

Țuca Zbârcea & Asociații obtains a landmark ruling from the Court of Justice of the European Union, which renders ineffective the entire Emergency Ordinance No. 25/ 2021 on the exclusion of non-EU economic operators from public procurement procedures



Țuca Zbârcea & Asociații has obtained a ruling from the Court of Justice of the European Union (CJEU), confirming that national legislation excluding non-EU economic operators from public procurement procedures has no legal effect.

In a high-stakes public procurement procedure worth approximately EUR 750 million, Țuca Zbârcea & Asociații represented a joint venture between a Romanian company and a non-EU one, which was excluded following the Romanian Government's adoption of Emergency Ordinance No. 25/2021. This legislative act imposed the sanction of exclusion for all economic operators from non-EU countries that had not signed a free-market access agreement with the European Union.

Țuca Zbârcea & Asociații challenged the legal grounds for the exclusion of the consortium and obtained, in the spring of 2022, the referral to the Court of Justice of the European Union with a series of questions regarding the compliance of the new exclusion rule introduced by the Romanian State with EU law.

Almost three years after the referral, the Court of Justice of the European Union ruled, in its judgment of 13 March 2025 in Case C-266/22, that primary EU law precludes a Member State from adopting national legislation excluding an economic operator from a third-country which has not concluded a free-market access agreement with the EU, as such a measure falls within the exclusive competence of the European Union. Accordingly, "*the national legislation at issue in the main proceedings requiring the contracting authority to exclude those economic operators cannot be applied.*" (paragraph 64 of the Judgment).

Consequently, the judgment expressly disapplies a legislative act of the Romanian State, i.e. Emergency Ordinance No. 25/2021, based on the principle of the primacy of EU law in relation to its exclusive competence in the area of the common commercial policy, pursuant to Article 3(1)(e) of the TFEU. The principle of this judgment becomes applicable whenever a Member State has adopted or adopts a national exclusion legislation, since "*there was no provision of EU law which required the admission to or the exclusion [...] of economic operators of a third country*" (paragraph 64 of the Judgment).

Throughout the legal dispute before the national courts and the proceedings before the CJEU, the claimant consortium was represented by Dan Cristea, Partner at Țuca Zbârcea & Asociații, with support from Șerban Sârbu, Senior Associate.

"The implications of this ECJ decision are far-reaching and impossible to summarize in a few sentences, since an interpretative ruling in a preliminary reference case does not apply only to the specific dispute in question, but extends to all similar legal relationships where an economic operator would have been excluded under a national law. It is also important that the Judgment is clear-cut and leaves no room for interpretation regarding the inapplicability of the national law that led to our client's exclusion from such a high-value procedure. Beyond its impact on specific cases, some of huge value, not only

in Romania, and beyond the importance of the clarifications it brings to the European Union's commercial relations with non-EU countries, I take pride in the fact that this ruling reflects a fundamental principle of our legal team: the ability to find creative solutions to complex cases, to think outside conventional frameworks—even when facing one of the most formidable legal obstacles a state authority can impose: national law. Ultimately, I take great satisfaction when a client places its trust in our ability to innovate”, declared Dan Cristea.

Țuca Zbârcea & Asociații has a leading practice in Dispute Resolution, the firm's pre-eminence in this area being already acknowledged by renowned international publications, such as Chambers & Partners, Legal 500 and the Global Arbitration Review.