



## Reports of Cases

ORDER OF THE COURT (Ninth Chamber)

20 June 2019\*

(Reference for a preliminary ruling — Public procurement of supplies, works or services — Directive 2014/24/EU — Article 10(h) — Specific exclusions for service contracts — Patient transport ambulance services — Concept)

In Case C-424/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per il Veneto (Regional Administrative Court for Veneto, Italy), made by decision of 13 June 2018, received at the Court on 27 June 2018, in the proceedings

**Italy Emergenza Cooperativa Sociale,**

**Associazione Volontaria di Pubblica Assistenza ‘Croce Verde’**

v

**ULSS 5 Polesana Rovigo,**

**Regione del Veneto,**

interveners:

**Regione del Veneto,**

**Croce Verde Adria,**

**Italy Emergenza Cooperativa Sociale,**

**Associazione Nazionale Pubbliche Assistenze (Organizzazione nazionale di volontariato) — ANPAS ODV,**

**Associazione Nazionale Pubblica Assistenza (ANPAS) — Comitato regionale Liguria,**

**Confederazione Nazionale delle Misericordie d’Italia,**

THE COURT (Ninth Chamber),

composed of K. Jürimäe, President of the Chamber, D. Šváby (Rapporteur) and S. Rodin, Judges,

Advocate General: M. Campos Sánchez-Bordona,

\* Language of the case: Italian.

Registrar: A. Calot Escobar,

having regard to the written procedure,

having considered the observations submitted:

- on behalf of Italy Emergenza Cooperativa Sociale, by R. Speranzoni and S. Betti, avvocati,
- on behalf of Associazione Volontaria di Pubblica Assistenza 'Croce Verde', by V. Migliorini and C. Tamburini, avvocati,
- on behalf of Regione del Veneto, by E. Zanon, C. Zampieri and C. Drago, avvocati,
- on behalf of Croce Verde Adria, by C. Tamburini, avvocato,
- on behalf of Associazione Nazionale Pubbliche Assistenze (Organizzazione nazionale di volontariato) — ANPAS ODV, by V. Migliorini and C. Tamburini, avvocati,
- on behalf of Associazione Nazionale Pubblica Assistenza (ANPAS) — Comitato regionale Liguria, by R. Damonte, avvocato,
- on behalf of Confederazione Nazionale delle Misericordie d'Italia, by P. Sanchini, F. Sanchini and C. Sanchini, avvocati,
- on behalf of the Italian Government, by G. Palmieri, acting as Agent, and by F. Sclafani, avvocato dello Stato,
- on behalf of the German Government, initially by T. Henze and J. Möller, and subsequently by J. Möller, acting as Agents,
- on behalf of Ireland, by M. Browne and G. Hodge, and by A. Joyce, acting as Agents, and by C. Donnelly, Barrister-at-law,
- on behalf of the European Commission, by G. Gattinara and P. Ondrůšek, and by L. Haasbeek, acting as Agents,

having decided, after hearing the Advocate General, to rule by reasoned order in accordance with Article 99 of the Rules of Procedure of the Court,

makes this

### Order

- 1 This request for a preliminary ruling concerns the interpretation of Article 10(h) 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 (OJ 2014 L 94, p. 65).
- 2 It has been made in the context of two disputes, the first between Italy Emergenza Cooperativa Sociale ('Italy Emergenza') and ULSS 5 Polesana Rovigo (local public health unit 5 of the Polesine of Rovigo, Italy, 'ULSS 5 Polesana'), and the second between Associazione Volontaria di Pubblica Assistenza 'Croce Verde' ('Croce Verde') and ULSS 5 Polesana and Regione del Veneto (Region of Veneto, Italy), concerning the award by ULSS 5 Polesana, by means of direct contracting, of a contract for ambulance transport services.

## Legal background

### *European Union law*

- 3 Recital 28 of Directive 2014/24 states:

‘This Directive should not apply to certain emergency services where they are performed by non-profit organisations or associations, since the particular nature of those organisations would be difficult to preserve if the service providers had to be chosen in accordance with the procedures set out in this Directive. However, the exclusion should not be extended beyond that strictly necessary. It should therefore be set out explicitly that patient transport ambulance services should not be excluded. In that context, it is furthermore necessary to clarify that CPV [Common Procurement Vocabulary] Group 601 ‘Land Transport Services’ does not cover ambulance services, to be found in CPV class 8514. It should therefore be clarified that services, which are covered by CPV code 85143000-3, consisting exclusively of patient transport ambulance services, should be subject to the special regime set out for social and other specific services (the ‘light regime’). Consequently, mixed contracts for the provision of ambulance services in general would also be subject to the light regime if the value of the patient transport ambulance services were greater than the value of other ambulance services.’

- 4 Article 10 of the directive, headed ‘Specific exclusions for service contracts’, provides, in paragraph (h):

‘This Directive shall not apply to public service contracts for:

...

