Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

6 October 2021 (*)

(Reference for a preliminary ruling – Article 267 TFEU – Scope of the obligation on national courts or tribunals of last instance to make a reference for a preliminary ruling – Exceptions to that obligation – Criteria – Question on the interpretation of EU law raised by the parties to the national proceedings after the Court has given a preliminary ruling in those proceedings – Failure to state the reasons justifying the need for an answer to the questions referred for a preliminary ruling – Partial inadmissibility of the request for a preliminary ruling)

In Case C?561/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 15 November 2018, received at the Court on 23 July 2019, in the proceedings

Consorzio Italian Management,

Catania Multiservizi SpA

v

Rete Ferroviaria Italiana SpA,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev (Rapporteur), A. Prechal, M. Vilaras, M. Ileši?, L. Bay Larsen, N. Piçarra, A. Kumin, N. Wahl, Presidents of Chambers, T. von Danwitz, C. Toader, L.S. Rossi, I. Jarukaitis and N. Jääskinen, Judges,

Advocate General: M. Bobek,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 15 July 2020,

after considering the observations submitted on behalf of:

– Consorzio Italian Management and Catania Multiservizi SpA, by E. Giardino and A. Cariola, avvocati,

– Rete Ferroviaria Italiana SpA, by U. Cossu, avvocato,

– the Italian Government, by G. Palmieri, acting as Agent, and S. Fiorentino, avvocato dello Stato,

– the German Government, by J. Möller and D. Klebs, acting as Agents,

– the French Government, by E. de Moustier, acting as Agent,

– the European Commission, by G. Gattinara, P. Ondr?šek and by L. Haasbeek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 April 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 2 and 3 TEU, Article 4(2), Articles 9, 26, 34, Article 101(1)(e) and Articles 106, 151 to 153, 156 and 267 TFEU, Articles 16 and 28 of the Charter of Fundamental Rights of the European Union ('the Charter'), of the European Social Charter signed at Turin on 18 October 1961 and revised at Strasbourg on 3 May 1996 ('the European Social Charter'), and of the Community Charter of the Fundamental Social Rights of Workers adopted at the meeting of the European Council held in Strasbourg on 9 December 1989 ('the Charter of Social Rights').

2 The request has been made in proceedings between Consorzio Italian Management and Catania Multiservizi SpA, the successful tenderers for a public contract for cleaning services for national railway infrastructure, and Rete Ferroviaria Italiana SpA ('RFI') concerning the latter's refusal to grant their request for a review of the contract price.

Legal context

3 Article 2(4) of Decreto legislativo n. 163 – Codice dei contratti pubblici relativi a lavori, servizi e forniture in attuazione delle direttive 2004/17/CE e 2004/18/CE (Legislative Decree No 163 establishing the Code on public works contracts, public service contracts and public supply contracts pursuant to Directives 2004/17/EC and 2004/18/EC) of 12 April 2006 (Ordinary Supplement to GURI No 100 of 2 May 2006) ('Legislative Decree No 163/2006') provides:

'In the absence of any express provisions in this Code, the contractual arrangements of the persons referred to in the first article shall also be regulated according to the provisions laid down in the Civil Code.'

4 Article 115(1) of Legislative Decree No 163/2006, that article being entitled 'Price adjustment', provides:

'All contracts for the supply of goods or services on an ongoing basis must include a clause providing for periodic review of the price. The revision shall be carried out on the basis of an investigation by the managers responsible for the acquisition of goods and services on the basis of the data referred to in Article 7(4)(c) and (5).'

5 Article 206 of that legislative decree provides that only certain provisions of the said legislative decree, which do not include Article 115 thereof, apply to contracts in the sectors covered by Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1), namely the special gas, thermal energy, electricity, water, transport services, postal services, exploration and extraction of oil, gas, coal and other solid fuels as well as ports and airports.

6 Under Article 210 of Legislative Decree No 163/2006, entitled 'Transport services':

‘1. Without prejudice to the exclusions referred to in Article 23, the provisions of this Part shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

2. As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by the competent public authorities, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.’

7 Article 217(1) of the legislative decree, that article being entitled ‘Contracts awarded for purposes other than the pursuit of an activity as described in Chapter 1 or for the pursuit of one of those activities in a third country’, provides:

‘This Part shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 208 to 213 or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the [European Union].’

8 The first paragraph of Article 1664 of the Codice Civile (Civil Code), that article being entitled ‘Onerous financial burdens or difficulties in performance’, provides:

‘When, as a result of unforeseeable circumstances, there are increases or decreases in the cost of labour or materials which give rise to an increase or decrease of more than one-tenth of the overall price agreed, the contractor or developer may seek review of that price. The review may be granted only in respect of the difference which exceeds one-tenth.’

