Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

8 September 2016*

(Reference for a preliminary ruling — Article 49 TFEU — Freedom of establishment — Betting and gambling — Restrictions — Overriding reasons of public interest — Proportionality — Public procurement — Conditions for participating in a call for tenders and assessment of economic and financial standing — Exclusion of the tenderer for not presenting certificates of economic and financial standing issued by two different banks — Directive 2004/18/EC — Article 47 — Applicability))

In Case C-225/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale di Reggio Calabria (District Court, Reggio Calabria, Italy), made by decision of 28 February 2015, received at the Court on 15 May 2015, in the criminal proceedings against

Domenico Politanò,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, C. Toader (Rapporteur), A. Rosas, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: N. Wahl,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 13 April 2016,

after considering the observations submitted on behalf of:

— Mr Politanò, by D. Agnello and D. Neto, avvocati,

— the Italian Government, by G. Palmieri, acting as Agent, and C. Colelli, avvocato dello Stato,

— the Belgian Government, by M. Jacobs and L. Van den Broeck, acting as Agents, and P. Vlaemminck, R. Verbeke and B. Van Vooren, advocaten,

— the German Government, by T. Henze and J. Möller, acting as Agents,

— the Polish Government, by B. Majczyna, acting as Agent,

— the European Commission, by E. Montaguti, H. Tserepa-Lacombe and A. Tokár, acting as Agents,

* Language of the case: Italian.

after hearing the Opinion of the Advocate General at the sitting on 16 June 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 49 TFEU, the principles of equal treatment and effectiveness and Article 47 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

2 The request has been made in criminal proceedings against Mr Domenico Politanò for failing to comply with the Italian legislation governing the collection of bets.

Legal context

EU law

3 Under Article 1(2)(a) and (d) and (4) of Directive 2004/18:

‘2.

(a) “Public contracts” are contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services within the meaning of this Directive....

(d) “Public service contracts” are public contracts other than public works or supply contracts having as their object the provision of services referred to in Annex II.

...

4. “Service concession” is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.’

4 Article 17 of that directive, entitled ‘Service concessions’, provided:

‘Without prejudice to the application of Article 3, this Directive shall not apply to service concessions as defined in Article 1(4).’

5 Article 47 of that directive, entitled ‘Economic and financial standing’, was worded as follows:

‘1. Proof of the economic operator’s economic and financial standing may, as a general rule, be furnished by one or more of the following references:

(a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;

(b) the presentation of balance-sheets or extracts from the balance-sheets, where publication of the balance-sheet is required under the law of the country in which the economic operator is established;

(c) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, insofar as information on such turnovers is available.

2. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing an undertaking by those entities to that effect.

3. Under the same conditions, a group of economic operators as referred to in Article 4 may rely on the capacities of participants in the group or of other entities.

4. Contracting authorities shall specify, in the contract notice or in the invitation to tender, which reference or references mentioned in paragraph 1 they have chosen and which other references must be provided.

5. If, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, he may prove his economic and financial standing by any other document which the contracting authority considers appropriate.'

6 Directive 2004/18 was repealed by Directive 2014/24/EU of the European Parliament and the Council of 26 February 2014 (OJ 2004 L 94, p. 65).

Italian law

7 Article 10(9g) and (9h) of decreto-legge n. 16 — Disposizioni urgenti in materia di semplificazioni tributarie, di efficientamento e potenziamento delle procedure di accertamento (Decree-Law No 16 laying down urgent provisions related to fiscal simplification, improving effectiveness and reinforcing monitoring procedures) of 2 March 2012 (GURI No 52, of 2 March 2012, p. 1), converted into statute, after amendment, by Law No 44 of 26 April 2012 (Ordinary Supplement to GURI No 99, of 28 April 2012) ('the 2012 Decree-Law') provides:

