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EU News: Click & Read

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Editor: [Henrik Westermarck](#) Legal Adviser

This newsletter contains a selection of recent official documents of the European Union. It features information of particular interest to Swiss readers and aims to provide universities, cantonal and federal administrations, legal professionals, as well as corporations with information about the latest legal developments in the European Union. Written in English or French, the newsletter offers links to documents in one of those languages.

We hope you will find this issue both useful and a pleasure to read.

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Highlights

Case C-396/21. Judgment of the Court (Second Chamber) of 12 January 2023. KT and NS v FTI Touristik GmbH.

Request for a preliminary ruling from the Landgericht München I.

Reference for a preliminary ruling – Directive (EU) 2015/2302 – Article 14(1) – **Package travel and linked travel arrangements** – Performance of a package travel contract – **Liability of the organiser concerned – Measures to fight the worldwide spread of an infectious disease** – COVID-19 pandemic – Restrictions imposed at the travel destination and in the place of residence of the traveller concerned and in other countries – Lack of conformity of the services provided as part of the package concerned – Appropriate reduction in the price of that package.

[EUR-Lex - 62021CJ0396](#)

Case C-154/21. Judgment of the Court (First Chamber) of 12 January 2023. RW v Österreichische Post AG. Request for a preliminary ruling from the Oberster Gerichtshof.

Reference for a preliminary ruling – Protection of natural persons with regard to the processing of personal data – Regulation (EU) 2016/679 – Article 15(1)(c) – **Data subject's right of access to his or her data – Information about the recipients or categories of recipient to whom the personal data have been or will be disclosed** – Restrictions.

[EUR-Lex - 62021CJ0154](#)

Joined Cases C-323/21 to C-325/21. Judgment of the Court (First Chamber) of 12 January 2023. Staatssecretaris van Justitie en Veiligheid and K. v B. and Others. Requests for a preliminary ruling from the Raad van State.

References for a preliminary ruling – **Regulation (EU) No 604/2013 – Determining the Member State responsible for examining an application for international protection** – Lodging of multiple applications for international protection in three Member States – Article 29 – Time limit for transfer – Expiry – Transfer of responsibility for examining the application – Article 27 – Remedy – Scope of judicial review – Possibility for the applicant to rely on the transfer of responsibility for examining the application.

[EUR-Lex - 62021CJ0323](#)

1. EU-Swiss Relations

Community Legislation

Decision of the European Parliament and of the Council on the non-acceptance of travel documents of the Russian Federation issued in Ukraine and Georgia notification from Switzerland

[EUR-Lex - ST 5258 2023 INIT](#)

Council implementing Decision on the application of an increased visa fee with respect to The Gambia notification from Switzerland

[EUR-Lex - ST 5261 2023 INIT](#)

Council Recommendation on a coordinated approach to travel to the Union during the COVID-19 pandemic and replacing Council Recommendation (EU) 2020/912 notification from Switzerland

[EUR-Lex - ST 5324 2023 INIT](#)

2. External Relations / Foreign Policy

Community Legislation

Council Regulation (EU) 2023/155 of 23 January 2023 amending Regulation (EU) No 356/2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia

[EUR-Lex - 32023R0155](#)

Council Decision (CFSP) 2023/191 of 27 January 2023 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

[EUR-Lex - 32023D0191](#)

Case Law

Case C-632/20 P. Judgment of the Court (Grand Chamber) of 17 January 2023. Kingdom of Spain v European Commission.

Appeal – External relations – **Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part** – Electronic communications – Regulation (EU) 2018/1971 – Body of European Regulators for Electronic Communications (BEREC) – Article 35(2) – Participation of the regulatory authority of Kosovo in that body – Concepts of ‘third country’ and ‘third State’ – Competence of the European Commission.

[EUR-Lex - 62020CJ0632](#)

3. Agriculture and Fisheries / Maritime Affairs

Community Legislation

Council Regulation (EU) 2023/194 of 30 January 2023 fixing for 2023 the fishing opportunities for certain fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, as well as fixing for 2023 and 2024 such fishing opportunities for certain deep-sea fish stocks

[EUR-Lex - 32023R0194](#)

4. Audiovisual and Media and Information Society

Case Law

Case C-205/21. Judgment of the Court (Fifth Chamber) of 26 January 2023. Criminal proceedings against V.S. Request for a preliminary ruling from the Spetsializiran nakazatelen sad.

