



## PRESS RELEASE No 45/24

Luxembourg, 7 March 2024

Advocate General's Opinion in Case C-652/22 | Kolin İnşaat Turizm Sanayi ve Ticaret

### **AG Collins: only economic operators established in countries party to international agreements on public contracts that bind the EU may rely on provisions of the Public Procurement Directive**

Kolin İnşaat Turizm Sanayi ve Ticaret (Kolin), a company established in Türkiye, challenged a decision by a Croatian contracting entity to award a contract to upgrade railway infrastructure between two Croatian towns. In the context of that action, a Croatian court asked the Court of Justice to clarify the circumstances in which, after the expiry of the deadline for their submission, contracting authorities may seek corrections or clarifications of bids from tenderers.

In today's Opinion, Advocate General Anthony Collins first examines the issue of the **admissibility** of the reference. He observes that, in so far as third-country economic operators are concerned, only those established in a country party to the World Trade Organisation Agreement on Government Procurement (GPA) or to another international agreement on the award of public contracts by which the EU is bound can rely upon provisions of the Public Procurement Directive <sup>1</sup>. As Kolin is not established in such a country, it is not entitled to participate in a public contract award procedure that is governed by the Public Procurement Directive and, consequently, is unable to rely on the provisions of that Directive before Member State courts.

Since the questions asked concern an exclusive competence of the EU, in principle Member States cannot unilaterally extend the application of the applicable EU rules by allowing economic operators from non-covered third-countries to participate in tender procedures, even where the EU has not exercised its exclusive competence in that regard.

#### **AG Collins therefore advises the Court to rule the request for preliminary ruling inadmissible.**

AG Collins proceeds to examine the questions asked in the event that the Court decides to admit the reference. In that event, he proposes that the Court rule that, where an initial award decision has been set aside and the matter referred back for re-evaluation by a contracting authority, **EU law precludes that authority from requesting documents from a tenderer which relate to its technical and professional ability by reference to works not mentioned in the original tender.**

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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.

Unofficial document for media use, not binding on the Court of Justice.

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

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<sup>1</sup> [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.