

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 5 August 2021 — Euler Hermes SA Magyarországi Fióktelepe v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-482/21)

(2021/C 471/28)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Euler Hermes SA Magyarországi Fióktelepe

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Question referred

Do the principles of proportionality, fiscal neutrality and effectiveness –having regard, in particular, to the fact that a Member State may not charge an amount of VAT exceeding that actually received by the supplier of goods or services in respect of that supply of goods or services — and the exemption laid down in Article 135(1)(a) of the VAT Directive ⁽¹⁾ — particularly as regards the requirement that that activity is to be treated as a single exempt transaction, by reference to the principles laid down in points 35, 37 and 53 of the Advocate General’s Opinion in Case C-242/08, *Swiss Re* — and the obligation to guarantee the free movement of capital and services in the internal market preclude a practice of a Member State pursuant to which the reduction applicable to the taxable amount in the event of definitive non-payment, as provided for in Article 90(1) of the VAT Directive, is not applicable where an insurer, in the course of its commercial credit insurance business, paid an indemnity to the insured person in respect of the taxable amount and also in respect of the VAT due when the risk materialised (non-payment by the insured’s client), meaning that, under the insurance contract, the debt, together with all associated rights of enforcement, was assigned to the insurer, in the following circumstances:

- (i) at the time when the debts in question became irrecoverable, national law did not allow any reduction of the taxable amount in respect of an irrecoverable debt;
- (ii) since the incompatibility of that prohibition with Union law was made clear, national positive law has consistently excluded outright the refund of VAT on an irrecoverable debt to the original supplier of the goods or services (the insured person) on the grounds that the insurer has reimbursed that amount of VAT to the supplier; and
- (iii) the insurer is able to show that its claim against the debtor has become definitively irrecoverable?

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Request for a preliminary ruling from the Državna revizijska komisija za revizijo postopkov oddaje javnih naročil (Slovenia) lodged on 9 August 2021 — SHARENGO najem in zakup vozil d.o.o. v Mestna občina Ljubljana

(Case C-486/21)

(2021/C 471/29)

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

Questions referred

1. Is Regulation (EC) No 2195/2002 [of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV)],⁽¹⁾ as amended by Commission Regulation (EC) No 213/2008 [of 28 November 2007 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV)⁽²⁾ and Directives 2004/17/EC⁽³⁾ and 2004/18/EC⁽⁴⁾ of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV], to be interpreted as meaning that the hire of passenger cars without a driver falls not within Group 601 of the Common Procurement Vocabulary (CPV), but instead within Group 341 of the CPV, with the addition of code PA01-7 Hire, from the Supplementary Vocabulary, completing the description, which is unaffected by code PB04-7 Without driver from the Supplementary Vocabulary, the combination of the codes from Group 341 of the CPV with the code PA01-7 Hire from the Supplementary Vocabulary meaning that the hire of passenger cars without a driver should be considered a supply contract, not a service contract and, consequently, where the bulk of the investment from the economic operator in the execution of a project — one to create a public system for the hire and sharing of electric vehicles — consists in the supply of electric vehicles, and where that investment is even greater than the contracting authority's investment in the project, the 'services' element referred to in 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]⁽⁵⁾ is not fulfilled and, therefore, the contract for the execution of such a project is not a 'services concession' within the meaning of Article 5(1)(b) of Directive 2014/23/EU?
2. Is the concept of 'the provision and management of services' in Article 5(1)(b) of Directive 2014/23/EU to be interpreted as meaning that:
 - (a) the concept of 'the provision of services' in Article 5(1)(b) of Directive 2014/23/EU has the same meaning as the concept of 'the provision of services' in Article 2(1)(9) 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⁽⁶⁾], such that the concept of 'the provision of services' in Article 5(1)(b) of Directive 2014/23/EU means that, in the case of the creation of a public system for the hire and sharing of electric vehicles, the economic operator provides services ancillary to the hire and sharing of electric vehicles, and carries on activities which go beyond the hire and sharing of electric vehicles,

