

Provisional text

JUDGMENT OF THE COURT (Third Chamber)

21 March 2019 (\*)

(Reference for a preliminary ruling — Public procurement — Directive 2014/24/EU — Article 10(h) — Specific exclusions for service contracts — Civil defence, civil protection and danger prevention services — Non-profit organisations or associations — Patient transport ambulance services — Transport by qualified ambulance)

In Case C-465/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany), made by decision of 12 June 2017, received at the Court on 2 August 2017, in the proceedings

**Falck Rettungsdienste GmbH,**

**Falck A/S**

v

**Stadt Solingen,**

interveners:

**Arbeiter-Samariter-Bund Regionalverband Bergisch Land eV,**

**Malteser Hilfsdienst eV,**

**Deutsches Rotes Kreuz, Kreisverband Solingen,**

THE COURT (Third Chamber),

composed of M. Vilaras, President of the Fourth Chamber, acting as President of the Third Chamber, J. Malenovský, L. Bay Larsen, M. Safjan and D. Šváby (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 5 September 2018,

after considering the observations submitted on behalf of

- Falck Rettungsdienste GmbH and Falck A/S, by P. Friton and H.-J. Prieß, Rechtsanwälte,
- Stadt Solingen, by H. Glahs, Rechtsanwältin, and by M. Kottmann and M. Rafii, Rechtsanwälte,
- Arbeiter-Samariter-Bund Regionalverband Bergisch Land eV, by J.-V. Schmitz and N. Lenger, Rechtsanwälte, and by J. Wollmann, Rechtsanwältin,

- Malteser Hilfsdienst eV, by W. Schmitz-Rode, Rechtsanwalt,
- Deutsches Rotes Kreuz, Kreisverband Solingen, by R.M. Kieselmann and M. Pajunk, Rechtsanwälte,
- the German Government, by T. Henze and J. Möller, acting as Agents,
- the Romanian Government, by C.-R. Cañțăr and R.H. Radu and by R.I. Hațieganu and C.-M. Florescu, acting as Agents,
- The Norwegian Government, by M.R. Norum and K.B. Moen, acting as Agents
- the European Commission, by A.C. Becker and by P. Ondrůšek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 November 2018,

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 10(h) 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).
- 2 The request has been made in proceedings between Falck Rettungsdienste GmbH and Falck A/S, on the one hand, and Stadt Soligen (City of Solingen, Germany), on the other hand, concerning the direct award of the contract for ‘Emergency Services in Solingen — Project No V16737/128’, lots 1 and 2 (‘the contract at issue’), without prior publication of a contract notice in the *Official Journal of the European Union*.

#### Legal context

##### *Directive 2014/24*

- 3 Recitals 28, 117 and 118 of Directive 2014/24 read as follows:

‘(28) This Directive should not apply to certain emergency services where they are performed by non-profit organisations or associations, since the particular nature of those organisations would be difficult to preserve if the service providers had to be chosen in accordance with the procedures set out in this Directive. However, the exclusion should not be extended beyond that strictly necessary. It should therefore be set out explicitly that patient transport ambulance services should not be excluded. In that context it is furthermore necessary to clarify that CPV [*Common Procurement Vocabulary*] Group 601 “Land Transport Services” does not cover ambulance services, to be found in CPV class 8514. It should therefore be clarified that services, which are covered by CPV code 85143000–3, consisting exclusively of patient transport ambulance services should be subject to the special regime set out for social and other specific services (the “light regime”). Consequently, mixed contracts for the provision of ambulance services in general would also be subject to the light regime if the value of the patient transport ambulance services were greater than the value of other ambulance services.

...

- (117) Experience has shown that a series of other services, such as rescue services, firefighting services and prison services are normally only of cross-border interest as of such time as they acquire

sufficient critical mass through their relatively high value. In so far as they are not excluded from the scope of this Directive, they should be included under the light regime. To the extent that their provision is actually based on contracts, other categories of services, such as government services or the provision of services to the community, they would normally only be likely to present a cross-border interest as from a threshold [EUR] 750 000 and should consequently only then be subject to the light regime.

