



2024 WARSAW HUMAN DIMENSION CONFERENCE

Warsaw, 30 September to 11 October 2024

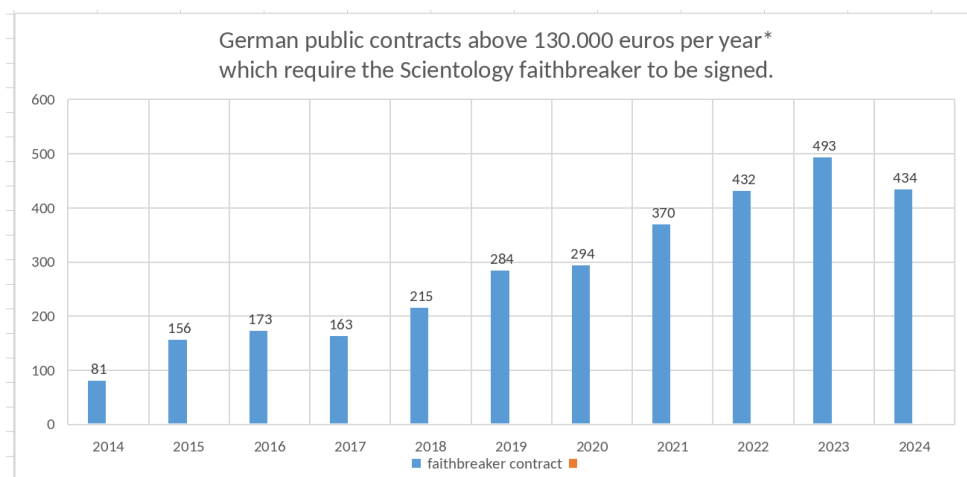
Plenary Session 7: Fundamental Freedoms II

Coordination des Association et des Particuliers pour la Liberté de Conscience

Exclusion and Ethics: Anti-Scientology Clauses (FAITH BREAKERS) in German Public Tenders

At least 3095 infringements (in the last 10 years, and 434 in just 2024 up to 20th August) of unequal treatment and discrimination through public tenders through the Scientology Faith-breaker Declarations by German Public Contracts

For at least 10 years, the EU Tenders Transparency Portal, has been publishing tenders from countries, including German authorities, and since May 2nd 2014¹, there are at least , there are at least, **3095 Germany public tenders forcing applicants to sign "faith breakers" documents** (generally called 'Scientology-Schutzerklärung' i.e. Scientology Protective Declaration)" distancing themselves from any connection/relation with Scientology, be it by the applicant or by any of their employees. On that day, one of the tenders² was for "**31121340 Wind farm, 45251160 Wind-power installation works, 45100000 Site preparation work, 70130000 Letting services of own property**".



* Source: <https://ted.europa.eu/> - Currently, per the relevant EU rules, it is only mandatory to inform the EU of contracts above 130.000 euros without VAT per year
 - 2014: The information of this year was only accessible from May 2nd 2014. Any previous contracts are not counted
 - 2024: Data of 2024 is counted only **upto August 20th 2024**, which is when the resources have been analyzed.

¹ <https://ted.europa.eu/en/search/result?FT=Scientology&publication-date-from=20140101&search-scope=ALL>

² <https://ted.europa.eu/en/notice/-/detail/147182-2014>

Ten years later, **May 2nd 2024**, the public tender forbids Scientologists to offer *medical furniture, shelves, tables, cupboards, desks, and bookcases*, to the municipal *München Klinks*³.

In these **10 years**, the EU Tenders portal has published **3095 German public tenders that discriminate Scientologists**. From **January 1st 2024**, at least **434 German discriminatory public tenders**⁴ have been published on the EU Tenders site, **discriminating against Scientologists**, in violation of Directive 2014/24/EU of February 16th 2014⁵. It has to be considered that these numbers are not all, since public authorities are only obliged to publicize these tenders through the EU Tenders portal when the are above 140.000 euros excluding VAT.

Year	faithbreaker contract		
2014	81		(as from May 2nd
2015	156		
2016	173		
2017	163		
2018	215		
2019	284		
2020	294		
2021	370		
2022	432		
2023	493		
2024	434		until August 20th
	3095		

Find a sample in the following page.




³ <https://ted.europa.eu/en/notice/-/detail/259451-2024>

⁴ <https://ted.europa.eu/en/search/result?FT=Scientology&publication-date-from=20240101&search-scope=ALL>

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>

SAMPLE OF A VIOLATION

An official website of the European Union How do you know? ▾

 European Union  Log in  English

EU tenders

Ted • tenders electronic daily Supplement to the Official Journal of the EU

- Construction and Real Estate(135)
- Environment and Sanitation(44)
- Materials and Products(37)
- Technology and Equipment(37)
- Computer and Related Services(36)

By nature of contract

Clear Selection Create notice alert Download Export list

<input type="checkbox"/>	Notice Number	Description	Country	Publication date	Deadline for receipt of tenders
<input type="checkbox"/>	259451-2024	Germany – Modular furniture – Rahmenvertrag Modulschränke Place of performance: Germany,München, Kreisfreie Stadt Main nature of the contract: Supplies Official name: München Klinik gGmbH Type of procedure: Open	Germany	02/05/2024	03/06/2024

Buyer: München Klinik gGmbH
Germany, München, Kreisfreie Stadt (DE212), München

Notice number: 259451-2024⁶

Publication date: May 2nd, 2024

München Klinik is the **official healthcare provider of the City of Munich**. With clinics in Bogenhausen, Harlaching, Neuperlach, Schwabing and Thalkirchner Strasse, München Klinik offers comprehensive care at the highest medical and nursing level. They are Germany's second largest **municipal hospital group** - with over 7,000 employees and four maximum care facilities.