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

9 RFI awarded Consorzio Italian Management and Catania Multiservizi, the applicants in the main proceedings forming a temporary association of undertakings, a contract for the supply of services relating to the cleaning and maintenance of the decoration of the premises and other areas which are open to the public as well as ancillary services at stations, facilities, offices and workshops at various sites throughout the territory covered by the Direzione Compartimentale Movimento de Cagliari (Cagliari Regional Operations Division, Italy). The contract contained a specific clause laying down the procedures for review of the agreed price, which derogated from Article 1664 of the Civil Code.

10 During the performance of that contract, the applicants in the main proceedings submitted a request to RFI on the basis, inter alia, of Article 115 of Legislative Decree No 163/2006 for a review of the previously agreed contract price in order to take account of higher contract costs resulting from an increase in staff costs. By decision of 22 February 2012, RFI refused that request.

11 The applicants in the main proceedings brought an action before the Tribunale amministrativo regionale per la Sardegna (Regional Administrative Court, Sardinia, Italy) seeking annulment of that decision refusing the request.

12 By judgment of 11 June 2014, the Tribunale amministrativo regionale per la Sardegna (Regional Administrative Court, Sardinia) dismissed the action. That court held that Article 115 of Legislative Decree No 163/2006 was not applicable to contracts relating to special sectors, such as the contract at issue in the main proceedings. In that court’s view the supply of services relating to the cleaning of stations, facilities, offices and workshops was ancillary to the main activities relating to the provision or operation of the rail transport network, which came under the special

sectors. That same court added that there was no need to review prices pursuant to Article 1664 of the Civil Code, since the parties to the main proceedings had made use of the option available to them under that article to derogate from it by inserting in the contract between them a term limiting price review.

13 The applicants in the main proceedings brought an appeal against that judgment before the referring court, claiming, in their first and second pleas, that Article 115 of Legislative Decree No 163/2006 or, in the alternative, Article 1664 of the Civil Code was, contrary to the finding of the Tribunale amministrativo regionale per la Sardegna (Regional Administrative Court, Sardinia), applicable to the contract at issue in the main proceedings. In addition, the applicants in the main proceedings claimed that Articles 115, 206, 201 and 217 of Legislative Decree No 163/2006, inter alia, did not comply with EU law, arguing that those provisions, in so far as they seek to exclude price review in the transport sector, in particular price review of cleaning contracts in that sector, were contrary, inter alia, to Article 3(3) TEU, Articles 26 and 101 et seq. TFEU and Directive 2004/17. In their view the national legislation provides for requirements that are unjustified and excessive as compared to EU legislation. It is also likely to place an undertaking that has been awarded a contract for the supply of cleaning services that is ancillary to a main service in the transport sector in a position of subordination and weakness, as compared to an undertaking that supplies the main service, which would result in a disproportionate and unfair contractual imbalance and ultimately would alter the rules governing the functioning of the market. Finally, they submitted that if price review can be excluded in contracts concluded in the special sectors as a direct result of Directive 2004/17, then the directive is invalid.

14 The applicants in the main proceedings asked the referring court to refer questions to the Court of Justice for a preliminary ruling in order to determine whether EU law precludes the national legislation at issue in the main proceedings and to verify the validity of Directive 2004/17.

15 By decision of 24 November 2016, received at the Court of Justice on 24 March 2017, the referring court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Is an interpretation of national law that excludes price review in contracts relating to special sectors, particularly as regards contracts with a different object from those to which the Directive 2004/17 refers, but which are functionally linked to those sectors, compatible with EU law, in particular, Article 3(3) TEU, Articles 26, 56 to 58 and 101 TFEU, and Article 16 of the Charter and Directive 2004/17?

2. Is Directive 2004/17 (if it should be considered that price review may be excluded, in all contracts concluded and implemented within special sectors, as a direct result of that directive) compatible with the principles of the European Union (in particular Article 3(1) TEU, Articles 26, 56 to 58 and 101 TFEU, and Article 16 of the Charter), “in the light of the unfairness, disproportionality, and distortion of contractual balance and, therefore, of the rules governing an efficient market”?’

16 By judgment of 19 April 2018, Consorzio Italian Management and Catania Multiservizi (C?152/17, EU:C:2018:264), the Court answered the first question by stating that Directive 2004/17 and the general principles underlying that directive must be interpreted as not precluding national rules which do not provide for periodic price review after a contract has been awarded in the sectors covered by that directive.

