Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

7 November 2024*

(Reference for a preliminary ruling – Customs union – Union Customs Code – Regulation (EU) No 952/2013 – Article 18 – Customs representative – Freedom to provide services – Directive 2006/123/EC – Articles 10 and 15 – Customs assistance centres – Territorial limitation of the activity – Restriction – Justification)

In Case C-503/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per il Piemonte (Regional Administrative Court, Piedmont, Italy), made by decision of 26 July 2023, received at the Court on 7 August 2023, in the proceedings

Centro di Assistenza Doganale (Cad) Mellano Srl

v

Agenzia delle Dogane e dei Monopoli – Agenzia delle Dogane – Direzione Interregionale per la Liguria,

Ministero dell'Economia e delle Finanze,

THE COURT (First Chamber),

composed of T. von Danwitz, Vice-President of the Court, acting as President of the First Chamber, A. Arabadjiev and I. Ziemele (Rapporteur), Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Centro di Assistenza Doganale (Cad) Mellano Srl, by S. Mellano, avvocata,

– the Italian Government, by G. Palmieri, acting as Agent, and by F. Meloncelli, avvocato dello Stato,

* Language of the case: Italian.

– the European Commission, by L. Armati and F. Moro, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 56 to 62 TFEU, of Article 18 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1; 'the Customs Code') and of Articles 10 and 15 of 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).

2 The request has been made in proceedings between the Centro di Assistenza Doganale (Cad) Mellano Srl ('Cad Mellano'), a customs assistance centre (CAD), and the Agenzia delle Dogane e dei Monopoli – Agenzia delle Dogane – Direzione Interregionale per la Liguria (Customs and Monopolies Agency – Customs Agency – Interregional Directorate for Liguria, Italy) concerning the latter's refusal to authorise Cad Mellano to carry out its activities outside the territorial remit of the customs district in which it has its registered office.

Legal framework

European Union law

The Customs Code

3 Recital 21 of the Customs Code states:

'In the interests of facilitating business, all persons should continue to have the right to appoint a representative in their dealings with the customs authorities. However, it should no longer be possible for that right of representation to be reserved under a law laid down by one of the Member States. Furthermore, a customs representative who complies with the criteria for the granting of the status of authorised economic operator for customs simplifications should be entitled to provide his or her services in a Member State other than the Member State where he or she is established. As a general rule, a customs representative should be established in the customs territory of the [European] Union. That obligation should be waived where the customs representative acts on behalf of persons who are not required to be established within the customs territory of the Union or in other justified cases.'

4 Article 18 of that code, entitled 'Customs representative', is worded as follows:

'1. Any person may appoint a customs representative.

Such representation may be either direct, in which case the customs representative shall act in the name of and on behalf of another person, or indirect, in which case the customs representative shall act in his or her own name but on behalf of another person.

2. A customs representative shall be established within the customs territory of the Union.

Except where otherwise provided, that requirement shall be waived where the customs representative acts on behalf of persons who are not required to be established within the customs territory of the Union.

3. Member States may determine, in accordance with Union law, the conditions under which a customs representative may provide services in the Member State where he or she is established. However, without prejudice to the application of less stringent criteria by the Member State concerned, a customs representative who complies with the criteria laid down in points (a) to (d) of Article 39 shall be entitled to provide such services in a Member State other than the one where he or she is established.

4. Member States may apply the conditions determined in accordance with the first sentence of paragraph 3 to customs representatives not established within the customs territory of the Union.'

5 Under Article 39 of that code:

'The criteria for the granting of the status of authorised economic operator shall be the following:

(a) the absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant;

(b) the demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;

(c) financial solvency, which shall be deemed to be proven where the applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned;

(d) with regard to the authorisation referred to in point (a) of Article 38(2), practical standards of competence or professional qualifications directly related to the activity carried out; and

(e) with regard to the authorisation referred to in point (b) of Article 38(2), appropriate security and safety standards, which shall be considered as fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the security and safety of the international supply chain including in the areas of physical integrity and access controls, logistical processes and handling of specific types of goods, personnel and identification of his or her business partners.'

Directive 2006/123

6 Recitals 2, 5, 6, 29 and 40 of Directive 2006/123 state:

‘(2) A competitive market in services is essential in order to promote economic growth and create jobs in the European Union. At present numerous barriers within the internal market prevent providers, particularly small and medium-sized enterprises (SMEs), from extending their operations beyond their national borders and from taking full advantage of the internal market. This weakens the worldwide competitiveness of European Union providers. A free market which compels the Member States to eliminate restrictions on cross-border provision of services while at the same time increasing transparency and information for consumers would give consumers wider choice and better services at lower prices.

…

(5) It is therefore necessary to remove barriers to the freedom of establishment for providers in Member States and barriers to the free movement of services as between Member States and to guarantee recipients and providers the legal certainty necessary for the exercise in practice of those two fundamental freedoms of the Treaty. Since the barriers in the internal market for services affect operators who wish to become established in other Member States as well as those who provide a service in another Member State without being established there, it is necessary to enable providers to develop their service activities within the internal market either by becoming established in a Member State or by making use of the free movement of services. Providers should be able to choose between those two freedoms, depending on their strategy for growth in each Member State.

