



C/2024/922

29.1.2024

Judgment of the Court (Tenth Chamber) of 7 December 2023 (requests for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — Zamestnik-ministar na regionalnoto razvitie i blagoustroystvoto i rakovoditel na Upravlyavashtia organ na Operativna programa ‘Regioni v rastezh’ 2014-2020 (C-441/22), Zamestnik-ministar na regionalnoto razvitie i blagoustroystvoto i rakovoditel na Natsionalnia organ po Programa INTERREG V-A Rumania-Bulgaria 2014-2020 (C-443/22) v Obshtina Razgrad (C-441/22), Obshtina Balchik (C-443/22)

(Joined Cases C-441/22 and C-443/22, ⁽¹⁾ Obshtina Razgrad and Others)

(References for a preliminary ruling — Public procurement — European Structural and Investment Funds — Contract performance — Directive 2014/24/EU — Article 72 — Modification of contracts during their term — Modification of the time limit for performance — Substantial modification — Unforeseeable circumstances)

(C/2024/922)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellants in cassation: Zamestnik-ministar na regionalnoto razvitie i blagoustroystvoto i rakovoditel na Upravlyavashtia organ na Operativna programa ‘Regioni v rastezh’ 2014-2020 (C-441/22), Zamestnik-ministar na regionalnoto razvitie i blagoustroystvoto i rakovoditel na Natsionalnia organ po Programa INTERREG V-A Rumania-Bulgaria 2014-2020 (C-443/22)

Respondents in cassation: Obshtina Razgrad (C-441/22), Obshtina Balchik (C-443/22)

With the participation of: Varhovna administrativna prokuratura

Operative part of the judgment

1. Article 72(1)(e) and Article 72(4) 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, as amended by Commission Delegated Regulation (EU) 2017/2365 of 18 December 2017,

must be interpreted as meaning that, for the purpose of classifying a modification of a public procurement contract as ‘substantial’ within the meaning of that article, the parties to the contract need not have signed a written agreement having that modification as its object, as a common intention to make the modification at issue may also be inferred from, inter alia, other written material originating from those parties.

2. Article 72(1)(c)(i) of Directive 2014/24, as amended by Delegated Regulation 2017/2365,

must be interpreted as meaning that the diligence which the contracting authority needs to have shown in order to be able to rely on that provision requires, in particular, that contracting authority to have taken into account, during the preparation of the public contract concerned, the risks of the time limit for performance of that contract being exceeded resulting from foreseeable causes of suspension, such as ordinary weather conditions and statutory prohibitions on the performance of works published in advance and applicable during a period included in the period for performance of that contract, as such weather conditions and statutory prohibitions cannot, where they have not been provided for in the documents governing the public contract award procedure, justify the performance of the works beyond the time limit set in those documents and in the initial public procurement contract.

⁽¹⁾ OJ C 408, 24.10.2022.