

Case C-503/23**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

7 August 2023

Referring court:

Tribunale Amministrativo Regionale per il Piemonte (Italy)

Date of the decision to refer:

26 July 2023

Applicant:

Centro di Assistenza Doganale (CAD) Mellano Srl

Defendants:

Agenzia delle Dogane e dei Monopoli – Agenzia delle Dogane – Direzione Interregionale per la Liguria [, il Piemonte e la Valle d’Aosta]

Ministero dell’Economia e delle Finanze

Subject matter of the main proceedings

Rules governing the activity of customs assistance centres (centri di assistenza doganale; CAD). Action brought by a CAD before the Tribunale amministrativo regionale per il Piemonte (Regional Administrative Court, Piedmont) against the decision of the Agenzia delle Dogane e dei Monopoli (Customs and Monopolies Authority) rejecting that CAD’s application for authorisation to carry out customs operations at a place other than that of the competent customs office.

Subject matter and legal basis of the request

Interpretation of recital 21 and Article 18 of Regulation (EU) No 952/2013, of Articles 10 and 15 of Directive 2006/123/EC, and of Articles 56 to 62 TFEU regarding territorial limitations on the CAD’s ability to operate.

Questions referred for a preliminary ruling

1. Must Article 18 of Regulation (EU) No 952/2013, in conjunction with recital 21, be interpreted as precluding a legislative provision (Article 3(3) of Ministerial Decree No 549/1992) and a national practice, which impose a restriction on the ability of the CAD – Customs assistance centres to operate at an ‘authorised place’ within the Regional / Interregional / Interprovincial directorate where they have their registered office, preventing them from expanding throughout the national territory?

2. Must Articles 10 and 15 of Directive 2006/123/EC of the European Parliament and of the Council be interpreted as precluding a legislative provision (Article 3(3) of Ministerial Decree No 549/1992) and a national practice, which impose a restriction on the ability of the CAD – Customs assistance centres to operate at an ‘authorised place’ within the Regional / Interregional / Interprovincial directorate where they have their registered office, preventing them from expanding throughout the national territory and, at the same time, reserving that right to operate throughout the national territory solely to customs agents?

3. Must Articles 56-62 TFEU be interpreted as precluding a legislative provision (Article 3(3) of Ministerial Decree No 549/1992) and a national practice, which impose a restriction on the ability of the CAD – Customs assistance centres to operate at an ‘authorised place’ within the Regional / Interregional / Interprovincial directorate where they have their registered office, preventing them from expanding throughout the national territory and, at the same time, reserving that right to operate throughout the national territory solely to customs agents?

Provisions of European Union law relied on

TFEU, and in particular Articles 56 to 62 thereof;

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, and in particular Articles 10 and 15 thereof;

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, and in particular recital 21 thereof, as well as Articles 18 and 139 thereof;

Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code, and in particular Article 115 thereof.

Case-law of the Court of Justice of the European Union

Judgments in Cases C-293/14, C-475/11, C-384/08, C-470/11, C-265/12, C-159/12, and Joined Cases C-570/07 and C-571/07.

Provisions of national law relied on

- Decreto del Presidente della Repubblica 23 gennaio 1973, n. 43 – Approvazione del testo unico delle disposizioni legislative in materia doganale (Decree No 43 of the President of the Republic of 23 January 1973 approving the Consolidated Laws on Customs)

Article 47(3) of that decree provides that ‘the appointment as a customs agent shall authorise the submission of customs declarations throughout the national territory’.

- Decreto del Ministro delle finanze 11 dicembre 1992, n. 549 – Regolamento recante la costituzione dei centri di assistenza doganale (Decree No 549 of the Minister of Finance of 11 December 1992 – Regulation establishing customs assistance centres)

Article 1(1) of that decree provides that ‘customs agents who have been registered for at least three years with the professional association ... and practice their profession without being restricted by any form of employment relationship may set up capital companies, known as CAD (centri di assistenza doganale (customs assistance centres)), with a minimum share capital of ITL 100 million, the sole purpose of which is to provide customs assistance (...)’.

Article 3(3) of that decree provides that ‘the approved companies referred to in Article 1(1) shall carry on their activities within the territorial jurisdiction of the customs department in which they have their head office and may operate in association with equivalent companies with registered office and jurisdiction in other territories of different departmental directorates and set up European Economic Interest Groupings (EEIG) as provided for in Regulation (EEC) No 2137/85 of 25 July 1985 (...)’.

- Legge 25 luglio 2000, n. 213 – Norme di adeguamento dell’attività degli spedizionieri doganali alle mutate esigenze dei traffici e dell’interscambio internazionale delle merci (Law No 213 of 25 July 2000 – Rules for adapting the activity of customs agents to changes in the requirements of trades and international trade in goods)

Article 3(5) of that law provides that ‘the CAD may, under the simplified procedures, present the goods, in addition to the spaces and places in which the customs operations, referred to in Article 17 of the Consolidated Law on Customs approved by Decree No 43 of the President of the Republic of 23 January 1973, are to be carried out, also in the places, warehouses or storage premises of the

persons on whose behalf they operate from time to time and in which the goods are stored, provided that those places, warehouses or storage premises are situated within the territorial jurisdiction of the customs authority for which they are authorised to operate’.

