



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

16 April 2026*

(Reference for a preliminary ruling – Article 56 TFEU – Freedom to provide services – Holder of a licence issued by a Member State authorising the organisation of online games of chance – Legislation of another Member State making the organisation of online games of chance subject to authorisation – Overriding reasons in the public interest – Online slot machines – Secondary lotteries – Recovery of lost stakes – Abuse of law)

In Case C-440/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Prim'Awla tal-Qorti Ċivili (First Hall of the Civil Court, Malta), made by decision of 11 July 2023, received at the Court on 14 July 2023, in the proceedings

FB

v

European Lotto and Betting Ltd,

Deutsche Lotto-und Sportwetten Ltd.,

THE COURT (Fifth Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, J. Passer, E. Regan, D. Gratsias (Rapporteur) and B. Smulders, Judges,

Advocate General: N. Emiliou,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 9 April 2025,

after considering the observations submitted on behalf of:

- FB, by himself,
- European Lotto and Betting Ltd and Deutsche Lotto-und Sportwetten ltd., by S. Camilleri, avukat, and R. Karpenstein, Rechtsanwalt,

* Language of the case: English.

- the Maltese Government, by A. Buhagiar, acting as Agent, and by D. Sarmiento Ramírez-Escudero, abogado, and Z. Sciberras, avukat,
- the Belgian Government, by A. De Brouwer, C. Jacob and L. Van den Broeck, acting as Agents, and by V. Ramognino, R. Verbeke and P. Vlaeminck, avocats,
- the Czech Government, by M. Smolek, T. Suchá and J. Vláčil, acting as Agents,
- the German Government, by J. Möller and P.-L. Krüger, acting as Agents,
- the Italian Government, by S. Fiorentino and G. Palmieri, acting as Agents,
- the European Commission, by L. Armati and M. Mataija, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 September 2025,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 56 TFEU and the principle of the prohibition of abuse of rights.
- 2 The request has been made in proceedings between FB, on the one hand, and European Lotto and Betting Ltd and Deutsche Lotto-und Sportwetten Ltd., two companies having their registered office in Malta, on the other, concerning a claim for the recovery of lost stakes in the context of online slot machines and betting on the results of lottery draws.

Legal context

European Union law

Regulation (EC) No 593/2008

- 3 Article 3 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6; ‘the Rome I Regulation’), headed ‘Freedom of choice’, provides in paragraphs 1 and 3:

‘1. A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.

...

3. Where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not

prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.’

4 Article 6 of the Rome I Regulation, headed ‘Consumer contracts’, provides in paragraphs 1 and 2:

‘1. Without prejudice to Articles 5 and 7, a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another person acting in the exercise of his trade or profession (the professional) shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:

- (a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or
- (b) by any means, directs such activities to that country or to several countries including that country,

and the contract falls within the scope of such activities.

2. Notwithstanding paragraph 1, the parties may choose the law applicable to a contract which fulfils the requirements of paragraph 1, in accordance with Article 3. Such a choice may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1.’

5 As set out in Article 9 of that regulation, headed ‘Overriding mandatory provisions’:

‘1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.

3. Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.’

6 Article 10 of that regulation, headed ‘Consent and material validity’, provides:

‘1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Regulation if the contract or term were valid.

2. Nevertheless, a party, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.’

7 Article 12 of that regulation, headed ‘Scope of the law applicable’, provides in paragraph 1:

‘The law applicable to a contract by virtue of this Regulation shall govern in particular:

...

(e) the consequences of nullity of the contract.

...’

8 Article 19 of the Rome I Regulation, headed ‘Habitual residence’, provides in paragraph 3 thereof:

‘For the purposes of determining the habitual residence, the relevant point in time shall be the time of the conclusion of the contract.’

9 Article 21 of that regulation, headed ‘Public policy of the forum’, reads as follows:

‘The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.’

Regulation (EU) No 1215/2012

10 Article 4(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1), which comes within Section 1, headed ‘General provisions’, of Chapter II of that regulation, provides:

‘Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.’

11 Article 5 of that regulation, which comes within Section 1, provides in paragraph 1 thereof:

‘Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.’

12 Section 4 of Chapter II of that regulation, headed ‘Jurisdiction over consumer contracts’, contains, inter alia, Articles 17 and 18 thereof.

13 Article 17(1) of Regulation No 1215/2012 provides:

‘In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section ... if:

(a) it is a contract for the sale of goods on instalment credit terms;

(b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or

(c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer’s domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.’

14 Article 18(1) of that regulation provides:

‘A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled.’

German law

The GlüStV 2012

15 Paragraph 1 of the Staatsvertrag zum Glücksspielwesen in Deutschland (State treaty on gambling in Germany) of 15 December 2011, in the version applicable to the dispute in the main proceedings (‘the GlüStV 2012’), concluded between the *Länder*, provides, in subparagraph 2, that one of its objectives is to steer the natural gambling instinct of the population into orderly and supervised channels, by offering a limited range of games of chance that constitute an appropriate alternative to unauthorised games of chance, and to counteract the development and spread of illegal gambling on parallel markets.

16 Paragraph 4(1), (4) and (5) of the GlüStV 2012 provides:

‘1. Public games of chance may only be organised or brokered with the permission of the competent authority of the respective [*Land*]. Organising games of chance without such permission (unlicensed gambling) and participating in payments in connection with unlicensed gambling are prohibited.

...

4. The organisation of public games of chance on the internet is prohibited.

5. By way of derogation from subparagraph 4, the *Land* may, in order better to achieve the objectives of Paragraph 1, permit the self-distribution and brokerage of lotteries as well as the organisation and brokerage of sports betting on the internet ...’

17 In accordance with Paragraph 10(2) and (6) of the GlüStV 2012, the grant of a licence for lotteries is reserved to State-controlled providers.

The German Civil Code

18 Paragraph 134 of the Bürgerliches Gesetzbuch (Civil Code), in the version applicable to the dispute in the main proceedings (‘the German Civil Code’), provides that any legal act contrary to a statutory prohibition shall be void except as otherwise provided by law.

19 Paragraph 812(1) of the German Civil Code provides:

‘A person who obtains something as a result of the performance of another person or otherwise at that person’s expense without legal grounds for doing so shall be obliged to surrender to that person what has been obtained.

...’

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

20 The defendants in the main proceedings are two companies established in Malta that offer online gambling services, in particular slot machine games and betting on the results of lottery draws, pursuant to a licence issued by the Maltese Gaming Authority (Malta). Both companies direct their activity to, inter alia, the German market through their websites.