(118) In order to ensure the continuity of public services, this Directive should allow that participation in procurement procedures for certain services in the fields of health, social and cultural services could be reserved for organisations which are based on employee ownership or active employee participation in their governance, and for existing organisations such as cooperatives to participate in delivering these services to end users. This provision is limited in scope exclusively to certain health, social and related services, certain education and training services, library, archive, museum and other cultural services, sporting services, and services for private households, and is not intended to cover any of the exclusions otherwise provided for by this Directive. Those services should only be covered by the “light regime”.’

4 Under the heading, ‘Specific exclusions for service contracts’, Article 10(h) of the directive provides:

‘This Directive shall not apply to public service contracts for:

...

(h) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3 [firefighting and rescue services], 75251000-0 [fire services], 75251100-1 [firefighting services], 75251110-4 [fire prevention services], 75251120-7 [forest fire-fighting services], 75252000-7 [emergency/rescue services], 75222000-8 [civil protection services], 98113100-9 [nuclear safety services] and 85143000-3 [ambulance services] except patient transport ambulance services;

...’

5 Chapter I on ‘Social and other specific services’ under Title III, headed ‘Particular procurement regimes’, of the directive comprises Articles 74 to 77.

6 Article 77 of Directive 2014/24, entitled ‘Reserved contracts for certain services’:

‘1. Member States may provide that contracting authorities may reserve the right for organisations to participate in procedures for the award of public contracts exclusively for those health, social and cultural services referred to in Article 74, which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8.

2. An organisation referred to in paragraph 1 shall fulfil all of the following conditions:

(a) its objective is the pursuit of a public service mission linked to the delivery of the services referred to in paragraph 1;

(b) profits are reinvested with a view to achieving the organisation’s objective. Where profits are distributed or redistributed, this should be based on participatory considerations;

(c) the structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders; and

- (d) the organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this Article within the past three years.

...'

### **German law**

- 7 Paragraph 107(1)(4) of the Gesetz gegen Wettbewerbsbeschränkungen (Law against Restrictions of Competition) of 26 June 2013, (BGB1. I, p. 1750), in the version applicable to the case in the main proceedings ('the GWB'), provides:

'General exclusions

1. This [fourth] part shall not apply to public procurement or the grant of concessions relating to:

...

(4) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3, except for patient transport ambulance services. Non-profit organisations or associations within the meaning of this provision include, in particular, public aid associations which are recognised under federal or regional law as associations involved in civil and disaster protection.'

- 8 In accordance with Article 2(1) of the Gesetz über den Rettungsdienst sowie die Notfallrettung und den Krankentransport durch Unternehmer (Rettungsgesetz NRW — RettG NRW) (Law of the *Land* of North Rhine-Westphalia on emergency services as well as emergency rescue and patient transport by contractors) of 24 November 1992, emergency services cover emergency interventions, transport by ambulance and the care of a large numbers of sick or injured persons in the event of major disasters. According to the first sentence of Paragraph 2(2) of that law, emergency rescue interventions have the aim of carrying out measures *in situ* to save the lives of patients in an emergency situation, making them fit for transport, maintaining their fitness for transport, and preventing further harm, including transporting them in an emergency doctor's vehicle or by ambulance to an appropriate hospital where further care can be provided. According to Paragraph 2(3), the transport by ambulance is designed to provide appropriate care to sick or injured persons or other persons needing help who are not covered by Paragraph 2(2) of the same law, including transporting them, *inter alia*, by ambulance under supervision by qualified personnel.

- 9 Paragraph 26(1), second sentence, of the Zivilschutz- und Katastrophenhilfegesetz (Law on civil protection and disaster response), of 25 March 1997 (BGB1. I, p. 726), in the version applicable in the case in the main proceedings, ('the Law on civil protection'), provides that the Arbeiter-Samariter-Bund (Workers' Samaritan Federation), the Deutsche Lebensrettungsgesellschaft (German Life Saving Association), the Deutsche Rote Kreuz (German Red Cross), the Johanniter-Unfall-Hilfe (St. John's Accident Assistance) and the Malteser-Hilfsdienst (Maltese Aid Service) are particularly suitable for collaboration in fulfilling the tasks under that legislation.

