



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

22 January 2015*

(Reference for a preliminary ruling — Articles 49 TFEU and 56 TFEU — Freedom of establishment — Freedom to provide services — Betting and gambling — National rules — Reorganisation of the licensing system through the alignment of licence expiry dates — New call for tenders — Licences with a period of validity shorter than that of previous licences — Restriction — Overriding reasons in the public interest — Proportionality)

In Case C-463/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Italy), made by decision of 2 July 2013, received at the Court on 23 August 2013, in the proceedings

Stanley International Betting Ltd,

Stanleybet Malta Ltd

v

Ministero dell’Economia e delle Finanze,

Agenzia delle Dogane e dei Monopoli di Stato,

intervening parties:

Intralot Italia SpA,

SNAI SpA,

Galassia Game Srl,

Eurobet Italia Srl unipersonale,

Lottomatica Scimmesse Srl,

Sisal Match Point SpA,

Cogetech Gaming Srl

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh, C. Toader (Rapporteur), E. Jarašiūnas and C.G. Fernlund, Judges,

* Language of the case: Italian.

Advocate General: N. Wahl,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 22 October 2014,

after considering the observations submitted on behalf of:

- Stanley International Betting Ltd, by D. Agnello and M. Mura, avvocati,
- Stanleybet Malta Ltd, by F. Ferraro, R.A. Jacchia, A. Terranova and D. Agnello, avvocati,
- SNAI SpA, by A. Fratini and F. Filpo, avvocati,
- Lottomatica Scommesse Srl, by A. Vergerio di Cesana, C. Benelli and G. Fraccastoro, avvocati,
- Sisal Match Point Spa, by L. Medugno, A. Auteri, G. Fraccastoro and F. Vetrò, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Fiorentino, avvocato dello Stato, and by I. Volpe, expert,
- the Belgian Government, by J.-C. Halleux and L. Van den Broeck, acting as Agents, assisted by P. Vlaemminck, advocaat,
- the Portuguese Government, by L. Inez Fernandes, acting as Agent,
- the European Commission, by E. Montaguti and H. Tserepa-Lacombe, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 49 TFEU and 56 TFEU and the principles of equal treatment and effectiveness.
- 2 The request has been made in proceedings between Stanley International Betting Ltd ('Stanley International Betting') and Stanleybet Malta Ltd ('Stanleybet Malta'), on the one hand, and, the Ministero dell'Economia e delle Finanze (the Ministry for the Economy and Finances) and the Agenzia delle Dogane e dei Monopoli di Stato (the Customs and State Monopolies Authority), on the other, concerning the organisation of a fresh call for tenders for the award of licences with a period of validity shorter than that of licences awarded previously.

Legal context

- 3 Italian legislation essentially provides that participation in the organising of betting and gambling, including the collection of bets, is subject to possession of a licence and a police authorisation.
- 4 Until amendments were made to the relevant legislation in 2002, operators constituted in the form of limited liability companies whose shares were quoted on the regulated markets could not obtain a betting or gambling licence. As a consequence, those operators were excluded from the tendering

procedures for the award of licences which were held in 1999. In the judgment in *Placanica and Others* (C-338/04, C-359/04 and C-360/04, EU:C:2007:133), inter alia, the Court declared that exclusion incompatible with Articles 43 EC and 49 EC.

- 5 Decree-Law No 223 of 4 July 2006 laying down urgent measures for economic and social revival, for the control and rationalisation of public expenditure, and providing for initiatives in relation to tax revenue and the combating of tax evasion, converted into statute by Law No 248 of 4 August 2006 (GURI No 18 of 11 August 2006) reformed the betting and gambling sector in Italy, with the aim of bringing it into line with the requirements under European Union ('EU') law.
- 6 Following, inter alia, the judgment in *Costa and Cifone* (C-72/10 and C-77/10, EU:C:2012:80), the betting and gambling sector was reformed by Decree-Law No 16 of 2 March 2012 laying down urgent provisions related to fiscal simplification, improving effectiveness and reinforcing monitoring procedures (GURI No 52 of 2 March 2012, p. 1), converted, after amendment, into statute by Law No 44 of 26 April 2012 (GURI No 99 of 28 April 2012, Ordinary Supplement No 85, p. 1 et seq.; consolidated text, p. 23 et seq., 'Decree-Law No 16').
- 7 Article 10(9g) and (9h) of Decree-Law No provides:

