Reports of Cases

ORDER OF THE COURT (Ninth Chamber)

6 February 2020*

(Reference for a preliminary ruling – Article 99 of the Rules of Procedure of the Court of Justice – Public procurement – Directive 2014/24/EU – Article 10(h) – Article 12(4) – Specific exclusions for service contracts – Civil defence, civil protection, and danger prevention services – Non-profit organisations or associations – Ordinary and emergency medical transport services – Regional legislation requiring priority to be given to recourse to a partnership between contracting authorities – Freedom of the Member States to choose how services are provided – Limits – Obligation to state reasons)

In Case C-11/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 26 July 2018, received at the Court on 7 January 2019, in the proceedings

Azienda ULSS n. 6 Euganea

v

Pia Opera Croce Verde Padova,

interveners:

Azienda Ospedaliera di Padova,

Regione Veneto,

Croce Verde Servizi,

THE COURT (Ninth Chamber),

composed of S. Rodin, President of the Chamber, D. Šváby (Rapporteur) and N. Piçarra, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Pia Opera Croce Verde Padova, by A. Veronese and R. Colagrande, avvocati,

* Language of the case: Italian.

– the Romanian Government, by C.-R. Canțăr and S.-A. Purza, acting as Agents,

– the European Commission, by G. Gattinara, P. Ondrůšek and L. Haasbeek, acting as Agents,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

Order

1 This request for a preliminary ruling concerns the interpretation of Article 10(h) 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 (OJ 2014 L 94, p. 65), read in conjunction with recital 28 and Article 12(4) of that directive.

2 The request has been made in the context of a dispute between the Azienda ULSS n. 6 Euganea (Local Health Authority No 6 Euganea, Italy; 'AULSS No 6') and Pia Opera Croce Verde Padova (Green Cross Charity, Padua, Italy; 'Croce Verde') concerning the award of ambulance transport services for patients receiving haemodialysis by AULSS No 6 and the Azienda Ospedaliera di Padova (Padua Hospital Centre, Italy).

Legal context

Directive 2014/24

3 Recitals 2, 5, 28, 31 and 33 of Directive 2014/24 state:

'(2) Public procurement plays a key role in the Europe 2020 strategy, set out in the [European] Commission Communication of 3 March 2010 entitled "Europe 2020, a strategy for smart, sustainable and inclusive growth" …, as one of the market-based instruments to be used to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the public procurement rules adopted pursuant to 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)] and 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)] should be revised and modernised in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises (SMEs) in public procurement, and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

…

(5) It should be recalled that nothing in this Directive obliges Member States to contract out or externalise the provision of services that they wish to provide themselves or to organise by means other than public contracts within the meaning of this Directive. …

…

(28) This Directive should not apply to certain emergency services where they are performed by non-profit organisations or associations, since the particular nature of those organisations would be difficult to preserve if the service providers had to be chosen in accordance with the procedures set out in this Directive. However, that exclusion should not be extended beyond that strictly necessary. It should therefore be set out explicitly that patient transport ambulance services should not be excluded. In that context it is furthermore necessary to clarify that CPV [Common Procurement Vocabulary] Group 601 "Land Transport Services" does not cover ambulance services, to be found in CPV class 8514. It should therefore be clarified that services, which are covered by CPV code 85143000-3, consisting exclusively of patient transport ambulance services, should be subject to the special regime set out for social and other specific services (the "light regime"). Consequently, mixed contracts for the provision of ambulance services in general would also be subject to the light regime if the value of the patient transport ambulance services were greater than the value of other ambulance services.

…

(31) There is considerable legal uncertainty as to how far contracts concluded between entities in the public sector should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted differently between Member States and even between contracting authorities. It is therefore necessary to clarify in which cases contracts concluded within the public sector are not subject to the application of public procurement rules.

Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice of the European Union. The sole fact that both parties to an agreement are themselves public authorities does not as such rule out the application of public procurement rules. However, the application of public procurement rules should not interfere with the freedom of public authorities to perform the public service tasks conferred on them by using their own resources, which includes the possibility of cooperation with other public authorities.

It should be ensured that any exempted public-public cooperation does not result in a distortion of competition in relation to private economic operators in so far as it places a private provider of services in a position of advantage vis-à-vis its competitors.