17 In that judgment, the Court also held that the first question was inadmissible in so far as it concerned the interpretation of Article 3(3) TEU, Articles 26, 57, 58 and 101 TFEU, as well as aspects of Article 56 TFEU other than the principles of equality and non-discrimination and the

obligation of transparency, that the latter enshrines with regard to the freedom to provide services, on the ground that the order for reference of 24 November 2016 provided no explanation as to the relevance of the interpretation of those provisions for the resolution of the dispute in the main proceedings and, therefore, did not comply with the requirements set out in Article 94 of the Rules of Procedure of the Court.

18 Furthermore, as regards the interpretation of Article 16 of the Charter, the Court held that the provisions of Legislative Decree No 163/2006 at issue in the main proceedings, in so far as they do not provide for periodic review of contract prices in the sectors covered by Directive 2004/17, cannot be regarded as implementing EU law within the meaning of Article 51(1) of the Charter.

19 The Court considered that, in view of the answer given to the first question, the second question was hypothetical and, therefore, inadmissible.

20 Following the delivery of the judgment of 19 April 2018, Consorzio Italian Management and Catania Multiservizi (C?152/17, EU:C:2018:264), the referring court held a public hearing on 14 November 2018. In their pleading of 28 October 2018, lodged with a view to that hearing, the applicants in the main proceedings asked that court to refer to the Court of Justice further questions for a preliminary ruling, seeking to determine whether Articles 2 and 3 TEU, Article 4(2), Articles 9, 26, 34, Article 101(1)(e), Articles 106, 151 to 153 and 156 TFEU, Articles 16 and 28 of the Charter, the European Social Charter and the Charter of Social Rights preclude the national legislation at issue in the main proceedings.

21 The referring court observes that some of those questions were answered in the judgment of 19 April 2018, Consorzio Italian Management and Catania Multiservizi (C?152/17, EU:C:2018:264), whereas others are raised for the first time by the applicants in the main proceedings. The referring court considers that it follows from the Court’s case-law that, in those circumstances, it must make a further reference to the Court for a preliminary ruling, since there is no judicial remedy against its decision and a question relating to the interpretation of EU law is raised before it.

22 However, that court considers it necessary to ask the Court of Justice beforehand whether a reference for a preliminary ruling is mandatory in the event that a party to legal proceedings submits to the national court or tribunal of last instance a question on the compatibility of national law with EU law and, in particular, whether such a court may consider that it is relieved of the obligation to make a reference where that question has been submitted by a party not in the initial pleading but subsequently, in particular after the case has been set down for judgment for the first time or even after the national court or tribunal of last instance has already made a reference for a preliminary ruling in that case.

23 In addition, the referring court considers that the proposal made by an applicant, at an advanced stage in the proceedings, seeking to have the court in question make a reference to the Court of Justice for a preliminary ruling on the interpretation of EU law provisions on which that party did not rely at the point in time at which the action was brought is inconsistent with a ‘system of bars inherent in the procedure’ established by national legislation, since such a proposal changes the subject matter of the dispute defined by the pleas in law and objections raised by the parties to the proceedings.

24 Moreover, according to the referring court, the successive or continuous proposal of questions for a preliminary ruling might give rise to possible abuses of process, render the right to judicial protection nugatory and undermine the principle that legal proceedings must be concluded swiftly and effectively.

25 In those circumstances, the Consiglio di Stato (Council of State, Italy) decided once more to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. In accordance with Article 267 TFEU, is a national court whose decisions are not amenable to appeal required, in principle, to make a reference for a preliminary ruling on a question concerning the interpretation of EU law even where the question is submitted to it by one of the parties to the proceedings after that party has lodged its initial pleading, or even after the case has been set down for judgment for the first time, or indeed even after a reference has already been made to the Court for a preliminary ruling?

2. … Are Articles 115, 206 and 217 of Legislative Decree No 163/2006, as interpreted by national administrative case-law, in so far as they exclude price review in the case of contracts relating to special sectors and, in particular, in the case of contracts that have a different object from those to which Directive 2004/17 refers but are functionally linked to one of those objects, consistent with EU law (in particular, Article 4(2), Article 9, Article 101(1)(e), Articles 106, 151, 152, 153 and 156 TFEU, the European Social Charter and the Charter of Social Rights, referred to in Article 151 TFEU, Articles 2 and 3 TEU and Article 28 of the Charter)?

3. … Are Articles 115, 206 and 217 of Legislative Decree No 163/2006, as interpreted by national administrative case-law, in so far as they exclude price review in the case of contracts relating to special sectors and, in particular, in the case of contracts that have a different object from those to which Directive 2004/17 refers but are functionally linked to one of those objects, consistent with EU law (in particular, Article 28 of the Charter, the principle of equal treatment enshrined in Articles 26 and 34 TFEU, and the principle of freedom to conduct a business enshrined in Article 16 of the Charter)?’

