

Judgment of the Court (Seventh Chamber) of 16 April 2026.

Sof Medica S.A. v Spitalul Clinic Județean de Urgență Cluj-Napoca.

Reference for a preliminary ruling – Public procurement – Directive 2014/24/EU –

Article 18 – Principles of procurement – Equal treatment and transparency –

Article 42 – Technical specifications – Discretion of the contracting authority –

Definition of need – Reference to a type or to a specific production – Situations in which such a reference must be accompanied by the words ‘or equivalent’.

Case C-568/24.

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JUDGMENT OF THE COURT (Seventh Chamber)

16 April 2026 (^{[*1](#)})

(Reference for a preliminary ruling – Public procurement – Directive 2014/24/EU – Article 18 – Principles of procurement – Equal treatment and transparency – Article 42 – Technical specifications – Discretion of the contracting authority – Definition of need – Reference to a type or to a specific production – Situations in which such a reference must be accompanied by the words ‘or equivalent’)

In Case C-568/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania), made by decision of 17 June 2024, received at the Court on 23 August 2024, in the proceedings

Sof Medica SA

v

Spitalul Clinic Județean de Urgență Cluj-Napoca,

THE COURT (Seventh Chamber),

composed of F. Schalin, President of the Chamber, M. Gavalec (Rapporteur) and Z. Csehi, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Sof Medica SA, by L. Duțu, avocată,
- the Czech Government, by L. Halajová, M. Smolek and J. Vláčil, acting as Agents,
- the Estonian Government, by H. Hirsik and M. Kriisa, acting as Agents,
- the Lithuanian Government, by K. Dieninis and E. Kurelaitytė, acting as Agents,
- the European Commission, by A. Biolan and G. Wils, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of point 13 of Article 2(1), Article 18(1), Article 42(1) to (4) and Article 49 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 Sof Medica SA and Spitalul Clinic Județean de Urgență Cluj-Napoca (provincial emergency hospital, Cluj-Napoca, Romania) ('the hospital') concerning the procedure conducted by the latter for the award of a public contract for the acquisition of a surgical robot meeting certain technical specifications.

Legal context

European Union law

- 3 Recitals 74 and 92 of Directive 2014/24 state:

‘(74)The technical specifications drawn up by public purchasers need to allow public procurement to be open to competition as well as to achieve objectives of sustainability. To that end, it should be possible to submit tenders that reflect the diversity of technical solutions standards and technical specifications in the marketplace, including those drawn up on the basis of performance criteria linked to the life cycle and the sustainability of the production process of the works, supplies and services.

Consequently, technical specifications should be drafted in such a way as to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications

in terms of functional and performance requirements generally allows that objective to be achieved in the best way possible. Functional and performance-related requirements are also appropriate means to favour innovation in public procurement and should be used as widely as possible. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements should be considered by contracting authorities. It should be the responsibility of the economic operator to prove equivalence with the requested label.

To prove equivalence, it should be possible to require tenderers to provide third-party verified evidence. However, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits, provided that the economic operator concerned thereby proves that the works, supplies or services meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

...

- (92) When assessing the best price-quality ratio contracting authorities should determine the economic and qualitative criteria linked to the subject matter of the contract that they will use for that purpose. Those criteria should thus allow for a comparative assessment of the level of performance offered by each tender in the light of the subject matter of the contract, as defined in the technical specifications. In the context of the best price-quality ratio, a non-exhaustive list of possible award criteria which include environmental and social aspects is set out in this Directive. Contracting authorities should be encouraged to choose award criteria that allow them to obtain high-quality works, supplies and services that are optimally suited to their needs.

The chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective and fair competition and be accompanied by arrangements that allow the information provided by the tenderers to be effectively verified.

To identify the most economically advantageous tender, the contract award decision should not be based on non-cost criteria only. Qualitative criteria should therefore be accompanied by a cost criterion that could, at the choice of the contracting authority, be either the price or a cost-effectiveness approach such as life-cycle costing. However, the award criteria should not affect the application of national provisions determining the remuneration of certain services or setting out fixed prices for certain supplies.’

