

Judgment of the Court (Sixth Chamber) of 28 February 2018 (request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary)) — Sporting Odds Ltd v Nemzeti Adó- és Vámhivatal Központi Irányítása

(Case C-3/17) ⁽¹⁾

(Reference for a preliminary ruling — Freedom to provide services — Article 56 TFEU — Article 4(3) TEU — Charter of Fundamental Rights of the European Union — Restrictions — Games of chance — National legislation — Operation of certain kinds of games of chance by the State — Exclusivity — Licensing system for other kinds of games of chance — Requirement of a licence — Administrative penalty)

(2018/C 142/15)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Sporting Odds Ltd

Defendant: Nemzeti Adó- és Vámhivatal Központi Irányítása

Operative part of the judgment

1. Article 56 TFEU must be interpreted as meaning that it does not, in principle, preclude a dual system of organisation of the market for games of chance under which certain types of those games fall with the State monopoly system, while others fall within the system of concessions and licences for the organisation of games of chance, if the referring court establishes that the rules restricting the freedom to provide services do, in fact, pursue the objectives relied on by the Member State concerned in a consistent and systematic manner;
2. Article 56 TFEU must be interpreted as meaning that it precludes a national measure, such as that at issue in the main proceedings, according to which the grant of a licence to organise online games of chance is reserved exclusively to operators of games of chance holding a concession for a casino situated on national territory, since that rule does not constitute a condition indispensable to the achievement of the desired objectives, and that there are less restrictive measures which are capable of attaining them;
3. Article 56 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which introduces a system of concessions and licences for the organisation of online games of chance, if it contains discriminatory rules with regard to operators established in other Member States or if it lays down rules which are not discriminatory but which are applied in a manner which is not transparent or are implemented in such a way as to prevent or hinder an application from certain tenderers established in other Member States;
4. Article 56 TFEU and Article 4(3) TEU, read in conjunction with Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which does not provide for the *ex officio* examination of the proportionality of measures restricting the freedom to provide services within the meaning of Article 56 TFEU and which puts the burden of proof on the parties to the proceedings;
5. Article 56 TFEU, read in conjunction with Articles 47 and 48 of the Charter of Fundamental Rights, must be interpreted as meaning that it is for a Member State which has put in place restrictive legislation to provide evidence to prove the existence of objectives capable of justifying a restriction on a fundamental freedom guaranteed by the FEU Treaty and its proportionality, in the absence of which the national court must draw all the inferences which result from such a failure;

6. Article 56 TFEU must be interpreted as meaning that it cannot be held that a Member State has failed to satisfy its obligation to justify a restrictive measure because it has failed to provide an analysis of the effects of that measure on the date on which that measure was introduced into national law or the date of the examination of such a measure by the national court;
7. Article 56 TFEU must be interpreted as precluding a penalty, such as that at issue in the main proceedings, imposed for the infringement of national rules introducing a system of concessions and licences for the organisation of games of chance, if such national legislation proves to be contrary to that article.

⁽¹⁾ OJ C 112, 10.4.2017.

Judgment of the Court (Third Chamber) of 1 March 2018 (request for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Maria Tirkkonen

(Case C-9/17) ⁽¹⁾

(Reference for a preliminary ruling — Public procurement — Directive 2004/18/EC — Tendering procedure for public contracts for farm advisory services — Whether or not there is a public contract — Scheme for obtaining services open to any economic operator who satisfies previously established conditions — Scheme not subsequently open to other economic operators)

(2018/C 142/16)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Maria Tirkkonen

Intervener: Maaseutuvirasto

Operative part of the judgment

Article 1(2)(a) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that a farm advisory scheme, such as that at issue in the main proceedings, through which a public entity admits all the economic operators who meet the suitability requirements set out in the invitation to tender and who pass the examination referred to in that invitation to tender, even if no new operator can be admitted during the limited validity period of that scheme, does not constitute a public contract within the meaning of that directive.

⁽¹⁾ OJ C 86, 20.3.2017.