

Operative part of the judgment

1. Article 12 of Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies, as amended by Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007, read in conjunction with Articles 21 and 22 of Directive 82/891, must be interpreted as not precluding the creditors of the company being divided whose credit interests antedate that division, who did not take advantage of the creditor protection tools provided for in the national legislation implementing that article, from bringing an *actio pauliana* after the division has been implemented, in order to obtain a declaration that the division in question has no effect against them and to bring enforcement or protective action in relation to the assets transferred to the newly formed company.
2. Article 19 of Directive 82/891, as amended by Directive 2007/63, read in conjunction with Articles 21 and 22 of Directive 82/891, which lays down nullity rules for divisions, must be interpreted as not precluding the creditors of the company being divided from bringing, after the division has been implemented, an *actio pauliana* which does not affect the validity of that division but merely allows for that division to be rendered unenforceable against those creditors.

⁽¹⁾ OJ C 301, 27.8.2018.

Judgment of the Court (Second Chamber) of 30 January 2020 (request for a preliminary ruling from the Tribunale amministrativo regionale per il Lazio — Italy) — Tim SpA — Direzione e coordinamento Vivendi SA v Consip SpA, Ministero dell'Economia e delle Finanze

(Case C-395/18) ⁽¹⁾

(Reference for a preliminary ruling — Public procurement of supplies, works or services — Directive 2014/24/EU — Article 18(2) — Article 57(4) — Optional grounds for exclusion — Ground for exclusion of a subcontractor mentioned in the economic operator's tender — Subcontractor's failure to comply with environmental, social and labour law obligations — National legislation providing for automatic exclusion of the economic operator for such a failure)

(2020/C 137/13)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale per il Lazio

Parties to the main proceedings

Applicant: Tim SpA — Direzione e coordinamento Vivendi SA

Defendant: Consip SpA, Ministero dell'Economia e delle Finanze

Intervener: E-VIA SpA

Operative part of the judgment

Article 57(4)(a) 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 does not preclude national legislation under which the contracting authority has the option, or even the obligation, to exclude the economic operator who submitted the tender from participation in the contract award procedure where the ground for exclusion referred to in that provision is established in respect of one of the subcontractors mentioned in that operator's tender. However, that provision, read in conjunction with Article 57(6) of that directive, and the principle of proportionality preclude national legislation providing for the automatic nature of such exclusion.

⁽¹⁾ OJ C 301, 27.8.2018.