(6) Those barriers cannot be removed solely by relying on direct application of Articles 43 and 49 of the Treaty, since, on the one hand, addressing them on a case-by-case basis through infringement procedures against the Member States concerned would, especially following enlargement, be extremely complicated for national and Community institutions, and, on the other hand, the lifting of many barriers requires prior coordination of national legal schemes, including the setting up of administrative cooperation. As the European Parliament and the Council [of the European Union] have recognised, a Community legislative instrument makes it possible to achieve a genuine internal market for services.

…

(29) Given that the Treaty provides specific legal bases for taxation matters and given the Community instruments already adopted in that field, it is necessary to exclude the field of taxation from the scope of this Directive.

…

(40) The concept of “overriding reasons relating to the public interest” … covers at least the following grounds: … consumer protection, … the prevention of fraud …’

7 Under Article 1(1) of Directive 2006/123:

‘This Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services.’

8 Article 2 of that directive provides:

‘1. This Directive shall apply to services supplied by providers established in a Member State.

…

3. This Directive shall not apply to the field of taxation.’

9 Article 3(1) of that directive states:

‘If the provisions of this Directive conflict with a provision of another Community act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the provision of the other Community act shall prevail and shall apply to those specific sectors or professions. …’

10 Article 4 of Directive 2006/123, which is entitled ‘Definitions’, reads as follows:

‘For the purposes of this Directive, the following definitions shall apply:

(1) “service” means any self-employed economic activity, normally provided for remuneration, as referred to in Article 50 of the Treaty;

…

(6) “authorisation scheme” means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof;

(7) “requirement” means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy; rules laid down in collective agreements negotiated by the social partners shall not as such be seen as requirements within the meaning of this Directive;

(8) “overriding reasons relating to the public interest” means reasons recognised as such in the case-law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives;

…’

11 Article 10 of Directive 2006/123, entitled ‘Conditions for the granting of authorisation’, states:

‘1. Authorisation schemes shall be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

2. The criteria referred to in paragraph 1 shall be:

(a) non-discriminatory;

(b) justified by an overriding reason relating to the public interest;

(c) proportionate to that public interest objective;

…

4. The authorisation shall enable 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 an authorisation for each individual establishment or a limitation of the authorisation to a certain part of the territory is justified by an overriding reason relating to the public interest.

…'

12 Article 15 of that directive provides:

'1. Member States shall examine whether, under their legal system, any of the requirements listed in paragraph 2 are imposed and shall ensure that any such requirements are compatible with the conditions laid down in paragraph 3. Member States shall adapt their laws, regulations or administrative provisions so as to make them compatible with those conditions.

2. Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with any of the following non-discriminatory requirements:

(a) quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between providers;

…

(e) a ban on having more than one establishment in the territory of the same State;

…

3. Member States shall verify that the requirements referred to in paragraph 2 satisfy the following conditions:

(a) non-discrimination: requirements must be neither directly nor indirectly discriminatory according to nationality nor, with regard to companies, according to the location of the registered office;

(b) necessity: requirements must be justified by an overriding reason relating to the public interest;

(c) proportionality: requirements must be suitable for securing the attainment of the objective pursued; they must not go beyond what is necessary to attain that objective and it must not be possible to replace those requirements with other, less restrictive measures which attain the same result.

…'

Italian law

13 Decreto-legge n. 417 – Disposizioni concernenti criteri di applicazione dell'imposta sul valore aggiunto, delle tasse per i contratti di trasferimento di titoli o valori e altre disposizioni tributarie urgenti (Decree-Law No 417 on provisions concerning the criteria for the application of value added tax, of taxes on contracts for the transfer of securities, and other urgent tax provisions) of 30 December 1991 (GURI No 1 of 2 January 1992, p. 3), converted into law, with amendments, by legge n. 66 (Law No 66) of 6 February 1992 (GURI No 33 of 10 February 1992, p. 4), provides, in paragraphs 1-*septies* and 1-*octies* of Article 7 thereof:

'1-*septies*. The customs agents referred to in paragraph 1-*sexies* may form capital companies with a minimum capital of 100 million [Italian lire (ITL) (approximately EUR 51 645)], having as its sole corporate purpose the provision of customs assistance services in order to carry out, in line with the authorisation of the Minister for Finance and in addition to the tasks referred to in paragraph 1-*sexies*, the following tasks:

(a) receiving or issuing customs declarations, certifying their contents after obtaining them and formally checking the relevant commercial documents, including for the adoption of the programmes and selection criteria for the purpose of the total or partial examination of the goods;

(b) certifying the data acquired and processed in accordance with points (a), (b) and (c) of paragraph 1-*sexies* for the completion of formalities arising from Community rules.