…

(33) Contracting authorities should be able to choose to provide jointly their public services by way of cooperation without being obliged to use any particular legal form. Such cooperation might cover all types of activities related to the performance of services and responsibilities assigned to or assumed by the participating authorities, such as mandatory or voluntary tasks of local or regional authorities or services conferred upon specific bodies by public law. The services provided by the various participating authorities need not necessarily be identical; they might also be complementary.

Contracts for the joint provision of public services should not be subject to the application of the rules set out in this Directive provided that they are concluded exclusively between contracting authorities, that the implementation of that cooperation is governed solely by considerations relating to the public interest and that no private service provider is placed in a position of advantage vis-à-vis its competitors.

In order to fulfil those conditions, the cooperation should be based on a cooperative concept. Such cooperation does not require all participating authorities to assume the performance of main contractual obligations, as long as there are commitments to contribute towards the

cooperative performance of the public service in question. In addition, the implementation of the cooperation, including any financial transfers between the participating contracting authorities, should be governed solely by considerations relating to the public interest.'

4 Article 2(1)(4) of that directive defines 'bodies governed by public law' as:

'bodies that have all of the following characteristics:

(a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) they have legal personality; and

(c) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or which have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.'

5 Articles 7 to 12 of that directive can be found in Section 3, headed 'Exclusions', of Chapter I of that directive, entitled 'Scope and definitions'.

6 Under the heading 'Specific exclusions for service contracts', Article 10 of Directive 2014/24 provides:

'This Directive shall not apply to public service contracts for:

…

(h) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3 [Fire-brigade and rescue services], 75251000-0 [Fire-brigade services], 75251100-1 [Firefighting services], 75251110-4 [Fire-prevention services], 75251120-7 [Forest-fire-fighting services], 75252000-7 [Rescue Services], 75222000-8 [Civil defence services], 98113100-9 [Nuclear safety services] and 85143000-3 [Ambulance services] except patient transport ambulance services;

…'

7 Under the heading 'Public contracts between entities within the public sector', Article 12 of that directive provides:

'1. A public contract awarded by a contracting authority to a legal person governed by private or public law shall fall outside the scope of this Directive where all of the following conditions are fulfilled:

(a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;

(b) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and

(c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

…

4. A contract concluded exclusively between two or more contracting authorities shall fall outside the scope of this Directive where all of the following conditions are fulfilled:

(a) the contract establishes or implements a cooperation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;

(b) the implementation of that cooperation is governed solely by considerations relating to the public interest; and

(c) the participating contracting authorities perform on the open market less than 20% of the activities concerned by the cooperation;

…'

8 The light regime referred to in recital 28 of Directive 2014/24 is defined in Articles 74 to 77 thereof.

Italian law

9 Dealing with 'agreements between public authorities', Article 15 of legge n. 241 – Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi (Law No 241 concerning new provisions on administrative procedure and the right of access to administrative documents) of 7 August 1990 (GURI No 192 of 18 August 1990), in the version applicable to the facts of the case in the main proceedings ('Law No 241/1990'), provides in its paragraph 1:

'Even in cases other than those referred to in Article 14, public administrative authorities may at any time enter into agreements among themselves with a view to laying down rules governing cooperation in activities of common interest.'

10 Headed 'Common principles on exclusion for concessions, public contracts and contracts between public bodies and contracting authorities in the public sector', Article 5 of decreto legislativo n. 50 – Codice dei contratti pubblici (Legislative Decree No 50 establishing the public procurement code) of 18 April 2016 (Ordinary Supplement to GURI No 91 of 19 April 2016; 'the public procurement code') provides in its paragraph 6:

'A contract concluded exclusively between two or more contracting authorities shall fall outside the scope of this code where all of the following conditions are satisfied:

(a) the contract establishes or implements cooperation between the participating contracting authorities or the participating public contracting bodies with the aim of ensuring that the public services that they have to perform are provided with a view to achieving objectives which they have in common;

(b) the implementation of that cooperation is governed solely by considerations relating to the public interest; and

(c) the participating contracting authorities or the participating public contracting bodies perform on the open market less than 20% of the activities concerned by the cooperation.'

