Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

28 April 2022*

(Reference for a preliminary ruling – Directive 2014/24/EU – Public procurement – Article 63 – Reliance by a group of economic operators on the capacities of other entities – Possibility for the contracting authority to require certain critical tasks to be performed by a participant in that group – National legislation requiring that the agent must fulfil the majority of the requirements and provide the majority of the services)

In Case C-642/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di giustizia amministrativa per la Regione siciliana (Council of Administrative Justice for the Region of Sicily, Italy), made by decision of 14 October 2020, received at the Court on 27 November 2020, in the proceedings

Caruter Srl

v

S.R.R. Messina Provincia SCpA,

Comune di Basicò,

Comune di Falcone,

Comune di Fondachelli Fantina,

Comune di Gioiosa Marea,

Comune di Librizzi,

Comune di Mazzarrà Sant'Andrea,

Comune di Montagnareale,

Comune di Oliveri,

Comune di Piraino,

Comune di San Piero Patti,

* Language of the case: Italian.

Comune di Sant'Angelo di Brolo,

Regione Siciliana – Urega – Ufficio regionale espletamento gare d'appalti lavori pubblici Messina,

Regione Siciliana – Assessorato regionale delle infrastrutture e della mobilità,

other parties:

Ditta individuale Pippo Pizzo,

Onofaro Antonino Srl,

Gial Plast Srl,

Colombo Biagio Srl,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, S. Rodin (Rapporteur), J.-C. Bonichot, L.S. Rossi and O. Spineanu-Matei, 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:

– Ditta individuale Pippo Pizzo, by R. Rotigliano, avvocato,

– the Italian Government, by G. Palmieri, acting as Agent, and by C. Colelli, avvocato dello Stato, and M. Cherubini, procuratore dello Stato,

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

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 The present request for a preliminary ruling concerns the interpretation of Article 63 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 the principles of freedom of establishment and freedom to provide services enshrined in Articles 49 and 56 TFEU.

2 The request has been made in proceedings between, on the one hand, Caruter Srl and, on the other, S.R.R. Messina Provincia SCpA ('SRR'), Comune di Basicò (Municipality of Basicò, Italy), Comune di Falcone (Municipality of Falcone, Italy), Comune di Fondachelli Fantina (Municipality of Fondachelli Fantina, Italy), Comune di Gioiosa Marea (Municipality of Gioiosa Marea, Italy), Comune di Librizzi (Municipality of Librizzi, Italy), Comune di Mazzarrà Sant'Andrea (Municipality of Mazzarrà Sant'Andrea, Italy), Comune di Montagnareale (Municipality of Montagnareale, Italy), Comune di Oliveri (Municipality of Oliveri, Italy), Comune di Piraino (Municipality of Piraino, Italy), Comune di San Piero Patti (Municipality of San Piero Patti, Italy), Comune di Sant'Angelo di Brolo (Municipality of Sant-Angelo di Brolo, Italy), Regione Siciliana – Urega – Ufficio regionale espletamento gare d'appalti lavori pubblici Messina (Region of Sicily – Urega – Regional Authority for Public Works Procurement in Messina, Italy) and Regione Siciliana – Assessorato regionale delle infrastrutture e della mobilità (Region of Sicily – Regional Infrastructure and Public Mobility Department, Italy) concerning the award of a public contract for the supply of a service consisting in the sweeping, collection and transportation for disposal of sorted and unsorted solid urban waste, and for other public cleaning services in 33 municipalities grouped within SRR.

Legal context

European Union law

3 Under recitals 1 and 2 of Directive 2014/24:

'(1) The award of public contracts by or on behalf of Member States' authorities has to comply with the principles of the Treaty on the Functioning of the European Union (TFEU), and in particular the free movement of goods, 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. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that those principles are given practical effect and public procurement is opened up to competition.

(2) … the public procurement rules … 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 …. 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.'

4 Article 2 of that directive, which is entitled 'Definitions', provides, in paragraph 1 thereof:

'For the purposes of this Directive, the follow definitions apply:

…

(10) "economic operator" means any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of works and/or a work, the supply of products or the provision of services on the market;

…’

5 Article 19 of Directive 2014/24, which is entitled ‘Economic operators’, provides, in paragraph 2 thereof:

‘Groups of economic operators, including temporary associations, may participate in procurement procedures. They shall not be required by contracting authorities to have a specific legal form in order to submit a tender or a request to participate.