'9g As part of a reform of the legislation relating to public gambling, including that relating to the collection of bets on sporting events, including horse racing, and non-sporting events, the provisions of the present paragraph have the aim of promoting that reorganisation, through an initial alignment of the expiry dates of the licences for the collection of the bets in question, while observing the requirement that the national rules on the selection of persons who, on behalf of the State, collect bets on sporting events, including horse racing, and non-sporting events, are adjusted to the principles laid down by the judgment [in *Costa and Cifone*, EU:C:2012:80]. To that end, in view of the impending expiry of a group of licences for the collection of those bets, the Independent Authority for the Administration of State Monopolies shall immediately initiate, and in any event by 31 July 2012 at the latest, a call for tenders for the selection of persons who are to collect such bets with due regard, at the very least, to the following criteria:

- (a) the possibility of participation for persons already carrying out an activity related to the collection of bets in one of the States of the European Economic Area, as a result of having their legal and operational seat there, on the basis of a valid and effective authorisation issued under the provisions in force in the law of that State and who fulfil the requirements as to reputation, reliability and financial capacity specified by the Independent Authority for the Administration of State Monopolies ...;
- (b) the award of a licence, expiring on 30 June 2016, for the collection, exclusively in a physical network, of bets on sporting events, including horse racing, and non-sporting events, from agencies, up to a maximum of 2 000, whose sole activity is the marketing of public gambling products, without restriction as to the minimum distances between those agencies or with respect to other collection points, which are already active, for identical bets;
- (c) provision, as a price component, for a basic contract value of EUR 11 000 for each agency;
- (d) the conclusion of a licence contract whose content is consistent with any other principle laid down by the judgment [in *Costa and Cifone*, EU:C:2012:80] and with the compatible national provisions in force regarding public gambling;
- (e) the possibility of managing agencies in any municipality or province, without numerical limits on a territorial basis or more favourable conditions compared to licensees who are already authorised to collect identical bets or which may, in any event, be favourable to those licensees;

(f) the lodging of deposits ...;

9h The licensees who are to collect bets referred to in paragraph 9g, whose contracts expire on 30 June 2012, shall continue their collection activities until the date of the conclusion of the licence contracts awarded in accordance with the above paragraph. ...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 8 Stanley International Betting and Stanleybet Malta brought an appeal before the Consiglio di Stato (Council of State) seeking variation of the judgment of the Tribunale amministrativo regionale del Lazio (Lazio Regional Administrative Court) No 1884/2013.
- 9 That judgment concerned a call for tenders for the award of 2 000 licences for the joint conduct of public gambling activities by means of the establishment and management of a physical network of betting shops, under Article 10(9g) and (9h) of Decree-Law No 16 ('the call for tenders').
- 10 Stanley International Betting, a company registered in the United Kingdom, and its Maltese subsidiary, Stanleybet Malta, are active in Italy, through agents known as 'Data Transmission Centres' ('DTCs'), which are located in premises open to the public and in which the owners of the DTCs place a computer link at the disposal of gamblers and transmit the data relating to each bet to the appellants in the main proceedings.
- 11 That activity has been carried out in Italy through the DTC owners for about 15 years on the contractual basis of a mandate without any licence or police authorisation.
- 12 As they consider that they were excluded from previous calls for tenders in 1999 and 2006, the appellants in the main proceedings seek annulment of the new call for tenders on the ground that it is discriminatory and contrary to the judgments in *Placanica and Others* (EU:C:2007:133) and *Costa and Cifone* (EU:C:2012:80) and request the organisation of a fresh call for tenders.
- 13 The appellants in the main proceedings complain, in particular, of discrimination as a result of the validity period of the new licences which is 40 months and therefore significantly shorter than the validity period of between 9 and 12 years of previous licences, and as a result of the exclusive nature of the marketing of public gambling products and the prohibition on the transfer of licences.
- 14 They claim in particular that those restrictive conditions do not allow them to participate effectively in the call for tenders, in particular in the light of the penalties associated with the grounds for revocation, suspension and withdrawal of licences, such as the loss of the deposit in the event of a withdrawal and the transfer, without charge, upon expiry of the licence, of the right to use the tangible and intangible assets which they own and which constitute their network for the management and collection of bets.
- 15 The appellants in the main proceedings submitted that they are at significant risk of the withdrawal or revocation of any licences acquired owing to the litigation involving the DTCs through which they operate in Italy. Accordingly, they take the view that they were placed in the position of having to choose between abandoning their activity in Italy or running the risk of the withdrawal of the licences which they may have acquired and the loss of the deposits paid.
- 16 The Tribunale amministrativo regionale del Lazio dismissed the action, which it deemed inadmissible because the appellants in the main proceedings had not taken part in the call for tenders which they were seeking to annul. Following that judgment, they lodged an appeal with the Consiglio di Stato.

