Subject: Serious professional misconduct, early termination of a procurement contract and exclusion of the operator only in the event of non-dispute or judicial confirmation of termination

The issue subject of this judgment concerns the compatibility with EU law of the national regulation concerning the exclusion from the tender procedure on the basis of an administrative provision for the termination of a previous contract, which assumptions are subject to litigation.

The Council of State therefore submitted the following question to the EUCJ:

"If the law of the European Union and, precisely, art. 57 par. 4 of Directive 2014/24 / EU on public procurement, together with point 101 of the” Whereas” of the same Directive and the principle of proportionality and equal treatment preclude national legislation, such as art. 80, paragraph 5, lett. c), Legislative Decree 18 April 2016, n. 50, which once defined as the cause of mandatory exclusion of an economic operator the "serious professional misconduct", establishes that, in the event the professional misconduct caused the early termination of a contract, the operator can be excluded only if the resolution is not contested or is confirmed by the outcome of a judgment ". 