- 4 Article 2 of that directive, entitled ‘Definitions’, provides, in point 13 of paragraph 1 thereof:

‘For the purposes of this Directive, the following definitions apply:

...

- (13) “procurement document” means any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents’.
- 5 Article 18 of that directive, entitled ‘Principles of procurement’, provides, in paragraph 1 thereof:
- ‘Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

The design of the procurement shall not be made with the intention of excluding it from the scope of this Directive or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.’

- 6 Article 29 of the same directive, entitled ‘Competitive procedure with negotiation’, provides, in paragraph 1 thereof:

‘In competitive procedures with negotiation, any economic operator may submit a request to participate in response to a call for competition containing the information set out in Annex V parts B and C by providing the information for qualitative selection that is requested by the contracting authority.

In the procurement documents, contracting authorities shall identify the subject matter of the procurement by providing a description of their needs and the characteristics required of the supplies, works or services to be procured and specify the contract award criteria. They shall also indicate which elements of the description define the minimum requirements to be met by all tenders.

The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.

...’

- 7 Article 42 of Directive 2014/24, entitled ‘Technical specifications’, provides:

‘1. The technical specifications as defined in point 1 of Annex VII shall be set out in the procurement documents. The technical specification shall lay down the characteristics required of a works, service or supply.

Those characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance provided that they are linked to the subject matter of the contract and proportionate to its value and its objectives.

...

2. Technical specifications shall afford equal access of economic operators to the procurement procedure and shall not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways:

- (a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow contracting authorities to award the contract;
- (b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European Technical Assessments, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or – when any of those do not exist – national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words “or equivalent”;
- (c) in terms of performance or functional requirements as referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;
- (d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements

referred to in point (a) for other characteristics.

4. Unless justified by the subject matter of the contract, technical specifications shall not refer to a specific make or source, or to a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words “or equivalent”.

...’

- 8 Article 46 of that directive, entitled ‘Division of contracts into lots’, provides, in the second subparagraph of paragraph 1 thereof:

‘Contracting authorities shall, except in respect of contracts whose division has been made mandatory pursuant to paragraph 4 of this Article, provide an indication of the main reasons for their decision not to subdivide into lots, which shall be included in the procurement documents or the individual report referred to in Article 84.’

- 9 Article 49 of that directive, entitled ‘Contract notices’, provides:

‘Contract notices shall be used as a means of calling for competition in respect of all procedures, without prejudice to the second subparagraph of Article 26(5) and Article 32. Contract notices shall contain the information set out in Annex V part C and shall be published in accordance with Article 51.’

- 10 Annex V to Directive 2014/24, entitled ‘Information to be included in notices’, includes Part C which lists the information to be included in contract award notices. Point 30 of that part is worded as follows:

‘Any other relevant information.’

- 11 Annex VII to that directive, entitled ‘Definition of certain technical specifications’, provides, in point 1:

‘For the purpose of this Directive:

- (1) “technical specification” means one of the following:

...

- (b) in the case of public supply or service contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures’.

Romanian law

- 12 Article 2 of Legea nr. 98/2016 privind achizițiile publice (Law No 98/2016 on public procurement) of 19 May 2016 (*Monitorul Oficial al României*, Part I, No 390 of 23 May 2016), provides, in paragraph 2 thereof:

‘The principles underlying the award of public procurement contracts and the organisation of competitions are:

- (a) non-discrimination;
- (b) equal treatment;
- (c) mutual recognition;

- (d) transparency;
- (e) proportionality;
- (f) accountability.'

13 Article 50 of Law No 98/2016 provides:

'1. Contracting authorities shall not design either the structure of the contracts or their elements with the aim of avoiding the application of the provisions of this Law or artificially restricting competition.

2. Pursuant to paragraph 1, an artificial restriction of competition is deemed to exist if the contract or its elements are designed or structured so as to unjustifiably favour or disadvantage certain economic operators.'

14 Article 155 of that law provides, in paragraphs 1, 2 and 6 thereof:

'1. The technical specifications shall be set out in the procurement documentation and shall lay down the characteristics required for the work, service or supplies which are the subject matter of the contract.

