Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

28 October 2020*

(Reference for a preliminary ruling – Procurement in the water, energy, transport and postal services sectors – Directive 2014/25/EU – Article 13 – Activities relating to the provision of postal services – Contracting entities – Public undertakings – Admissibility)

In Case C-521/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), made by decision of 4 July 2018, received at the Court on 6 August 2018, in the proceedings

Pegaso Srl Servizi Fiduciari,

Sistemi di Sicurezza Srl,

YW

v

Poste Tutela SpA,

interveners:

Poste Italiane SpA,

Services Group,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, M. Ilešič, E. Juhász (Rapporteur), C. Lycourgos and I. Jarukaitis, Judges,

Advocate General: M. Bobek,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 22 January 2020,

after considering the observations submitted on behalf of:

– Pegaso Srl Servizi Fiduciari and Sistemi di Sicurezza Srl, by A. Scuderi and F. Botti, avvocati,

* Language of the case: Italian.

– Poste Tutela SpA, by S. Napolitano, avvocato,

– Poste Italiane SpA, by A. Fratini and A. Sandulli, avvocati,

– Services Group, by L. Lentini, avvocato,

– the Italian Government, by G. Palmieri, acting as Agent, and by D. Del Gaizo, avvocato dello Stato,

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

after hearing the Opinion of the Advocate General at the sitting on 23 April 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of recitals 21 and 46 and Article 16 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), Article 2(1) 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) and Article 3(4), Article 4(1) and (2) and Article 13 of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ 2014 L 94, p. 243).

2 The request has been made in proceedings between, of the one part, Pegaso Srl Servizi Fiduciari, Sistemi di Sicurezza Srl and YW (together 'Pegaso') and, of the other, Poste Tutela SpA and Poste Italiane SpA, concerning the legality of a contract notice for the award, in an open procedure, of caretaking, reception and access control services for the premises of Poste Italiane and of other companies in its group.

Legal context

EU law

Directive 2004/17/EC

3 Article 6 of 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), entitled 'Postal services', provided in paragraph 1 thereof:

'This Directive shall apply to activities relating to the provision of postal services or, on the conditions set out in paragraph 2(c), other services than postal services.'

Directive 2014/23

4 Recitals 21 and 46 of Directive 2014/23 state:

'(21) The notion of "bodies governed by public law" has been examined repeatedly in the case-law of the Court of Justice of the European Union. A number of clarifications are key to the full understanding of this concept. It should therefore be clarified that a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity should not be considered to be a "body governed by public law", since the needs in the general interest, that it has been set up to meet or been given the task of meeting, can be deemed to have an industrial or commercial character. Similarly, the condition relating to the origin of the funding of the body considered, has also been examined by the Court, which has clarified that financed for "the most part" means for more than half and that such financing may include payments from users which are imposed, calculated and collected in accordance with rules of public law.

…

(46) Concessions awarded to controlled legal persons should not be subject to the application of the procedures provided for by this Directive if the contracting authority or contracting entity as referred to point (a) of Article 7(1) exercises a control over the legal person concerned which is similar to that which it exercises over its own departments provided that the controlled legal person carries out more than 80% of its activities in the performance of tasks entrusted to it by the controlling contracting authority or contracting entity or by other legal persons controlled by that contracting authority or contracting entity, regardless of the beneficiary of the contract performance. …'

5 Article 6 of that directive, entitled 'Contracting authorities', states, in paragraph 4 thereof:

'"Bodies governed by public law" means 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 bodies or authorities; or 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.'

6 Article 16 of Directive 2014/23, entitled, 'Exclusion of activities which are directly exposed to competition', provides:

'This Directive shall not apply to concessions awarded by contracting entities where, for the Member State in which such concessions are to be performed, it has been established pursuant to Article 35 of Directive 2014/25/EU that the activity is directly exposed to competition in accordance with Article 34 of that Directive.'

Directive 2014/24

7 The definition of the concept of 'bodies governed by public law' in Article 2(1)(4) of Directive 2014/24 corresponds to that in Article 6(4) of Directive 2014/23.

Directive 2014/25

8 The definition of the concept of 'bodies governed by public law' in Article 3(4) of Directive 2014/25 also corresponds to that in Article 6(4) of Directive 2014/23.

9 Article 4(1) and (2) of Directive 2014/25 is worded as follows:

'1. For the purpose of this Directive contracting entities are entities, which:

(a) are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 8 to 14;

(b) when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 8 to 14, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.

2. "Public undertaking" means any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it.