'9g As part of a reform of the legislation relating to public gambling, including that relating to the collection of bets on sporting events, including horse racing, and non-sporting events, the provisions of the present paragraph have the aim of promoting that reorganisation, through an initial alignment of the expiry dates of the licences for the collection of bets in question, while observing the requirement that the national rules on the selection of persons who, on behalf of the State, collect bets on sporting events, including horse racing, and non-sporting events, are adjusted to the principles laid down by the judgment of the Court of Justice of the European Union, on 16 February 2012, in Joined Cases C-72/10 and C-77/10. To that end, in view of the impending expiry of a group of licences for the collection of those bets, the Independent Authority for the Administration of State Monopolies shall immediately, and in any event by 31 July 2012 at the latest, initiate a call for tenders for the selection of persons who are to collect such bets with due regard, at the very least, to the following criteria:

(a) the possibility of participation for persons already carrying out an activity related to the collection of bets in one of the States of the European Economic Area, as a result of having their legal and operational seat there, on the basis of a valid and effective authorisation issued under the provisions in force in the law of that State and who fulfil the requirements as to reputation, reliability and financial standing specified by the Independent Authority for the Administration of

State Monopolies, account being taken of the provisions in this matter referred to in Law No 220 of 13 December 2010, and in Decree-Law No 98 of 6 July 2011, converted, after amendment, into statute by Law No 111 of 15 July 2011;

(b) the award of a licence, expiring on 30 June 2016, for the collection, exclusively in a physical network, of bets on sporting events, including horse racing, and non-sporting events, from agencies, up to a maximum of 2 000, whose sole activity is the marketing of public gambling products, without restriction as to the minimum distances between those agencies or with respect to other collection points, which are already active, for identical bets;

(c) provision, as a price component, for a basic contract value of EUR 11 000 for each agency;

(d) the conclusion of a licence agreement whose content is consistent with any other principle laid down in the abovementioned judgment of the Court of Justice of the European Union of 16 February 2012 and with the compatible national provisions in force regarding public gambling;

(e) the possibility of managing agencies in any municipality or province, without numerical limits on a territorial basis or more favourable conditions by comparison with licensees who are already authorised to collect identical bets or which may, in any event, be favourable to those licensees;

(f) the lodging of deposits consistent with the provisions of Article 24 of Decree-Law No 98 of 6 July 2011, converted, after amendment, into statute by Law No 111 of 15 July 2011.

9h The licensees who are to collect bets referred to in paragraph 9g, whose contracts expire on 30 June 2012, shall continue their collection activities until the date of the conclusion of the licence contracts awarded in accordance with the above paragraph. The following paragraphs are repealed: paragraphs 37 and 38 of Article 24 of Decree-Law No 98 of 6 July 2011, converted, after amendment, into statute by Law No 111 of 15 July 2011, subparagraph e of paragraph 287 of Article 1 of Law No 311 of 30 December 2004, and subparagraph e of paragraph 4 of Article 38 of Decree-Law No 223 of 4 July 2006, converted, after amendment, into statute by Law No 248 of 4 August 2006.'

8 In accordance with the provisions of the 2012 Decree-Law, tendering procedures were launched by the Italian authorities in the course of 2012. Article 3.2 of the Administrative Rules for the awarding of concessions and the signature of agreements annexed to the corresponding contract notice ('the Monti contract notice') required tenderers which had been formed for less than two years and whose overall revenues linked to the activity of gaming operator were below two million euros during the two most recent business years to submit statements issued by at least two banks, in order to prove their economic and financial standing.

9 Directive 2004/18 was transposed into Italian law by decreto legislativo n. 163 — Codice dei contratti pubblici relativi a lavori, servizi e forniture in attuazione delle direttive 2004/17/CE e 2004/18/CE (Legislative Decree No 163 establishing the Code on public works contracts, public service contracts and public supply contracts pursuant to Directives 2004/17/EC and 2004/18/EC) of 12 April 2006 (Ordinary Supplement to GURI No 100 of 2 May 2006).

