

Malta's Court of Appeal Refers Gaming Judgment Enforcement Questions to the CJEU

In a decree delivered on 26 October 2026 in TSG Interactive Gaming Europe Ltd v Gerhard Posch, Malta's Court of Appeal referred seven questions to the Court of Justice of the European Union (CJEU) concerning the recognition and enforcement of foreign judgments relating to online gaming. The reference addresses the scope of the public-policy exception under Regulation (EU) No 1215/2012 and the compatibility of Article 56A of Malta's Gaming Act with the EU framework governing the circulation of judgments between Member States.



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The Court stayed the appeal pending the CJEU's response.

The dispute arose after Gerhard Posch obtained an Austrian judgment ordering TSG Interactive Gaming Europe Ltd, a Malta-registered company operating the PokerStars website, to reimburse gambling losses amounting to €40,536.43, together with interest and costs. The Austrian court held that Austrian law applied and that the gambling contract was invalid because the services were unauthorised under that law. The judgment was subsequently upheld on appeal.

On 25 May 2021, the Regional Court of Klagenfurt ordered TSG Interactive Gaming Europe Ltd to pay Gerhard Posch €40,536.43, together with interest at 4% from 23 September 2020 and procedural costs of €9,557.56; the Higher Regional Court of Graz dismissed the company's appeal on 13 August 2021. On 8 April 2022, Posch, acting through his special mandatary, Dr Damien Degiorgio, served the company with a judicial letter enclosing the Austrian judgments, their Maltese translations and the certificate issued under Article 53 of Regulation (EU) No 1215/2012 in Maltese and English. He subsequently applied for an executive garnishee order on 19 April 2022, which was granted on 27 April 2022. The company then brought proceedings in Malta seeking refusal of recognition and

enforcement under Articles 45(1) and 46 of that Regulation, contending that enforcement would be manifestly contrary to Maltese public policy. It also challenged service of the documents under Regulation (EC) No 1393/2007 and argued that the garnishee order had been sought before valid service of the Article 53 certificate, contrary to Article 43(1) of Regulation 1215/2012. The proceedings therefore centred on the validity of service and the public-policy objection.

Following Posch's attempts to enforce the Austrian judgments in Malta, the company instituted proceedings seeking to prevent their recognition and enforcement. It argued that enforcement would be manifestly contrary to Maltese public policy, maintaining that the Austrian restrictions on online gambling infringed the freedom to provide services guaranteed by Article 56 of the Treaty on the Functioning of the European Union.

The Civil Court, First Hall, upheld the company's claim on 27 February 2025. It considered the Austrian gambling monopoly to constitute a disproportionate restriction on the freedom to provide services and concluded that enforcement of the judgments would offend Maltese public policy. It also referred to Article 56A of the Gaming Act, which requires Maltese courts to refuse recognition or enforcement of foreign judgments

falling within its provisions concerning gaming activities authorised under Maltese law.

Posch appealed on 27 March 2025. His appeal raised six grievances. The first challenged the decrees of 6 and 26 September 2022 authorising the Permanent Secretary of the Ministry for the Economy, European Funds and Lands and the Malta Gaming Authority to intervene in the proceedings. The second maintained that the company could not successfully invoke Article 45(1) of Regulation 1215/2012 because it had not exhausted all remedies available to it in Austria.

The third grievance concerned the first-instance court's re-examination of the Austrian judgments, which Posch argued was contrary to Article 52 of the Regulation, prohibiting review of a judgment from another Member State as to its substance. In his fourth grievance, he contested the court's consideration of the company's tax payments to the Austrian authorities, maintaining that this inquiry was likewise precluded by Article 52 and should not have influenced the decision.

The fifth grievance challenged the finding that the Austrian judgment was contrary to Maltese public policy on the basis that it infringed EU law. The sixth concerned Article 56A of the Gaming Act. The company and the intervening parties opposed the

appeal and submitted reasons why it should be dismissed.

Against that background, the Court of Appeal referred seven questions to the CJEU. These address the scope of the public-policy exception, the effect of Article 56A and the limits imposed on the enforcing court's examination of judgments delivered in another Member State. Rendered in English, the questions are as follows.

First, should "public policy (ordre public)" under Article 45(1)(a) of Regulation (EU) No 1215/2012 be interpreted as including measures intended to protect the gaming industry as a private economic activity in the Member State where enforcement of a foreign judgment is sought, and/or measures intended to support the cross-border provision of gaming services within the European Union in light of Article 56 TFEU?

Second, does Article 45(1)(a) permit a court of one Member State to refuse enforcement of a judgment delivered by a court of another Member State on public-policy grounds if enforcement is considered to restrict the provision of online gaming services by an operator licensed in another Member State, in light of the freedom to provide services under Article 56 TFEU and the freedom of establishment under Article 49 TFEU?

Third, should Article 45(1)(a) be interpreted as precluding a court of a Member State from refusing recognition or enforcement of a judgment delivered by a court of another Member State solely on the basis of a provision of national law, such as Article 56A of the Gaming Act, which provides that such foreign judgments or decisions are not to be recognised or enforced?

Fourth, is a national provision such as Article 56A compatible with the principle of mutual trust underpinning Articles 39 and 40 of Regulation 1215/2012 if it imposes conditions limiting the recognition or enforcement of judgments delivered by courts of other Member States in relation to gaming services?

Fifth, in proceedings under Regulation 1215/2012 in which a debtor opposes recognition or enforcement of a judgment delivered in another Member State, in this case Austria, may the Maltese court, when examining public policy under Article 45(1), assess whether the national law of the Member State of origin complies with the freedom to provide services within the European Union under Article 56 TFEU?

Sixth, should Article 52 of Regulation 1215/2012 be interpreted as precluding the court of the Member State in which recognition or enforcement is sought, when examining the public-policy exception under Article 45(1)(a), from verifying whether the legislation applied by the court of the Member State of origin complies with Article 56 TFEU?

Seventh, should Article 52 be interpreted as precluding that court, when examining the public-policy exception under Article 45(1)(a), from investigating whether the Austrian tax authorities receive tax payments from companies registered in Malta and drawing a conclusion as to whether those payments mean that the activity is lawful or unlawful in Austria?

The decree does not finally determine whether the Austrian judgments are enforceable in Malta. It places before the CJEU questions concerning the limits of national public policy, the prohibition on reviewing foreign judgments on their merits, and the relationship between domestic gaming legislation and EU obligations.

FFF Legal represented the defendant in this case.

This latest reference from Malta for a preliminary ruling comes against the background of a wider long-running legal saga concerning online gaming businesses established in Malta whose customers are resident in other EU Member States, discussed in these earlier articles:

- [European Court Casts Doubt on Malta's Gaming Enforcement Barrier](#)
- [The Long and Winding Road for the Maltese Gaming Industry: The Latest Signpost from Luxembourg](#)
- [CJEU Rules Member States Can Restrict Cross-Border Online Gambling and Allow Consumer Refund Claims](#)

The CJEU is scheduled to hand down a much-anticipated decision in C-683/24 *Spielerschutz Sigma* on 19 November 2026. If in that judgment the CJEU finds that the reference for a preliminary ruling in that case is admissible and goes on to grapple with the legality of Malta's Article 56A, it will bring much-needed clarity to this lengthy debacle.

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