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Judgment of the Court in Case C-348/22 | Autorità Garante della Concorrenza e del Mercato
(Municipality of Ginosa)

Concessions authorising the exploitation of Italian beaches may not be renewed automatically but must be subject to an impartial and transparent selection procedure

The national courts and the administrative authorities are required to apply the relevant rules of EU law and to disapply provisions of national law which conflict with them

Under EU law,¹ in order to grant concessions for the occupation of State-owned maritime property, Member States must apply a selection procedure to potential candidates where the number of authorisations available for a given activity is limited because of the scarcity of natural resources. Authorisation is to be granted for an appropriate limited period and may not be open to automatic renewal. Although those rules have been transposed into the Italian legal order, a law of 2018 indicated that existing concessions would be extended until 31 December 2033, in order to allow sufficient time to complete all the actions necessary for the reform of the concessions.

In accordance with that law, **by decision of 24 December 2020, the Municipality of Ginosa extended, in its territory, concessions for the occupation of State-owned maritime property.** Taking the view that that decision failed to comply with the principles of competition and freedom of establishment, the Italian Competition and Markets Authority (AGCM) issued a reasoned opinion to the Municipality of Ginosa reminding it of the requirement for a prior public procurement procedure and stating that the national provisions automatically extending the concessions had to be disapplied.

After the Municipality of Ginosa refused to comply with that opinion, the AGCM brought an action before the Regional Administrative Court, Puglia, for annulment of that municipality's decision. While finding that the national provisions are incompatible with **Directive 2006/123 on services in the internal market**, the Regional Administrative Court, Puglia, doubts whether the directive is self-executing and has the effect of ousting conflicting national rules. It also does not share the Italian Council of State's view that Directive 2006/123 is a liberalisation directive, not a harmonisation directive. The Regional Administrative Court, Puglia, infers therefrom that that directive should have been adopted unanimously rather than by a majority of the votes of the Council.

The Regional Administrative Court, Puglia, consequently refers several questions to the Court of Justice for a preliminary ruling, with a view to ascertaining the scope of the directive, its validity, its nature and the effects of applying it.

By today's judgment, the **Court rules, first, that the directive applies to all concessions for the occupation of State-owned maritime property, regardless of whether they are of certain cross-border interest** or concern a

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

situation where all the relevant elements are confined to a single Member State.

Second, EU law does not preclude an assessment of the scarcity of natural resources and available concessions from being made by combining an abstract and general approach at national level with a case-by-case approach based on an analysis of the coastal territory of the municipality concerned. It is crucial that the criteria used by a Member State to assess the scarcity of available natural resources are based on objective, non-discriminatory, transparent and proportionate factors.

Third, **consideration has disclosed no factor of such a kind as to affect the validity of the directive on services in the internal market.** Given that the legal basis for a measure must derive from the aim and the content of the measure and that the directive aims to facilitate the exercise of the freedom of establishment for service providers and the free movement of services, **the Council was fully entitled to act by qualified majority, in accordance with the Treaty provisions.**

Fourth, **the obligation for Member States to apply an impartial and transparent selection procedure to potential candidates and the prohibition on automatic renewal of an authorisation granted for a given activity are laid down unconditionally and sufficiently precisely by the directive. Since those rules have direct effect, the national courts and the administrative authorities, including municipal authorities, are under an obligation to apply them and also to disapply national rules which conflict with them.**

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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