A dominant influence on the part of the contracting authorities shall be presumed in any of the following cases in which those authorities, directly or indirectly:

(a) hold the majority of the undertaking's subscribed capital;

(b) control the majority of the votes attaching to shares issued by the undertaking;

(c) can appoint more than half of the undertaking's administrative, management or supervisory body.'

10 Article 6(1) and (2) of that directive provides:

'1. In the case of contracts intended to cover several activities, contracting entities may choose to award separate contracts for the purposes of each separate activity or to award a single contract. Where contracting entities choose to award separate contracts, the decision as to which rules apply to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.

Notwithstanding Article 5, where contracting entities choose to award a single contract, paragraphs 2 and 3 of this Article shall apply. However, where one of the activities concerned is covered by Article 346 TFEU or Directive 2009/81/EC [of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ 2009 L 216, p. 76)], Article 26 of this Directive shall apply.

The choice between awarding a single contract or awarding a number of separate contracts shall not, however, be made with the objective of excluding the contract or contracts from the scope of application either of this Directive or, where applicable, Directive 2014/24/EU or Directive 2014/23/EU.

2. A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.'

11 Articles 8 to 14 of Directive 2014/25 list the activities to which that directive applies. Those activities are gas and heat (Article 8), electricity (Article 9), water (Article 10), transport services (Article 11), ports and airports (Article 12), postal services (Article 13) and the extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels (Article 14).

12 Article 13 of that directive is worded as follows:

'1. This Directive shall apply to activities relating to the provision of:

(a) postal services;

(b) other services than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of point (b) of paragraph 2 of this Article and provided that the conditions set out in Article 34(1) are not satisfied in respect of the services falling within point (b) of paragraph 2 of this Article.

2. For the purpose of this Article and without prejudice to Directive 97/67/EC of the European Parliament and of the Council [of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14)]:

(a) "postal item" means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;

(b) "postal services" means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in conformity with Directive 97/67/EC;

(c) "other services than postal services" means services provided in the following areas:
(i) mail service management services (services both preceding and subsequent to despatch, including mailroom management services);
(ii) services concerning postal items not included in point (a), such as direct mail bearing no address.'

13 Article 19(1) of Directive 2014/25 provides:

'This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 8 to 14 or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union nor shall it apply to design contests organised for such purposes.'

Italian law

14 Decreto legislativo n. 50 – Attuazione delle direttive 2014/23/UE, 2014/24/UE e 2014/25/UE sull'aggiudicazione dei contratti di concessione, sugli appalti pubblici e sulle procedure d'appalto degli enti erogatori nei settori dell'acqua, dell'energia, dei trasporti e dei servizi postali, nonché per il riordino della disciplina vigente in materia di contratti pubblici relativi a lavori, servizi e forniture (Legislative Decree No 50, implementing Directive 2014/23/EU on the award of concession contracts, Directive 2014/24/EU on public procurement and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors, and reforming the existing

provisions in relation to public works, service and supply contracts) of 18 April 2016 (ordinary supplement to GURI No 91 of 19 April 2016) established the Codice dei contratti pubblici (Public Procurement Code).

15 Article 3(1)(d) of that code defines the concept of 'bodies governed by public law', within the meaning of that code, in the same terms as that concept is defined in Article 6(4) of Directive 2014/23, Article 2(1)(4) of Directive 2014/24 and Article 3(4) of Directive 2014/25.

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

16 By notice published on 29 July 2017 in the *Official Journal of the European Union*, Poste Tutela, 100% owned at the time by Poste Italiane, launched an open tendering procedure with a view to establishing framework agreements for caretaking, reception and access control services for the premises of Poste Italiane and of other companies in its group, subdivided territorially into seven cumulative lots, for a period of 24 months (with a further 12 months, in the event of contract renewal), for a total estimated amount of EUR 25 253 242. The contract notice indicated Directive 2014/25 as the 'legal basis'.

17 Taking the view that the contract notice was contrary to certain provisions of the Public Procurement Code, Pegaso brought an action before the referring court, which, by interim order of 20 October 2017, suspended the tendering procedure.

18 Before that court, Poste Italiane, with which Poste Tutela merged with effect from 1 March 2018, argued that the action was inadmissible on the ground that the administrative courts had no jurisdiction to hear it. Poste Italiane explains that, while, at the date on which the contract notice at issue in the main proceedings was published, Poste Tutela took the form of a public undertaking, the services concerned by that contract notice did not come under one of the special sectors covered by Directive 2014/25. It adds that that point of view was upheld in an order of the Corte suprema di cassazione (Supreme Court of Cassation, Italy) of 1 October 2018, which found that the ordinary courts have jurisdiction in respect of public contracts concluded by Poste Italiane, even though it has the status of a public undertaking, where those contracts concern activities unconnected with those covered by the special sector concerned.