What do they want to buy (page 1 of the documentation of the public tender):

2.1.1 Purpose Main nature of the contract:

Supplies Main classification (cpv): 39151300 Modular furniture ,
Additional classification (cpv): 33192000

Medical furniture 39141100

Shelves 39120000 **Tables, cupboards, desk and bookcases**

Where is this material supposed to be brought?

⁶ <https://ted.europa.eu/en/notice/-/detail/259451-2024>

2.1.1 Place of performance Postal address:

München Klinik

-Harlaching Sanatoriumsplatz 2

-Schwabing Kölner Platz 1

-Neuperlach Oskar-Maria-Graf-Ring 51

-Bogenhausen Engelschalkinger Str. 77

-Thalkirchner Straße Thalkirchner Str. 48

Town: **München**

Postcode: 81545

Country subdivision (NUTS): München, Kreisfreie Stadt (DE212)

Country: Germany

Value of the offered contract:

2.3 Value Estimated value excluding VAT: 1 000 000,00 EUR

Maximum value of the framework agreement: 1 000 000,00 EUR

General information (to be provided in the application to have access to the contract):

Additional information: Bekanntmachungs-ID: CXP4YL5HL00 Vom Bieter einzureichende Unterlagen:

1. Leistungsverzeichnis

2. Angebotsschreiben

3. Eigenerklärung Eignung

4. Schutzklärung Scientology

5. Bietergemeinschaft (falls einschlägig)

6. Verzeichnis der LeistKap anderer Unternehmen (falls einschlägig)

7. Referenzenvordruck

8. Eigenerklärung Russlandsanktionen

9. Preisblatt.xlsx

10. Nachweis des Berufs- oder Handelsregisters

11. Nachweis einer Betriebshaftpflichtversicherung

12. Nachweis der Berufserfahrung der Monteure

13. Bestätigung der Mindestanforderungen mittels Eigenerklärung / Nachweis / Anlage

2.5_Referenzvordruck.docx

Legal basis: Directive 2014/24/EU

5.1.12. 5.1.15. Terms of procurement Terms of submission:

[...]

Terms of contract: Conditions relating to the performance of the contract: 1. Angaben,

dass zwingende Ausschlussgründe gemäß § 123 GWB nicht vorliegen, Dokument "2.1_Eigenerklärung Eignung" 2. Angaben, dass fakultative Ausschlussgründe gemäß § 124 GWB nicht vorliegen, Dokument "2.1_Eigenerklärung Eignung" 3. Angaben zur Selbstreinigung gemäß § 125 GWB, Dokument "2.1_Eigenerklärung Eignung" 4. Verpflichtungserklärung zur Einhaltung des Mindestlohngesetzes, Dokument "2.1_Eigenerklärung Eignung" 5. Antikorruptionserklärung, Dokument "2.1_Eigenerklärung Eignung" 6. Ausschluss Interessenkonflikt, Dokument "2.1_Eigenerklärung Eignung" **7. Schutzklärung Scientology, Dokument "2.2_Schutzklärung Scientology"** 8. Eigenerklärung Russlandsanktionen, Dokument "2.6_Eigenerklärung Russlandsanktionen" 9. Abfrage nach § 6 Abs. 1 WRegG ab Auftragswert 30.000 EUR ohne USt

The Directive 2014/24/EU⁷ on public contracts:

The above public tender (and many others announced daily at the EU Tenders Transparency Portal) violate at least the following provisions of the EU Directive (more in depth study will be made) and as shown in many court decisions and documentation provided to different bodies of the United Nations⁸, there is not valid reason reason for it, and therefore violating international standard of UDHR, ICCPR, EU Fundamental Rights and others:

It violates:

[Preamble of the directive]

Whereas: (1) The award of public contracts by or on behalf of Member States' authorities has to comply with the principles of the Treaty on the Functioning of the European Union (TFEU), and in particular the free movement of goods, freedom of establishment and the freedom to provide services, as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that those principles are given practical effect and public procurement is opened up to competition.

[...]

(90) Contracts should be awarded on the basis of objective criteria **that ensure compliance with the principles of transparency, non-discrimination and equal treatment, with a view to ensuring an objective comparison of the relative value of the tenders in order to determine, in conditions of effective competition, which tender is the most economically advantageous tender.**

[...]

CHAPTER II

General rules

Article 18 - Principles of procurement

1. Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

The design of the procurement shall not be made with the intention of excluding it from the scope of this Directive or of artificially narrowing competition. **Competition shall be considered to be artificially narrowed where the design of the procurement is**

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>

⁸

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FCSS%2FDU%2F46895&Lang=en



made with the intention of unduly favouring or disadvantaging certain economic operators.

2. Member States shall take appropriate measures to **ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law** provisions listed in Annex X..

[...]

*Article 57 Exclusion grounds - 1. Contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established, by verifying in accordance with Articles 59, 60 and 61, or are otherwise aware that that economic operator has been **the subject of a conviction by final judgment** for one of the following reasons: (a) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA (32); (b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (33) and Article 2(1) of Council Framework Decision 2003/568/JHA (34) as well as corruption as defined in the national law of the contracting authority or the economic operator; (c) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests (35); (d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA (36) respectively, or inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision; (e) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council (37); (f) child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council (38).*

The obligation to exclude an economic operator shall also apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein.