



Press and Information

Court of Justice of the European Union

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Judgment in Case C-593/13

Presidenza del Consiglio dei Ministri and Others v Rina Services SpA and Others

## **Italian legislation requiring certification bodies to have their registered office in Italy is contrary to EU law**

*No justification can be given for that requirement*

The Services Directive<sup>1</sup> prohibits Member States from making the exercise of a service activity in their territory subject to compliance with any discriminatory requirements based on nationality or the location of the registered office and from restricting the freedom of a provider to choose between a principal or a secondary establishment in the territory of a Member State.

SOA Rina Organismo di Attestazione SpA is a limited company with its registered office in Genoa. It provides certification services and performs technical inspections concerning the organisation and production of construction companies; 99% of that company is owned by Rina SpA (the group holding company) and 1% by Rina Services SpA. Its object is to provide UNI CEI EN 45000 quality certification services.

Those three companies brought an action challenging the Italian legislation which provides that the registered office of a certification body (Società Organismo di Attestazione) (SOA) must be situated in Italian territory, on the ground that it is unlawful.

The Presidenza del Consiglio dei Ministri (Presidency of the Council of Ministers) and other parties have argued that the activity carried out by SOAs is connected with the exercise of official authority, with the result that it is excluded from the scope of both the Directive and the TFEU.

The referring court, the Consiglio di Stato (Council of State, Italy) essentially asks the Court of Justice whether EU law permits legislation under which SOAs must have their registered office in national territory.<sup>2</sup>

In today's judgment, the Court observes that certification services fall within the scope of the Services Directive and that SOAs are commercial undertakings performing their activities in conditions of competition with no power to make decisions connected with the exercise of powers of a public authority. SOAs' certification activities are not therefore directly and specifically connected with the exercise of official authority.<sup>3</sup>

Requiring a provider's registered office to be located within national territory restricts the freedom of that provider and obliges it to have its principal establishment in national territory.

The Court points out that, with regard to freedom of establishment, the Directive sets out a list of 'prohibited' requirements (including those concerning the location of the registered office), for which no justification can be given. The Directive does not permit Member States to justify maintaining such requirements in their national legislation.

<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

<sup>2</sup> Italy invokes the need to ensure the effectiveness of the public authorities' supervision of SOAs' activities as justification for the requirement that the registered offices of SOAs be situated in national territory.

<sup>3</sup> See first paragraph of Article 51 TFEU, and, on that point, the judgment in Case [C-327/12](#) *Soa Nazionale Costruttori*.

Nor may Member States justify, on the basis of the principles set out in the FEU Treaty, what is prohibited by the Directive, since that would deprive the Directive of any practical effect and ultimately undermine the ad hoc harmonisation intended. Any justification based on the principles of the FEU Treaty would be contrary to the spirit of the Directive, which states that barriers to freedom of establishment may not be removed solely by relying on direct application of the provisions of the FEU Treaty, owing to the extreme complexity of addressing those barriers on a case-by-case basis. To concede that the 'prohibited' requirements under the directive may nevertheless be justified on the basis of the Treaty would be tantamount to reintroducing such case-by-case examination of restrictions on freedom of establishment.

Moreover, the FEU Treaty does not prevent the EU legislature, when adopting a directive such as the Services Directive giving effect to a fundamental freedom, from restricting the possibilities for Member States to derogate from it in a manner adversely affecting the proper functioning of the internal market.

In conclusion, the Court finds **that the Services Directive does not permit national legislation under which such bodies must have their registered office in national territory.**

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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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