

**Judgment of the Court (Eighth Chamber) of 10 November 2022 (request for a preliminary ruling from the Državna revizijska komisija za revizijo postopkov oddaje javnih naročil — Slovenia) — SHARENGO najem in zakup vozil d.o.o. v Mestna občina Ljubljana**

(Case C-486/21) <sup>(1)</sup>

*(Reference for a preliminary ruling — Public system for the rental and shared use of electric cars — Distinction between the concepts of ‘services concessions’ and ‘public supply contracts’ — Directive 2014/23/EU — Article 5(1)(b) — Article 20(4) — Concept of ‘mixed contracts’ — Article 8 — Determining the value of a services concession — Criteria — Article 27 — Article 38 — Directive 2014/24/EU — Article 2(1), points 5 and 8 — Implementing Regulation (EU) 2015/1986 — Annex XXI — Possibility of imposing a condition concerning the registration of a specific professional activity under national law — Impossibility of imposing that condition on all members of a temporary business association — Regulation (EC) No 2195/2002 — Article 1(1) — Obligation to refer exclusively to the ‘Common Procurement Vocabulary’ in concession documents — Regulation (EC) No 1893/2006 — Article 1(2) — Impossibility of referring to the ‘NACE Rev. 2’ nomenclature in the concession documents)*

(2023/C 7/12)

Language of the case: Slovenian

### Referring court

Državna revizijska komisija za revizijo postopkov oddaje javnih naročil

### Parties to the main proceedings

*Applicant:* SHARENGO najem in zakup vozil d.o.o.

*Defendant:* Mestna občina Ljubljana

### Operative part of the judgment

1. Article 5(1)(b) of Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, as amended by Commission Delegated Regulation (EU) 2019/1827 of 30 October 2019,

must be interpreted as meaning that

an operation whereby a contracting authority intends to entrust the establishment and operation of a service consisting of the hire and sharing of electric vehicles to an economic operator whose financial contribution is mostly allocated for the purchase of those vehicles, and in which the revenue of that economic operator will derive essentially from the fees paid by the users of that service constitutes a ‘services concession’, since such characteristics are such as to establish that the risk linked to the operation of the services under concession has been transferred to that economic operator.

2. Article 8 of Directive 2014/23, as amended by Delegated Regulation 2019/1827,

must be interpreted as meaning that

in order to determine whether the threshold for applicability of that directive is reached, the contracting authority must estimate the ‘total turnover of the concessionaire generated over the duration of the contract, net of [value-added tax (VAT)]’, taking into account the fees which users will pay to the concessionaire, together with contributions and costs borne by the contracting authority. However, the contracting authority may also take the view that the threshold laid down for the application of Directive 2014/23, as amended by Delegated Regulation 2019/1827, is reached where the investments and costs to be borne by the concessionaire, alone or with the contracting authority, throughout the period of application of the concession contract manifestly exceed that threshold of applicability.

3. Article 38(1) of Directive 2014/23, as amended by Delegated Regulation 2019/1827, read in conjunction with point 7 (b) of Annex V to and recital 4 of that directive, and with Article 4 and point III.1.1 of Annex XXI to Commission Implementing Regulation (EU) 2015/1986 of 11 November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011,

must be interpreted as meaning that

a contracting authority may require, as criteria for the selection and qualitative assessment of candidates, that economic operators be enrolled on a trade register or on a professional register, provided that an economic operator can rely on being enrolled on a similar register in the Member State in which it is established.

4. Article 38(1) of Directive 2014/23, as amended by Delegated Regulation 2019/1827, read in conjunction with Article 27 of that directive and Article 1 of Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV),

must be interpreted as

precluding a contracting authority, which requires economic operators to be enrolled on the trade register or the professional register of a Member State of the European Union, from referring not to the Common Procurement Vocabulary (CPV) made up of CPV codes, but to the NACE Rev. 2 nomenclature, as established by Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains.

5. Article 38(1) to (2) of Directive 2014/23, as amended by Delegated Regulation 2019/1827, read in conjunction with Article 26(2) of that directive,

must be interpreted as meaning that

a contracting authority may not, without infringing the principle of proportionality guaranteed by the first subparagraph of Article 3(1) of that directive, require each of the members of a temporary business association to be enrolled, in a Member State, on the trade register or the professional register with a view to the pursuit of the activity of renting and leasing of cars and light motor vehicles.

<sup>(1)</sup> OJ C 471, 22.11.2021.

**Judgment of the Court (Fifth Chamber) of 10 November 2022 (request for a preliminary ruling from the High Court (Ireland) — Ireland) — Eircom Limited v Commission for Communications Regulation**

(Case C-494/21) <sup>(1)</sup>

*(Reference for a preliminary ruling — Electronic communications networks and services — Universal service and users' rights — Directive 2002/22/EC (Universal Service Directive) — Article 12 — Costing and financing of universal service obligations — Single universal service provider and multiple telecommunications services providers operating in the market — Determination as to whether an unfair burden exists)*

(2023/C 7/13)

Language of the case: English

**Referring court**

High Court (Ireland)