2. The characteristics referred to in paragraph 1 may also relate to the specific process or method of execution of the works, manufacture of the products or provision of the services requested, or to a specific process for another stage of their life cycle, even if those elements do not form part of the physical content of the supplies, works or services to be procured, provided that those characteristics are linked to the subject matter of the public contract/framework agreement and are proportionate to its value and objectives.

...

6. The technical specifications must afford all economic operators equal access to the procurement procedure and must not have the effect of creating unjustified obstacles to ensuring effective competition between economic operators.'

15 Article 156(2) to (4) of that law provides:

'2. Unless justified by the subject matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain economic operators or certain products.

3. Notwithstanding the provisions of paragraph 2, in exceptional circumstances it is permitted to lay down technical specifications that specify the elements referred to in paragraph 2, where a sufficiently precise and intelligible description of the subject matter of the contract pursuant to paragraph 1 is not possible. In that event, the specification of the elements referred to in paragraph 2 shall be accompanied by the words "or equivalent".

4. Where the contracting authority establishes the technical specifications in accordance with paragraph (1)(b), it shall not reject a tender on the grounds that the works, products or services tendered for do not comply with the technical specifications to which reference is made, if the tenderer demonstrates in its tender by any appropriate means that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.'

16 Article 1 of the methodological rules annexed to the Hotărârea Guvernului nr. 395/2016 pentru aprobarea Normelor metodologice de aplicare a prevederilor referitoare la atribuirea contractului de achiziție publică/acordului-cadru din Legea nr. 98/2016 privind achizițiile publice (Government Decision No 395/2016, approving the detailed methodological rules for the implementation of the provisions relating to the award of public contracts/framework contracts of Law No 98/2016 on public contracts), of 2 June 2016 (*Monitorul Oficial al României*, Part I, No 423 of 6 June 2016), provides:

'1. In the public procurement procedure, any situation in respect of which there is no express regulation shall be interpreted in the light of the principles laid down in Article 2(2)

of [Law No 98/2016].

2. When conducting a procurement procedure, the contracting authority shall take all necessary measures to avoid situations liable to give rise to conflicts of interest and/or to prevent, limit or distort competition.

3. If it finds that a situation referred to in paragraph 2 has arisen, the contracting authority shall eliminate the effects resulting from such a situation by taking, in accordance with its powers, and where necessary, corrective measures to amend, terminate, revoke or cancel acts which have affected the proper application of the procurement procedure or related activities.

...’

17 Article 20(10) of those methodological rules provides:

‘The tender specifications shall contain technical specifications that represent requirements, prescriptions and characteristics of a technical nature which enable each supply and each service or work to be described objectively in a manner corresponding to the needs of the contracting authority.’

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

18 On 23 February 2024, the hospital, in its capacity as the contracting authority, published a call for tenders for the award of a public contract entitled ‘Supply, installation and commissioning of surgical robot 2’, with an estimated value of 25400000 Romanian lei (RON) (approximately EUR 5000000).

19 The hospital had previously launched a market consultation procedure concerning the surgical robot that is the subject matter of that call for tenders, from which it appeared, first, that there were two types of surgical robots with similar functionalities, namely, a monobloc type (the robot arms are arranged as one unit) and a modular type (the robot arms are individually arranged) and, second, that at least three robot manufacturers of the modular type of robot had been identified.

20 In tender specifications relating to that call for tenders, the hospital set out technical specifications for the surgical robot concerned in those terms, namely: ‘Robot assisted surgical equipment, modular and mobile, with at least four modules with independent robotic arms and certified for use for at least the following specialities: general surgery, gynaecology, urology and thoracic surgery. The equipment must be able to be placed in the operating block without any special arrangements being necessary and permit a hybrid approach to [surgical] intervention, and switch rapidly to and from classical laparoscopic surgery to robot-assisted surgery each time that is necessary during a [surgical] procedure. The equipment must be able to be used continuously.’