1-*octies*. The tax authorities shall have the power to ask companies authorised to carry out customs assistance activities, including by way of derogation from any statutory or regulatory provision to the contrary, for the data and information in their possession. A decree of the Minister for Finance to be adopted … no later than 31 July 1992 shall lay down the provisions necessary for the implementation of paragraph 1-*septies*, including the provisions concerning the companies referred to in paragraph 1-*septies* and, in particular, the criteria and detailed rules for entry in the relevant register, the issue by the Minister for Finance of the authorisation to carry out the tasks entrusted to them, and the provisions relating to controls and monitoring, including inspection, by the tax authorities …'

14 Article 1 of decreto ministeriale n. 549 – Regolamento recante la costituzione dei centri di assistenza doganale (Ministerial Decree No 549 – Regulation establishing customs assistance centres) of 11 December 1992 (GURI No 17 of 22 January 1993, p. 16; 'Ministerial Decree No 549/1992') provides:

'1. Customs agents who have been registered for at least three years with the professional association … and practise their profession outside any form of employment relationship may set

up capital companies, known as CADs …, having as their sole corporate purpose the provision of customs assistance services …

2. [CADs] shall be subject to monitoring, including inspection, by the tax authorities …

…'

15 According to Article 2 of that decree:

'1. The authorisation of the Minister for Finance, provided for in paragraph 1-*septies* of Article 7 of Law [No 66], shall be granted to the companies referred to in Article 1(1) after submission to the Customs and Indirect Taxation Unit of the following documents: (a) instrument of incorporation of the company, indicating the members, together with details of the licence with unlimited validity; (b) articles of association of the company, drawn up in accordance with the model set out in the annex to this decree; (c) company's registration certificate with the Chamber of Commerce, Industry, Crafts and Agriculture; (d) certification by the competent District Council that all the members have been registered for at least three years with the professional association, that they practise their profession outside any form of employment relationship and that none of the situations giving rise to the suspension or withdrawal of their licence applies to them pursuant to Article 53 or Article 54 of [decreto del presidente della Repubblica n. 43] – Approvazione del testo unico delle disposizioni legislative in materia doganale (Decree No 43 of the President of the Republic approving the Consolidated Laws on Customs) of 23 January 1973 (ordinary supplement to GURI No 80 of 28 March 1973) ("Decree No 43/1973")].

2. In addition, a document issued by the customs unit responsible for the territory where the offices of the [CAD] are located must be produced, showing, following an inspection visit, that there is indeed an establishment with suitable premises and equipment for the pursuit of customs assistance activities, as well as an accounting and record-keeping system. Any establishment subsequently assigned to the [CAD's] activities shall also be notified to the customs unit responsible for the purposes of the required inspection visit.

…'

16 Article 3 of Ministerial Decree No 549/1992 provides:

'1. A specific register shall be established at the Central Directorate of the Customs Services of the Customs and Indirect Taxation Unit, in which the companies referred to in Article 1(1) must be registered after obtaining prior authorisation from the Minister for Finance. Registration involves entering the company's identification details, authorisation number, tax identification code and [value added tax (VAT)] number, and assigning a serial number.

…

3. The authorised companies referred to in Article 1(1) shall carry on their activities within the territorial remit of the customs district in which they have their registered office and may associate themselves with equivalent companies having their registered office and authorisation to pursue an activity in other territories of different district directorates and may set up European Economic Interest Groupings as provided for in [Council] Regulation (EEC) No 2137/85 [of 25 July 1985 on the European Economic Interest Grouping (EEIG) (OJ 1985

L 199, p. 1)], governed by decreto legislativo … n. 240 [(Legislative Decree No 240) of 23 July 1991].'

17 Under Article 7(4) of Ministerial Decree No 549/1992:

'The customs district directorate may order controls or checks of the activity carried out at the offices or other places of the [CAD] located within its territorial remit.'

18 According to Article 8 of that ministerial decree:

'1. In order to ensure that the records are kept in good order by the [CADs], the transactions are carried out in the proper manner and that the prescribed obligations are met, monitoring, including inspection, of the [CADs] shall consist of cross-checking, by sampling, the transactions as per the registers, records and any other documents held by the [CADs] against the acts of the customs offices and users which operated in those [CADs]. Such monitoring shall be carried out at least once a year.

…

3. Without prejudice to any other legal obligation, if monitoring reveals irregularities in areas within the remit of another financial service or of another administration, formal communications will be sent to the services concerned.'

19 Article 3 of legge n. 213 – Norme di adeguamento dell'attività degli spedizionieri doganali alle mutate esigenze dei traffici e dell'interscambio internazionale delle merci (Law No 213 on rules to adapt the activities of customs agents to the changing needs of transport of and international trade in goods) of 25 July 2000 (GURI No 178 of 1 August 2000, p. 5), provides:

'…

4. The authorisation to pursue an activity granted to CADs shall provide that they are permitted to carry out the simplified declaration procedures provided for in Article 76 of the Community Customs Code established by Council Regulation (EEC) No 2913/92 of 12 October 1992 [establishing the Community Customs Code (OJ 1992 L 302, p. 1)] and Article 253 et seq. of Commission Regulation (EEC) No 2454/93 of 2 July 1993 [laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1)], under the conditions and in accordance with the procedures laid down therein.

5. Under the simplified procedures, CADs may present the goods not only in the areas and places intended for the customs operations referred to in Article 17 of [Decree No 43/1973] but also in the places and warehouses of the persons on whose behalf they operate in each case and in which the goods are located, provided that those places or warehouses are located within the territorial remit of the customs district in which they are authorised to operate.

