



Court of Justice of the European Union

**PRESS RELEASE No 77/16**

Luxembourg, 14 July 2016

Judgment in Joined Cases C-458/14

Promoimpresa S.r.l. v Consorzio dei comuni della Sponda Bresciana del Lago di Garda e del Lago di Idro and Others and C-67/15 Mario Melis and Others v Comune di Loiri Porto San Paolo and Others

Press and Information

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**EU law precludes concessions for the exercise of tourist and leisure-orientated business activities on State-owned maritime and lakeside property from being extended automatically without any selection procedure for potential candidates**

*The extension provided for by Italian law prevents an impartial and transparent selection of candidates*

The services directive<sup>1</sup> provides specific rules on the freedom of establishment and the principles of non-discrimination and safeguarding competition. Article 12 governs the specific situation in which, due to the scarcity of available natural resources or technical capacity, the number of authorisations available for a given activity is limited. In such a situation, that article provides that the Member States may subject business activities to an authorisation scheme.

In Italy, national legislation provides for an automatic and generalised extension of the date of termination of concessions which have been granted, without a prior selection procedure, for the use of State-owned maritime and lakeside property (especially beaches) for tourist-orientated business purposes. As far as the present term is concerned, the date of termination was extended to 31 December 2020.

Despite such legislation, private operators in the tourist industry had the extension of their concessions refused by the Italian authorities. They therefore brought legal actions against those refusals. The Italian courts, before which these cases are pending, pose questions to the Court of Justice on the compatibility of the Italian legislation with EU law.

In today's judgment, the Court states, first of all, that it is for the national courts to determine, for the purposes of applying the directive, whether the Italian concessions must be subject to a limited number of authorisations<sup>2</sup> because of the scarcity of natural resources.

If the directive is applicable, the Court then states that the grant of authorisations relating to the economic exploitation of State-owned maritime and lakeside property must be subject to a selection procedure for potential candidates which must ensure full guarantees of impartiality and transparency (in particular, adequate publicity). The automatic renewal of authorisations does not allow for such a selection procedure to be organised.

Article 12 of the directive certainly allows the Member States to take into account, in establishing the selection procedure, overriding reasons relating to the public interest, such as, inter alia, the need to safeguard the legitimate expectations of the holders of authorisations so that they can recoup the cost of investments made. However, such considerations cannot justify automatic renewal where no selection procedure was organised at the time of the initial grant of the authorisations. Article 12 of the directive therefore precludes a national measure which, without any selection procedure for potential candidates, provides for the automatic extension of

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<sup>1</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, p. 36).

<sup>2</sup> The concessions at issue in the cases referred to the Court may be characterised as 'authorisations' within the meaning of Directive 2006/123.

authorisations for tourist and leisure-oriented business activities on State-owned maritime and lakeside property.

Lastly the Court makes clear, if the directive is not applicable, that where such a concession is of certain cross-border interest, the automatic extension of its award to an undertaking located in a Member State results in a difference in treatment to the detriment of undertakings located in the other Member States and potentially interested in that concession, such a difference in treatment being, in principle, inconsistent with the freedom of establishment.

The principle of legal certainty, which aims to allow concessionaires to recoup the cost of their investments, cannot be relied on in order to justify such a difference in treatment in so far as the concessions were awarded when it had already been established that type of contract (which is of certain cross-border interest) was subject to a duty of transparency.

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**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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