Where necessary, contracting authorities may clarify in the procurement documents how groups of economic operators are to meet the requirements as to economic and financial standing or technical and professional ability referred to in Article 58 provided that this is justified by objective reasons and is proportionate. Member States may establish standard terms for how groups of economic operators are to meet those requirements.

Any conditions for the performance of a contract by such groups of economic operators, which are different from those imposed on individual participants, shall also be justified by objective reasons and shall be proportionate.’

6 Article 58 of that directive, which is entitled ‘Selection criteria’, provides, in paragraphs 3 and 4 thereof:

‘3. With regard to economic and financial standing, contracting authorities may impose requirements ensuring that economic operators possess the necessary economic and financial capacity to perform the contract. For that purpose, contracting authorities may require, in particular, that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract. In addition, contracting authorities may require that economic operators provide information on their annual accounts …. They may also require an appropriate level of professional risk indemnity insurance.

…

4. With regard to technical and professional ability, contracting authorities may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard.

…’

7 Article 63 of Directive 2014/24, which is entitled ‘Reliance on the capacities of other entities’, states:

‘1. With regard to criteria relating to economic and financial standing as set out pursuant to Article 58(3), and to criteria relating to technical and professional ability as set out pursuant to Article 58(4), an economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. With regard to criteria relating to the educational and professional qualifications … or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing a commitment by those entities to that effect.

…

Under the same conditions, a group of economic operators as referred to in Article 19(2) may rely on the capacities of participants in the group or of other entities.

2. In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, contracting authorities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators as referred to in Article 19(2), by a participant in that group.'

Italian law

8 Article 83 of decreto legislativo del 18 aprile 2016, n. 50 – Codice dei contratti pubblici (supplemento ordinario alla GURI n. 91, del 19 aprile 2016) (Legislative Decree No 50 of 18 April 2016 – the Public Procurement Code (Ordinary Supplement to GURI No 91, 19 April 2916)) ('the Public Procurement Code'), relating to the criteria for selection and assistance in compiling the tendering documentation, provides, in paragraph 8 thereof:

'The contracting authorities shall state the participation requirements which may be expressed as minimum levels of capacity, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest, and shall carry out formal and substantial verification of the delivery capacities, technical and professional skills, including the human resources of the undertaking's staff, and the activities actually carried out. With regard to the entities referred to in Article 45(2)(d), (e), (f) and (g), the contract notice may state to what extent those criteria must be fulfilled by the various competing participants. The agent must in any event fulfil the majority of the requirements and provide the majority of the services. The contract notice and the invitation to participate may not include other requirements other than those set out in the present code or other legal provisions in force, or they will otherwise be excluded. Such requirements are, in any event, void.'

9 Article 89 of the Public Procurement Code, relating to the reliance on the capacities of other entities, provides, in paragraph 1 thereof:

'For a particular contract, the economic operator, whether as a single operator or a member of a group within the meaning of Article 45, may fulfil the requirements relating to the economic, financial, technical and professional criteria laid down in Article 83(1)(b) and (c) necessary to take part in a tendering procedure, and, in any event, excluding the requirements laid down in Article 80, by relying on the capacity of other entities, also participants in the group, regardless of the legal nature of the links which it has with them. …'

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

10 SRR announced an open tendering procedure for the award of a contract for the supply of a service consisting in the sweeping, collection and transportation for disposal of sorted and unsorted solid urban waste, and similar waste, and for other public cleaning services in 33 municipalities grouped within SRR. The contract, for a period of seven years, the total value of which was EUR 42 005 042.16, excluding VAT, was subdivided into three lots. The contract notice specified the economic/financial capacity and technical capacity requirements for each lot. For the purposes of the award, provision was made for the application of the criterion of the most economically advantageous tender, to be identified on the basis of the best quality-price ratio.

11 As regards Lot 2, the value of which was EUR 19 087 724.73 in respect of service provision for 11 municipalities, the contract was awarded to the temporary association of undertakings consisting in the ditta individuale Pippo Pizzo, Onofaro Antonino Srl and Gial Plast Srl ('ATI Pippo Pizzo'), whereas the temporary association of undertakings consisting in Caruter Srl and Gilma Srl ('ATI Caruter') was ranked second.

12 Caruter brought an action before the Tribunale amministrativo regionale per la Sicilia (Regional Administrative Court for Sicily, Italy) against the decision awarding the contract to ATI Pippo Pizzo. ATI Pippo Pizzo also brought a counterclaim against the decision admitting ATI Caruter to the tendering procedure.