…'

20 Article 47(3) of Decree No 43/1973, as amended by Article 82(1)(b) of decreto legislativo n. 59 – Attuazione della direttiva 2006/123/CE relativa ai servizi nel mercato interno (Legislative Decree No 59 implementing Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market) of 26 March 2010 (ordinary supplement to GURI No 94 of 23 April 2010) states:

'The appointment as a customs agent shall enable the agent to submit customs declarations throughout the national territory.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

21 Cad Mellano is a CAD in the business of offering customs representation services to its customers. It has been approved by the Direzione territoriale II per la Liguria, il Piemonte e la Valle d'Aosta (Territorial Directorate II for Liguria, Piedmont and the Aosta Valley, Italy), which is responsible for the area where its registered office is located. For the purposes of applying simplified procedures, Cad Mellano uses, in that customs area, approved premises allowing it to carry out customs operations without having to take the goods through customs or to the importer's premises.

22 In 2021, Cad Mellano entered into an agreement with a German company, ALFA, concerning the issuing of customs dockets for import and export to/from the United Kingdom.

23 In order to carry out import and export operations in respect of ALFA's goods, Cad Mellano entered into an agreement with BETA, a company owning a warehouse in the province of Vicenza (Italy), outside the remit of the customs district in which Cad Mellano has its registered office. Cad Mellano therefore requested approval of those premises from the competent customs authorities.

24 On 20 October 2021, that request was rejected on the ground that Article 3(3) of Ministerial Decree No 549/1992 does not allow CADs to carry out their activities outside the customs district where they have their registered office.

25 Cad Mellano brought an action before the Tribunale amministrativo regionale per il Piemonte (Regional Administrative Court, Piedmont, Italy), the referring court, seeking annulment of that decision rejecting its request.

26 In the first place, that court expresses doubts as to whether Article 3(3) of Ministerial Decree No 549/1992 is compatible with Article 18(3) of the Customs Code. Under the latter provision, where a customs representative complies with the criteria laid down in points (a) to (d) of Article 39 of that code, he or she should be entitled to provide services in a Member State other than the one where he or she is established. A fortiori, such a representative should be able to carry out his or her activities throughout the territory of the Member State in which he or she is established.

27 In the second place, the referring court claims that Article 3(3) of Ministerial Decree No 549/1992 might contravene Article 10(4) of Directive 2006/123. That latter provision enables the authorised 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 the need for a limitation of the authorisation to a given part of the territory for each establishment is justified by an overriding reason relating to the public interest. First, there does not appear to be any justification for such a limitation in the case in the main proceedings.

Second, the national provision at issue might have the effect of prohibiting CADs from using more than one establishment on the national territory. Such a prohibition would be neither necessary nor proportionate.

28 In the third place, a territorial limitation of the pursuit of CAD activities might contravene Articles 56 to 62 TFEU. Those CADs, which operate as capital companies, find themselves in a situation that is objectively detrimental compared to customs agents who, while pursuing the same activities as CADs, are not subject to any territorial limitation.

29 The referring court points out, in that regard, that the restriction on the freedom to provide services of CADs established in Italy which may result from Article 3(3) of Ministerial Decree No 549/1992 is also liable to have cross-border effects, since that provision is applicable to providers established in other Member States.

30 In those circumstances, the Tribunale amministrativo regionale per il Piemonte (Regional Administrative Court, Piedmont) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 18 of [the Customs Code], in conjunction with recital 21 [thereof], 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 [CADs … to operate at an “approved place”] within the Regional / Interregional / Interprovincial [customs] 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] 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 [CADs … to operate at an “approved place”] within the Regional / Interregional / Interprovincial [customs] 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 to 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 [CADs … to operate at an “approved place”] within the Regional / Interregional / Interprovincial [customs] 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?’

Admissibility of the request for a preliminary ruling

31 The Italian Government argues that the questions referred for a preliminary ruling do not call for a reply. In its view, it is possible to interpret Article 3(3) of Ministerial Decree No 549/1992 in a way that is consistent with EU law, with the result that the request for a preliminary ruling is nugatory.

32 It should be recalled that the procedure referred to in Article 267 TFEU is based on a clear separation of functions between the national courts and the Court of Justice. In that context, the national court alone has jurisdiction to determine and assess the facts of the main proceedings and to interpret and apply national law. It is likewise solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for, and the relevance of the questions which it submits to the Court (see, to that effect, judgment of 12 May 2022, *U.I. (Indirect customs representative)*, C-714/20, EU:C:2022:374, paragraph 33 and the case-law cited).

33 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, judgment of 27 April 2023, *Legea*, C-686/21, EU:C:2023:357, paragraph 25 and the case-law cited).

34 In the case at hand, the referring court has set out, in a sufficiently clear manner, the legal and factual context as well as the reasons for its doubts regarding the interpretation of certain provisions of EU law it considers necessary in order to enable it to deliver judgment. It is not obvious that the interpretation sought bears no relation to the main action or that the problem raised is hypothetical.