11 Article 17 of that code, headed 'Specific exclusions for service contracts and concessions', provides, in its paragraph 1:

'The provisions of this code do not apply to service contracts and concessions in respect of:

…

(h) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3 [Fire-brigade and rescue services], 75251000-0 [Fire-brigade services], 75251100-1 [Firefighting services], 75251110-4 [Fire-prevention services], 75251120-7 [Forest-fire-fighting services], 75252000-7 [Rescue Services], 75222000-8 [Civil defence services], 98113100-9 [Nuclear safety services] and 85143000-3 [Ambulance services] except patient transport ambulance services;

…'

12 In decreto legislativo n. 117 – Codice del Terzo settore (Legislative Decree No 117 establishing the third sector code) of 3 July 2017 (Ordinary Supplement to GURI No 179 of 2 August 2017), Article 57, headed 'Emergency medical transport services', provides as follows in its paragraph 1:

'Contracts for the provision of emergency medical transport services may, as a matter of priority, be awarded to voluntary organisations which have been included in the single national third sector register for at least six months and belong to a network of associations as referred to in Article 41(2) and are accredited under relevant regional legislation, if it exists, where, on account of the specific nature of the service, the direct award of a contract ensures that a service in the public interest is provided, in a system which actually contributes to a social purpose and pursues objectives connected with the good of the community, in an economically efficient and appropriate manner, and in compliance with the principles of transparency and non-discrimination.'

13 Legge regionale n. 26 – Disciplina del sistema regionale di trasporto sanitario di soccorso ed emergenza (Regional Law No 26 on the regional system of medical transport (emergency response and emergency care)) of 27 July 2012 (*Bollettino Ufficiale della Regione del Veneto*, No 61 of 3 August 2012; 'Regional Law No 26/2012') establishes the 'regional system of emergency medical transport services'.

14 Article 1 of that law, headed 'Subject matter and purpose', provides:

'1. The Region of Veneto [(Italy)] shall lay down the rules governing the regional system of emergency response medical transport services, giving health-care bodies and authorised and accredited associations the possibility of tendering to provide intrinsically health-related emergency and rescue transport services, having regard to their geographic coverage, how well they are established in the health and welfare fabric of Veneto, and efficiency and quality of the service rendered, in the public interest and in compliance with the principles of universality, the good of the community, economic efficiency and suitability.'

15 Article 2 of that law, headed 'Definitions', provides, in its paragraph 1:

'For the purposes of this Law, ["]emergency medical transport["] comprises those activities which are carried out using emergency vehicles by the personnel, medical or otherwise, responsible for that service, in the exercise of the following functions:

(a) emergency transport services provided using emergency vehicles under the direction of the [*Servizio urgenze ed emergenze mediche* (emergency medical service) (SUEM)] coordination centres;

(b) transport services provided with [*livelli essenziali di assistenza* (essential levels of care) (LEA)] using emergency vehicles;

(c) transport services provided in circumstances where the patient's condition requires the use of an emergency vehicle and the attention, during the journey, of medical or specially trained personnel, and also requires uninterrupted care to be ensured.'

16 Under Article 4 of Regional Law No 26/2012, which concerns the 'Regional list':

'1. Within 60 days of the entry into force of this Law, the Regional Government shall approve a regional list containing, for an initial period, already authorised health care bodies and associations which have provided emergency patient transport services in the region for at least five years, on behalf of the [*unità locali socio-sanitarie* (local health and welfare bodies) (ULSSs)] with local competence, on the basis of specific contracts and/or agreements that have been entered into for that purpose, and which meet the authorisation requirements referred to in [legge regionale n. 22 – Autorizzazione e accreditamento delle strutture sanitarie, socio-sanitarie e sociali (Regional Law No 22 on approval and accreditation of health and social facilities) of 16 August 2002 (*Bollettino Ufficiale della Regione del Veneto* n. 82)] and successive amendments, in compliance with EU legislation on freedom of establishment and freedom to provide services.

2. In addition to the persons referred to in paragraph 1, the regional list referred to therein shall include the committees of the Italian Red Cross (CRI), following specific agreement by the Veneto regional committee thereof, and the Istituti Pubblici di Assistenza e Beneficienza (public welfare and charity organisations) (IPABs) which provide emergency patient transport services, on the agreement and related sworn declaration that the conditions for authorisation, set out in Regional Law [No 22] and its subsequent amendments, as well as the conditions specified by the Regional Government, under Article 3(2), are satisfied, in compliance with EU legislation on freedom of establishment and freedom to provide services.

3. The regional list referred to in paragraph 1 shall be updated annually with the addition of new health bodies and associations which satisfy the authorisation and accreditation conditions set out by Regional Law [No 22] and its subsequent amendments.

4. Persons on the regional list shall be subject to periodic checks in order to establish that the conditions continue to be satisfied.'

