



Press and Information

Court of Justice of the European Union

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Judgment in Case C-591/15

The Queen, on the application of The Gibraltar Betting and Gaming Association v Commissioners for Her Majesty's Revenue and Customs

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## **The principle of freedom to provide services guaranteed by EU law does not apply between Gibraltar and the UK**

*The provision of services by operators established in Gibraltar to persons established in the UK constitutes, as a matter of EU law, a situation confined in all respects within a single Member State*

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

In 2014 the UK adopted a new tax regime for certain gambling duties. The new regime, based on the 'place of consumption' principle, requires gambling services providers to pay a gaming duty in respect of all remote games of chance placed with them by UK consumers. Under the previous taxation regime, based on the 'place of supply' principle, only service providers established in the UK were charged gambling duties on their gross 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 regime is contrary to the principle of the freedom to provide services enshrined under Article 56 of the Treaty on the Functioning of the EU. 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 by operators established in Gibraltar to persons established in 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, as a matter of EU law, 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.

The Court observes, first of all, that the provisions of the Treaties apply to the European territories for whose external relations a Member State is responsible. **Gibraltar is a European territory for whose external relations a Member State, namely the UK, is responsible, so that EU law is applicable to that territory.**

Moreover, the Court notes that, under the 1972 Act of Accession, EU acts do not apply to Gibraltar in certain areas of EU law. However, freedom to provide services is not one of those exceptions. **Article 56 TFEU is therefore applicable to Gibraltar.**

Next, the Court observes that, according to its case-law, **the provisions of the Treaty on freedom to provide services do not apply to a situation which is confined in all respects within a single Member State.**

The Court concludes that, as a matter of EU law, **the provision of services by operators established in Gibraltar to persons established in the UK constitutes a situation confined in all respects within a single Member State.**

The Court confirms that **Gibraltar does not form part of the UK.** Nevertheless, it finds that **that fact is not decisive in determining whether two territories must, for the purposes of the applicability of the provisions on the four freedoms, be treated as a single Member State.**

According to the Court, **there is no factor that could justify the conclusion that relations between Gibraltar and the UK may be regarded, for the purposes of Article 56 TFEU, as akin to those existing between two Member States.** The contrary approach would be tantamount to denying the connection, recognised in EU law, between that territory and that Member State. Indeed, the UK has assumed obligations towards the other Member States under the Treaties so far as the application and transposition of EU law in the territory of Gibraltar is concerned.

Finally, the Court confirms that the conclusion that it has reached undermines neither the objective of ensuring the functioning of the internal market nor the status of Gibraltar under national constitutional law or international law. It emphasises that **its conclusion cannot be understood as undermining the separate and distinct status of Gibraltar.**

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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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