

Annex 2.18



European Lotteries' report on Lotteries in the EU and in Europe in 2011

Lausanne, Switzerland, May 2012

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1. Lotteries in the EU and Europe 2011 - Executive Summary

In 2011, the total economic activity measured as gross gambling revenue (sales minus prizes and hereinafter GGR) of state licensed and controlled lotteries in the EU (27) was €34.6bn. Compared with 2010, this represented an increase of 4.3%¹. This figure reflects the expenditure of European Union (27) consumers on activities offered by the state licensed national lotteries. In the period 2006 to 2011, the average annual increase in total GGR was 1.4%. Viewing all the European Lotteries' 78 members that reported in 2011 (not including RAY, Finland as explained in the footnote for table 1a) , the total GGR was €37.3bn; of this, lotteries from Turkey, Switzerland, Norway and Israel account for almost 90% of the difference.

In the EU, per capita GGR spending ranges from €3 in Latvia, €6 in Lithuania, to more than €100 in Cyprus, Greece, Italy, Spain and the Nordic countries. Average spending across the EU was €69. The corresponding figure for the 78 reporting European lotteries was €44, including the Russian Interlot, Orglot and Ural Loto lotteries covering a population of almost 143 million and spending at €0.5 per capita.

Sales in the EU, measured for the four "lottery categories", draw based games, instant tickets, sports games with pari-mutuel and fixed odds, were €76.9bn in 2011 representing an increase of 4.2% over that of 2010.

A key characteristic of the state licensed lotteries in the EU is that they are required by law or through their licences to make payments to society. In 2011, such mandatory payments to society from the 52 reporting EU lotteries came to a total of €23.4bn in the form of taxes for treasury, duties, funds for sports or funds for other good causes. This was up 5.1% compared with 2010. On average, a state licensed lottery in the EU gives back to society as mandatory payments – as opposed to and not including sponsorships – 68% of each Euro it earns and some even return more than 75% as shown in table 19. In the largest EU member states the amount for society raised from lotteries exceeded €2.0bn (Italy €5.4bn, Spain €3.9bn, Germany €2.8bn, France €2.7bn, the U.K €2.9bn). On average, the

¹ The survey has data from 2006, 2007, 2008, 2009, 2010 and 2011. To make figures comparable over time, all lottery monetary figures from those years in currencies other than EUR have been converted into EUR using the 2.1.2012 European Central Bank exchange rates. In other words, all amounts in the report are reported in 2012 EURO value. Thus, looking at previous years reports, which have used exchange rates from 2007, 2008, 2009, 2010 and 2011 respectively; differences appear as a consequence of the change in exchange rates.

amount that lotteries paid back to society across the 27 EU member states (population of 502 million) was €46 per capita in 2011 (€44 in 2010).

The largest lottery activity in the EU is comprised of draw based games with brand names like Lotto, EuroMillions and Joker. This category of game, offered in all 27 EU member states, had sales of €50.9bn and a GGR of €23.2bn and accounted for 67% of total GGR. The category grew 2.9% from 2010 (GGR) but, seen over the period 2006 to 2011, it has lost an average of 1.2% every year.

The second largest category is instant games with EU sales of €19.4bn (up 12.4% on 2010) and a GGR of €6.3bn representing some 18% of the total GGR. The category's 2011 GGR grew 11.5% over 2010, having remained quite steady for the previous four years. Of the top four instant selling countries there were some large sales increases over 2010 in Portugal (96%), Spain (46%), UK (18.5%) and France (16.9%).

National lotteries in 26 of the 27 EU member states (all except Greece) offer instant games and per capita spending ranges from € 2 or less in, for example, Estonia, Germany, Latvia, Lithuania, Malta, Poland, Spain and the Czech Republic to more than € 20 in Cyprus, France, Italy and Sweden. Italy is the largest instant market with €3.1bn in GGR, an increase of 8.5% over 2010.

The two sports games categories, pari-mutual and fixed odds wagering, totalled a GGR in the EU of €1.9bn (6% of the total GGR). However, sports wagering pari-mutual continued its strong decline and GGR dropped 12% from 2010. The average annual decrease since 2006 has been 12% for this category to now totalling €572million. Fixed odds betting saw a fall of 4.1% compared with 2010 and showed a total GGR of €1.3bn in 2011. National lotteries in 16 EU member states offered fixed odds betting in 2011.

Slots/VLTs/EILs outside casinos include slot machines, apart from casinos, Video Lottery Terminals and Electronic Instant Lottery. They are operated by lotteries in 6 EU member states. This was the third largest category with a GGR of €2.8bn (8% of the total GGR); and a growth of some 30% over 2010.

Direct full time employment by 53 EU lotteries in 2011 was above 19,500 whilst indirect employment typically in sectors selling lottery products accounted for more than 290,000 full time jobs².

Responsible gaming and measures to prevent problem gambling are an integrated part of lottery operations. In 2011, some 29 lotteries in EU reported spending of €16million on measures to prevent problem gambling. Among all the EL members, the corresponding figures were 34 lotteries spending €21.5million.

Some 25 state licensed lotteries in 20 EU member states reported a total GGR through the Internet of €1.6bn –slightly down from the €1.7bn recorded in 2010. The annual compound growth of GGR through the Internet has averaged 19% over the past four years.

2. Introduction and background

This is the sixth report based on data gathered under the heading “ELISE”³. The report covers key descriptive statistics about lotteries in Europe in 2011 and includes comparative statistics for the years 2006 – 2010 where appropriate. All monetary figures also from previous years 2006 to 2010, are calculated in EUR using the exchange rate from the Central European bank 3.1.2012, as noted in the above foot note 1. This implies slight differences in, for example, 2010 figures in this report and the same 2010 figures in last year’s report.

The objective being to provide data on the economic activities of lotteries in the European Union member states (EU 27) and in Europe in general. The EL gathered the information for this report in spring of 2012. It is the most detailed and up to date data on lotteries in the EU and Europe available from any source. The survey for 2011 has data from 79 EL member lotteries (including RAY, the Finland’s Slot Machine Association) and covers 44

² The calculation is based on the London Economics study “The case for State lotteries”, September 2006, which found a multiplier effect of 15. In other words, for each full time employee of the lotteries an average of 15 full time jobs was created in sectors where lotteries are sold.

³ European Lotteries Information Sharing Extended. Data are collected through a questionnaire to all EU lotteries and since 2008 also to non EU lotteries which are members of EL, and quality tested by a group of lottery experts. The group is comprised of: Ms. Alexandra Perrier, Head of International Relations of La Française des Jeux, France; Ms. Helka Lääperi, Development Manager/BI, and Mr. Vesa Mäkinen, Veikkaus Oy, Finland; Mr. Oscar Castro Villar, Business Analyst of ONCE, Spain; Mr. Ulrich Engelsberg, Senior Referent, Westdeutsche Lotterie GmbH & Co. OHG, Germany; Mr. Wolfgang Leitner, Senior Controller and Ms. Astrid Baier-Löw, Financial Controller, Austrian Lotteries, Austria;; Mr. David J. Evans, Global Strategy and Insight Manager at Camelot UK Lotteries Ltd., U.K.; Ms Méliissa Jacquérioz Steiner, Administrative Secretary, and Ms. Bernadette Lobjois, Secretary General of EL, Lausanne, Switzerland.

European countries. As all EL members have answered the survey, the response rate is 100%.

There are five common characteristics of the EU lotteries included in this report. They:

1. are located in an EU country
2. have an exclusive license from the state (or region) to operate games and are controlled by the state
3. make mandatory payments to the state and/or to state defined good causes like, for example, sports or culture
4. sell only within the jurisdiction they are licensed and cover the complete jurisdiction. They are not “local” lotteries and unlike commercial bookmakers, they do not sell in a jurisdiction where they are not licensed
5. are members of the EL

Thus, the reporting lotteries of each country serve as the "base unit". With a few exceptions, they cover all large-scale lotteries in the EU. Not all lotteries offer the same games and services. Therefore, each table is calculated with the number of lotteries that reported for the activity indicated in the table heading.

The report shows the consolidated Gross Gaming Revenues (GGR) figures broken down into six gaming categories⁴ and the corresponding sales figures. It also shows the amount of money collected through mandatory payments by lotteries to society, the employment created through lottery activities and how the Internet is used as a sales channel for lottery products. The tables are accompanied with explanatory footnotes where appropriate but otherwise left uncommented to serve as a basis for EL members and other stakeholders' own analysis.

The EL believes that ELISE can contribute to the understanding of how lotteries work and what their contributions are to society in general.

Bernadette Lobjois, EL Secretary General, Lausanne, Switzerland, May 2012

⁴ The six categories are defined in Annex A.

3. Tables and figures

Table 1a: Participating lotteries in the EU

Country	Number of reporting Lotteries	Founded year	EU Lotteries
Austria	1	1986	Österreichische Lotterien
Belgium	1	1934	Loterie Nationale
Bulgaria	2	1957	Bulgarian Sports Totalizator
		1993	Eurofootball Ltd.
Czech Republic	1	1956	Sazka Sázková kancelář a.s.
Cyprus	2	1958	Cyprus Government Lottery
		1969	OPAP (Cyprus) Ltd.
Denmark	2	1948	Danske Spil AS
		1753	Det Danske Klasselotteri AS
Estonia	1	1971	AS Eesti Loto
Finland*	2	1940	Veikkaus Oy
		1938	RAY Raha-automaattiyhdistys*
France	1	1933	La Française des Jeux
Germany	18	1946	Staatliche Lotterieverwaltung
		1947	Süddeutsche Klassenlotterie (SKL)
		1947	Deutsche Klassenlotterie Berlin (DKBL)
		1948	Staatliche Toto-Lotto GmbH
		1948	Nordwestdeutsche Klassenlotterie (NKL)
		1948	Bremer Toto und Lotto GmbH
		1948	Lotto Rheinland-Pfalz GmbH
		1948	LOTTO Hamburg GmbH
		1949	Lotterie-Treuhandgesellschaft mbH Hessen
		1949	Toto-Lotto Niedersachsen GmbH
		1951	Saarland-Sporttoto GmbH
		1957	Westdeutsche Lotterie GmbH & Co. OHG
		1990	Sächsische LOTTO- GmbH
		1991	Land Brandenburg LOTTO GmbH
		1991	Verwaltungsgesellschaft Lotto und Toto in Mecklenburg-Vorpommern mbH
		1991	Lotto-Toto GmbH Sachsen-Anhalt
		1991	Nordwestlotto Schleswig-Holstein GmbH & Co. KG
		1991	Lotterie-Treuhand-Gesellschaft mbH Thüringen
Greece	2	1959	OPAP S.A.
		1929	Greek State Lotteries
Hungary	1	1991	Szerencsejáték Zrt.
Ireland	1	1987	National Lottery Ireland
Italy	2	1990	Lottomatica Group S.p.A.
		1946	Sisal S.p.A.
Latvia	1	1993	Latvijas Loto
Lithuania	1	1993	Olifeja Inc.
Luxembourg	1	1945	Loterie Nationale
Malta	1	2004	Maltco Lotteries Ltd.
The Netherlands	2	1959	De Lotto
		1726	Nederlandse Staatsloterij
Poland	1	1956	Totalizator Sportowy Sp.z.o.o.
Portugal	1	1783	Santa casa da Misericórdia de Lisboa
Romania	1	1906	C.N. Loteria Romana S.A.
Slovakia	1	1993	TIPOS National Lottery Company a.s.
Slovenia	2	1952	Loterija Slovenije d.d.
		1996	Športna Loterija d.d.
Spain	3	1812	Sociedad Estatal Loterías y Apuestas del Estado
		1987	Loteria de Catalunya
		1938	Organización Nacional de Ciegos Españoles (ONCE)
Sweden	1	1996	AB Svenska Spel
United Kingdom	1	1994	Camelot UK Lotteries Ltd.
EU (27) TOTAL*	53		

*RAY is the Finnish Slot Machine Association and a Member of EL. As such, RAY completed the ELISE survey. However, RAY does not offer lottery games and their data has not been included in the aggregated lottery data shown in this report.

Table 1b: Participating lotteries outside the EU

Country	Number of reporting Lotteries	Founded year	EL Lotteries outside the EU
Azerbaijan	2	2010	Azerinteltek CJSC
		2001	Azerlotereya SJSC
Belarus	1	2007	CJSC Sport-Pari
Bosnia and Herzegovina	2	1973	Lottery of Bosnia and Herzegovina
		1992	Lottery of the Republic of Srpska
Croatia	1	1973	Hrvatska Lutrija d.o.o.
FYROM	1	2008	National Lottery of Macedonia
Georgia	1	2009	GLC Georgian Lottery Company LLC
Iceland	2	1934	Happdrætti Háskóla Íslands
		1986	Íslensk Getspá
Israel	2	1968	TOTO (The Israel Sports Betting Board)
		1951	Mifal Hapais
Kazakhstan	1	1997	National Lottery of Kazakhstan
Kosovo	1	1974	Lotaria e Kosovës
Moldova	1	1994	I.M. Loteria Moldovei SA
Norway	1	1948	Norsk Tipping AS
Russia	3	1996	CJSC Interlot
		2006	Orglot OOO
		2008	OOO Ural Loto
Serbia	1	2004	State Lottery of Serbia d.o.o.
Switzerland	2	2003	Swisslos
		1937	Société de la Loterie de la Suisse romande
Turkey	1	1939	Turkish National Lottery Administration
Ukraine	2	1971	MSL
		1997	Ukrainian National Lottery
EL (44) TOTAL	25		

Thus, a total of 79 lotteries have provided 2011 data for this report.

Table 2: GGR 2011 in the EU by game category

Game category	Lotteries reporting	EU (27) GGR 2011 (M€)	%
Draw based games	52	23'159	67%
Instant games	44	6'328	18%
Sports games pari-mutual	33	572	2%
Sports games fixed odds*	31	1'340	4%
Slots/VLTs/EILs outside casinos	7	2'815	8%
All other games and non gaming activities	12	358	1%
Total	52	34'573	100%

Euro exchange rate 2.1.2012. All the data from previous years has been recalculated from the national currencies using these rates.

GGR = Gross Gambling Revenue

*Not including Bulgaria/Eurofootball, they did not report GGR

Figure 1: GGR 2011 in the EU by game category

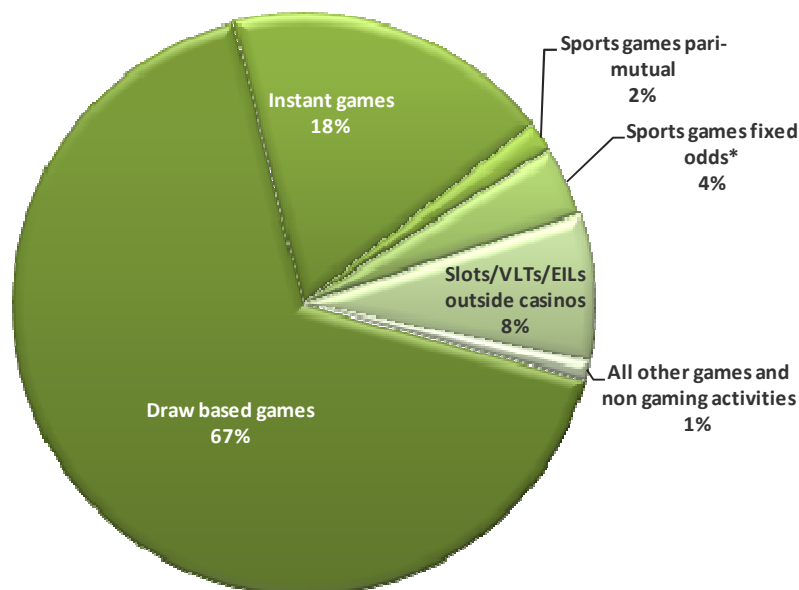


Table 3: GGR 2011 for EL members by game category

Game category	Lotteries reporting	EL (44) GGR 2011 (M€)	%
Draw based games	74	24'959	67%
Instant games	62	6'738	18%
Sports games pari-mutual	43	663	2%
Sports games fixed odds*	41	1'563	4%
Slots/VLTs/EILs outside casinos	15	3'056	8%
All other games and non gaming activities	16	365	1%
Total	77	37'345	100%

Euro exchange rate 2.1.2012. All the data from previous years has been recalculated from the national currencies using these rates.

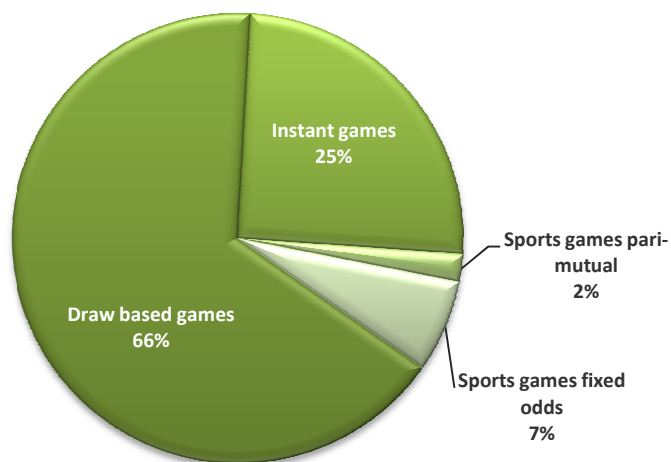
GGR = Gross Gambling Revenue

*Not including Bulgaria/Eurofootball, they did not report GGR

Table 4: Lottery sales 2011 in the EU by game category

Game category	Lotteries reporting	SALES EU (27) 2011 (M€)	%
Draw based games	52	50'888	66%
Instant games	44	19'386	25%
Sports games pari-mutual	33	1'529	2%
Sports games fixed odds	32	5'097	7%
Total	53	76'900	100%

Euro exchange rate 2.1.2012

Figure 2: Lottery sales 2011 in the EU by game category**Table 5: Lottery sales 2011 for EL members by game category**

Game category	Lotteries reporting	SALES EL (44) 2011 (M€)	%
Draw based games	73	53'991	66%
Instant games	61	20'094	25%
Sports games pari-mutual	42	1'746	2%
Sports games fixed odds	42	5'749	7%
Total*	77	81'580	100%

Euro exchange rate 2.1.2012

**Not including Swisslos/Switzerland, they are not reporting Sales*

The total turnover of Lottery sales for EL Members for 2011 including “Slots/VLTs/EILs outside casinos” and “All other games and non gaming” amounted to € 99.2 billion.

Table 6: GGR development in the EU 2006 – 2011 by game category

Game category	Lotteries reporting	EU (27) GGR 2011 (M€)	EU (27) GGR 2010 (M€)	Change (%) 2011 vs. 2010	EU (27) GGR 2009 (M€)	EU (27) GGR 2008 (M€)	EU (27) GGR 2007 (M€)	EU (27) GGR 2006 (M€)	Avg. annual change (%) 2011-2006
Draw based games	52	23'159	22'516	2.9%	23'881	22'880	24'916	24'558	-1.2%
Instant games	44	6'328	5'675	11.5%	5'720	5'698	5'627	4'350	7.8%
Sports games pari-mutual	33	572	658	-13.0%	711	801	997	1'084	-12.0%
Sports games fixed odds*	31	1'340	1'398	-4.1%	1'348	1'454	1'231	1'264	1.2%
Slots/VLTs/EILs outside casinos	7	2'815	2'163	30.1%	1'833	1'664	1'197	754	30.2%
All other games and non gaming	12	358	749	-52.2%	687	376	278	237	8.6%
Total	52	34'573	33'160	4.3%	34'180	32'873	34'245	32'246	1.4%

Euro exchange rate 2.1.2012

GGR = Gross Gambling Revenue

*Not including Bulgaria/Eurofootball, they are not reporting GGR

Table 7: Sales development in the EU 2008- 2011 by game category

Game category	Lotteries reporting	SALES EU (27) 2011 (M€)	SALES EU (27) 2010 (M€)	SALES EU (27) 2009 (M€)	SALES EU (27) 2008 (M€)	Change (M€) 2011 vs. 2010	Change (%) 2011 vs. 2010
Draw based games	52	50'888	49'270	51'560	49'883	1'617	3.3 %
Instant games	44	19'386	17'252	16'735	16'151	2'134	12.4 %
Sports games pari-mutual	33	1'529	1'694	1'882	2'003	-165	-9.7 %
Sports games fixed odds	32	5'097	5'566	5'136	5'392	-469	-8.4 %
Total	53	76'900	73'783	75'314	73'429	3'117	4.2 %

Euro exchange rate 2.1.2012

Annex A: Data collection and game category definitions

The data was gathered and analyzed in the period from February to May 2012 and covers the calendar year 2011. With few editorial changes in the questionnaire that lotteries complete, the same data has been collected in previous years 2006 to 2010 allowing for comparison over time. Data was requested in national currency and figures from the non-Euro countries was converted into Euros using the European Central Bank's official exchange rate quoting on January 2, 2012. Population figures are from EUROSTAT. Percentage changes between years have been calculated on the basis of figures in national currency.

The report relies almost exclusively on primary data sources. All data thus comes from EL member lotteries answering to a questionnaire sent out on 31st January 2012 by the EL.

There are no common definitions or internationally agreed to terms for games operated by state lotteries – or for that matter the wider gaming markets. Each jurisdiction thus applies its own definitions and no EU framework exists to give a homogenous description of gaming categories. The SICL study used five categories⁵ of which lotteries were one (the others were bingo; casino; sports betting and slot machines outside casinos). There is a great variety of activities offered by lotteries. Svenska Spel, for example, operates games in all of the categories used in the SICL study. In the Nordic region, national lotteries were established in the 1930's and 1940's offering "Tipset". It was a sports game based on the outcome of typically 11 to 13 football matches. The lotteries later added other games based on a random draw of numbers – typically named Lotto. The national lottery in Denmark, Danske Spil AS, also operates horserace betting whilst other jurisdictions have granted separate non-lottery entities, like PMU in France or ATG of Sweden, exclusive licenses for this activity. In the U.K., nation wide lotteries were prohibited until The National Lottery was established in 1994.