Reference for a preliminary ruling – **Protection of natural persons with regard to the processing of personal data** – Directive (EU) 2016/680 – Article 4(1)(a) to (c) – Principles relating to processing of personal data – Purpose limitation – Data minimisation – Article 6(a) – Clear distinction between personal data of different categories of data subjects – Article 8 – Lawfulness of processing – Article 10 – Transposition – **Processing of biometric data and genetic data** – Concept of ‘processing authorised by Member State law’ – Concept of ‘strictly necessary’ – Discretion – Charter of Fundamental Rights of the European Union – Articles 7, 8, 47, 48 and 52 – Right to effective judicial protection – Presumption of innocence – Limitation – Intentional criminal offence subject to public prosecution – Accused persons – Collection of photographic and dactyloscopic data in order for them to be entered in a record and taking of a biological sample for the purpose of creating a DNA profile – Procedure for enforcement of collection – Systematic nature of the collection.

[EUR-Lex - 62021CJ0205](#)

Case C-132/21. Judgment of the Court (First Chamber) of 12 January 2023. BE v Nemzeti Adatvédelmi és Információszabadság Hatóság. Request for a preliminary ruling from the Fővárosi Törvényszék.

Reference for a preliminary ruling – **Protection of natural persons with regard to the processing of personal data** – Regulation (EU) 2016/679 – Articles 77 to 79 – **Remedies** – Parallel exercise – Relationship – Procedural autonomy – Effectiveness of the protection rules established by that regulation – Consistent and homogeneous application of those rules throughout the European Union – Article 47 of the Charter of Fundamental Rights of the European Union.

[EUR-Lex - 62021CJ0132](#)

Case C-154/21. Judgment of the Court (First Chamber) of 12 January 2023. RW v Österreichische Post AG. Request for a preliminary ruling from the Oberster Gerichtshof.

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[EUR-Lex - 62021CJ0154](#)

5. Competition and State Aid

Case Law

Case C-284/21 P. Judgment of the Court (Grand Chamber) of 31 January 2023. European Commission v Anthony Braesch and Others.

Appeal – State aid – Articles 107 and 108 TFEU – **Restructuring aid – Banking sector** – Preliminary examination stage – Decision declaring the aid compatible with the internal market – Restructuring plan – Commitments given by the Member State concerned – Burden-sharing measures – Conversion of subordinated debts into equity – Bondholders – Action for annulment – Admissibility – Fourth paragraph of Article 263 TFEU – **Locus standi** – Natural or legal person directly and individually concerned – Breach of the procedural rights of interested parties – Failure to initiate the formal investigation procedure – Article 108(2) TFEU – Concept of ‘parties concerned’ – Regulation (EU) 2015/1589 – Article 1(h) – Concept of ‘interested party’ – National measures taken into account by the European Commission – Inadmissibility of the action.

[EUR-Lex - 62021CJ0284](#)

Case C-680/20. Judgment of the Court (Fifth Chamber) of 19 January 2023. Unilever Italia Mkt. Operations Srl v Autorità Garante della Concorrenza e del Mercato. Request for a preliminary ruling from the Consiglio di Stato.

Reference for a preliminary ruling – Competition – Article 102 TFEU – **Dominant position – Imputation, to the producer, of actions of its distributors** – Existence of contractual links between the producer and the distributors – **Concept of ‘economic unit’** – Scope – Abuse – Exclusivity clause – Need to demonstrate the effects on the market.

[EUR-Lex - 62020CJ0680](#)

Case C-57/21. Judgment of the Court (Second Chamber) of 12 January 2023. RegioJet a. s. v České dráhy a.s. and Česká republika, Ministerstvo dopravy. Request for a preliminary ruling from the Nejvyšší soud.