10 Under Article 41 of that legislative decree, the conditions to be satisfied in order to prove the economic and financial standing to carry out the service are to be specified by the contracting authority. However, according to the same article, a candidate who, for valid reasons, is unable to submit the requisite bank or accounting references may prove his economic and financial standing by producing any other document which the contracting authority considers appropriate.

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

11 On 6 February 2015, during a check carried out in the business premises called 'Betuniq' in Polistena (Italy), which is managed by Mr Politanò and affiliated to UniqGroup Ltd, a Maltese company, the administrative police from the Questura di Reggio Calabria (police headquarters of Reggio Calabria, Italy) established that the activity of collecting bets was being carried out there without a concession first having been issued.

12 Accordingly, by decision of 13 February 2015, the Giudice per le indagini preliminari (judge responsible for preliminary investigations) of the Tribunale di Palmi (District Court, Palmi, Italy) ordered the preventive sequestration of the assets used for that activity.

13 Following that decision, Mr Politanò brought an action against the sequestration before the referring court, claiming that certain clauses of the Monti contract notice were incompatible with Articles 49 TFEU and 56 TFEU.

14 According to the applicant in the main proceedings, therefore, his conduct does not constitute an offence, since the collecting of bets on sporting events on behalf of the Maltese company UniqGroup must be considered to be lawful, in so far as the domestic legislation is contrary to Articles 49 TFEU and 56 TFEU.

15 He maintains in that regard that UniqGroup was excluded from the tendering procedure launched in 2012 on the ground that it had not submitted two certificates of economic and financial standing issued by two different banks, as required by Article 3.2 of the Administrative Rules annexed to the Monti contract notice.

16 According to the referring court, a tendering procedure involving gambling operators established in different Member States, such as that at issue in the main proceedings, was necessarily required to comply with Article 47 of Directive 2004/18, which provides for the possibility of evaluating economic and financial standing 'by any other document which the contracting authority considers appropriate'.

17 The definition by the Italian authorities of strict conditions for participation in the tendering procedure had to be reconciled with the principle of the widest possible participation in the tendering procedure, and any interested parties should be guaranteed the possibility of proving his economic and financial standing by any document — other than those requested by the contracting authority — considered appropriate.

18 According to the referring court, it follows that those authorities were required to state expressly the criteria considered appropriate and effective for demonstrating the requisite economic and financial standing, so that each tenderer may in any event prove such standing effectively.

19 That court considers that, in this instance, the Administrative Rules annexed to the Monti contract notice did not allow UniqGroup to prove, other than by producing the documents specified therein, its economic and financial standing.

20 In those circumstances, the Tribunale di Reggio Calabria (District Court, Reggio Calabria, Italy) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 49 TFEU, as well as the principles of equal treatment and effectiveness, be interpreted as precluding national legislation in the field of betting and gambling which provides for the organisation of a fresh call for tenders (as governed by Article [10(9g) of the 2012 Decree-Law]) for the award of licences that includes clauses excluding from the tendering

procedure undertakings which have failed to meet the condition relating to economic and financial standing as a result of the failure to provide for criteria other than the requirement of two bank references from two separate banks?

(2) Must Article 47 of Directive 2004/18/EC ... be interpreted as precluding national legislation in the field of betting and gambling which provides for the organisation of a fresh call for tenders (as governed by Article [10(9g) of the 2012 Decree-Law]) for the award of licences [that includes clauses excluding from the tendering procedure undertakings which have failed to meet the condition] relating to economic and financial standing, as a result of the failure to provide for alternative documentation and options, as laid down under [EU] legislation?'

Consideration of the questions referred

Admissibility

21 The Italian Government and, as regards the second question only, the European Commission submit that the request for a preliminary ruling should be declared inadmissible, since the order for reference does not set out the factual context sufficiently so as to allow the Court to provide a useful answer.

