

Request for a preliminary ruling from the Tribunale di Santa Maria Capua Vetere (Italy) lodged on 16 October 2015 — Criminal proceedings against Angela Manzo

(Case C-542/15)

(2016/C 016/22)

Language of the case: Italian

Referring court

Tribunale di Santa Maria Capua Vetere

Party to the main proceedings

Angela Manzo

Questions referred

1. Must [Articles 49 TFEU and 56 TFEU], as well as the principles of equal treatment and effectiveness, be interpreted as precluding national legislation in the field of betting and gambling which provides for the organisation of a fresh call for tenders (as governed by Article [10(9)g] of Law No 44 of 26 April 2012) for the award of licences that includes clauses excluding from the tendering procedure undertakings which have failed to meet the condition relating to economic and financial standing as a result of the failure to provide for criteria other than the requirement of two bank references from two separate banks?
2. Must Article 47 of Directive 2004/18/EC⁽¹⁾ of the European Parliament and of the Council of 31 March 2004 be interpreted as precluding national legislation in the field of betting and gambling which provides for the organisation of a fresh call for tenders (as governed by Article [10(9)g] of Law No 44 of 26 April 2012) for the award of licences [that includes clauses excluding from the tendering procedure undertakings which have failed to meet the condition] relating to economic and financial standing as a result of the failure to provide for alternative documentation and options, as laid down under [EU] legislation?
3. Do [Articles 49 TFEU and 56 TFEU] preclude national legislation which *de facto* prevents any cross-border activity in the field of betting and gambling, irrespective of the form which that activity takes, in particular (in line with the findings in the judgment of the Third Chamber of the Court of Justice of 12 September 2013 in [Joined Cases C-660/11 and C-8/12 *Biasci and Others*, EU:C:2013:550] in cases in which there are physical checks, for purposes of public security, of the undertaking's intermediaries present on national territory?

⁽¹⁾ 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 (OJ 2004 L 134, p. 114).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 19 October 2015 — Association nationale des opérateurs détaillants en énergie (ANODE) v Premier ministre, Ministre de l'Écologie, du Développement durable et de l'Énergie

(Case C-543/15)

(2016/C 016/23)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Association nationale des opérateurs détaillants en énergie (ANODE)

Defendants: Premier ministre, Ministre de l'Écologie, du Développement durable et de l'Énergie

Question referred

Must Articles 34 and 36 of the Treaty on the Functioning of the European Union be interpreted as precluding a capacity mechanism in the electricity sector such as that at issue in the main proceedings which is described in particular in paragraphs 1, 15 and 17 to 19 of the present decision?

In particular:

- a) Even though the mechanism remunerates capacities only on the basis of their availability, not of their actual production, and having regard to the taking into account of the effects of interconnections in the determination of suppliers' obligations, which relaxes the causal link between the exclusion of foreign capacities from the mechanism, as laid down by the decree, and the restrictive effect on cross-border electricity trading which could arise therefrom in terms of investors' resource allocation choices and suppliers' procurement choices, must Article 34 TFEU be interpreted as precluding such an exclusion measure?
- b) Having regard to developments in the European legal framework governing the internal market in electricity, is the objective of security of electricity supply for the inhabitants of a Member State capable of being covered by the concept of public security provided for in Article 36 TFEU?
- c) Having regard, in particular, to the discretion granted to Member States with respect to defining suitable policies to ensure their security of electricity supply, what criteria may be used to ascertain whether a decentralised market-based capacity mechanism, involving, in the present state of the European electricity market, a measure excluding foreign capacities which is offset by the taking into account of interconnections in the determination of suppliers' obligations, is capable of satisfying the condition of proportionality required for Article 36 TFEU to apply?

Action brought on 16 October 2015 — European Commission v Republic of Poland

(Case C-545/15)

(2016/C 016/24)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: M. Heller, K. Herrmann and E. Sanfrutos Cano, acting as Agents)

Defendant: Republic of Poland

Form of order sought

The applicant claims that the Court should:

- declare that, by not adopting and bringing into force the laws, regulations and administrative provisions necessary to ensure compliance with Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment, ⁽¹⁾ or in any event by not informing the Commission of those provisions, the Republic of Poland has failed to meet its obligations under Article 24(1) of that directive;
- impose on the Republic of Poland, pursuant to Article 260(3) TFEU, for its failure to meet its obligation to notify the measures implementing Directive 2012/19/EU a penalty payment at a daily rate of EUR 71 610 from the day on which judgment is delivered in this case;
- order the Republic of Poland to pay the costs of the proceedings.