Reference for a preliminary ruling – Competition – Abuse of a dominant position – **Rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union** – Directive 2014/104/EU – Articles 5 and 6 – **Disclosure of evidence** – Evidence in a competition authority’s file – Proceedings relating to an infringement of competition rules pending before the European Commission – National proceedings relating to an action for damages with regard to the same infringement – Conditions for the disclosure of evidence.

[EUR-Lex - 62021CJ0057](#)

Joined Cases C-702/20 and C-17/21. Judgment of the Court (Grand Chamber) of 12 January 2023. SIA „DOBELES HES” and Sabiedrisko pakalpojumu regulēšanas komisija v Sabiedrisko pakalpojumu regulēšanas komisija and Others. Requests for a preliminary ruling from the Augstākā tiesa (Senāts).

Reference for a preliminary ruling – **State aid** – Article 107(1) TFEU – **National legislation imposing an obligation on the public operator to purchase from renewable energy producers at a price higher than the market price** – Failure to pay a portion of the aid concerned – Application for compensation submitted by those producers to a public authority distinct from that which is, in principle, required, under that national legislation, to pay that aid and whose budget is intended solely to ensure its own operation – New aid – Notification requirement – De minimis aid – Regulation (EU) No 1407/2013 – Article 5(2) – Cumulation – Taking into account the amounts of aid already received during the reference period on the basis of that national legislation.

[EUR-Lex - 62020CJ0702](#)

Case C-883/19 P. Judgment of the Court (Third Chamber) of 12 January 2023. HSBC Holdings plc and Others v European Commission.

Appeal – Competition – Agreements, decisions and concerted practices – **Euro Interest Rate Derivatives sector** – Decision establishing an infringement of Article 101 TFEU and Article 53 of the EEA Agreement – Manipulation of the Euribor interbank reference rates – Exchange of confidential information – **Restriction of competition by object** – Characterisation – Taking into account of procompetitive effects – Single and continuous infringement – ‘Hybrid’ procedure having led successively to the adoption of a settlement decision and a decision made under the ordinary procedure – Charter of Fundamental Rights of the European Union – Article 41 – Right to good administration – Article 48 – Presumption of innocence.

[EUR-Lex - 62019CJ0883](#)

Case C-42/21 P. Judgment of the Court (Third Chamber) of 12 January 2023. Lietuvos geležinkeliai AB v European Commission.

Appeal – Competition – **Abuse of dominant position – Rail freight market** – Decision finding an infringement of Article 102 TFEU – Access by third-party undertakings to infrastructure managed by Lithuania’s national railway company – Removal of a section of railway track – Concept of ‘abuse’ – Actual or likely exclusion of a competitor – Exercise by the General Court of its powers of unlimited jurisdiction – Reduction of the fine.

[EUR-Lex - 62021CJ0042](#)

6. Customs

Nothing to report for the period under review.

7. Economic and Monetary Affairs, Taxation, Enterprise

Nothing to report for the period under review.

8. Education, Training, Youth, Culture, Research and Innovation

Nothing to report for the period under review.

9. Employment and Social Affairs

Case Law

Case C-356/21. Judgment of the Court (Second Chamber) of 12 January 2023. J.K. v TP S.A. Request for a preliminary ruling from the Sąd Rejonowy dla m.st. Warszawy w Warszawie.

Reference for a preliminary ruling – Equal treatment in employment and occupation – Directive 2000/78/EC – Article 3(1)(a) and (c) – Conditions for access to self-employment – Employment and working conditions – **Prohibition of discrimination based on sexual orientation – Self-employed person working on the basis of a contract for specific work** – Termination and non-renewal of contract – Freedom to choose a contracting party.
[EUR-Lex - 62021CJ0356](#)

10. Energy and Environment

Case Law

Case C-162/21. Judgment of the Court (First Chamber) of 19 January 2023. Pesticide Action Network Europe and Others v État belge, représenté par le Ministre des Classes moyennes, des Indépendants, des P.M.E., de l'Agriculture et de l'Intégration sociale, chargé des Grandes villes. Request for a preliminary ruling from the Conseil d'État.