22 In that regard, it should be noted that, according to settled case-law, 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, and 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 (judgment of 22 January 2015, *Stanley International Betting and Stanleybet Malta*, C-463/13, EU:C:2015:25, paragraph 26 and the case-law cited).

23 It is also settled case-law that the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for that court to define the factual and legal context of the questions it is asking or, at the very least, to explain the factual circumstances on which those questions are based. The order for reference must also set out the precise reasons why the national court is unsure as to the interpretation of EU law and considers it necessary to refer a question to the Court for a preliminary ruling (judgment of 22 January 2015, *Stanley International Betting and Stanleybet Malta*, C-463/13, EU:C:2015:25, paragraph 27 and the case-law cited).

24 Moreover, the Court has found that the requirements recalled in paragraphs 22 and 23 above may be satisfied more easily where the request for a preliminary ruling comes within a context that is already largely familiar (see, in particular, order of 17 July 2014, *3D I*, C-107/14, not published, EU:C:2014:2117, paragraph 12 and the case-law cited).

25 However, it is apparent from the order for reference, first, that it describes with sufficient clarity and precision the legal and factual context of the case in the main proceedings and, secondly, that the information it contains allow the scope of the questions asked to be determined, as evidenced, moreover, by the written observations of the various governments and the Commission.

26 In those circumstances, the request for a preliminary ruling must be held to be admissible.

The second question

27 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 47 of Directive 2004/18 must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which imposes on operators wishing to respond to a call for tenders for the grant of concessions in the field of betting and gambling the obligation of providing evidence of their economic and financial standing by means of statements issued by at least two banks, without allowing that standing to be proved by any other document.

28 As a preliminary point, it should be ascertained whether the directive in question is applicable in a case such as that at issue in the main proceedings.

29 In that regard, it must be pointed out that Directive 2004/18 involves procedures for the award of public service contracts and not those relating to service concessions, which are excluded from the scope of that directive pursuant to Article 17 thereof. That provision actually expressly excludes service concessions, which are defined in Article 1(4) of that directive as contracts of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in that right together with payment.

30 According to the case-law of the Court, it follows from a comparison of the definitions of a public service contract and a service concession provided, respectively, by Article 1(2)(a) and (d) and by Article 1(4) of Directive 2004/18 that the difference between a public service contract and a service concession lies in the consideration for the provision of services. A service contract involves consideration which, although it is not the only consideration, is paid directly by the contracting authority to the service provider, while, for a service concession, the consideration for the provision of services consists in the right to exploit the service, either alone, or together with payment (see judgment of 10 March 2011, *Privater Rettungsdienst und Krankentransport Stadler*, C-274/09, EU:C:2011:130, paragraph 24 and the case-law cited).

31 It also follows from that case-law that, while the method of remuneration is, therefore, one of the determining factors for the classification of a service concession, such a classification implies that the service supplier takes the risk of operating the services in question and that the absence of a transfer to the service provider of the risk connected with operating the service shows that the transaction concerned is a public service contract and not a service concession (see, to that effect, judgment of 10 March 2011, *Privater Rettungsdienst und Krankentransport Stadler*, C-274/09, EU:C:2011:130, paragraph 26 and the case-law cited).

32 However, as was observed by the Advocate General in point 51 of his Opinion, in the case in the main proceedings, the service provider receives no remuneration from the contracting authority and bears the entire risk associated with the activity of collecting and transmitting bets.

33 It follows that a concession relating to the organisation of bets, such as that at issue in the main proceedings, cannot be classified as a public contract for services within the meaning of Article 1(2)(a) and (b) of Directive 2004/18.

34 Having regard to the foregoing, the answer to the second question is that the directive in question, in particular Article 47, must be interpreted as meaning that national legislation governing the grant of concessions in the field of betting and gambling, such as that at issue in the main proceedings, does not fall within its scope.

