bwin freeroll

1. bwin freeroll
2. bwin freeroll :jogos automático para ganhar dinheiro
3. bwin freeroll :casa de aposta betano

bwin freeroll

Resumo:
bwin freeroll : Descubra a diversão do jogo em mka.arq.br. Inscreva-se agora para receber seu bônus emocionante!
contente:
Todos os vídeos são produzidos e exibidos ao vivo por um novo usuário, ou seja, pelo site oficial. Após uma votação, o jogador que somar mais comentários na enquete ganha uma viagem ao novo local da praia.
Em alguns meses desde que a votação foi divulgada, o vídeo game está disponível para compra nos Estados Unidos e Canadá pela iTunes Store.
A partir de setembro de 2019, foi lançado o jogo brasileiro de tabuleiro de xadrez "Serenner", sendo o primeiro jogo brasileiro a conseguir tal feito no ano de 2010.
Criado pelo artista brasileiro Maurício Gabor da Silva e desenvolvido pela dupla de jogos, a "Serenner" traz uma jogabilidade simples e intuitiva, bem como uma narrativa divertida.
OPINION OF ADVOCATE GENERAL
BOT
delivered on 14 October 2008 1( )
Case C42/07
Liga
Portuguesa de Futebol Profissional (CA/LPFP)
Baw International Ltd
v
Departamento de
Jogos da Santa Casa da Misericórdia de Lisboa
(Reference for a preliminary ruling from
the Tribunal de Pequena Instância Criminal do Porto (Portugal))
(Legislation of a
Member State granting a single entity an exclusive right to organise and operate
betting on the internet – 'Technical regulation' within the meaning of Directive
98/34/EC – Restriction of the freedom to provide services – Overriding reasons relating
to the public interest – Protection of consumers and maintenance of public order –
National legislation appropriate for attaining objectives – Proportionality)
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1. The problem of the conformity with Community law of the
Member States' legislation concerning games of chance and gambling has already given rise to a relatively large number of cases. Nevertheless it continues to give rise to numerous references from the courts of the Member States, as shown by the number of cases at present pending before the Court. ( )
2. In the present case, the referring
court needs to be enabled to determine whether its domestic law, in so far as it grants a single operator the exclusive right to offer off-course bets on the internet, conforms with Community law.
3. The case concerns the Portuguese legislation which
confers on the Departamento de Jogos da Santa Casa da Misericórdia de Lisboa ( ), a centuries-old non-profit-making organisation which has the object of financing causes in the public interest, the exclusive right to organise and operate lotteries and off-course betting in the whole of national territory. This exclusive right has been extended to all electronic means of communication, in particular the internet. The legislation also provides for penalties in the form of administrative fines on those who organise such games in breach of the abovementioned exclusive right and who advertise such games.
4. Baw International Ltd, ( ) an on-line betting company
established in Gibraltar, and the Liga Portuguesa de Futebol Profissional (CA/LPFP) ( ) were fined for offering off-course betting by electronic means and advertising it.
5.
The referring court, before which Bwin and the Liga contested the fines, is uncertain as to whether its national legislation, in providing for such a system of exclusive rights for off-course betting on the internet, conforms with Community law.
6. In those
circumstances, I shall submit, first, that legislation of a Member State which grants a single entity the exclusive right to offer off-course betting on the internet and which provides for penalties in the form of fines on persons disregarding that right, constitutes a 'technical regulation' within the meaning of Directive 98/43/EC of the European Parliament and of the Council. ( ) I shall conclude from this that, if that legislation was not duly notified to the Commission of the European Communities, it cannot be relied on against private operators such as the Liga and Bwin.
7. Secondly, I
shall state that such legislation constitutes a restriction of the freedom to provide services. I shall consider to what extent such legislation may be justified.
8. To
begin with, I shall describe the effect which I think the restriction by Community law of the powers of the Member States in the field of betting and games of chance should have. I shall state that the aim of the freedoms of movement is not to open up the market in games of chance and gambling. I shall argue that a Member State should be required to open up this activity to the market only if, in law or in fact, it treats the gambling and games of chance as true economic activities which yield maximum profits. I shall also argue that the Member States should have a broad discretion in determining what measures to take in order to protect consumers and to maintain public order against the excesses of gambling, including determining the gambling services

necessary for that purpose. I shall conclude that Community law should be confined to prohibiting situations in which restrictive measures taken to protect consumers against excessive gaming are manifestly distorting their purpose.

