



Press and Information

Court of Justice of the European Union

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Judgment in Case C-419/14

WebMindLicenses kft. v Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vám Főigazgatóság

The transfer of know-how enabling operation of the erotic site livejasmin.com from Hungary to Madeira where a lower rate of VAT applies does not amount, in itself, to an abusive practice

On the other hand, that transfer amounts to an abusive practice if its objective is to conceal the fact that the site is in fact operated from Hungary

WebMindLicenses (WML) is a Hungarian company owned by the Hungarian businessman György Gattyán. By a licensing agreement entered into in 2009, WML made available to Lalib, a company established in Madeira (Portugal), know-how enabling the website 'livejasmin.com' to be operated. That site provides erotic interactive audiovisual services in which individuals throughout the world take part in real time.

Following a tax inspection of WML, the Hungarian tax authorities took the view that the transfer of WML's know-how to Lalib did not correspond to a genuine economic transaction and that that know-how was in reality exploited by WML from Hungary. Accordingly, the Hungarian tax authorities considered in particular that the VAT relating to exploitation of the know-how should have been paid in Hungary, and not in Portugal, and therefore required WML to pay various sums, including 10 293 457 000 Hungarian forints (HUF) (roughly € 33 145 618) in VAT, HUF 7 940 528 000 (roughly € 25 568 574) by way of a fine and HUF 2 985 262 000 (roughly € 9 612 602) by way of penalties for late payment.

WML brought an action against the decision of the tax authorities before the Fővárosi Közigazgatási és Munkaügyi bíróság (Administrative and Labour Court, Budapest, Hungary). That court has asked the Court of Justice what circumstances should be taken into account in assessing whether the contractual construction used to transfer from Hungary to Portugal the know-how enabling the site concerned to be operated constitutes an abusive practice. It also seeks to ascertain whether the Charter of Fundamental Rights of the European Union permits the tax authorities of the Member States to gather and use evidence obtained by secret means in the context of a criminal procedure.

In today's judgment, the Court replies, firstly, that in order to find that the licensing agreement in question arises from an abusive practice whose objective is to benefit from a lower rate of VAT in Madeira, the Hungarian court must establish that that agreement constitutes a wholly artificial arrangement designed to conceal the fact that the services concerned were in fact supplied by WML from Hungary. In order to determine the actual place of the supply of those services, objective factors, such as the physical existence of Lalib in terms of premises, staff and equipment, must be taken into consideration.

On the other hand, the fact that the manager and sole shareholder of WML was the creator of the know-how at issue and that he exercised influence or control over its development and exploitation does not appear decisive in itself. Likewise, the fact that management of the financial transactions, staff and technical instruments necessary for the supply of those services was carried out by subcontractors and the reasons which may have led WML to make its know-how available to another party instead of exploiting it itself are not in themselves sufficient to demonstrate the existence of a wholly artificial arrangement.

In any event, **the mere fact that a licensing agreement has been concluded with a company established in a Member State which applies a standard rate of VAT lower than that of the Member State in which the company granting the licence is established cannot, in the absence of other factors, be regarded as an abusive practice.**

Secondly, the Court states that **EU law does not preclude the tax authorities from being able to use evidence obtained in the context of a parallel criminal procedure that has not yet been concluded, provided that the fundamental rights guaranteed by EU law, and in particular by the Charter, are observed.** In this regard, the Court points out that the interception of telecommunications and seizure of emails, carried out in respect of WML, constitute interference with the exercise of the right to respect for private and family life, and therefore must be provided for by law and carried out in observance of the principle of proportionality.

It will be for the national court to determine whether, in this instance, those requirements have been met and whether the use by the tax authorities of the evidence obtained by those means was also authorised by law and necessary. It will also be for the national court to ascertain whether WML had the opportunity, in the context of the administrative procedure, of gaining access to that evidence and of being heard concerning it.

If the national court finds that **WML did not have that opportunity or that the evidence in question was obtained in breach of the Charter, or if the national court is not empowered to carry out that review, it must disregard that evidence, and must annul the contested decision** in the event that, as a result, it has no basis.

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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