In spite of the lack of a commonly agreed to framework, for the description of gaming, there is an unspoken consensus in the world of gaming by which games can be meaningfully grouped under the same heading. Commonly understood terms have developed over time and are based upon a few generic gaming characteristics.

Probably the most important distinction, as explained below, is between pari-mutual based games and games with fixed odds.

Additionally, there is usually a distinction between games where the outcome is completely based on a random selection of numbers or symbols and games where the outcome is based on one or more events, in which it is meaningful to claim that punters can estimate the likelihood of the outcomes differently. In other words, games based on future events in areas like sports, politics, music, film, weather forecast etc. where a punter's skill or knowledge within the given area increases her/his chances of winning the game.

The first group of games, those of random outcome, are typically also divided into regularly drawn games and pre-drawn games. The former is, for example, Lotto whilst the latter could be a scratch

⁵ The study originally had eight categories defined by the EU Commission in its tender document Markt/2004/12/E. However, the researchers were only able to collect data from five out of eight categories leaving out Gambling services operated by charitable organisations; Media gambling services and Sales promotional games with prizes above € 100.000.

ticket game, where the winning tickets were determined at the time of printing.

Building upon this unspoken consensus, a list of terms with accompanying explanations was given to the lotteries to assist them in answering the data questionnaire. The explanations are attached as annex b and show which data the participants have been asked to report.

The report defined 6 economic activities carried out by lotteries:

Draw based games: All games offered nationwide and based on a random draw of numbers, letters or symbols. Another term would be Number games used in earlier versions of the questionnaire. The most well known European (worldwide) generic brand names are Lotto, Keno, Joker, Class Lottery and Bingo. The games are normally built on the pari-mutual principle where a certain percentage of the total stake sum is allocated to one or more prize pools and then shared amongst the winners in that prize pool. If there are many winners the prizes will be small and vice versa.

However, a small number of the games in this category use fixed prizes. In other words, the player knows the potential winning on a lottery ticket at the time of purchase no matter how many winners there are. There is thus a certain risk for the lottery operator that it must pay out more in prizes than what it sells for. This is obviously never the case for pari-mutual based games. When fixed prize games like, for example, Bingo or Keno are sold in large volumes the prize pay-out resembles that of pari-mutual games which is why they are grouped together.

In economic terms, the “Draw based games” category is by far the largest of all lottery operated game categories. Note that a given game may be sold through more sales channels like retail, the Internet and mobile phones.

Instant games: “scratch tickets” or “pull tab” games are pre-drawn lotteries. In other words, when the player buys a ticket it has already been decided at the time of manufacturing and according to a winning plan if the ticket is a winner or not. Thus, the player can immediately see if it is a winning ticket and hence the name “instant ticket”.

Typically, the winning plan applies a certain percentage of a sales unit as the prize amount and the winner selection is exclusively random. Thus, in construction, the game is closely related to number games in particular if the volume sold is large. However, the category always uses fixed prizes where players know the potential size of a winning in advance of the purchase independently of the conduct of other players.

Sports games pari-mutual: The term “sports betting” or “sports games” does not necessarily refer only to betting on sports events. In some jurisdictions, “sports betting” may also cover betting on other future events from politics, music, films, weather forecast or even operator created events – what in the U.K. comes under the term “novelty bets”. This report will therefore also use the term “sports games” knowing that it embraces events other than sports.

Probably the most important distinction in sports wagering is between pari-mutual betting and fixed odds betting. In Pari-mutual betting the lottery defines a certain share of the stake that goes to one or more prize pools. As stated above, if many punters predict the correct outcome, prizes will be small and if only few have guessed the correct outcome prizes will be large. Thus, the operator runs no risk of losing money – given a level of sales that at least cover the total costs. The principle is typical for wagering on horse races and for the so-called “Toto” or “Tipset” games where punters must predict the outcome of a series of football matches ranging from 11 to 14 in the 1 (home win) X (draw) or 2 (away win) format.

Sports games fixed odds: Fixed odds betting is different. Here, the price or “the odds” are set in accordance with the different likelihoods of the outcome of a given event⁶. Hence, the operator offers a fixed prize established as the stake multiplied by the odds for a correct prediction. In principle, the operator does not need any volume as would be the case in pari-mutual wagering. The wager is, of course, concluded before the outcome of the event is known and the potential prize is then fixed and cannot subsequently be altered. Obviously, the operator runs a risk that the prize payout might exceed sales, which is not the case for pari-mutual based games.

Slots/VLTs/EILs outside casinos: Slot machines, Video Lottery Terminals (VLTs) and Electronic Instant Lotteries (EILs) are devices designed for gaming which the player operates without the intervention of a sales person or retailer. Typically, VLT’s are modern devices linked to a central computer from which games can be monitored, audited, installed and removed on one or on more terminals at a time. Slot machines are normally stand-alone devices where new games may be installed but only through direct physical contact with each machine.

To be in line with the recommendation of the VLT/EIL Working Group, this section will be named EGMs (Electronic Gaming Machines) as per next year.

Any other game or non-gaming activities: Was created as a residual category to make sure all games and economical activities offered were included in the answers. The category comprises of Internet Poker, Brick and mortar casino games and non-gaming activities like the issuing of drivers licenses.

⁶ The odds are equal to: prize pay-out percent divided by the likelihood of the outcome in percent. For example, a lottery aims at an average theoretical pay-out of 85% of sales and uses this as the pay-out percentage for individual betting objects. Let the event be a football match between Manchester United and Arsenal where the company’s experts estimate that the likelihood for a home win is 50%, a draw 35% and an away win 15%. The (rounded) odds, or the price offered to punters for betting with one unit on the correct outcome, would then be: $85\%/50\% = 1.70$ for (1); $85\%/35\% = 2.45$ for an (x) and $85\%/15\% = 5.65$ for the (2).

Annex 2.19

GAC Early Warning – Submittal_____

Application ID:	1-868-7904
Entity/Applicant Name:	Afilias Limited
String:	LOTTO
Early Warning Issue Date:	(this box to be filled in by GAC Secretariat only)

Early Warning Description – This will be posted publicly:

The government of Islamic Republic of Iran would like to express its serious concerns toward “.LOTTO” new gTLD application made by Afilias Limited, based on the following reasons:

- According to believes and values of Islamic Republic of Iran the new applied for TLD is in conflict with ethical standards.
- From rational view point any action that lead to agitation and irritation of the humanity and have deleterious behavioral impact are not acceptable.
- The new applied for TLD can encourage people on doing non-religious, unethical and non rational actions in any society.

Reason/Rationale for the Warning – This will be posted publicly:

According to believes and values of Islamic Republic of Iran the applied for new gTLD is in conflict with ethical standards. From rational view point any action that lead to agitation and irritation of the humanity and faith; and have deleterious behavioral impacts which are not permitted.

The applied for new gTLD can encourage people on doing non-religious, unethical and non rational actions.

The applicant has not worked on any legislation or roles to prevent the registration of domain names under applied for TLD in Islamic and other sensitive countries, which is an aggression to the sensitive communities’ beliefs and regulations, causing many Unpredictable results.

So the government of the Islamic Republic of Iran would like to express its serious concern on the applied for TLD, asking ICANN to not to approve the applied for TLD unless the applicant modifies its rules and regulations in a clear way to prevent the registrations under the applied for TLD in the countries with serious concerns.

GAC Early Warning – Submittal_____

Supporting GAC Members (Optional):

I agree to include the supporting GAC members in the publication of this Early Warning

Possible Remediation steps for Applicant – This will be posted publicly:

- | |
|--|
| <ul style="list-style-type: none">- The applicant should withdraw their application based on the information provided above- Or the applicant should change the TLDs registration policies to clearly and effectively interdict the registration of the domains in Islamic and other sensitive countries. |
|--|

Further Notes from GAC Member(s) (Optional) – This will be posted publicly:

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INFORMATION FOR APPLICANTS

About GAC Early Warning

The GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs or of a formal objection at a later stage in the process. Refer to section 1.1.2.4 of the Applicant Guidebook (<http://newgtlds.icann.org/en/applicants/agb>) for more information on GAC Early Warning.

Instructions if you receive the Early Warning

ICANN strongly encourages you work with relevant parties as soon as possible to address the concerns voiced in the GAC Early Warning.

Asking questions about your GAC Early Warning

If you have questions or need clarification about your GAC Early Warning, please contact gacearlywarning@gac.icann.org. As highlighted above, ICANN strongly encourages you to contact gacearlywarning@gac.icann.org as soon as practicable regarding the issues identified in the Early Warning.

Continuing with your application

If you choose to continue with the application, then the “Applicant’s Response” section below should be completed. In this section, you should notify the GAC of intended actions, including the expected completion date. This completed form should then be sent to gacearlywarning@gac.icann.org. If your remediation steps involve submitting requests for changes to your application, see the change request process at <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>.

In the absence of a response, ICANN will continue to process the application as submitted.

Withdrawing your application

If you choose to withdraw your application within the 21-day window to be eligible for a refund of 80% of the evaluation fee (USD 148,000), please follow the withdrawal process published at <http://newgtlds.icann.org/en/applicants/customer-service/withdrawal-refund>. Note that an application can still be withdrawn after the 21-day time period; however, the available refund amount is reduced. See section 1.5 of the Applicant Guidebook.

For questions please contact: gacearlywarning@gac.icann.org

Applicant Response:

Annex 2.20

JUDGMENT OF THE COURT (Grand Chamber)

8 September 2009 (*)

(Reference for a preliminary ruling – Article 49 EC – Restrictions on the freedom to provide services – Offer of games of chance via the internet)

In Case C-42/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunal de Pequena Instância Criminal do Porto (Portugal), made by decision of 26 January 2007, received at the Court on 2 February 2007, in the proceedings

Liga Portuguesa de Futebol Profissional,

Bwin International Ltd, formerly Baw International Ltd,

v

Departamento de Jogos da Santa Casa da Misericórdia de Lisboa,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and K. Lenaerts, Presidents of Chambers, A. Tizzano, J.N. Cunha Rodrigues, R. Silva de Lapuerta, K. Schiemann (Rapporteur), J. Klučka, A. Arabadjiev, C. Toader and J.-J. Kasel, Judges,

Advocate General: Y. Bot,

Registrars: K. Sztranc-Sławiczek and B. Fülöp, Administrators,

having regard to the written procedure and further to the hearing on 29 April 2008,

after considering the observations submitted on behalf of:

- the Liga Portuguesa de Futebol Profissional and Bwin International Ltd, by E. Serra Jorge, advogado, and by C.-D. Ehlermann and A. Gutermuth, Rechtsanwälte,
- the Departamento de Jogos da Santa Casa da Misericórdia de Lisboa, by V. Rodrigues Feliciano, procurador-adjunto,

- the Portuguese Government, by L. Inez Fernandes, M.L. Duarte and A. Matos Barros, acting as Agents,
- the Belgian Government, by A. Hubert and L. Van den Broek, acting as Agents, assisted by P. Vlaeminck, advocaat,
- the Danish Government, by J. Liisberg, acting as Agent,
- the German Government, by M. Lumma, acting as Agent,
- the Greek Government, by N. Dafniou, O. Patsopoulou and M. Tassopoulou, acting as Agents,
- the Spanish Government, by F. Díez Moreno, acting as Agent,
- the Italian Government, by I.M. Braguglia, acting as Agent, assisted by D. Del Gaizo, avvocato dello Stato,
- the Netherlands Government, by C. Wissels and M. de Grave, acting as Agents,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the Slovenian Government, by T. Mihelič, acting as Agent,
- the Finnish Government, by J. Heliskoski, acting as Agent,
- the Norwegian Government, by P. Wennerås and J.A. Dalbakk, acting as Agents,
- the Commission of the European Communities, by E. Traversa and M. Afonso, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 October 2008,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Articles 43 EC, 49 EC and 56 EC.
- 2 The reference has been made in the course of proceedings between, on the

one hand, the Liga Portuguesa de Futebol Profissional ('the Liga') and Bwin International Ltd ('Bwin'), formerly Baw International Ltd, and, on the other, the Departamento de Jogos da Santa Casa da Misericórdia de Lisboa ('Santa Casa') concerning fines imposed on the Liga and Bwin by the directors of Santa Casa on the ground that they had infringed the Portuguese legislation governing the provision of certain games of chance via the internet.

Legal framework

The regulation of games of chance in Portugal

- 3 In Portugal games of chance are, in principle, prohibited. However, the State has reserved the right to authorise, in accordance with the system which it deems most appropriate, the operation of one or more games directly, through a State body or a body controlled directly by the State, or to grant the right to operate such games to private entities, whether profit-making or not, by calls for tender conducted in accordance with the Code of Administrative Procedure.
- 4 Games of chance in the form of lotteries, lotto games and sports betting are known in Portugal as games of a social nature ('jogos sociais') and the operation of such games is systematically entrusted to Santa Casa.
- 5 Each type of game of chance organised by Santa Casa is instituted separately by a decree-law and the entire organisation and operation of the various games offered by it, including the amount of stakes, the system for awarding prizes, the frequency of draws, the specific percentage of each prize, methods of collecting stakes, the method of selecting authorised distributors, and the methods and periods for payment of prizes, are covered by government regulation.
- 6 The first type of game in question was the national lottery (Lotaria Nacional), which was established by a royal edict of 18 November 1783, and a concession was awarded to Santa Casa, the concession being renewed regularly thereafter. Today that lottery consists in the monthly drawing of numbers by lot.
- 7 Following a number of legislative developments, Santa Casa acquired the right to organise other games of chance based on the drawing of numbers by lot or on sporting events. This led to the introduction of two games involving betting on football matches called 'Totobola' and 'Totogolo', respectively enabling participants to bet on the result (win, draw or loss) and the number of goals scored by the teams. There are also two lotto games, namely Totoloto,

in which six numbers are chosen from a total of 49, and EuroMillions, a type of European lotto. Players of Totobola or Totoloto may also take part in a game called ‘Joker’, which consists in the drawing of a single number by lot. Lastly, there is also the Lotaria Instantânea, an instant game with a scratch card, commonly called ‘raspadinha’.

The provision of games of a social nature via the internet

8 In 2003 the legal framework governing lotteries, lotto games and sports betting was adapted in order to take account of technical developments enabling games to be offered by electronic means, in particular the internet. Those measures feature in Decree-Law No 282/2003 of 8 November 2003 (*Diário da República* I, series A, No 259, 8 November 2003). They seek essentially, first, to license Santa Casa to distribute its products by electronic means and, secondly, to extend Santa Casa’s exclusive right of operation to include games offered by electronic means, in particular the internet, thereby prohibiting all other operators from using those means.

9 Article 2 of Decree-Law No 282/2003 confers on Santa Casa, through its Departamento de Jogos (Gaming Department), exclusive rights for the operation by electronic means of the games in question and for any other game the operation of which may be entrusted to Santa Casa, and states that that system covers all of the national territory, and includes, in particular, the internet.

10 Under Article 11(1) of Decree-Law No 282/2003 the following are classed as administrative offences:

‘(a) the promotion, organisation or operation by electronic means of games [the operation of which has been entrusted to Santa Casa], in contravention of the exclusive rights granted by Article 2 [of the present Decree-Law], and also the issue, distribution or sale of virtual tickets and the advertisement of the related draws, whether they take place within national territory or not;

(b) the promotion, organisation or operation by electronic means of lotteries or other draws similar to those of the Lotaria Nacional or the Lotaria Instantânea, in contravention of the exclusive rights granted by Article 2, and also the issue, distribution or sale of virtual tickets and the advertisement of the related draws, whether they take place within national territory or not;

...’

11 Article 12(1) of Decree-Law No 282/2003 sets the maximum and minimum fines for the administrative offences laid down in, inter alia, Article 11(1)(a) and (b) of that Decree-Law. For legal persons, the fine is to be not less than EUR 2 000 or more than three times the total amount deemed to have been collected from organising the game in question, provided that the triple figure is greater than EUR 2 000 but does not exceed a maximum of EUR 44 890.

The organisation and activities of Santa Casa

12 The activities of Santa Casa were, at the material time, regulated by Decree-Law No 322/91 of 26 August 1991 adopting the statutes of Santa Casa da Misericórdia de Lisboa (*Diário da República* I, series A, No 195, 26 August 1991), as amended by Decree-Law No 469/99 of 6 November 1999 (*Diário da República* I, series A, No 259, 6 November 1999) ('Decree-Law No 322/91').

13 The preamble to Decree-Law No 322/91 emphasises the importance of the various aspects of Santa Casa – historical, social, cultural and economic – and concludes that the Government must pay 'specific and continuous attention in order to prevent negligence and failures ... while nevertheless granting [Santa Casa] the broadest possible autonomy in the management and operation of games of a social nature'.

14 Under Article 1(1) of its statutes, Santa Casa is a 'legal person in the public administrative interest'. The administrative organs of Santa Casa consist, by virtue of Article 12(1) of its statutes, of a director and a board of management. Pursuant to Article 13 of those statutes, the director is appointed by decree of the Prime Minister, the other members of Santa Casa's board of management being appointed by decree of the members of the Government under whose supervision Santa Casa falls.

15 Under Article 20(1) of its statutes, Santa Casa has been given specific tasks in the areas of protection of the family, mothers and children, help for unprotected minors at risk, assistance for old people, social situations of serious deprivation, and primary and specialised health care.

16 The earnings generated by the operation of games of chance are allocated between Santa Casa and other public-interest institutions or institutions involved in social projects. Those other public-interest institutions include associations of voluntary fire crews, private social solidarity institutions, establishments for the safety and rehabilitation of handicapped persons, and the cultural development fund.

- 17 The operation of games of chance falls within the responsibilities of the Gaming Department of Santa Casa. That department is governed by regulations adopted, as in the case of Santa Casa's statutes, by Decree-Law No 322/91, and it has its own administrative and control organs.
- 18 In accordance with Article 5 of the regulations governing the Gaming Department, the administrative organ of that department consists of the director of Santa Casa, who is the ex officio chairman, and two deputy directors appointed by joint decree of the Minister for Employment and Solidarity and the Minister for Health. Pursuant to Articles 8, 12 and 16 of the regulations of the Gaming Department, the majority of the members of the committees in charge of games, draws and complaints are representatives of the public authorities, that is to say, the General Tax Inspectorate and the District Government in Lisbon. Accordingly, the chairman of the complaints committee, who has a casting vote, is a judge appointed by decree of the Minister for Justice. Two of the three members of that committee are appointed by decree of the chief tax inspector and decree of the chief administrative officer (prefect) of the District of Lisbon respectively, while the third member of the committee is appointed by the director of Santa Casa.
- 19 The Gaming Department has the powers of an administrative authority to open, institute and prosecute proceedings concerning offences involving the illegal operation of games of chance in relation to which Santa Casa has the exclusive rights, and to investigate such offences. Decree-Law No 282/2003 confers upon the directors of the Gaming Department, inter alia, the necessary administrative powers to impose fines as provided for under Article 12(1) of that Decree-Law.

The actions in the main proceedings and the question referred for a preliminary ruling

- 20 Bwin is an on-line gambling undertaking which has its registered office in Gibraltar. It offers games of chance on an internet site.
- 21 Bwin has no establishment in Portugal. Its servers for the on-line service are in Gibraltar and Austria. All bets are placed directly by the consumer on Bwin's internet site or by some other means of direct communication. Stakes on that site are paid by credit card in particular, but also by other means of electronic payment. The value of any winnings is credited to the gambling account opened for the gambler by Bwin. The gambler may use that money in order to gamble or ask for it to be transferred to his bank account.

- 22 Bwin offers a wide range of on-line games of chance covering sports betting, casino games, such as roulette and poker, and games based on drawing numbers by lot which are similar to the Totoloto operated by Santa Casa.
- 23 Betting is on the results of football matches and other sporting events. The different games offered include bets on the result (win, draw or loss) of football matches in the Portuguese championship equivalent to the Totobola and Totogolo games operated exclusively by Santa Casa. Bwin also offers on-line betting in real time, in which the odds are variable and change as the sporting event in question unfolds. Information such as the match score, the time elapsed, yellow and red cards given, and so on, are displayed in real time on the Bwin internet site, thus enabling gamblers to place bets interactively as the sporting event unfolds.
- 24 The order for reference states that the Liga is a private-law legal person with the structure of a non-profit-making association, made up of all the clubs taking part in football competitions at professional level in Portugal. It organises, inter alia, the football competition corresponding to the national First Division and is responsible for the commercial operation of that competition.
- 25 The Liga and Bwin stated in the observations which they submitted to the Court that a sponsorship agreement, concluded by them on 18 August 2005 for four playing seasons starting in 2005/2006, made Bwin the main institutional sponsor of the First Football Division in Portugal. Under the terms of that agreement, the First Division, previously known as the ‘Super Liga’, changed its name first to the Liga betandwin.com, and then subsequently to the Bwin Liga. In addition, the Bwin logos were displayed on the sports kit worn by the players and affixed around the stadiums of the First Division clubs. The Liga’s internet site also included references and a link allowing access to Bwin’s internet site, making it possible for consumers in Portugal and other States to use the gambling services thus offered to them.
- 26 Subsequently, in exercising the powers conferred on them by Decree-Law No 282/2003, the directors of the Gaming Department of Santa Casa adopted decisions imposing fines of EUR 75 000 and EUR 74 500 respectively on the Liga and Bwin in respect of the administrative offences referred to in Article 11(1)(a) and (b) of that Decree-Law. Those sums represent the aggregated amounts of two fines imposed on each of the Liga and Bwin for promoting, organising and operating, via the internet, games of a social nature reserved to Santa Casa or such similar games, and also for advertising such gambling.