21 It is apparent from the request for a preliminary ruling and from the material before the Court that, until 1 July 2021, German legislation provided for a general prohibition on online games of chance, with the exception, since 2012, of sports betting and horse-race betting, and the self-distribution and brokerage of lotteries, the organisation of which was, however, reserved to legal persons governed by public law and to legal persons governed by private law in which legal persons governed by public law hold, directly or indirectly, a controlling interest. According to the request for a preliminary ruling, despite that general prohibition, ‘in Germany, slot machines are omnipresent, both in gaming halls and restaurants as well as in numerous casinos’.

22 As regards online betting on the results of lottery draws (‘secondary lotteries’), it is apparent from the request for a preliminary ruling that, according to the German legislation applicable to the dispute in the main proceedings, as interpreted by the German courts, secondary lotteries are regarded as simply a form of online betting which is therefore subject to the general prohibition on online games of chance.

23 It is in that context that a person having his habitual residence in Germany (‘the original player’) made use of the services offered by the defendants in the main proceedings during the period from 5 June 2019 to 12 July 2021.

24 It is apparent from the reply of the Prim’Awla tal-Qorti Ċivili (First Hall of the Civil Court, Malta), which is the referring court, to the request for clarification sent by the Court of Justice on 15 April 2024 pursuant to Article 101(1) of its Rules of Procedure, that, according to the general terms and conditions governing the contract concluded between the original player and the defendants in the main proceedings, the contractual relationship concerned should have been governed by Maltese law. However, the referring court considers that, pursuant to Article 6(2) of the Rome I Regulation, German law is applicable to that contractual relationship. It considers in that regard that, under German law and in the light of the general prohibition on online games of chance laid down, at the material time, by German legislation, the contract between that player and the defendants in the main proceedings should, under Paragraph 812 of the German Civil Code, be regarded as void.

25 On the basis of that provision of the German Civil Code that player brought a claim before the Landgericht Erfurt (Regional Court, Erfurt, Germany) against the defendants in the main proceedings seeking to recover the stakes he had lost during the period concerned. While the proceedings were still pending, the same player, by a contract concluded on 21 November 2021,

assigned his claims under that contractual relationship to the applicant in the main proceedings, who, in turn, brought a claim before the referring court against the defendants in the main proceedings seeking to recover the stakes lost by the original player. According to the statements made by the defendants in the main proceedings at the hearing before the Court, the claim brought before the Landgericht Erfurt (Regional Court, Erfurt) has since been withdrawn.

- 26 The applicant in the main proceedings claims that, holding only a Maltese licence, the defendants in the main proceedings offered the services at issue in the main proceedings to the original player illegally. That illegality, it is submitted, rendered the contract concluded between the defendants in the main proceedings and the original player null and void.
- 27 The defendants in the main proceedings contend that, in breach of their freedom to provide services guaranteed by Article 56 TFEU, they were prevented from obtaining authorisation to offer services involving slot machines and secondary lotteries in Germany. Therefore, it was the prohibition thus imposed which was unlawful and not the offer of the services at issue in the main proceedings. Moreover, they contend that the original player acted ‘in abuse of rights and in bad faith’.
- 28 The applicant in the main proceedings disputes those arguments and relies, in that regard, on the fact that, according to the case-law of the German higher regional courts, such arguments have never been accepted in cases concerning claims for the recovery of lost stakes by consumers of services such as those at issue in the main proceedings.
- 29 The referring court is uncertain whether the interpretation of EU law adopted by the German courts is capable of establishing a justified restriction on the freedom to provide services of operators such as the defendants in the main proceedings.
- 30 As regards, first, online slot machines, the referring court states that, at the end of 2019, the *Länder* agreed to amend the GlüStV 2012 in order to make it possible to obtain a licence for online games of chance and, in particular, ‘for the self-distribution and brokerage of lotteries, the organisation, brokerage and [self]- distribution of sports betting and horse betting as well as the organisation and self-distribution of online casino games, virtual slot machine games and online poker’. The draft of that amendment to the regulatory framework was notified to the European Commission.
- 31 In the light of the development of that regulatory framework, the heads of the State and senate chancelleries of the *Länder* adopted a resolution on the organisation of games of chance for a transitional period to 1 July 2021. According to the request for a preliminary ruling, that resolution states that, ‘until 30 June 2021, enforcement against unauthorised gambling offers [would] be concentrated on those providers for whom it is foreseeable that they will also want to evade probable future regulation’.
- 32 In that context, the supreme gambling supervisory authorities of the *Länder* announced the adoption of joint guidelines providing that, in view of the amendment of the legislation from 1 July 2021, ‘offers of virtual slot games and online poker that [were] ... not yet eligible for a licence – the self-distribution and the organisation – [were] generally among the circumstances that [would] not be taken up in the enforcement of gambling law’, subject to certain conditions set out in those guidelines.

33 In that regard, the defendants in the main proceedings argue that it is not possible to justify the earlier total ban on online casino games by the objectives pursued by the GlüStV 2012, since the *Länder* themselves, in considering the amendment to the regulatory framework set out in the preceding paragraphs and notifying the amended draft GlüStV to the Commission, ‘had made it clear that the objectives of [that Treaty] could be realised with the milder intervention of a system of prior official authorisation’, even before the amendment of the legislation concerned became effective on 1 July 2021, given the measures taken during the transitional period referred to in paragraph 31 above.

34 Second, as regards secondary lotteries, the referring court notes that, since 2017, all German courts ‘have left open the question of whether the State reservation (lottery monopoly) is justified’. The referring court states that, in that regard, it is difficult to understand why, in the case of a service which is identical for the consumer, a distinction should be made between a bet with a State provider on the outcome of a lottery organised by the State and a bet with a private organiser regulated in another Member State on the outcome of that same lottery.

35 In those circumstances, the *Prim’Awla tal-Qorti Ċivili* (First Hall of the Civil Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is [Article] 56 TFEU to be interpreted to the effect that the infringement of the freedom of services by a general prohibition of online slots in the [M]ember [S]tate of the consumer ([S]tate of destination) [vis-à-vis] online casino operators that are licensed and regulated in their [S]tate of origin (Malta) cannot be justified by compelling reasons of the common good,

– if the [M]ember [S]tate of destination is at the same time permitting similar land-based gaming ubiquitously with licensed slots in arcades and restaurants for private operators, more intense gaming in land-based casinos [and] licensed national [l]ottery operations by [S]tate lotteries in more than 20 000 agents shops [aimed at] the public, and

– allowing licensed online gaming operations for private sports betting and horse betting operators and for private online lottery brokers selling the products of the [State-owned] lotteries and other licensed lotteries,

while that same [M]ember [S]tate – contrary to [...] judgments [of 19 October 2016, *Deutsche Parkinson Vereinigung* (C-148/15, EU:C:2016:776, paragraph 35; of 8 September 2010, *Stoß and Others* (C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, EU:C:2010:504; and of 13 November 2003, *Lindman* (C-42/02, EU:C:2003:613)] – did apparently not provide scientific evidence showing that there are specific dangers in these games that significantly contribute to achieving the goals pursued by its regulation, in particular the prevention of problematic gaming, and that in view of these dangers restricting the prohibition [only] to online slots – in contrast to all the gaming offers that are allowed for online and land-based slots – can be considered suitable, mandatory and proportionate to [achieve] the regulatory goals?