The questions referred for a preliminary ruling

The first question

26 By its first question, the referring court asks, in essence, whether Article 267 TFEU must be interpreted as meaning that a national court or tribunal against whose decisions there is no judicial remedy under national law is relieved of the obligation, laid down in the third indent of that article, to bring before the Court of Justice a question concerning the interpretation of EU law where that question is put to it by a party at an advanced stage of the proceedings, after the case has been set down for judgment for the first time or where a reference for a preliminary ruling has already been made in that case.

27 In that context, it should be recalled that the preliminary ruling procedure provided for in Article 267 TFEU, which is the keystone of the judicial system established by the Treaties, sets up a dialogue between one court and another, specifically between the Court of Justice and the courts of the Member States, having the object of securing uniform interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy as well as, ultimately, the particular nature of the law established by the Treaties (see, to that effect, Opinion 2/13 (Accession of the European Union to the ECHR) of 18 December 2014, EU:C:2014:2454, paragraph 176 and the case-law cited, and judgment of 6 March 2018, Achmea, C?284/16, EU:C:2018:158, paragraph 37).

28 The preliminary ruling mechanism established by that provision aims to ensure that, in all circumstances, EU law has the same effect in all Member States and thus to avoid divergences in its interpretation which the national courts and tribunals have to apply and tends to ensure that application by making available to national judges a means of eliminating difficulties which may be

occasioned by the requirement of giving EU law its full effect within the framework of the judicial systems of the Member States. Thus, national courts and tribunals have the broadest power, or even the obligation, to refer a matter to the Court of Justice if they consider that a case pending before them raises questions involving interpretation of the provisions of EU law or consideration of their validity, necessitating a decision on their part (see, to that effect, Opinion 1/09 (Agreement creating a Unified Patent Litigation System) of 8 March 2011, EU:C:2011:123, paragraph 83 and the case-law cited).

29 The system set up by Article 267 TFEU therefore establishes between the Court of Justice and national courts or tribunals direct cooperation as part of which the latter are closely involved in the correct application and uniform interpretation of EU law and also in the protection of individual rights conferred by it (see, to that effect, Opinion 1/09 (Agreement creating a Unified Patent Litigation System) of 8 March 2011, EU:C:2011:123, paragraph 84).

30 In the context of that cooperation, the Court of Justice provides national courts, in their capacity as courts responsible for the application of EU law (see, to that effect, judgment of 6 October 1982, Cilfit and Others, 283/81, EU:C:1982:335, paragraph 7), with the points of interpretation of EU law which they need in order to decide the disputes before them (see, to that effect, judgments of 9 September 2015, Ferreira da Silva e Brito and Others, C?160/14, EU:C:2015:565, paragraph 37, and of 5 December 2017, M.A.S. and M.B., C?42/17, EU:C:2017:936, paragraph 23).

31 It follows from the foregoing that the tasks attributed to national courts and to the Court of Justice, respectively, are indispensable to the preservation of the very nature of the law established by the Treaties (Opinion 1/09 (Agreement creating a Unified Patent Litigation System) of 8 March 2011, EU:C:2011:123, paragraph 85).

32 In addition, it should be recalled that where there is no judicial remedy under national law against the decisions of a national court or tribunal, that court or tribunal is in principle obliged to make a reference to the Court of Justice within the meaning of the third indent of Article 267 TFEU where a question concerning the interpretation of EU law is raised before it (judgment of 15 March 2017, Aquino, C?3/16, EU:C:2017:209, paragraph 42 and the case-law cited).

33 According to the Court’s settled case-law, a national court or tribunal against whose decisions there is no judicial remedy under national law cannot be relieved of that obligation unless it has established that the question raised is irrelevant or that the EU law provision in question has already been interpreted by the Court or that the correct application of EU law is so obvious as to leave no scope for any reasonable doubt (see, to that effect, judgments of 6 October 1982, *Cilfit and Others*, 283/81, EU:C:1982:335, paragraph 21; of 15 September 2005, *Intermodal Transports*, C?495/03, EU:C:2005:552, paragraph 33; and of 4 October 2018, *Commission v France (Advance payment)*, C?416/17, EU:C:2018:811, paragraph 110).