35 That finding is not called into question by the argument put forward by the Italian Government. While it is true that national courts are required to interpret national law, to the greatest extent possible, in compliance with the requirements of EU law in order to ensure the full effectiveness of EU law, the fact remains that, in proceedings under Article 267 TFEU, it is for the Court to interpret the provisions of EU law set out in the order for reference in order to provide all the information necessary to enable the referring court to determine whether the national law is compatible with those provisions. By the questions referred for a preliminary ruling, the referring court specifically asks the Court for guidance on the interpretation of EU law to enable it to determine whether certain national rules are compatible with EU law, but does not ask the Court itself to rule on that point.

36 In those circumstances, the request for a preliminary ruling is admissible.

Consideration of the questions referred

The first question

37 By its first question, the referring court asks, in essence, whether Article 18(3) of the Customs Code must be interpreted as precluding national legislation which restricts the pursuit of the activities of customs representatives organised as capital companies, having as their sole corporate purpose the provision of customs assistance services, to the remit of the customs district in which those companies have their registered office.

38 In accordance with settled case-law, it is necessary, when interpreting provisions of EU law, to consider not only their wording but also their context and the objectives of the legislation of which they form part (judgments of 15 July 2021, *BEMH and CNCC*, C-325/20, EU:C:2021:611, paragraph 18, and of 12 October 2023, *INTER Consulting*, C-726/21, EU:C:2023:764, paragraph 43 and the case-law cited).

39 According to the first sentence of Article 18(3) of the Customs Code, Member States may determine, in accordance with EU law, the conditions under which a customs representative may provide services in the Member State where he or she is established.

40 As regards the provision of services by a customs representative established in another Member State, the second sentence of Article 18(3) of that code provides that, without prejudice to the application of less stringent criteria by the Member State concerned, such a representative is entitled to provide such services in a Member State other than the one where he or she is established, provided that he or she complies with the criteria laid down in points (a) to (d) of Article 39 of that code.

41 Thus, in accordance with those criteria, a customs representative must demonstrate that he or she has not committed any serious infringement or repeated infringements of customs legislation and taxation rules; that he or she exercises a high level of control over his or her operations and of the flow of goods, by means of a system of managing commercial records; that he or she is financially solvent and that he or she has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned; and that he or she complies with practical standards of competence or professional qualifications directly related to the activity carried out.

42 It therefore follows from Article 18(3) of the Customs Code that a customs representative wishing to provide his or her services in a Member State other than the one where he or she is established is subject to the conditions laid down in points (a) to (d) of Article 39 of that code, without prejudice to the application of less stringent criteria by the Member State concerned. Those conditions do not, however, apply to the customs representative who provides his or her services in the Member State where he or she is established, since that Member State may determine the conditions for the provision of those services, provided that those conditions are consistent with EU law.

43 In the present case, Article 3(3) of Ministerial Decree No 549/1992 lays down a condition applicable to CADs, restricting their activities to the territorial remit of the customs district in which they have their registered office. In so doing, the Italian Republic exercised the power conferred on it by the first sentence of Article 18(3) of the Customs Code to determine the conditions under which customs representatives organised as capital companies established in the territory of that Member State may provide services in that territory.

44 It follows from the foregoing considerations that Article 18(3) of the Customs Code must be interpreted as not precluding national legislation which restricts the pursuit of the activities of customs representatives organised as capital companies, having as their sole corporate purpose the provision of customs assistance services, to the remit of the customs district in which those companies have their registered office, provided that that legislation is consistent with EU law.

The second and third questions

45 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 10 and 15 of Directive 2006/123 and Articles 56 to 62 TFEU must be interpreted as precluding national legislation which restricts the pursuit of the activities of customs representatives organised as capital companies, having as their sole corporate purpose the provision of customs assistance services, to the remit of the customs district in which those companies have their registered office.

46 First, it follows from recital 6 of Directive 2006/123 that barriers to the freedom to provide services may not be removed solely by relying on direct application of Article 56 TFEU, owing, inter alia, to the extreme complexity of addressing barriers to that freedom on a case-by-case basis (see, to that effect, judgment of 26 June 2019, *Commission* v *Greece*, C-729/17, EU:C:2019:534, paragraph 53).

47 If a national measure were to be examined simultaneously in the light of the provisions of Directive 2006/123 and those of the FEU Treaty, that would be tantamount to introducing case-by-case examination, as a matter of primary law, and would thereby undermine the targeted harmonisation effected by that directive (see, to that effect, judgment of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraph 96).

48 It follows that, where a restriction of the freedom to provide services falls within the scope of Directive 2006/123, there is no need to examine it in the light also of Article 56 TFEU (see, to that effect, judgment of 26 June 2019, *Commission* v *Greece*, C-729/17, EU:C:2019:534, paragraph 54).

49 Second, it is true that the case in the main proceedings concerns a purely domestic situation, in so far as the circumstances relate to the refusal by the Italian authorities to allow an Italian company to pursue its activities in Italy in a customs district other than the one in which that company has its registered office.

50 However, this circumstance is not such as to preclude the provisions of Chapter III of Directive 2006/123, containing Articles 10 and 15 thereof, from applying, since the provisions of Chapter III must be interpreted as also applying to a situation where all the relevant elements are confined to a single Member State (judgment of 13 January 2022, *Minister Sprawiedliwości*, C-55/20, EU:C:2022:6, paragraph 89 and the case-law cited). If the internal market in services is to be fully achieved, that requires, above all, the elimination of obstacles which are encountered by providers in becoming established in the Member States, whether in their own Member State or in another Member State, and which are liable to affect adversely their ability to supply services to recipients located throughout the European Union (judgment of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraph 105).