9. I shall state that Article 49 EC does not preclude legislation such as the Portuguese legislation at issue if it satisfies the following conditions, which must be verified by the referring court: the legislation must be justified by overriding reasons relating to the public interest, it must be appropriate for ensuring the attainment of the objectives which it pursues, it must not exceed what is necessary for attaining them and it must not be applied in a discriminatory way. I shall make the following points regarding those conditions.

10. First, with regard to the risks created by gambling and games of chance on the internet, a Member State may legitimately restrict the right to operate such games in order to protect consumers and to maintain public order.

11. Second, the grant of the exclusive right to organise and operate such games to a single entity may be an appropriate measure for pursuing those aims if, first, the Member State has the means of directing and controlling effectively the operation of gambling and games of chance by the entity holding that right and, second, if, in actually implementing that measure, the Member State does not manifestly exceed its margin of discretion.

12. Third, the grant of an exclusive right to a single non-profit-making entity controlled by the Member State may be a proportionate measure.

13. Fourth, the legislation in question, in so far as it grants a single entity the exclusive right to operate lotteries and off-course betting on the internet is not, in itself, discriminatory.

14. Before setting out the legal and factual context of the present case, followed by my analysis, I think it necessary to describe briefly the nature of games of chance and gambling in the European Union and then the issues to which those activities give rise.

B – Games of chance and gambling

15. I shall briefly make the following five points. Games of chance and gambling today include a wide variety of games. They have considerable economic significance. Nevertheless they give rise to serious risks to society. They are the subject of strict regulations of different kinds in the Member States. Finally, electronic means of communication, in particular the internet, are an important factor in the spread of such games.

1. A wide variety of games

16. The playing of games the result of which depends on chance, in which the players wager a stake with valuables or money, appears to be very ancient and common to many societies. Historians situate their origin in the third millennium BC in the Far East and Egypt. ( ) Such games were common in ancient Greece and Rome. ( )

17. Games of chance and gambling have changed considerably in the course of history and there is a very wide variety of them today. They may be divided very broadly into four main categories.

18. The first category consists of lotteries, in which I include bingo games, which are based on the same principle. This is a pure game of chance in which knowledge and strategy play no part at all. The result of the game is determined by the drawing by lot of winning numbers, the result of which is known immediately or later.

19.

Lotteries and bingo games may be organised on a very different scale, from the annual draw or bingo of a local association with prizes in kind of small value to games organised by national or regional lotteries aimed at the entire territory of a Member State or a region of a federal State and which offer a prize that could be as much as several million euros. They may also be organised in different forms, so that there is a very wide variety of them.

20. In the course of February 2004 the lotteries of several Member States decided to set up together a common lottery called 'EuroMillions'. ( )

21. So-called 'instant' or 'scratch card' lotteries have also appeared in the last 20 years. These offer cards at a modest price on which the result is printed beneath a film which has to be scratched off with a fingernail or coin.

22. The second main category of games of chance and gambling is betting. This may be based on the result of a competition, the occurrence of an event or the existence of something.

23. The best known and oldest form of betting is on horse races. The punters are invited to bet on the result of a race in which those taking part, horses and jockeys, are known in advance. Consequently the punters can place their bets in reliance on luck and also on their knowledge of the characteristics and the performance of the horses and jockeys. In addition to betting on horse races, there is now also betting on sporting events.

24. The winnings depend either on the total amount of bets or on the odds agreed with the bookmaker.

25. In the third place we have casinos. Different games are authorised in these establishments, which are open to the public. They have long been regarded as reserved for wealthy clients who are able to gamble large sums in games that are complicated, or supposed to be such, surrounded by rites and ceremonial.

26. Gaming machines must be placed in fourth place. They were invented in the United States in the first half of the 19th century and were immediately successful. ( ) They are slot machines into which the player is invited to insert a coin or token and which show a pre-programmed result by means of a random computer system. Consequently the moment and frequency with which the result shown by the machine corresponds to a winning combination depend on chance.

2. A significant economic factor

27. In recent years gambling and games of chance have increased significantly. They now constitute what may be described as a considerable economic factor. In the first place, they generate a very large income for the organisations that operate them. ( ) Secondly, they provide a substantial number of jobs in the different Member States. ( )

3. An activity that gives rise to serious risks

28. However, games of chance and gambling give rise to serious risks to society in relation to the players and to the operators that organise them.

