

# Public procurement rules do not apply to emergency patient transport services provided by non-profit organisations (Falck Rettungsdienste and Falck)

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**Public Law analysis: Ambulance services provided by a not-for-profit organisation, where there is a risk of deterioration of a patient to be dealt with by qualified staff, are not subject to the main provisions of public procurement law, according to a recent decision of the Court of Justice. Written by Adam Heppinstall, Barrister, Henderson Chambers.**

*Falck Rettungsdienste GmbH, Falck A/S v Stadt Solingen*, [C-465/17](#)

## What are the practical implications of this case?

Regulation 10(h) of the Public Contracts Regulations 2015 (PCR 2015), [SI 2015/102](#) implements Article 10(h) Directive 2014/24/EU (see below). It excludes public service contracts for danger prevention services that are provided by non-profit organisations and associations from Part 2 of the PCR 2015 (ie from being subject to the bulk of EU public procurement law) but provides for an exception from that exemption in favour of 'patient transport ambulance services' (which are, in turn, covered by the light touch regime under Chapter 3 of the PCR 2015 (CPV code 85143000-3 which is covered by the first line of the table of PCR 2015, [SI 2015/102](#), [Sch 3](#))).

It can be seen that there needs to be clarity as to when transport in an ambulance is a 'danger prevention service' provided by a not-for-profit which requires no public procurement regime to be followed or a 'patient transport ambulance service' which triggers the light touch regime. Essentially, the answer, according to the Court of Justice is whether there is on board the ambulance: (a) a qualified first aider, and (b) a patient 'whose state of health is at risk of deterioration during that transport.' If these criteria are met and the service provider is not-for-profit, then there is no need for a public procurement exercise.

Given that one must wonder when a patient might travel by ambulance attended by a paramedic or equivalent where the patient's health poses no risk of deterioration of health, it seems pretty clear that ambulance services which include the provision of a paramedic when provided by a not-for-profit will not likely require a public procurement process, whereas if the ambulance is carrying reasonably well people without qualified attendance, that is likely to be merely patient transport ambulance services to which the light touch regime applies.

In the context of UK health procurement this probably means that a contracting authority could award contracts without a public procurement exercise to, say, St John's Ambulance Services (so long as content that it is truly not for profit-on which the Court of Justice gave some guidance, as below), so long as the patients' health poses a risk of deterioration and the person in the ambulance with them is qualified to deal with that deterioration.

However, if St John's Ambulance Services are, for example, just providing a taxi service to hospital for routine outpatient appointments for the infirm, even if a paramedic happens to be onboard, that is likely to require a light touch procurement exercise. Given that those who require an ambulance to go to hospital, even for a routine appointment, might well carry a risk of health deterioration, the presence of a paramedic or similar might just tip the balance and caution should be exercised.

## What was the background?

The German City of Sollingen awarded its ambulance and emergency medical services to the Workers' Samaritan Service and a German Outpost of the Order of Malta, not-for-profit organisations. Like St John's Ambulance in the UK, these organisations, particularly the Order of Malta, provide not-for-profit emergency medical services throughout Europe. Falck, a well-known commercial provider of such services (including to the NHS in the UK) challenged the award of this contract without prior notification in the Official Journal of the European Union.

[Article 10\(h\)](#) 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](#) states that ‘civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations’ are exempt from the main provisions of EU public procurement law. ‘[P]atient transport ambulance services’ are, however, excluded from the exemption. The dispute focused on the meaning of ‘danger prevention services’ which Falck alleged did not include transporting patients to hospital in an ambulance, which in fact fell within the ‘patient transport ambulance services’ exception.

### What did the court decide?

The Court of Justice had very little difficulty finding that ‘both the care of patients in an emergency situation in a rescue vehicle by an emergency worker/paramedic and transport by qualified ambulance fall within the concept of “danger prevention”,’ for the purposes of [Article 10\(h\)](#) of Directive 2014/24/EU, rejecting the arguments of Falck that civil defence, civil protection and danger prevention services should be read together so that a service shall only fall under any of those heads if there is a risk to collective danger (such as widespread disaster), as opposed to the danger that an individual might face if needing to be rushed to hospital when seriously ill. (See para 36 of the judgment).

The court, however, would not rule that the exemption applies to any transport of patients by ambulance (not least because otherwise the patient transport ambulance services exception would be rendered nugatory). It held that there must be the potential for an emergency situation and intervention by qualified first aiders, thus the main exemption was held only to apply to services provided ‘by personnel properly trained in first aid...provided to a patient whose state of health is at risk of deterioration during that transport.’ (See para 51 of the judgment).

There was also a technical challenge to the status of the winning bidders as not-for-profit organisations because German law had pre-qualified them for recognition as emergency service providers without properly considering whether they were not-for-profit. Unsurprisingly the court held that the contracting authority has to ensure that the exemption only applied to organisations ‘not having a profit-making purpose.’ The court went on to clarify and confirm that ‘organisations or associations whose purpose is to undertake social tasks, which have no commercial purpose and which reinvest any profits in order to achieve the objective of that organisation or association constitute ‘non-profit organisations or associations’ within the meaning of that provision.’ (See para 61 of the judgment).

### Case details:

- Court: Court of Justice
- Judge: M Vilaras, J Malenovský, L Bay Larsen, M Safjan and D Šváby, M Campos Sánchez-Bordona
- Date of judgment: 21 March 2019

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