21 As a provider of the monobloc type of surgical robots, Sof Medica considered that those technical specifications were in breach of the public procurement principles set out in Articles 2, 50, 155 and 156 of Law No 98/2016, which implement Articles 18 and 42 of Directive 2014/24, since those specifications favour only the modular type of surgical robots. Therefore, before the Tribunalul Cluj (Regional Court, Cluj, Romania) Sof Medica requested that the contracting authority be ordered to remove those technical specifications which, in its view, are discriminatory, and to set certain minimum requirements ensuring a transparent procedure based on effective competition and, if it is not possible to correct the procurement documentation, to cancel the procurement procedure concerned.

22 The hospital raised the objection that the acquisition of a modular type of surgical robot was justified by several specific factors. As the hospital was composed of old buildings it is necessary to take account of the logistical capacities of the operating blocks, which are small, the need to move the medical equipment between those blocks in response to need and emergencies, as well as the number of operating theatres and their arrangement. The nature of those rooms required a robot that is configured flexibly and is appropriate for the

available space, with limited weight and footprint, which did not correspond to the characteristics of a monobloc type of robot.

- 23 By a judgment of 22 March 2024, the Tribunalul Cluj (Regional Court, Cluj) dismissed Sof Medica's request as being, in part, devoid of purpose and, in part, unfounded.
- 24 Sof Medica brought an appeal against that judgment before the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania) which is the referring court.
- 25 That court has three doubts as to the discretion enjoyed by the contracting authority in defining the technical specifications.
- 26 In the first place, it wonders whether, having regard to the principle of transparency referred to in Article 18(1) of Directive 2014/24, read in conjunction with Article 49 thereof, a contracting authority may exclude a tenderer on the basis of technical specifications justified by an 'objective need', where that need has been brought to the attention of the tenderer only after publication of the documents relating to the call for tenders concerned, upon contentious proceedings being brought.
- 27 In the second place, the referring court wonders whether Article 42(1), (3)(b) and (4) of Directive 2014/24 may be interpreted as meaning that the restrictive nature of the technical specifications of a call for tender, which requires the inclusion of the words 'or equivalent' in the procurement documentation, must be assessed taking account of all of the requirements set out in that documentation.
- 28 In the third and last place, it also wonders whether, if the answer to the first two queries set out in paragraphs 26 and 27 of the present judgment is in the affirmative, the principle of equal treatment and the principle of non-discrimination, laid down in Article 18(1) of that directive, may be interpreted as meaning that the restrictive nature of the technical specifications must be assessed in connection with the 'objective need' relied on by the contracting authority before the date of publication of the contract notice and the procurement documentation relating to the call for tenders concerned.
- 29 In those circumstances, the Curtea de Apel Cluj (Court of Appeal, Cluj) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
 - '(1) Must the principle of transparency, referred to in Article 18(1) of Directive [2014/24], in conjunction with Articles 49 and 2(1)(13) of [that directive], be interpreted as precluding the exclusion of a tenderer on the basis of certain technical specifications, justified by "objective need", where that need is defined by the contracting authority only after publication of the contract notice and the procurement documents?
 - (2) May the provisions of Article 42(1), (3)(b) and (4) of Directive [2014/24] be interpreted as meaning that the assessment of the restrictive nature of the technical specifications, which requires the words "or equivalent" in the procurement documentation, is also carried out by means of a cumulative analysis of all the requirements [set out in] the procurement documentation?
 - (3) If the answer to the first two questions is in the affirmative, can the principle of equal treatment and the principle of non-discrimination, [laid down] in Article 18(1) of Directive [2014/24], be interpreted as meaning that the assessment of the restrictive nature of the technical specifications must be linked to the contracting authority's "objective need" prior to the publication of the contract notice and the procurement documentation?"

Procedure before the Court

- 30 The referring court has requested that the present preliminary ruling be dealt with under the expedited preliminary ruling procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice.

- 31 That request was rejected by order of the President of the Court of 13 December 2024, *Sof Medica* ([C-568/24](#), [EU:C:2024:1055](#)).

