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OVERVIEW

**Bucharest Arbitration
Days 2025**

By **Prof. Stefan Deaconu**, President of
the Court of International Commercial
Arbitration and **Corina Tanase**, Editorial
Director of LIR Romania

Access of Third Market Operators to Public Contracts in Romania

Following up to the intensely debated Kolin Ruling, the recent ruling by the Court of Justice of the European Union (CJEU) in Case C-266/22 CRRC Qingdao Sifang (*The CRRC Qingdao Sifang Ruling*) has, as anticipated in our previous article, significantly impacted the landscape for third-country operators seeking access to public procurement in Romania.

Background and Legal Context

GEO 25/2021, adopted by the Romanian government in April 2021, barred the participation of certain third country operators to public procurement procedures in Romania.

This national measure was subject to a preliminary question to CJEU, sent by a consortium comprising a Romanian company and a non-EU operator, which had been excluded from a €750 million procurement procedure further to the adoption of GEO 25/2021.

While the preliminary question did not directly address the access of third country operators to Romanian public procurement procedures, the CJEU assumed the same approach as in the Kolin Ruling, restating that such exclusionary measures as undertaken throughout GEO no 25/2021 encroached on the EU's exclusive competence over common commercial policy under Article 3(1)(e) of the Treaty on the Functioning of the European Union (TFEU).

Key Legal Implications

The CRRC Qingdao Sifang Ruling has several important legal implications for third-country operators and Romanian contracting authorities:

- **Exclusive EU Competence:** CJEU reinforces that only the EU, not individual Member States, may regulate access for third-country operators to public procurement markets. Therefore, national laws like OUG 25/2021, which unilaterally barred non-EU bidders, may not be applied by contracting authorities.
- **Case-by-Case Assessment:** Romanian contracting authorities must now evaluate third-country participation on a case by cases basis, relying exclusively on national legislation. This creates potential inconsistencies in the application of procurement rules across different authorities.
- **Lack of EU Law Protections:** Third countries operators may not rely on EU procurement law, including principles such as equal treatment, nor on national legislation implementing EU law.



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Practical Effects

The ruling presents both opportunities and challenges for third-country operators and contracting authorities:

- **Opportunities for third countries operators:** Third countries operators, such as China or India (previously barred under OUG 25/2021) and Türkiye (which were not barred from participation under GEO no 25/2021, but may not rely on EU law under Kolin and CRRC Qingdao Sifang Ruling) may now bid for Romanian public contracts, provided they are allowed to by contracting authorities and within the conditions set for such participation.
- **Risks and Uncertainties:** Contracting authorities may decide on allowing acces to third countries bidders and also adopt varying criteria for third-country bids, leading to legal challenges. Establishing clear criteria for third-country bids may minimize legal risks and ensure fair and competitive participation.
- **Compliance Challenges:** Third countries bidders must meticulously align proposals with tender specifications, as they may not rely on EU legal safeguards, remedies being confined to Romanian courts (whose case law is yet to be aligned). For EU-based competitors, lobbying for EU-level legislation to standardize third-country access rules may help create a more predictable procurement environment.

Conclusion

Case C-266/22 marks a pivotal shift in Romanian public procurement, dismantling national barriers while highlighting the need for EU-wide coherence. For businesses, the ruling presents both opportunities and challenges, demanding agility in navigating a fragmented landscape.



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