(h) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3 [Fire-brigade and rescue services], 75251000-0 [Fire-brigade services], 75251100-1 [Firefighting services], 75251110-4 [Fire-prevention services], 75251120-7 [Forest-firefighting services], 75252000-7 [Rescue Services], 75222000-8 [Civil defence services], 98113100-9 [Nuclear safety services] and 85143000-3 [Ambulance services] except patient transport ambulance services;

...’

- 5 Title III of the directive, headed ‘Particular Procurement Regimes’, contains a Chapter I consisting of Articles 74 to 77. Those articles make provision for the light regime which is applicable to social and other specific services.

### *Italian law*

- 6 Decreto legislativo n. 50 — Attuazione delle direttive 2014/23/UE, 2014/24/UE e 2014/25/UE sull’aggiudicazione dei contratti di concessione, sugli appalti pubblici e sulle procedure d’appalto degli enti erogatori nei settori dell’acqua, dell’energia, dei trasporti e dei servizi postali, nonché per il riordino della disciplina vigente in materia di contratti pubblici relativi a lavori, servizi e forniture (Legislative Decree No 50 making provision for the application of Directives 2014/23/EU [on the award of concession contracts], 2014/24/EU and 2014/25/EU, on procurement by entities operating in the water, energy, transport and postal services sectors, and reorganising the legislation applicable to public works contracts, public services contracts and public supply contracts), of 18 April 2016 (GURI No 91 of 19 April 2016), constitutes the new Codice dei contratti pubblici (‘public contracts code’).

- 7 Article 17 of that code, headed 'Specific exceptions for public contracts and service concessions', provides, in paragraph (1):

'The provisions of this code do not apply to public contracts or service concessions in respect of:

...

- (h) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3 except patient transport ambulance services.'
- 8 Article 57 of decreto legislativo n. 117 — Codice del Terzo settore (Legislative Decree No 117 enacting the third sector code) of 3 July 2017 (Ordinary Supplement to GURI No 179 of 2 August 2017) provides:

'Emergency ambulance transport services may be awarded as a priority, by direct contracting, to volunteer organisations which have been registered for at least 6 months in the national third sector register, which belong to a network of associations for the purposes of Article 41(2), and which are accredited under the relevant regional legislation, if any, where, by reason of the particular nature of the service, direct contracting ensures that a service which is in the public interest can be provided within a framework of effective contributions to social goals, which pursues objectives of solidarity, in an economically efficient and appropriate manner, and in accordance with the principles of transparency and non-discrimination.'

- 9 The decreto del Presidente del Consiglio dei Ministri — Definizione e aggiornamento dei livelli essenziali di assistenza, di cui all'articolo 1, comma 7, del decreto legislativo 30 dicembre 1992 n. 502 (Decree of the President of the Council of Ministers defining and updating the basic levels of care provided for in Article 1(7) of Legislative Decree No 502 of 30 December 1992) of 12 January 2017 (Ordinary Supplement to GURI No 65 of 18 March 2017), provides in Article 7, headed 'Local emergency medical care':

'1. The national health service shall ensure that medical care is provided rapidly, with a view to stabilising the patient's condition, in emergencies arising out of hospital, through the provision of safe transport to the most appropriate hospital facility. Local emergency services shall be coordinated and managed by '118' centres of operations, 24 hours a day.

2. In particular, the following shall be ensured:

- (a) medical intervention by means of ground and air vehicles providing basic and advanced emergency care, and carrying appropriately trained medical personnel,
- (b) secondary ambulance transport services, with or without the provision of care,
- (c) medical care and coordination in the event of major emergencies or incidents carrying a nuclear, biological, chemical or radiological (NBCR) risk,
- (d) medical care in respect of demonstrations and scheduled events, in accordance with the detailed provisions laid down by the regions and autonomous provinces.

3. The delivery of local emergency medical services shall be integrated with the emergency hospital care provided by the first response and emergency services, and with the provision of basic and ongoing care.'

- 10 Article 2(1) of the legge regionale n. 26 — Disciplina del sistema regionale di trasporto sanitario di soccorso ed emergenza (Regional Law of Veneto No 26 on the regional system of medical transport (emergency response and emergency care)) of 27 July 2012 ('Regional Law No 26/2012'), provides:
- 'For the purposes of this law, emergency response ambulance transport comprises those activities which are carried out using emergency vehicles by the personnel, in particular the medical personnel, responsible for that service, in the exercise of the following functions:
- (a) emergency transport services provided using emergency vehicles under the direction of the emergency medical service (SUEM) coordination centres;
  - (b) transport services provided with the *Livelli Essenziali di Assistenza* (basic levels of care), using emergency vehicles;
  - (c) transport services provided in circumstances where the patient's condition requires the use of an emergency vehicle and the attention, during the journey, of medical or specially trained personnel, and also requires uninterrupted care to be ensured.'
- 11 Resolution No 1515 of the Giunta Regionale del Veneto (Executive Organ of the Region of Veneto, Italy), of 29 October 2015, provides that 'during the delivery of the service, a driver with emergency response training shall be present on board the ambulance together with at least one emergency responder with the qualifications and skills mandatory for that activity', which are obtained by completing a course and passing an examination in three subjects, namely anatomy, physiology and emergency response. It follows that the secondary service, which includes the service of transport alone, is delivered in a context which brings ordinary transport together with medical care.