13 By judgment of 19 December 2019, that court upheld the principal action and annulled the admission of ATI Pippa Pizzo to the tendering procedure and the award of the contract to ATI Pippo Pizzo. Ruling on the counterclaim, the court also annulled the decision admitting ATI Caruter to the tendering procedure.

14 That court noted that, in accordance with Article 83(8) in conjunction with Article 89 of the Public Procurement Code, reliance by an agent on the capacities of other economic operators of the group is permitted, but the agent must in any event fulfil the majority of the conditions for admission to the tendering procedure and provide the majority of the services in relation to the other economic operators. However, in the present case, the ditta individuale Pippo Pizzo did not, on its own, fulfil the requirements laid down in the contract documents at issue in the main proceedings and it was not able to rely on the capacities of the other undertakings of the temporary association of undertakings of which it was the agent.

15 Caruter brought an appeal against that judgment before the Consiglio di giustizia amministrativa per la Regione siciliana (Council of Administrative Justice for the Region of Sicily, Italy), the referring court. ATI Pippo Pizzo for its part brought a cross-appeal against that judgment.

16 The referring court considers that the interpretation of the Public Procurement Code by the first-instance court, according to which the agent must, in any event, fulfil the majority of the admission requirements and provide the majority of the services, could be contrary to Article 63 of Directive 2014/24, since that latter provision does not appear to limit the possibility for an economic operator to rely on the capacities of other operators.

17 In those circumstances the Consiglio di giustizia amministrativa per la Regione siciliana (Council of Administrative Justice for the Region of Sicily) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Article 63 of Directive [2014/24], concerning reliance on the capacities of other entities, in conjunction with the principles of freedom of establishment and freedom to provide services enshrined in Articles 49 and 56 [TFEU], preclude the application of the Italian national rules relating to "criteria for selection and the supplementing or amending of tendering documentation" laid down in the [third] sentence of Article 83(8) of the [Public Procurement Code], according to which where recourse is had to reliance on the capacities of other entities (referred to in Article 89 of the [Public Procurement Code]), the agent must in any event fulfil the majority of the requirements and provide the majority of the services?'

Request for an expedited procedure

18 The referring court requested the application of the expedited procedure to the present case, pursuant to Article 105 of the Rules of Procedure of the Court.

19 In support of its request, the referring court stated that the present case raised a question of principle having a bearing on the decisions of economic operators wishing to rely on the capacities of other undertakings in order to participate in a tendering procedure, and maintained that that question is the subject of numerous cases before the Italian courts. Furthermore, the continuation of the procedure for the award of the public contact at issue in the main proceedings depends on the decision of the Court, given that the referring court has already ruled on all the other arguments. Lastly, Lot 2 of that public contract concerns the supply of a service consisting in the collection and transportation for disposal of solid urban waste, and for other public cleaning services in 11 municipalities in the region of Sicily. The total value of Lot 2 is EUR 19 087 724.73.

20 In that regard, Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his or her own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure.

21 So far as concerns, first of all, the fact that the question referred is the subject of extensive litigation in Italy, it should be borne in mind that the expedited procedure under Article 105(1) of the Rules of Procedure is a procedural instrument intended to address matters of exceptional urgency (orders of the President of the Court of 31 August 2010, *UEFA and British Sky Broadcasting*, C-228/10, not published, EU:C:2010:474, paragraph 6; of 20 December 2017, *M. A. and Others*, C-661/17, not published, EU:C:2017:1024, paragraph 17; and of 18 January 2019, *Adusbef and Others*, C-686/18, not published, EU:C:2019:68, paragraph 11).

22 The large number of persons or legal situations which may be affected by the question referred does not, as such, constitute an exceptional circumstance justifying application of the expedited procedure (order of the President of the Court of 8 March 2018, *Vitali*, C-63/18, not published, EU:C:2018:199, paragraph 17 and the case-law cited).

23 With regard, next, to the fact that the outcome of the dispute in the main proceedings depends on the answer to be provided by the Court, it is apparent from the case-law that the mere interest of litigants in determining as quickly as possible the scope of their rights under EU law, while legitimate, is not such as to establish the existence of an exceptional circumstance within the meaning of Article 105(1) of the Rules of Procedure (order of the President of the Court of 8 March 2018, *Vitali*, C-63/18, not published, EU:C:2018:199, paragraph 18 and the case-law cited).