- 10 The first sentence of Paragraph 18(1) and Paragraph 18(2) of the Gesetz über den Brandschutz, die Hilfeleistung und den Katastrophenschutz (Law on protection from fire, aid and civil defence) of 17 December 2015 ('the Law on fire protection') reads as follows:

'(1) Private associations for public aid help with accidents and public emergencies, major operations and disasters, if they have declared to the highest supervisory authority their readiness to cooperate and that authority has determined their general suitability for cooperation and there is a need for such cooperation (recognised aid associations). ...

2. For the organisations listed in the second sentence of Paragraph 26(1) of the [Law on civil protection] no declaration of willingness to cooperate or general suitability is required.’

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

- 11 The City of Solingen decided, in March 2016, to renew the award of the contract for emergency services for a period of five years. The planned contract concerned in particular the use of municipal ambulances, first, for emergency rescue, with the care and treatment of emergency patients by emergency worker assisted by a paramedic as the primary task, and, second, the transport by ambulance, the primary task being the care of patients by a paramedic assisted by medical assistant.
- 12 The City of Solingen did not publish a contract notice in the *Official Journal of the European Union*. Instead, on 11 May 2016, it invited four public aid associations, including the three parties intervening before the referring court, to submit a tender.
- 13 After tenders were received, Arbeiter-Samariter-Bund Regionalverband Bergisch Land eV and Malteser Hilfsdienst eV were each awarded one of the two lots comprising the contract at issue.
- 14 Falck Rettungsdienste, a provider of emergency and health services, and the Falck A/S Group, to which Falck Rettungsdienste belongs (together ‘Falck and Others’ ) criticise the City of Solingen for having awarded the contract without prior publication of a contract notice in the *Official Journal of the European Union*. Falck and Others therefore lodged, before the Vergabekammer Rheinland (Public Procurement Tribunal for the Rhineland, Germany), an action seeking a declaration that the de facto award breached their rights and that the City of Solingen was required, if it maintained its intention to award the contract at issue, to award it upon conclusion of a public procurement procedure that complied with EU law.
- 15 By decision of 19 August 2016, that tribunal rejected the action as inadmissible.
- 16 Falck and Others brought an appeal against the decision of the Public Procurement Tribunal for the Rhineland before the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany). They reproach the tribunal for having failed to interpret the first sentence of Paragraph 107(1)(4) of the GWB, the wording of all points of which is consonant with Article 10(h) of Directive 2014/24, consistently with that directive.
- 17 Before the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf), Falck and Others submit that the rescue services at issue in the main proceedings do not constitute services of danger prevention. The concept of ‘danger prevention’ refers only to prevention of danger to large groups of people in extreme situations with the result that it does not have an independent meaning and that it does not cover the protection against danger to life and health of individuals. It follows, according to Falck and Others, that transport by qualified ambulance, which includes, in addition to the provision of transport, care by a paramedic assisted by an medical assistant (‘transport by qualified ambulance’), is not covered by the exclusion laid down in Article 10(h) of Directive 2014/24 because it constitutes merely a patient transport ambulance service.
- 18 Furthermore, according to Falck and Others, the national legislature was not entitled to decide that the three intervening parties before the referring court are non-profit organisations or associations merely because they are recognised in national law as public aid associations, in accordance with the second sentence of Paragraph 107(1)(4) of the GWB. The conditions under EU law for classification as a ‘non-profit organisation’ are stricter, having regard to the judgments of 11 December 2014, *Azienda sanitaria locale n. 5 ‘Spezzino’ and Others* (C-113/13, EU:C:2014:2440) and of 28 January 2016, *CASTA and Others* (C-50/14, EU:C:2016:56) or, at the very least, Article 77(1) of Directive 2014/24.
- 19 The referring court considers that the appeal brought by Falck and Others could be upheld if at least one of the conditions required for the exclusion laid down in Paragraph 107(1)(4) of the GWB was not satisfied. It

was therefore necessary to determine, first, whether the contract at issue covers danger prevention services, secondly, from what date the conditions for the status of non-profit organisation or association are deemed to be satisfied and, thirdly, the nature of the services covered by the phrase ‘patient transport ambulance services’ used in that provision.

