

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 25 April 2018 — Equitalia centro SpA v Poste Italiane SpA

(Case C-284/18)

(2018/C 249/17)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant (and respondent in the cross-appeal): Equitalia centro SpA

Respondent (and appellant in the cross-appeal): Poste Italiane SpA

Questions referred

1. Is a rule such as that provided for in the combined provisions of Article 10(3) decreto legislativo (Legislative Decree) No 504/1992 and Article 2(18)-(20) of legge (Law) No 662/1996 according to which a reservation of activity (monopoly) in favour of Poste Italiane s.p.a. is set up and maintained — even following the privatisation of the ‘bancoposta’ postal banking services provided by Poste Italiane s.p.a. — in relation to the management of the postal current account intended for the collection of the local tax ICI, contrary to Articles 14 TFEU (formerly Article 7D of the Treaty, then Article 16 TEC) and 106(2) TFEU (formerly Article 90 of the Treaty, then Article 86(2) TEC) and to classification as a service of general economic interest (SGEI), taking into account the evolution of State regulation in the area of tax collection which, since 1997 at least, allows taxpayers and local tax authorities to make payments and collections through the banking system?
2. If the answer to the first question is that the establishment of the statutory monopoly must be recognised as meeting the SGEI criteria, is a rule such as that resulting from the combined provisions of Article 10(3) decreto legislativo (Legislative Decree) No 504/1992, Article 2(18)-(20) of legge (Law) No 662/1996 and Article 3(1) decreto del Presidente della Repubblica (Presidential Decree) No 144/2001, which grant Poste Italiane s.p.a. the power unilaterally to determine the level of the fee, payable by the agent collecting the ICI taxes, that is applied to each management operation carried out on the postal current account in the name of the agent, contrary to Articles 106(2) TFEU (formerly Article 90 of the Treaty, then Article 86(2) TEC) and 107(1) TFEU (formerly Article 92 of the Treaty, then Article 87 TCE), according to the interpretation of such rules provided by the Court of Justice with reference to the requirements for distinguishing a lawful measure — compensatory of public service obligations — from unlawful State aid (judgment of the Court of Justice of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00), regard being had to the fact that Poste Italiane spa, by board decision No 57/1996, set that fee at 100 Lire for the period from 1 April 1997 to 31 May 2001 and at EUR 0,23 for the period from 1 June 2001?
3. Is a set of rules such as that put in place by Article 2(18)-(20) of legge (Law) No 662/1996, Article 3(1) decreto del Presidente della Repubblica (Presidential Decree) No 144/2001 and Article 10(3) decreto legislativo (Legislative Decree) No 504/1992, necessarily subjecting the agent to payment of the fee as unilaterally determined and/or varied by Poste Italiane s.p.a., contrary to Article 102, first paragraph, TFEU (formerly Article 86 of the Treaty, then Article 82(1) TEC), as interpreted by the Court of Justice (see judgments of the Court of Justice of 13 December 1991, Case C-18/88, *GB-Inno-BM*, of 25 June 1998, Case C-203/96, *Dusseldorp and Others*, and of 17 May 2001, Case C-340/99, *TNT TRACO*), since the agent is not otherwise able to withdraw from the postal current account contract without infringing the obligation laid down in Article 10(3) Decreto Legislativo No 504/1992 and, as a consequence, infringing its ICI-collection obligations in regard to the local tax authority?