Consideration of the questions referred

The first and third questions

- 32 By its first and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 18(1) of Directive 2014/24, read in conjunction with Article 42(1) and (2) and Article 49 of that directive, must be interpreted as meaning that the principles of transparency and of equal treatment, set out in that Article 18(1), preclude, in the context of a public supply contract, a contracting authority from excluding a tender by a tenderer on the basis of technical specifications, without those specifications having been, at the date of publication of the contract notice, the subject of an objective justification in the procurement documents, within the meaning of point 13 of Article 2(1) of that directive.
- 33 In the first place, it must be observed that point 13 of Article 2(1) of Directive 2014/24 restricts itself to defining the concept of ‘procurement document’ as being any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including, *inter alia*, the contract notice and the technical specifications.
- 34 However, that provision remains silent on the point of whether, at the date of the publication of a contract notice, the contracting authority concerned is required to state the objective justifications underpinning a technical specification.
- 35 In the second place, it must be observed that Article 49 of Directive 2014/24 merely states, in essence, that the contract notices are to be used as a means of calling for competition, that they are to contain the information set out in Annex V, part C, to that directive, and that they are to be published in accordance with Article 51 of that directive. While that part C, entitled ‘Information to be included in contract notices’, lists numerous points of information to be included, it does not refer, amongst those points, to an obligation to state the objective justifications underpinning a technical specification.
- 36 In the third place, it is stated in Article 42(1) of Directive 2014/24 that the technical specifications, which are defined in point 1 of Annex VII to that directive, are to be set out in the procurement documents and that they are to lay down the characteristics required of a supply. As regards public supply or service contracts, point 1(b) of Annex VII defines a technical specification as being a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures. However, it is not clear from the wording of Article 42(1), or from that of point 1(b), that the contracting authority is required objectively to justify the technical specifications that it lays down.
- 37 In that regard, the Court has held that a contracting authority has a broad discretion in the formulation of the technical specifications of a procurement contract since it is best placed to determine the supplies they need and to determine the requirements necessary to achieve the desired results (see, to that effect, judgments of 25 October 2018, *Roche Lietuva*, [C-413/17](#), [EU:C:2018:865](#), paragraphs 29 and 30, and of 16 January 2025, *DYKA Plastics*, [C-424/23](#), [EU:C:2025:15](#), paragraph 42).
- 38 However, a contracting authority must, in accordance with Article 42(2) of Directive 2014/24, read in conjunction with Article 18(1) thereof, ensure that the technical specifications afford equal access of economic operators to the procurement procedure and

do not have the effect of creating unjustified obstacles to the opening up of public procurement to competition (judgment of 16 January 2025, *DYKA Plastics*, [C-424/23](#), [EU:C:2025:15](#), paragraph 42).