20 According to the referring court, while civil defence covers unforeseeable large-scale emergencies during peacetime, the concept of civil protection relates to the protection of the civilian population during wartime. The concept of ‘danger prevention services’ could however include services for the prevention of danger to the health and life of individuals, where those services are mobilised against an imminent danger from normal risks such as fire, illness or accidents. That interpretation of the concept of ‘danger prevention’ is more attractive than the restrictive notion contended for by Falck and Others which does not confer any independent regulatory content upon it, since it may be confused with the concept of ‘civil defence’ and also ‘civil protection’.

21 Furthermore, the objective of the exclusion laid down in Article 10(h) of Directive 2014/24, as the first sentence of recital 28 of the directive clarifies, is to enable non-profit organisations to continue to work in the emergency services sector for the well-being of citizens without the risk of being excluded from the market because the competition from commercial companies is too great. However, since non-profit organisations or associations act essentially in the area of daily emergency services for individuals, that exclusion would not achieve its aim if it applied only to services for the prevention of major disasters.

22 The referring court also wonders whether the rule laid down in the second sentence of Paragraph 107(1) (4) of the GWB is compatible with the concept of non-profit organisations or associations contained in Article 10(h) of Directive 2014/24 to the extent that the legal recognition, in national law, of the status of an organisation for civil protection and civil defence does not necessarily depend on whether the organisation is a non-profit one.

23 In that regard, the referring court has doubts as to the submission made by Falck and Others that the non-profit organisation must satisfy other conditions set out in Article 77(2) of Directive 2014/24, or even in the judgments of 11 December 2014, *Azienda sanitaria locale n. 5 ‘Spezzino’ and Others* (C-113/13, EU:C:2014:2440) and of 28 January 2016, *CASTA and Others* (C-50/14, EU:C:2016:56).

24 The referring court also observes that danger prevention services, covered by CPV code 85143000-3 (ambulance services), are covered by the exclusion laid down in Article 10(h) of Directive 2014/24 (‘the exclusion’), with the exception of ‘patient transport ambulance services’ (‘the exception to the exclusion’). In that regard, the question arises as to whether this exception to the exclusion covers only the transport of a patient in an ambulance without any medical care, or whether it also covers transport by qualified ambulance, where the patient receives medical assistance.

25 In those circumstances, the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Do the care and treatment of emergency patients in an ambulance by an emergency worker/paramedic, on the one hand, and the care and treatment of patients in a patient transport ambulance by a paramedic/medical assistant, on the other hand, constitute “civil defence, civil protection, and danger prevention services” within the meaning of Article 10(h) of Directive [2014/24] which come under CPV codes 75252000-7 (rescue services) and 85143000-3 (ambulance services)?

(2) Can Article 10(h) of Directive [2014/24] be understood as meaning that “non-profit organisations or associations” include, in particular, aid organisations that are recognised under national law as civil defence and civil protection organisations?

(3) Are “non-profit organisations or associations” within the meaning of Article 10(h) of Directive [2014/24] those whose mission is fulfilled in the achievement of tasks in the public good, which do

not operate with a view to making a profit and which reinvest any profits in order to realise the mission of the organisation?

- (4) Is the transport of a patient in an ambulance while care is provided by a paramedic/medical assistant (so-called transport by qualified ambulance) a “patient transport ambulance service” within the meaning of Article 10(h) of Directive [2014/24], which is not covered by the exclusion and to which Directive [2014/24] applies?’

