

**Question for written answer E-003127/2023  
to the Commission**

Rule 138

**Maria Angela Danzi (NI), Mario Furore (NI), Sabrina Pignedoli (NI), Fabio Massimo Castaldo (NI)**

Subject: Compatibility of the right of pre-emption with EU law

Article 193 of the Italian law<sup>1</sup> that transposed Directive (EU) 2014/23<sup>2</sup> provides for an ‘award procedure’ which enables promoters to exercise the right of pre-emption if they are not awarded a contract, thus granting them a competitive advantage and ultimately discouraging or inhibiting participation by other parties. The Commission had previously brought infringement proceedings against Italy on this matter, only for the Court of Justice of the European Union (CJEU)<sup>3</sup> to declare the suit inadmissible on purely procedural grounds.

The Italian Council of State has reopened the matter by referring it to the CJEU for a preliminary ruling on the same point<sup>4</sup>.

In the light of the above:

1. Can the Commission say what measures it has taken in the wake of the above ruling, in particular whether it has obtained or intends to obtain data on the number of contracts awarded on the basis of this procedure and on the number of participants who were actually involved, with a view to verifying compliance with the principles of competition and transparency?
2. Does it believe that the right to pre-emption – currently provided for by the award procedure laid down in Italy’s Public Contracts Code – is compatible with EU law?

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<sup>1</sup> Article 193(4) and (8) of Legislative Decree No 36 of 31 March 2023 (Public Contracts Code implementing Article 1 of Law No 78 of 21 June 2022 delegating powers to the Government on public contracts).

<sup>2</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

<sup>3</sup> Judgement of the Court (Second Chamber) of 21 February 2008, *Commission of the European Communities v Italian Republic*, C-412/04, ECLI:EU:C:2008:102.

<sup>4</sup> Order No 5615/2023 of the Sixth Chamber of the Italian Council of State, point 8. The text is available at: <http://www.dirittodeiservizipubblici.it/sentenze/sentenza.asp?sezione=dettsentenza&id=7371>.