



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-591/15

The Queen, on the application of:

The Gibraltar Betting and Gaming Association Limited v Commissioners for

Her Majesty's Revenue and Customs

Her Majesty's Treasury

Advocate General Szpunar considers that the UK and Gibraltar are a single Member State for the purposes of the freedom to provide services

The Gibraltar Betting and Gaming Association (the 'GBGA') is a trade association whose members are primarily Gibraltar-based gambling providers who provide remote gaming services to customers in the UK and elsewhere.

In 2014 the UK adopted a new tax regime (the 'New Tax Regime') for certain gambling duties, requiring gambling services providers to pay a gaming duty in respect of all remote games of chance placed with them by UK consumers, regardless of the tax paid in their own jurisdiction. This New Tax Regime replaced the previous taxation regime under which only service providers established in the UK were charged gambling duties on their gross gambling profits from their supply of gaming services to customers worldwide.

The GBGA has challenged the New Tax Regime before the High Court of England and Wales on the basis that the tax is contrary to the freedom to provide services enshrined under Article 56 of the Treaty on the Functioning of the European Union. Her Majesty's Revenue and Customs (the Defendant in the proceedings) argues that the GBGA has no enforceable EU rights as the provision of services between Gibraltar and the UK is not caught by EU law. In any event, as an indistinctly applicable tax measure, the new regime cannot be said to be a restriction of the freedom to provide services.

The High Court asks the Court of Justice whether, for the purposes of the freedom to provide services, Gibraltar and the UK are to be treated as if they were part of a single Member State or whether, with respect to the freedom to provide services, Gibraltar has the constitutional status of a separate territory to the UK so that the provision of services between the two is to be treated as intra-EU trade.

In today's Opinion, **Advocate General Maciej Szpunar takes the view that, for the purposes of the freedom to provide services, Gibraltar and the UK are to be treated as one entity.**

First, the Advocate General takes the view that while it is clear from the Treaties that EU law does apply to Gibraltar, they are silent on the relationship between the UK and Gibraltar when it comes to application of the fundamental freedoms.

Having regard to the Court's case law, the Advocate General notes that it is the UK and not Gibraltar that has assumed obligations towards the Member States in ratifying the Treaties. Logically, therefore, infringement proceedings with respect to Gibraltar are brought against the UK and Gibraltar cannot institute infringement proceedings itself. In the Advocate General's view, if the freedom to provide services were to apply between the UK and Gibraltar, this would imply, rather strangely, that the UK assumes an obligation vis-à-vis itself. The Advocate General concludes that the application of EU law to Gibraltar does not create new or supplementary rights between the UK and Gibraltar that are in addition to those flowing from UK and Gibraltar constitutional law.

Consequently, Gibraltar and the UK cannot be other than a single Member State for the purposes of the freedom to provide services.

Secondly, in the event that the Court concludes that the freedom to provide services does apply to trade between Gibraltar and the UK, the Advocate General considers that the New Tax Regime does not constitute a restriction to that freedom. The New Tax Regime imposes domestic gambling duties which apply indistinctly to service providers.

Finally, the Advocate General briefly considers whether a restriction to the freedom to provide services would be justified should the Court disagree that this is a purely internal situation and there is not a restriction on the freedom to provide services in the present case. He concludes that it is for the referring court to determine whether the grounds of justification invoked by the UK, namely to level the playing field between UK and overseas operators and to ensure that the UK can exercise proper fiscal supervision over the gaming market, are suitable and necessary to attaining what they set out to achieve.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 Opinion is published on the CURIA website on the day of delivery.

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