27 The Liga and Bwin brought actions before the national court for annulment of those decisions, invoking, inter alia, the relevant Community rules and case-law.

28 In those circumstances, the Tribunal de Pequena Instância Criminal do Porto (Local Criminal Court, Oporto) (Portugal) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘[Do] the exclusive rights granted to Santa Casa, when relied on against [Bwin], that is to say, against a provider of services established in another Member State in which it lawfully provides similar services, which has no physical establishment in Portugal, [constitute] an impediment to the free provision of services, in breach of the principles of freedom to provide services, freedom of establishment and the free movement of payments enshrined in Articles 49, 43 and 56 of the EC Treaty [?]

[Is it] contrary to Community law, in particular to the abovementioned principles, for rules of domestic law such as those at issue in the main proceedings first to grant exclusive rights in favour of a single body for the operation of lotteries and off-course betting and then to extend those exclusive rights to “the entire national territory, including ... the internet”[?]

The application to have the oral procedure reopened

29 By document lodged at the Court Registry on 30 October 2008, Bwin requested the Court to order that the oral procedure be reopened, pursuant to Article 61 of the Rules of Procedure.

30 In accordance with that provision, the Advocate General was heard in connection with that application.

31 The Court may of its own motion, or on a proposal from the Advocate General, or at the request of the parties, order the reopening of the oral procedure in accordance with Article 61 of the Rules of Procedure if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties (see, inter alia, Case C-284/06 *Burda* [2008] ECR I-4571, paragraph 37 and case-law cited).

32 However, neither the Statute of the Court of Justice nor its Rules of Procedure make provision for the parties to submit observations in response to the Advocate General’s Opinion.

33 In its application, Bwin essentially confines itself to commenting on the Opinion of the Advocate General, emphasising in particular that, in relation to a number of points of fact, the Advocate General based himself on the observations submitted by Santa Casa and the Portuguese Government, without taking into account the arguments put forward by Bwin or the Liga in order to challenge those points, or noting that those points were the subject of dispute.

34 The Court takes the view that it has all the material necessary in the present case to enable it to reply to the question referred by the national court and that the case does not have to be examined in the light of an argument that has not been the subject of discussion before it.

35 Consequently, there is no need to order the reopening of the oral procedure.

The admissibility of the reference for a preliminary ruling

36 In its observations submitted to the Court, the Italian Government argues that the reference for a preliminary ruling is inadmissible on the ground that the question referred by the national court requests the Court of Justice to give a ruling on the compatibility of a provision of national law with Community law.

37 In that connection, it should be noted that the cooperative arrangements established by Article 234 EC are based on a clear division of responsibilities between the national courts and the Court of Justice. In proceedings brought on the basis of that article, the interpretation of provisions of national law is a matter for the courts of the Member States, not for the Court of Justice, and the Court has no jurisdiction to rule on the compatibility of national rules with Community law. On the other hand, the Court does have jurisdiction to provide the national court with all the guidance as to the interpretation of Community law necessary to enable that court to rule on the compatibility of those national rules with Community law (Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* [2007] ECR I-1891, paragraph 36).

38 It must be pointed out that, by its question, the national court is not asking the Court of Justice to rule on the compatibility with Community law of the specific Portuguese legislation on games of chance, but rather on certain aspects only of that legislation, which are set out in general terms. More specifically, these relate to the prohibition of all service providers other than Santa Casa, including service providers established in other Member States,

from offering via the internet in Portugal games of chance which Santa Casa is authorised to operate, and any similar games. Such a reference is admissible.

39 In addition, the Italian, Netherlands and Norwegian Governments and the Commission of the European Communities question the admissibility of the reference for a preliminary ruling on the ground that it does not provide sufficient information on the content and objectives of the Portuguese legislation applicable to the dispute in the main proceedings.

40 With regard to the information that must be provided to the Court in connection with a reference for a preliminary ruling, it should be noted that that information does not serve only to enable the Court to provide answers which will be of use to the national court; it must also enable the Governments of the Member States, and other interested parties, to submit observations in accordance with Article 23 of the Statute of the Court of Justice. For those purposes, according to settled case-law, it is firstly necessary that the national court should define the factual and legislative context of the questions which it is asking or, at the very least, explain the factual circumstances on which those questions are based. Secondly, the order for reference must set out the precise reasons why the national court is unsure as to the interpretation of Community law and why it considered it necessary to refer questions to the Court for a preliminary ruling. In consequence, it is essential that the national court provide at the very least some explanation of the reasons for the choice of the Community provisions which it requires to be interpreted and of the link which it establishes between those provisions and the national legislation applicable to the dispute in the main proceedings (see *Placanica and Others*, paragraph 34 and the case-law cited).

41 In that connection, it is true that the precision, and even the usefulness, both of the observations submitted by the governments of the Member States and the other interested parties, and of the answer given by the Court, may depend on sufficient details being provided as to the content and objectives of the national legislation applicable to the dispute in the main proceedings. Nevertheless, in the light of the division of responsibilities between the national courts and the Court of Justice, the referring court cannot be required to make all the findings of fact and of law required by its judicial function first before it may then bring the matter before the Court. It is sufficient that both the subject-matter of the dispute in the main proceedings and the main issues raised for the Community legal order may be understood from the reference for a preliminary ruling, in order to enable the Member States to submit their observations in accordance with Article 23 of the Statute of the Court of Justice and to participate effectively in the proceedings before the Court.

42 In the main proceedings, the order for reference satisfies those requirements. The referring court has defined the factual and legislative context of the question which it has referred to the Court. In so far as the objectives of the Portuguese legislation on games of chance are not set out in the order for reference, the Court will be required to answer the question referred by having particular regard to the objectives referred to by the parties to the main proceedings and by the Portuguese Government before the Court. Accordingly, the Court takes the view that, in those circumstances, it has all the material necessary to enable it to reply to that question.

43 In the light of all those considerations, the reference for a preliminary ruling must be held to be admissible.

The question referred for a preliminary ruling

44 By its question, the national court seeks a ruling from the Court on the interpretation of Articles 43 EC, 49 EC and 56 EC.

The applicability of Articles 43 EC and 56 EC

45 In so far as the question referred by the national court refers not only to Article 49 EC but also to Articles 43 EC and 56 EC, it should be made clear from the outset that it is not apparent, in the light of the information in the file, that those last two articles might be applicable to the dispute in the main proceedings.

46 As to whether Article 43 EC is applicable, it is common ground that Bwin carries on its activities in Portugal exclusively via the internet, without resorting to intermediaries in Portugal and thus without having established a principal place of business or secondary establishment in that State. Similarly, it is not apparent from the file that Bwin had any intention to establish itself in Portugal. Consequently, there is nothing to suggest that the Treaty provisions on freedom of establishment might be applicable to the dispute in the main proceedings.

47 As to whether Article 56 EC is applicable, it must be noted that any restrictive effects which the national legislation at issue in the main proceedings might have on the free movement of capital and payments would be no more than the inevitable consequence of any restrictions on the freedom to provide services. Where a national measure relates to several fundamental freedoms at the same time, the Court will in principle examine the measure in relation to only one of those freedoms if it appears, in the circumstances of the case, that the other freedoms are entirely secondary in relation to the first and

may be considered together with it (see, to that effect, Case C-452/04 *Fidium Finanz* [2006] ECR I-9521, paragraph 34 and case-law cited).

48 In those circumstances, the question referred by the national court must be answered in the light of Article 49 EC alone.

The scope of the question referred for a preliminary ruling

49 The dispute in the main proceedings concerns the marketing in Portugal of a number of games of chance played on an electronic medium, namely the internet. Bwin, a private operator established in another Member State, offers games of chance in Portugal exclusively via the internet, and the administrative offences laid down in Article 11(1)(a) and (b) of Decree-Law No 282/2003, of which the Liga and Bwin are accused in the main proceedings, concern exclusively conduct in relation to games of chance organised by electronic means.

50 The question referred by the national court must therefore be construed as asking in essence whether Article 49 EC precludes legislation of a Member State, such as that at issue in the main proceedings, which prohibits operators, such as Bwin, which are established in other Member States, in which they lawfully provide similar services, from offering games of chance via the internet within the territory of that first Member State.

The existence of restrictions on the freedom to provide services

51 Article 49 EC requires the abolition of all restrictions on the freedom to provide services, even if those restrictions apply without distinction to national providers of services and to those from other Member States, when they are liable to prohibit, impede or render less advantageous the activities of a service provider established in another Member State where it lawfully provides similar services (see, to that effect, Case C-76/90 *Säger* [1991] ECR I-4221, paragraph 12, and Case C-58/98 *Corsten* [2000] ECR I-7919, paragraph 33). Moreover, the freedom to provide services is for the benefit of both providers and recipients of services (see, to that effect, Joined Cases 286/82 and 26/83 *Luisi and Carbone* [1984] ECR 377, paragraph 16).

52 It is accepted that the legislation of a Member State which prohibits providers such as Bwin, established in other Member States, from offering via the internet services in the territory of that first Member State constitutes a restriction on the freedom to provide services enshrined in Article 49 EC (see, to that effect, Case C-243/01 *Gambelli and Others* [2003] ECR I-13031, paragraph 54).

53 Such legislation also imposes a restriction on the freedom of the residents of the Member State concerned to enjoy, via the internet, services which are offered in other Member States.

54 Consequently, as indeed the Portuguese Government expressly concedes, the legislation at issue in the main proceedings gives rise to a restriction of the freedom to provide services enshrined in Article 49 EC.

The justification of the restriction of the freedom to provide services

55 It is necessary to consider to what extent the restriction at issue in the main proceedings may be allowed as a derogation expressly provided for by Articles 45 EC and 46 EC, applicable in this area by virtue of Article 55 EC, or justified, in accordance with the case-law of the Court, by overriding reasons in the public interest.

56 Article 46(1) EC allows restrictions justified on grounds of public policy, public security or public health. In addition, a certain number of overriding reasons in the public interest have been recognised by case-law, such as the objectives of consumer protection and the prevention of both fraud and incitement to squander money on gambling, as well as the general need to preserve public order (see, to that effect, *Placanica and Others*, paragraph 46 and case-law cited).

57 In that context, as most of the Member States which submitted observations to the Court have noted, the legislation on games of chance is one of the areas in which there are significant moral, religious and cultural differences between the Member States. In the absence of Community harmonisation in the field, it is for each Member State to determine in those areas, in accordance with its own scale of values, what is required in order to ensure that the interests in question are protected (see, inter alia, Case 34/79 *Henn and Darby* [1979] ECR 3795, paragraph 15; Case C-275/92 *Schindler* [1994] ECR I-1039, paragraph 32; Case C-268/99 *Jany and Others* [2001] ECR I-8615, paragraphs 56 and 60, and *Placanica and Others*, paragraph 47).

58 The mere fact that a Member State has opted for a system of protection which differs from that adopted by another Member State cannot affect the assessment of the need for, and proportionality of, the provisions enacted to that end. Those provisions must be assessed solely by reference to the objectives pursued by the competent authorities of the Member State concerned and the degree of protection which they seek to ensure (Case C-124/97 *Läärä and Others* [1999] ECR I-6067, paragraph 36, and Case C-

67/98 *Zenatti* [1999] ECR I-7289, paragraph 34).

- 59 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 they impose must satisfy the conditions laid down in the case-law of the Court as regards their proportionality (*Placanica and Others*, paragraph 48).
- 60 In the present case, it is thus necessary to examine in particular whether the restriction of the provision of games of chance via the internet, imposed by the national legislation at issue in the main proceedings, is suitable for achieving the objective or objectives invoked by the Member State concerned, and whether it does not go beyond what is necessary in order to achieve those objectives. In any event, those restrictions must be applied without discrimination (see, to that effect, *Placanica and Others*, paragraph 49).
- 61 In that context, it must be recalled that national legislation is appropriate for ensuring attainment of the objective pursued only if it genuinely reflects a concern to attain it in a consistent and systematic manner (Case C-169/07 *Hartlauer* [2009] ECR I-0000, paragraph 55).
- 62 The Portuguese Government and Santa Casa submit that the main objective pursued by the national legislation is the fight against crime, more specifically the protection of consumers of games of chance against fraud on the part of operators.
- 63 In that connection, it should be noted that the fight against crime may constitute an overriding reason in the public interest that is capable of justifying restrictions in respect of operators authorised to offer services in the games-of-chance sector. Games of chance involve a high risk of crime or fraud, given the scale of the earnings and the potential winnings on offer to gamblers.
- 64 The Court has also recognised that limited authorisation of games on an exclusive basis has the advantage of confining the operation of gambling within controlled channels and of preventing the risk of fraud or crime in the context of such operation (see *Läärä and Others*, paragraph 37, and *Zenatti*, paragraph 35).
- 65 The Portuguese Government submits that the grant of exclusive rights to Santa Casa to organise games of chance ensures that the system will function in a secure and controlled way. First, Santa Casa's long existence, spanning more than five centuries, is evidence of that body's reliability. Second, the

Portuguese Government points out that Santa Casa operates under its strict control. The legal framework for games of chance, Santa Casa's statutes and government involvement in appointing the members of its administrative organs enable the State to exercise an effective power of supervision over Santa Casa. That system, based on legislation and Santa Casa's statutes, provides the State with sufficient guarantees that the rules for ensuring fairness in the games of chance organised by Santa Casa will be observed.

66 In that regard, it is apparent from the national legal framework, set out in paragraphs 12 to 19 of the present judgment, that the organisation and functioning of Santa Casa are governed by considerations and requirements relating to the pursuit of objectives in the public interest. The Gaming Department of Santa Casa has been given the powers of an administrative authority to open, institute and prosecute proceedings involving offences of illegal operation of games of chance in relation to which Santa Casa has the exclusive rights.

67 In that connection, it must be acknowledged that the grant of exclusive rights to operate games of chance via the internet to a single operator, such as Santa Casa, which is subject to strict control by the public authorities, may, in circumstances such as those in the main proceedings, confine the operation of gambling within controlled channels and be regarded as appropriate for the purpose of protecting consumers against fraud on the part of operators.

68 As to whether the system in dispute in the main proceedings is necessary, the Portuguese Government submits that the authorities of a Member State do not, in relation to operators having their seat outside the national territory and using the internet to offer their services, have the same means of control at their disposal as those which they have in relation to an operator such as Santa Casa.

69 In that regard, it should be noted that the sector involving games of chance offered via the internet has not been the subject of Community harmonisation. A Member State is therefore entitled to take the view that the mere fact that an operator such as Bwin lawfully offers services in that sector via the internet in another Member State, in which it is established and where it is in principle already subject to statutory conditions and controls on the part of the competent authorities in that State, cannot be regarded as amounting to a sufficient assurance that national consumers will be protected against the risks of fraud and crime, in the light of the difficulties liable to be encountered in such a context by the authorities of the Member State of establishment in assessing the professional qualities and integrity of operators.

70 In addition, because of the lack of direct contact between consumer and operator, games of chance accessible via the internet involve different and more substantial risks of fraud by operators against consumers compared with the traditional markets for such games.

71 Moreover, the possibility cannot be ruled out that an operator which sponsors some of the sporting competitions on which it accepts bets and some of the teams taking part in those competitions may be in a position to influence their outcome directly or indirectly, and thus increase its profits.

72 It follows that, in the light of the specific features associated with the provision of games of chance via the internet, the restriction at issue in the main proceedings may be regarded as justified by the objective of combating fraud and crime.

73 Consequently, the answer to the question referred is that Article 49 EC does not preclude legislation of a Member State, such as that at issue in the main proceedings, which prohibits operators such as Bwin, which are established in other Member States, in which they lawfully provide similar services, from offering games of chance via the internet within the territory of that Member State.

Costs

74 Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national 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 (Grand Chamber) hereby rules:

Article 49 EC does not preclude legislation of a Member State, such as that at issue in the main proceedings, which prohibits operators such as Bwin International Ltd, which are established in other Member States, in which they lawfully provide similar services, from offering games of chance via the internet within the territory of that Member State.

[Signatures]

* Language of the case: Portuguese.

Annex 2.21

JUDGMENT OF THE COURT (Second Chamber)

3 June 2010 (*)

(Article 49 EC – Restrictions on the freedom to provide services – Games of chance – Offer of games of chance via the internet – Legislation reserving a licence to a single operator – Renewal of licence without subjecting the matter to competition – Principle of equal treatment and obligation of transparency – Application in the field of games of chance)

In Case C-203/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Raad van State (Netherlands), made by decision of 14 May 2008, received at the Court on 16 May 2008, in the proceedings

Sporting Exchange Ltd, trading as ‘Betfair’,

v

Minister van Justitie,

intervening party:

Stichting de Nationale Sporttotalisator,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues (Rapporteur), President of the Chamber, P. Lindh, A. Rosas, U. Lõhmus and A. Arabadjiev, Judges,

Advocate General: Y. Bot,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 12 November 2009,

after considering the observations submitted on behalf of:

- Sporting Exchange Ltd, trading as ‘Betfair’, by I. Scholten-Verheijen, O. Brouwer, A. Stoffer and J. Franssen, advocaten,
- Stichting de Nationale Sporttotalisator, by W. Geursen, E. Pijnacker

Hordijk and M. van Wissen, advocaten,

- the Netherlands Government, by C. Wissels, M. de Grave and Y. de Vries, acting as Agents,
- the Belgian Government, by A. Hubert and L. Van den Broeck, acting as Agents, and by P. Vlaemminck, advocaat,
- the Danish Government, by J. Bering Liisberg and V. Pasternak Jørgensen, acting as Agents,
- the German Government, by M. Lumma, acting as Agent,
- the Greek Government, by M. Tassopoulou, Z. Chatzipavlou and A. Samoni-Rantou, acting as Agents,
- the Spanish Government, by F. Díez Moreno, acting as Agent,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the Portuguese Government, by L. Inez Fernandes, P. Mateus Calado and A. Barros, acting as Agents,
- the Finnish Government, by A. Guimaraes-Purokoski and J. Heliskoski, acting as Agents,
- the Norwegian Government, by P. Wennerås and K. Moen, acting as Agents,
- the Commission of the European Communities, by E. Traversa, A. Nijenhuis and S. Noë, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 December 2009,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 49 EC.
- 2 The reference has been made in proceedings between Sporting Exchange

Ltd, a company trading as ‘Betfair’ established in the United Kingdom (‘Betfair’), and the Minister van Justitie (Minister for Justice; ‘the Minister’) concerning the latter’s rejection of (i) Betfair’s applications for a licence to organise games of chance in the Netherlands, and (ii) Betfair’s objections to licences granted to two other operators.

National legal context

3 Article 1 of the Law on games of chance (Wet op de kansspelen; ‘the Wok’) provides:

‘Subject to the provisions of Title Va of this Law, the following are prohibited:

- (a) providing an opportunity to compete for prizes if the winners are designated by means of any calculation of probability over which the participants are generally unable to exercise a dominant influence, unless a licence therefor has been granted pursuant to this Law;
- (b) promoting participation either in an opportunity as referred to under (a), provided without a licence pursuant to this Law, or in a similar opportunity, provided outside the Kingdom of the Netherlands in Europe, or to maintain a stock of materials intended to publicise or disseminate knowledge of such opportunities; ...’

4 Article 16(1) of the Wok is worded as follows:

‘The Minister for Justice and the Minister for Welfare, Public Health and Culture may grant to one legal person with full legal capacity a licence, for a period to be determined by them, to organise sports-related prize competitions in the interests of bodies operating for public benefit, particularly in the area of sport and physical education, culture, social welfare and public health.’

5 Article 23 of the Wok states:

- ‘1. A licence to organise a totalisator may be granted only in accordance with the provisions of this Title.
2. “Totalisator” shall mean any opportunity provided to bet on the outcome of trotting or other horse races, on the understanding that the total stake, apart from any deduction permitted by or by virtue of the law, will be distributed among those who have bet on the winner or on one of the prize winners.’

6 According to Article 24 of the Wok, the Minister for Agriculture and Fisheries and the Minister for Justice may grant to one legal person with full legal capacity a licence to organise a totalisator for a period to be determined by them.

7 Article 25 of the Wok provides:

- ‘1. The Ministers referred to in Article 24 shall impose certain conditions on a licence to organise a totalisator.
2. Those conditions relate, inter alia, to:
 - a. the number of trotting and other horse races;
 - b. the maximum stake per person;
 - c. the percentage retained before distribution among the winners and the particular use of that percentage;
 - d. the supervision of the application of the Law by the authorities;
 - e. the obligation to prevent or take measures to prevent, so far as possible, unauthorised betting or the use of intermediaries at venues where trotting or other horse races take place.
3. The conditions may be amended or supplemented.’

8 Under Article 26 of the Wok:

‘A licence granted in accordance with Article 24 may be withdrawn before its expiry by the Ministers referred to in that article in the event of a breach of the conditions imposed pursuant to Article 25.’

9 Article 27 of the Wok prohibits the offer or provision to the public of an intermediary service in the placing of bets with the operator of a totalisator.

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

10 Netherlands legislation in relation to games of chance is based on a system of exclusive licences under which (i) the organisation or promotion of games of chance is prohibited unless an administrative licence for that purpose has been issued, and (ii) only one licence is granted by the national authorities in respect of each of the games of chance authorised.