17 Article 5 of that law, concerning the 'organisation of emergency medical transport', provides:

'1. The provision of emergency medical transport services shall be carried out by [ULSSs] and by persons on the regional list referred to in Article 4.

2. The relationship with the [ULSSs], and the ways in which the persons on the regional list referred to in Article 4 may participate in the provision of emergency medical services shall be governed by specific agreements, entered into on the basis of a model approved by the Regional Government and made public in accordance with the national and EU legislation on public procurement in force.

3. The agreements referred to in paragraph 2 shall provide for a budgeting system established in accordance with criteria based on the application of standard costs identified by the Regional Government and updated every three years.

…

5. If the provision of emergency medical transport services cannot be carried out by the persons on the regional list referred to in Article 4, the [ULSSs] may award the contract for the provision of those services, in return for payment, to persons identified by means of a public tendering procedure, in accordance with national and EU legislation on public procurement in force, who meet the requirements designed to ensure appropriate levels of quality and to enhance the welfare function of the service.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

18 In 2017, AULSS No 6 launched a call for tenders for a contract to provide, for a period of five years with an option for an additional year, ambulance transport services for patients receiving haemodialysis, to be awarded in accordance with the criterion of the most economically advantageous offer ('the contested call for tenders'). The annual value of that contract was estimated at EUR 5 043 560, amounting to EUR 25 217 800 for the five-year period.

19 Croce Verde brought an action before the Tribunale amministrativo regionale del Veneto (Regional Administrative Court, Veneto, Italy) against the decision of AULSS No 6 to opt for awarding a public contract rather than a partnership between entities within the public sector. When the required conditions for entering such a partnership are satisfied, it argued, Regional Law No 26/2012 requires that an agreement governed by Article 12(4) of Directive 2014/24 and Article 5(6) of the public procurement code be entered into with the accredited public body without there being any need to contemplate the award of a public contract, even under the simplified regime, as provided for by Article 10(h) of that directive and Article 17(1)(h) of that code.

20 In that regard, Croce Verde states that it is not a mere association governed by private law doing voluntary work but rather a non-economic public body – more precisely, an IPAB. In that connection, it states that it has been involved for more than a century in the health care of the inhabitants of the territory of Padua (Italy), principally providing transport for the wounded and sick on a non-profit basis. It was also awarded AULSS No 6's emergency medical services by an agreement entered into on 22 December 2017 pursuant to Regional Law No 26/2012. In addition, following a call for tenders launched in 2010, which had been extended twice and expired on 31 March 2018, it was also awarded the ordinary transport service.

21 The Tribunale amministrativo regionale del Veneto (Regional Administrative Court, Veneto) took the view, however, that Articles 10 and 74 of Directive 2014/24 and Article 17(1)(h) of the public procurement code provided for the award of contracts for non-emergency ambulance transport services by means of a call for tenders.

22 Since that court nevertheless upheld the plea alleging that AULSS No 6 was not entitled to organise the contested call for tenders, AULSS No 6 appealed against the judgment of the Tribunale amministrativo regionale del Veneto (Regional Administrative Court, Veneto), arguing that point before the referring court, namely the Consiglio di Stato (Council of State, Italy).

23 The referring court, which dismissed the main appeal, must still rule on the cross-appeal in which Croce Verde reiterates the argument which it raised at first instance.

24 The referring court takes the view that it is necessary to distinguish between, on the one hand, emergency ambulance services and, on the other hand, (ordinary) patient transport ambulance services. Article 10 of Directive 2014/24, in conjunction with recital 28 thereof, and Article 17(1)(h) of the public procurement code exclude emergency ambulance services, which consist in non-profit organisations transporting a patient by ambulance and providing first aid in situations of extreme emergency, from the rules on the public procurement procedure. By contrast, patient transport ambulance services that are non-emergency in nature are subject to the 'light regime' established by Articles 74 to 77 of Directive 2014/24 when, as in the case in the main proceedings, their value is at least equivalent to the threshold of EUR 750 000 provided for by Directive 2014/24.

25 However, according to the referring court, Article 5 of Regional Law No 26/2012 provides that, when they are not carried out directly by ULSSs, 'emergency medical transport' services must be carried out by persons on the regional list referred to in Article 4 of that law and that the relationship with the ULSSs and the methods of performance of that service are governed by specific agreements. In addition, the contract for emergency medical transport services may be awarded following a competitive public tendering procedure only when that service cannot be performed by persons on that regional list.

