



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-72/10 Marcello Costa and
C-77/10 Ugo Cifone

EU law precludes national betting and gaming legislation requiring a minimum distance between betting outlets, where the aim is to protect the market position of existing operators

The Court of Justice analyses the measures taken by Italy to remedy the exclusion of some betting and gaming operators, which the Court declared unlawful in 2007

Under the Italian legislation currently in force, the collecting and managing of bets may be engaged in only by the holder of a licence, granted under a public tendering procedure, and police authorisation. Any infringement of that legislation carries criminal penalties.

In 1999, following public tendering procedures, the Italian authorities granted a significant number of licences for sports betting and betting on horse racing. Among the parties excluded from the tendering procedures were operators in the form of companies whose shares were quoted on the regulated markets. In 2007 the Court of Justice ruled that this exclusion was unlawful¹.

Starting in 2006, Italy introduced reforms in the betting and gaming sector, with the aim of bringing it into line with the requirements under EU law. In particular, Italy put out to tender a significant number of new licences, one of the requirements being that a minimum distance had to be observed between the new outlets and those for which a licence was awarded following the 1999 tendering procedure.

Mr Costa and Mr Cifone, managers of Data Transmission Centres (DTCs) linked to Stanley International Betting Ltd, an English company, were accused of the illicit operation of betting activities, because they had been collecting bets without meeting the requirements under the Italian legislation. Stanley operates in Italy exclusively through (over 200) agencies, in the form of DTCs. It had been unlawfully excluded from the 1999 tendering procedure and had decided not to take part in the 2006 procedure because the Italian authorities had not given it satisfactory answers to its requests for clarification of the new legislation.

The Corte Suprema di Cassazione (Supreme Court of Cassation, Italy), which is hearing those cases, found that there was **uncertainty as to whether the Italian legal framework was compatible with the freedom of establishment and the freedom to provide services, as guaranteed under EU law. The Italian legal framework had features which appeared to it to be discriminatory**. Against that background, the Italian court decided to refer a number of questions to the Court of Justice for a preliminary ruling.

First, the Court of Justice examines the provision of Italian law under which new licence holders must, when setting up, observe a minimum distance from existing licensees. The Court holds that the effect of that measure is to protect the market position acquired by operators which are already established, to the detriment of new licence holders, which are compelled to open premises in less commercially attractive locations than those occupied by the former. Such a measure therefore entails discrimination against the operators which were excluded from the 1999 tendering procedure.

¹ Joined Cases [C-338/04](#), [C-359/04](#) and [C-360/04](#) *Placanica and Others*, see also Press Release No [20/07](#).

Under EU law, it is possible for such unequal treatment to be justified by overriding reasons in the public interest. The Italian Government put forward two such reasons. The first relates to the purported aim of preventing consumers who live close to betting establishments from being exposed to an excess of supply. The Court rejects that argument because the betting and gaming sector in Italy has long been marked by a policy of expanding activity with the aim of increasing tax revenue. Secondly, Italy claimed that the objective of the legislation is to counter the risk that consumers living in less well served areas might opt for clandestine betting or gaming. In that regard, the Court points out that the means used in order to achieve the purported objective must be consistent and systematic. In the circumstances under consideration, the rules on minimum distances were imposed, not on licence holders already established on the market, but on new licence holders, which means that the only operators to be placed at a disadvantage as a result would be the new licence holders.

In any event, **a national system which requires minimum distances between outlets would be justifiable only if it did not have as its true objective the protection of the market position of the existing operators**, a matter for the national court to determine. Moreover, it is for the Italian court to determine also whether the obligation to observe minimum distances, which precludes the establishment of additional outlets in densely-populated areas, is really an appropriate way of attaining the purported objective and whether it indeed results in new operators choosing to set up in less populated areas, thereby ensuring nationwide coverage.

Secondly, the Court examines the Italian legislation under which a licence must be withdrawn (with forfeiture of the financial guarantees arranged in order to obtain it) where the licensee or a director of the licensee has marketed unauthorised gambling involving offences 'liable to breach the relationship of trust with the State Monopolies Board'.

The Court declares that the principles of freedom of establishment and the freedom to provide services preclude the imposition of penalties on persons (such as Mr Costa and Mr Cifone) linked to an operator (such as Stanley) which has been excluded from a tendering procedure in breach of EU law. That also applies in the case of the new tendering procedure intended to remedy the operator's unlawful exclusion, if that new procedure has none the less failed to achieve that objective, which it will be for the national court to verify.

Furthermore, the Court holds that the conditions and detailed rules of a tendering procedure and, in particular, **provisions concerning the withdrawal of licences granted must be drawn up in a clear, precise and unequivocal manner**, which is not the case in the circumstances under consideration. In principle, however, such matters are for the national court to verify.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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