34 In that regard, it is appropriate to recall, in the first place, that it follows from the relationship between the second and third paragraphs of Article 267 TFEU that the courts and tribunals referred to in the third paragraph have the same discretion as any other national court or tribunal to ascertain whether a decision on a question of EU law is necessary to enable them to give judgment. Accordingly, those courts and tribunals are not obliged to refer to the Court of Justice a question concerning the interpretation of EU law that has been raised before them if that question is not relevant, that is to say, if the answer to that question, regardless of what it may be, can in no way affect the outcome of the case (judgments of 6 October 1982, Cilfit and Others, 283/81, EU:C:1982:335, paragraph 10; of 18 July 2013, Consiglio Nazionale dei Geologi, C?136/12, EU:C:2013:489, paragraph 26; and of 15 March 2017, Aquino, C?3/16, EU:C:2017:209, paragraph 43).

35 In proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts or tribunals and the Court of Justice, the national court or tribunal alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law. Similarly, it is solely for the national court or tribunal before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for and the relevance of the questions which it submits to the Court (judgments of 26 May 2011, Stichting Natuur en Milieu and Others, C?165/09 to C?167/09, EU:C:2011:348, paragraph 47 and the case-law cited; of 9 September 2015, X and van Dijk, C?72/14 and C?197/14, EU:C:2015:564, paragraph 57; and of 12 May 2021, Altenrhein Luftfahrt, C?70/20, EU:C:2021:379, paragraph 25).

36 In the second place, it should be noted that the authority of an interpretation already provided by the Court under Article 267 TFEU may deprive the obligation laid down in the third paragraph of Article 267 TFEU of its purpose and thus empty it of its substance, especially where the question raised is materially identical to a question that has already been the subject of a preliminary ruling in a similar case, or, a fortiori, in the same national proceedings, or where established case-law of the Court already resolves the point of law in question, irrespective of the nature of the proceedings which led to that case-law, even if the issues in dispute are not strictly identical (see, to that effect, judgments of 27 March 1963, Da Costa and Others, 28/62 to 30/62, EU:C:1963:6, p. 38; of 6 October 1982, Cilfit and Others, 283/81, EU:C:1982:335, paragraphs 13 and 14; of 4 November 1997, Parfums Christian Dior, C?337/95, EU:C:1997:517, paragraph 29, and of 2 April 2009, Pedro IV Servicios, C?260/07, EU:C:2009:215, paragraph 36).

37 It must be borne in mind nonetheless that, even when there is case-law of the Court resolving the point of law at issue, national courts and tribunals retain the broadest power to bring a matter before the Court if they consider it appropriate to do so, and the fact that the provisions whose interpretation is sought have already been interpreted by the Court does not deprive the Court of jurisdiction to give a further ruling (judgments of 17 July 2014, Torresi, C?58/13 and C?59/13, EU:C:2014:2088, paragraph 32 and the case-law cited, and of 3 March 2020, Tesco-Global Áruházak, C?323/18, EU:C:2020:140, paragraph 46).

38 Similarly, the authority of a preliminary ruling does not preclude the national court or tribunal to which it is addressed from taking the view that it is necessary to make a further reference to the Court before giving judgment in the main proceedings (judgment of 6 March 2003, Kaba, C?466/00, EU:C:2003:127, paragraph 39 and the case-law cited). A national court or tribunal of last instance must make such a reference when it encounters difficulties in understanding the scope of the judgment of the Court.

39 In the third place, it should be recalled that, in addition to the situations set out in paragraph 36 above, it follows from the Court’s settled case-law that a national court or tribunal against whose decisions there is no judicial remedy under national law may also refrain from referring to the Court a question concerning the interpretation of EU law and take upon itself the responsibility for resolving it where the correct application of EU law is so obvious as to leave no scope for any reasonable doubt (see, to that effect, judgments of 6 October 1982, Cilfit and Others, 283/81, EU:C:1982:335, paragraphs 16 and 21, and of 9 September 2015, Ferreira da Silva e Brito and Others, C?160/14, EU:C:2015:565, paragraph 38).

40 Before concluding that such is the case, the national court or tribunal of last instance must be convinced that the matter would be equally obvious to the other courts or tribunals of last instance of the Member States and to the Court of Justice (see, to that effect, judgments of 6 October 1982, Cilfit and Others, 283/81, EU:C:1982:335, paragraph 16; of 15 September 2005, Intermodal Transports, C?495/03, EU:C:2005:552, paragraph 39; of 9 September 2015, Ferreira

da Silva e Brito and Others, C?160/14, EU:C:2015:565, paragraph 42; and of 28 July 2016, Association France Nature Environnement, C?379/15, EU:C:2016:603, paragraph 48).

41 In addition, the question whether the possibility referred to in paragraph 39 above exists must be assessed on the basis of the characteristic features of EU law, the particular difficulties to which the interpretation of the latter gives rise and the risk of divergences in judicial decisions within the European Union (judgments of 6 October 1982, Cilfit and Others, 283/81, EU:C:1982:335, paragraph 17, and of 9 September 2015, Ferreira da Silva e Brito and Others, C?160/14, EU:C:2015:565, paragraph 39 and the case-law cited).