- 11 Furthermore, it is apparent from the case-file in the main proceedings as supplied to the Court by the referring court that there is no possibility at all of offering games of chance interactively via the internet in the Netherlands.
- 12 The Stichting de Nationale Sporttotalisator ('De Lotto'), which is a non-profit-making foundation governed by private law, has held the licence for the organisation of sports-related prize competitions, the lottery and numbers games since 1961. The licence for the organisation of a totalisator on the outcome of horse races was granted to a limited company, Scientific Games Racing BV ('SGR'), which is a subsidiary of Scientific Games Corporation Inc., a company established in the United States.
- 13 It is apparent from the case-file submitted to the Court that, according to De Lotto's constitution, its objects are the collection of funds by means of the organisation of games of chance and the distribution of those funds among institutions working in the public interest, particularly in the fields of sport, physical education, general welfare, public health and culture. De Lotto is managed by a five-member commission whose chairman is appointed by the Minister. The other members are designated by the Stichting Aanwending Loterijgelden Nederland (Foundation for the Use of Lottery Funds) and by the Nederlands Olympisch Comité/Nederlandse Sport Federatie (Netherlands Olympic Committee/Netherlands Sports Federation).
- 14 Betfair operates within the gaming sector. Its services are provided solely via the internet and by telephone. From the United Kingdom, it provides the recipients of its services with a platform for betting on sporting events and horse races, known as a 'betting exchange', on the basis of British and Maltese licences. Betfair has no office or sales outlet in the Netherlands.
- 15 As Betfair wished actively to offer its services on the Netherlands market, it requested the Minister to determine whether it required a licence in order to carry on such activities. It also applied to the Minister for a licence to organise sports-related prize competitions and a totalisator on the outcome of horse races, whether or not via the internet. By decision of 29 April 2004, the Minister refused those requests.
- 16 The objection lodged in respect of that decision was dismissed by the Minister on 9 August 2004. In particular, the Minister took the view that the Wok provides for a closed system of licences which does not allow for the possibility of licences being granted to provide opportunities for participating in games of chance via the internet. As Betfair could not obtain a licence for its current internet activities under the Wok, it was prohibited from offering those services to recipients established in the Netherlands.

- 17 Betfair also lodged two objections to the Minister's decisions of 10 December 2004 and 21 June 2005 concerning the renewal of licences granted to De Lotto and to SGR, respectively.
- 18 Those objections were dismissed by decisions of the Minister dated 17 March and 4 November 2005, respectively.
- 19 By judgment of 8 December 2006, the Rechtbank 's-Gravenhage (District Court, The Hague) declared Betfair's appeals against the dismissal decisions referred to above to be unfounded. Betfair subsequently appealed against that judgment to the Raad van State (Council of State).
- 20 In its appeal, Betfair submitted, in essence, that the Netherlands authorities were obliged (i) to recognise the licence which it held in the United Kingdom, and (ii) on the basis of the judgment in Case C-260/04 *Commission v Italy* [2007] ECR I-7083, to respect the principle of transparency when granting a licence for the provision of games of chance.
- 21 The Raad van State took the view that an interpretation of European Union law was required to enable it to determine the dispute before it, and decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Should Article 49 EC be interpreted as meaning that, where a closed licensing system is applied in a Member State to the provision of services relating to games of chance, the application of that article precludes the competent authority of that Member State from prohibiting a service provider to whom a licence has already been granted in another Member State to provide those services via the internet from also offering those services via the internet in the first Member State?
- (2) Is the interpretation which the Court of Justice has given to Article 49 EC, and in particular to the principle of equality and the obligation of transparency arising therefrom, in a number of individual cases concerning concessions applicable to the procedure for the granting of a licence to offer services relating to games of chance under a statutorily established single-licence system?
- (3) (a) Under a statutorily established single-licence system, can the extension of the licence of the existing licence-holder, without potential applicants being given an opportunity to compete for that licence, be a suitable and proportionate means of meeting the overriding reasons in the public interest which the Court of Justice has recognised as justifying restriction of the freedom to provide

services in respect of games of chance? If so, under what conditions?

- (b) Does it make a difference to the answer to Question 3(a) whether Question 2 is answered in the affirmative or the negative?’

Consideration of the questions referred

The first question

- 22 By its first question, the national court asks, in essence, whether Article 49 EC must be interpreted as precluding legislation of a Member State, such as the legislation at issue in the main proceedings, under which exclusive rights to organise and promote games of chance are conferred on a single operator, and which prohibits any other operator, including an operator established in another Member State, from offering via the internet services within the scope of that regime in the territory of the first Member State.
- 23 Article 49 EC requires the abolition of all restrictions on the freedom to provide services, even if those restrictions apply without distinction to national providers of services and to those from other Member States, when they are liable to prohibit, impede or render less advantageous the activities of a service provider established in another Member State where it lawfully provides similar services. The freedom to provide services is for the benefit of both providers and recipients of services (Case C-42/07 *Liga Portuguesa de Futebol Profissional and Bwin International* [2009] ECR I-0000, paragraph 51 and the case-law cited).
- 24 It is common ground that legislation of a Member State such as the legislation at issue in the main proceedings constitutes a restriction on the freedom to provide services enshrined in Article 49 EC (see, to that effect, *Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 52, and Case C-258/08 *Ladbrokes Betting & Gaming and Ladbrokes International* [2010] ECR I-0000, paragraph 16).
- 25 However, it is necessary to assess whether such a restriction may be allowed as a derogation expressly provided for by Articles 45 EC and 46 EC, applicable in this area by virtue of Article 55 EC, or justified, in accordance with the case-law of the Court, by overriding reasons in the public interest (see, to that effect, *Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 55).

- 26 Article 46(1) EC allows restrictions justified on grounds of public policy,

public security or public health. A certain number of overriding reasons in the public interest which may also justify such restrictions have been recognised by the case-law of the Court, including, in particular, the objectives of consumer protection and the prevention of both fraud and incitement to squander money on gambling, as well as the general need to preserve public order (*Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 56).

27 In that context, moral, religious or cultural factors, as well as the morally and financially harmful consequences for the individual and for society associated with betting and gaming, may serve to justify a margin of discretion for the national authorities, sufficient to enable them to determine what is required in order to ensure consumer protection and the preservation of public order (Case C-243/01 *Gambelli and Others* [2003] ECR I-13031, paragraph 63, and Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* [2007] ECR I-1891, paragraph 47).

28 The Member States are free to set the objectives of their policy on betting and gambling according to their own scale of values and, where appropriate, to define in detail the level of protection sought. The restrictive measures that they impose must, however, satisfy the conditions laid down in the case-law of the Court, in particular as regards their proportionality (see, to that effect, *Placanica and Others*, paragraph 48, and *Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 59).

29 According to the case-law of the Court, it is for the national courts to determine whether Member States' legislation actually serves the objectives which might justify it and whether the restrictions it imposes do not appear disproportionate in the light of those objectives (*Gambelli and Others*, paragraph 75, and *Placanica and Others*, paragraph 58).

30 Referring specifically to the judgments in *Gambelli and Others* and *Placanica and Others*, the national court found that the objectives – of ensuring the protection of consumers and combating both crime and gambling addiction – underpinning the system of exclusive licences provided for by the Wok can be regarded as overriding reasons in the public interest within the meaning of the case-law of the Court.

31 The national court also considers that the restrictions which result from that system are neither disproportionate nor applied in a discriminatory way. As regards proportionality, specifically, it states that the fact that only one operator is licensed simplifies not only the supervision of that operator, thus enabling monitoring of the rules associated with licences to be more effective,

but also prevents strong competition from arising between licensees and resulting in an increase in gambling addiction. The national court adds that no distinction is made in the application of the prohibition against anyone other than the licensee offering games of chance as between undertakings established in the Netherlands and those whose seats are in other Member States.

32 The national court's doubts arise from the fact that, in the main proceedings, Betfair claims that it does not need to be the holder of a licence issued by the Netherlands authorities in order to offer its sports betting services via the internet to bettors residing in the Netherlands. The Kingdom of the Netherlands is obliged to recognise the licences which have been granted to Betfair by other Member States.

33 It should be noted in that regard that the internet gaming industry has not been the subject of harmonisation within the European Union. A Member State is therefore entitled to take the view that the mere fact that an operator such as Betfair lawfully offers services in that sector via the internet in another Member State, in which it is established and where it is in principle already subject to statutory conditions and controls on the part of the competent authorities in that State, cannot be regarded as amounting to a sufficient assurance that national consumers will be protected against the risks of fraud and crime, in the light of the difficulties liable to be encountered in such a context by the authorities of the Member State of establishment in assessing the professional qualities and integrity of operators (see, to that effect, *Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 69).

34 In addition, because of the lack of direct contact between consumer and operator, games of chance accessible via the internet involve different and more substantial risks of fraud by operators against consumers compared with the traditional markets for such games (*Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 70).

35 The fact that an operator who offers games of chance via the internet does not pursue an active sales policy in the Member State concerned, particularly because he is not making use of advertising in that State, cannot be regarded as running counter to the considerations set out in the two preceding paragraphs. Those considerations are based solely on the effects of the mere accessibility of games of chance via the internet and not on the potentially different consequences of the active or passive provision of services by that operator.

36 It follows that, in the light of the specific features associated with the provision of games of chance via the internet, the restriction at issue in the

main proceedings may be regarded as justified by the objective of combating fraud and crime (*Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 72).

37 Therefore, the answer to the first question is that Article 49 EC must be interpreted as not precluding legislation of a Member State, such as the legislation at issue in the main proceedings, under which exclusive rights to organise and promote games of chance are conferred on a single operator, and which prohibits any other operator, including an operator established in another Member State, from offering via the internet services within the scope of that regime in the territory of the first Member State.

The second and third questions

38 By its second and third questions, which should be examined together, the national court asks whether the case-law developed by the Court in relation to the interpretation of Article 49 EC and to the principle of equal treatment, and the consequent obligation of transparency, in the field of service concessions is applicable to the procedure for the grant of a licence to a single operator in the field of games of chance. Moreover, it asks whether the renewal of that licence without competitive tendering can be a suitable and proportionate means of meeting objectives based on overriding reasons in the public interest.

39 As European Union law now stands, service concession contracts are not governed by any of the directives by which the Union legislature has regulated the field of public procurement. However, the public authorities concluding them are bound to comply with the fundamental rules of the EC Treaty in general, including Article 49 EC and, in particular, the principles of equal treatment and of non-discrimination on the ground of nationality and with the consequent obligation of transparency (see, to that effect, Case C-324/98 *Telaustria and Telefonadress* [2000] ECR I-10745, paragraphs 60 to 62; Case C-206/08 *Eurawasser* [2009] ECR I-0000, paragraph 44; and Case C-91/08 *Wall* [2010] ECR I-0000, paragraph 33).

40 That obligation of transparency applies where the service concession in question may be of interest to an undertaking located in a Member State other than that in which the concession is awarded (see, to that effect, Case C-231/03 *Coname* [2005] ECR I-7287, paragraph 17, and *Wall*, paragraph 34).

41 Without necessarily implying an obligation to launch an invitation to tender, that obligation of transparency requires the concession-granting authority to

ensure, for the benefit of any potential concessionaire, a degree of advertising sufficient to enable the service concession to be opened up to competition and the impartiality of the procurement procedures to be reviewed (see, to that effect, Case C-324/07 *Coditel Brabant* [2008] ECR I-8457, paragraph 25, and *Wall*, paragraph 36).

- 42 It follows both from the order for reference and from the wording of the second question put by the national court that the intervention of the Netherlands public authorities that is designed to enable certain economic operators to provide services in the field of games of chance in the Netherlands is considered by that court to be the issue of a single licence.
- 43 As indicated in paragraph 10 of the present judgment, the Wok is based on a system of exclusive licences under which (i) the organisation or promotion of games of chance is prohibited unless an administrative licence for that purpose has been issued, and (ii) only one licence is granted by the national authorities in respect of each of the games of chance authorised.
- 44 The single licence constitutes an intervention by the public authorities, the purpose of which is to regulate the pursuit of an economic activity which, in the present case, is the organisation of games of chance.
- 45 The decision granting the licence includes conditions imposed by those authorities relating, *inter alia*, to the maximum number of sports-related prize competitions permitted per year, to the amounts thereof, to the distribution of net funds to bodies operating for public benefit and to the relevant operator's own income, inasmuch as the latter may keep only the amount of costs incurred without making any profit. That operator is also authorised to establish a reserve fund every year, corresponding to no more than 2.5% of funds obtained in the previous calendar year, in order to ensure the continuity of his activities.
- 46 The fact that the issue of a single licence is not the same as a service concession contract does not, in itself, justify any failure to have regard to the requirements arising from Article 49 EC, in particular the principle of equal treatment and the obligation of transparency, when granting an administrative licence such as that at issue in the main proceedings.
- 47 As the Advocate General stated in points 154 and 155 of his Opinion, the obligation of transparency appears to be a mandatory prior condition of the right of a Member State to award to an operator the exclusive right to carry on an economic activity, irrespective of the method of selecting that operator. Such an obligation should apply in the context of a system whereby the

authorities of a Member State, by virtue of their public order powers, grant a licence to a single operator, because the effects of such a licence on undertakings established in other Member States and potentially interested in that activity are the same as those of a service concession contract.

- 48 As the answer to the first question shows, the Member States have sufficient discretion to determine the level of protection sought in relation to games of chance and, consequently, it is open to them to choose a single-operator licensing system, as in the case underlying the main proceedings.
- 49 Nevertheless, such a system cannot render legitimate discretionary conduct on the part of the national authorities which is liable to negate the effectiveness of provisions of European Union law, in particular those relating to a fundamental freedom such as the freedom to provide services.
- 50 It has consistently been held that if a prior administrative authorisation scheme is to be justified, even though it derogates from a fundamental freedom, it must be based on objective, non-discriminatory criteria known in advance, in such a way as to circumscribe the exercise of the authorities' discretion so that it is not used arbitrarily (Case C-389/05 *Commission v France* [2008] ECR I-5397, paragraph 94, and Case C-169/07 *Hartlauer* [2009] ECR I-1721, paragraph 64). Furthermore, any person affected by a restrictive measure based on such a derogation must have a judicial remedy available to them (see, to that effect, Case C-205/99 *Analir and Others* [2001] ECR I-1271, paragraph 38).
- 51 Compliance with the principle of equal treatment and with the consequent obligation of transparency necessarily means that the objective criteria enabling the Member States' competent authorities' discretion to be circumscribed must be sufficiently advertised.
- 52 With regard to the procedure for extending the exclusive licences granted pursuant to the Wok, the Netherlands Government explained in its written observations that licences are always granted on a temporary basis, generally for periods of five years. That approach is adopted in the interests of continuity, with fixed reference dates allowing decisions to be taken as to whether any adjustment of the licence conditions may be justified.
- 53 It is common ground that, by the decisions of 10 December 2004 and 21 June 2005, the Minister renewed the licence granted to De Lotto for a period of five years, and that granted to SGR for a period of three years, without any competitive tendering procedure.

54 In that regard, there is no need to draw a distinction according to whether the restrictive effects of a single licence arise from the grant of that licence in disregard of the requirements set out in paragraph 50 of the present judgment or from the renewal of such a licence under the same conditions.

55 A licence renewal procedure, such as that at issue in the main proceedings, which does not fulfil those conditions, in principle precludes other operators from being able to express their interest in carrying on the activity concerned and, as a result, those operators are prevented from enjoying their rights under European Union law, in particular the freedom to provide services that is enshrined in Article 49 EC.

56 The Netherlands Government observes that the referring court found that the restrictions resulting from the system of granting licences to a single operator are justified by overriding reasons in the public interest, and that they are appropriate and proportionate.

57 It should be pointed out, however, that the findings of the national court to which the Netherlands Government refers relate, in general, to a system of exclusive licences as provided for by the Wok and not, specifically, to the procedure for the renewal of a licence granted to an operator who has the exclusive right to organise and promote games of chance.

58 As the Advocate General observed in point 161 of his Opinion, it is important to distinguish the effects of competition in the market for games of chance, the detrimental nature of which may justify a restriction on the activity of economic operators, from the effects of a call for tenders for the award of the contract in question. The detrimental nature of competition in the market, that is to say, between several operators authorised to operate the same game of chance, arises from the fact that those operators would be led to compete with each other in inventiveness in making what they offer more attractive and, in that way, increasing consumers' expenditure on gaming and the risks of their addiction. On the other hand, such consequences are not to be feared at the stage of issuing a licence.

59 In any event, the restrictions on the fundamental freedom enshrined in Article 49 EC which arise specifically from the procedures for the grant of a licence to a single operator or for the renewal thereof, such as those at issue in the main proceedings, may be regarded as being justified if the Member State concerned decides to grant a licence to, or renew the licence of, a public operator whose management is subject to direct State supervision or a private operator whose activities are subject to strict control by the public authorities (see, to that effect, Case C-124/97 *Läärä and Others* [1999] ECR I-6067,

paragraphs 40 and 42, and *Liga Portuguesa de Futebol Profissional and Bwin International*, paragraphs 66 and 67).

- 60 In such situations, the grant to such an operator of exclusive rights to operate games of chance, or the renewal of such rights, without any competitive tendering procedure would not appear to be disproportionate in the light of the objectives pursued by the Wok.
- 61 It is for the national court to ascertain whether the holders of licences in the Netherlands for the organisation of games of chance satisfy the conditions set out in paragraph 59 of the present judgment.
- 62 In the light of the foregoing considerations, the answer to the second and third questions is that Article 49 EC must be interpreted as meaning that the principle of equal treatment and the consequent obligation of transparency are applicable to procedures for the grant of a licence to a single operator or for the renewal thereof in the field of games of chance, in so far as the operator in question is not a public operator whose management is subject to direct State supervision or a private operator whose activities are subject to strict control by the public authorities.

Costs

- 63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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. Article 49 EC must be interpreted as not precluding legislation of a Member State, such as the legislation at issue in the main proceedings, under which exclusive rights to organise and promote games of chance are conferred on a single operator, and which prohibits any other operator, including an operator established in another Member State, from offering via the internet services within the scope of that regime in the territory of the first Member State.**
- 2. Article 49 EC must be interpreted as meaning that the principle of equal treatment and the consequent obligation of transparency are applicable to procedures for the grant of a licence to a single operator or for the renewal thereof in the field of games of chance, in**

so far as the operator in question is not a public operator whose management is subject to direct State supervision or a private operator whose activities are subject to strict control by the public authorities.

[Signatures]

* Language of the case: Dutch.

Annex 2.22

JUDGMENT OF THE COURT (Grand Chamber)

8 September 2010 (*)

(Article 49 EC – Freedom to provide services – Holder of a licence issued in Gibraltar authorising the collection of bets on sporting competitions only abroad – Organisation of bets on sporting competitions subject to a public monopoly at Land level – Objective of preventing incitement to squander money on gambling and combating gambling addiction – Proportionality – Restrictive measure to be genuinely aimed at reducing opportunities for gambling and limiting gambling activities in a consistent and systematic manner – Other games of chance capable of being offered by private operators – Authorisation procedure – Discretion of the competent authority – Prohibition on offering games of chance via the internet – Transitional measures provisionally authorising such an offer by certain operators)

In Case C-46/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Schleswig-Holsteinisches Verwaltungsgericht (Germany), made by decision of 30 January 2008, received at the Court on 8 February 2008, in the proceedings

Carmen Media Group Ltd

v

Land Schleswig-Holstein,

Innenminister des Landes Schleswig-Holstein,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot and P. Lindh, Presidents of Chambers, K. Schiemann (Rapporteur), A. Borg Barthet, M. Ilešič, J. Malenovský, U. Lõhmus, A. Ó Caoimh, and L. Bay Larsen, Judges,

Advocate General: P. Mengozzi,

Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 8 December 2009,

after considering the observations submitted on behalf of:

- Carmen Media Group Ltd, by W. Hambach, M. Hettich and S. Münstermann, Rechtsanwälte, and by C. Koenig, professeur,
- the Land Schleswig-Holstein and the Innenminister des Landes Schleswig-Holstein, by L.-E. Liedke and D. Kock, acting as Agents, and by M. Hecker and M. Ruttig, Rechtsanwälte,
- the German Government, by M. Lumma, J. Möller and B. Klein, acting as Agents,
- the Belgian Government, by L. Van den Broeck, acting as Agent, and by P. Vlaeminck and A. Hubert, advocaten,
- the Greek Government, by A. Samoni-Rantou, M. Tassopoulou and O. Patsopoulou, acting as Agents,
- the Spanish Government, by F. Díez Moreno, acting as Agent,
- the Netherlands Government, by C. Wissels and M. de Grave, acting as Agents,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the Norwegian Government, by K.B Moen, acting as Agent,
- the European Commission, by E. Traversa, P. Dejmek and H. Krämer, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 March 2010,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 49 EC.
- 2 The reference was made in the context of a dispute between, on the one hand, Carmen Media Group Ltd ('Carmen Media') and, on the other, the Land Schleswig-Holstein and the Innenminister des Landes Schleswig-Holstein

(interior minister of the Land Schleswig-Holstein) concerning the refusal by the two last-named of a request by Carmen Media for acknowledgement of the right to offer bets on sporting competitions via the internet in that Land.

National legal context

Federal law

3 Paragraph 284 of the Criminal Code (Strafgesetzbuch; ‘the StGB’) provides:

‘(1) Whosoever without the authorisation of a public authority publicly organises or operates a game of chance or makes equipment for it available shall be liable to imprisonment of not more than two years or a fine.

...

(3) Whosoever in cases under subparagraph 1 above acts

1. on a commercial basis

...

shall be liable to imprisonment of between three months and five years.

...’

4 Apart from bets concerning official horse races, which fall primarily under the Law on Racing Bets and Lotteries (Rennwett- und Lotteriegesezt; ‘the RWLG’), and the installation and use of gambling machines in establishments other than casinos (gaming arcades, cafes, hotels, restaurants and other accommodation), which fall primarily within the Trade and Industry Code (Gewerbeordnung) and the Regulation on Gambling Machines (Verordnung über Spielgeräte und andere Spiele mit Gewinnmöglichkeit), determination of the conditions under which authorisations within the meaning of Paragraph 284(1) of the StGB may be issued for games of chance has taken place at the level of the various *Länder*.