24 As regards, moreover, the allegedly urgent character of the works to be performed under the public works contract at issue in the main proceedings, it should be noted that the requirement to deal rapidly with the dispute pending before the Court cannot derive solely from the fact that the referring court is required to ensure the rapid settlement of the dispute or from the mere fact that the delay or suspension of the works the subject of a public contract could have adverse effects on the persons concerned (see, to that effect, orders of the President of the Court of

18 July 2007, *Commission* v *Poland*, C-193/07, not published, EU:C:2007:465, paragraph 13 and the case-law cited, and of 8 March 2018, *Vitali*, C-63/18, not published, EU:C:2018:199, paragraph 19 and the case-law cited).

25 Lastly, so far as concerns the value of the contract at issue in the main proceedings, it is settled case-law that economic interests, however important or legitimate they may be, are not sufficient to justify in themselves application of the expedited procedure (order of the President of the Court of 16 March 2017, *Abanca Corporación Bancaria*, C-70/17, not published, EU:C:2017:227, paragraph 13 and the case-law cited).

26 In those circumstances, on 13 January 2021 the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, to refuse the request for an expedited procedure.

The admissibility of the request for a preliminary ruling

27 The Italian Government contends that the request for a preliminary ruling is inadmissible on the ground that the issue raised is hypothetical, given that the relevance of that request in relation to the specific subject matter of the main proceedings has not been established.

28 In that regard, according to 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 the 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 of EU law, the Court is in principle required to give a ruling (judgment of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, paragraph 26 and the case-law cited).

29 It follows that questions concerning 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 obvious that the interpretation, or the determination of validity, of a rule of EU law that is sought bears no relation to the 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 (see, to that effect, judgment of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraph 29, and order of 26 March 2021, *Fedasil*, C-134/21, EU:C:2021:257, paragraph 48).

30 In the present case, it should be noted that the question referred concerns the interpretation of provisions of EU law, in particular Article 63 of Directive 2014/24, and that the order for reference sets out the factual and legal context in sufficient detail to enable the Court to determine the scope of that question.

31 Furthermore, it is not apparent that the interpretation sought bears no relation to the actual facts or the purpose of the dispute in the main proceedings; nor does the problem appear to be hypothetical. While Article 63 of Directive 2014/24 permits contracting authorities to require only that 'certain critical tasks' be performed by the lead undertaking of a group itself, it is apparent from the order for reference that the undertaking to which the contract at issue in the

main proceedings was awarded was excluded from the tendering procedure on the ground that it did not carry out 'the majority' of the works, as required by Article 83(8) of the Public Procurement Code.

32 It is, therefore, apparent that the referring court needs an answer from the Court of Justice on its request for interpretation if it is to be able to give a ruling.

33 The request for a preliminary ruling is, accordingly, admissible.

Consideration of the question referred

34 By its question, the referring court asks, in essence, whether Article 63 of Directive 2014/24, read in conjunction with Articles 49 and 56 TFEU, must be interpreted as precluding national legislation requiring that the undertaking which is the agent of a group of economic operators participating in a public procurement procedure must fulfil the majority of the requirements set out in the contract notice and provide the majority of the services under that contract.

35 First of all, it should be noted that, as is apparent from the order for reference, Directive 2014/24 is applicable to the facts at issue in the main proceedings. In addition, it should be pointed out that the provisions of that directive must, by reason of recital 1 thereof, be interpreted in accordance with the principles of freedom of establishment and freedom to provide services as well as with the principles deriving therefrom. It is, therefore, not necessary to examine separately the question referred in the light of Articles 49 and 56 TFEU (see, by analogy, judgment of 10 November 2016, *Ciclat*, C-199/15, EU:C:2016:853, paragraph 25). Since, moreover, the present request for a preliminary ruling raises no new point of law with regard to the principles of freedom of establishment and freedom to provide services or the principles deriving therefrom, it is sufficient to deal with the question referred for a preliminary ruling by referring to Directive 2014/24.

36 Article 63(1) of that directive provides that, with regard to criteria relating to economic and financial standing and to criteria relating to technical and professional ability, an economic operator may, for a particular contract, rely on the capacities of other entities, and that, under the same conditions, a group of economic operators may rely on the capacities of participants in the group or of other entities. Furthermore, Article 63(2) states that, for certain types of contracts, including service contracts, 'contracting authorities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators …, by a participant in that group'.