- 39 The Court has emphasised that the principles of equality of treatment, non-discrimination and transparency are of crucial importance so far as concerns technical specifications, in the light of the risks of discrimination related either to the choice of specifications or to their formulation (judgment of 25 October 2018, *Roche Lietuva*, [C-413/17](#), [EU:C:2018:865](#), paragraph 34).
- 40 Similarly, it is clear from recital 74 of Directive 2014/24 that technical specifications should be drafted in such a way as to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies habitually offered by that economic operator. In the words of recital 74 of that directive, ‘it should be possible to submit tenders that reflect the diversity of technical solutions standards and technical specifications in the marketplace’.
- 41 Complying with those requirements is all the more important when the technical specifications are formulated in a particularly detailed manner. Indeed, the more detailed the technical specifications, the higher the risk of favouring the products of a given manufacturer will be (judgment of 25 October 2018, *Roche Lietuva*, [C-413/17](#), [EU:C:2018:865](#), paragraph 37).
- 42 Accordingly, the level of detail of the technical specifications must also comply with the principle of proportionality, which requires an examination of whether that level of detail is necessary to attain the objectives pursued (see, to that effect, judgment of 25 October 2018, *Roche Lietuva*, [C-413/17](#), [EU:C:2018:865](#), paragraph 41).
- 43 Nevertheless, neither Article 18(1) of Directive 2014/24 nor Article 42(1) and (2) of that directive requires the principles of transparency and of equal treatment to be interpreted as meaning that they require a contracting authority, at the date of publication of the contract notice concerned, to state the objective justifications underpinning the technical specifications that it lays down.
- 44 The principle of transparency requires that all the conditions and detailed rules of the award procedure must be drawn up in a clear, precise and unequivocal manner in the contract notice or tender specifications so that, first, all reasonably informed tenderers exercising ordinary care can understand their exact meaning and interpret them in the same way and, second, the contracting authority is able to ascertain whether the tenders submitted satisfy the criteria applying to the relevant contract (judgment of 10 May 2012, *Commission v Netherlands*, [C-368/10](#), [EU:C:2012:284](#), paragraph 109 and the case-law cited). The principle of transparency merely requires therefore that the documentation relating to the call for tenders be clear, precise and unequivocal, without going so far as to require contracting authorities, at the date of publication of the contract notice concerned, to state specifically all the objective justifications underpinning each technical specification referred to in the tender specifications. That latter requirement relates, by contrast, to compliance with the principle of proportionality, with the result that the contracting authority must be in a position to justify why that level of detail in the technical specifications concerned is necessary to attain the objectives pursued.
- 45 It follows from the foregoing that the principle of transparency referred to in Article 18(1) of Directive 2014/24 does not require a contracting authority to provide an objective justification which explains, from its perspective, the content of the technical specifications set out in the documentation relating to the call for tenders concerned.
- 46 In the fourth place, that interpretation is supported by the scheme of Directive 2014/24. When the EU legislature intended the contracting authority to set out, in the procurement documents, the reasons justifying one or other characteristic or condition relating to the contract or the procurement procedure, it expressly provided for it. That is the case, for example, with regard to the second subparagraph of Article 46(1) of that directive, which lays down the obligation on the contracting authority to indicate the main reasons for their decision not to subdivide a contract into lots, or to the second subparagraph of Article 29(1)

of that directive, which provides that, where the contracting authority decides to use a competitive procedure with negotiation, it must identify, in the procurement documents, the subject matter of the procurement concerned by providing a description of its needs and the characteristics required of the supplies, works or services to be procured.

- 47 In the fifth and last place, an interpretation contrary to that set out in paragraph 45 of the present judgment would be liable to upset the balance sought by the EU legislature between the rights and obligations of tenderers and those of contracting authorities. It would have the effect of requiring the contracting authority to give a detailed justification for each specific requirement, providing information relating to the needs which it seeks to satisfy and as to the basis upon which it drew up the technical specifications. In certain cases, such an obligation to state reasons would have the effect of placing a particularly heavy, or even disproportionate, administrative burden on the contracting authority concerned and of calling into question the broad discretion conferred on it in determining its needs and in formulating the technical specifications of a contract.
- 48 In the light of the foregoing grounds, the answer to the first and third questions is that Article 18(1) of Directive 2014/24, read in conjunction with Article 42(1) and (2) and Article 49 of that directive, must be interpreted as meaning that the principles of transparency and of equal treatment, set out in Article 18(1), do not preclude, in the context of a public supply contract, a contracting authority from excluding a tender by a tenderer on the basis of technical specifications, without those specifications having been, at the date of publication of the contract notice, the subject of an objective justification in the procurement documents, within the meaning of point 13 of Article 2(1) of that directive.