5 Paragraph 1(1) of the RWLG provides:

‘An association wishing to operate a mutual betting undertaking on horse races or other public horse competitions must first obtain the authorisation of the competent authorities in accordance with the law of the *Land*’.

6 Paragraph 2(1) of the RWLG provides:

‘Any person wishing, on a commercial basis, to conclude bets on public horse competitions or serve as intermediary for such bets (Bookmaker) must first obtain the authorisation of the competent authorities in accordance with the law of the *Land*’.

The GlüStV

7 By the State treaty concerning lotteries in Germany (Staatsvertrag zum Lotteriewesen in Deutschland; ‘the LottStV’), which entered into force on 1 July 2004, the *Länder* created a uniform framework for the organisation, operation and commercial placing of gambling, apart from casinos.

8 In a judgment of 28 March 2006, the Bundesverfassungsgericht (Federal Constitutional Court) held, concerning the legislation transposing the LottStV in the *Land* of Bavaria, that the public monopoly on bets on sporting competitions existing in that *Land* infringed Paragraph 12(1) of the Basic Law, guaranteeing freedom of occupation. That court held in particular that, by excluding private operators from the activity of organising bets, without at the same time providing a regulatory framework capable of ensuring, in form and in substance, both in law and in fact, effective pursuit of the aims of reducing the passion for gambling and combating addiction to it, that monopoly had a disproportionately adverse effect on the freedom of occupation thus guaranteed.

9 As the referring court explains, the State treaty on games of chance (Glücksspielstaatsvertrag; ‘the GlüStV’), concluded between the *Länder* and which entered into force on 1 January 2008, establishes a new uniform framework for the organisation, operation and intermediation of games of chance aiming to satisfy the requirements laid down by the Bundesverfassungsgericht in the said judgment of 28 March 2006.

10 The referring court further states that the explanatory report on the draft of the GlüStV (‘the explanatory report’) shows that the main aim of the latter is the prevention and combating of addiction to games of chance. According to the explanatory report, a study dating from April 2006, carried out, at the request of the Commission of the European Communities, by the Swiss Institute of Comparative Law and concerning the market for games of chance in the European Union, clearly showed the effectiveness which may result, in that perspective, from legislation and a strict channelling of the activities concerned.

11 As regards the specific area of bets on sporting competitions, the explanatory report indicated that whilst, for the great majority of persons

placing bets, such bets might be only for relaxation and entertainment, it was very possible, on the evidence contained in the available scientific studies and expert reports, that, if the supply of those bets were significantly increased, the potential for dependency likely to be generated by them would be significant. It was thus necessary to adopt measures for preventing such dependency by imposing limits on the organisation, marketing and operation of such games of chance. The channelling and limitation of the market for those games by the GlüStV was to be obtained, in particular, by maintaining the existing monopoly on the organisation of bets on sporting competitions and on lotteries with particular risk potential.

12 According to Paragraph 1 of the GlüStV, the objectives of the latter are as follows:

- ‘1. to prevent dependency on games of chance and on bets, and to create the conditions for effectively combating dependency,
2. to limit the supply of games of chance and to channel the gaming instinct of the population in an organised and supervised manner, preventing in particular a drift towards unauthorised games of chance,
3. to ensure the protection of minors and players,
4. to ensure the smooth operation of games of chance and the protection of players against fraudulent manoeuvres, and to prevent criminality connected with and arising from games of chance.’

13 Paragraph 2 of the GlüStV states that, with regard to casinos, only Paragraphs 1, 3 to 8, 20 and 23 apply.

14 Paragraph 4 of the GlüStV states:

‘(1) The organisation or intermediation of public games of chance may take place only with the authorisation of the competent authority of the *Land* concerned. All organisation or intermediation of such games is prohibited without such authorisation (unlawful games of chance).

(2) Such authorisation shall be refused where the organisation or intermediation of the game of chance is contrary to the objectives of Paragraph 1. Authorisation shall not be issued for the intermediation of games of chance unlawful according to the present State treaty. There is no established right to the obtaining of an authorisation.

...

(4) The organisation and intermediation of public games of chance on the internet are prohibited.’

15 Paragraph 10 of the GlüStV provides:

‘(1) In order to attain the objectives set out in Paragraph 1, the *Länder* are under a statutory obligation to ensure a sufficient supply of games of chance. They shall be assisted by a technical committee composed of experts specialised in combating dependency on games of chance.

(2) In accordance with the law, the *Länder* may undertake that task either by themselves or through the intermediary of legal persons under public law or private law companies in which legal persons under public law hold a direct or indirect controlling shareholding.

...

(5) Persons other than those referred to in subparagraph 2 shall be authorised to organise only lotteries and games in accordance with the provisions of the third section.’

16 The third section of the GlüStV concerns lotteries with a low risk of danger, which may be authorised under highly restrictive conditions and exclusively for organisers pursuing public interest or charitable aims.

17 Paragraph 25(6) of the GlüStV states:

‘The *Länder* may, for a maximum period of one year after the entry into force of the State treaty, in derogation from Paragraph 4(4), permit the organisation and intermediation of lotteries on the internet where there is no reason to refuse them pursuant to Paragraph 4(2) and where the following conditions are met:

- exclusion of minors or prohibited players guaranteed by identification and authentication measures, in compliance with the directives of the Commission for the protection of minors as a closed group of media users;
- limitation of stakes, as fixed in the authorisation, to EUR 1 000 per month, and guarantee that credit is prohibited;
- prohibition of particular incitements to dependency by rapid draws and of the possibility of participating interactively with publication of results in real time; as regards lotteries, limitation to two winning draws per

week;

- localisation by use of the most modern methods, in order to ensure that only persons within the scope of the authorisation may participate;
- establishment and operation of a programme of social measures adapted to the specific conditions of the internet, the effectiveness of which is to be assessed scientifically.’

18 The referring court states that, according to the explanatory report, the transitional provision contained in Paragraph 25(6) of the GlüStV aims to provide equitable relief for two operators of commercial games who operate almost entirely on the internet and respectively employ 140 and 151 persons, by giving them sufficient time to bring their activity into conformity with the distribution channels authorised by the GlüStV.

The legislation of the Land Schleswig-Holstein

19 The GlüStV was transposed by the Land Schleswig-Holstein by the law implementing the State treaty on games of chance in Germany (Gesetz zur Ausführung des Staatsvertrages zum Glücksspielwesen in Deutschland) of 13 December 2007 (GVObI. 2007, p. 524; ‘the GlüStV AG’).

20 Paragraph 4 of the GlüStV AG provides:

‘(1) In order to achieve the objectives set out in Paragraph 1 of the GlüStV, the Land Schleswig-Holstein shall concern itself with supervision of games of chance, the guarantee of a sufficient provision of games of chance, and scientific research in order to avoid and prevent the dangers of dependency connected with games of chance.

(2) In accordance with Paragraph 10(1) of the GlüStV, the Land Schleswig-Holstein shall fulfil that function through the intermediary of NordwestLotto Schleswig-Holstein GmbH & Co. KG. (NordwestLotto Schleswig-Holstein), the shares of which are held, directly or indirectly, in whole or in part, by the Land. ...

(3) NordwestLotto Schleswig-Holstein may organise lottery draws, scratch cards and sporting bets, as well as lotteries and additional games in the matter.

...’

21 Paragraph 5(1) of the GlüStV AG provides:

‘Authorisation under Paragraph 4(1) of the GlüStV for games of chance which are not lotteries having a low potential for danger (Paragraph 6) presupposes:

1. the absence of grounds for refusal set out in Paragraph 4(2), first and second sentences, of the GlüStV,
2. compliance with:
 - (a) the requirements concerning the protection of minors in accordance with Paragraph 4(3) of the GlüStV,
 - (b) the internet prohibition contained in Paragraph 4(4) of the GlüStV,
 - (c) the restrictions on advertising contained in Paragraph 5 of the GlüStV,
 - (d) the requirements concerning the programme of social measures contained in Paragraph 6 of the GlüStV, and
 - (e) the requirements on explanations concerning the risks of dependency in accordance with Paragraph 7 of the GlüStV,
3. the reliability of the organiser or the intermediary, who must, in particular, ensure that the organisation and intermediation are carried out in a regular manner and easily verifiable by players and the competent authorities,
4. the participation, in accordance with Paragraph 9(5) of the GlüStV, of the technical committee in the introduction of new games of chance, of new distribution channels or in considerable enlargement of existing distribution channels and a guarantee that a report on the social repercussions of the new or enlarged supply of games of chance has been drafted,
5. a guarantee that the organisers, within the meaning of Paragraph 10(2) of the GlüStV, participate in the concerted system for prohibiting certain players in accordance with Paragraphs 8 and 23 of the GlüStV,
6. a guarantee that players prohibited from gambling in accordance with the first sentence of Paragraph 21(3) and the first sentence of paragraph 22(2) of the GlüStV are excluded, and
7. compliance by intermediaries in commercial gambling with Paragraph 19 of the GlüStV.

If the conditions in the first sentence are met, authorisation should be given.’

22 Paragraph 9 of the GlüStV AG provides:

‘By derogation from Paragraph 4(4) of the GlüStV, in the case of lotteries, organisation and intermediation on the internet may be authorised until 31 December 2008 if compliance with the conditions set out in Paragraph 25(6) of the GlüStV is guaranteed. ...’

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

23 Carmen Media is established in Gibraltar, where it obtained a licence authorising it to market bets on sporting competitions. For tax reasons, however, that licence is limited to the marketing of bets abroad (‘offshore bookmaking’).

24 In February 2006, wishing to offer such bets via the internet in Germany, Carmen Media applied to the Land Schleswig-Holstein for a declaration that that activity was lawful, having regard to the licence which Carmen Media holds in Gibraltar. In the alternative, it applied for the issuing of an authorisation for its activity, or, failing that, for tolerance of that activity until the establishment of an authorisation procedure for private offerors of bets which complies with Community law.

25 Those applications having been rejected on 29 May 2006, Carmen Media brought an action on 30 June 2006 before the Schleswig-Holsteinisches Verwaltungsgericht (Schleswig-Holstein Administrative Court). In support of that action, it argued, in particular, that the public monopoly on bets on sporting competitions in force in the Land Schleswig-Holstein infringed Article 49 EC. Contrary to the requirements laid down by the Court of Justice, in particular in Case C-243/01 *Gambelli and Others* [2003] ECR I-13031), the legal and practical configuration of the public monopoly on bets on sporting competitions and lotteries arising from the LottStV did not enable a consistent and systematic fight against gambling addiction to be ensured. According to Carmen Media, other forms of gambling and bets, such as automated games, bets on horse races or bets offered by gaming establishments, are not subject to such a public monopoly, and, moreover, are experiencing increasingly extensive development, even though such games and bets generate a higher risk of addiction than bets on sporting competitions and lotteries. In the course of the judicial proceedings, Carmen Media has argued that such inconsistencies persist after the entry into force of the GlüStV and the GlüStV AG.

- 26 The Land Schleswig-Holstein counters that the fact that the licence held by Carmen Media is limited to ‘offshore bookmaking’ prevents it from relying on the Community provisions on the freedom to provide services, given that that operator cannot legally provide such services in the Member State in which it is established. The Land further argues that Community law does not contain any requirement of overall consistency between all regulatory provisions on games of chance. The various sectors of gambling are not comparable, and any shortcomings in one of those sectors cannot have an impact on the legality of the regime applicable to the others. The compliance of a public monopoly with Community law should therefore be assessed only in relation to the gambling sector concerned. In this case, the Land argues, that compliance is certain, particularly since the entry into force of the GlüStV and the GlüStV AG.
- 27 The referring court states that the success or otherwise of Carmen Media’s application to become a private online provider of bets on sporting competitions in the Land Schleswig-Holstein depends in particular on the answer to be given to the two arguments thus put forward by the Land Schleswig-Holstein.
- 28 Regarding the first of those arguments, the referring court is of the opinion that, for a provider wishing to offer services via the internet to have applied to it the rules on the freedom to provide services, it is sufficient for the activity concerned not to be illegal in the Member State of establishment of the said provider. The question whether or not such a service is actually offered by that provider, on the other hand, is irrelevant. In this case, the offering of bets is not prohibited in Gibraltar, and it is only for tax reasons that the authorisation issued to Carmen Media covers only bets abroad.
- 29 Regarding the second argument, the referring court, which states that the internal legal regulations which must henceforward be considered are those arising from the GlüStV and the GlüStV AG, is in doubt as to whether the public monopoly, and the corresponding exclusion of private operators, in relation to bets on sporting competitions and all lotteries save for those presenting only a slight risk of danger, arising from the combined provisions of Paragraph 10(1), (2) and (5) of the GlüStV and Paragraph 4(2) of the GlüStV AG, infringes Article 49 EC.
- 30 That court states that, as is shown in particular by the explanatory report, the main objective of the GlüStV is to prevent and combat dependency on gambling. It considers in that respect that the case-law of the Court of Justice shows that, whilst the discretion which Member States enjoy in setting the objectives of their policy on gambling, particularly as regards the pursuit of a

policy of preventing citizens from being encouraged to spend excessively in that area, while defining with precision the level of protection sought, authorises them in principle to create a monopoly, that is nevertheless on condition that the regulations adopted in that regard satisfy the principle of proportionality. The referring court cites in particular the judgment in Case C-124/97 *Läärä and Others* [1999] ECR I-6067, paragraph 39). The referring court doubts whether the public monopoly on bets on sporting competitions at issue in the main proceedings satisfies the requirement arising from paragraph 67 of the judgment in *Gambelli and Others* that the fight against dependence on gambling must be consistent and systematic.

- 31 The referring court points out in that regard, first, that, in relation to gaming machines, despite the fact that, in the current state of scientific knowledge and as is shown in particular by the explanatory report, they are demonstrated to present the highest potential risk of dependency amongst games of chance, the Federal Minister for the Economy has recently relaxed the conditions for their commercial exploitation by modifying the Regulation on Gambling Machines (BGBl. 2006 I, p. 280). The modifications which thus entered into force on 1 January 2006 include an increase in the number of gaming machines authorised in cafes from 2 to 3, a reduction in the minimum surface per machine in gaming arcades from 15 m² to 12 m², and an increase in the maximum number of machines in those arcades from 10 to 12. Similarly, the minimum gaming duration per machine has been reduced from 12 to 5 seconds, and the maximum loss has been fixed at EUR 80 instead of EUR 60.
- 32 Secondly, the referring court sees a contradiction between, on the one hand, the objectives justifying the public monopoly on bets on sporting competitions and, on the other, the expansionist policy of the German authorities on casino games, the dependency risk of which is also higher than that for sporting bets. During the period from 2000 to 2006, the number of authorised casinos rose from 66 to 81.
- 33 Thirdly, bets on public horse races or other horse trials are excluded from the scope of the GlüStV and are governed in particular by the RWLG, which authorises bets exploited commercially by private undertakings.
- 34 In the view of the referring court, the consistency of the legislation on games of chance should be assessed in the context of an overall view of the offers of games of chance which are authorised, that being the only approach capable of allowing the legislature effectively to remedy the dangers of addiction to gambling.
- 35 According to that court, the fact that those various forms of gaming and bets

fall sometimes within the competence of the *Länder* and sometimes within the competence of the federal State should not, in that respect, be relevant for the purposes of assessing the conformity of the monopoly at issue in the main proceedings with Community law.

36 Should the Court of Justice reply to the first two questions referred that Article 49 EC applies to a situation such as that of the applicant in the main proceedings and that the said monopoly infringes that article, the question would then arise as to the form in which national law must satisfy the obligation to ensure the safeguarding of the rights which operators derive from that article, and, more particularly, the question would arise as to the conformity with that article of Paragraph 4(2) of the GlüStV, making the possibility of obtaining an authorisation subject to the conditions set out in that latter provision.

37 Similarly, the question would arise as to the compatibility with Article 49 EC of the prohibition on the organisation and intermediation of public games of chance on the internet, laid down by Paragraph 4(4) of the GlüStV. The referring court doubts in that respect whether such a measure may be regarded as suitable for attaining the objectives, here being pursued, of protecting minors and combating the risk of addiction to gambling.

38 In those circumstances, the Schleswig-Holsteinisches Verwaltungsgericht decided to stay the proceedings before it and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is Article 49 EC to be interpreted as meaning that reliance on the freedom to provide services requires that a service provider be permitted, in accordance with the provisions of the Member State in which it is established, to provide that service there as well (in the present case, restriction of the Gibraltar gambling licence to “offshore bookmaking”)?

(2) Is Article 49 EC to be interpreted as precluding a national monopoly on the operation of sports betting and lotteries (with more than a low potential risk of addiction), justified primarily on the grounds of combating the risk of gambling addiction, whereas other games of chance, with important potential risk of addiction, may be provided in that Member State by private service providers, and the different legal rules for sports betting and lotteries, on the one hand, and other games of chance, on the other, are based on the differing legislative powers of the *Bund* and the *Länder*?

Should the second question be answered in the affirmative:

- (3) Is Article 49 EC to be interpreted as precluding national rules which make entitlement to the grant of a licence to operate and arrange games of chance subject to the discretion of the competent licensing authority, even where the conditions for the grant of a licence as laid down in the legislation have been fulfilled?
- (4) Is Article 49 EC to be interpreted as precluding national rules prohibiting the operation and brokering of public games of chance on the internet, in particular where, at the same time, although only for a transitional period of one year, their online operation and brokering [are] permitted, subject to legislation protecting minors and players, for the purposes of compensation in line with the principle of proportionality and to enable two commercial gambling brokers who have previously operated exclusively online to switch over to those distribution channels permitted by the [GlüStV]?’

The questions referred

The first question

39 By its first question, the referring court asks whether an operator wishing to offer bets on sporting competitions in a Member State other than the one in which it is established may rely on the provisions of Article 49 EC in a case where it does not hold an authorisation allowing it to offer such bets to persons within the territory of the Member State in which it is established, but holds only an authorisation to offer those services to persons outside that territory.

40 In that regard, it should be noted that activities which consist in allowing users to participate, for remuneration, in a game of chance constitute ‘services’ for the purposes of Article 49 EC (see, to that effect, Case C-275/92 *Schindler* [1994] ECR I-1039, paragraph 25, and Case C-67/98 *Zenatti* [1999] ECR I-7289, paragraph 24).

41 Therefore, as consistent case-law shows, such services fall within the scope of Article 49 EC where the provider is established in a Member State other than the one in which the service is offered (see, to that effect, *Zenatti*, paragraphs 24 and 25). That is particularly so in the case of services which the provider offers via the internet to potential recipients established in other Member States and which he provides without moving from the Member State in which he is established (see, to that effect, *Gambelli and Others*, paragraphs 53 and 54).

- 42 The fact that the authorisation issued to an operator established in a Member State covers only bets offered, via the internet, to persons located outside the territory of that Member State cannot, by itself, have the consequence of taking such an offer of bets outside the scope of the freedom to provide services guaranteed by Article 49 EC.
- 43 The right of an economic operator, established in a Member State, to provide services in another Member State, which that provision lays down, is not subject to the condition that the said operator also provides such services in the Member State in which he is established (see Case C-56/96 *VT4* [1997] ECR I-3143, paragraph 22). In that regard, Article 49 EC requires only that the provider be established in a Member State other than that of the recipient.
- 44 Such a finding is, moreover, without prejudice to the ability of any Member State whose territory is covered by an offer of bets emanating, via the internet, from such an operator, to require the latter to comply with restrictions laid down by its legislation in that area, provided those restrictions comply with the requirements of European Union law ('EU law'), particularly that they be non-discriminatory and proportionate (Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* [2007] ECR I-1891, paragraphs 48 and 49).
- 45 In that regard, it should be noted that, with regard to the justifications which may be accepted where internal measures restrict the freedom to provide services, the Court has held several times that the objectives pursued by national legislation in the area of gambling and bets, considered as a whole, usually concern the protection of the recipients of the services in question, and of consumers more generally, and the protection of public order. It has also held that such objectives are amongst the overriding reasons in the public interest capable of justifying obstacles to the freedom to provide services (see to that effect, in particular, *Schindler*, paragraph 58; *Läärä and Others*, paragraph 33; *Zenatti*, paragraph 31; Case C-6/01 *Anomar and Others* [2003] ECR I-8621, paragraph 73; and *Placanica and Others*, paragraph 46).
- 46 The case-law of the Court of Justice thus shows that it is for each Member State to assess whether, in the context of the legitimate aims which it pursues, it is necessary wholly or partially to prohibit activities of that nature, or only to restrict them and to lay down more or less strict supervisory rules for that purpose, the necessity and the proportionality of the measures thus adopted having only to be assessed having regard to the objectives pursued and the level of protection sought to be ensured by the national authorities concerned (see to that effect, in particular, *Läärä and Others*, paragraphs 35 and 36; *Zenatti*, paragraphs 33 and 34; and Case C-42/07 *Liga Portuguesa de Futebol Profissional and Bwin International* [2009] ECR I-7633, paragraph

58).