- 17 The Consiglio di Stato states that, whilst it is true that the contested provisions relating to the new licences are stricter and more detailed than those provided for previously, they are, however, no longer unclear, are directed at all participants, including past licence holders, and also apply to existing relationships, so that it is difficult to understand what the alleged ‘benefit’ favouring past licence holders is.
- 18 Furthermore, about 120 other participants in the call for tenders in question, including major foreign groups which are not part of existing operators and which have a similar operational structure to that of the appellants in the main proceedings, make no criticism of that call for tenders.
- 19 In addition, according to that court, although the new licences have a shorter period of validity than those previously awarded, they are, however, also less onerous and less economically restrictive for the aspiring licence holder.
- 20 Accordingly, while expressing its view that Articles 49 TFEU and 56 TFEU do not preclude the national provisions at issue, the referring court nevertheless considers it necessary to refer questions to the Court for a preliminary ruling in that regard.
- 21 In those circumstances, the Consiglio di Stato decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘1. Are Article 49 TFEU et seq. and Article 56 TFEU et seq. and the principles laid down by the Court ... in the judgment [in *Costa and Cifone* (EU:C:2012:80)] 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 TFEU et seq. and Article 56 TFEU et seq. and the principles laid down by the Court ... in the judgment [in *Costa and Cifone* (EU:C:2012:80)] 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?’

Consideration of the questions referred for a preliminary ruling

The jurisdiction of the Court

- 22 Lottomatica Scommesse Srl essentially disputes the jurisdiction of the Court. It submits that, in the light of the discretion enjoyed by Member States, it is not for the Court to rule on whether the determination of a shorter or longer period of validity for licences with respect to betting and gambling is compatible with Articles 49 TFEU and 56 TFEU. The question of that compatibility falls within the jurisdiction of national courts and not that of the Court.
- 23 In that regard, it is clear that that company does not dispute that the Italian legislation at issue must comply with Articles 49 TFEU and 56 TFEU. However, the scope of Articles 49 TFEU and 56 TFEU is a matter for the Court to assess and the referring court specifically seeks an interpretation of those articles in order to determine whether the period of validity of those licences is consistent with those articles.
- 24 Consequently, it must be held that the Court has jurisdiction to answer the questions referred for a preliminary ruling.

Admissibility

- 25 The Italian Government considers that the request for a preliminary ruling must be declared inadmissible, since the order for reference does not set out the factual context sufficiently to allow the Court to provide a useful answer.
- 26 In that regard, it should be noted that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment in *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 27 and the case-law cited).
- 27 It is also settled case-law that the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for that court to define the factual and legal context of the questions it is asking or, at the very least, to explain the factual circumstances on which those questions are based. The order for reference must also set out the precise reasons why the national court is unsure as to the interpretation of EU law and considers it necessary to refer a question to the Court for a preliminary ruling (judgment in *Mulders*, C-548/11, EU:C:2013:249, paragraph 28 and the case-law cited).
- 28 The order for reference sets out in sufficient detail the legal and factual context of the disputes in the main proceedings and the information provided by that court makes it possible to determine the scope of the questions referred.
- 29 In those circumstances, the request for a preliminary ruling must be held to be admissible.

Substance

- 30 By its first and second questions, which it is appropriate to examine together, the referring court essentially asks whether Articles 49 TFEU and 56 TFEU and the principles of equal treatment and effectiveness must be interpreted as precluding national legislation in the field of betting and gambling which provides for the organisation of a fresh call for tenders for the award of licences with a period of validity shorter than that of licences awarded previously because of the reorganisation of the system by way of an alignment of licence expiry dates.
- 31 First, it is necessary to consider whether the national legislation at issue in the main proceedings, by setting a shorter period of validity for the new licences than for previous licences, is consistent with the principles of equal treatment and effectiveness.
- 32 In that regard it should be noted that, although in the judgment in *Costa and Cifone* (EU:C:2012:80), the Court also examined the Italian legislation's compliance with the obligation of transparency and the principle of legal certainty, such an examination is not necessary in the present case because, according to the referring court, the provisions at issue in the main proceedings are sufficiently clear and it can no longer be alleged that they were not drawn up in a clear, precise and unequivocal manner.

33 Secondly, it is appropriate to assess whether the reason given by the national authorities in order to justify the shorter period of validity of the new licences, in particular the reorganisation of the licensing system through the alignment of licence expiry dates, is capable of justifying a possible restriction on the freedoms guaranteed by the Treaties.