### **The main proceedings and the questions referred for a preliminary ruling**

- 12 Italy Emergenza, which is a social cooperative organisation providing ambulance transport services, brought an action seeking, principally, the annulment of Decision No 1754 of the Director-General of ULSS 5 Polesana of 28 December 2017, together with a series of preparatory measures taken with a view to its adoption. By that decision, that local unit, ULSS 5 Polesana, had awarded the provision of emergency and secondary ambulance transport services, within its geographical area, to Croce Verde, by direct contracting. The contract, which runs from 1 April 2018 to 31 March 2020, can be renewed for a further 2 years provided that Croce Verde continues to meet the accreditation requirements of Regional Law No 26/2012 and Decision No 179/2014 of the Regional Council of Veneto. It quantifies the reimbursable costs at EUR 2 291 260 per annum, representing EUR 6 873 780 over 3 years.
- 13 Italy Emergenza submits that secondary ambulance transport services are not among the services excluded from the public procurement rules by Article 10(h) of Directive 2014/24, read in conjunction with recital 28 of that directive.
- 14 While that action was pending before the Tribunale amministrativo regionale per il Veneto (Regional Administrative Court for Veneto, Italy), by Decision No 372 of 24 April 2018, ULSS 5 Polesana annulled Decision No 1754, so as to reflect a judgment of the Consiglio di Stato (Council of State, Italy), of 22 February 2018, which held that only emergency ambulance services could fall within the exclusion from the award procedure, and only where they were provided by non-profit organisations. A service consisting simply in transport by ambulance, or in other words in the ordinary non-urgent transport of patients, was, on the other hand, held to be subject to the light regime provided for in Articles 74 to 77 of Directive 2014/24.
- 15 Following the adoption of Decision No 372, Italy Emergenza, in essence, indicated a wish to withdraw its action, on the basis that Croce Verde would not seek to have that decision annulled.



- 16 Croce Verde did challenge the decision, however, submitting that the distinction between emergency transport services and ordinary transport services had not been settled beyond argument. While recital 28 of Directive 2014/24 appeared to make the light regime applicable 'exclusively' to patient transport ambulance services, no such stipulation was to be found in Article 10(h) of the directive.
- 17 In a judgment delivered in a similar matter, on 9 March 2018, the referring court held that in accordance with that article, and with Article 17(1)(h) of the public contracts code, which transposes it word-for-word, the 'ambulance services' covered by CPV code 85143000-3 are, by derogation from the usual rules of public procurement, excluded from the provisions of the public contracts code, with the exception of 'patient transport ambulance services', which remain subject to the light regime. In order for the exclusion in Article 10(h) of Directive 2014/24 to apply, it held, the emergency assistance services must be provided by ambulance, must consist in the provision of transport and first aid to patients in an emergency, and must be provided by a non-profit organisation. Ambulance transport services alone, or in other words the ordinary transport of patients where there is no emergency, were held to be subject to the light regime.
- 18 The referring court states, however, that while it is easy to distinguish emergency response services from mere patient transport services, there are intermediate forms of transport where the proper classification is less than obvious. This is true, in particular, of certain healthcare services referred to in Article 2 of Regional Law 26/2012, such as transport services provided with basic levels of care (which comprise an obligation on the part of the Servizio Sanitario Nazionale (National Health Service, Italy), to provide all citizens, free of charge or on payment of a contribution, with services delivered using emergency vehicles), or transport services provided in circumstances where the patient's condition requires the use of an emergency vehicle and the attention, during the journey, of healthcare personnel, or specially trained personnel, in order to ensure uninterrupted care.
- 19 The referring court states that Article 2 of Regional Law No 26/2012 treats all such services as emergency transport services delivered using emergency vehicles and thus brings them, where they are provided by non-profit organisations or associations, within the exclusion in Article 10(h) of Directive 2014/24 and Article 17(1)(h) of the public contracts code.
- 20 Against that background, the Tribunale amministrativo regionale per il Veneto (Regional Administrative Court for Veneto) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- (1) Must Article 10(h) and recital 28 of Directive [2014/24] be interpreted as meaning that:
- (a) ambulance services that require the presence on board of a driver with emergency response training and at least one emergency responder with the qualifications and skills obtained from completing a course and passing an examination in emergency response, and
  - (b) transport services provided with basic levels of care using emergency vehicles are covered by the exclusion laid down in the above-mentioned Article 10(h), or must they be among the services referred to in Articles 74 to 77 of Directive [2014/24]?
- (2) Must Directive 2014/24/EU be interpreted as precluding national legislation which provides that, even in the absence of an actual emergency,
- (a) ambulance services that require the presence on board of a driver with emergency response training and at least one emergency responder with the qualifications and skills obtained from completing a course and passing an examination in emergency response, and
  - (b) transport services provided with basic levels of care using emergency vehicles are awarded as a priority to voluntary associations by means of direct contracting?

