



When the Subsidiary matters: The CJEU clarifies the use of group resources in public procurement

CJEU judgment of 22 January 2026, Case C-812/24, PreZero

This CJEU judgment addresses a very important issue for a corporate group participating in public tenders: whether a parent company that intends to perform a contract by relying on the technical or professional capacities of its wholly owned subsidiary is, for the purposes of Directive 2014/24/EU, to be regarded as relying on the capacities of another entity, and what the documentary implications that follow are.

This is not the first time the CJEU has ruled on the use of companies within the same corporate group. However, the present judgment goes a step further, as it concerns a parent company relying on a subsidiary in which it holds 100% of the share capital.

Background

The dispute arose in the context of a public procurement procedure launched in Portugal for the award of a services contract. Two bidders participated in the tender, and the contract was initially awarded to PreZero Portugal, S.A. (PreZero), whose tender received the highest score.

The other bidder, Semural, challenged the award. Semural argued that PreZero should have been excluded from the procedure because it intended to perform the contract using facilities and resources belonging to a subsidiary (Valor RIB). PreZero owned 100% of the share capital of Valor RIB and had not submitted a subcontracting declaration, the European Single Procurement Document (ESPD) for that subsidiary, or a declaration of

commitment from the latter. According to Semural, this omission infringed public procurement regulations and could not be rectified.

The Portuguese courts at first and second instance upheld the appeal and annulled the award. PreZero appealed to the Supreme Court, which decided to refer the matter to the CJEU for a preliminary ruling. In essence, the referring court asked:

- Whether the use, for the performance of the contract, of the capacities of a wholly owned subsidiary constitutes “reliance on the capacities of other entities” within the meaning of Article 63 of Directive 2014/24.
- If so, whether the failure to submit the ESPD for that subsidiary must lead to exclusion from the procedure.

The position of the CJEU

Regarding the first question, the CJEU starts from the wording of Article 63 of Directive 2014/24, which provides that an economic operator may rely on the capacities of other entities “regardless of the legal nature of the links which it has with them”. This makes it possible to conclude that reliance on a subsidiary’s capacities, even where the parent company owns 100% of its share capital, amounts to reliance on the capacities of “other entities” within the meaning of that provision.

In support of this interpretation, the CJEU also refers to the broad definition of “economic opera-





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tor”, which explicitly includes subsidiaries, and rejects PreZero’s argument that this issue should be analysed in light of the concept of “economic unit” used in competition law. The Court considers that the objectives of competition law and public procurement law are different. In conclusion, even where a subsidiary is wholly controlled by its parent company, it remains a separate legal entity and is therefore another entity for the purposes of the Directive.

As a result, PreZero was required to demonstrate to the contracting authority that it would have at its disposal the capacities necessary to perform the contract, in particular by submitting a commitment from its subsidiary.

As regards the second question, the Court adopts a more flexible stance. It recalls that the ESPD is a form of preliminary evidence designed to reduce administrative burdens, but it is not the only possible means of proof. By virtue of the principle of freedom of evidence, an economic operator may demonstrate by other means that the entity on whose capacities it relies in fact possesses the necessary capacities and that no grounds for exclusion apply.

Furthermore, failure to submit the subsidiary’s ESPD does not automatically exclude the parent company’s bid. It is a rectifiable omission (provided that national law allows it) and subject to compliance with the principles of equal treatment and transparency.

Practical considerations

There are several reasons why a company may need to rely on another company within its group. This can entail significant documentary risks, particularly when non-Spanish entities are involved. Even within a framework of integration such as the European Union, national differences persist in the

collection, translation, and submission of reliable administrative or corporate documentation (e.g. authorisations, certificates confirming the absence of exclusion grounds, registry documents, etc.).

Belonging to the same group does not negate the existence of separate legal entities. The CJEU reminds us that this must be considered from the tender preparation stage. In practice, this requires forward planning, as post-submission rectification procedures are often strict and subject to short deadlines. Prior to submitting a tender, it is advisable to identify the capacities to be relied upon, the entity that will provide them, and the documentation required to demonstrate both the effective availability of the capacities and the corresponding commitment to the contracting authority.

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