and
 - (b) the concept of 'the management of services' in Article 5(1)(b) of Directive 2014/23/EU means that the economic operator exercises the 'right to exploit the services', as mentioned further on in Article 5(1)(b) of Directive 2014/23/EU, in order to generate revenue, and therefore the concept of 'the management of services' in Article 1(b) of Directive 2014/23/EU means that, in the case of the creation of a public system for the hire and sharing of electric vehicles, an economic operator, by reason of the provision of services falling within the scope of the hire and sharing of electric vehicles and activities going beyond the hire and sharing of electronic vehicles, has the right to charge users for the provision of the services and is not required to pay parking fees to the municipality or to bear the costs of regular maintenance of parking spaces, such that it is legitimate for it to generate revenue on that basis?@
3. Is the concept of the 'total turnover of the concessionaire generated over the duration of the contract, net of VAT, as estimated by the contracting authority or the contracting entity, in consideration for the ... services being the object of the concession', in the first subparagraph of Article 8(2) of Directive 2014/23/EU, to be interpreted as meaning that the 'total turnover of the concessionaire' also includes payments made to the concessionaire by users and that, consequently, such payments also constitute 'consideration for the ... services being the object of the concession'?
4. Is Article 8(1) of Directive 2014/23/EU to be interpreted as meaning that Directive 2014/23/EU applies where the value of the investments or the value of the investments and costs borne by the economic operator in connection with a services concession, or borne by the economic operator and by the contracting authority in connection with a services concession (manifestly) exceeds EUR 5 350 000, excluding VAT?

5. Is Article 38(1) of Directive 2014/23/EU to be interpreted as permitting a contracting authority to impose a condition of participation relating to professional activity, and to require economic operators to provide evidence of the fulfilment of that condition, including in accordance with Commission Implementing Regulation 2015/1986 ⁽⁷⁾ [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 ⁽⁸⁾], and the corrigendum [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], which sets out, in Annex XXI, the concession notice (standard form 24), which contains a Section III.1.1. Suitability to pursue the professional activity, including requirements relating to enrolment on professional or trade registers?
6. If question 5 is answered in the affirmative, is Article 38(1) of Directive 2014/23/EU, in the light of the principles of equal treatment and non-discrimination mentioned in Article 3(1) of Directive 2014/23/EU, to be interpreted as meaning that, in setting the condition of participation relating to professional activity, a contracting authority may use the national item NACE 77.110 for the description of the activity of Renting and leasing of cars and light motor vehicles, which has the same meaning as in Regulation 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] in Annex I, NACE REV 2, ⁽⁹⁾ class 77.11 Renting and leasing of cars and light motor vehicles?
7. If question 5 is answered in the affirmative, is Article 38(1) of Directive 2014/23/EU, in particular in so far as it refers to the requirement of proportionality and in the light of the principles of equal treatment and non-discrimination mentioned in Article 3(1) of Directive 2014/23/EU, to be interpreted as meaning that a contracting authority may require that the condition of registration for the pursuit of the activity of renting and leasing of cars and light motor vehicles is fulfilled by each of the partners?
8. Is Article 2(1)(8) of Directive 2014/24/EU to be interpreted as meaning that it is a 'public supply contract' when (in relation to the economic operator's investment) an essential part of the future contractual relationship between the municipality and the economic operator relates to the hire and sharing of electronic vehicles intended for users of a public electronic vehicle hire and sharing system, where the municipality does not invest directly in the implementation of the project for the creation of a public system for the hire and sharing of electronic vehicles by paying money to the economic operator, but instead invests indirectly, through the waiving of parking fees for a period of 20 years and through the provision of regular maintenance of parking spaces, and where the value of that investment exceeds, in aggregate, the value indicated in Article 4(b) or (c) of Directive 2014/24/EU, having regard to Commission Delegated Regulation 2019/1828 [of 30 October 2019 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the thresholds for public supply, service and works contracts, and design contests ⁽¹⁰⁾], and where the investment from the municipality is, however, (substantially) less than both the economic operator's investment as a whole in the project for the creation of a public system for the hire and sharing of electric vehicles, and the economic operator's investment in the part of the project which relates to electronic vehicles, notwithstanding that users will pay the economic operator for the use of the electronic vehicles and that the economic operator's success in generating revenue will depend on user demand, which will be indicative of the financial success of the public system for the hire and sharing of electronic vehicles, for which reason the economic operator bears the operating risk in the implementation of the project, which is a characteristic of a 'services concession', within the meaning of Article 5(1)(b) of Directive 2012/23/EU, rather than of a 'public contract' within the meaning of Article 2(1)(5) of Directive 2014/24/EU?
9. Is the third subparagraph of Article 3(4) of Directive 2014/24/EU to be interpreted as constituting the legal basis for the application of the regime established by Directive 2014/24/EU for the purposes of the award of a future contract between the municipality and the economic operator for the project to create a public system for the hire and sharing of electric vehicles, inasmuch as that contract must be considered a mixed contract, containing elements of a public supply and service contract and of a services concession, given that the municipality's investment in the implementation of the project exceeds the threshold set in Article 4(c) of Directive 2014/24/EU, having regard to Delegated Regulation 2019/1828?

