

**Order of the Court (Eighth Chamber) of 16 February 2012  
(reference for a preliminary ruling from the Tribunale di  
Roma — Italy) — Criminal proceedings against Alessandro  
Sacchi**

(Case C-255/10) <sup>(1)</sup>

*(Article 104(3), first subparagraph, of the Rules of Procedure — Freedom of establishment — Freedom to provide services — Betting and gaming — Collection of bets on sporting events — Licensing requirement — Consequences of an infringement of European Union law in the awarding of licences — Award of 16 300 additional licences — Principle of equal treatment and the obligation of transparency — Principle of legal certainty — Protection of holders of earlier licences — National legislation — Mandatory minimum distances between betting outlets — Whether permissible — Cross-border activities analogous to those engaged in under the licence — Prohibition under national legislation — Whether permissible)*

(2012/C 151/17)

Language of the case: Italian

**Referring court**

Tribunale di Roma

**Criminal proceedings against**

Alessandro Sacchi

**Re:**

Reference for a preliminary ruling — Tribunale ordinario di Roma — Free movement of persons — Freedom to provide services — Activity of collecting bets — Domestic legislation making the exercise of that activity conditional upon the obtaining of a public security authorisation and permit — Protection afforded to persons obtaining authorisations and permits by means of award procedures that unlawfully excluded other operators from the same sector — Whether compatible with Articles 43 EC and 49 EC

**Operative part of the order**

- Articles 43 EC and 49 EC and the principles of equal treatment and effectiveness must be interpreted as precluding a Member State which, in breach of European Union law, has excluded a category of operators from the award of licences to engage in a particular economic activity and which seeks to remedy that breach by putting out to tender a significant number of new licences, from protecting the market positions acquired by the existing operators, by providing *inter alia* that a minimum distance must be observed between the establishments of new licence holders and those of existing operators.
- Articles 43 EC and 49 EC must be interpreted as precluding the imposition of penalties for engaging in the organised activity of

collecting bets without a licence or police authorisation on persons who are linked to an operator which was excluded, in breach of European Union law, from an earlier tendering procedure, even following the new tendering procedure intended to remedy that breach of European Union law, in so far as that tendering procedure and the subsequent award of new licences have not in fact remedied the exclusion of that operator from the earlier tendering procedure.

- It follows from Articles 43 EC and 49 EC, the principle of equal treatment, the obligation of transparency and the principle of legal certainty that the conditions and detailed rules of a tendering procedure such as that at issue in the case before the referring court and, in particular, the provisions concerning the withdrawal of licences granted under that tendering procedure, such as those laid down in Article 23(2)(a) and (3) of the model contract between the Independent Authority for the Administration of State Monopolies and the successful tenderer for the licence for betting on events other than horse races, must be drawn up in a clear, precise and unequivocal manner, a matter which it is for the referring court to verify.

<sup>(1)</sup> OJ C 209, 31.7.2010.

**Order of the Court (Eighth Chamber) of 16 February 2012  
(reference for a preliminary ruling from the Tribunale di  
Verbania — Italy) — Criminal proceedings against Matteo  
Minesi**

(Case C-279/10) <sup>(1)</sup>

*(Article 104(3), first subparagraph, of the Rules of Procedure — Freedom of establishment — Freedom to provide services — Betting and gaming — Collection of bets on sporting events — Licensing requirement — Consequences of an infringement of European Union law in the awarding of licences — Award of 16 300 additional licences — Principle of equal treatment and the obligation of transparency — Principle of legal certainty — Protection of holders of earlier licences — National legislation — Mandatory minimum distances between betting outlets — Whether permissible — Cross-border activities analogous to those engaged in under the licence — Prohibition under national legislation — Whether permissible)*

(2012/C 151/18)

Language of the case: Italian

**Referring court**

Tribunale di Verbania

**Criminal proceedings against**

Matteo Minesi