The first question

35 As a preliminary point, it must be pointed out that although the referring court did make reference, in the formulation of the first question, to the principles of equal treatment and effectiveness, the order for reference contains no details on the reasons that prompted it to inquire about the interpretation of those principles in the context of the case in the main proceedings or on the relationship between those principles and the national legislation at issue in the main proceedings.

36 Having regard to the foregoing, it must be considered that, by its first question, the referring court asks, in essence, whether Article 49 TFEU must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which imposes on operators wishing to respond to a call for tenders for the grant of concessions in the field of betting and gambling the obligation of providing evidence of their economic and financial standing by means of statements issued by at least two banks, without also allowing that standing to be proved by other means.

37 First of all, it is settled case-law that all measures which prohibit, impede or render less attractive the exercise of the freedoms guaranteed by Articles 49 TFEU and 56 TFEU must be regarded as restrictions on the freedom of establishment and/or the freedom to provide services (see judgment of 22 January 2015, *Stanley International Betting and Stanleybet Malta*, C-463/13, EU:C:2015:25, paragraph 45 and the case-law cited).

38 A provision of a Member State, such as that at issue in the main proceedings, which subjects the exercise of an economic activity to the obtaining of a concession and subjects, in that context, tenderers to the obligation of producing certificates from two different banking providers, might dissuade economic operators from participating in a tendering procedure and is therefore capable of constituting a restriction of the freedom of establishment within the meaning of Article 49 TFEU.

39 Next, it is appropriate to bear in mind that legislation on betting and gambling is one of the areas in which there are significant moral, religious and cultural differences between the Member States. In the absence of harmonisation on the issue at EU level, the Member States enjoy a wide discretion as regards choosing the level of consumer protection and the preservation of order in society which they deem the most appropriate (see, to that effect, judgment of 22 January 2015, *Stanley International Betting and Stanleybet Malta*, C-463/13, EU:C:2015:25, paragraphs 51 and 52 and the case-law cited).

40 The Member States are therefore free to set the objectives of their policy on betting and gambling and, where appropriate, to define in detail the level of protection sought. However, the restrictive measures that the Member States impose must satisfy the conditions laid down in the case-law of the Court as regards inter alia their justification by overriding reasons in the general interest and their proportionality (see, to that effect, judgment of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International*, C-42/07, EU:C:2009:519, paragraph 59 and the case-law cited).

41 It is appropriate, therefore, to determine whether a restriction, such as that at issue in the main proceedings, may be allowed as a derogation, on grounds of public policy, public security or public health, as expressly provided for under Articles 51 TFEU and Article 52 TFEU, which are also applicable in the area of freedom to provide services by virtue of Article 62 TFEU, or justified, in accordance with the case-law of the Court, by overriding reasons in the public interest (judgment of 12 June 2014, *Digibet and Albers*, C-156/13, EU:C:2014:1756, paragraph 22 and the case-law cited).

42 In the present case, the Italian Government submits that the restrictive provision at issue is justified, as part of the objective of combating criminality linked to betting and gambling, by the interest in ensuring the continuation of the lawful activity of collecting bets in order to curb the growth of parallel illegal activities and by the interest in protecting consumers. Thus, it is essential that the economic and financial capacities of concession holders enable them to carry out their activity on the market over the longer term.

43 In that regard, it is worthwhile bearing in mind that such an objective may be a reason of overriding public interest capable of justifying a restriction on fundamental freedoms, such as that at issue in the main proceedings (see, to that effect, judgment of 28 January 2016, *Laezza*, C-375/14, EU:C:2016:60, paragraphs 34 and 35). The Court has, moreover, previously held that the objective of combating criminality linked to betting and gambling is capable of justifying restrictions on fundamental freedoms under restrictive rules (see, to that effect, judgments of 12 September 2013, *Biasci and Others*, C-660/11 and C-8/12, EU:C:2013:550, paragraph 23, and of 28 January 2016, *Laezza*, C-375/14, EU:C:2016:60, paragraph 32).

