



**Under EU law on freedom of establishment and freedom to provide services,
economic operators cannot be required to have a share capital of €10 million in
order to be entitled to collect local taxes**

The Italian provision goes beyond what is necessary to protect public authorities against possible non-performance of obligations of the holders of concessions for the collection of local revenue

Italian legislation on the reorganisation of local taxation¹ authorises the provinces and municipalities to organise their own revenues, including taxes, by means of regulations. Local authorities may choose to award the tasks of assessment and collection of taxes and all local revenues to third party operators. In that case, those activities are awarded by means of concessions which comply with EU legislation on the tendering of the management of local public services.

The concession holders first collect the tax revenue covered by the contracts and then, after retaining a 'collection charge', pay the amounts in question over to the public authorities at the end of each quarter. The profit of the concession holders is also generated by financial market transactions carried out using the funds which they hold.

Italian legislation² also provides that private companies seeking to carry out those activities must be entered in a register of private undertakings authorised to perform activities relating to the assessment and collection of taxes. They must have a fully paid-up share capital of €10 million, whereas companies in which a majority of the share capital is in public ownership are not subject to that condition. The award of those services to operators which fail to satisfy that financial requirement is null and void. Such operators may not be awarded new contracts, and may not participate in tendering procedures initiated for that purpose, unless they increase their share capital accordingly³.

The tribunale amministrativo regionale per la Lombardia (Regional Administrative Court, Lombardy) is required to rule in several sets of proceedings between private companies and regional municipalities in Lombardy. Those private undertakings submitted tenders for the award of concessions but were excluded from the procedure because they did not have a fully paid-up share capital of €10 million.

The Italian court has referred questions to the Court of Justice concerning the compatibility of the Italian legislation with European Union law and, in particular, with the rules on freedom to provide services and freedom of establishment.

In its judgment delivered today, the Court's reply is that the Italian legislation **amounts to a restriction on freedom of establishment and freedom to provide services** inasmuch as it contains a condition relating to minimum share capital and forces private operators wishing to pursue those activities to incorporate and to have a fully paid-up share capital of €10 million.

¹ Legislative Decree No 446 of 15 December 1997. In 2005 the Commission initiated infringement proceedings in respect of an earlier version of this Legislative Decree. These proceedings were discontinued in 2007.

² Decree-Law No 185 of 29 November 2008.

³ It is apparent from the written observations of the Italian Government that these rules were reformulated by Article 3a of Decree-Law No 40 of 25 March 2010.

Consequently, such a provision impedes or renders less attractive the freedom of establishment and the freedom to provide services.

The Court then goes on to examine whether such a restriction may be justified by overriding reasons in the public interest.

The only ground of justification raised before the Court is the need to protect public authorities against possible non-performance by the concession holder, in the light of the high overall value of the contracts which have been awarded to it. In practice, the concession holders, by first collecting the tax revenue, hold and deal with millions of euros which they are required to pay over to the public authorities.

The Court does not rule out the possibility that such an **objective may constitute an overriding reason in the public interest** - and not a reason that is purely economic in nature. However, it notes that **a restriction of the fundamental freedoms may be justified only if the relevant measure is appropriate for ensuring the attainment of the legitimate objective pursued and does not go beyond what is necessary to attain that objective.**

According to the referring court, however, other provisions are capable of providing adequate protection for public authorities; proof, on the part of the operator concerned, of its technical and financial capacity, creditworthiness and solvency, or, in addition, the application of minimum thresholds for share capital that vary depending on the value of the contracts actually awarded to the concession holder.

Consequently, the Court finds that, as **the Italian provision goes beyond the objective of protecting the public authorities** against non-performance by concession holders, it contains **disproportionate, and therefore unjustified, restrictions of the fundamental freedoms.**

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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