42 To begin with it must be borne in mind that EU legislation is drafted in several languages and that the different language versions are all equally authentic (judgment of 6 October 1982, Cilfit and Others, 283/81, EU:C:1982:335, paragraph 18).

43 According to the Court’s settled case-law, one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be made to override the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all languages of the European Union (see, inter alia, judgment of 24 March 2021, A, C?950/19, EU:C:2021:230, paragraph 37 and the case-law cited).

44 While a national court or tribunal of last instance cannot be required to examine, in that regard, each of the language versions of the provision in question, the fact remains that it must bear in mind those divergences between the various language versions of that provision of which it is aware, in particular when those divergences are set out by the parties and are verified.

45 It must also be borne in mind that EU law uses terminology which is peculiar to it and legal concepts that do not necessarily have the same meaning as the corresponding concepts that may exist in the law of the Member States (see, to that effect, judgment of 6 October 1982, Cilfit and Others, 283/81, EU:C:1982:335, paragraph 19).

46 Finally, every provision of EU law must be placed in its context and interpreted in the light of the provisions of EU law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied (judgment of 6 October 1982, Cilfit and Others, 283/81, EU:C:1982:335, paragraph 20, and of 28 July 2016, Association France Nature Environnement, C?379/15, EU:C:2016:603, paragraph 49).

47 Accordingly, it is only where, with the help of the interpretation criteria set out in paragraphs 40 to 46 above, a national court or tribunal of last instance concludes that there is no circumstance capable of giving rise to any reasonable doubt as to the correct interpretation of EU law that that national court or tribunal may refrain from referring to the Court a question concerning the interpretation of EU law and take upon itself the responsibility for resolving it.

48 That being said, the mere fact that a provision of EU law may be interpreted in another way or several other ways, in so far as none of them seem sufficiently plausible to the national court or tribunal concerned, in particular with regard to the context and the purpose of that provision as well as the system of rules of which it forms part, is not sufficient for the view to be taken that there is a reasonable doubt as to the correct interpretation of that provision.

49 Nonetheless, where the national court or tribunal of last instance is made aware of the existence of diverging lines of case-law – among the courts of a Member State or between the courts of different Member States – concerning the interpretation of a provision of EU law applicable to the dispute in the main proceedings, that court or tribunal must be particularly vigilant in its assessment of whether or not there is any reasonable doubt as to the correct interpretation of

the provision of EU law at issue and have regard, inter alia, to the objective pursued by the preliminary ruling procedure which is to secure uniform interpretation of EU law.

50 It should be observed, in the fourth place, that national courts or tribunals against whose decisions there is no judicial remedy under national law must take upon themselves, independently and with all the requisite attention, the responsibility for determining whether the case before them involves one of the situations in which they may refrain from referring to the Court a question concerning the interpretation of EU law that has been raised before them (see, to that effect, judgments of 15 September 2005, Intermodal Transports, C?495/03, EU:C:2005:552, paragraph 37 and the case-law cited; of 9 September 2015, Ferreira da Silva e Brito and Others, C?160/14, EU:C:2015:565, paragraph 40; and of 9 September 2015, X and van Dijk, C?72/14 and C?197/14, EU:C:2015:564, paragraphs 58 and 59).

51 In that regard, it follows from the system established by Article 267 TFEU, read in the light of the second paragraph of Article 47 of the Charter, that, if a national court or tribunal against whose decisions there is no judicial remedy under national law takes the view, because the case before it involves one of the three situations mentioned in paragraph 33 above, that it is relieved of its obligation to make a reference to the Court under the third paragraph of Article 267 TFEU, the statement of reasons for its decision must show either that the question of EU law raised is irrelevant for the resolution of the dispute, or that the interpretation of the EU law provision concerned is based on the Court’s case-law or, in the absence of such case-law, that the interpretation of EU law was so obvious to the national court or tribunal of last instance as to leave no scope for any reasonable doubt.

52 Finally, it must also be assessed whether a national court or tribunal of last instance is relieved of the obligation to bring before the Court a question concerning the interpretation of EU law, under the third paragraph of Article 267 TFEU, where the reference for a preliminary ruling has been proposed by a party to the proceedings at an advanced stage thereof, in particular after a reference for a preliminary ruling has already been made, moreover, following a request by that party.