19 In any event, Poste Italiane submits that the subject matter of the dispute has ceased to exist, since the contract notice at issue in the main proceedings was withdrawn after the present request for a preliminary ruling was made.

20 Pegaso, for its part, disputes the plea of lack of jurisdiction raised by Poste Italiane. It maintains that it is necessary to include among the services covered by the special sectors not only the services directly referred to in the applicable legislation, such as postal services, but also complementary and ancillary services, the purpose of which is to ensure that the postal services are actually provided.

21 The referring court considers that it is necessary, at the outset, to resolve the question whether the case in the main proceedings falls within the jurisdiction of the administrative courts or the ordinary courts. To that end, it is essential to determine whether Poste Tutela, now Poste Italiane, was under the obligation to initiate a tendering procedure with a view to awarding the services at issue in the main proceedings. On that point, the referring court considers that Poste Italiane possessed all the characteristics necessary to be classified as a body governed by public law, within the meaning of Article 3(1)(d) of the Public Procurement Code and Directives 2014/23, 2014/24 and 2014/25. However, it also notes that the Corte suprema di cassazione (Supreme Court of Cassation) reached a different conclusion, in the order mentioned in paragraph 18 above, emphasising in particular that Poste Italiane is now essentially driven by industrial and commercial requirements.

22 In those circumstances the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Should the company Poste Italiane, on the basis of characteristics set out above, be classified as a "body governed by public law" within the meaning of Article 3(1)(d) of [the Public Procurement Code] and of the relevant EU directives (2014/23, 2014/24 and 2014/25)?

(2) Should that classification be extended to include the wholly owned subsidiary company [Poste Tutela] – whose merger with Poste Italiane is already under way – bearing in mind what is stated in recital 46 of Directive 2014/23 concerning controlled legal persons? (See, also, to that effect, judgment of 5 October 2017[, *LitSpecMet* (C-567/15, EU:C:2017:736)]: competitive tendering requirement for companies controlled by public authorities; judgment No 6211 of the Consiglio di Stato [(Council of State, Italy)], Chamber VI, of 24 November 2011).

(3) Are those companies, as contracting entities, required to conduct competitive tendering procedures only when awarding contracts in connection with activities carried out in the special sectors, pursuant to Directive 2014/25 – such contracting entities having to be deemed bodies governed by public law under the rules laid down in Part II of the Public Procurement Code – whilst, on the other hand, having unfettered freedom and being subject only to private-sector rules for contracts not connected to such sectors, bearing in mind the principles set out in recital 21 and Article 16 of Directive 2014/23?

(4) On the other hand, with regard to contracts considered not to be directly connected with the specific activities covered by the special sectors, are those companies, where they satisfy the requirements for being classified as bodies governed by public law, subject to the general Directive 2014/24 (and therefore to the rules governing competitive tendering procedures), even when performing primarily entrepreneurial activities under competitive market conditions, having developed from when they were originally established?

(5) In any event, in the case of offices in which activities connected to the universal service and activities unrelated to it are both performed, may the concept of functionality, in connection with a service which is specifically in the public interest, be said to be inapplicable as regards contracts relating to ordinary and extraordinary maintenance, cleaning, furnishing, caretaking and storage services for such offices?

(6) Finally, were the arguments of Poste Italiane to be endorsed, should the fact that a decision to organise a competitive tendering procedure has been taken without there being any obligation to conduct such a procedure – which is not subject to all the guarantees of transparency and equal treatment, as governed by the Public Procurement Code – and the fact that the decision is duly published without any further notice in that regard in the *Gazzetta Ufficiale della Repubblica italiana* (Official Journal of the Italian Republic) and the *Official Journal of the European Union*, be regarded as incompatible with the established principle that the legitimate expectations of tenderers must be protected?'

23 After the Court was informed by Poste Italiane that the contract notice at issue in the main proceedings had been annulled, the Court asked the referring court whether it wished to withdraw its request for a preliminary ruling. On 26 October 2018, the referring court informed the Court that it was maintaining its request for a preliminary ruling.

24 In response to a request from the Court to explain the grounds on which it considered that the dispute at issue in the main proceedings was still pending before it, the referring court provided clarification in that regard on 18 March 2019.

Admissibility

25 Poste Italiane and the Italian Government contend that the request for a preliminary ruling is inadmissible, arguing that the subject matter of the dispute in which the request was made has ceased to exist, since the contract notice at issue in the main proceedings was withdrawn after the action was brought before the referring court.