Reference for a preliminary ruling – Environment – Regulation (EC) No 1107/2009 – Placing of plant protection products on the market – Article 53(1) – Emergency situations in plant protection – Derogation – Scope – Seeds treated with plant protection products – Neonicotinoids – **Active substances posing high risks to bees – Prohibition of the placing on the market and outside use of seeds treated with plant protection products containing those active substances** – Implementing Regulation (EU) 2018/784 and Implementing Regulation (EU) 2018/785 – Non-applicability of the derogation – Protection of human and animal health and the environment – Precautionary principle.
[EUR-Lex - 62021CJ0162](#)

Case C-147/21. Judgment of the Court (Third Chamber) of 19 January 2023. Comité interprofessionnel des huiles essentielles françaises (CIHEF) and Others v Ministre de la Transition écologique and Premier ministre. Request for a preliminary ruling from the Conseil d'État.

Reference for a preliminary ruling – Approximation of laws – **Biocidal products** – Regulation (EU) No 528/2012 – Article 72 – Free movement of goods – Article 34 TFEU – **Possibility for Member States to adopt restrictive measures on commercial and advertising practices** – Selling arrangements falling outside the scope of Article 34 TFEU – Whether justified – Article 36 TFEU – Objective of protecting human and animal health and the environment – Proportionality.
[EUR-Lex - 62021CJ0147](#)

Joined Cases C-702/20 and C-17/21. Judgment of the Court (Grand Chamber) of 12 January 2023. SIA „DOBELES HES” and Sabiedrisko pakalpojumu regulēšanas komisija v Sabiedrisko pakalpojumu regulēšanas komisija and Others. Requests for a preliminary ruling from the Augstākā tiesa (Senāts).

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[EUR-Lex - 62020CJ0702](#)

11. Food Safety, Public Health and Consumers

Case Law

Case C-469/21. Judgment of the Court (Seventh Chamber) of 26 January 2023. Consejo General de Colegios Oficiales de Farmacéuticos de España (CGCOF) v Administración General del Estado. Request for a preliminary ruling from the Tribunal Supremo.

Reference for a preliminary ruling – **Medicinal products for human use** – Delegated Regulation (EU) 2016/161 – Repositories system containing information on safety features – **Creation of an interface integrated into the national repository and managed by the public authorities** – Obligation to use a specific application for certain medicinal products.

[EUR-Lex - 62021CJ0469](#)

Joined Cases C-495/21 and C-496/21. Judgment of the Court (Seventh Chamber) of 19 January 2023. L. GmbH and H. Ltd v Bundesrepublik Deutschland. Requests for a preliminary ruling from the Bundesverwaltungsgericht.

Reference for a preliminary ruling – Medical devices – Directive 93/42/EEC – Article 1(2)(a) – Definition – Article 1(5)(c) – Scope – Medicinal products for human use – Directive 2001/83/EC – Article 1(2) – **Definition of the concept of ‘medicinal product’** – Article 2(2) – Applicable legal framework – Classification as a ‘medical device’ or as a ‘medicinal product’.

[EUR-Lex - 62021CJ0495](#)

Case C-395/21. Judgment of the Court (Fourth Chamber) of 12 January 2023. D.V. v M.A. Request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas.

Reference for a preliminary ruling – **Unfair terms in consumer contracts** – Directive 93/13/EEC – **Contract for the provision of legal services concluded between a lawyer and a consumer** – Article 4(2) – Assessment of the unfairness of contractual terms – Exclusion of terms relating to the main subject matter of the contract – Term providing for the payment of lawyers’ fees on the basis of an hourly rate – Article 6(1) – Powers of the national court when dealing with a term considered to be ‘unfair’.

[EUR-Lex - 62021CJ0395](#)

Case C-396/21. Judgment of the Court (Second Chamber) of 12 January 2023. KT and NS v FTI Touristik GmbH. Request for a preliminary ruling from the Landgericht München I.

Reference for a preliminary ruling – Directive (EU) 2015/2302 – Article 14(1) – **Package travel and linked travel arrangements** – Performance of a package travel contract – **Liability of the organiser concerned** – **Measures to fight the worldwide spread of an infectious disease** – COVID-19 pandemic – Restrictions imposed at the travel destination and in the place of residence of the traveller concerned and in other countries – Lack of conformity of the services provided as part of the package concerned – Appropriate reduction in the price of that package.