44 However, it is still necessary to determine whether the restriction at issue in the main proceedings is suitable for ensuring the attainment of the objective pursued and does not go beyond what is necessary in order to achieve that objective, including by ensuring that the national legislation at issue genuinely reflects a concern to attain it in a consistent and systematic manner (see, to that effect, judgment of 12 July 2012, *HIT and HIT LARIX*, C-176/11, EU:C:2012:454, paragraph 22 and the case-law cited).

45 In relation to the question of whether that restriction is suitable for ensuring the attainment of the objective pursued, it should be noted that bank statements from two different banks, such as those required by the provision at issue in the main proceedings, are able to prove the economic and financial standing of the tenderer to exercise the activity of collecting bets.

46 The obligation of providing statements from two banks is manifestly capable of ensuring that the economic operator has an economic and financial standing enabling him to fulfil the obligations he may contract towards winning gamblers. In that regard, the Court has previously held that the requirement for a share capital of a certain amount may prove to be of use in order to ensure such an economic and financial standing (see, to that effect, judgment of 15 September 2011, *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 77).

47 Furthermore, it must be determined whether, given the wide discretion enjoyed in the non-harmonised area of betting and gambling by national authorities for determining what is required in order to ensure consumer protection and the preservation of order in society (see, to that effect, judgment of 12 June 2014, *Digibet and Albers*, C-156/13, EU:C:2014:1756, paragraph 32 and the case-law cited), the obligation of producing two statements from two different banks does not go beyond what is necessary in order to achieve the objective pursued, as such an assessment must be carried out solely by reference to the objectives pursued by the competent authorities of the Member State concerned and the level of protection which they seek to ensure (see judgment of 15 September 2011, *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 46 and the case-law cited).

48 In that context, it is appropriate to note, as the Advocate General observed, in essence, in points 80 and 81 of his Opinion, that, in view of the particular nature of economic activities in the betting and gambling sector, the requirement imposed on tenderers which had been formed for less than two years and whose overall revenues linked to the activity of gaming operator were below two million euros during the two most recent business years to provide appropriate statements issued by at least two banks does not appear to go further than is necessary in order to achieve the objective pursued.

49 However, it is for the referring court, taking account of the indications given by the Court of Justice, to verify, in an overall assessment of the circumstances surrounding the grant of the new licences, whether the restrictions imposed by the Member State concerned satisfy the conditions laid down in the Court's case-law concerning their proportionality (see, to that effect, judgment of 12 June 2014, *Digibet and Albers*, C-156/13, EU:C:2014:1756, paragraph 40 and the case-law cited).

50 In the light of all the foregoing considerations, the answer to the first question is that Article 49 TFEU must be interpreted as not precluding a national provision, such as that at issue in the main proceedings, which imposes on operators wishing to respond to a call for tenders for the grant of

concessions in the field of betting and gambling the obligation of providing evidence of their economic and financial standing by means of statements issued by at least two banks, without also allowing that standing to be proved by other means, where such a provision is capable of satisfying the conditions of proportionality laid down by the case-law of the Court, which is for the referring court to ascertain.

Costs

51 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 (Second Chamber) hereby rules:

1. **Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, in particular Article 47, must be interpreted as meaning that national legislation governing the grant of concessions in the field of betting and gambling, such as that at issue in the main proceedings, does not fall within its scope.**

2. **Article 49 TFEU must be interpreted as not precluding a national provision, such as that at issue in the main proceedings, which imposes on operators wishing to respond to a call for tenders for the grant of concessions in the field of betting and gambling the obligation of providing evidence of their economic and financial standing by means of statements issued by at least two banks, without also allowing that standing to be proved by other means, where such a provision is capable of satisfying the conditions of proportionality laid down by the case-law of the Court, which is for the referring court to ascertain.**

[Signatures]