## Consideration of the questions referred

### *The first and fourth questions*

- 26 As a preliminary matter, it is appropriate to underline, as the referring court observes, 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’.
- 27 Therefore, the referring court must be regarded as asking, by its first and fourth questions, which it is appropriate to examine together, in essence, whether Article 10(h) of Directive 2014/24 must be interpreted as meaning that, first, the care of patients in an emergency situation in a rescue vehicle by an emergency worker/paramedic and, second, transport by qualified ambulance fall within the concept of ‘danger prevention services’ and the CPV codes 75252000–7 (emergency/rescue services) and 85143000–3 (ambulance services) respectively and, therefore, that they are excluded from the field of application of that directive, or whether those services are ‘patient transport ambulance services’, which are subject, on that basis, to a special regime established for social and other specific services.
- 28 It must be observed that Directive 2014/24 does not define the concept of ‘danger prevention’ and that, according to established case-law, it follows from the need for the uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, having regard to the context of the provision and the objective pursued by the legislation in question (see, inter alia, judgments of 18 January 1984, *Ekro*, 327/82, EU:C:1984:11, paragraph 11, and of 19 September 2000, *Linster*, C–287/98, EU:C:2000:468, paragraph 43).
- 29 While it is true that the concepts of ‘civil protection’ and ‘civil defence’ refer to situations in which it is necessary to respond to mass harm, such as, for example, an earthquake, a tsunami or even a war, it does not necessarily follow that the concept of ‘danger prevention’, which is also referred to in Article 10(h) of Directive 2014/24, must have such a collective dimension.
- 30 It follows from both a literal and contextual interpretation of Article 10(h) of Directive 2014/24 that ‘danger prevention’ covers both collective and individual risks.
- 31 First, the wording of that provision refers to various CPV codes referring to dangers irrespective of whether they are collective or individual. That is the case, inter alia, as regards CPV codes 75250000–3 (firefighting and rescue services), 75251000–0 (fire services), 75251100–1 (firefighting services), 75251110–4 (fire prevention services) and, more specifically, having regard to the subject matter of the case in the main proceedings, codes 75252000–7 (emergency/rescue services) and 85143000–3 (ambulance services).
- 32 Secondly, to require danger prevention to have a collective dimension would prevent that concept having any independent content, since it would be systematically confused with either civil protection or civil defence. Where a provision of EU law is open to several interpretations, preference must be given to that interpretation which ensures that the provision retains its effectiveness (judgment of 24 February 2000, *Commission v France*, C–434/97, EU:C:2000:98, paragraph 21).

- 33 Thirdly, having regard to the context, that interpretation of Article 10(h) of Directive 2014/24 is confirmed by recital 28 thereof. The first sentence of that recital states that ‘this directive should not apply to certain emergency services where they are performed by non-profit organisations or associations, since the particular nature of those organisations would be difficult to preserve if the service providers had to be chosen in accordance with the procedures set out in this directive’. In that regard, it must be emphasised that the exclusion of the application of that directive is not restricted only to emergency services that are provided when collective danger arises. Furthermore, it must be observed, as the order for reference states, that the primary activity carried out by the public aid associations in question in the main proceedings relate to emergency services which, as a general rule, deal with individual and daily interventions. It is precisely as a result of the experience thus acquired by performing those day-to-day emergency services that those non-profit organisations or associations are in the position, according to the referring court, of being operational when they are required to provide ‘civil protection’ and ‘civil defence’ services.
- 34 Fourthly, and as the German Government submitted in its written observations, if danger prevention and, hence, the general exclusion referred to in Article 10(h) of Directive 2014/24, was limited to emergency interventions in extreme situations, the EU legislature would not have cited solely transport by ambulance in the exception from the exclusion. In that regard, as the Advocate General noted in point 48 of his Opinion, it must be observed that if the EU legislature judged it useful to make reference to ‘patient transport ambulance services’, it was because those services would otherwise have been construed as being covered by the exclusion laid down in that provision.
- 35 It follows that the objective referred to in recital 28 of Directive 2014/24 would not be achieved if the concept of ‘danger prevention’ must be understood as covering only the prevention of collective danger.
- 36 Having regard to all the foregoing considerations, it must be concluded that, both the care of patients in an emergency situation in a rescue vehicle by an emergency worker/paramedic and transport by qualified ambulance fall within the concept of ‘danger prevention’, for the purposes of Article 10(h) of Directive 2014/24.
- 37 It remains to be determined whether both of those services are covered by one of the CPV codes listed in that provision.
- 38 As a preliminary matter, it is necessary to refer to the structure of Article 10(h) of Directive 2014/24 which contains an exclusion and an exception to the exclusion. That provision excludes from the scope of the usual rules on public procurement, public contracts for services relating to civil defence, civil protection and danger prevention, subject to two conditions, namely that those services correspond to the CPV codes referred to in that provision and that they are provided by non-profit organisations or associations. That exclusion from the application of the rules on public procurement contains an exception, however, in that it does not apply to patient transport ambulance services, which are covered by the simplified regime for public procurement laid down in Articles 74 to 77 of Directive 2014/24.
- 39 The objective of the exclusion is, as is clear from recital 28 of the directive, to preserve the particular nature of non-profit organisations or associations by avoiding applying the procedures set out in the directive to them. That said, the same recital states that that exclusion must not be extended beyond what is strictly necessary.
- 40 In that context, and as the Advocate General indicated, in essence, in point 64 of his Opinion, there is no doubt that the care of patients in an emergency situation, carried out moreover in a rescue vehicle by an emergency worker/paramedic is covered by CPV code 75252000-7 (rescue services).
- 41 It is therefore necessary to assess whether transport by qualified ambulance is also capable of being covered by the same code or by CPV code 85143000-3 (ambulance services).
- 42 In that regard, from the formulation of the first question referred it seems that transport by qualified ambulance does not correspond to the transport of patients in emergency situations. As the Advocate

