

Judgment of the Court (Fourth Chamber) of 3 October 2019 (request for a preliminary ruling from the Curtea de Apel București — Romania) — Delta Antrepriză de Construcții și Montaj 93 SA v Compania Națională de Administrare a Infrastructurii Rutiere SA

(Case C-267/18) ⁽¹⁾

(Reference for a preliminary ruling — Public Procurement — Public procurement procedure — Directive 2014/24/EU — Article 57(4) — Optional grounds for exclusion — Exclusion of an economic operator from participating in a public procurement procedure — Early termination of a prior contract on account of partial subcontracting — Concept of ‘significant or persistent deficiencies’ — Scope)

(2019/C 413/13)

Language of the case: Romanian

Referring court

Curtea de Apel București

Parties to the main proceedings

Applicant: Delta Antrepriză de Construcții și Montaj 93 SA

Defendant: Compania Națională de Administrare a Infrastructurii Rutiere SA

Operative part of the judgment

Article 57(4)(g) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC must be interpreted as meaning that the subcontracting, by an economic operator, of part of the works under a prior public contract, decided upon without the contracting authority's authorisation and which led to the early termination of that contract, constitutes a significant or persistent deficiency shown in the performance of a substantive requirement under that public contract, within the meaning of that provision, and is therefore capable of justifying that economic operator being excluded from participation in a subsequent public procurement procedure if, after conducting its own evaluation of the integrity and reliability of the economic operator concerned by the early termination of the prior public contract, the contracting authority which organises that subsequent procurement procedure considers that such subcontracting entails breaking the relationship of trust with the economic operator in question. Before deciding such an exclusion, the contracting authority must however, in accordance with Article 57(6) of that directive, read in conjunction with recital 102 thereof, allow that economic operator the opportunity to set out the corrective measures adopted by it further to the early termination of the prior public contract.

⁽¹⁾ OJ C 249, 16.7.2018.