- (2) Is Article 56 TFEU to be interpreted as precluding the application of a total ban on online casino gambling contained in Paragraph 4(1) and (4) of the [GlüStV 2012] if [that law], according to its [Paragraph] 1, does not aim at a total ban [on] gambling, but at [...] “steering the natural gambling instinct of the population into orderly and supervised channels as well as counteracting the development and spread of unauthorised gambling in black markets” and a considerable demand from players for online slots exists?
- (3) Is Article 56 TFEU to be interpreted in such a way that a general ban [on] online casino offers cannot be applied if
- governments in all federal states of this [M]ember [S]tate have already agreed that the dangers of such online gambling offers can be combated more effectively via a system of prior official approval than by a total ban and
 - have drafted and agreed on a future regulatory framework by a corresponding [S]tate treaty that replaces the total ban [with] a system of prior approval,
 - and in anticipation of this future regulation, decide to accept corresponding gambling offers without a German permit subject to compliance with certain requirements until German licen[c]es are issued,
- although according to [the judgment of 8 September 2010, *Winner Wetten*, (C-409/06, EU:C:2010:503)], Union law may not be temporarily suspended?
- (4) Is Article 56 TFEU to be interpreted to the effect that a [M]ember [S]tate (of destination) cannot justify a national regulation with compelling reasons of the common good, if
- that regulation prohibits consumers to place licensed cross-border bets in another [M]ember [S]tate (of origin) on licensed [l]otteries in the [M]ember [S]tate of destination that are permitted and regulated there and
 - if the lotteries are licensed in the [M]ember [S]tate of destination and the regulation aims to protect players and minors
 - and if the regulation of the licensed betting on lotteries in the [M]ember [S]tate of origin also aims to protect players and minors and provides the same level of protection as the regulation of lotteries in the [S]tate of destination?
- (5) Is Article 56 TFEU to be interpreted to the effect that this rule precludes the recovery of stakes lost in the course of participation in (secondary) lotteries based on the asserted illegality of transactions because of the lack of a licence in the [M]ember [S]tate of the consumer, if
- such a licence for private (secondary) lotteries is excluded in the law,
 - and that exclusion is justified by the national courts with an asserted difference between a tip placed with a [S]tate operator on the outcome of a lottery organised by a [S]tate and a bet with a private organiser on the outcome of a [S]tate lottery?

- (6) Is Article 56 TFEU to be interpreted to the effect that it precludes the recovery of stakes lost in the course of participation in (secondary) lotteries based on the asserted illegality of transactions because of the lack of a licence in the [M]ember [S]tate of the consumer if
- there is an exclusion of such a licence for private (secondary) lotteries in the law
 - and if that exclusion in favour of [S]tate lottery organisers is justified by the national courts with an asserted difference between a tip placed with a [S]tate operator on the outcome of a lottery organised by a [S]tate and a bet with a private organiser on the outcome of [the] same [S]tate lottery?
- (7) Is Article 56 TFEU and the prohibition [on] abuse of rights (([judgment of 28 July 2016, *Kratzer* (C-423/15, EU:C:2016:604)]) to be interpreted as precluding the claim for reimbursement of lost stakes based on the lack of a German permit and unjust enrichment where the organiser is licensed and supervised by the authorities in another Member State and the player’s claim assets and claims to payment are secured by the law of the Member State in which the organiser is established?)

Procedure before the Court

- 36 By letter of 5 January 2026, received at the Court on 15 January 2026, the referring court forwarded the observations made by the defendants in the main proceedings on the Advocate General’s Opinion of 4 September 2025.
- 37 In that regard, it should be borne in mind that, under the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his involvement. The Court is not bound either by the Advocate General’s Opinion or by the reasoning on which it is based (judgment of 29 January 2026, *Keladis I and Keladis II*, C-72/24 and C-73/24, EU:C:2026:51, paragraph 63 and the case-law cited).
- 38 It should also be noted, in that context, that the Statute of the Court of Justice of the European Union and the Rules of Procedure make no provision for the parties or the interested persons referred to in Article 23 of that statute to submit observations in response to the Advocate General’s Opinion. The fact that a party or such an interested person disagrees with the Advocate General’s Opinion, irrespective of the questions examined in the Opinion, cannot therefore in itself constitute grounds justifying the reopening of the oral procedure (judgment of 29 January 2026, *Keladis I and Keladis II*, C-72/24 and C-73/24, EU:C:2026:51, paragraph 64 and the case-law cited).
- 39 In the present case, without formally requesting that the written or oral part of the procedure before the Court be reopened, the defendants in the main proceedings nevertheless argued, in paragraph 9.4 of their observations referred to in paragraph 36 above, that they were not given the opportunity, either in the proceedings before the referring court or in those before the Court of Justice, to state their case on a point of law addressed in the Advocate General’s Opinion, namely whether the alleged infringement of EU law should be regarded as manifest in the circumstances of the present case.

- 40 In that regard, suffice it to point out that, pursuant to Article 83 of the Rules of Procedure, the Court may, at any time after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case is to be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.
- 41 In the present case, the Court has all the information necessary to answer the questions referred by the national court. Furthermore, the observations of the defendants in the main proceedings referred to in paragraph 36 above do not reveal any new fact which is of such a nature as to be a decisive factor for the decision which the Court is called upon to give.
- 42 In those circumstances, the Court considers, after hearing the Advocate General, that there is no need to order the reopening of the oral part of the procedure.

