

Judgment of the Court (Tenth Chamber) of 9 February 2023 (request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia — Italy) — VZ v CA

(Case C-53/22, ⁽¹⁾ VZ (Tenderer definitively excluded))

(Reference for a preliminary ruling — Review procedures in respect of the award of public supply and public works contracts — Directive 89/665/EEC — Article 1(3) — Interest in bringing proceedings — Access to the review procedures — Grave professional misconduct on account of an anticompetitive agreement — Other operator definitively excluded from participating in the procurement procedure concerned due to failure to meet the minimum requirements)

(2023/C 112/14)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia

Parties to the main proceedings

Applicant: VZ

Defendant: CA

Intervening parties: RT, BO, Regione Lombardia, Regione Liguria

Operative part of the judgment

Article 1(3) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014

must be interpreted as not precluding legislation of a Member State which does not allow an operator which is prevented from participating in a procedure for the award of a public contract on the ground that it did not satisfy one of the conditions for participation laid down in the call for tenders concerned, and whose action against the inclusion of that condition in that call for tenders was rejected by a decision which acquired the force of *res judicata*, to challenge the refusal of the contracting authority concerned to annul the decision awarding that public contract following confirmation by a court decision that the successful tenderer and all the other tenderers had participated in an agreement constituting an infringement of the competition rules in the same sector as that concerned by the procedure for the award of that public contract.

⁽¹⁾ OJ C 148, 4.4.2022.