

Request for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Valenciana (Spain) lodged on 16 September 2020 — Asociación Estatal de Entidades de Servicios de Atención a Domicilio (ASADE) v Consejería de Igualdad y Políticas Inclusivas

(Case C-436/20)

(2020/C 423/42)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Valenciana

Parties to the main proceedings

Applicant: Asociación Estatal de Entidades de Servicios de Atención a Domicilio (ASADE)

Defendant: Consejería de Igualdad y Políticas Inclusivas

Questions referred

1. Must Article 49 TFEU and Articles 76 and 77 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 ⁽¹⁾ (as read with Article 74 and Annex 14 thereof) be interpreted as precluding national legislation which permits contracting authorities to make use of agreements with private non-profit organisations — not solely voluntary associations — to provide **all manner** of social services to the person **in return for reimbursement of costs** without following the procedures in the Procurement Directive and irrespective of the estimated value, simply by classifying the arrangements in question as non-contractual?
2. If the reply is in the negative, meaning that such arrangements are possible, must Article 49 TFEU and Articles 76 and 77 of the Procurement Directive (as read with Article 74 and Annex 14 thereof) be interpreted as permitting contracting authorities to make use of agreements with private non-profit organisations (not solely voluntary associations) to provide **all manner** of social services to the person in return for reimbursement of costs without following the procedures in the directive and irrespective of the estimated value, simply by classifying the arrangements in question as non-contractual, where, moreover, the national legislation in question does not expressly include the requirements established in Article 77 of the directive, but refers to subsequent implementation through regulations without expressly stipulating, among the requirements to be satisfied by the implementing regulations, that they must explicitly include the conditions laid down in Article 77 of the directive?
3. If the reply is, again, in the negative, meaning that such a situation is possible, must Articles 49 and 56 TFEU, Articles 76 and 77 of the Public Procurement Directive (as read with Article 74 and Annex XIV thereof) and Article 15(2) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market ⁽²⁾ be interpreted as permitting contracting authorities, when selecting non-profit organisations (not solely voluntary associations) with which to enter into agreements to provide **all manner** of social services to the person, to include not only the selection criteria set out in Article 2(2)(j) of the said directive but also the criterion that the organisation be established *in the place where the service is to be provided*?

⁽¹⁾ 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⁾ OJ 2006 L 376, p. 36.