

Order of the Court (Tenth Chamber) of 4 September 2014 (request for a preliminary ruling from the Tatabányai Közigazgatási és Munkaügyi Bíróság (Hungary)) — István Tivadar Szabó v Nemzeti Adó- és Vámhivatal Közép-dunántúli Regionális Adó Főigazgatósága

(Case C-204/14) ⁽¹⁾

(Reference for a preliminary ruling — Tax debts accumulated by a commercial company — Director of that company could not be recruited to be a director of another company — Article 53(2) of the Rules of Procedure of the Court of Justice — Interpretation requested of provisions of EU law that are inapplicable — Manifest lack of jurisdiction of the Court — Hypothetical questions — Manifest inadmissibility)

(2014/C 431/12)

Language of the case: Hungarian

Referring court

Tatabányai Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: István Tivadar Szabó

Defendant: Nemzeti Adó- és Vámhivatal Közép-dunántúli Regionális Adó Főigazgatósága

Operative part of the order

1. The Court of Justice of the European Union manifestly lacks jurisdiction to provide an answer to the third question posed by the Tatabányai Közigazgatási és Munkaügyi Bíróság (Hungary).
2. The other questions posed by the aforementioned court are manifestly inadmissible.

⁽¹⁾ OJ C 245, 28.7.2014.

Request for a preliminary ruling from the Krajowa Izba Odwoławcza (Poland) lodged on 14 August 2014 — Esaprojekt sp. z o.o. v Województwo Łódzkie

(Case C-387/14)

(2014/C 431/13)

Language of the case: Polish

Referring court

Krajowa Izba Odwoławcza

Parties to the main proceedings

Appellant: Esaprojekt sp. z o.o.

Respondent: Województwo Łódzkie

Questions referred

- 1) Does Article 51 of 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 ('Directive 2004/18/EC'), ⁽¹⁾ in conjunction with the principle of equal and non-discriminatory treatment of economic operators and the principle of transparency set out in Article 2 thereof, allow an economic operator, when clarifying or supplementing documents, to refer to the performance of contracts (that is to say, supplies provided) other than those which it referred to in the list of supplies attached to the tender, and in particular can it refer to the performance of contracts by another entity the use of whose resources it did not refer to in the tender?

- 2) In the light of the judgment of the Court of Justice in Case C-336/12 *Manova* [2013] ECR, according to which 'the principle of equal treatment must be interpreted as not precluding a contracting authority from asking a candidate, after the deadline for applying to take part in a tendering procedure, to provide documents describing that candidate's situation — such as a copy of its published balance sheet — which can be objectively shown to pre-date that deadline, so long as it was not expressly laid down in the contract documents that, unless such documents were provided, the application would be rejected', must Article 51 of Directive 2004/18/EC be interpreted as meaning that the supplementing of documents is possible only when it involves documents which can be objectively shown to pre-date the deadline for submitting tenders or requests to participate in the procedure, or that the Court of Justice stated only one of the possibilities and the supplementing of documents is possible also in other cases, for example by attaching documents which did not pre-date the deadline but which objectively confirm fulfilment of a condition?
- 3) If the answer to Question 2 is to the effect that the supplementing of documents other than as stated in the judgment in Case C-336/12 *Manova* is possible, is it possible to supplement by adding documents drawn up by the economic operator, subcontractors or other entities on whose capacities the economic operator relies, if they were not submitted together with the tender?
- 4) Does Article 44 of Directive 2004/18/EC, in conjunction with Article 48(2)(a) thereof and the principle of equal treatment of economic operators set out in Article 2, allow reliance on the resources of another entity, as referred to in Article 48(3), by combining the knowledge and experience of two entities, which, individually, do not have the knowledge and experience required by the contracting authority, where that experience cannot be divided (that is to say, the condition for participation in the procedure must be fulfilled in its entirety by the economic operator) and performance of the contract cannot be divided (constitutes a single whole)?
- 5) Does Article 44 of Directive 2004/18/EC, in conjunction with Article 48(2)(a) thereof and the principle of equal treatment of economic operators in Article 2, allow reliance on the experience of a group of economic operators in such a way that an economic operator which performed a contract as one of a group of economic operators can rely on the performance by that group, regardless of what its participation in the performance of that contract was, or can it rely only on the experience it itself has actually acquired in performing the relevant part of the contract which was assigned to it within that group?
- 6) Can Article 45(2)(g) of Directive 2004/18/EC, which states that any economic operator which is guilty of serious misrepresentation in supplying or not supplying information can be excluded from the procedure, be interpreted as excluding from the procedure an economic operator which submitted incorrect information which affected, or could affect, the result of the procedure, in that the guilt for misrepresentation lies in the very supply to the contracting authority of the factually inaccurate information which affects the decision of the contracting authority concerning exclusion of the economic operator (and rejection of its tender), regardless of whether the economic operator did so knowingly and wilfully, or unknowingly, through recklessness, negligence or failure to exercise due diligence? It is possible to regard as 'guilty of serious misrepresentation in supplying the information required [...] or not having supplied such information' only an economic operator which has submitted incorrect (factually inaccurate) information, or also one which has submitted information which is correct, but has done so in such a way as to satisfy the contracting authority that it fulfils the requirements laid down by the contracting authority it, even though it does not?
- 7) Does Article 44 of Directive 2004/18/EC, in conjunction with Article 48(2)(a) thereof and the principle of equal treatment of economic operators in Article 2, allow reliance by an economic operator on experience in such a way that it relies jointly on two or more contractual agreements as a single public contract, despite the fact that the contracting authority did not refer to such a possibility in the contract notice or the tender specifications?

⁽¹⁾ OJ 2004 L 134, p. 114.