26 In that regard, it must be borne in mind that, in accordance with the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation or the validity of a rule of EU law, the Court is in principle bound to give a ruling (judgment of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraph 34 and the case-law cited).

27 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to give a ruling on a question referred by a national court only where it is quite obvious that the interpretation, or the determination of validity, of a rule of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraph 35 and the case-law cited)

28 In the present case, it is common ground that, following the merger by incorporation of Poste Tutela into Poste Italiane, Poste Italiane had its decision 'to annul/revoke' the contract notice at issue in the main proceedings published in the *Official Journal of the European Union* (S series, of 29 September 2018) and that, as confirmed by the referring court to the Court of Justice on 18 March 2019, Poste Italiane had published in the *Official Journal of the European Union* (S series, of 19 January 2019) a new contract notice concerning caretaking, reception and access control services for the premises of Poste Italiane and of the other companies in its group. Moreover, Pegaso does not deny that the contract notice at issue in the main proceedings was withdrawn, even though it argues that the referring court is still required to rule on the substance of dispute in the main proceedings, in particular on whether that contract notice was lawful, both for the purposes of a possible claim for compensation and for the purposes of costs.

29 In those circumstances, it must be found that, notwithstanding the initial doubts of the referring court in that regard, the subject matter of the dispute in the main proceedings has indeed ceased to exist.

30 However, the referring court considers that, in order to be able to determine what action is to be taken on the application brought before it, it must first settle the question whether it has jurisdiction to hear the case. It states that that would be the case if the contract at issue in the main proceedings were governed by one of the European Union's public procurement directives.

31 Consequently, the request for a preliminary ruling is admissible.

Consideration of the questions referred

The third and fifth questions

32 By its third and fifth questions, which it is appropriate to examine together at the outset, the referring court seeks, in essence, to ascertain whether Article 13(1) of Directive 2014/25 must be interpreted as applying to activities consisting in the provision of caretaking, reception and access control services for the premises of postal service providers, such as Poste Italiane and other companies in its group.

33 As a preliminary point, it must be stated, first, that Directive 2014/25 repealed and replaced Directive 2004/17. In that regard, as regards the provisions of Directive 2014/25 having essentially the same scope as the relevant provisions of Directive 2004/17, the Court's case-law on Directive 2004/17 is also applicable to Directive 2014/25.

34 Secondly, it is common ground between the parties that Poste Tutela and Poste Italiane have the status of 'public undertakings' within the meaning of Article 4(2) of Directive 2014/25 and therefore, as contracting entities, fall within the scope *ratione personae* of that directive. Consequently, there is no need to examine whether those undertakings also constitute a body governed by public law within the meaning of Article 3(4) of that directive.

35 According to Article 13(1) of Directive 2014/25, that directive is to apply to activities relating to the provision, first, of postal services and, secondly, services other than postal services, on condition that those other services are provided by an entity which also provides postal services. The concepts 'postal services' and 'other services than postal services' are defined in Article 13(2)(b) and (c) of that directive as referring, respectively, to (i) services consisting in the clearance, sorting, routing and delivery of postal items and (ii) mail service management services and services concerning items other than postal items, such as direct mail bearing no address.

36 In addition, Article 19(1) of Directive 2014/25 states, in particular, that that directive is not to apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 8 to 14 of that directive.

37 In that regard, the Court has held that Directive 2004/17 in fact applied not only to contracts awarded in the sphere of one of the activities expressly listed in Articles 3 to 7 thereof, but also to contracts which, even though they were different in nature and could as such normally fall within the scope 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 (OJ 2004 L 134, p. 114), were used in the exercise of activities defined in Directive 2004/17. The Court inferred from this that where a contract awarded by a contracting entity was connected with an activity which that entity carried out in the sectors listed in Articles 3 to 7 of that directive, in the sense that that contract was awarded in connection with and for the exercise of activities in one of those sectors, the contract was subject to the procedures laid down in that directive (see, to that effect, judgments of 10 April 2008, *Ing. Aigner*, C-393/06, EU:C:2008:213, paragraphs 31 and 56 to 59, and of 19 April 2018, *Consorzio Italian Management and Catania Multiservizi*, C-152/17, EU:C:2018:264, paragraph 26).

38 Article 6(1) of Directive 2004/17 applied, inter alia, to 'activities relating to the provision of postal services' and Article 13(1) of Directive 2014/25, which replaced that provision, defines the scope of Directive 2014/25 by referring, in particular, to 'activities relating to the provision of postal services'.