26 Furthermore, under Article 2 of Regional Law No 26/2012, the regime for the award of the contract for 'emergency medical transport' services covers services provided, using emergency vehicles, by healthcare personnel among others, consisting in particular of 'transport services provided with essential levels of care (LEA) using emergency vehicles' and 'transport services provided in circumstances where the patient's condition requires the use of an emergency vehicle and the attention, during the journey, of healthcare personnel, or specially trained personnel, in order to ensure uninterrupted care'. According to the referring court, the activities covered by that regime are therefore, particularly in the latter case, activities which appear to come within the category of ordinary (non-emergency) transport of patients rather than within that of emergency transport.

27 Consequently, the referring court takes the view that the service at issue in the main proceedings can be classified as an 'ordinary transport service' or 'medical transport service' and not as an 'emergency medical transport service'. Therefore, in accordance with Article 5 of Regional Law No 26/2012, the referring court considers that the contracting authority could organise a tendering procedure only if it were impossible directly to award the contract by means of an agreement.

28 The referring court is, however, uncertain whether Article 5 of Regional Law No 26/2012 is compatible with EU law when that article is applied in respect of services other than those relating to emergency medical transport. Its uncertainty also relates to the supposition that direct award of the contract constitutes the implementation of a partnership between contracting authorities.

29 The referring court notes that, under Article 15 of Law No 241/1990, public bodies may still conclude agreements between themselves in order to lay down rules governing cooperation in activities of common interest. Nevertheless, such collaboration between public bodies cannot interfere with the main objective of the applicable EU rules on public procurement, namely the free movement of services and the opening up of undistorted competition in all Member States.

30 Article 5(6) of the public procurement code confirms the exclusion from the application of the public procurement rules when the conditions set out therein are satisfied, which, it finds, is the case here. AULSS No 6 and Croce Verde have the common objectives of encouraging participation of the persons on the regional list referred to in Article 4 of Regional Law No 26/2012 and promoting the

use of voluntary work. In addition, Croce Verde features on that regional list in its capacity as an IPAB. Lastly, it carries out a minimal portion of its activity on the market for emergency medical transport services.

31 The referring court states, however, that Article 15 of Law No 241/1990 and Article 5(6) of the public procurement code merely present a partnership between entities within the public sector as an alternative to awarding a public contract and cannot impose it as a method to be given priority. An agreement between contracting authorities is therefore an option available to the contracting authorities and would require the creation of a bilateral agreement between the contracting parties. It follows that a contracting authority may merely express its wish to enter into such a partnership, without compelling another contracting authority to choose that option. The referring court notes, in this regard, that, in the present case, AULSS No 6 did not intend to exercise that option since it decided to launch the contested call for tenders.

32 Furthermore, the referring court takes the view that Article 5 of Regional Law No 26/2012 cannot oblige the contracting authority to state reasons for its choice in awarding the contract for the service in question by means of a call for tenders. Such a requirement to state reasons would, in its view, be justified only in the event that the contracting authority intends to make a direct award, following bilateral negotiations, since that does not provide comparative data serving to identify the most economically advantageous tender.

33 Conversely, in its view, the tendering procedure guarantees compliance with the EU-law principles of impartiality, right of access, transparency, participation and equal treatment through the comparison of several tenders having regard to the criterion of the most economically advantageous tender.

34 Thus, since EU law does not qualify general, different and concomitant interests such as the promotion of volunteering, the direct award of the contract by means of an agreement cannot, in the view of the referring court, be justified. That is so in the present case since Croce Verde claims to be the only authorised public body in the Veneto region, which would eliminate all competition and comparison between operators potentially interested in providing the service at issue in the main proceedings. By contrast, like the other volunteer organisations on the regional list referred to in Article 4 of Regional Law No 26/2012, Croce Verde is fully entitled, as an economic operator, to participate in the contested tendering procedure and could therefore assert in that context the advantageous nature of its tender.

35 It was in that context that the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Where both parties concerned are public bodies, do recital 28 of Directive [2014/24] and Articles 10 and 12(4) thereof preclude the applicability of Article 5 of [Regional Law No 26/2012], in conjunction with Articles 1 [to] 4 thereof, on the basis of the public-public partnership referred to in Article 12(4) of [that directive], [Article] 5(6) of [the public procurement code] and [Article] 15 of Law No 241/1990?

