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Court of Justice of the European Union

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Judgment in Joined Cases C-155/19 and C-156/19
Federazione Italiana Giuoco Calcio (FIGC) and Consorzio Ge.Se.Av. S.c.arl
v De Vellis Servizi Globali Srl

A national sports federation, such as the Italian Football Federation, may be subject to the rules on the award of public contracts if it pursues activities of general interest not having an industrial or commercial character

However, such a federation having legal personality must also be subject to supervision by a public authority, such as the Italian National Olympic Committee, in the sense that the latter must be able to influence the federation's decisions with regard to public contracts

The Federazione Italiana Giuoco Calcio (FIGC) (Italian Football Federation) organised a negotiated procedure for the award of a contract for portage services for accompanying the national football teams and for the purposes of the FIGC store for a period of three years. At the end of that procedure, one of the tenderers invited to participate in it, but to whom the contract was not awarded, brought an action before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy) to challenge the detailed rules governing the conduct of that procedure. According to that tenderer, the FIGC must be regarded as a body governed by public law and should, therefore, have complied with the rules on publication laid down by the legislation on public procurement.

Since the Tribunale amministrativo regionale per il Lazio upheld that action and annulled the award of the contract at issue, the FIGC and the entity to which it awarded the contract each brought an appeal against that court's judgment before the Consiglio di Stato (Council of State, Italy). Before that court, they disputed, inter alia, the premiss that the FIGC should be classified as a 'body governed by public law'.

It is in that context that the Consiglio di Stato decided to refer to the Court of Justice for a preliminary ruling two questions concerning the interpretation of the directive on public procurement.¹ That court wishes to clarify **whether the FIGC fulfils certain conditions, laid down by that directive, in order to be classified as a 'body governed by public law' and therefore required to apply the rules relating to the award of public contracts.** More specifically, the referring court asks the Court of Justice to interpret, first, the condition that a 'body governed by public law' must have been established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character² and, secondly, the condition that such a body must be subject to management supervision by a public authority.³

Findings of the Court

In the first place, the Court observes that, in Italy, the activity of general interest comprised by **sport is pursued by each of the national sports federations within the framework of tasks of a public nature expressly assigned to those federations by national legislation**, it being specified that several of those tasks appear not to be of an industrial or commercial character. The Court concludes from this that, **if a national sports federation, such as the FIGC, does in fact carry out such tasks, that federation may be regarded as having been established for the**

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

³ Article 2(1) (4) (c) of Directive 2014/24.

specific purpose of meeting needs in the general interest not having an industrial or commercial character.

The Court states that that conclusion is not called into question by the fact that the FIGC, first, has the legal form of an association governed by private law and, secondly, pursues, alongside the activities of general interest exhaustively listed in the national rules, other activities which constitute a large part of its overall activities and are self-financed.

In the second place, as regards the question **whether a national sports federation must be regarded as being subject to management supervision by a public authority such as, in the present case, the Comitato Olimpico Nazionale Italiano (CONI) (Italian National Olympic Committee)**, the Court finds that a public authority responsible in essence for laying down sporting rules, verifying that they are properly applied and intervening only as regards the organisation of competitions and Olympic preparation, without regulating the day-to-day organisation and practice of the different sporting disciplines, cannot be regarded, *prima facie*, as a hierarchical body capable of controlling and directing the management of national sports federations. It adds that the management autonomy conferred on the national sports federations in Italy **seems, a priori, to militate against active control on the part of the CONI to the extent that it would be in a position to influence the management of a national sports federation such as the FIGC, particularly in relation to the award of public contracts.**

However, the Court makes clear that **such a presumption may be rebutted** if it is established that the various powers conferred on the CONI in relation to the FIGC have the effect of making the FIGC dependent on the CONI to such an extent that the CONI may influence its decisions with regard to public contracts.

While pointing out **that it is for the referring court to ascertain whether there is dependency coupled with such a possibility of influence**, the Court provides clarification to guide that court in its decision. In that context, the Court states, *inter alia*, that, in order to assess the existence of active control by the CONI over the management of the FIGC and of the possibility of influence over the FIGC's decisions with regard to public contracts, the analysis of the CONI's various powers in relation to the FIGC must be the subject of an overall assessment.

Furthermore, the Court finds that, **if it were concluded that the CONI exercises supervision over the management of national sports federations**, the fact that the latter may, on account of their majority participation in the CONI's main bodies, exert an influence over the CONI's activity, is relevant only **if it can be established that each national sports federation, considered individually, is in a position to exert a significant influence over the management supervision exercised by the CONI over it** with the result that **that supervision would be offset** and such a federation would thus regain control over its management.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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