Succinct presentation of the facts and procedure in the main proceedings

- 1 The applicant company, whose registered office is situated in Cuneo, is a CAD which carries out customs operations on behalf of its customers. That registered office is within the territorial jurisdiction of the Regional Directorate II for Liguria, Piedmont and Val d’Aoste of the Customs and Monopolies Authority, which is the defendant administration in the main proceedings.
- 2 As part of its business activities, the applicant entered into an agreement with a German company to carry out customs operations concerning the United Kingdom.
- 3 In that regard, the applicant submitted an application to the defendant Regional Directorate seeking authorisation for the approval of a place other than the customs office, in order that it be able to carry out customs operations in a warehouse situated in the province of Vicenza. That warehouse, unlike the applicant’s registered office, did not fall within the territorial jurisdiction of that Regional Directorate.
- 4 By decision of that Regional Directorate, the applicant’s application was rejected pursuant to Article 3(3) of Ministerial Decree No 549/1992, according to which the CAD may operate exclusively in the territory of the customs department where they have their registered office; in the present case, that department is that of the Regional Directorate in question.
- 5 The applicant company brought an action against that decision to reject its application before the Regional Administrative Court, Piedmont, the referring court.

The essential arguments of the parties in the main proceedings

- 6 In support of its request, the applicant asserts, in particular, that the contested decision is contrary to recital 21 and Article 18 of Regulation (EU) No 952/2013, as well as Directive 123/2006/EC.
- 7 In the contested decision, the defendant states that the national law does not permit, for the purposes of carrying out customs operations, the approval of a place other than the customs office outside the territorial jurisdiction of the competent Regional Directorate. According to that decision, although, according to Article 47(3) of Presidential Decree No 43/1973, a customs agent is authorised to carry out customs operations throughout the national territory, that provision

does not, however, apply to the activity of a customs agent acting as a member of a CAD. In other words, a customs agent who does not operate as a member of a CAD may carry out customs operations throughout the national territory, whereas a customs agent acting as a member of a CAD may carry out customs operations only within the territorial jurisdiction of the Regional Directorate in which the head office of that CAD is situated. In that regard, it should be borne in mind that, on the basis of Ministerial Decree No 549/1992, the CAD is set up by customs agents.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 8 In the first place, the referring court takes the view that the customs rules of the European Union, in particular Article 18 of Regulation (EU) No 952/2013, does not permit any territorial limitation to be placed on the exercise of customs brokerage services. Consequently, according to that court, the domestic legal system, in particular Article 3(3) of Ministerial Decree No 549/1992 and Article 3(5) of Law No 213/2000, does not appear to be consistent with EU law.
- 9 In the second place, the referring court observes that Article 3(3) of Ministerial Decree No 549/1992 prohibits the applicant company, as a CAD, from operating through a local unit and a warehouse situated outside the jurisdiction of the Regional Directorate of the Customs and Monopolies Authority where its head office is located, with the result that that provision introduces restrictions on the ability to operate through agencies, subsidiaries or branches; this appears to be contrary to Article 10(4) of Directive 2006/123, which enables the provider to have access to the service activity, or to exercise that activity, throughout the national territory, including by means of setting up agencies, subsidiaries, branches or offices, except where a specific authorisation or a limitation of the authorisation to a certain part of the territory for the pursuit of an activity is justified by an overriding reason relating to the public interest; however, in the present case, the referring court is unable to see any such reason.
- 10 Furthermore, according to the referring court, where the places to be assigned to customs operations are situated outside the territorial jurisdiction of the Regional Directorate in which the CAD's head office is situated, Article 3(3) of Ministerial Decree No 549/1992 amounts to a prohibition on having more than one establishment in the same national territory, despite the fact that the conditions of necessity and proportionality laid down in Article 15(3) of Directive 2006/123 are not satisfied, and is therefore an infringement of that provision.
- 11 The Court has already held that the territorial limitation of authorisation to pursue a service activity constitutes, within the meaning of Articles 10 and 15 of Directive 2006/123/EC, a restriction on the freedom of establishment of service providers. According to the referring court, that finding is not called into question by the fact that Article 3(3) of Ministerial Decree No 549/1992 provides that the CAD may act in aggregate form (in association with equivalent companies, with

the same corporate purpose, or by setting up a European Economic Interest Grouping – EEIG) in order to be able to provide the services outside the territory in which they have their registered office. Both the association with equivalent companies and the setting-up of an EEIG could result in significant economic and management burdens affecting exclusively the CAD, despite the principle, established by the Union Customs Code, of freedom of representation for customs purposes, in the form of both direct and indirect representation.

- 12 In the third place, the referring court expresses doubts as to whether Article 3(3) of Ministerial Decree No 549/1992 is compatible with Articles 56 to 62 TFEU, on the ground that the territorial limitation on the ability of the CAD to carry out operations appears to constitute a restriction on the freedom to provide services, since it places the CAD in an objectively unfavourable position compared to other operators.
- 13 Contrary to the defendant's contention, the referring court does not consider that the exercise by a CAD of its activity outside the territorial limits mentioned above could undermine the technical and professional requirements envisaged for that activity and, therefore, the continuity of the service.
- 14 The referring court states that the national legislation in force could lead to a distortion within the European market with regard to the free movement of goods and persons, in so far as that legislation would restrict the free movement of services within the Member States and between Member States, in the light of both Directive 2006/123 and Articles 56 to 62 TFEU.
- 15 As regards the possibility of referring questions for a preliminary ruling and, in particular, the existence of cross-border interest, the referring court, in the first place, emphasises the potential effects that the national system at issue could have on persons established in other Member States, where those persons wish to benefit from the freedom to provide services, and, in the second place, points out that the applicant's activity in the specific case involves two Member States (Italy, as the State of the provider of the service, and Germany, as the State of the recipient of the service).
- 16 Lastly, the referring court requests that the expedited procedure provided for in Article 105(1) of the Rules of Procedure of the Court of Justice be applied, on the basis of the relevance of the questions at issue, which are of principle, and of the fact that the resolution of the dispute in the main proceedings is subject only to the decision of the Court.