(2) Where both parties concerned are public bodies, do recital 28 of Directive [2014/24] and Articles 10 and 12(4) thereof preclude the applicability of the provisions of [Regional Law No 26/2012], on the basis of the public-public partnership referred to in Article 12(4) of [that directive] and [Article] 5(6) of [the public procurement code] and [Article] 15 of Law No 241/1990, in the limited sense of placing the contracting authority under an obligation to give reasons for the decision to award the contract for the provision of ordinary patient transport services by way of a tendering procedure rather than by direct award of the contract?’

The questions referred for a preliminary ruling

36 Under Article 99 of the Rules of Procedure of the Court of Justice, where the reply to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

37 That provision must be applied in the present case.

The first question

38 By its first question, the referring court asks, in essence, whether Article 10(h) and Article 12(4) of Directive 2014/24 must be interpreted as precluding regional legislation that makes the award of a public contract conditional on there being no partnership between entities within the public sector which would be capable of providing the ordinary medical transport service.

39 As the Court stated in the judgment of 3 October 2019, *Irgita* (C-285/18, EU:C:2019:829, 'the *Irgita* judgment', paragraph 41), the purpose of Directive 2014/24, as stated in recital 1 thereof, is to coordinate national procurement procedures above a certain value.

40 It is clear from paragraph 43 of the *Irgita* judgment that the effect of Article 12(1) of that directive, concerning internal operations, also known as in-house transactions, which thus does no more than state the conditions which a contracting authority must satisfy when it wishes to conclude an in-house transaction, is solely to empower the Member States to exclude such a transaction from the scope of Directive 2014/24.

41 That provision cannot, consequently, deprive the Member States of the freedom to give preference to one means of providing services, performing work or obtaining supplies to the detriment of others. That freedom implies a choice which is at a stage prior to that of procurement and which cannot, therefore, come within the scope of Directive 2014/24 (the *Irgita* judgment, paragraph 44).

42 The freedom of the Member States to choose the means of providing services whereby the contracting authorities meet their own needs follows, moreover, from recital 5 of Directive 2014/24, which states that 'nothing in this Directive obliges Member States to contract out or externalise the provision of services that they wish to provide themselves or to organise by means other than public contracts within the meaning of this Directive', thereby reflecting the case-law of the Court prior to that directive (the *Irgita* judgment, paragraph 45).

43 Thus, just as Directive 2014/24 does not require the Member States to have recourse to a public procurement procedure, it cannot compel them to have recourse to an in-house transaction where the conditions laid down in Article 12(1) are satisfied (the *Irgita* judgment, paragraph 46).

44 Further, as the Court stated in paragraph 47 of the *Irgita* judgment, the freedom thus left to the Member States is more clearly distinguished in Article 2(1) of 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), which states:

'This Directive recognises the principle of free administration by national, regional and local authorities in conformity with national and Union law. Those authorities are free to decide how best to manage the execution of works or the provision of services, to ensure in particular a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights in public services.

Those authorities may choose to perform their public interest tasks with their own resources, or in cooperation with other authorities, or to confer them upon economic operators.'

45 The freedom of Member States to choose the management method that they judge to be most appropriate for the performance of works or the provision of services cannot, however, be unlimited. It must, rather, be exercised with due regard to the fundamental rules of the FEU Treaty, in particular the free movement of goods, the freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency (the *Irgita* judgment, paragraph 48).

46 Consequently, the Court held, in paragraph 50 of the *Irgita* judgment, that Article 12(1) of Directive 2014/24 must be interpreted as not precluding a rule of national law whereby a Member State imposes a requirement that the conclusion of an in-house transaction should be subject, inter alia, to the condition that public procurement does not ensure that the quality of the services performed, their availability or their continuity can be guaranteed, provided that the choice made in favour of one means of providing services in particular, made at a stage prior to that of public procurement, has due regard to the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

47 It follows from the foregoing that, in the first place, the freedom of the Member States to choose the means of providing services whereby the contracting authorities meet their own needs authorises them, *mutatis mutandis*, to make the award of a public contract conditional on it being impossible for contracting authorities to enter into a partnership, in accordance with the conditions laid down in Article 12(4) of Directive 2014/24.

48 According to that provision, a partnership between contracting authorities may be concluded only if (i) the contract establishes or implements a cooperation between the participating contracting authorities with the aim of ensuring that the public services they have to perform are provided with a view to achieving objectives that they have in common, (ii) the implementation of that cooperation is governed solely by considerations relating to the public interest, and (iii) the participating contracting authorities perform on the open market less than 20% of the activities concerned by the cooperation.