Consideration of the questions referred

Admissibility

- 43 The German and Italian Governments dispute the admissibility of the request for a preliminary ruling. The Maltese Government disputes the admissibility of the first to fourth questions.
- 44 In that regard, the German Government considers, in essence, that there are gaps in the request for a preliminary ruling, which does not contain the information necessary to enable the Court to understand the context of the main proceedings or to ascertain that German law is indeed applicable in the present case. Furthermore, that government invokes the application of Article 56A of the Maltese Gaming Act, which, it states, had the effect of making ‘actions brought in Malta against gambling operators licensed in Malta unlawful ...’. If that law were to be applicable in the present case, on the assumption that it is compatible with EU law, the request for a preliminary ruling would not be relevant to the resolution of the dispute in the main proceedings.
- 45 The Italian Government relies, inter alia, on the judgment of 11 March 1980, *Foglia* (104/79, EU:C:1980:73), by which the Court found that it had no jurisdiction to rule on a request for a preliminary ruling, finding that the parties to the main proceedings were seeking to obtain a ruling that the French tax system was invalid for liqueur wines by means of proceedings before an Italian court between two parties who were in agreement as to the result to be attained. That government observes, first, that, in the present case, the claim for reimbursement was brought before a Maltese court following the assignment of a claim for reimbursement, whereas the German courts have consistently upheld such claims, and, second, that the parties to the main proceedings ‘jointly’ requested a reference for a preliminary ruling, the applicant in the main proceedings arguing that such a reference is necessary to ‘achieve legal certainty and legal clarity for his business model’. However, that government points out, referring in particular to the judgment of 18 December 2007, *ZF Zefeser* (C-62/06, EU:C:2007:811, paragraph 15), that the task entrusted to the Court by Article 267 TFEU is not to deliver advisory opinions on general or hypothetical questions.

- 46 Furthermore, according to the Italian Government, a Maltese court is not in the best position to examine the objectives pursued by the German legislation on games of chance or the most appropriate means of protecting those objectives. As is apparent from the judgment of 22 January 2015, *Stanley International Betting and Stanleybet Malta* (C-463/13, EU:C:2015:25, paragraph 51), the legislation on betting and gambling is one of the areas in which there are considerable moral, religious and cultural differences between the Member States. For the purpose of applying the national ‘scale of values’ to which that case-law refers, only a court belonging to the Member State whose legislation is at issue has jurisdiction. In all instances when applying German law, the referring court should instead refer to the interpretation of that law adopted by the German courts, which have repeatedly held that the limitations imposed by the German legislation on the provision of gambling services are consistent with the objectives laid down by the German legislature.
- 47 The Maltese Government, for its part, invokes, inter alia, the judgments of 16 December 1981, *Foglia* (244/80, EU:C:1981:302), and of 21 January 2003, *Bacardi-Martini and Cellier des Dauphins* (C-318/00, EU:C:2003:41), referring, first, to the Court’s case-law on artificial disputes and, second, to that relating to the fact that the need, of a court of one Member State, for a ruling on the compatibility of the law of another Member State with EU law must be particularly clear from the request for a preliminary ruling in order for the Court to agree to answer it. That government submits, in particular, that the referring court has not sufficiently proved that need in the case in the main proceedings as regards the first to fourth questions.
- 48 The Commission, while noting that there are gaps in the request for a preliminary ruling, states, first, that bringing proceedings before a court that the applicant considers more likely to make use of the possibility afforded to it by Article 267 TFEU is not in itself abusive. Second, it seems that there is a genuine dispute between the parties to the main proceedings, whereas the compatibility with Article 56 TFEU of the German legislation, the meaning of which does not appear to be disputed, is clearly an issue that is material for the resolution of the dispute in the main proceedings, assuming that that legislation is actually applicable in the present case.
- 49 It should be recalled, in the first place, that while national courts are free to refer questions to the Court at any stage of the proceedings they consider appropriate and it is for them alone to determine, in the light of the particular circumstances of the case before them, both the need for a preliminary ruling in order to enable them to give judgment and the relevance of the questions which they submit to the Court, the need to provide an interpretation of EU law that will be of use to those courts nevertheless requires them to define the factual and regulatory context of the questions they are asking or, at the very least, to explain the factual assumptions on which the questions are based (order of 25 March 2022, *IP and Others (Establishment of the accuracy of the facts in the main proceedings)*, C-609/21, EU:C:2022:232, paragraph 21 and the case-law cited).
- 50 That said, it is apparent from the Court’s settled case-law that the Court may declare a request made by a national court inadmissible only where it is quite obvious that the interpretation of EU law 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. However, the referring court cannot be required to make all the findings of fact and of law required by its judicial function 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 EU legal order can be

understood from the order for reference (see, to that effect, order of 25 March 2022, *IP and Others (Establishment of the accuracy of the facts in the main proceedings)*, C-609/21, EU:C:2022:232, paragraphs 24 and 25 and the case-law cited).

- 51 In that context, it should be pointed out that, as stated in paragraph 24 above, in its reply to the request for clarification sent to the Court, the referring court set out, inter alia, the factors which had led it to consider that German law was applicable to the dispute in the main proceedings and stated that the Maltese Gaming Act was not applicable to that dispute.
- 52 Thus, in the present case, in the light of the information contained in the request for a preliminary ruling as confirmed and clarified in the referring court's reply to that request for clarification, it is not obvious that the interpretation of EU law sought bears no relation to the subject matter of the dispute in the main proceedings or that the issue to be resolved by the referring court is hypothetical. Furthermore, the Court has before it the factual and legal material necessary to give a useful answer to the questions referred.
- 53 In particular, first, nothing in the file before the Court gives rise to any doubt as to the relevance of German law to the resolution of the dispute in the main proceedings.
- 54 Under Article 6(1) of the Rome I Regulation, a contract concluded by a consumer with a professional is to be governed by the law of the country where the consumer has his or her habitual residence, subject to fulfilment of the requirements set out in that provision, namely that the professional pursues his or her activities in the country where the consumer has his or her habitual residence, or, by any means, directs such activities to that country or to several countries including that country, and the contract falls within the scope of such activities (order of 14 March 2024, *N1 Interactive*, C-429/22, EU:C:2024:245, paragraph 26 and the case-law cited). In the present case, it is not disputed that the original player had his habitual residence in Germany, the country to which the defendants in the main proceedings directed their offer of online games of chance. Consequently, German law governs the contract concluded between that player and those defendants.
- 55 As the Advocate General observed in point 30 of his Opinion, that conclusion cannot be affected by the fact that that player later assigned his claim, since such a circumstance is not capable of altering the nature of the contract concluded between that player and the defendants in the main proceedings. The same is true of the fact, noted by the German Government in its written observations, that the general terms and conditions applicable to that contract referred to Maltese law.
- 56 It is true that Article 6(2) of the Rome I Regulation expressly provides that the parties may, in accordance with Article 3 of that regulation, choose the law applicable to a contract falling within Article 6(1). However, that choice must not have the result of depriving the consumer of the protection afforded to him or her by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of that choice, would have been applicable on the basis of Article 6(1) of that regulation (order of 14 March 2024, *N1 Interactive*, C-429/22, EU:C:2024:245, paragraph 27 and the case-law cited).
- 57 The referring court, whose jurisdiction to rule on the dispute in the main proceedings under Articles 4, 5, 17 and 18 of Regulation No 1215/2012 is not disputed, thus considers that the choice of applicable law made by the defendants in the main proceedings and the original player, namely the choice of Maltese law, runs counter to that rule, in so far as, under German law, which,

in the absence of such a choice would be applicable, that contract should be considered void, since its subject matter was unlawful under the German legislation applicable to the main proceedings, namely the GlüStV 2012.