- 47 Doubts have been cast by the Belgian and Austrian Governments, with reference in particular to Case C-148/91 *Veronica Omroep Organisatie* [1993] ECR I-487 and Case C-196/04 *Cadbury Schweppes and Cadbury Schweppes Overseas* [2006] ECR I-7995, as to whether Carmen Media may, in the circumstances of the case at issue in the main proceedings, rely on rules on the freedom to provide services, given that that operator established itself in Gibraltar, encouraged in that respect by a tax incentive, only in order to escape the stricter rules that would have been applicable to it if it had established itself in the territory of the Member State towards which its business is directed.
- 48 However, such considerations are outside the scope of this reference for a preliminary ruling.
- 49 This reference concerns only the point whether lack of an authorisation issued by the Gibraltar authorities, permitting it also to offer bets in the territory of Gibraltar, is capable of taking an operator such as Carmen Media outside the scope of the provisions of the EC Treaty on the freedom to provide services. The referring court has not supplied precise information or raised any particular doubts as to the reasons which led Carmen Media to establish itself in Gibraltar, or put any questions to the Court as to the consequences which might follow therefrom.
- 50 It should also be remembered that the Court of Justice has previously held that the question of the applicability of Article 49 EC is distinct from that of whether a Member State may take measures to prevent a provider of services established in another Member State from circumventing its internal legislation (see, to that effect, Case C-23/93 *TV10* [1994] ECR I-4795, paragraph 15, and, by analogy, concerning the freedom of establishment, Case C-212/97 *Centros* [1999] ECR I-1459, paragraph 18).
- 51 In those circumstances, there is no need for the Court to rule, in these proceedings, on the doubts thus expressed by the Belgian and Austrian Governments.
- 52 Having regard to all the foregoing, the answer to the first question is that, on a proper interpretation of Article 49 EC, an operator wishing to offer via the internet bets on sporting competitions in a Member State other than the one in which it is established does not cease to fall within the scope of the said provision solely because that operator does not have an authorisation permitting it to offer such bets to persons within the territory of the Member

State in which it is established, but holds only an authorisation to offer those services to persons located outside that territory.

The second question

53 Having regard to the information contained in the order for reference, as reported in paragraphs 29 to 35 of this judgment, this Court considers that, by its second question, the referring court is asking, in essence, whether Article 49 EC must be interpreted as precluding the establishment, by a regional entity, of a public monopoly on the organisation of bets on sporting competitions and lotteries, essentially motivated by prevention of the incitement to squander money on gambling and the fight against addiction to the latter, inasmuch as it is doubtful, in this case, that that objective is being pursued in a consistent and systematic manner, having regard:

- first, to the fact that the exploitation of other games of chance, such as bets on competitions involving horses or automated games, is authorised on the part of private operators, and
- secondly, to the fact that offers relating to other games of chance, such as casino games or automated games installed in gaming arcades, cafes, restaurants and places of accommodation are subject to a policy of expansion.

54 The referring court also asks whether the answer to that question may be affected by the fact that the regulation of those other games of chance falls at least partly within the competence of the federal State.

55 As a preliminary observation, it should be noted that, in paragraph 67 of the judgment in *Gambelli and Others*, after stating that restrictions on gaming activities might be justified by imperative requirements in the public interest, such as consumer protection and the prevention of both fraud and incitement to squander money on gambling, the Court held that that applied only in so far as such restrictions, based on such grounds and on the need to preserve public order, were suitable for achieving those objectives, inasmuch as they must serve to limit betting activities in a consistent and systematic manner.

56 As is apparent from paragraph 53 of this judgment, the referring court has doubts as to the scope of that latter requirement.

57 According to that court, it is doubtful whether a public monopoly such as that at issue in the main proceedings relating to bets on sporting competitions and established for purposes of preventing incitement to squander money on

gambling and combating addiction to the latter is capable of contributing to limiting betting activities in a consistent and systematic manner, given the way in which other games of chance are marketed.

58 In that regard, as is apparent from the case-law referred to in paragraph 46 of this judgment, it is for each Member State to assess whether, in the context of the legitimate aims which it pursues, it is necessary wholly or partially to prohibit activities of that nature, or only to restrict them and to lay down more or less strict supervisory rules for that purpose, the need for and the proportionality of the measures thus adopted having to be assessed solely in relation to the objectives pursued and the level of protection which the national authorities concerned seek to ensure.

59 The Court has also held that, in the context of legislation which is compatible with the Treaty, the choice of methods for organising and controlling the operation and playing of games of chance or gambling, such as the conclusion with the State of an administrative licensing contract or the restriction of the operation and playing of certain games to places duly licensed for that purpose, falls within the margin of discretion which the national authorities enjoy (*Anomar and Others*, paragraph 88).

60 The Court has also held that, in the matter of games of chance, it is in principle necessary to examine separately for each of the restrictions imposed by the national legislation whether, in particular, it is suitable for achieving the objective or objectives invoked by the Member State concerned and whether it does not go beyond what is necessary in order to achieve those objectives (*Placanica and Others*, paragraph 49).

61 In paragraphs 50 to 52 of its judgment in *Schindler*, delivered in relation to legislation of a Member State prohibiting lotteries, the Court observed in particular that, whilst they might give rise to stakes comparable to those of lotteries and involve a significant element of chance, other games for money such as football pools or ‘bingo’, which remained authorised in that Member State, differed in their object, rules and methods of organisation from lotteries established in other Member States. They were therefore not in a comparable situation to that of lotteries prohibited by the legislation of that Member State and could not be assimilated to them.

62 As all the governments which have submitted observations before the Court have observed, it is undisputed that the various types of games of chance can exhibit significant differences, particularly as regards the actual way in which they are organised, the size of the stakes and winnings by which they are characterised, the number of potential players, their presentation, their

frequency, their brevity or repetitive character and the reactions which they arouse in players, or, again, by reference to whether, as in the case of games offered in casinos and slot machines in casinos or other establishments, they require the physical presence of the player.

- 63 In those circumstances, the fact that some types of games of chance are subject to a public monopoly whilst others are subject to a system of authorisations issued to private operators, cannot, in itself, render devoid of justification, having regard to the legitimate aims which they pursue, measures which, like the public monopoly, appear at first sight to be the most restrictive and the most effective. Such a divergence in legal regimes is not, in itself, capable of affecting the suitability of such a public monopoly for achieving the objective of preventing citizens from being incited to squander money on gambling and of combating addiction to the latter, for which it was established.
- 64 However, as pointed out in paragraph 55 of this judgment, the case-law of the Court of Justice also shows that the establishment, by a Member State, of a restriction on the freedom to provide services and the freedom of establishment on the grounds of such an objective is capable of being justified only on condition that the said restrictive measure is suitable for ensuring the achievement of the said objective by contributing to limiting betting activities in a consistent and systematic manner.
- 65 The Court has, similarly, held that it is for the national courts to ensure, having regard in particular to the actual rules for applying the restrictive legislation concerned, that the latter genuinely meets the concern to reduce opportunities for gambling and to limit activities in that area in a consistent and systematic manner (see to that effect, in particular, *Zenatti*, paragraphs 36 and 37, and *Placanica and Others*, paragraphs 52 and 53).
- 66 As the Court has already held in those various respects, in *Gambelli and Others*, paragraphs 7, 8 and 69, in so far as the authorities of a Member State incite and encourage consumers to participate in lotteries, games of chance or betting to the financial benefit of the public purse, the authorities of that State cannot invoke public order concerns relating to the need to reduce opportunities for gambling in order to justify restrictive measures, even if, as in that case, the latter relate exclusively to betting activities.
- 67 In the present case, after stating that bets on competitions involving horses and automated games can be exploited by private operators which hold an authorisation, the referring court has also established that, in regard to casino games and automated games, even though such games present a higher risk of

addiction than bets on sporting competitions, the competent public authorities are pursuing a policy of expanding supply. Thus, the number of casinos has risen from 66 to 81 between 2000 and 2006, while the conditions under which automated games may be exploited in establishments other than casinos, such as gaming arcades, restaurants, cafes and places of accommodation, have recently been the subject of major relaxations.

68 In that respect, on the basis of such findings, it must be acknowledged that the referring court may legitimately be led to consider that the fact that, in relation to games of chance other than those covered by the public monopoly at issue in the main proceedings, the competent authorities thus pursue policies seeking to encourage participation in those games rather than to reduce opportunities for gambling and to limit activities in that area in a consistent and systematic manner has the effect that the aim of preventing incitement to squander money on gambling and of combating addiction to the latter, which was at the root of the establishment of the said monopoly, can no longer be effectively pursued by means of the monopoly, with the result that the latter can no longer be justified having regard to Article 49 EC.

69 As for the fact that the various games of chance concerned are partially within the competence of the *Länder* and partially within the competence of the federal State, it should be recalled that, according to consistent case-law, a Member State may not rely on provisions, practices or situations of its internal legal order in order to justify non-compliance with its obligations under EU law. The internal allocation of competences within a Member State, such as between central, regional or local authorities, cannot, for example, release that Member State from its obligation to fulfil those obligations (see to that effect, in particular, Case C-417/99 *Commission v Spain* [2001] ECR I-6015, paragraph 37).

70 It follows from the above that, whilst EU law does not preclude an internal allocation of competences whereby certain games of chance are a matter for the *Länder* and others for the federal authority, the fact remains that, in such a case, the authorities of the *Land* concerned and the federal authorities are jointly required to fulfil the obligation on the Federal Republic of Germany not to infringe Article 49 EC. It follows that, in the full measure to which compliance with that obligation requires it, those various authorities are bound, for that purpose, to coordinate the exercise of their respective competences.

71 Having regard to the whole of the above, the answer to the second question referred is that, on a proper interpretation of Article 49 EC, where a regional public monopoly on sporting bets and lotteries has been established with the

objective of preventing incitement to squander money on gambling and of combating gambling addiction, and yet a national court establishes at the same time:

- that other types of games of chance may be exploited by private operators holding an authorisation; and
- that in relation to other games of chance which do not fall within the said monopoly and which, moreover, pose a higher risk of addiction than the games which are subject to that monopoly, the competent authorities pursue policies of expanding supply, of such a nature as to develop and stimulate gaming activities, in particular with a view to maximising revenue derived from the latter;

that national court may legitimately be led to consider that such a monopoly is not suitable for ensuring the achievement of the objective for which it was established by contributing to reducing the opportunities for gambling and to limiting activities within that area in a consistent and systematic manner.

The fact that the games of chance subject to the said monopoly fall within the competence of the regional authorities, whereas those other types of games of chance fall within the competence of the federal authorities, is irrelevant in that respect.

The third question

72 By its third question, the referring court asks whether Article 49 EC must be interpreted as precluding national legislation which leaves it to the discretion of the competent authority whether to issue an authorisation for the organisation and intermediation of games of chance, even though the statutory conditions for grant are satisfied.

73 That question has been raised only in the alternative, in case the answer to the second question should make it appear that the monopoly at issue in the main proceedings infringes Article 49 EC. Given, however, that it is for the referring court, on the basis of the answer given by the Court of Justice to that second question, to determine whether or not that monopoly may be justified by the legitimate objectives in the general interest underlying its establishment, the Court should reply to the third question.

74 The Land Schleswig-Holstein has, however, cast doubt on the admissibility of that latter question by reason of a lack of sufficient reasoning in relation thereto in the order for reference.

75 In that regard, according to settled case-law, in proceedings under Article 267 TFEU, it is 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 a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (see, in particular, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38, and Case C-169/07 *Hartlauer* [2009] ECR I-1721, paragraph 24).

76 The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite clear 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 (*PreussenElektra*, paragraph 39, and *Hartlauer*, paragraph 25).

77 In this case, as is apparent from paragraph 24 of this judgment, the action brought by Carmen Media seeks, in the case, in particular, of the monopoly at issue in the main proceedings being recognised as contrary to EU law, to obtain an order against the defendants in the main proceedings to issue an authorisation to Carmen Media to market bets on sporting competitions in the Land Schleswig-Holstein or, in the alternative, to tolerate that activity until the establishment of a procedure for authorisation in conformity with Community law.

78 In addition, the national legal background applicable to the dispute in the main proceedings shows that Paragraphs 4(1) and (2) of the GlüStV and Paragraph 5(1) of the GlüStV AG lay down different conditions to which the issuing of authorisations for the organisation and intermediation of games of chance is subject, Paragraph 4(2) of the GlüStV stating however, in particular, that there is no established right to the obtaining of an authorisation.

79 Such indications give an understanding of the reasons which prompted the referring court to ask its third question and to grasp the relevance which a reply to the latter might have for the resolution of the dispute in the main proceedings. Similarly, they are sufficient to allow the Court to give a useful answer to the question thus asked.

80 The third question referred is therefore admissible.

- 81 On the substance, it should be noted that, although the information supplied by the referring court shows that the Land Schleswig-Holstein has, as regards lotteries and bets on sporting competitions, established a public monopoly of which NordwestLotto Schleswig-Holstein GmbH & Co. KG is the holder, the possibility of issuing authorisations in this area appears, at least theoretically, to have been reserved by Paragraph 4(1) and (2) of the GlüStV and Paragraph 5(1) of the GlüStV AG.
- 82 The referring court asks, in essence, whether an authorisation regime such as that established by those provisions is able to satisfy the requirements under Article 49 EC even though it leaves the issuing of an authorisation for the organisation or the intermediation of games of chance to the free discretion of the competent authority, even though the conditions for grant laid down by those provisions are satisfied.
- 83 As stated in paragraph 46 of this judgment, it is for each Member State to assess whether, in the context of the legitimate aims which it pursues, it is necessary wholly or partially to prohibit gambling activities, or only to restrict them and to lay down more or less strict supervisory rules for that purpose.
- 84 The Court's case-law shows that, if a Member State pursues an objective seeking to reduce gambling opportunities, it is entitled, in principle, to establish a system of authorisation and in that respect to lay down restrictions as to the number of operators authorised (*Placanica and Others*, paragraph 53).
- 85 However, the margin of discretion which the Member States thus enjoy in restricting gambling does not exonerate them from ensuring that the measures they impose satisfy the conditions laid down in the case-law of the Court, particularly as regards their proportionality (see, in particular, *Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 59 and case-law cited).
- 86 According to consistent case-law, where a system of authorisation pursuing legitimate objectives recognised by the case-law is established in a Member State, such a system cannot render legitimate discretionary conduct on the part of the national authorities which is liable to negate the effectiveness of provisions of EU law, in particular those relating to a fundamental freedom such as that at issue in the main proceedings (see, in particular, Case C-203/08 *Sporting Exchange* [2010] ECR I-0000, paragraph 49).
- 87 Also, if a prior administrative authorisation scheme is to be justified, even

though it derogates from a fundamental freedom, it must be based on objective, non-discriminatory criteria known in advance, in such a way as to circumscribe the exercise of the authorities' discretion so that it is not used arbitrarily. Furthermore, any person affected by a restrictive measure based on such a derogation must have an effective judicial remedy available to them (see *Sporting Exchange*, paragraph 50 and case-law cited).

88 In its written observations, the Land Schleswig-Holstein has argued in particular, concerning the authorisation referred to in Paragraph 4 of the GlüStV, that the discretion enjoyed by the competent authority is not absolute, but is limited by the legislative aim pursued, the principle of proportionality and fundamental rights. That would in particular exclude any arbitrary treatment and allow judicial review satisfying the requirements of a State governed by the rule of law. Moreover, the Land argues, Paragraph 5(1) of the GlüStV AG fixes the limits of the discretion of the said authority by laying down various conditions and specifying that, if those are fulfilled, the said authorisation should be granted. For its part, the German Government argues that the German legal order provides suitable remedies against discretionary administrative decisions which are revealed to be arbitrary.

89 It is for the national court, which alone has jurisdiction to interpret national law, where appropriate, to verify whether or not the legislation at issue in the main proceedings, namely Paragraph 4(1) and (2) of the GlüStV and Paragraph 5(1) of the GlüStV AG, satisfies the requirements of EU law as described in paragraphs 85 to 87 of this judgment.

90 Having regard to the above, the answer to the third question is that, on a proper interpretation of Article 49 EC, where a system of prior administrative authorisation is established in a Member State as regards the supply of certain types of gambling, such a system, which derogates from the freedom to provide services guaranteed by Article 49 EC, is capable of satisfying the requirements of that latter provision only if it is based on criteria which are objective, non-discriminatory and known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion so that it is not used arbitrarily. Furthermore, any person affected by a restrictive measure based on such a derogation must have an effective judicial remedy available to them.

The fourth question

91 By its fourth question, the referring court asks whether Article 49 EC must be interpreted as precluding national legislation prohibiting the organisation and intermediation of games of chance on the internet, in particular where it

appears that those activities remain authorised for a transitional period of one year in order to enable operators who had hitherto operated only on the internet to effect a conversion of their business to other means of authorised communication, such transitional authorisation being granted on condition that, during the transitional period, various rules concerning the protection of minors and players are complied with.

92 The Land Schleswig-Holstein argues that it is not clear from the wording of the present question whether it concerns only the conformity with EU law of a transitional period such as that arranged by the legislation at issue in the main proceedings, or whether it also concerns the prohibition in principle on offering games of chance on the internet.

93 Those doubts are unfounded, however.

94 In the first place, it is clear from the wording of the question that the referring court enquires generally and primarily as to the conformity with EU law of a prohibition on the organisation and intermediation of games of chance on the internet, whereas the existence of the abovementioned transitional provisions is referred to, as the phrase ‘in particular’ indicates, only as a particularity to which regard must also be had in the case in the main proceedings.

95 In addition, as is shown by paragraph 37 of this judgment, the doubts expressed in the order for reference concern, in very general terms, the question whether a prohibition such as that in Paragraph 4(4) of the GlüStV may be regarded as suitable for pursuing the objectives of combating the risk of gambling addiction and protecting minors, which are deemed to underlie the adoption of the legislation at issue in the main proceedings.

96 Finally, it is clearly only on condition that the prohibition in principle on using the internet for offering games of chance may be regarded as suitable for achieving the legitimate objectives pursued that it may be asked whether the arrangement of a transitional period such as that at issue in the main proceedings is, or is not, likely to affect that suitability.

97 Concerning, first, the prohibition on the organisation and intermediation of games of chance on the internet, it should be noted that the referring court has confined itself to casting doubt on the conformity of that prohibition with EU law in the very general terms which have just been referred to in paragraph 95 of this judgment.

98 Since the referring court has not been more specific about the nature of the

doubts which it has in that regard, merely referring to positions which the Commission is said to have adopted in a reasoned opinion addressed to the Federal Republic of Germany following notification by the latter of the draft of the GlüStV, without however explaining them in any way, the Court will limit its examination to the question whether a measure prohibiting offers of games of chance on the internet such as that contained in Paragraph 4(4) of the GlüStV may, in principle, be regarded as suitable for achieving the objectives of preventing incitement to squander money on gambling, combating gambling addiction, and protecting young people.

99 In that regard, it should be noted as a preliminary observation that the Court has previously acknowledged that a measure prohibiting, purely and simply, the practice of a form of gambling on the territory of a Member State, in that case lotteries, is capable of being justified by such overriding reasons in the public interest (see *Schindler*).

100 In the main proceedings, the prohibition in dispute concerns not the marketing of a particular type of gambling, but a channel through which games of chance may be offered, namely the internet.

101 The Court has already had occasion to emphasise the particularities concerned with the offering of games of chance on the internet (see *Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 72).

102 It has thus observed in particular that, because of the lack of direct contact between consumer and operator, games of chance accessible via the internet involve different and more substantial risks of fraud by operators against consumers compared with the traditional markets for such games (*Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 70).

103 It should be noted that, in the same way, the characteristics specific to the offer of games of chance by the internet may prove to be a source of risks of a different kind and a greater order in the area of consumer protection, particularly in relation to young persons and those with a propensity for gambling or likely to develop such a propensity, in comparison with traditional markets for such games. Apart from the lack of direct contact between the consumer and the operator, previously referred to, the particular ease and the permanence of access to games offered over the internet and the potentially high volume and frequency of such an international offer, in an environment which is moreover characterised by isolation of the player, anonymity and an absence of social control, constitute so many factors likely to foster the development of gambling addiction and the related squandering of money, and thus likely to increase the negative social and moral consequences

attaching thereto, as underlined by consistent case-law.

- 104 Moreover, it should be noted that, having regard to the discretion which Member States enjoy in determining the level of protection of consumers and the social order in the gaming sector, it is not necessary, with regard to the criterion of proportionality, that a restrictive measure decreed by the authorities of one Member State should correspond to a view shared by all the Member States concerning the means of protecting the legitimate interest at issue (see, by analogy, Case C-518/06 *Commission v Italy* [2009] ECR I-3491, paragraphs 83 and 84).
- 105 Having regard to the whole of the above, it must be acknowledged that a prohibition measure covering any offer of games of chance via the internet may, in principle, be regarded as suitable for pursuing the legitimate objectives of preventing incitement to squander money on gambling, combating addiction to the latter and protecting young persons, even though the offer of such games remains authorised through more traditional channels.
- 106 Secondly, concerning the establishment of a transitional period such as that at issue in the main proceedings, it needs in particular to be verified whether the latter might not undermine the consistency of the legislation concerned by leading to a result contrary to the objective pursued.
- 107 In that respect, it should first be noted that the transitional measure at issue in the main proceedings applies only to lotteries, and not to other types of gambling.
- 108 Next, the explanations provided by the referring court show that that transitional measure is designed only to allow certain economic operators, who had hitherto legally offered lotteries via the internet in the Land concerned, to carry out a conversion of their business following the entry into force of the prohibition affecting their initial business, and that it is limited in duration to one year, which cannot be regarded as unreasonable in the said perspective.
- 109 Finally, it should also be emphasised, first, that, according to Paragraph 25(6) of the GlüStV and Paragraph 9 of the GlüStV AG, during the said transitional period, the operators concerned are obliged to comply with a series of conditions concerning the exclusion of minors and prohibited players, the limitation of stakes, the rules for and the frequency of the offer of games and the implementation of social measures, and, secondly, that the Land Schleswig-Holstein has stated before the Court that the benefit of that transitional measure was to be available, without discrimination, to all lottery

operators who might be concerned.