39 In those circumstances, and is apparent from the comparison between the introductory parts of those two provisions, the scope *ratione materiae* of Directive 2014/25 cannot be interpreted more restrictively than that of Directive 2004/17 and it cannot, therefore, be limited solely to activities of providing postal services as such, but also includes, in addition, activities relating to the provision of such services.

40 It follows that the interpretation adopted by the Court in its case-law referred to in paragraph 37 above, based on a systematic interpretation of Directives 2004/17 and 2004/18, has been confirmed, since the entry into force of Directive 2014/25, by the wording of Article 13(1) thereof, which sets out the scope of that new directive.

41 It must, therefore, be determined whether, as Pegaso and the European Commission assert, services such as those at issue in the main proceedings may be regarded as being connected, within the meaning of paragraph 37 above, with the activity carried out by the contracting entity concerned in the postal sector.

42 In that regard, in order to be of use in carrying out the activity falling within the postal sector, the connection between the contract at issue and that sector cannot be of just any kind, on pain of misconstruing the meaning of Article 19(1) of Directive 2014/25. It is not sufficient that the services which are the subject of that contract make a positive contribution to the activities of the contracting entity and increase profitability, in order to be able to establish the existence of a connection between that contract and the activity falling within the scope of the postal sector, for the purposes of Article 13(1) of that directive.

43 It is, therefore, appropriate to consider as activities relating to the provision of postal services, within the meaning of that provision, all activities which actually serve to carry out the activity falling within the postal services sector, by enabling that activity to be carried out adequately, having regard to the normal conditions under which it is carried out, to the exclusion of activities carried out for purposes other than the pursuit of the sectoral activity concerned.

44 The same applies to activities which, being complementary and transverse in nature, could in other circumstances serve to carry out other activities outside the scope of the special sectors directive.

45 In the present case, it is difficult to imagine that postal services may be adequately provided in the absence of the caretaking, reception and access control services for the premises of the provider concerned. That finding applies both to premises which are open to the recipients of postal services and thus admit the public and to premises used for administrative functions. As the Advocate General observed in point 116 of his Opinion, the provision of postal services also includes the management and planning of those services.

46 In those circumstances, a contract such as that at issue in the main proceedings cannot be regarded as awarded for purposes other than the pursuit of the activity falling within the postal services sector, in terms of Article 19(1) of Directive 2014/25, and, on the contrary, having regard to the considerations set out in paragraph 43 above, displays a connection with that activity which justifies the contract being subject to the regime established by that directive.

47 Accordingly, in view of the fact that Poste Italiane has the status of a public undertaking within the meaning of Article 4(2) of Directive 2014/25, as has been pointed out in paragraph 34 above, and that the services at issue in the main proceedings are activities related to the provision of postal services, which they actually serve to carry out, that directive is, therefore, applicable both *ratione personae* and *ratione materiae* to the contract at issue in the main proceedings.

48 Such a conclusion is not invalidated by Poste Italiane's argument that the reception and caretaking activities which are the subject of the tender at issue in the main proceedings are also provided for the benefit of activities which are outside the material scope of Directive 2014/25, such as payment services, mobile telephony, insurance or digital services.

49 As the Advocate General observed, in essence, in points 119 and 120 of his Opinion, Article 6(1) of Directive 2014/25 provides, in the case of contracts intended to cover several activities, that contracting entities may decide to award separate contracts for each of the different activities or to award a single contract. In the latter case, it follows from Article 6(2) of that directive that that single contract is to be subject to the rules applicable to the activity for which it is principally intended.

50 However, the information provided to the Court does not enable it to be established that the contract at issue in the present case was principally intended for activities not falling within the material scope of Directive 2014/25.

51 Consequently, it cannot be held, in the context of the information provided to the Court and subject to verification by the referring court, that the contract at issue in the main proceedings falls outside the material scope of Directive 2014/25.

52 In the light of the foregoing, the answer to the third and fifth questions is that Article 13(1) of Directive 2014/25 must be interpreted as applying to activities consisting in the provision of caretaking, reception and access control services for the premises of postal services providers, where such activities are connected with the activity falling within the postal sector, in the sense that such activities actually serve to carry out that activity by enabling it to be carried out adequately, having regard to the normal conditions under which it is carried out.

The other questions

53 In the light of the reply given to the third and fifth questions, there is no need to answer the other questions referred.

Costs

54 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 (Fifth Chamber) hereby rules:

Article 13(1) of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC must be interpreted as applying to activities consisting in the provision of caretaking, reception and access control services for the premises of postal services providers, where such activities are connected with the activity falling within the postal sector, in the sense that such activities actually serve to carry out that activity by enabling it to be carried out adequately, having regard to the normal conditions under which it is carried out.

[Signatures]