- 58 In any event, as the Advocate General observed in point 31 of his Opinion, in order to determine whether the subject matter of the contract at issue in the main proceedings was illegal, regard should be had to the prohibitions laid down by the law of the country in which that contract had to be performed, namely, in the present case, German law. While it is true that the defendants in the main proceedings provided their gambling services from Malta, the fact remains that those services were used by the original player in Germany, from where he participated in the games of chance in question and wagered the stakes concerned.
- 59 Second, even if it is found that the application of Article 56A of the Maltese Gaming Act could have rendered the questions referred hypothetical, the referring court stated, in its reply to the request for clarification referred to in paragraph 24 above, that the claim brought by the applicant in the main proceedings had been brought on 21 January 2023, that is to say, before 12 June 2023, the date of entry into force of that provision, which does not have retroactive effect, and, consequently, cannot have any bearing on the dispute in the main proceedings.
- 60 In the second place, as regards the case-law relied on by the Italian and Maltese Governments and, in particular, that stemming from the judgments of 11 March 1980, *Foglia* (104/79, EU:C:1980:73), of 16 December 1981, *Foglia* (244/80, EU:C:1981:302), and of 21 January 2003, *Bacardi-Martini and Cellier des Dauphins* (C-318/00, EU:C:2003:41), suffice it to note, as stated by the Commission and by the Advocate General in points 38 and 86 to 89 of his Opinion, that, in the present case, it is not apparent that the issue to be resolved by the referring court is hypothetical and that, therefore, the answer to the questions referred may not be necessary for the resolution of the dispute in the main proceedings, nor that that dispute is artificial.
- 61 In the light of all the foregoing considerations, it must be held that the request for a preliminary ruling is admissible.

The first, second and fourth questions

- 62 By its first, second and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 56 TFEU must be interpreted as precluding national legislation which imposes a prohibition on the organisation of online casino games, in particular slot machines, and of forms of betting such as secondary lotteries, where its objective is to steer the natural gambling instinct of the population into orderly and supervised channels and to counteract the development and spread of unauthorised gambling on parallel markets, in a situation where, first, there is a considerable demand from players for online slot machines, second, the Member State concerned also permits similar games, including lotteries, in physical establishments, third, that Member State allows licensed operators to offer online sports betting and betting on horse races, and private brokers to sell products of the State lottery and other licensed lotteries and, fourth, the legislation of the Member State in which the operator seeking to offer, in particular, secondary lottery services is licensed pursues the same objectives as those pursued by the legislation of the Member State imposing a general prohibition on the offering of such services.

- 63 According to settled case-law, activities which consist in allowing users to participate, for remuneration, in a game of chance constitute services for the purposes of Article 56 TFEU. In particular, such services come within the scope of that article where the provider is established in a Member State other than that in which the service is offered, in particular via the internet (see, to that effect, judgment of 8 September 2010, *Carmen Media Group*, C-46/08, EU:C:2010:505, paragraphs 40 and 41 and the case-law cited).
- 64 It has been repeatedly held that any Member State whose territory is covered by an offer of such services emanating, via the internet, from such an operator retains the ability to require the latter to comply with restrictions laid down by its legislation in that area, provided those restrictions comply with the requirements of EU law, particularly that they be non-discriminatory and proportionate (judgment of 8 September 2010, *Carmen Media Group*, C-46/08, EU:C:2010:505, paragraph 44 and the case-law cited).
- 65 In that regard, in so far as concerns the justifications which may be accepted where internal measures restrict the freedom to provide services, the Court has repeatedly held that the objectives pursued by national legislation in the area of gambling and betting, 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 (judgment of 8 September 2010, *Carmen Media Group*, C-46/08, EU:C:2010:505, paragraph 45 and the case-law cited).
- 66 The Court's case-law 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 to prohibit activities of that nature in whole or in part, 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 in the light of the objectives pursued and the level of protection sought to be ensured by the national authorities concerned (judgment of 8 September 2010, *Carmen Media Group*, C-46/08, EU:C:2010:505, paragraph 46 and the case-law cited).
- 67 It is thus necessary for the national courts to ascertain whether a restriction decided upon by a Member State is suitable for achieving the objective or objectives invoked by that Member State, at the level of protection which it seeks, and whether it does not go beyond what is necessary in order to achieve those objectives (judgment of 8 September 2010, *Stoß and Others*, C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, EU:C:2010:504, paragraph 78 and the case-law cited).
- 68 In making that assessment, the national courts must take account of the fact that 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 and that, in the absence of harmonisation in the field at the level of the European Union, 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, to that effect, judgment of 24 January 2013, *Stanleybet and Others*, C-186/11 and C-209/11, EU:C:2013:33, paragraph 24 and the case-law cited).
- 69 To that end, the national courts must, in particular where, as in the case in the main proceedings, they are called upon to apply the relevant legislation of another Member State, make use of all procedural tools available to them and, where appropriate, the procedure provided for by Article 267 TFEU.

