

**Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy)
lodged on 24 October 2016 — DUEMMESGR SpA v Associazione Cassa Nazionale di Previdenza e
Assistenza in favore dei Ragionieri e Periti Commerciali (CNPR)**

(Case C-536/16)

(2017/C 022/10)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: DUEMMESGR SpA

Defendant: Associazione Cassa Nazionale di Previdenza e Assistenza in favore dei Ragionieri e Periti Commerciali (CNPR)

Questions referred

1. Although the Member States have the ability to require payment for *soccorso istruttorio*, a procedure whereby the tenderer is given an opportunity to remedy shortcomings in its tendering documentation, which has the effect of remedying any irregularity, is Article 38(2a) of Legislative Decree No 163 of 2006, in the version in force at the time of the tendering procedure in question ..., which makes provision for the payment of a 'pecuniary penalty', in so far as that penalty must be fixed by the contracting authority ('not less than 0.1 % and not more than 1 % of the value of the contract and in any event not more than EUR 50 000, the payment of which shall be guaranteed by the provisional security'), contrary to EU law in view of the excessively high amount and the predetermined nature of that penalty, which cannot be adjusted according to the specific situation to be regulated or the seriousness of the irregularity to be remedied?
2. Is Article 38(2a) of Legislative Decree No 163 of 2006 (in the version in force at the time indicated above) contrary to EU law, in that that requirement to pay for *soccorso istruttorio* may be regarded as contrary to the principle of opening up the market to competition as widely as possible, an aim which the *soccorso istruttorio* mechanism is intended to achieve, the facility which the contracting authority is required to offer in that regard therefore being a logical consequence of the duties imposed on that authority by law in the light of the public interest in achieving that aim?

**Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 24 October
2016 — Garlsson Real Estate SA, in liquidation, and Others v Commissione Nazionale per le Società e
la Borsa (Consob)**

(Case C-537/16)

(2017/C 022/11)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellants: Garlsson Real Estate SA, in liquidation, Stefano Ricucci, Magiste International SA

Cross-appellant: Commissione Nazionale per le Società e la Borsa (Consob)

Questions referred

1. Does Article 50 of the Charter of Fundamental Rights of the European Union, interpreted in the light of Article 4 of Protocol No 7 to the European Convention on Protection of Human Rights and Fundamental Freedoms, the relevant case-law of the European Court of Human Rights and national law, preclude the possibility of conducting administrative proceedings in respect of an act (unlawful conduct consisting in market manipulation) for which the same person has been convicted by a decision that has the force or *res judicata*?
2. May the national court directly apply EU principles in connection with the *ne bis in idem* principle, on the basis of Article 50 of the Charter of Fundamental Rights of the European Union, interpreted in the light of Article 4 of Protocol No 7 to the European Convention on the Protection of Human Rights and Fundamental Freedoms, the relevant case-law of the European Court of Human Rights and national law?

Request for a preliminary ruling from the Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi (Spain) lodged on 28 October 2016 — Montte SL v Musikene

(Case C-546/16)

(2017/C 022/12)

Language of the case: Spanish

Referring court

Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi

Parties to the main proceedings

Applicant: Montte SL

Defendant: Musikene

Questions referred

1. Does Directive 2014/24/EU⁽¹⁾ of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC preclude national legislation such as Article 150(4) TRLCSP,⁽²⁾ or a practice for interpreting and implementing that legislation, which authorises contracting authorities to establish in the documents governing an open tendering procedure award criteria which apply in successive elimination stages for tenders which do not exceed a predetermined minimum score threshold?
2. If the reply to question 1 is in the negative, does the aforementioned Directive 2014/24 preclude national legislation, or a practice for interpreting and implementing that legislation, which uses in the open procedure the aforementioned system of award criteria which apply in successive elimination stages in such a way that in the last stage there are not sufficient tenders to ensure genuine competition?
3. If the reply to question 2 is in the affirmative, does the aforementioned Directive 2014/24 preclude, because it does not ensure genuine competition or circumvents the mandate to award the contract to the tender with the best quality/price ratio, a clause such as that at issue, in which the price factor is evaluated only for tenders which have obtained 35 out of 50 points in the technical criteria?

⁽¹⁾ OJ 2014 L 94, p. 65.

⁽²⁾ Consolidated text of the Law on Public Sector Contracts.