General observes in point 33 of his Opinion, the referring court has distinguished between the care of patients in emergency situations by a rescue vehicle, and the care of patients in an ambulance by a paramedic/medical assistant. It must therefore be held that the latter service, which the referring court classifies as transport by qualified ambulance, is not carried out by means of a rescue vehicle, with all the specialised medical equipment that that implies, but by means of an ambulance which may only be a mere transport vehicle.

43 It is clear from Article 10(h) of Directive 2014/24, read in the light of recital 28 thereof, that the exclusion from the public procurement rules laid down in that provision in favour of danger prevention services only benefits certain emergency services provided by non-profit organisations or associations and that it must not go beyond what is strictly necessary.

44 It follows that the inapplicability of the public procurement rules laid down in Article 10(h) of that directive is inextricably linked to the existence of an emergency service.

45 It follows that the presence of qualified personnel on board an ambulance cannot suffice to establish, in itself, the existence of an ambulance service covered by CPV code 85143000-3.

46 An emergency may, despite everything, be shown to exist, at least potentially, where it is necessary to transport a patient whose state of health is at risk of deterioration during that transport. It is only in those circumstances that transport by qualified ambulance could fall within the scope of the exclusion from the application of the public procurement rules laid down in Article 10(h) of directive 2014/24.

47 In that regard, it must be emphasised that, at the hearing before the Court, both the City of Solingen and the German Government explained, in essence, that transport by qualified ambulance is characterised by the fact that, due to the state of the patient's health, an emergency situation could arise at any time in the transport vehicle.

48 It is therefore on the ground that there is a risk of deterioration in the state of the patient's health during his transport that personnel properly trained in first aid must be on board that vehicle in order to be able to care for the patient and, if necessary, provide the urgent medical care that he may require.

49 It is necessary, in addition, to clarify that it must be possible for the risk of deterioration in the patient's state of health to be, in principle, objectively assessed.

50 It follows that transport by qualified ambulance is only capable of constituting an 'ambulance service' covered by CPV code 85143000-3, within Article 10(h) of Directive 2014/24, where, first, it is in fact undertaken by personnel properly trained in first aid and, second, it is provided to a patient whose state of health is at risk of deterioration during that transport.

51 Therefore, the answer to the first and fourth questions is that Article 10(h) of Directive 2014/24 must be interpreted as meaning that the exclusion from the application of the public procurement rules that it lays down, covers the care of patients in an emergency situation in a rescue vehicle by an emergency worker/paramedic, covered by CPV code 75252000-7 (rescue services) and transport by qualified ambulance covered by CPV code 85143000-3 (ambulance services), provided that, as regards transport by qualified ambulance, it is in fact undertaken by personnel properly trained in first aid and, second, it is provided to a patient whose state of health is at risk of deterioration during that transport.

### *The second and third questions*

52 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 10(h) of Directive 2014/24 must be interpreted as meaning, first, that it precludes public aid associations recognised in national law as civil protection and defence organisations from being regarded as 'non-profit organisations or associations', within the meaning of that provision, in so far as, under national law, recognition as having public aid association status is not subject to not having a profit-

making purpose and, second, the organisations and 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 that provision.

53 In the first place, it suffices to observe that it is clear from the order for reference itself that the legal recognition in German law, on the basis of the first sentence of Paragraph 107(1)(4), second sentence, of the GWB, of the status of a civil protection and defence organisation does not necessarily depend upon whether the organisation concerned is a non-profit organisation.