51 Therefore, in order to provide an answer to the questions raised by the referring court, it is necessary to interpret the provisions of Directive 2006/123, in so far as they are applicable to the facts of the case in the main proceedings.

Scope of Directive 2006/123

52 As a preliminary point, it should be recalled that Article 3(1) of Directive 2006/123 provides that if the provisions of that directive conflict with the provisions of an act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the provisions of such an act are to prevail.

53 As is apparent from paragraphs 39 and 44 above, Article 18(3) of the Customs Code confer on Member States the power to determine the conditions under which a customs representative may provide services in the Member State where he or she is established, in accordance with EU law, and does not preclude legislation of a Member State which restricts the pursuit of the activities of customs representatives to the remit of the customs district in which they are established.

54 It follows that the Customs Code does not contain, in that regard, any rules which conflict with the provisions of Directive 2006/123, with the result that that directive may apply to services provided by customs representatives organised as capital companies established in Italy, subject to the territorial limitation provided for in Article 3(3) of Ministerial Decree No 549/1992.

55 As regards the actual activities of customs representatives, Article 2(1) and Article 4 of Directive 2006/123 provide that the directive applies to any self-employed economic activity, normally provided for remuneration, by a provider established in a Member State, regardless of whether the provider is established in a stable and continuous manner in the Member State in which the services are provided, with the exception of the activities expressly excluded pursuant to Article 2(2) and (3) of that directive (see, to that effect, judgment of 1 October 2015, *Trijber and Harmsen*, C-340/14 and C-341/14, EU:C:2015:641, paragraph 45).

56 Accordingly, Article 2(2) of Directive 2006/123 excludes a series of activities from its scope. Article 2(3) of that directive specifies, moreover, that it does not apply to the field of taxation.

57 In the present case, as is apparent from the documents before the Court, customs representatives organised as capital companies established in Italy, subject to the territorial limitation laid down in Article 3(3) of Ministerial Decree No 549/1992, provide assistance services for the completion of customs formalities in return for remuneration.

58 Such services fall precisely within the subject matter of Directive 2006/123, as set out in Article 2(1) thereof, since those customs representatives are suppliers of services in the Member State where they are established. Furthermore, the activity of customs representative corresponds to the concept of 'services', as defined in Article 4(1) of that directive, in so far as it is a self-employed economic activity, normally provided for remuneration.

59 Furthermore, the services provided by those customs representatives clearly fall outside the activities expressly excluded from the scope of Directive 2006/123 by virtue of Article 2(2) of that directive.

60 Moreover, as regards Article 2(3) of Directive 2006/123, which provides that the directive 'shall not apply to the field of taxation', it is apparent from recital 29 of that directive that the exclusion of the field of taxation from its scope is explained in particular by the fact that the FEU Treaty provides for specific legal bases for taxation matters.

61 In that regard, as the European Commission has observed, a distinction must be drawn between the field of taxation and that of customs, the latter being an exclusive competence of the European Union by virtue of Article 3(1)(a) TFEU and governed by EU customs legislation, in particular the Customs Code. As regards the services provided by customs representatives, Article 18(3) of that code refers to national legislation, while requiring that that legislation be consistent with EU law, and thus also with Directive 2006/123. The applicability of that directive in the present case is therefore not excluded by virtue of Article 2(3) thereof.

62 In those circumstances, the activities of customs representatives organised as capital companies established in Italy, subject to the territorial limitation provided for in Article 3(3) of Ministerial Decree No 549/1992, fall within the scope of Directive 2006/123.

63 Such an interpretation of the scope of Directive 2006/123 is supported by the objectives of that directive which, as is apparent from Article 1 thereof, read together with recitals 2 and 5, consist in laying down general provisions that are intended to remove restrictions on the freedom of establishment for service providers in Member States and on the free movement of services between the Member States, in order to contribute to the completion of a free and competitive internal market (judgment of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraph 104 and the case-law cited).

64 In the light of the foregoing considerations, national legislation such as that at issue in the main proceedings, in so far as it governs the pursuit of the activities of customs representatives organised as capital companies established in Italy, is covered by Directive 2006/123.

The relevant provisions of Directive 2006/123

65 In the second question referred for a preliminary ruling, the referring court seeks from the Court the interpretation of Articles 10 and 15 of Directive 2006/123.

66 According to Article 10(1) of Directive 2006/123, which comes under Section 1 of Chapter III of that directive, relating to authorisations for access to a service activity, authorisation schemes must be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

67 Article 4(6) of Directive 2006/123 defines an 'authorisation scheme' within the meaning, inter alia, of Article 10(1) thereof, as any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof.

68 Article 15(1) and (2) of that directive, which comes under Section 2 of Chapter III of that directive, relating to requirements that are prohibited or subject to evaluation, sets out the requirements to which Member States may make access to, or exercise of a service activity subject, under the conditions set out in Article 15(3).

69 The concept of 'requirement' referred to in Article 15(1) and (2) of Directive 2006/123 is defined in Article 4(7) thereof as any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy.