Compliance with the principles of equal treatment and effectiveness

34 In the case at issue in the main proceedings, the applicants are seeking the revocation of existing licences, the annulment of the last call for tenders and the organisation of another call for tenders on a non-discriminatory basis. They submit that the Italian authorities had no right to make the choice between the revocation and redistribution of existing licences and the award by public tender of an adequate number of new licences and that, in any event, the choice made infringes the principles of equal treatment and effectiveness.

35 However, as the Court has already held, both the revocation and redistribution of the old licences and the award by public tender of an adequate number of new licences could be appropriate courses of action. In principle, those courses of action are both capable of remedying, at least as regards the future, the unlawful exclusion of certain operators, by allowing them to engage in their activity on the market under the same conditions as existing operators (judgment in *Costa and Cifone*, EU:C:2012:80, paragraph 52).

36 It follows that national authorities are entitled to choose between those approaches by reason of the discretion enjoyed by Member States in a non-harmonised area such as betting and gambling, a discretion which is, however, circumscribed by the principles of equivalence and effectiveness.

37 In accordance with the established case law of the Court, it is for the national legal order to lay down detailed procedural rules to ensure the protection of the rights that operators derive from the direct effect of EU law, provided, however, that those detailed rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness) (judgments in *Placanica and Others*, EU:C:2007:13, paragraph 63, and *Costa and Cifone*, EU:C:2012:80, paragraph 51).

38 In addition, in order to be consistent with the principle of equal treatment and to meet the obligation of transparency which flows from that principle, an authorisation scheme for betting and gambling must be based on objective, non-discriminatory criteria known in advance, in such a way as to circumscribe the exercise by the authorities of their discretion so that it is not used arbitrarily (judgment in *Garkalns*, C-470/11, EU:C:2012:505, paragraph 42).

39 As the Court has already held, the very fact that the existing operators were able to commence their activities several years earlier than the operators which were unlawfully excluded, and have accordingly been able to establish themselves on the market with a certain reputation and a measure of customer loyalty, confers on them an unfair competitive advantage. To grant the existing operators 'even greater' competitive advantages over the new licence holders has the consequence of entrenching and exacerbating the effects of the unlawful exclusion of the latter from the tendering procedures, and accordingly constitutes a breach of the principle of equal treatment. Such a measure also makes it excessively difficult to exercise the rights conferred by EU law on operators unlawfully excluded from the last call for tenders and, as a consequence, is inconsistent with the principle of effectiveness (see judgment in *Costa and Cifone*, EU:C:2012:80, paragraph 53).

40 It follows that, in order to be consistent with the principles of equal treatment and effectiveness, national legislation should not give the existing operators 'even greater' competitive advantages over the new licence holders.

- 41 As regards compliance with the principle of equal treatment, it should be noted that, according to the referring court, the provisions at issue in the case in the main proceedings are no longer unclear, apply to all participants, including past licence holders, and also apply to existing licences without giving existing operators 'even greater' competitive advantages. While it is true that that assessment is not shared by the appellants in the main proceedings, it should in that regard be noted that it is not for the Court, in the context of a reference for a preliminary ruling, to give a ruling on the interpretation of provisions of national law or to decide whether the interpretation given by the referring court of those provisions is correct (see, inter alia, judgment in *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 48 and the case-law cited).
- 42 Furthermore, account should also be taken of the fact that, as is apparent from the order for reference, the appellants in the main proceedings have been conducting their operations in Italy through DTCs for approximately 15 years without holding any licence or police authorisation, with the result that they may not truly be described as 'new entrants on the market'.
- 43 As regards the principle of effectiveness, it should be pointed out that, according to the referring court, although the new licences have a shorter period of validity than those previously awarded, they are, however, also less onerous and less economically restrictive for the aspiring licence holder.
- 44 It therefore appears that in the case at issue in the main proceedings, compliance with the principles of equal treatment and effectiveness is assured.