[EUR-Lex - 62021CJ0396](#)

12. Human Rights

Case Law

Affaire C-158/21. Arrêt de la Cour (grande chambre) du 31 janvier 2023. Procédure pénale contre Lluís Puig Gordi e.a. Demande de décision préjudicielle, introduite par le Tribunal Supremo (Espagne).

Renvoi préjudiciel – Espace de liberté, de sécurité et de justice – Coopération judiciaire en matière pénale – **Mandat d'arrêt européen** – Décision-cadre 2002/584/JAI – Procédures de remise entre États membres – Conditions d'exécution – Compétence de l'autorité judiciaire d'émission – Article 47, deuxième alinéa, de la charte des droits fondamentaux de l'Union européenne – **Droit d'accès à un tribunal établi préalablement par la loi** – Possibilité d'émettre un nouveau mandat d'arrêt européen visant une même personne.

[EUR-Lex - 62021CJ0158](#)

Case C-205/21. Judgment of the Court (Fifth Chamber) of 26 January 2023. Criminal proceedings against V.S. Request for a preliminary ruling from the Spetsializiran nakazatelen sad.

Reference for a preliminary ruling – **Protection of natural persons with regard to the processing of personal data** – Directive (EU) 2016/680 – Article 4(1)(a) to (c) – Principles relating to processing of personal data – Purpose limitation – Data minimisation – Article 6(a) – Clear distinction between personal data of different categories of data subjects – Article 8 – Lawfulness of processing – Article 10 – Transposition – **Processing of biometric data and genetic data** – Concept of 'processing authorised by Member State law' – Concept of 'strictly necessary' – Discretion – Charter of Fundamental Rights of the European Union – Articles 7, 8, 47, 48 and 52 – Right to effective judicial protection – Presumption of innocence – Limitation – Intentional criminal offence subject to public prosecution – Accused persons – Collection of photographic and dactyloscopic data in order for them to be entered in a record and taking of a biological sample for the purpose of creating a DNA profile – Procedure for enforcement of collection – Systematic nature of the collection.

[EUR-Lex - 62021CJ0205](#)

Case C-132/21. Judgment of the Court (First Chamber) of 12 January 2023. BE v Nemzeti Adatvédelmi és Információszabadság Hatóság. Request for a preliminary ruling from the Fővárosi Törvényszék.

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[EUR-Lex - 62021CJ0132](#)

Case C-154/21. Judgment of the Court (First Chamber) of 12 January 2023. RW v Österreichische Post AG. Request for a preliminary ruling from the Oberster Gerichtshof.

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[EUR-Lex - 62021CJ0154](#)

13. Internal Market and Free Movement

Case Law

Case C-682/21. Judgment of the Court (Fourth Chamber) of 26 January 2023. UAB „HSC Baltic“ and Others v Vilniaus miesto savivaldybės administracija and Others. Request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas.

Reference for a preliminary ruling – **Public procurement** – Directive 2014/24/EU – Article 57(4)(g) – Optional ground for exclusion linked to deficiencies in the context of a prior contract – **Contract awarded to a group of economic operators** – Early termination of that contract – **Automatic inclusion of all members of the group on a list of unreliable suppliers** – Principle of proportionality – Directive 89/665/EEC – Article 1(1) and (3) – Right to an effective remedy.

[EUR-Lex - 62021CJ0682](#)

Case C-403/21. Judgment of the Court (Third Chamber) of 26 January 2023. SC NV Construct SRL v Județul Timiș. Request for a preliminary ruling from the Consiliul Național de Soluționare a Contestațiilor.

Reference for a preliminary ruling – Article 267 TFEU – Definition of ‘court or tribunal of a Member State’ – Criteria – Independence and compulsory nature of the jurisdiction of the national body concerned – Stability of the members of that body – Directive 2014/24/EU – **Public procurement procedures** – Article 58 – Selection criteria – Possibility of including, amongst those criteria, obligations under special laws applicable to the activities connected with the contract in question and not set out as a criterion for selection in the procurement documents – Article 63(1) – **Tenderer relying on the capacities of another entity in order to meet the requirements of the contracting authority** – Not possible to require recourse to subcontracting.