70 The Court has held that an 'authorisation scheme' within the meaning of Article 4(6) of Directive 2006/123 is distinct from a 'requirement' within the meaning of Article 4(7) of that directive, inasmuch as it involves steps being taken by the service provider and a formal decision whereby the competent authorities authorise that service provider's activity (judgment of 22 September 2020, *Cali Apartments*, C-724/18 and C-727/18, EU:C:2020:743, paragraph 49 and the case-law cited).

71 It is apparent from the request for a preliminary ruling that, under Article 3(3) of Ministerial Decree No 549/1992, CADs may have a place approved for the completion of customs formalities without having to present the goods physically at a customs office only when that place is located in that customs district.

72 Having regard to the characteristics of the territorial limitation provided for in Article 3(3) of Ministerial Decree No 549/1992, such a condition must be regarded as coming under the concept of 'requirement' within the meaning of Article 15(1) and (2) of Directive 2006/123, as defined in Article 4(7) of that directive. The national legislation at issue in the main proceedings has the effect of limiting the pursuit of the activities of customs representatives organised as capital companies, having as their sole corporate purpose the provision of customs assistance services, to the customs district in which those companies have their registered office.

Interpretation of Article 15(2) and (3) of Directive 2006/123

73 Under Article 15(2)(a) of Directive 2006/123, Member States are to examine whether their legal system makes access to a service activity or the exercise thereof subject, inter alia, to compliance with a territorial restriction.

74 In that regard, the Court has already held that a territorial restriction of the authorisation to pursue a service activity constitutes, pursuant to Article 15 of that directive, a restriction on the freedom of establishment of service providers (judgment of 23 December 2015, *Hiebler*, C-293/14, EU:C:2015:843, paragraph 49).

75 Article 15(2)(a) of Directive 2006/123 expressly classifies 'territorial restrictions' on the pursuit of a service activity as 'requirements' within the meaning of Article 4(7) of the directive, which are conditions affecting the freedom of establishment of service providers (judgment of 23 December 2015, *Hiebler*, C-293/14, EU:C:2015:843, paragraph 51).

76 In the present case, Article 3(3) of Ministerial Decree No 549/1992 prevents CADs from having an approved place within the territorial remit of a customs district other than the one in which they have their registered office and thus imposes a restriction on their activities, in the form of a territorial restriction.

77 In that regard, as Cad Mellano and the Commission have pointed out, the fact that, under Article 3(3) of Ministerial Decree No 549/1992, CADs may associate themselves, in the form of European economic interest groups, with equivalent companies having their registered office in other customs districts in order to offer their services is not such as to eliminate the restriction resulting from that provision, since they are not allowed to provide their services outside the customs district in which they have their registered office in accordance with the procedures they have chosen.

78 In order to be permitted, such a restriction must satisfy the conditions laid down in Article 15(3) of Directive 2006/123, namely that it must apply without discrimination on grounds of nationality and it must be necessary and proportionate to the objectives which it pursues (see, to that effect, judgment of 23 December 2015, *Hiebler*, C-293/14, EU:C:2015:843, paragraphs 56 to 70).

79 Accordingly, the restriction arising from the requirement imposed by Article 3(3) of Ministerial Decree No 549/1992 may be permitted, having regard to the conditions laid down in Article 15(3) of Directive 2006/123, if that restriction is neither directly nor indirectly discriminatory according to nationality nor, with regard to companies, according to the location of the registered office, if it is justified by an overriding reason relating to the public interest and if it is suitable for securing the attainment of the objective pursued, it does not go beyond what is necessary to attain that objective and it is not possible to replace it with other, less restrictive measures which attain the same result.

80 As regards, first, compliance with the condition of non-discrimination referred to in Article 15(3)(a) of Directive 2006/123, it is common ground that the requirement laid down in Article 3(3) of Ministerial Decree No 549/1992 applies without discrimination according to nationality or the location of the registered office, since that requirement must be met by all customs representatives wishing to use the 'approved place' simplified procedure, irrespective of whether they are established in Italy or in another Member State.

81 As regards, second, the question whether the measure at issue in the main proceedings is justified by an overriding reason relating to the public interest within the meaning of Article 15(3)(b) of Directive 2006/123, the Italian Government relies on the objective of ensuring the effectiveness of customs controls, in order to prevent customs fraud and to protect the recipients of customs assistance services.

82 As regards the objective of ensuring the effectiveness of customs controls, in order to prevent customs fraud and to protect the recipients of customs assistance services, it should be borne in mind that, in accordance with Article 4(8) of Directive 2006/123, read in the light of recital 40 thereof, the protection of recipients of services and combating fraud are overriding reasons relating to the public interest capable of justifying restrictions on the freedom of establishment (see, to that effect, judgment of 19 January 2023, *CNAE and Others*, C-292/21, EU:C:2023:32, paragraph 61).

83 As regards, third, the question whether the measure at issue in the main proceedings complies with the principle of proportionality, as required by Article 15(3)(c) of Directive 2006/123, it must be ascertained whether that measure is suitable for securing the attainment of the objective pursued, that it does not go beyond what is necessary to attain it and that there are no measures less detrimental to the freedom at issue (see, to that effect, judgment of 19 January 2023, *CNAE and Others*, C-292/21, EU:C:2023:32, paragraph 62 and the case-law cited).

