



C/2024/6225

28.10.2024

Judgment of the Court (First Chamber) of 12 September 2024 (request for a preliminary ruling from the Tribunal de première instance de Liège – Belgium) – Casino de Spa SA, Ardent Betting SA, Ardent Finance SA and Others v État belge (SPF Finances)

(Case C-741/22, ⁽¹⁾ Casino de Spa and Others)

(Reference for a preliminary ruling – Taxation – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 135(1)(i) – Exemptions – Betting, lotteries and other forms of gambling – Conditions and limits – Principle of fiscal neutrality – Maintenance of the effects of a piece of national legislation – Entitlement to refund – Unjust enrichment – State aid – Article 107(1) TFEU – Application for a refund of the tax in the form of damages)

(C/2024/6225)

Language of the case: French

Referring court

Tribunal de première instance de Liège

Parties to the main proceedings

Applicants: Casino de Spa SA, Ardent Betting SA, Ardent Finance SA, Artekk SRL (taken over by Circus Belgium SA), Circus Belgium SA, Circus Services SA, Gambling Management SA, Games Services SA, Gaming1 SRL, Guillemins Real Estate SA, Immo Circus Wallonie SA, Mr Joker SRL, Pres Carats Sports SA, Pro Sécurité SRL, Royal Namur SA, Euro 78 SRL, Lucky Bet SRL, Reflex SA, Slots SRL, Winvest SRL, Parction SA, Ardent Casino Belgium SA, Ardent Casino International SA, Ardent Namur Immo SA, Odds Sportbar SRL, HQ1 SRL, Tour de Baschamps SRL

Defendant: État belge (SPF Finances)

Interested parties: État belge (SPF Justice), La Chambre des Représentants

Operative part of the judgment

1. Article 135(1)(i) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with the principle of fiscal neutrality,

must be interpreted as not precluding national legislation which differentiates between, on the one hand, the purchase of lottery tickets online and, on the other hand, participation in other forms of gambling offered online, by excluding the latter from the value added tax exemption applicable to the former, provided that the objective differences between those two categories of gambling are liable to have a considerable influence on the decision of the average consumer to use one or other of those categories of games.

2. The principle of sincere cooperation as enshrined in Article 4(3) TEU and the principle of the primacy of EU law require the national court to disapply the national provisions held to be incompatible with Article 135(1)(i) of Directive 2006/112, read in conjunction with the principle of fiscal neutrality, the existence of a judgment of the national constitutional court deciding to maintain the effects of those national provisions being irrelevant in that regard.
3. The rules of EU law on the recovery of amounts wrongly paid must be interpreted as meaning that they confer on a taxable person a right to a refund of the amount of the value added tax collected in a Member State in breach of Article 135(1)(i) of Directive 2006/112, provided that that refund does not entail the unjust enrichment of that taxable person.

⁽¹⁾ OJ C 112, 27.3.2023.

4. Article 108(3) TFEU must be interpreted as meaning that, where the value added tax (VAT) exemption from which certain operators have benefited constitutes unlawful State aid, a taxable person who has not benefited from such an exemption cannot receive, in the form of damages, an amount equivalent to the VAT that that taxable person paid.
