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Court of Justice of the European Union

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Judgment in Case C-465/17

Falck Rettungsdienste GmbH and Others v Stadt Solingen

Public procurement rules do not apply to services for the transport of patients provided, in emergency situations, by non-profit organisations or associations

After having invited some public aid associations to submit tenders, the City of Solingen (Germany) awarded, in 2016, the contract for emergency services, for a period of five years, to two of those associations. The contract concerned, in particular, the care of patients in an emergency situation by an emergency worker assisted by a paramedic and the transport by ambulance of patients cared for by a paramedic assisted by a medical assistant (the latter, 'transport by qualified ambulance').

The company Falck Rettungsdienste GmbH and the Falck A/S group, to which Falck Rettungsdienste belongs, ('Falck'), brought an action before the German courts for a declaration that the award was illegal owing to the lack of prior publication of a contract notice in the *Official Journal of the European Union* (OJ), in accordance with the general rules laid down in the directive on public procurement.¹

In those circumstances, the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany) asks the Court of Justice whether those contracts fall within the concept of 'danger prevention services' which Article 10(h) of Directive 2014/24 excludes from the scope of application of the usual rules of public procurement, provided that they correspond to certain CPV [Common Procurement Vocabulary] codes and are provided by non-profit organisations or associations. Otherwise, whether those services fall within the concept 'patient transport ambulance services', which are subject to a simplified procurement regime. The Oberlandesgericht Düsseldorf also asks the Court of Justice to interpret the concept of 'non-profit organisation or association'.

By today's judgment, the Court rules that, according to Article 10(h) of the directive, the usual public procurement rules, including the obligation to publish the contract notice in the Official Journal, do not apply to public contracts for services relating to civil defence, civil protection and danger prevention, subject to two conditions, namely that (i) the services correspond to certain CPV codes (here, corresponding to 'emergency/rescue services' or 'ambulance services') and (ii) that they are provided by non-profit organisations or associations. That exclusion of the application of the public procurement rules contains, however, an exception in that it does not include patient transport ambulance services, which are subject to a simplified public procurement regime.

The Court notes that **the care of patients in an emergency situation in a rescue vehicle by an emergency worker/paramedic and the transport by qualified ambulance** do not constitute either 'civil defence services' or 'civil protection services' but **fall within the concept of 'danger prevention'**. It is clear from a literal and contextual interpretation of the directive that 'danger prevention' concerns both collective and individual risks.

The Court observes, next, that the exclusion from the public procurement rules in respect of danger prevention services only benefits certain emergency services provided by non-profit

¹ 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).

organisations or associations and must not go beyond what is strictly necessary. **The inapplicability of the public procurement rules is thus inextricably linked to the existence of an emergency service.**

The Court concludes that **the care of patients in an emergency situation**, carried out moreover in a rescue vehicle by an emergency worker/paramedic **is covered by the code corresponding to emergency/rescue services**. However, **transport by qualified ambulance is not covered by the code for ‘ambulance services’ unless it is possible to establish, at least potentially, an emergency, that is to say where it is necessary to transport a patient whose health is at risk of deterioration – which may be objectively assessed – during that transport**. That risk implies that that transport must be **provided by personnel properly trained in first aid**. In such cases, the general rules on public procurement (including the obligation of prior publication of a contract notice in the Official Journal) do not apply, provided that those services are provided by non-profit organisations or associations.

Finally, the Court rules that organisations or **associations whose purpose is to undertake social tasks**, which have **no commercial purpose** and which **reinvest any profits** in order to achieve the objective of that organisation or association **constitute ‘non-profit organisations or associations’** within the meaning of the directive. Consequently, the directive precludes public aid associations recognised in national law as civil protection and defence associations from being regarded as ‘non-profit organisations or associations’, unless that status is subject, in national law, to not having a profit-making purpose.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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