- 70 In particular, in accordance with case-law, 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 (judgment of 8 September 2010, *Carmen Media Group*, C-46/08, EU:C:2010:505, paragraph 104 and the case-law cited).
- 71 However, it should be recalled in this connection that national legislation is suitable for ensuring attainment of the objectives relied on only if it genuinely reflects a concern to attain them in a consistent and systematic manner (judgment of 22 September 2022, *Admiral Gaming Network and Others*, C-475/20 to C-482/20, EU:C:2022:714, paragraph 57 and the case-law cited).
- 72 In the present case, in the light of the case-law cited in paragraph 65 above, it should be stated, first of all, that the objective of steering the natural gambling instinct of the population into orderly and supervised channels and of counteracting the development and spread of unauthorised gambling on parallel markets is intended to protect the recipients of the services concerned, namely consumers, and the social order in the betting and gaming sector. Consequently, it is capable of justifying obstacles to the freedom to provide services.
- 73 Furthermore, it should be observed that the referring court does not point to any information capable of demonstrating that the national legislation at issue in the main proceedings contains rules which discriminate against operators established in other Member States.
- 74 In the light of those observations, it is necessary, next, to examine, first, whether legislation with the characteristics identified by the referring court is capable of ensuring the attainment of the objective referred to in paragraph 72 of the present judgment, at the level of protection sought by the Member State concerned and in a consistent and systematic manner, and, second, whether it does not go beyond what is necessary to attain that objective.
- 75 In that regard, it should be borne in mind that, in accordance with case-law, where there are questions intended to enable a national court to determine whether national provisions are compatible with EU law, the Court may provide the criteria for the interpretation of EU law which will enable the national court to resolve the legal issue before it. The same is true when it is to be determined whether the provisions of a Member State other than that of the referring court are compatible with EU law (see judgment of 23 November 1989, *Eau de Cologne & Parfümerie-Fabrik 4711*, C-150/88, EU:C:1989:594, paragraph 12; see also, to that effect and by analogy, judgment of 8 December 2022, *Luxury Trust Automobil*, C-247/21, EU:C:2022:966, paragraph 67 and the case-law cited).
- 76 As regards, first, the fact that the legislation at issue in the main proceedings permits similar games, including lotteries, to be offered in physical establishments, it follows from settled case-law that the characteristics specific to the offer of games of chance via 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 particular 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, 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 consequences attaching thereto (see, to that effect, judgments of 8 September 2010, *Carmen Media Group*, C-46/08, EU:C:2010:505, paragraph 103; of 30 June 2011, *Zeturf*, C-212/08, EU:C:2011:437, paragraph 80; and of 28 February 2018, *Sporting Odds*, C-3/17, EU:C:2018:130, paragraph 41 and the case-law cited).

- 77 Thus, 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, a prohibition covering all offers of games of chance via the internet may, in principle, be regarded as suitable for pursuing legitimate objectives such as that referred to in paragraph 72 above, even if the offer of such games remains authorised through more traditional channels (see, to that effect, judgment of 8 September 2010, *Carmen Media Group*, C-46/08, EU:C:2010:505, paragraphs 104 and 105 and the case-law cited).
- 78 Second, the fact, referred to by the referring court, that, despite that prohibition, there is, in Germany, a considerable demand from players for online slot machines is not capable of calling that conclusion into question. The existence of a considerable demand for such online services does not mean that there is no equally considerable number of players who, owing to the restrictive legislation at issue in the main proceedings, are diverted from online services in order to use services offered in physical establishments. Consequently, such a circumstance cannot demonstrate that the legislation at issue in the main proceedings is not capable of ensuring the attainment of the objective referred to in paragraph 82 of the present judgment.
- 79 As regards, third, the fact that certain types of online games of chance, namely sports and horse-race betting and the brokerage of the sale of the products of State and other licensed lotteries, are not covered by the prohibition at issue in the main proceedings, the Court has held that the various types of games of chance may 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 (see, to that effect, judgments of 8 September 2010, *Carmen Media Group*, C-46/08, EU:C:2010:505, paragraph 62, and of 8 September 2010, *Stoß and Others*, C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, EU:C:2010:504, paragraph 95).
- 80 Thus, the fact that some types of games of chance are subject, for example, to a prohibition, others to a public monopoly or even 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 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 measures for achieving the objective of preventing citizens from being incited to squander money on gambling and of combating addiction to the latter (judgment of 8 September 2010, *Carmen Media Group*, C-46/08, EU:C:2010:505, paragraph 63).
- 81 In the circumstances of the present case, sports betting differs substantially from other online games of chance, such as casino games, in so far as, first, by its very nature, it is aimed at a more limited circle of players and, second, its frequency depends on the frequency of the sporting events to which it relates. Those observations apply all the more to online horse-race betting which, moreover, according to the German Government's statements at the hearing, accounted for only a very small share of the relevant market in 2020.

- 82 By contrast, online casino games are liable to attract all sections of the public and especially a particularly young audience, also because of their graphic presentation and the generally simple rules governing them. Moreover, there is, in principle, no limit to the potential frequency of access to that type of game.
- 83 The considerations set out in paragraph 81 above concerning sports betting apply to the brokerage by private operators of the sale of lottery products, in particular as regards the potential frequency of access and the specific arrangements for the organisation of such lotteries, which, in Germany, is reserved to public operators.
- 84 Moreover, from the perspective of the guarantees offered to players in the event of a win, the Belgian Government and, in essence, the German Government stated at the hearing that secondary lotteries cannot be compared to ‘primary’ lotteries, since the risk of non-payment in the event of substantial winnings is virtually non-existent in the latter, as the sums corresponding to potential winnings are in principle available before the draw.
- 85 In that context, it should be noted that the referring court also raises questions stemming from the fact that the Member State concerned appears not to have established that, prior to the adoption of the legislation at issue in the main proceedings, it had scientific evidence demonstrating that unauthorised games present specific dangers.
- 86 In that regard, the Court has held that if a Member State wishes to rely on an objective capable of justifying an obstacle to the freedom to provide services arising from a national restrictive measure, it is under a duty to supply the court called upon to rule on that question with all the evidence of such a kind as to enable the latter to be satisfied that the said measure does fulfil the requirements arising from the principle of proportionality (judgment of 8 September 2010, *Stoß and Others*, C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, EU:C:2010:504, paragraph 71 and the case-law cited).
- 87 However, the Court has also held that it cannot be inferred from that case-law that a Member State is deprived of the possibility of establishing that an internal restrictive measure satisfies those requirements, solely on the ground that that Member State is not able to produce studies serving as the basis for the adoption of the legislation at issue (judgment of 8 September 2010, *Stoß and Others*, C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, EU:C:2010:504, paragraph 72).
- 88 Accordingly, the fact referred to in paragraph 85 above cannot, in itself, call into question the proportionality and, in particular, the appropriateness of the legislation at issue in the main proceedings.
- 89 It should also be noted that the information provided to the Court, as set out in particular in the German Government’s written observations based on the explanatory notes to the GlüStV 2012, tends to demonstrate the existence of factors capable of establishing the proportionality and, in particular, the appropriateness of the legislation at issue in the main proceedings.
- 90 Fourth, the referring court seeks to ascertain whether a prohibition such as the prohibition on secondary lotteries may be regarded as justified where the legislation of the Member State in which the operator concerned is licensed pursues the same objectives as those of the legislation of the Member State of destination.