[EUR-Lex - 62021CJ0403](#)

Case C-292/21. Judgment of the Court (Third Chamber) of 19 January 2023. Administración General del Estado and Others v Asociación para la Defensa de los Intereses Comunes de las Autoescuelas (AUDICA) and Ministerio Fiscal. Request for a preliminary ruling from the Tribunal Supremo.

Reference for a preliminary ruling – Directive 2006/123/EC – Services in the internal market – Article 2(2)(d) – Substantive scope – Service in the field of transport – **Provision of road safety awareness and re-education courses for the recovery of driving licence points – Concession to operate a public service** – Article 15 – Requirements – Division of the relevant territory into five lots – Quantitative and territorial limit on access to the activity concerned – **Overriding reasons in the public interest** – Justification – Road safety – Proportionality – Service of general economic interest.

[EUR-Lex - 62021CJ0292](#)

Case C-583/22 PPU. Judgment of the Court (Second Chamber) of 12 January 2023. Criminal proceedings against MW. Request for a preliminary ruling from the Bundesgerichtshof.

Reference for a preliminary ruling – Area of freedom, security and justice – Police and judicial cooperation in criminal matters – Framework Decision 2008/675/JHA – Article 3(1) – **Principle of assimilation of earlier convictions handed down in another Member State** – Obligation to ensure that the effects attached to those convictions are equivalent to those attached to previous national convictions – National rules concerning subsequent formation of a cumulative sentence – Multiple offences – Determination of an aggregate sentence – Maximum of 15 years for non-life custodial sentences – Article 3(5) – Exception – Offence committed before the handing down or execution of sentences in another Member State.

[EUR-Lex - 62022CJ0583](#)

14. Intellectual Property

Nothing to report for the period under review.

15. Justice, Freedom and Security (incl. Judicial Cooperation)

Case Law

Affaire C-158/21. Arrêt de la Cour (grande chambre) du 31 janvier 2023. Procédure pénale contre Lluís Puig Gordi e.a. Demande de décision préjudicielle, introduite par le Tribunal Supremo (Espagne).

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[EUR-Lex - 62021CJ0158](#)

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[EUR-Lex - 62021CJ0323](#)

Case C-280/21. Judgment of the Court (Third Chamber) of 12 January 2023. P.I. v Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos. Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas.

Reference for a preliminary ruling – Area of freedom, security and justice – **Common asylum policy** – Eligibility for refugee status – Directive 2011/95/EU – Article 10(1)(e) and (2) – Reasons for persecution – **Concepts of ‘political opinion’ and ‘attributed political opinion’** – Attempts by an applicant for asylum to defend himself, in his country of origin, by legal means against non-State actors acting illegally and in a position to exploit the mechanism by which that State imposes penalties for criminal offences.

[EUR-Lex - 62021CJ0280](#)

16. Transport

Nothing to report for the period under review.

17. Community Institutions, Principles and the Communities’ own Resources

Case Law

Case C-403/21. Judgment of the Court (Third Chamber) of 26 January 2023. SC NV Construct SRL v Județul Timiș. Request for a preliminary ruling from the Consiliul Național de Soluționare a Contestațiilor.

Reference for a preliminary ruling – Article 267 TFEU – **Definition of ‘court or tribunal of a Member State’** – Criteria – **Independence and compulsory nature of the jurisdiction of the national body concerned** – Stability of the members of that body – Directive 2014/24/EU – Public procurement procedures – Article 58 – Selection criteria – Possibility of including, amongst those criteria, obligations under special laws applicable to the activities connected with the contract in question and not set out as a criterion for selection in the procurement documents – Article 63(1) – Tenderer relying on the capacities of another entity in order to meet the requirements of the contracting authority – Not possible to require recourse to subcontracting.

[EUR-Lex - 62021CJ0403](#)