The second question

- 49 By its second question, the referring court asks, in essence, whether Article 42(1), (3)(b) and (4) of Directive 2014/24 must be interpreted as meaning that a contracting authority may lay down, in the technical specifications of a public contract for the supply of a surgical robot, requirements relating to the modular and mobile character, weight, footprint and arrangement of the arms of the surgical robot covered by that contract, without those requirements being accompanied by the words ‘or equivalent’.
- 50 It should be observed at the outset that, in a public procurement procedure for supply, the formulation of the technical specifications is intended, in accordance with Article 42(1) of Directive 2014/24, read in conjunction with point 1(b) of Annex VII to that directive, to define the required characteristics of the supply concerned, such as, inter alia, performance, the use of the product concerned, and its safety or dimensions. In so far as they establish those characteristics, the technical specifications define, as is apparent from recital 92 of that directive, the very subject matter of the public contract concerned (see, to that effect, judgment of 16 January 2025, DYKA Plastics, [C-424/23](#), [EU:C:2025:15](#), paragraph 40).
- 51 Article 42(3) of Directive 2014/24 lists exhaustively the methods for formulating the technical specifications which must appear in the procurement documents, without establishing a hierarchy between those methods (see, to that effect, judgment of 16 January 2025 in DYKA Plastics, [C-424/23](#), [EU:C:2025:15](#), paragraphs 29 and 30 and the case-law cited).
- 52 On that basis, the contracting authority may decide to formulate technical specifications in terms of performance or functional requirements, in accordance with Article 42(3)(a) of that directive. It may also choose to refer to national standards transposing European standards, European technical assessments, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies, or, when any of those do not exist, national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of works and use of supplies, in accordance with Article 42(3)(b). It may furthermore combine those two methods, in accordance with Article 42(3)(c) and (d). Where a contracting authority formulates technical specifications in accordance with the method

laid down in Article 42(3)(b), each reference to the latter provision must be accompanied by the words ‘or equivalent’.

- 53 In the present case, it should be noted that the technical specifications relating to the contract at issue, as set out in paragraph 20 of the present judgment, do not appear to be formulated in accordance with the method laid down in Article 42(3)(b) of Directive 2014/24, with the result that that provision does not apply.
- 54 However, it should also be noted that the first sentence of Article 42(4) of that directive prohibits, in principle, the inclusion, in the technical specifications, of a reference ‘to a specific make or source, or a particular process which characterises the products ... provided by a specific economic operator’ or to ‘types ... or a specific ... production with the effect of favouring or eliminating certain undertakings or certain products’. Such references do not contribute to opening up the public market concerned to competition, but rather have the effect of restricting competition (see, to that effect, judgment of 16 January 2025, *DYKA Plastics*, [C-424/23](#), [EU:C:2025:15](#), paragraphs 48 and 49).
- 55 There are, however, two exceptions to that prohibition ‘in principle’. First, the second sentence of Article 42(4) of Directive 2014/24 provides that, on an exceptional basis, a contracting authority may, in the contract documents containing the technical specifications, include a reference as referred to in Article 42(4), provided that, as laid down, in essence, in that second sentence, the performance or functional requirements referred to in accordance with Article 42(3)(a) of that directive or the specifications referred to in accordance with Article 42(3)(b) of that directive, or a combination of the two, do not, in themselves, make a sufficiently precise and intelligible description of the subject matter of the contract possible. In such a case, the contracting authority must, in accordance with the third sentence of Article 42(4) of that directive, accompany that reference with the words ‘or equivalent’ (see, to that effect, judgment of 16 January 2025, *DYKA Plastics*, [C-424/23](#), [EU:C:2025:15](#), paragraph 50).
- 56 Second, as is apparent from the phrase ‘unless justified by the subject matter of the contract’, which is found in the first sentence of Article 42(4) of Directive 2014/24, the references referred to in that provision may also be made where that is legitimate in the light of the subject matter of the contract. That situation, which is distinct from that provided for in the second sentence of Article 42(4), must be understood as a circumstance which allows the contracting authority to disregard the very applicability of the normative content of paragraph 4, which contains the in principle prohibition set out in the first sentence thereof, the exception to that prohibition laid down in the second sentence of that paragraph 4 and the requirement, laid down in the third sentence thereof, to add, where that exception applies, the words ‘or equivalent’ (see, to that effect, judgment of 16 January 2025, *DYKA Plastics*, [C-424/23](#), [EU:C:2025:15](#), paragraph 51).
- 57 It follows that, where a reference such as that mentioned in the first sentence of Article 42(4) of Directive 2014/24 is justified by the subject matter of the contract concerned, it may be included in the technical specifications, without the prohibition set out in the first sentence of that provision or the conditions laid down in the second and third sentences thereof applying (see, to that effect, judgment of 16 January 2025, *DYKA Plastics*, [C-424/23](#), [EU:C:2025:15](#), paragraph 52).
- 58 That situation referred to by the words ‘unless justified by the subject matter of the contract’ must, if the objective of opening up public procurement to competition is not to be undermined, be interpreted restrictively, so that it covers only situations in which a requirement relating to a type of product or to the dimensions of that product follows inevitably from the subject matter of the contract (see, to that effect, judgment of 16 January 2025, *DYKA Plastics*, [C-424/23](#), [EU:C:2025:15](#), paragraph 53).
- 59 It is in the light of all the foregoing considerations that the referring court must assess whether the hospital may validly impose requirements relating to the modular and mobile character, weight, footprint and arrangement of the arms of the surgical robot comprising the subject matter of the contract concerned, without those requirements being accompanied by the words ‘or equivalent’.