- 91 In that regard, it is sufficient to recall that, in view of the absence of harmonisation at EU level of legislation in the sector of games of chance offered online, and of the substantial differences between the objectives pursued and the levels of protection sought by the legislation of the various Member States, the mere fact that an operator lawfully offers services in one Member State, in which it is established and is in principle already subject to statutory conditions and controls on the part of the competent authorities of that State, cannot be regarded as a sufficient assurance that national consumers will be protected against the risks of fraud and crime, in view 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 the operators concerned (judgment of 15 September 2011, *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 96 and the case-law cited).
- 92 It follows that, even if two Member States pursue, within their respective legislation on games of chance, similar or even identical objectives, not only is the level of protection sought by each of them and the means of achieving it likely to differ, but the potential difficulties identified in the preceding paragraph of the present judgment cannot necessarily be regarded as having been ruled out.
- 93 Accordingly, the factors cited by the referring court are not capable of calling into question the proportionality, consistency or systematic nature of legislation such as that at issue in the main proceedings.
- 94 That conclusion cannot be called into question by the claim made by the defendants in the main proceedings that the prohibition at issue in the main proceedings coexists with a system of prior authorisation in the form of licences granted for online slot machines in the Land of Schleswig-Holstein. The German Government acknowledged at the hearing that the Land of Schleswig-Holstein did not accede to the GlüStV 2012 until 9 February 2013. However, it also observed, first, that the more liberal legislation adopted by that *Land* had been applicable only for a short period and, second, that, contrary to the Maltese Government's contention at the hearing, the few licences which had continued beyond 2013 had been limited to the territory of that *Land*.
- 95 As the Court has held, even assuming that the legislation of one *Land*, which is more liberal than that in force in the other *Länder*, might damage the consistency of the legislation concerned as a whole, the derogating legal situation of one *Land* limited *ratione temporis* and *ratione loci* cannot, in the circumstances of the case in the main proceedings, seriously affect the appropriateness of the restrictions applicable in all the other *Länder* to achieve the legitimate public interest objectives that they pursue (see, to that effect, judgment of 12 June 2014, *Digibet and Albers*, C-156/13, EU:C:2014:1756, paragraph 36).
- 96 In the light of all the foregoing considerations, the answer to the first, second and fourth questions is that Article 56 TFEU must be interpreted as not precluding national legislation which imposes a prohibition on the organisation of online casino games, in particular slot machines, and of forms of betting such as secondary lotteries, where its objective is to steer the natural gambling instinct of the population into orderly and supervised channels and to counteract the development and spread of unauthorised gambling on parallel markets, even if:
- there is a considerable demand from players for online slot machines;

- the Member State concerned also permits similar games, including lotteries, in physical establishments;
- that Member State allows licensed operators to offer online sports betting and horse-race betting, and private brokers to sell products of the State lottery and other licensed lotteries; and
- the legislation of the Member State in which the operator seeking to offer, in particular, secondary lottery services is licensed pursues the same objectives as those pursued by the legislation of the Member State imposing a general prohibition on the offering of such services.

The third question

- 97 By its third question, the referring court asks, in essence, whether Article 56 TFEU must be interpreted as precluding the recognition, in a given dispute, of the legal consequences of a prohibition on online casino games where, after the events liable to give rise to those consequences, a decision to replace that prohibition with a system of prior approval has been adopted and a transitional period has been put in place during which gambling offers likely to be compliant with the future legislation would be accepted subject to compliance with certain requirements.
- 98 It should be borne in mind that, in a review of proportionality that a national court is called upon to undertake, that court must carry out a global assessment of the circumstances in which the restrictive legislation concerned was adopted and implemented, in accordance with an approach that is dynamic rather than static in the sense that it must take account of the way in which circumstances have developed following the adoption of that legislation (see, to that effect, judgment of 14 June 2017, *Online Games and Others*, C-685/15, EU:C:2017:452, paragraphs 52 and 53 and the case-law cited, and order of 18 May 2021, *Fluctus and Others*, C-920/19, EU:C:2021:395, paragraph 46).
- 99 However, in accordance with case-law, the mere fact that the regulatory framework applicable in a Member State has been amended cannot call into question the proportionality and consistency of that framework as it stood before that amendment. As the Court has repeatedly held, a policy of controlled expansion of games of chance, such as the replacement of the prohibition regime by a system of prior approval, may be consistent both with the objective of preventing the use of gambling activities for criminal or fraudulent purposes and with that of preventing incitement to squander money on gambling and of combating addiction to gambling, by directing consumers towards the offer emanating from authorised operators, that offer being deemed to be protected from criminal elements and designed to safeguard consumers against squandering of money and addiction to gambling (see, to that effect, judgment of 28 February 2018, *Sporting Odds*, C-3/17, EU:C:2018:130, paragraph 29).
- 100 In order to achieve that objective of channelling into controlled circuits, the authorised operators must provide a reliable, but at the same time attractive, alternative to a prohibited activity, which may necessitate, inter alia, the use of new distribution techniques (judgment of 28 February 2018, *Sporting Odds*, C-3/17, EU:C:2018:130, paragraph 29). Nevertheless, it follows from case-law that, if a Member State carries out a reform introducing a system of prior administrative approval for the provision of certain types of games of chance, it must be based on objective, non-discriminatory criteria which are known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion so that it is not used arbitrarily (see judgment of 4 February 2016, *Ince*, C-336/14, EU:C:2016:72, paragraph 55 and the case-law cited).

- 101 However, a policy of controlled expansion of gambling activities may be regarded as being consistent only on the condition that, first, criminal and fraudulent activities linked to gambling and, second, addiction to gambling could have been a problem for the Member State concerned at the material time and if the expansion of authorised and regulated activities could have solved that problem (see judgments of 28 February 2018, *Sporting Odds*, C-3/17, EU:C:2018:130, paragraph 31, and of 11 June 2015, *Berlington Hungary and Others*, C-98/14, EU:C:2015:386, paragraph 71 and the case-law cited).
- 102 In the present case, it is such circumstances and, in particular, the considerable demand for online slot machines, mentioned by the referring court, and the existence of a ‘parallel market’ for the services concerned which, as the German Government stated both in its written observations and at the hearing, inspired the reforms introduced in Germany, referred to in the third question.
- 103 In those circumstances, the fact that, during a transitional period, the *Länder* decided, by means of the resolution referred to in paragraph 31 above, to apply the existing regulatory framework only to gaming providers that would be unable to comply with the requirements of the future legislation has no bearing on the legal consequences which may, where appropriate, be drawn from the prohibition at issue in the main proceedings.
- 104 First, such an exceptional transitional regime appears to be intended to ensure that the transition from the regime at issue in the main proceedings to a more liberal regime is carried out under the best possible conditions of legal certainty. Second, the applicability of such a transitional regime, in the case of a gaming provider such as the defendants in the main proceedings, can, in the context of a dispute such as that in the main proceedings, only be hypothetical. Furthermore, even if that transitional regime may have been applied in certain cases, such a circumstance is not, in itself, capable of calling into question the consistency and appropriateness of the legal regime at issue in the main proceedings, nor does it appear capable of leading to a result contrary to the objective pursued (see, to that effect and by analogy, judgment of 8 September 2010, *Carmen Media Group*, C-46/08, EU:C:2010:505, paragraphs 106 and 110).
- 105 In the light of all the foregoing considerations, the answer to the third question is that Article 56 TFEU must be interpreted as not precluding the recognition, in a given dispute, of the legal consequences of a prohibition on online casino games where, after the events liable to give rise to those consequences, a decision has been adopted to replace that prohibition with a system of prior approval and a transitional period has been put in place during which gambling offers likely to comply with the future legislation would be accepted subject to compliance with certain requirements.