53 In that regard, it should be borne in mind that the system of direct cooperation between the Court of Justice and the national courts, established by Article 267 TFEU, is completely independent of any initiative by the parties (see, to that effect, judgments of 18 July 2013, Consiglio Nazionale dei Geologi, C?136/12, EU:C:2013:489, paragraph 28 and the case-law cited, and of 3 June 2021, Bankia, C?910/19, EU:C:2021:433, paragraph 22). The latter cannot deprive the national courts of their independence in exercising the discretion referred to in paragraph 50 above, in particular by compelling them to make a reference for a preliminary ruling (see, to that effect, judgment of 22 November 1978, Mattheus, 93/78, EU:C:1978:206, paragraph 5).

54 The system established by Article 267 TFEU therefore does not constitute a means of redress available to the parties to a case pending before a national court or tribunal. Thus, the mere fact that a party contends that the dispute gives rise to a question concerning the interpretation of EU law does not mean that the court or tribunal concerned is compelled to consider that such a question has been raised within the meaning of Article 267 TFEU (judgment of 6 October 1982, Cilfit and Others, 283/81, EU:C:1982:335, paragraph 9).

55 It follows that the determination and formulation of the questions to be put to the Court devolve upon the national court or tribunal alone and that the parties to the main proceedings may not change their tenor (see, to that effect, judgment of 18 July 2013, Consiglio Nazionale dei Geologi, C?136/12, EU:C:2013:489, paragraph 29 and the case-law cited).

56 Moreover, it is for the national court or tribunal alone to decide at what stage in the

proceedings it is appropriate to refer a question to the Court of Justice for a preliminary ruling (see, to that effect, judgment of 17 July 2008, Coleman, C?303/06, EU:C:2008:415, paragraph 29 and the case-law cited), with the latter having no jurisdiction, however, to hear a reference for a preliminary ruling when, at the time it is made, the procedure before the referring court or tribunal has already been concluded (judgment of 13 April 2000, Lehtonen and Castors Braine, C?176/96, EU:C:2000:201, paragraph 19).

57 It follows from the foregoing that, where the case before it involves one of the situations set out in paragraph 33 above, a national court or tribunal against whose decisions there is no judicial remedy under national law is not required to bring the matter before the Court, within the meaning of the third paragraph of Article 267 TFEU, even when the question concerning the interpretation of EU law is raised by a party to the proceedings before it.

58 By contrast, it follows from the considerations set out in paragraphs 32 and 33 above that, if that court or tribunal finds that the case before it does not involve any of those situations, pursuant to the third paragraph of Article 267 TFEU it must bring before the Court of Justice any question concerning the interpretation of EU law that has been raised before it.

59 The fact that that court or tribunal has already made a reference to the Court of Justice for a preliminary ruling in the same national proceedings does not affect that obligation when a question concerning the interpretation of EU law the answer to which is necessary for the resolution of the dispute remains after the Court’s decision.

60 The referring court mentions, however, national procedural rules according to which a further question concerning the interpretation of EU law that has been raised by a party in the dispute in the main proceedings, where it changes the subject matter of the dispute, is inadmissible, in particular when it is submitted after a reference for a preliminary ruling has already been made.

61 In that regard, it must be recalled that a national court or tribunal of last instance may refrain from referring a question to the Court of Justice for a preliminary ruling on grounds of inadmissibility specific to the procedure before that court or tribunal, subject to compliance with the principles of equivalence and effectiveness (see, to that effect, judgments of 14 December 1995, van Schijndel and van Veen, C?430/93 and C?431/93, EU:C:1995:441, paragraph 17, and of 15 March 2017, Aquino, C?3/16, EU:C:2017:209, paragraph 56).

62 The principle of equivalence requires that all the rules applicable to actions apply without distinction to actions alleging infringement of EU law and to similar actions alleging infringement of national law (judgment of 15 March 2017, Aquino, C?3/16, EU:C:2017:209, paragraph 50 and the case-law cited).

63 As regards the principle of effectiveness, national procedural rules must not be such as to render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order. In that regard, account should be taken of the role of those provisions in the procedure, its progress and special features, viewed as a whole, before the various national instances. In that context, it is appropriate to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (judgment of 15 March 2017, Aquino, C?3/16, EU:C:2017:209, paragraphs 52 and 53, and the case-law cited).

64 The Court has thus held that national procedural rules according to which the subject matter of the dispute is determined by the pleas in law put forward at the point in time at which the action was brought are consistent with the principle of effectiveness in so far as they ensure proper

conduct of proceedings by, in particular, protecting them from the delays inherent in examination of new pleas (see, to that effect, judgment of 14 December 1995, van Schijndel and van Veen, C?430/93 and C?431/93, EU:C:1995:441, paragraph 21).