29. First, they may lead players to jeopardise their financial and family situation, and even their health.

30. Games of chance and gambling by nature allow only a very small number of players to win, failing which they will lose and cannot go on. In the great majority of cases, therefore, players lose more than they gain. However, the excitement of the game and the promise of winning, sometimes very large amounts, may lead players to spend on

gambling more than the share of their budget available for leisure pursuits.

31. This behaviour may therefore have the consequence that players are no longer able to fulfil their social and family obligations. It may also lead to a situation of real addiction to games of chance and gambling, comparable to addiction caused by drugs or alcohol. ( )

32. Secondly, because of the very considerable stakes involved in gambling and games of chance, they are likely to be open to manipulation on the part of the organiser who may wish to arrange matters so that the result of the draw or the sporting event is the most favourable to himself. Furthermore, in that connection an individual player has no really effective means of verifying that the conditions in which gambling takes place actually conform with what is announced.

33. Finally, games of chance and gambling may be a means of 'laundering' money obtained illegally. Such money can be gambled in the hope of winning more. It can also be converted into profit if the criminal is also the owner of the gambling establishment.

4. An activity strictly regulated by the Member States

34. In the course of history games of chance and gambling have often been condemned on moral and religious grounds and also the maintaining of public order. ( ) Nevertheless they have been accepted as a social fact.

35. The reaction of governing authorities has oscillated between total prohibition, strict regulation, while providing that the revenue from games of chance and gambling should serve exclusively to finance causes of public interest, and encouragement so as to profit from the manna represented by this voluntary tax.

36. Nowadays games of chance and gambling are subject to restrictive regulation in most Member States of the European Union.

37. In a number of those States ( ) these restrictions take the form of a ban in principle on games of chance and gambling, with specific exceptions. Likewise in most Member States, ( ) the operation of a game of chance or gambling by a private operator, where it is provided for, is subject to obtaining a licence from the appropriate authority. In addition, the number of operators who may be authorised to operate a particular game is normally limited, usually by a quota.

38. In several Member States the operation of games of chance and gambling may also be the subject of an exclusive right granted to a State organisation or a private operator. ( )

39. There are considerable differences in the legislation in force in the Member States. Apart from the differences in operating systems, there are exceptions to the general prohibition where it exists, and the definition of 'games of chance and gambling' and the scope of the national legislation are not uniform. The same game may therefore be authorised in one Member State and prohibited in another or be treated differently. ( )

40. Finally, the tax treatment of games of chance and gambling differs considerably from one Member State to another because, in some Member States, the profits generated by the operation of such games and gambling must be appropriated, in varying proportions, to causes of general interest. Likewise, the share of the winnings distributed to players varies significantly.

5. The impact of new means of communication

41. Until about twenty years ago, games of chance and gambling were accessible only in specific places such as the

numerous outlets for betting and lottery tickets, race courses and casinos. This meant that anyone wishing to bet or gamble had to make a journey and it could only be done during the opening times of the premises in question.

42. The appearance of electronic means of communication in the 1990s, such as mobile phones, interactive television and, above all, the internet, changed the situation radically. Thanks to these new means of communication, punters can play games at any time without leaving their home.

43. In this way betting and gaming have been considerably facilitated. Access to these pursuits has been encouraged by the following factors. First, the number of persons who can use electronic means of communication is increasing regularly. ( ) Second, they are becoming easier and easier to use and they function in an integrated system. ( ) Lastly, the financial transactions can be carried out very easily through those means of communication.

44. In addition, electronic means of communication, particularly the internet, enable persons residing in one Member State to gain physical access not only to online games offered by operators established in that State, but also to those offered by operators established in other Member States or non-member countries.

45. Therefore these new means of communication have permitted a significant increase in the provision of games of chance and gambling, which have become extremely successful. ( )

II – The legal context

A – Community law

1. Secondary law

a) No measures governing games of chance and gambling in particular

46. Games of chance and gambling have not so far been the subject of any regulation or harmonisation within the Union.

47. They are expressly excluded from the scope of Directive 2000/31/EC of the European Parliament and of the Council, ( ) the last indent of Article 1(5)(d) of which provides that the Directive does not apply to ‘gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions’.

48. Games of chance and gambling are also excluded from the ambit of Directive 2006/123/EC of the European Parliament and of the Council, ( ) in which the twenty-fifth recital of the preamble states that ‘gambling activities, including lottery and betting transactions, should be excluded … in view of the specific nature of these activities, which entail implementation by Member States of policies relating to public policy and consumer protection’.