- 60 In the present case, and although it is ultimately for that court to apply the rules set out in Article 42 of Directive 2014/24, as interpreted by the Court, the Court may nevertheless provide guidance in order to determine the extent to which those rules may apply to such requirements.
- 61 More specifically, the referring court has doubts as to the requirements referred to in the tender specifications relating to the modular and mobile character, weight, footprint and arrangement of the arms of the surgical robot comprising the subject matter of the contract concerned. In that regard, it must be held that those requirements relate to a ‘type’ of product or to a ‘specific production’ which may have ‘the effect of favouring or eliminating certain undertakings or certain products’, within the meaning of the first sentence of Article 42(4) of Directive 2014/24, since those requirements lead to the elimination of undertakings which supply the monobloc type of surgical robots or the modular type of surgical robots which exceed the maximum weight and/or footprint set out in those tender specifications.
- 62 However, it is for that court to ascertain whether, in accordance with Article 156(2) of Law No 98/2016, which is intended to transpose the first sentence of Article 42(4) of Directive 2014/24, the requirements referred to in the preceding paragraph inevitably follow from the subject matter of the contract concerned. It is thus for the national court to ascertain whether those requirements are linked to the dimensions and arrangement of the operating theatres, which, according to those tender specifications, must not ‘necessitate any special arrangements’. If, at the end of that examination, that court concludes that those requirements inevitably follow from the subject matter of the contract, the contracting authority may introduce such requirements, without those requirements being accompanied by the words ‘or equivalent’.
- 63 Apart from cases in which requirements such as those at issue in the main proceedings, relating to the modular and mobile character, weight, footprint and arrangement of the arms of the surgical robot comprising the subject matter of the contract concerned, inevitably flow from the subject matter of that contract, the contracting authority cannot impose those requirements without adding the words ‘or equivalent’.
- 64 In the light of the foregoing grounds, the answer to the second question is that Article 42(1) and (4) of Directive 2014/24 must be interpreted as meaning that a contracting authority may not lay down, in the technical specifications of a public contract for the supply of a surgical robot, requirements relating to the modular and mobile character, weight, footprint and arrangement of the arms of the surgical robot comprising the subject matter of that contract, without those requirements being accompanied by the words ‘or equivalent’, unless, in the light of the procurement documents, those requirements inevitably follow from the subject matter of that contract.

Costs

- 65 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Seventh Chamber) hereby rules:

1. **Article 18(1) 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, read in conjunction with Article 42(1) and (2) and Article 49 of Directive 2014/24,**

must be interpreted as meaning that the principles of transparency and of equal treatment, set out in Article 18(1), do not preclude, in the context of a public supply contract, a contracting authority from excluding a tender by a tenderer on the basis of technical specifications, without those specifications

having been, at the date of publication of the contract notice, the subject of an objective justification in the procurement documents, within the meaning of point 13 of Article 2(1) of that directive.

2. Article 42(1) and (4) of Directive 2014/24

must be interpreted as meaning that a contracting authority may not lay down, in the technical specifications of a public contract for the supply of a surgical robot, requirements relating to the modular and mobile character, weight, footprint and arrangement of the arms of the surgical robot comprising the subject matter of that contract, without those requirements being accompanied by the words ‘or equivalent’, unless, in the light of the procurement documents, those requirements inevitably follow from the subject matter of that contract.

[Signatures]

(^{*1}) Language of the case: Romanian.
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