84 In that regard, it must also be recalled that, according to settled case-law, national legislation is suitable for securing the attainment of the objective pursued only if it genuinely reflects a concern to attain the objective in a consistent and systematic manner (judgment of 29 July 2019, *Commission* v *Austria (Civil engineers, patent agents and veterinary surgeons)*, C-209/18, EU:C:2019:632, paragraph 94).

85 It is ultimately for the national court, which has sole jurisdiction to assess the facts of the dispute in the main proceedings, to determine whether a measure satisfies that condition. However, in order to provide an answer of use to the referring court, the Court may provide guidance based on the documents relating to the main proceedings and on the written observations before it, in order to enable that court to give judgment (judgment of 19 January 2023, *CNAE and Others*, C-292/21, EU:C:2023:32, paragraph 63 and the case-law cited).

86 As regards, in the first place, the suitability of a measure such as that provided for in Article 3(3) of Ministerial Decree No 549/1992 for attaining the objective of ensuring the effectiveness of controls, it is apparent from the information provided to the Court that the territorial restriction to which CADs are subject allows a geographical link to be maintained between the place where CADs carry out their activities and the customs district in whose remit they have their registered office.

87 In that regard, it must be observed that the geographical proximity of the competent customs office and the information available to it as the authority which approved a place for the purpose of carrying out customs procedures may, in principle, increase the effectiveness of on-the-spot checks, by making it possible, as the Italian Government points out, to ensure preventive and constant monitoring.

88 That said, the national legislation at issue in the main proceedings does not appear to ensure that the customs office with territorial competence to check a CAD is the office closest to the approved place where that CAD is authorised to carry out its activities.

89 Furthermore, it is apparent from the order for reference that, under Article 47(3) of Decree No 43/1973, customs agents may submit customs declarations throughout Italy. In that regard, the referring court stated that, prior to its amendment, that provision imposed on customs agents a territorial restriction identical to that applicable to CADs.

90 In the light of that difference in treatment between customs agents and CADs, and subject to the controls which it is for the referring court to carry out, the territorial restriction resulting from Article 3(3) of Ministerial Decree No 549/1992, which is applicable only to CADs, does not appear suitable for securing the attainment of the objectives pursued, since it does not genuinely reflect a concern to attain those objectives in a consistent and systematic manner.

91 In so far as the Italian Government observes, in that context, that while customs agents cannot benefit from the 'approved place' simplified customs procedure, since they are required to carry out the customs formalities at their customers' premises, the advantage afforded by that procedure lies in the fact that the goods do not have to be physically presented at the premises of the customs authorities. Customs agents also appear to benefit from such an advantage since they may submit the goods for customs formalities from their customers' premises.

92 In the second place, as regards the question whether the measure at issue in the main proceedings goes beyond what is necessary to attain the objective pursued, by prohibiting CADs from using 'approved places' located within the territorial remit of a customs district other than the one in which they have their registered office, they are obliged, in order to be able to use such places, to move their registered office to that customs district or to associate themselves, in the form of European economic interest groups, with equivalent companies having their registered office in that district.

93 As is apparent from the documents before the Court, measures that are less restrictive than the territorial restriction resulting from Article 3(3) of Ministerial Decree No 549/1992 may be envisaged to guarantee the effectiveness of customs controls, in order to prevent customs fraud and to protect the recipients of customs assistance services.

94 Thus, it is for the referring court to examine, in particular, whether the exchange, between the customs offices, of the information necessary to check the customs formalities carried out by CADs, under Article 8(3) of Ministerial Decree No 549/1992, would allow the same result to be attained as the measure at issue in the main proceedings, while constituting a measure less detrimental to the freedom to provide services than the provision at issue in the main proceedings.

95 It follows from the foregoing considerations that Article 15(2) and (3) of Directive 2006/123 must be interpreted as precluding national legislation which, with a view to ensuring the effectiveness of customs controls, in order to prevent customs fraud and to protect the recipients of customs assistance services, restricts the pursuit of the activities of customs representatives organised as capital companies, having as their sole corporate purpose the provision of customs assistance services, to the remit of the customs district in which those companies have their registered office, in so far as that territorial restriction is not applied consistently and the objective of guaranteeing the effectiveness of those controls could be attained by less restrictive measures.

Costs

96 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Article 18(3) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code**

   must be interpreted as not precluding national legislation which restricts the pursuit of the activities of customs representatives organised as capital companies, having as their sole corporate purpose the provision of customs assistance services, to the remit of the customs district in which those companies have their registered office, provided that that legislation is consistent with EU law.

2. **Article 15(2) and (3) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market**

   must be interpreted as precluding national legislation which, with a view to ensuring the effectiveness of customs controls, in order to prevent customs fraud and to protect the recipients of customs assistance services, restricts the pursuit of the activities of customs representatives organised as capital companies, having as their sole corporate purpose the provision of customs assistance services, to the remit of the customs district in which those companies have their registered office, in so far as that territorial restriction is not applied consistently and the objective of guaranteeing the effectiveness of those controls could be attained by less restrictive measures.

[Signatures]