10. Are Article 58(1) and Article 58(2) of Directive 2014/24/EU, in the light of the principles of equal treatment and non-discrimination mentioned in Article 18(1) of Directive 2014/24/EU, to be interpreted as meaning that, that, in setting a condition of participation relating to professional activity, a contracting authority may use the national item NACE 77.110 for the description of the activity of Renting and leasing of cars and light motor vehicles, which has the same meaning as in Regulation 1893/2006, in Annex I, NACE Rev. 2, class 77.11 Renting and leasing of cars and light motor vehicles?
11. Are Article 58(1) of Directive 2014/24/EU, in particular in so far as it refers to the requirement of proportionality, and Article 58(2) of Directive 2014/24/EU, in the light of the principles of equal treatment and non-discrimination mentioned in Article 18(1) of Directive 2014/24/EU, to be interpreted as meaning that a contracting authority may require the condition of registration for the pursuit of the activity of Renting and leasing of cars and light motor vehicles to be fulfilled by each of the partners?

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- (¹) Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (Text with EEA relevance) (OJ 2002 L 340, p. 1).
- (²) Commission Regulation (EC) No 213/2008 of 28 November 2007 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) and Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV (OJ 2008 L 74, p. 1).
- (³) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1).
- (⁴) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).
- (⁵) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ 2014 L 94, p. 1).
- (⁶) 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).
- (⁷) 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 (OJ 2015 L 296, p. 1).
- (⁸) Commission Implementing Regulation (EU) No 842/2011 of 19 August 2011 establishing standard forms for the publication of notices in the field of public procurement and repealing Regulation (EC) No 1564/2005 (OJ 2011 L 222, p. 1).
- (⁹) 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 (OJ 2006 L 393, p. 1).
- (¹⁰) Commission Delegated Regulation (EU) 2019/1828 of 30 October 2019 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the thresholds for public supply, service and works contracts, and design contests (OJ 2019 L 279, p. 25).

Appeal brought on 9 August 2021 by Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo against the judgment delivered on 2 June 2021 by the General Court (Seventh Chamber) in Case T-223/18, Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo v European Commission

(Case C-492/21 P)

(2021/C 471/30)

Language of the case: Italian

Parties

Appellant: Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo (represented by: F. Rosi, avvocato)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

- set aside the judgment delivered by the General Court on 2 June 2021 in Case T-223/18 concerning the application under Article 263 TFEU seeking annulment of Commission Decision C(2017) 7973 final of 4 December 2017 concerning State Aid SA.39913 (2017/NN) Italy — Alleged compensation of public hospitals in the Lazio Region;
- order the Commission to pay the costs.