37 However, by requiring the undertaking which is the agent of the group of economic operators to provide 'the majority' of the services in relation to all the members of the group, that is to say to provide the majority of all the services covered by the contract, Article 83(8) of the Public Procurement Code lays down a stricter condition than that provided for by Directive 2014/24 which merely authorises the contracting authority to provide, in the contract notice, that certain critical tasks are to be performed directly by a participant in the group of economic operators.

38 Under the system established by that directive, it is the contracting authorities that may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators as referred to in Article 19(2) of Directive 2014/24,

by a participant in that group whereas, according to the national legislation at issue in the main proceedings, it is the national legislature that requires horizontally, for all public contracts in Italy, that the agent of the group of economic operators must perform the majority of the services.

39 It is true that the second subparagraph of Article 19(2) of Directive 2014/24 provides that Member States may establish standard terms for how groups of economic operators are to meet the criteria relating to economic and financial standing and the criteria relating to technical and professional ability referred to in Article 58 of that directive.

40 However, even if the capacity to perform critical tasks falls within the notion of 'technical ability', within the meaning of Articles 19 and 58 of Directive 2014/24, which would allow the national legislature to include that capacity in its standard terms provided for in Article 19(2) of that directive, a rule such as that contained in the third sentence of Article 83(8) of the Public Procurement Code – which requires the agent of the group of economic operators to perform directly itself the majority of the tasks – goes beyond what is allowed by that directive. Such a rule is not limited to specifying how groups of economic operators are to guarantee they possess the human and technical resources necessary to perform the contract, within the meaning of Article 19(2) of that directive, read in conjunction with Article 58(4) thereof, but relates to the actual performance of the contract itself and requires, in that regard, the agent of the group to perform the majority of the services.

41 Lastly, it is true that, according to Article 63(2) of Directive 2014/24, in the case, inter alia, of service contracts, contracting authorities may require that 'certain critical tasks' be performed by a participant in the group of economic operators.

42 However, notwithstanding the slight variation between different language versions of Directive 2014/24, it is clear from the words '*certaines tâches essentielles* [certain essential tasks]', used in several language versions of that directive, including those in French and Italian ('*taluni compiti essenziali*'), and also from the words '*certain critical tasks*', used in other versions of that directive, including those in Spanish ('*determinadas tareas críticas*'), German ('*bestimmte kritische Aufgaben*'), English ('*certain critical tasks*'), Dutch ('*bepaalde kritieke taken*') and Romanian ('*anumite sarcini critice*'), that the intention of the EU legislature is, in accordance with the objectives set out in recitals 1 and 2 of that directive, to limit what can be imposed on a single operator of a group, following a qualitative approach rather than merely a quantitative approach, in order to facilitate the participation of groups such as temporary associations of small- and medium-sized undertakings in public procurement procedures. A requirement such as that set out in the third sentence of Article 83(8) of the Public Procurement Code, which extends to the 'provision of the majority of the services', is inconsistent with such an approach, goes beyond the targeted words used in Article 63(2) of Directive 2014/24 and therefore undermines the objective pursued by EU law in that area of attaining the widest possible opening-up of public contracts to competition and of facilitating the involvement of small- and medium-sized undertakings (judgment of 2 June 2016, *Pizzo*, C-27/15, EU:C:2016:404, paragraph 27).

43 Moreover, while Article 63(2) of Directive 2014/24 merely authorises contracting authorities to require, in the case, inter alia, of service contracts, that certain tasks be performed by a participant of the group of economic operators, Article 83(8) of the Public Procurement Code lays down the requirement that the agent of the group alone must perform the majority of the services, to the exclusion of all the other participating undertakings, and thus unduly restricts the meaning and scope of the words used in Article 63(2) of Directive 2014/24.

44 In the light of the foregoing considerations, the answer to the question referred is that Article 63 of Directive 2014/24 must be interpreted as precluding national legislation requiring that the undertaking which is the agent of a group of economic operators participating in a public procurement procedure must fulfil the majority of the requirements set out in the contract notice and provide the majority of the services under that contract.

Costs

45 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fourth Chamber) hereby rules:

Article 63 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 precluding national legislation requiring that the undertaking which is the agent of a group of economic operators participating in a public procurement procedure must fulfil the majority of the requirements set out in the contract notice and provide the majority of the services under that contract.

[Signatures]