- 110 It does not therefore appear that such a transitional period, in appearance justified by considerations of legal certainty (see, by analogy, Case C-347/06 *ASM Brescia* [2008] ECR I-5641, paragraphs 68 to 71), is likely to affect the consistency of the measure prohibiting the offer of gambling on the internet and its suitability for achieving the objectives which it pursues (see, by analogy, in relation to a temporary exception from a prohibition on the operation of pharmacies by non-pharmacists, Joined Cases C-171/07 and C-172/07 *Apothekerkammer des Saarlandes and Others* [2009] ECR I-4171, paragraphs 45 to 50).
- 111 Having regard to all the foregoing, the answer to the fourth question is that, on a proper interpretation of Article 49 EC, national legislation prohibiting the organisation and intermediation of games of chance on the internet for the purposes of preventing the squandering of money on gambling, combating addiction to the latter and protecting young persons may, in principle, be regarded as suitable for pursuing such legitimate objectives, even if the offer of such games remains authorised through more traditional channels. The fact that such a prohibition is accompanied by a transitional measure such as that at issue in the main proceedings is not capable of depriving the said prohibition of that suitability.

Costs

- 112 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Grand Chamber) hereby rules:

- 1. On a proper interpretation of Article 49 EC, an operator wishing to offer via the internet bets on sporting competitions in a Member State other than the one in which it is established does not cease to fall within the scope of the said provision solely because that operator does not have an authorisation permitting it to offer such bets to persons within the territory of the Member State in which it is established, but holds only an authorisation to offer those services to persons located outside that territory.**
- 2. On a proper interpretation of Article 49 EC, where a regional public**

monopoly on sporting bets and lotteries has been established with the objective of preventing incitement to squander money on gambling and of combating gambling addiction, and yet a national court establishes at the same time:

- that other types of games of chance may be exploited by private operators holding an authorisation; and**
- that in relation to other games of chance which do not fall within the said monopoly and which, moreover, pose a higher risk of addiction than the games which are subject to that monopoly, the competent authorities pursue policies of expanding supply, of such a nature as to develop and stimulate gaming activities, in particular with a view to maximising revenue derived from the latter;**

that national court may legitimately be led to consider that such a monopoly is not suitable for ensuring the achievement of the objective for which it was established by contributing to reducing the opportunities for gambling and to limiting activities within that area in a consistent and systematic manner.

The fact that the games of chance subject to the said monopoly fall within the competence of the regional authorities, whereas those other types of games of chance fall within the competence of the federal authorities, is irrelevant in that respect.

- 3. On a proper interpretation of Article 49 EC, where a system of prior administrative authorisation is established in a Member State as regards the supply of certain types of gambling, such a system, which derogates from the freedom to provide services guaranteed by Article 49 EC, is capable of satisfying the requirements of that latter provision only if it is based on criteria which are objective, non-discriminatory and known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion so that it is not used arbitrarily. Furthermore, any person affected by a restrictive measure based on such a derogation must have an effective judicial remedy available to them.**
- 4. On a proper interpretation of Article 49 EC, national legislation prohibiting the organisation and intermediation of games of chance on the internet for the purposes of preventing the squandering of**

money on gambling, combating addiction to the latter and protecting young persons may, in principle, be regarded as suitable for pursuing such legitimate objectives, even if the offer of such games remains authorised through more traditional channels. The fact that such a prohibition is accompanied by a transitional measure such as that at issue in the main proceedings is not capable of depriving the said prohibition of that suitability.

[Signatures]

* Language of the case: German.

Annex 2.23

A7-0342/2011

14.10.2011

REPORT

on online gambling in the Internal Market
(2011/2084(INI))

Committee on the Internal Market and Consumer Protection

Rapporteur: Jürgen Creutzmann

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on online gambling in the Internal Market (2011/2084(INI))

The European Parliament,

- having regard to the Commission communication of 24 March 2011 entitled ‘Green Paper on online gambling in the Internal Market’ (COM(2011)0128),
- having regard to Articles 51, 52 and 56 of the Treaty on the Functioning of the European Union,
- having regard to the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty on the Functioning of the European Union,
- having regard to the relevant case law of the Court of Justice of the European Union¹,
- having regard to the Council conclusions of 10 December 2010 and the progress reports of the French, Swedish, Spanish and Hungarian Council Presidencies on the framework for gambling and betting in the EU Member States,
- having regard to its resolution of 10 March 2009 on the integrity of online gambling²,
- having regard to its resolution of 8 May 2008 on the White Paper on Sport³,
- having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services⁴,
- having regard to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council⁵,

¹ In particular the judgments in the following cases: Schindler 1994 (C-275/92), Gebhard 1995 (C-55/94), Läära 1999 (C-124/97), Zenatti 1999 (C-67/98), Anomar 2003 (C-6/01), Gambelli 2003 (C-243/01), Lindman 2003 (C-42/02), Fixtures Marketing Ltd v OPAP 2004 (C-444/02), Fixtures Marketing Ltd v Svenska Spel AB 2004 (C-338/02), Fixtures Marketing Ltd v Oy Veikkaus Ab 2005 (C-46/02), Stauffer 2006 (C-386/04), Unibet 2007 (C-432/05), Placanica and others 2007 (C-338/04, C-359/04 and C-360/04), Kommission v Italien 2007 (C-206/04), Liga Portuguesa de Futebol Profissional 2009 (C-42/07), Ladbrokes 2010 (C-258/08), Sporting Exchange 2010 (C-203/08), Sjöberg and Gerdin 2010 (C-447/08 and C-448/08), Markus Stoß and others 2010 (C-316/07, C-358/07, C-359/07, C-360/07, C-409/07 and C-410/07), Carmen Media 2010 (C-46/08) and Engemann 2010 (C-64/08).

² OJ C 87E, 1.4.2010, p.30..

³ OJ C 271E, 12.11.2009, p.51.

⁴ OJ L 95, 15.4.2010, p. 1.

⁵ OJ L 149, 11.6.2005, p. 22.

- having regard to Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts¹,
- having regard to Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing²,
- having regard to the Commission communication of 6 June 2011 entitled ‘Fighting corruption in the EU’,
- having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data³,
- having regard to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector⁴,
- having regard to the Commission communication of 18 January 2011 entitled ‘Developing the European Dimension in Sport’,
- having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax⁵,
- having regard to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market⁶,
- having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market⁷,
- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs (A7-0342/2011),

A. whereas the online gambling sector is growing constantly, to some extent outside the control of the national governments of the citizens to whom such gambling services are provided, and whereas this sector is unlike other markets on account of the risks involved in terms of consumer protection and the fight against organised crime,

B. whereas, in application of the principle of subsidiarity, there is no specific European

¹ OJ L 144, 4.6.1997, p. 19.

² OJ L 309, 25.11.2005, p. 15.

³ OJ L 281, 23.11.1995, p. 31.

⁴ OJ L 201, 31.7.2002, p. 37.

⁵ OJ L 347, 11.12.2006, p. 1.

⁶ OJ L 376, 27.12.2006, p. 36.

⁷ OJ L 178, 17.07.2000, p. 1.

legislative act regulating online gambling,

- C. whereas gambling services are subject to a number of EU acts such as the Audiovisual Media Services Directive, the Unfair Commercial Practices Directive, the Distance Selling Directive, the Anti-Money Laundering Directive, the Data Protection Directive, the Directive on privacy and electronic communication, and the Directive on the common system of value added tax,
- D. whereas the gambling sector is regulated differently in different Member States and this not only makes it difficult for regulated providers to provide lawful gaming services on a cross-border basis, but also for regulators to protect consumers and combat illegal online gambling and potential crime associated with it at EU level,
- E. whereas the value added by a pan-European approach to combating crime and fraud, in particular when it comes to preserving the integrity of sport and protecting gamblers and consumers, is considerable,
- F. whereas Article 56 TFEU guarantees the freedom to provide services but whereas, as a consequence of its particular nature, online gambling was exempted from the E-Commerce, Services and Consumer Rights Directives,
- G. whereas, while the Court of Justice has clarified a number of important legal questions concerning online gambling in the EU, legal uncertainty remains with regard to a number of other questions, which can only be solved at the political level; whereas this legal uncertainty has led to a significant increase in the availability of illegal gambling offers and the high risks associated with them;
- H. whereas online gambling, if not properly regulated, may involve a greater risk of addiction than traditional physical, location-based gambling, owing inter alia to increased ease of access and the absence of social control,
- I. whereas consumers must be educated about the potential harm of online gambling and protected against dangers in this area, especially addiction, fraud, scams and underage gambling,
- J. whereas gambling represents a considerable source of revenue, which most Member States channel to publicly beneficial and charitable purposes such as sport,
- K. whereas it is essential to ensure the integrity of sport by stepping up the fight against corruption and match fixing,
- L. whereas, in order to achieve these objectives, it is essential to introduce mechanisms for scrutinising sports competitions and financial flows, along with common supervisory mechanisms at the EU level,
- M. whereas international-level cooperation among all stakeholders (institutions, sports federations and betting operators) is also crucial with a view to pooling good practices,
 - 1. Welcomes the fact that the Commission has taken the initiative of launching public

consultation in connection with its Green Paper on online betting and gambling, which will facilitate pragmatic and realistic consideration of the future of this sector in Europe;

2. Welcomes the Commission's clarification of the fact that the political process initiated by means of the Green Paper is in no way aimed at deregulating/liberalising online gambling; welcomes the fact that the Green Paper takes account of the European Parliament's clear and standing position on gambling; deplores the fact that the Commission is not closing the existing infringement cases;
3. Recalls the growing economic importance of the online gambling industry, the take from which was over EUR 6 billion, or 45% of the world market, in 2008; agrees with the Court of Justice of the European Union that this is an economic activity with specific characteristics; recalls that this growth also entails an increased social cost from compulsive gambling and illegal practices;
4. Takes the view that efficient regulation of the online gambling sector should in particular:
 - (1) channel the natural gaming instinct of the population by restricting advertising to the level that is strictly necessary in order to direct potential gamblers to the legal provision of services, and by requiring all advertising for online gambling to be systematically coupled with a message warning against excessive or pathological gambling,
 - (2) combat the illegal gambling sector by strengthening technical and legal instruments for identifying and sanctioning illegal operators, and by promoting the legal provision of high-quality gambling services,
 - (3) guarantee effective protection for gamblers, with specific attention to vulnerable groups, in particular young people,
 - (4) preclude risks of gambling addiction, and
 - (5) ensure that gambling is proper, fair, responsible and transparent,
 - (6) ensure that specific measures are promoted to guarantee the integrity of sporting competition,
 - (7) ensure that part of the value of bets goes to sports and horse-racing bodies,
 - (8) ensure that a considerable proportion of government revenue from gambling is used for publicly beneficial and charitable purposes, and
 - (9) ensure that gaming is kept free from crime, fraud and any form of money laundering;
5. Sees such regulation as having the potential to ensure that sports competitions are attractive to consumers and to the public, that sports results remain credible and that the competitions retain their prestige;
6. Underscores the standpoint of the European Court of Justice¹ whereby the Internet is

¹ Carmen Media 2010 (C-46/08).

simply a channel for offering games of chance with sophisticated technologies that can be used to protect consumers and to maintain public order, although Member States' discretion in determining their own approach to the regulation of online gambling is unaffected thereby and they can still restrict or prohibit the provision of certain services to consumers;

Subsidiarity principle and European added value

7. Emphasises that any regulation of the gambling sector is subject to, and must be underpinned by, the subsidiarity principle, given the different traditions and cultures in the Member States, which must be understood as 'active subsidiarity', entailing cooperation among the national administrations; considers, however, that this principle implies compliance with the rules of the internal market in so far as applicable in accordance with the ruling by the ECJ concerning gambling;
8. Highlights the fact that Member States have the right to regulate and control their gambling sector in accordance with European internal market legislation and with their traditions and culture;
9. Is of the opinion that an attractive, well regulated provision of gambling services, both on the Internet and via traditional physical gambling channels, is necessary to ensure that consumers do not use operators which do not fulfil national licensing requirements;
10. Insists on the need to dissuade players from engaging in illegal gambling, which means that lawful services must be provided as part of a system that is coherent across Europe, especially in terms of tax treatment, and which applies common minimum standards of accountability and integrity; calls on the Commission, with due regard for the subsidiarity principle, to investigate how these common standards should be implemented, including the issue of whether a European legislative framework laying down minimum rules would be appropriate;
11. Rejects, accordingly, any European legislative act uniformly regulating the entire gambling sector, but nonetheless takes the view that, in some areas there would be clear added value from a coordinated European approach, in addition to national regulation, given the cross-border nature of online gambling services;
12. Recognises the Member States' discretion in determining how gambling is organised, while observing the basic EU Treaty principles of non-discrimination and proportionality; respects in this context the decision by a number of Member States to ban all or certain types of online gambling or to maintain government monopolies on that sector, in accordance with the jurisprudence of the Court of Justice, as long as they adopt a coherent approach;
13. Points out that the European Court of Justice has accepted in a number of rulings that granting exclusive rights to a single operator subject to tight public-authority control may be a means of improving protection of consumers against fraud and combating crime in the online gambling sector more effectively;

14. Points out that online gambling is a special kind of economic activity, to which internal market rules, namely freedom of establishment and freedom to provide services, cannot fully apply; recognises, however, the consistent jurisprudence of the Court of Justice of the European Union which emphasises that national controls should be enacted and applied in a consistent, proportionate and non-discriminatory manner;
15. Stresses, on the one hand, that providers of online gambling should in all cases respect the national laws of the countries in which those games operate and, on the other hand, that Member States should retain the exclusive right to impose all the measures they deem necessary to address illegal online gambling in order to implement national legislation and exclude illegal providers from market access;
16. Is of the opinion that the principle of mutual recognition of licences in the gambling sector does not apply, but nevertheless, in keeping with internal market principles, insists, that Member States which open up the online gambling sector to competition for all or certain types of online gambling must ensure transparency and make non-discriminatory competition possible; suggests, in this instance, that Member States introduce a licensing model which makes it possible for European gambling providers meeting the conditions imposed by the host Member State to apply for a licence; licence application procedures, which reduce administrative burdens by avoiding the unnecessary duplication of requirements and controls carried out in other Member States, could be set up in those Member States that have implemented a licensing system, while ensuring the pre-eminent role of the regulator in the Member State in which the application has been submitted; takes the view, therefore, that mutual confidence among national regulators needs to be enhanced through closer administrative cooperation; respects, furthermore, the decision of some Member States to determine the number of operators, types and quantities of games on offer, in order to protect consumers and prevent crime, on condition that those restrictions are proportionate and reflect a concern to limit activities in that sector in a consistent and systematic manner;
17. Calls on the Commission to explore – in keeping with the principle of ‘active subsidiarity’ – all possible tools or measures at the EU level designed to protect vulnerable consumers, prevent addiction and combat illegal operators in the field of gambling, including formalised cooperation between national regulators, common standards for operators or a framework directive; is of the opinion that a pan-European code of conduct for online gambling agreed between regulators and operators could be a first step;
18. Takes the view that a pan-European code of conduct for online gambling should address the rights and obligations of both the service provider and the consumer; considers that this code of conduct should help to ensure responsible gaming, a high level of protection for players, particularly in the case of minors and other vulnerable persons, support mechanisms both at EU and national level that fight cyber crime, fraud and misleading advertisement and ultimately provide a framework of principles and rules which ensures that consumers are protected evenly across the EU;
19. Stresses that more action should be taken by Member States to prevent illegal gambling providers from offering their services online, for example by blacklisting illegal gambling providers; calls on the Commission to examine the possibility of proposing a legally

binding instruments obliging banks, credit card issuers and other payment system participants in the EU to block, on the basis of national black lists, transactions between their clients and gambling providers that are not licensed in their jurisdiction, without hindering legitimate transactions;

20. Respects the right of the Member States to draw on a wide variety of repressive measures against illegal online gambling offers; supports, in order to increase the efficiency of the fight against illegal online gambling offers, the introduction of a regulatory principle whereby a gambling company can only operate (or bid for the required national licence) in one Member State if it does not operate in contravention of the law in any other EU Member State;
21. Calls on the Commission, as guardian of the Treaties, and the Member States to continue to carry out effective checks on compliance with EU law;
22. Notes the fact that more progress could have been made on pending infringement cases since 2008 and that no Member State has ever been referred to the European Court of Justice; urges the Commission to continue its investigation of the possible inconsistencies of Member States gambling legislation (offline and online) with the TFEU and – if necessary – to pursue those infringement proceedings that have been pending since 2008 in order to ensure such consistency; reminds the Commission, as ‘guardian of the Treaties’, of its duty to act swiftly upon receipt of complaints about violations of the freedoms enshrined in the Treaties; calls on the Commission, therefore, to urgently and systematically pursue existing and new infringement cases;

Cooperation among regulatory bodies

23. Is concerned about the possible emerging fragmentation of the European online gambling sector, which will hinder the setting up of legal gambling offerings in smaller Member States in particular;
24. Calls for cooperation among national regulatory bodies to be considerably expanded, giving them a sufficient remit, with the Commission as coordinator, to develop common standards and take joint action against online gambling operators which operate without the required national licence; states that, in particular as a means of identifying blacklisted gamblers and combating money laundering, betting fraud and other organised crime, national standalone solutions are not successful; in this context; considers the establishment of a regulator with suitable powers in each Member State to be a necessary step towards more effective regulatory cooperation; states that the Internal Market Information System could serve as the basis for more effective cooperation among national regulatory bodies; takes note of initiatives by national regulators to work together more closely, such as the Gaming Regulators European Forum (GREF) network and the European Regulatory Platform; calls for closer cooperation and better coordination among EU Member States, Europol and Eurojust in the fight against illegal gambling, fraud, money laundering and other financial crimes in the area of online gambling;
25. Points out in particular that spread betting – a form of gambling which is conducted primarily online and in which consumers may potentially lose many times more than their

initial stake – necessitates very strict conditions governing consumer access and should be regulated, as is already the case in a number of Member States, in a similar way to financial derivatives;

26. Takes the view that the various forms of online gambling – such as rapid interactive games of chance which have to be played at a frequency of seconds, betting, and lotteries involving a weekly draw – differ from one another and require different solutions insofar as some forms of gambling afford greater opportunities for abuse than others; notes in particular that the opportunity for money laundering depends on the strength of identification, the type of game and the methods of payment used, which makes it necessary, in respect of some forms of game, to monitor play in real time and exercise stricter control than is the case with other forms of game;
27. Emphasises the need to address the protection of customer accounts opened in connection with online gambling in the event of the service provider becoming insolvent; suggests, therefore, that any future legislation aim to protect deposits in the event that fines are imposed on the websites in question, or legal proceedings brought against them;
28. Asks the Commission to support consumers if they have been affected by illegal practices and to offer them legal support;
29. Recommends the introduction of pan-European uniform minimum standards of electronic identification; considers that registration should be performed in such a way that the player's identity is established and at the same time it is ensured that the player has at his disposal a maximum of one gambling account per gambling company; emphasises that robust registration and verification systems are key tools in preventing any misuse of online gambling, such as money laundering;
30. Is of the opinion that in order to effectively protect consumers, especially vulnerable and young players, from the negative aspects of gambling online, the EU needs to adopt common standards for consumer protection; emphasises, in this context, that control and protection processes need to be in place before any gaming activity begins and could include, inter alia, age verification, restrictions for electronic payment and transfers of funds between gambling accounts and a requirement for operators to place notices about legal age, high-risk behaviour, compulsive gambling and national contact points on online gambling sites;
31. Calls for effective methods to be used to tackle problem gambling, inter alia by means of gambling bans and compulsory limits on expenditure over a particular period, albeit set by the customer himself; stresses that, in addition, if an expenditure limit can be raised, a time lag should apply before this takes effect;
32. Stresses that compulsive gambling is in fact a behavioural disorder which may affect up to 2% of the population in some countries; calls, therefore, for a survey of the extent of the problem in each EU Member State as a basis for an integrated strategy designed to protect consumers from this form of addiction; takes the view that as soon as a gambling account is created, comprehensive and accurate information must be made available with regard to gambling games, responsible gambling and opportunities for treatment of dependence on gambling;

33. Calls on the Commission and the Member States to take note of studies already conducted in this field, to focus on research examining the incidence, formation and treatment of gambling addiction and to collect and publish statistics on all channels (online and offline) of gambling sectors and gambling addiction in order to produce comprehensive data on the entire gambling sector of the EU; underlines the need for statistics from independent sources, particularly concerning gambling addiction;
34. Calls on the Commission to prompt the formation of a network of national organisations taking care of gambling addicts, so that experience and best practices can be exchanged;
35. Observes that, according to a recently published study¹, the gambling sector was identified as the sector where the lack of an alternative dispute resolution system most frequently makes itself felt; suggests, therefore, that national regulatory agencies could establish alternative dispute resolution systems for the online gambling sector;

Gambling and sport: the need to ensure integrity

36. Notes that the risk of fraud in sports competitions – although present since the outset – has been exacerbated since the emergence of the online sports betting sector and represents a risk to the integrity of sport; is therefore of the opinion that a common definition of sport fraud and cheating should be developed and that betting fraud should be penalised as a criminal offence throughout Europe;
37. Calls for instruments to increase cross-border police and judicial cooperation, involving all Member States' competent authorities for the prevention, detection and investigation of match-fixing in connection with sport betting; in this respect, invites Member States to consider dedicated prosecution services with primary responsibility for investigating match-fixing cases; calls for a framework for cooperation with organisers of sports competitions to be considered with a view to facilitating the exchange of information between sports disciplinary bodies and state investigation and prosecution agencies, by setting up, for example, dedicated national networks and contact points to deal with cases of match-fixing; this should happen, where appropriate, in cooperation with the gambling operators;
38. Considers, therefore, that a uniform definition of sports fraud should be set at European level and included in the criminal law of all Member States;
39. Expresses its concerns over the links between criminal organisations and the development of match-fixing in relation to online betting, the profits from which feed other criminal activities;
40. Notes that several European countries have already adopted strict legislation against money laundering through sport betting, sport fraud (classifying it as a specific and criminal offence) and conflicts of interests between betting operators and sport clubs, teams or active athletes;

¹ Study on "Cross-Border Alternative Dispute Resolution in the European Union", 2011, <http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=41671>.