### Consideration of the questions referred

- 21 Under Article 99 of the Rules of Procedure of the Court, where the reply to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.
- 22 It is appropriate to apply that provision in the present case.
- 23 By its questions, which can appropriately be examined together, the referring court asks, in essence, whether Article 10(h) of Directive 2014/24, read in conjunction with recital 28 of that directive, is to be interpreted as precluding national legislation under which, first, ambulance services requiring the presence on board of a driver with emergency response training and at least one emergency responder with the qualifications and skills obtained from completing a course and passing an examination in emergency response, and second, transport services provided with basic levels of care using emergency vehicles, fall, in the absence of any emergency, within the exclusion provided for by that article.
- 24 In answering that question, it should be observed that Article 10(h) of Directive 2014/24 excludes public service contracts relating to civil defence services, civil protection services and danger prevention services from the scope of the traditional public procurement rules, provided that they fall within the CPV codes referred to in that article and are provided by non-profit organisations or associations. That exclusion to the public procurement rules is itself subject to an exception, however, in that it does not extend to patient transport ambulance services, which are subject to the light regime provided for in Articles 74 to 77 of Directive 2014/24 (see, to that effect, judgment of 21 March 2019, *Falck Rettungsdienste and Falck*, C-465/17, EU:C:2019:234, paragraph 38).
- 25 It is clear from Article 10(h) of Directive 2014/24, read in the light of recital 28 thereof, that the exclusion from the public procurement rules laid down in that provision in favour of danger prevention services only benefits certain emergency services provided by non-profit organisations or associations and that it must not go beyond what is strictly necessary (judgment of 21 March 2019, *Falck Rettungsdienste and Falck*, C-465/17, EU:C:2019:234, paragraph 43).
- 26 Thus, as regards danger prevention services, the inapplicability of the public procurement rules laid down in Article 10(h) of that directive is inextricably linked to the existence of an emergency service, such that the presence of qualified personnel on board an ambulance cannot suffice to establish, in itself, the existence of an ambulance service covered by CPV code 85143000-3 (see, to that effect, judgment of 21 March 2019, *Falck Rettungsdienste and Falck*, C-465/17, EU:C:2019:234, paragraphs 44 and 45).
- 27 An emergency may nevertheless be shown to exist, at least potentially, where it is necessary to transport a patient whose state of health is at risk of deterioration during that transport, although it must be possible, in principle, for that risk to be objectively assessed. It is only in those circumstances that transport by qualified ambulance could fall within the scope of the exclusion from the application of the public procurement rules laid down in Article 10(h) of Directive 2014/24 (see, to that effect, judgment of 21 March 2019, *Falck Rettungsdienste and Falck*, C-465/17, EU:C:2019:234, paragraphs 46 and 49).
- 28 It follows from the considerations set out above that neither ambulance services which, under the legislation at issue in the main proceedings, require the presence on board of an appropriately trained emergency response driver and at least one appropriately trained emergency responder, nor transport services provided with basic levels of care using emergency vehicles, can automatically fall within the exclusion in Article 10(h) of Directive 2014/24. The benefit of that exclusion is only available where,

in addition to appropriately trained first responders being present, the ambulance service is provided by non-profit organisations or associations, within the meaning of that provision, and there is an emergency.

- 29 Accordingly, the answer to the questions referred is that Article 10(h) of Directive 2014/24, read in conjunction with recital 28 of that directive, must be interpreted as precluding national legislation under which ambulance services that require the presence on board of a driver with emergency response training and at least one emergency responder with the qualifications and skills obtained from completing a course and passing an examination in emergency response, and transport services provided with basic levels of care using emergency vehicles, fall, in the absence of any emergency, within the exclusion provided for in that article.

### **Costs**

- 30 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

**Article 10(h) 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, read in conjunction with recital 28 of that directive, must be interpreted as precluding national legislation under which ambulance services that require the presence on board of a driver with emergency response training and at least one emergency responder with the qualifications and skills obtained from completing a course and passing an examination in emergency response, and transport services provided with basic levels of care using emergency vehicles, fall, in the absence of any emergency, within the exclusion provided for in that article.**

[Signatures]