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Judgment of the Court in Case C-652/22 | Kolin İnşaat Turizm Sanayi ve Ticaret

Economic operators from a third country which has not concluded an international agreement on public procurement with the European Union cannot claim equal treatment in this area

In the absence of an international agreement on public procurement concluded between the European Union and a third country, economic operators in that third country cannot rely on the provisions of the relevant directive on that matter ¹ in order to claim participation in a procedure for the award of a public contract in the European Union on the same footing as tenderers from Member States or third countries bound by such an agreement. Furthermore, having regard to the exclusive competence of the European Union in the area of the common commercial policy, national authorities are not entitled to apply, to economic operators in third countries which have not concluded such an international agreement with the European Union, national provisions transposing the rules contained in that directive.

A contracting entity opened a procedure for the award of a public contract for the construction of railway infrastructure connecting two towns in Croatia. Kolin İnşaat Turizm Sanayi ve Ticaret (Kolin), a company established in Turkey, challenged the legality of the decision awarding the contract to another tenderer. In the context of that action, the competent national court asks the Court of Justice to clarify the circumstances in which, after the expiry of the deadline for the submission of tenders, contracting authorities are entitled, under the relevant directive on public procurement, to ask tenderers to make corrections or to clarify their initial tender.

The Court of Justice rules on the admissibility of the request submitted to it.

It notes that the European Union is linked to certain third countries by international agreements, in particular the World Trade Organization Agreement on Government Procurement (GPA), which guarantee reciprocal and equal access for economic operators to public procurement. Thus, according to the directive applicable to public procurement at issue in the present case, contracting entities of the Member States must accord economic operators from third countries which are parties to such an agreement treatment no less favourable than that accorded to economic operators in the European Union. Economic operators in those third countries may rely on the provisions of that directive.

By contrast, **economic operators in third countries which, like Türkiye, have not concluded such an international agreement with the European Union** cannot participate in a procedure for the award of a public contract in the European Union while claiming equal treatment with tenderers of Member States or third countries bound by such an agreement. Similarly, **they cannot rely on the provisions of the relevant directive on public procurement in order to challenge the decision awarding the contract in question.**

Finally, the Court considers that the question of access of economic operators of third countries to public procurement procedures in the Member States falls within an area in which **the European Union has exclusive competence**. Accordingly, as regards that access, the Member States are not empowered to legislate or adopt legally binding acts of general application, including where the European Union has not adopted applicable acts in

that area.

Where no such act exists, it is for the contracting entity to assess, on a case-by-case basis, whether economic operators from third countries which have not concluded an international agreement on public procurement with the European Union should be admitted to a procedure for the award of a public contract. If such an economic operator challenges the conduct of the procedure, its action can be examined only in the light of national law and not EU law.

On this point, the Court holds that **national authorities cannot require contracting authorities to apply national provisions transposing the rules contained in the directive on public procurement to economic operators of third countries which have not concluded an international agreement with the European Union.**

Consequently, it declares that **the request for a preliminary ruling is inadmissible.**

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 EU law or the validity of an EU 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 and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ [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.