65 If, in accordance with the procedural rules of the Member State concerned which observe the principles of equivalence and effectiveness, the pleas in law raised before a court or tribunal referred to in the third paragraph of Article 267 TFEU must be declared inadmissible, a request for a preliminary ruling cannot be regarded as necessary and relevant for that court or tribunal to be able to give judgment (judgment of 15 March 2017, Aquino, C?3/16, EU:C:2017:209, paragraph 44).

66 In the light of all of the foregoing, the answer to the first question is that Article 267 TFEU must be interpreted as meaning that a national court or tribunal against whose decisions there is no judicial remedy under national law must comply with its obligation to bring before the Court a question concerning the interpretation of EU law that has been raised before it, unless it finds that that question is irrelevant or that the provision of EU law in question has already been interpreted by the Court or that the correct application of EU law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the characteristic features of EU law, the particular difficulties to which the interpretation of the latter gives rise and the risk of divergences in judicial decisions within the European Union. Such a court or tribunal cannot be relieved of that obligation merely because it has already made a reference to the Court for a preliminary ruling in the same national proceedings. However, it may refrain from referring to the Court a question for a preliminary ruling on grounds of inadmissibility specific to the procedure before that court or tribunal, subject to compliance with the principles of equivalence and effectiveness.

The second and third questions

67 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 2 and 3 TEU, Article 4(2), Articles 9, 26, 34, Article 101(1)(e) as well as Articles 106, 151 to 153 and 156 TFEU, Articles 16 and 28 of the Charter, the European Social Charter and the Charter of Social Rights must be interpreted as precluding national legislation which does not provide for periodic price review after a contract has been awarded in the sectors covered by Directive 2004/17.

68 In that regard, it should be recalled that, according to the Court’s settled case-law, in the context of the cooperation between the Court of Justice and the national courts, the need to provide an interpretation of EU law which will be of use to the national court means that the national court is bound to observe scrupulously the requirements concerning the content of a request for a preliminary ruling, expressly set out in Article 94 of the Rules of Procedure of which the national court is presumed to be aware (judgment of 19 April 2018, Consorzio Italian Management and Catania Multiservizi, C?152/17, EU:C:2018:264, paragraph 21 and the case-law cited). Moreover, those requirements are set out in the Court’s recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2019 C 380, p. 1).

69 Thus, it is essential, as is stated in Article 94(c) of the Rules of Procedure that the request for a preliminary ruling itself contain a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings (see, to that effect, judgment of 19 April 2018, Consorzio Italian Management and Catania Multiservizi, C?152/17, EU:C:2018:264, paragraph 22 and the case-law cited).

70 In the present case, it should be stated that, by this request for a preliminary ruling, the

referring court has failed to remedy the lacuna established by the Court in paragraph 23 of its judgment of 19 April 2018, Consorzio Italian Management and Catania Multiservizi, (C?152/17, EU:C:2018:264), in so far as, in breach of Article 94(c) of the Rules of Procedure, it still fails to state with the requisite precision and clarity the reasons why it considers that the interpretation of Article 3 TEU as well as Article 26 and Article 101(1)(e) TFEU is necessary or useful for the purpose of resolving the dispute in the main proceedings or the relationship between EU law and the national legislation applicable to those proceedings. Neither does the referring court specify the reasons which prompted it to inquire about the interpretation of the other provisions and measures mentioned in the second and third questions referred, including, in particular, the European Social Charter, which the Court, moreover, has no jurisdiction to interpret (see, to that effect, judgment of 5 February 2015, Nisttahuz Poclava, C?117/14, EU:C:2015:60, paragraph 43), but merely sets out, in essence, the questions of the applicants in the main proceedings in that regard, as is apparent from paragraph 20 above, without giving its own assessment.

71 It follows that the second and third questions are inadmissible.

Costs

72 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 (Grand Chamber) hereby rules:

Article 267 TFEU must be interpreted as meaning that a national court or tribunal against whose decisions there is no judicial remedy under national law must comply with its obligation to bring before the Court of Justice a question concerning the interpretation of EU law that has been raised before it, unless it finds that that question is irrelevant or that the provision of EU law in question has already been interpreted by the Court or that the correct application of EU law is so obvious as to leave no scope for any reasonable doubt.

The existence of such a possibility must be assessed in the light of the characteristic features of EU law, the particular difficulties to which the interpretation of the latter gives rise and the risk of divergences in judicial decisions within the European Union.

Such a court or tribunal cannot be relieved of that obligation merely because it has already made a reference to the Court for a preliminary ruling in the same national proceedings. However, it may refrain from referring to the Court a question for a preliminary ruling on grounds of inadmissibility specific to the procedure before that court or tribunal, subject to compliance with the principles of equivalence and effectiveness.

[Signatures]

* Language of the case: Italian