

Respondents: Ministero dell'Economia e delle Finanze, Agenzia delle Dogane e dei Monopoli

Questions referred

1. Must EU law — in particular, the right of establishment and the freedom to provide services, and the principles of non-discrimination, transparency, freedom of competition, proportionality and consistency too — be interpreted as precluding rules, such as those laid down by Article 1(653) of the 2015 Stability Law and the relevant implementing legislation, that provide for an exclusive mono-concessionaire model for management of the Lotto, but not for other games, prediction games and betting?
2. Must EU law — in particular, the right of establishment, the freedom to provide services and Directive 2014/23/EU, ⁽¹⁾ and the principles of non-discrimination, transparency, freedom of competition, proportionality and consistency too — be interpreted as precluding a concession notice that stipulates a much higher basic contract value unjustified in relation to the requirements concerning economic and financial standing and technical and organisational ability, as set out in paragraphs 5.3, 5.4, 11. 12.4 and 15.3 of the concession documents for the award of the Lotto concession?
3. Must EU law — in particular, the right of establishment, the freedom to provide services and Directive 2014/23/EU, and the principles of non-discrimination, transparency, freedom of competition, proportionality and consistency too — be interpreted as precluding rules that impose a de facto choice between being awarded a new concession and continuing to exercise the freedom to provide various betting services on a cross-border basis, a choice of the kind that results from Article 30 of the model contract, the effect being that the decision to participate in the tender for the award of the new concession would involve abandoning the cross-border activity, even though the legality of that activity has on several occasions been recognised by the Court of Justice?

⁽¹⁾ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ 2014 L 94, p. 1).

Request for a preliminary ruling from the Bundesverwaltungsgericht — Germany lodged on 10 July 2017 — Federal Republic of Germany v Touring Tours und Travel GmbH

(Case C-412/17)

(2017/C 330/08)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Defendant and appellant on a point of law: Federal Republic of Germany

Applicant and respondent on a point of law: Touring Tours und Travel GmbH

Questions referred

1. Do Article 67(2) TFEU and Articles 22 and 23 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Control) ⁽¹⁾ preclude a provision of national law of a Member State which has the effect of requiring bus undertakings operating regular services across a Schengen internal border to check their passengers' travel documents before crossing an internal border in order to prevent foreign nationals not in possession of a passport or residence permit from being brought into the territory of the Federal Republic of Germany?

In particular:

- (a) Does the general statutory duty, or the administrative obligation directed at individual carriers, not to bring into federal territory foreign nationals not in possession of a passport or residence permit as required, which is properly discharged only if carriers check all passengers' travel documents before crossing an internal border, constitute, or fall to be treated as, a check on persons at internal borders within the meaning of Article 22 of the Schengen Borders Code?
 - (b) Is the imposition of the duties referred to in point 1 to be assessed by reference to Article 23(a) of the Schengen Borders Code, even though carriers do not exercise 'police powers' within the meaning of that provision and, moreover, do not formally enjoy any powers of public authority by virtue of the State-imposed obligation to carry out checks?
 - (c) If the answer to Question 1(b) is in the affirmative, do the checks which carriers are required to carry out, taking into account the criteria laid down in the second sentence of Article 23(a) of the Schengen Borders Code, constitute an impermissible measure having an effect equivalent to border checks?
 - (d) Is the imposition of the duties referred to in point 1, in so far as it concerns bus undertakings operating regular services, to be assessed by reference to Article 23(b) of the Schengen Borders Code, which provides that the absence of border control at internal borders is not to affect the power of carriers to carry out security checks on persons at ports and airports? Does it follow from this that checks within the meaning of Question 1 are impermissible even when carried out other than at ports and airports if they do not constitute security checks and are not also carried out on persons travelling within a Member State?
2. Do Articles 22 and 23 of the Schengen Borders Code permit provisions of national law under which, for the purposes of ensuring compliance with that duty, an order imposing a prohibition on pain of a penalty payment may be made against a bus undertaking in cases where the failure to carry out checks has enabled even foreign nationals not in possession of a passport or residence permit to be brought into the territory of the Federal Republic of Germany?

⁽¹⁾ OJ 2016 L 77, p. 1.

**Request for a preliminary ruling from the Cour de cassation (France) lodged on 21 July 2017 —
Préfet des Pyrénées-Orientales v Abdelaziz Arib, Procureur de la République près le tribunal de
grande instance de Montpellier, Procureur général près la cour d'appel de Montpellier**

(Case C-444/17)

(2017/C 330/09)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant: Préfet des Pyrénées-Orientales

Respondents: Abdelaziz Arib, Procureur de la République près le tribunal de grande instance de Montpellier, Procureur général près la cour d'appel de Montpellier

Questions referred

1. Is Article 32 of Regulation (EU) No 2016/399 ⁽¹⁾ of 9 March 2016, which provides that, when border control at internal borders is reintroduced, the relevant provisions of Title II (relating to external borders) are to apply *mutatis mutandis*, to be interpreted to the effect that border controls reintroduced at an internal border of a Member State may be equated with border controls at an external border, when that border is crossed by a third-country national who has no right of entry?
2. In the same circumstances of reintroduction of controls at internal borders, do that regulation and Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally ⁽²⁾ staying third-country nationals permit the application to the situation of a third-country national crossing a border at which controls have been reintroduced of the power, conferred on them by Article 2(2)(a) of the directive, to continue to apply simplified national return procedures at their external borders?