Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Lb Group Ltd

Defendants: Ministero dell'Economia e delle Finanze, Amministrazione Autonoma dei Monopoli di Stato (AAMS) and Galassia Game Srl

Questions referred

1. Are Article 49 et seq. TFEU and Article 56 et seq. TFEU and the principles laid down by the Court of Justice of the European Union in [Joined Cases C-72/10 and C-77/10 *Costa and Cifone* [2012] ECR] to be interpreted as precluding a call for tenders for the award of licences with a period of validity shorter than that of licences awarded in the past, where that tendering procedure has been launched in order to remedy the consequences of the unlawful exclusion of a certain number of operators from earlier tendering procedures?

2. Are Article 49 et seq. TFEU and Article 56 et seq. TFEU and the principles laid down by the Court of Justice of the European Union in *Costa and Cifone* to be interpreted as precluding the possibility that sufficient justification for the shorter period of validity of licences offered for tender, as compared with licences awarded in the past, can be found in the requirement for the licensing system to be reorganised through the alignment of licence expiry dates?

Request for a preliminary ruling from the Tribunale ordinario di Cagliari (Italy) lodged on 9 December 2013 — Criminal proceedings against Mirko Saba

(Case C-652/13)

(2014/C 112/27)

Language of the case: Italian

Referring court

Tribunale ordinario di Cagliari

Party to the main proceedings

Mirko Saba

Questions referred

1. Are Article 49 et seq. TFEU and Article 56 et seq. TFEU and the principles laid down by the Court of Justice of the European Union in [Joined Cases C-72/10 and C-77/10 *Costa and Cifone* [2012] ECR] to be interpreted as precluding a call for tenders for the award of licences with a period of validity shorter than that of licences awarded in the past, where that tendering procedure has been launched in order to remedy the consequences of the unlawful exclusion of a certain number of operators from earlier tendering procedures?

2. Are Article 49 et seq. TFEU and Article 56 et seq. TFEU and the principles laid down by the Court of Justice of the European Union in *Costa and Cifone* to be interpreted as precluding the possibility that sufficient justification for the shorter period of validity of licences offered for tender, as compared with licences awarded in the past, can be found in the requirement for the licensing system to be reorganised through the alignment of licence expiry dates?

Request for a preliminary ruling from the Consiglio di Giustizia Amministrativa per la Regione Siciliana (Italy) lodged on 24 December 2013 — PFE v Airgest

(Case C-689/13)

(2014/C 112/28)

Language of the case: Italian

Referring court

Consiglio di Giustizia Amministrativa per la Regione Siciliana

Parties to the main proceedings

Applicant: Puligienica Facility Esco SpA (PFE)

Defendant: Airgest SpA

Questions referred

1. Do the principles laid down by the Court of Justice in its judgment of 4 July 2013 in Case C-100/12 *Fastweb*, concerning the specific set of circumstances forming the subject-matter of the request for a preliminary ruling in that case, in which only two undertakings participated in a public procurement procedure, also apply — given the considerable similarities between those circumstances and the facts in the present case — to the case currently before this Council, in which the undertakings participating in the tendering procedure, even though more than two undertakings were admitted, were all excluded by the contracting authority without those exclusion decisions being challenged by undertakings other than those involved in the present proceedings, with the result that, in the dispute currently before this Council, only two undertakings are concerned?

2. In respect solely of issues which can be settled through the application of European Union law, is it the case that, upon a proper construction of European Union law and, in particular, of Article 267 TFEU, Article 99(3) of the Italian Code of Administrative Procedure is precluded to the extent that it makes all principles of law stated by the plenary session of the Council of State binding upon all Chambers and Divisions of the Council of State, even where it is clearly the case that the plenary session has stated, or may have stated, a principle that is contrary to or incompatible with European Union law?

3. Specifically, in the event that doubts arise as to whether a principle of law already stated by the Council of State in plenary session is in conformity with or is compatible with European Union law, is the Chamber or Division of the Council of State to which the case is assigned under an obligation to make a reasoned order referring the decision on the appeal back to the plenary session, even before it is able to make a request to the Court of Justice for a preliminary ruling as to whether the principle of law in question is in conformity with or is compatible with European Union law; or, instead, may — or, rather, must — the Chamber or Division of the Council of State, being national courts against whose decisions no appeal lies, independently refer — as ordinary courts applying European Union law — a question to the Court of Justice for a preliminary ruling so as to obtain the correct interpretation of European Union law?

4. In the event that the answer to [Question 3] is that each Chamber and Division of the Council of State is recognised as having the power or the obligation to refer questions directly to the Court of Justice for a preliminary ruling, or in every case in which the Court of Justice has taken a position — especially if it has done so at a time subsequent to the plenary session of the Council of State — to the effect that the principle of law stated in the plenary session is not in conformity or not wholly in conformity with the correct interpretation of European Union law, may or must each Chamber and each Division of the Council of State, being ordinary courts applying European Union law and against whose decisions no appeal lies, immediately apply the correct interpretation of European Union law as provided by the Court of Justice or, instead, are they under an obligation, even in such cases, to make a reasoned order referring the decision on the appeal back to the plenary session of the Council of State, thereby deferring to the authority of the plenary session of the Council of State and to its discretion all assessment of the application of European Union law already declared binding by the Court of Justice?

5. Lastly, is it not the case that an interpretation of the administrative procedure rules of the Italian Republic as meaning that any potential decision relating to a request to the Court of Justice for a preliminary ruling — or even merely the resolution of the case whenever that flows directly from the application of European Union legal principles already set out by the Court of Justice — is a matter exclusively for the plenary session of the Council of State constitutes an obstacle, not only to the principles that proceedings are to be concluded within a reasonable period and that a review is to be available speedily in relation to procedures for the award of public contracts, but also to the requirement that European Union law is to be promptly applied in full by all courts in all Member States, in a manner which must be consistent with its proper interpretation as provided by the Court of Justice, and moreover for the purposes of ensuring the broadest possible application of the principle of 'effectiveness' (*effet utile*) and the principle of the primacy (in terms not only of substance but also of procedure) of European Union law over the national law of every single Member State (in the present case: over Article 99(3) of the Italian Code of Administrative Procedure)?