41. Notes that online operators licensed in the EU already play a role in identifying potential instances of corruption in sport;
42. Stresses the importance of education for protecting the integrity of sport; calls, therefore, on the Member States and sports federations to adequately inform and educate sportspeople and consumers starting from a young age and at all levels (both amateur and professional);
43. Is aware of the particular importance of the contribution from gambling revenue towards the funding of all levels of professional and amateur sport in the Member States, including measures to safeguard the integrity of sporting competitions from betting manipulations; calls on the Commission to look at alternative financing arrangements, while respecting practices in the Member States, in which revenues from sports betting might be routinely used to safeguard the integrity of sporting competitions from betting manipulations, while considering that no funding mechanism should lead to a situation from which only very few professional, widely televised sports would benefit while other sports, especially grassroots sport, would see the funding generated by sport betting diminished;
44. Reminds the Commission once again of the importance of lottery funding for sports and good causes and urges it to propose measures to secure this societal function; in this context also recalls the Council Conclusions of 10 December 2010;
45. Reaffirms its position that sports bets are a form of commercial use of sporting competitions; recommends that sporting competitions should be protected from any unauthorised commercial use, notably by recognising the property rights of sports event organisers, not only in order to secure a fair financial return for the benefit of all levels of professional and amateur sport, but also as a means of strengthening the fight against sports fraud, particularly match-fixing;
46. Stresses that the conclusion of legally binding agreements between organisers of sports competitions and online gambling operators would ensure a more balanced relationship between them.
47. Notes the importance of transparency in the online gambling sector; envisages, in this connection, annual reporting obligations, which should demonstrate, inter alia, what activities of general interest and/or sports events are financed and/or sponsored by means of the proceeds from gambling; calls on the Commission to investigate the possibility of compulsory annual reporting.
48. Points to the need to provide a reliable alternative to illegal gambling services; emphasises the need for pragmatic solutions with regard to advertising for, and sponsoring of, sports events by online gambling operators; is of the opinion that common advertising standards should be adopted which provide sufficient protection for vulnerable consumers, but at the same time make sponsorship of international events possible;
49. Calls on the Commission and Member States to work with all sports stakeholders with a view to identifying the appropriate mechanisms necessary to preserve the integrity of sport and the funding of grassroots sport;

50. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

The online gambling sector is growing constantly. Nowadays, according to current figures, about 10% - a figure which is rising - of all gambling in Europe takes place on the Internet or via comparable distribution channels such as mobile 'phones or interactive television platforms, with a market volume in excess of EUR 10 billion.

The market for physical, location-based gambling and the online gambling sector are characterised by a wide range of products: traditional lotteries, but also sports betting, poker, bingo, and totalisator betting on horse and greyhound races.

By its very nature, the Internet is a cross-border medium. online gambling therefore does not stop at borders. As a result of ever increasing offerings and the increasing number of gamblers, the current market fragmentation in this area in Europe is also becoming ever more obvious. In a host of Member States, there are total bans or bans with the possibility of authorisation, while others have a completely open and liberalised market.

As the European Court of Justice has established in many judgments, gambling is not a normal service. Accordingly, it was expressly exempted from the Services Directive, though it goes without saying that freedom to provide services, under Article 56 TFEU, also applies to gambling. Inter alia on the basis of Articles 51 and 52 TFEU, Member States may largely regulate their markets themselves, provided that the regulatory arrangements are consistent with objectives being pursued, e.g. combating gambling addiction.

Because of the very great differences in traditions, however, the subsidiarity principle plays a particularly powerful role in this area. To a large extent, the Member States themselves determine how they want to regulate their gambling sectors. As regards the Internet, however, such considerable regulatory divergence also results in market distortions. Gambling service providers from Member States with open markets and low tax rates are accessible in countries in which online gambling is banned, too, or are in competition with licensed online providers. It is virtually impossible for those providers, and for providers of physical, location-based gambling services from those countries, to compete. Furthermore, there is a large unregulated black market on the Internet.

The central objective must therefore be to contain that black (and grey) market to a large extent. One option for the Member States to realise that objective would be to impose a total ban, which, however, would then have to be strictly enforced. The subsidiarity principle makes it possible for Member States to decide on that option.

However, it would be better to establish legal gambling offerings on the Internet. But under no circumstances must that bring about a (government) monopoly over gambling, since monopolies rarely ensure adequate supply. Accordingly, the market should be opened up and sufficient incentives should be created for firms to provide legal offerings. To do this, a licensing model is the best approach, provided that it is based on the principle of non-discriminatory competition. In such a system, which has already been successfully introduced in some Member States, such as France and Italy, national regulatory bodies lay down the conditions for licences to be granted. In France, for instance, the proportion of legal providers

has sharply increased since the introduction of the licensing system: licensed providers now account for more than 80% of the French online gambling sector. To prevent discrimination, there must be a sufficient or unlimited number of licences available. Furthermore, there must be no indirect discrimination, e.g. in the area of technical standards.

An open and regulated market for online gambling presupposes an independent and powerful national regulatory body. It must determine, and above all also be able to enforce, the environment for gambling. National regulators must therefore be given the necessary powers to penalise infringements and act against illegal providers.

Because of the cross-border nature of the Internet, however, Member States alone are not in a position to regulate all areas of online gambling. Much-expanded cooperation between national regulatory bodies is therefore essential. To date, collaboration has been on a small scale, e.g. through bilateral procedures. What is needed, however, are institutionalised collaborative arrangements, e.g. on the basis of the Internal Market Information System, in order to share information efficiently and quickly. An extended, Commission-coordinated network of regulators is also conceivable. Only through a common European approach can unregulated providers be prevented from exploiting regulatory gaps and playing national regulatory bodies off against each other. The challenge for the Commission and the Member States is to act quickly, therefore, in order to safeguard consumers in Europe against untrustworthy providers.

Gambling involves a risk of addiction. Studies show that, since online gambling was introduced some 10 years ago, there has been a significant increase in the number of people approaching support centres for gambling addicts. There are already many initiatives - both by regulatory bodies and in the form of codes of conduct and commitments - attempting to stem Internet problem gambling and gambling addiction. In this connection, however, it is not appropriate that different standards should apply in each Member State. In many Member States, both public- and private-sector providers of online gambling services operate exemplary safeguards. In many instances, however, they are based on purely national standards and are therefore not compatible with the notion of the internal market. In some Member States, for example, an electronic badge is required for identity checks on the Internet. Many foreign nationals do not have such a badge and are therefore debarred from online gambling - even if they are permanent residents in the Member State concerned. For that reason, European technical standards which could be jointly developed by the industry, consumer organisations and the Commission are important; they also lower market entry barriers for gambling service providers from other European countries. Lower market entry barriers are an important step towards establishing a legal and regulated gambling sector.

Safeguarding minors against gambling is a further universal objective; it is not governed by different traditions or cultures. What obviously needs to be done, accordingly, is to lay down pan-European minimum standards for safeguarding minors and for combating gambling addiction, but also for combating money laundering and other crimes associated with gambling. This could be done in a Commission proposal for a directive laying down minimum standards applicable across Europe and binding on all regulated online gambling service providers. Member States would be free to set further criteria. Resolute action by the Commission and the Member States is important in order to ensure, across Europe, a uniform and high minimum level of protection for consumers.

In most Member States, revenue from gambling is also used for charitable and publicly beneficial purposes and for the funding of sport. However, that only applies in the case of legal and regulated gambling providers. Illegal providers pay no taxes and therefore make no contribution towards society. If markets were regulated at Member State level, online gambling service providers would have to pay much of the gaming tax levied in the country of the gambler. That is important for ensuring that government revenue from gambling throughout Europe is available for the funding of sport and for other publicly beneficial purposes. With regard to horse race betting, for example, this can ensure that breeders receive a proportion of betting revenue so that breeding can continue to be funded.

Time and time again in the past, regrettably, there have been cases of betting fraud in sport; that calls the integrity of sport into question. It is in the direct interest of all stakeholders, i.e. sports associations, fans, gambling service providers and players, to safeguard the integrity of sport and prevent betting fraud. Betting fraud can best be combated at European level. The Commission should therefore develop a system, together with the Member States, which effectively combats betting fraud. Common action against betting fraud will also produce a greater impact vis-à-vis non-European criminal betting fraudsters.

In the interests of the integrity of sport, conflicts of interest between sports betting providers and sports clubs must be avoided. Advertising for gambling or sponsoring a sports club does not yet, in itself, constitute a conflict of interests, however. Accordingly, advertising and sponsoring bans should be rejected.

5.9.2011

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on the Internal Market and Consumer Protection

on online gambling in the Internal Market
(2011/2084(INI))

Rapporteur: Sophie Auconie

SUGGESTIONS

The Committee on Economic and Monetary Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Recalls the growing economic importance of the online gambling industry, the take from which was over EUR 6 billion, or 45% of the world market, in 2008; agrees with the Court of Justice of the European Union that this is an economic activity with specific characteristics; recalls that this growth also entails an increased social cost from compulsive gambling and illegal practices, and that regulation of the industry should seek to minimise these costs through appropriate standards in relation to marketing and conditions of access to online gambling sites;
2. Stresses that Member States can choose freely between three options: banning online gambling and gaming; introducing or preserving a national monopoly; or controlled deregulation of this sector, with Member States having the right, in accordance with the established case-law of the Court of Justice, to restrict the number of operators, the types of game on offer and the volume of such games; urges Member States electing to deregulate their online gambling and gaming sector to introduce a licensing system based on compliance by operators and public authorities with stringent specifications;
3. Reiterates that the Court of Justice of the European Union has confirmed that cross-border gambling services – including those provided electronically – constitute an economic activity which falls under Article 56 TFEU on the freedom to provide services; confirms that restrictions on the freedom to provide cross-border gambling services may be justified on the basis of the grounds for exceptions referred to in Articles 51 and 52 TFEU or for

reasons of overriding public interest, in accordance with the case-law of the Court of Justice;

4. Reaffirms its position that, in as sensitive an area as gambling, industry self-regulation can only complement but not replace statutory legislation; takes note of self-regulatory initiatives launched by public and commercial gambling operators' associations in connection with responsible gaming and other standards;
5. Stresses that the inherent nature of all online activities, in particular the fact that they operate across national borders and the proliferation of offshore operators, means that they must be dealt with in a coordinated manner at the European or global level, where appropriate; highlights the importance of a common EU-wide definition of online gambling as a starting point for any future legislation;
6. Insists on the need to dissuade players from engaging in illegal gambling, which means that lawful services must be provided as part of a system that is coherent across Europe, especially in terms of tax treatment, and which applies common minimum standards of accountability and integrity; calls on the Commission, with due regard for the subsidiarity principle, to investigate how these common standards should be implemented, including the issue of whether a European legislative framework laying down minimum rules would be appropriate;
7. Stresses that online gambling and gaming, if not properly regulated, involve greater risks than traditional gambling and gaming, and that measures must be taken at the European level to clamp down on fraud, money laundering and other illicit operations linked to online gambling; calls for more effective cooperation between Member State authorities, the Commission and Europol, including regular exchanges of information; calls on the Commission to extend the scope of legislation designed to clamp down on organised crime and money laundering so that it includes the gambling and gaming sector; recommends establishing a blacklist of illegal undertakings; supports the introduction of a regulatory principle whereby a gambling company can operate (or bid for the requisite national licence) in one Member State only if it is not operating in breach of the law in any other EU Member State; urges the Commission, therefore, to consider the possibility of introducing interoperable EU standards in relation to fraud detection and prevention with a view to improving global market monitoring;
8. Points out in particular that spread betting – a form of gambling which is conducted primarily online and in which consumers may potentially lose many times more than their initial stake – necessitates very strict conditions governing consumer access and should be regulated, as is already the case in a number of Member States, in a similar way to financial derivatives;
9. Takes the view that the various forms of online gambling – such as rapid interactive games of chance which have to be played at a frequency of seconds, betting, and lotteries involving a weekly draw – differ from one another and require different solutions insofar as some forms of gambling afford greater opportunities for abuse than others; notes in particular that the opportunity for money laundering depends on the strength of identification, the type of game and the methods of payment used, which makes it necessary, in respect of some forms of game, to monitor play in real time and exercise

stricter control than is the case with other forms of game;

10. Underlines that structural cooperation between national regulatory bodies is essential; urges, therefore, that such cooperation be expanded, with the involvement of the Commission, so as to develop common standards and take joint action against online gambling companies operating in one or more Member States without the requisite national licence(s) for all the games they offer; points to the discussions in Council as to whether, and in what way, the Internal Market Information System could contribute to more effective cooperation between national regulatory bodies; states that, in particular when it comes to combating money laundering, betting fraud and other – often organised – crime, national stand-alone solutions are not successful; takes the view that cooperation between national supervisory authorities and the pooling of best practices should be promoted, and that such authorities should exchange information with the responsible authorities of other Member States in order to prevent abuses and money laundering;
11. Stresses that compulsive gambling is in fact a behavioural disorder which may affect up to 2% of the population in some countries; calls, therefore, for a survey of the extent of the problem in each EU Member State as a basis for an integrated strategy designed to protect consumers from this form of addiction; takes the view that as soon as a gambling account is created, comprehensive and accurate information must be made available with regard to gambling games, responsible gambling and opportunities for treatment of dependence on gambling; suggests that gamblers should be invited to set themselves daily and monthly monetary expenditure limits applicable to the whole gambling service;
12. Calls for the introduction of statutory minimum consumer protection standards, especially for the most vulnerable consumers, without prejudice to the right of Member States to adopt more stringent rules;
13. Emphasises the need to address the protection of customer accounts opened in connection with online gambling in the event of the service provider becoming insolvent; suggests, therefore, that any future legislation aim to protect deposits in the event that fines are imposed on the websites in question, or legal proceedings brought against them;
14. Insists that more must be done to protect children from the dangers of gambling and in particular the dangers of addiction; suggests that consideration be given to industry-funded safeguards and monitoring; takes the view that online gambling should be subject to a requirement to open a gambling account, that players should be identified in a precise and watertight manner before they can open a gambling account, and that financial transactions should be monitored, and maintains that all of these aspects should be absolute requirements so as to protect gamblers, ensure that systems of gambling bans are effective and prevent under-age gambling, abuses and crime;
15. Notes that a large number of people taking part in gambling are professional gamblers; takes the view that it must be possible to identify the gambler at all times so that it is impossible to create more than one gambling account per person with the same gambling company; maintains that this should be done by means of a standardised, infallible identification procedure such as the online verification systems used for bank and credit cards; emphasises that robust registration and verification systems are key tools in preventing any misuse of online gambling, such as money laundering;

16. Takes the view that the proliferation of illegal online gambling and the fact that online gambling is not regulated at the global level may represent a threat to the integrity of sport; stresses that keeping sporting events credible and honest is vital to the sports industry as a whole; stresses that this can be done effectively only at transnational level; takes the view that the European Union must therefore play a more prominent role in safeguarding the integrity of sport, alongside all stakeholders;
17. Deplores recent cases of corruption and match fixing in sport; calls, therefore, for the establishment of structural cooperation at the EU level in order to uphold integrity and fair play in sport in accordance with Articles 6, 83 and 165 TFEU; notes that such cooperation must involve sports event organisers, online betting operators and public authorities, with a view to promoting player education and coordinating action against fraud and corruption in sport by sharing information and expertise and by applying the common definition of offences and sanctions;
18. Stresses that online gambling is a significant source of funding for the sports industry and other activities of general interest; recalls that online betting is one form of commercial exploitation of sporting events; calls on the Commission to look at ways in which revenues from sports betting might routinely be used to safeguard and develop the integrity of amateur sport; calls on the Commission to ensure that there is a high level of legal security, particularly as regards the application of the rules on state aid;
19. Notes the importance of transparency in the online gambling sector; envisages, in this connection, annual reporting obligations, which should demonstrate, inter alia, what activities of general interest and/or sports events are financed and/or sponsored by means of the proceeds from gambling; calls on the Commission to investigate the possibility of compulsory annual reporting.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	31.8.2011
Result of final vote	+: 38 -: 0 0: 2
Members present for the final vote	Burkhard Balz, Sharon Bowles, Udo Bullmann, Pascal Canfin, Nikolaos Chountis, Rachida Dati, Leonardo Domenici, Diogo Feio, Markus Ferber, Ildikó Gáll-Pelcz, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Sven Giegold, Liem Hoang Ngoc, Jürgen Klute, Philippe Lamberts, Astrid Lulling, Arlene McCarthy, Sławomir Witold Nitras, Ivari Padar, Alfredo Pallone, Antolín Sánchez Presedo, Olle Schmidt, Edward Scicluna, Theodor Dumitru Stolojan, Ivo Strejček, Marianne Thyssen, Corien Wortmann-Kool,
Substitute(s) present for the final vote	Sophie Auconie, Pervenche Berès, Herbert Dorfmann, Sari Essayah, Vicky Ford, Ashley Fox, Olle Ludvigsson, Thomas Mann, Sirpa Pietikäinen, Andreas Schwab, Theodoros Skylakakis, Catherine Stihler
Substitute(s) under Rule 187(2) present for the final vote	Kriton Arsenis (S&D), Knut Fleckenstein (S&D), Bill Newton Dunn (ALDE)

13.7.2011

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on the Internal Market and Consumer Protection

on online gambling in the internal market
(2011/2084(INI))

Rapporteur: Sajjad Karim

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Points out that online gambling is a special kind of economic activity, to which internal market rules, namely freedom of establishment and freedom to provide services, cannot fully apply;
2. Highlights the fact that Member States have the right to regulate and control their gambling markets in accordance with European internal market legislation and with their traditions and culture;
3. Notes that, while the Court of Justice has clarified a number of important legal questions concerning online gambling in the EU, legal uncertainty remains with regard to a number of other questions, which can only be solved at the political level;
4. Underlines that the Court of Justice has clarified in recent rulings¹ that Member States' regulatory restrictions must be justified, consistent and in line with the legal objectives pursued in order to protect consumers, prevent fraud and protect public order;
5. Calls on the Commission and the Member States to introduce effective measures to raise awareness of the risks of gambling addiction, targeting young people in particular;
6. Asks the Commission to support consumers if they have been affected by illegal practices

¹ Joined cases C-316/07, C-358/07, C-359/07, C-360/07, C-409/07 and C-410/07, Markus Stoß, not yet published.

and to offer them legal support;

7. Welcomes the Commission's statement that different games have different inherent risks and asks for a differentiated regulation;
8. Asks for minimum standards of consumer protection from online gambling, enabling Member States to have stricter rules;
9. Underlines the importance of national licenses for online gambling operators; considers that in this regard the Member States are best placed to act, in accordance with the principle of subsidiarity;
10. Notes the fact that more progress could have been made on pending infringement cases since 2008 and that no Member State has ever been referred to the European Court of Justice;
11. Welcomes the presentation of a Green Paper by the Commission as a step in the right direction and believes that action by the Commission in this field is needed to avoid fragmentation of the internal market and to ensure consumers' access to safe and properly regulated online services; supports the Commission's undertaking a wide public consultation, addressing all policy challenges and internal market issues raised by legitimate and illegal online gambling;
12. Reminds the Commission, as 'guardian of the Treaties', of its duty to swiftly act upon reception of complaints of violation of the freedoms enshrined in the Treaties; calls on the Commission, therefore, to urgently and systematically pursue existing and new infringement cases;
13. Welcomes the CEN Workshop Agreement¹, but nevertheless reaffirms its position that, in the area of gambling, industry self-regulation can only complement, but not replace, statutory legislation;
14. Reaffirms its position that sports bets are a form of commercial use of sporting competitions, and recommends that the European Commission and the Member States protect sporting competitions from any unauthorised commercial use, notably by recognition of sports bodies' property rights over the competitions they organise, not only in order to secure a fair financial return for the benefit of all levels of professional and amateur sport, but also as a way to strengthen the fight against match-fixing;
15. Urges the Member States to ensure that the fraudulent manipulation of results for financial or other advantage is prohibited by establishing as a criminal offence any threat to the integrity of competitions, including those linked to betting operations;
16. Calls on the Commission to bring forward meaningful legislative proposals to provide a legal framework that will create legal certainty for legitimate European businesses and protect consumers;

¹ CWA 16259:2011: Responsible Remote Gambling Measures.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	11.7.2011
Result of final vote	+: 22 -: 0 0: 0
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Kurt Lechner, Eva Lichtenberger, Toine Manders, Paulo Rangel, Dagmar Roth-Behrendt
Substitute(s) under Rule 187(2) present for the final vote	Giuseppe Gargani

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	6.10.2011
Result of final vote	+ : 30 - : 1 0 : 3
Members present for the final vote	Adam Bielan, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia De Campos, Jürgen Creutzmann, Christian Engström, Evelyne Gebhardt, Louis Grech, Małgorzata Handzlik, Iliana Ivanova, Edvard Kožušník, Kurt Lechner, Toine Manders, Hans-Peter Mayer, Phil Prendergast, Mitro Repo, Robert Rochefort, Zuzana Roithová, Christel Schaldemose, Andreas Schwab, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler
Substitute(s) present for the final vote	Marielle Gallo, Anna Hedh, Constance Le Grip, Emma McClarkin, Sylvana Rapti, Oreste Rossi, Wim van de Camp
Substitute(s) under Rule 187(2) present for the final vote	Alexander Alvaro, Monika Hohlmeier, Axel Voss, Pablo Zalba Bidegain

Annex 2.24

Overzicht verrichtingen

!	Actie	Beschrijving	Aantal	Totaal Bank	Memodatum	Datum verzending
		Betaling van ALTIUS CVBA BE11 7330 0754 8448 EUR aan International chamber of commerce CH79 0024 0240 2245 3473 Z	1	5.000,00 EUR KBC	13/03/13	13/03/13 11:30

Totalen per transactiemunt

Aantal debettransacties	1	Totaal debetbedrag	5.000,00 EUR
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