The fifth and sixth questions

- 106 By its fifth and sixth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 56 TFEU must be interpreted as precluding a finding that a contract concluded between a consumer residing in one Member State and an operator offering online secondary lottery services from another Member State is void, where, under the legislation of the first Member State, the grant of a licence for the organisation of such betting is excluded for private operators.

- 107 As stated in paragraph 22 above, it is apparent from the request for a preliminary ruling that, according to the legislation at issue in the main proceedings as interpreted by the German courts, secondary lotteries are regarded as simply a form of online betting which is therefore subject to the prohibition on online games of chance applicable in the main proceedings.
- 108 Therefore, the fact that, under the legislation at issue in the main proceedings, the organisation of lotteries is reserved to public operators cannot have any bearing on the outcome of the dispute in the main proceedings. First, according to the referring court, that dispute concerns only stakes lost in the context of the original player's participation in secondary lotteries and, second, according to the explanations provided by the German Government both in its written observations and at the hearing, the organisation and brokerage of such lotteries were, under that legislation, prohibited for all operators and not only for operators not controlled by the State.
- 109 In the light of all the foregoing considerations, the answer to the fifth and sixth questions is that Article 56 TFEU must be interpreted as not precluding a finding that a contract concluded between a consumer residing in one Member State and an operator offering online secondary lottery services from another Member State is void, where, under the legislation of the first Member State, the grant of a licence for the organisation of such betting is excluded for private operators.

The seventh question

- 110 By its seventh question, the referring court asks, in essence, whether Article 56 TFEU and the principle prohibiting abuse of rights must be interpreted as precluding a consumer who has participated, from the Member State of his or her habitual residence, in games of chance offered online by an operator not holding a licence issued by that Member State but by another Member State, from bringing a civil action against that operator for restitution of the stakes wagered, on the basis of the nullity of the gambling contract concerned, under the applicable contract law.
- 111 It should be noted, in that regard, as the Advocate General observed in point 30 of his Opinion, that the question whether a given contract is invalid where its subject matter is illegal and whether that invalidity entails, for each party, a right to restitution of the benefits which each party has received under that contract, are issues for the law governing that contract under Article 10(1) and Article 12(1)(e) of the Rome I Regulation. In the present case, as is apparent from paragraphs 53 to 58 above, the law governing the contract concluded between the original player and the defendants in the main proceedings is German law.
- 112 Furthermore, as the Advocate General observed in point 93 of his Opinion, in so far as it is apparent from the considerations set out in relation to the first to sixth questions that Article 56 TFEU must be interpreted as not precluding legislation such as that described by the referring court, the nullity of a contract such as that concluded between the original player and the defendants in the main proceedings, the cause of which is illegal under that legislation, cannot constitute a separate restriction on the freedom to provide services requiring a separate assessment of its legality, but is the necessary consequence of the illegality of that contract.
- 113 It is true that, in accordance with the case-law invoked by the referring court, EU law cannot be relied on for abusive or fraudulent ends (judgment of 28 July 2016, *Kratzer*, C-423/15, EU:C:2016:604, paragraph 37). However, as the Advocate General observed in point 94 of his Opinion, here, the claim for restitution brought in the main proceedings is based not on EU law, but entirely on German law.

- 114 Moreover, while it cannot be ruled out that, in a situation such as that at issue in the main proceedings, the player was able to make use of the services offered by an undertaking such as the defendants in the main proceedings while being fully aware of a prohibition such as that applicable to that dispute and its possible consequences, such a question can be decided only on the basis of the applicable national law.
- 115 In the light of all the foregoing considerations, the answer to the seventh question is that Article 56 TFEU and the principle prohibiting abuse of rights must be interpreted as not precluding a consumer who has participated, from the Member State of his or her habitual residence, in games of chance offered online by an operator not holding a licence issued by that Member State but by another Member State, from bringing a civil action against that operator for restitution of the stakes wagered, on the basis of the nullity of the gambling contract concerned, under the applicable contract law.

Costs

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

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

1. Article 56 TFEU

must be interpreted as not precluding national legislation which imposes a prohibition on the organisation of online casino games, in particular slot machines, and of forms of betting such as online betting on the results of lottery draws, where its objective is to steer the natural gambling instinct of the population into orderly and supervised channels and to counteract the development and spread of unauthorised gambling on parallel markets, even if:

- **there is a considerable demand from players for online slot machines;**
- **the Member State concerned also permits similar games, including lotteries, in physical establishments;**
- **that Member State allows licensed operators to offer online sports betting and horse-race betting, and private brokers to sell products of the State lottery and other licensed lotteries; and**
- **the legislation of the Member State in which the operator seeking to offer, in particular, online betting services on lottery draw results is licensed pursues the same objectives as those pursued by the legislation of the Member State imposing a general prohibition on the offering of such services.**

2. Article 56 TFEU

must be interpreted as not precluding the recognition, in a given dispute, of the legal consequences of a prohibition on online casino games where, after the events liable to give

rise to those consequences, a decision has been adopted to replace that prohibition with a system of prior approval and a transitional period has been put in place during which gambling offers likely to comply with the future legislation would be accepted subject to compliance with certain requirements.

3. Article 56 TFEU

must be interpreted as not precluding a finding that a contract concluded between a consumer residing in one Member State and an operator offering online betting services on lottery draws from another Member State is void, where, under the legislation of the first Member State, the grant of a licence for the organisation of such betting is excluded for private operators.

4. Article 56 TFEU and the principle prohibiting abuse of rights

must be interpreted as not precluding a consumer who has participated, from the Member State of his or her habitual residence, in games of chance offered online by an operator not holding a licence issued by that Member State but by another Member State, from bringing a civil action against that operator for restitution of the stakes wagered, on the basis of the nullity of the gambling contract concerned, under the applicable contract law.

[Signatures]