49 In that regard, it must be stated, as the Commission did in its written observations, that, even though Croce Verde is an IPAB, it is in no way certain that it is a body governed by public law within the meaning of Article 2(1)(4) of Directive 2014/24.

50 It is also for the referring court to satisfy itself that Article 5(2) and (3) of Regional Law No 26/2012 is in fact capable of establishing the existence of cooperation between contracting authorities given that, according to that provision, the relationships between the ULSSs and the persons on the regional list referred to in Article 4 of that law and which participate in the provision of emergency services are governed by specific agreements, concluded on the basis of a uniform format approved by the Regional Government.

51 In the second place, the freedom of the Member States to choose the means of providing services whereby the contracting authorities meet their own needs allows them, in the context of civil protection, civil defence and danger prevention, to favour a public procurement procedure, with non-profit organisations or associations, subject to the light regime defined in Articles 74 to 77 of Directive 2014/24, provided that the conditions set out in Article 10(h) of that directive are satisfied.

52 In that regard, it must be borne in mind that Article 10(h) of Directive 2014/24 must be interpreted as meaning that the exclusion from the application of the public procurement rules that that article lays down covers the care of patients in an emergency situation in a rescue vehicle by an emergency worker/paramedic, covered by CPV code 75252000-7 (rescue services) and transport by qualified ambulance covered by CPV code 85143000-3 (ambulance services), provided that, as regards transport

by qualified ambulance, it is in fact undertaken by personnel properly trained in first aid and, second, it is provided to a patient whose state of health is at risk of deterioration during that transport (judgment of 21 March 2019, *Falck Rettungsdienste and Falck*, C-465/17, EU:C:2019:234, paragraph 51). The benefit of that exclusion is also only available when the ambulance service is provided by non-profit organisations or associations, within the meaning of that provision, and there is an emergency (order of 20 June 2019, *Italy Emergenza and Associazione Volontaria di Pubblica Assistenza 'Croce Verde'*, C-424/18, EU:C:2019:528, paragraph 28).

53 Lastly, in the two cases mentioned in paragraphs 47 and 51 of the present order, it is for the Member States, in exercising their freedom to choose the means of providing services whereby the contracting authorities meet their own needs, to ensure due regard to the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency (the *Irgita* judgment, paragraph 48).

54 The answer to the first question is therefore that Article 10(h) and Article 12(4) of Directive 2014/24 must be interpreted as not precluding a regional law that makes the award of a public contract conditional on the fact that a partnership between public bodies cannot provide the ordinary medical transport service, provided that the choice made in favour of one means of providing services in particular, made at a stage prior to that of public procurement, has due regard to the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

The second question

55 By the second question, the referring court asks, in essence, whether Article 10(h) and Article 12(4) of Directive 2014/24 must be interpreted as precluding a regional law that requires a contracting authority to provide reasons for its decision to award the contract for the provision of ordinary patient transport services by way of a tendering procedure rather than by direct award of the contract by means of an agreement entered into with another contracting authority.

56 As is clear from the answer to the first question, neither Article 10(h) nor Article 12(4) of that directive precludes a regional law which envisages the award of a public contract only as an alternative and by way of derogation.

57 Accordingly, EU law, in particular Article 10(h) and Article 12(4) of Directive 2014/24, cannot preclude a regional law which requires a contracting authority to demonstrate that the conditions for application of those provisions are not satisfied.

58 The answer to the second question is, therefore, that Article 10(h) and Article 12(4) of Directive 2014/24 do not preclude a regional law that requires a contracting authority to provide reasons for its decision to award the contract for the provision of ordinary patient transport services by way of a tendering procedure rather than by direct award of the contract by means of an agreement entered into with another contracting authority.

Costs

59 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

1. **Article 10(h) and Article 12(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 must be interpreted as not precluding a regional law that makes the award of a public contract conditional on a partnership between public bodies being unable to provide the ordinary medical transport service, provided that the choice made in favour of one means of providing services in particular, made at a stage prior to that of public procurement, has due regard to the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency.**

2. **Article 10(h) and Article 12(4) of Directive 2014/24 do not preclude a regional law that requires a contracting authority to provide reasons for its decision to award the contract for the provision of ordinary patient transport services by way of a tendering procedure rather than by direct award of the contract by means of an agreement entered into with another contracting authority.**

[Signatures]