The justification for a restriction of the freedoms guaranteed by Articles 49 TFEU and 56 TFEU

- 45 It is settled case-law that all measures which prohibit, impede or render less attractive the exercise of the freedoms guaranteed by Articles 49 TFEU and 56 TFEU must be regarded as restrictions on the freedom of establishment and/or the freedom to provide services (see, inter alia, judgment in *Duomo Gpa and Others*, C-357/10 to C-359/10, EU:C:2012:283, paragraphs 35 and 36 and the case-law cited).
- 46 Consequently, legislation of a Member State, such as that at issue in the main proceedings, which makes the exercise of an economic activity subject to a licensing requirement and which specifies situations in which the licence is to be withdrawn, constitutes an obstacle to the freedoms thus guaranteed by Articles 49 TFEU and 56 TFEU (see judgment in *Costa and Cifone*, EU:C:2012:80, paragraph 70).
- 47 It is necessary, however, to determine whether such a restriction may be allowed as a derogation, on grounds of public policy, public security or public health, as expressly provided for under Articles 51 TFEU and Article 52 TFEU, which are also applicable in the area of freedom to provide services by virtue of Article 62 TFEU, or justified, in accordance with the case-law of the Court, by overriding reasons in the public interest (judgment in *Digibet and Albers*, C-156/13, EU:C:2014:1756, paragraph 22 and the case-law cited).
- 48 Thus, it is settled case-law that restrictions on betting and gambling may be justified by overriding reasons in the public interest, such as consumer protection and the prevention of both fraud and incitement to squander money on gambling (judgment in *Digibet and Albers*, EU:C:2014:1756, paragraph 23 and the case-law cited).
- 49 Moreover, as regards the Italian legislation relating to betting and gambling, the Court has held previously that the objective of combating criminality linked to betting and gambling is capable of justifying restrictions on fundamental freedoms under those rules (see judgment in *Biasci and Others*, C-660/11 and C-8/12, EU:C:2013:550, paragraph 23).

- 50 In the present case, as regards the classification as an ‘overriding reason in the public interest’ of the reason given by the national authorities in order to justify the shorter period of validity of the new licences, namely the reorganisation of the licensing system through the alignment of licence expiry dates, it is true that, according to settled case-law, considerations of an administrative nature cannot justify derogation by a Member State from the rules of EU law. That principle applies with even greater force where the derogation in question amounts to preventing or restricting the exercise of one of the fundamental freedoms of EU law (see judgment in *Arblade and Others*, C-369/96 and C-376/96, EU:C:1999:575, paragraph 37 and the case-law cited).
- 51 However, it is appropriate to bear in mind the specific nature of legislation on betting and gambling, which is one of the areas in which there are significant moral, religious and cultural differences between the Member States. In the absence of harmonisation on the issue at EU level, it is for each Member State to determine in those areas, in accordance with its own scale of values, what is required in order to ensure that the interests in question are protected, since the identification of the objectives which are in fact pursued by the national legislation falls, in the context of a case referred to the Court under Article 267 TFEU, within the jurisdiction of the national court (judgment in *Digibet and Albers*, EU:C:2014:1756, paragraph 24 and the case-law cited).
- 52 Accordingly, in that specific field, national authorities enjoy a wide measure of discretion when determining what is required in order to ensure consumer protection and the preservation of order in society and — provided that the conditions laid down in the Court’s case-law are in fact met — it is for each Member State to assess whether, in the context of the legitimate aims which it pursues, it is necessary to prohibit, wholly or in part, betting and gambling or only to restrict them and, to that end, to lay down more or less strict supervisory rules (see judgment in *Digibet and Albers*, EU:C:2014:1756, paragraph 32 and the case-law cited).
- 53 It follows that, in this particular context, the reorganisation of the licensing system through the alignment of licence expiry dates may, by providing for a shorter period of validity for the new licences than that for the licences awarded previously, contribute to a coherent pursuit of the legitimate objectives of reducing gambling opportunities or combating criminality linked to betting and gambling and may also satisfy the proportionality requirements.
- 54 If, in future, the national authorities wanted to reduce the number of licences granted or exercise stricter control over activities in the field of betting and gambling, such measures would be facilitated if all the licences were awarded for the same duration and expired at the same time.
- 55 In the light of all the foregoing considerations, the answer to the questions referred is that Articles 49 TFEU and 56 TFEU and the principles of equal treatment and effectiveness must be interpreted as not precluding national legislation such as that at issue in the main proceedings which provides for the organisation of a fresh call for tenders for the award of licences with a period of validity shorter than that of licences awarded previously because of the reorganisation of the system by way of an alignment of licence expiry dates.

Costs

- 56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Articles 49 TFEU and 56 TFEU and the principles of equal treatment and effectiveness must be interpreted as not precluding national legislation such as that at issue in the main proceedings which provides for the organisation of a fresh call for tenders for the award of licences with a period of validity shorter than that of licences awarded previously because of the reorganisation of the system by way of an alignment of licence expiry dates.

[Signatures]