54 Paragraph 26(1), second sentence, of the Law on civil protection merely affirms that the Workers’ Samaritan Federation, the German Life Saving Association, the German Red Cross, St. John’s Accident Assistance and the Maltese Aid Service are particularly suitable for collaboration in fulfilling the tasks under that legislation. The certificate of suitability thus issued to those five associations, in accordance with Paragraph 18(2) of the Law on fire protection, recognises their general suitability to participate in rescue operations or assist in the event of public accidents or emergencies, mass interventions or disasters.

55 It appears, moreover, that neither Paragraph 26(1), second sentence, of the Law on civil protection, nor Paragraph 18(2) of the Law on fire protection indicates whether, and to what extent, the not-for-profit aim of the service is to be taken into account or whether it is a condition for the recognition of status as a public aid association.

56 In those circumstances, the attribution under German law of the status of ‘civil protection and civil defence organisation’ cannot guarantee with certainty that the beneficiary entities of that status do not pursue a profit-making purpose.

57 It should however be noted that, in its written observations, Arbeiter-Samariter-Bund Regionalverband Bergisch-Land (the Bergisch-Land Regional Workers’ Samaritan Federation) submitted that, on pain of having its status as a non-profit organisation withdrawn, a person must, pursuant to Paragraph 52 of the Abgabenordnung (Tax Code), constantly carry out an activity intended to bring about, in a disinterested way, material, spiritual or moral benefits for the community.

58 In that regard, it is for the referring court to determine whether Paragraph 107(1)(4), second sentence, of the GWB, read in conjunction with Paragraph 52 of the Tax Code, may be interpreted consistently with the requirements flowing from Article 10(h) of Directive 2014/24.

59 In the second place, organisations and 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 Article 10(h) of Directive 2014/24.

60 In that regard, it must be held, as the Advocate General observed in points 74 to 77 of his Opinion, that non-profit organisations or associations referred to in recital 28 of Directive 2014/24 are not required also to satisfy the conditions laid down in Article 77(2) of that directive. There is no equivalence between, on the one hand, those organisations and associations referred to in recital 28 and, on the other hand, the ‘organisations which are based on employee ownership or active employee participation in their governance’ and ‘existing organisations such as cooperatives’, which are referred to in recital 118 of the same directive. Therefore, there also cannot be equivalence between Article 10(h) of Directive 2014/24, which excludes certain activities of non-profit organisations or associations from the scope of that directive, and Article 77 of the directive, which subjects certain activities of organisations based on employee ownership or employee participation in the organisation’s governance and existing organisations, such as cooperatives, to the light regime laid down in Articles 74 to 77 of Directive 2014/24.

61 Consequently, the answer to the second and third questions is that Article 10(h) of Directive 2014/24 must be interpreted as meaning, first, that it precludes public aid associations recognised in national law as civil

protection and defence associations from being regarded as ‘non-profit organisations or associations’, within the meaning of that provision, in so far as, under national law, recognition as having public aid association status is not subject to not having a profit-making purpose and, second, 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 that provision.

### Costs

- 62 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 (Third Chamber) hereby rules:

- 1. Article 10(h) of Directive 2004/18/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 meaning that the exclusion from the application of the public procurement rules that it lays down, covers the care of patients in an emergency situation in a rescue vehicle by an emergency worker/paramedic, covered by CPV [*Common Procurement Vocabulary*] code 75252000-7 (rescue services) and transport by qualified ambulance, which comprises, in addition to the provision of transport, the care of patients in an ambulance by a paramedic assisted by a medical assistant, covered by CPV code 85143000-3 (ambulance services), provided that, as regards transport by qualified ambulance, it is in fact undertaken by personnel properly trained in first aid and, second, it is provided to a patient whose state of health is at risk of deterioration during that transport.**
- 2. Article 10(h) of Directive 2014/24 must be interpreted as meaning, first, that it precludes public aid associations recognised in national law as civil protection and defence associations from being regarded as ‘non-profit organisations or associations’, within the meaning of that provision, in so far as, under national law, recognition as having public aid association status is not subject to not having a profit-making purpose and, second, 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 that provision.**

[Signatures]

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\* Language of the case: German.