49. However, a national law which prohibits internet service providers from offering games of chance and gambling in the territory of a Member State is likely to fall within the scope of Directive 98/34.

b) Directive 98/34

50. Directive 98/34 aims to remove or reduce barriers to the free movement of goods arising from the adoption by the Member States of different technical regulations, by promoting the transparency of national initiatives vis-à-vis the Commission, European standardisation bodies and the other Member States.

51. The ambit of Directive 98/34 was extended by Directive 98/48 to all services of the information society, that is to say, according to Article 1(2) of Directive 98/34, any service normally provided for remuneration by

electronic means and at the individual request of a recipient of services.
52. The term
‘technical regulation’ is defined as follows in Article 1(11) of Directive
98/34:
‘Technical specifications and other requirements or rules on services, including
the relevant administrative provisions, the observance of which is compulsory, de jure
or de facto, in the case of marketing, provision of a service, establishment of a
service operator or use in a Member State or a major part thereof, as well as laws,
regulations or administrative provisions of Member States, except those provided for in
Article 10, prohibiting the manufacture, importation, marketing or use of a product or
prohibiting the provision or use of a service, or establishment as a service
provider.
…’
53. Therefore Directive 98/34 provides for a system whereby each Member
State must notify the Commission of its proposed technical regulations so as to enable
the Commission and the other Member States to inform it of their viewpoint and to
propose a standardisation which is less restrictive of trade. This system also gives
the Commission the necessary time to propose, if necessary, a binding standardisation
measure.
54. Article 8 of Directive 98/34 reads as follows:
‘1. … Member States shall
immediately communicate to the Commission any draft technical regulation, except where
it merely transposes the full text of an international or European standard, in which
case information regarding the relevant standard shall suffice; they shall also let the
Commission have a statement of the grounds which make the enactment of such a technical
regulation necessary, where these have not already been made clear in the draft.
…
The
Commission shall immediately notify the other Member States of the draft and all
documents which have been forwarded to it; it may also refer this draft, for an
opinion, to the Committee referred to in Article 5 and, where appropriate, to the
committee responsible for the field in question.
…
2. The Commission and the Member
States may make comments to the Member State which has forwarded a draft technical
regulation; that Member State shall take such comments into account as far as possible
in the subsequent preparation of the technical regulation.
3. Member States shall
communicate the definitive text of a technical regulation to the Commission without
delay.
…’
55. Article 9 of Directive 98/34 provides as follows:
‘1. Member States shall
postpone the adoption of a draft technical regulation for three months from the date of
receipt by the Commission of the communication referred to in Article 8(1).
2. Member
States shall postpone:
…
– without prejudice to paragraphs 4 and 5, for four months the
adoption of any draft rule on services, from the date of receipt by the Commission of
the communication referred to in Article 8(1) if the Commission or another Member State
delivers a detailed opinion, within three months of that date, to the effect that the
measure envisaged may create obstacles to the free movement of services or to the

freedom of establishment of service operators within the internal market.
…
4. Member
States shall postpone the adoption of a draft technical regulation for 12 months from the date of receipt by the Commission of the communication referred to in Article 8(1) if, within the three months following that date, the Commission announces its finding that the draft technical regulation concerns a matter which is covered by a proposal for a directive, regulation or decision presented to the Council in accordance with Article 189 of the [EC] Treaty [now Article 249 EC].
…'
2. Primary law and its
interpretation
56. The regulations of the Member States concerning games of chance and gambling must not interfere with the obligations of the Member States in the context of the EC Treaty, particularly in relation to the freedoms of movement.
a) The Treaty
57.
The first paragraph of Article 49 EC prohibits restrictions on the freedom to provide services within the Community in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.
58. Under Articles 48 and 55 EC, Article 49 is applicable to the
services offered by a company formed in accordance with the law of a Member State and having its registered office, central administration or principal place of business within the Community.
b) Case-law
59. The problem of whether the laws of the Member
States concerning games of chance and gambling are consistent with the fundamental freedoms of movement have given rise to a relatively large body of case-law, the main outlines of which may be described as follows.
60. Games of chance and gambling are an
economic activity within the meaning of Article 2 EC. ( ) They consist in the provision of a particular service, namely the hope of making a cash profit, in return for remuneration.
61. They are also a service activity which falls within the scope of
Articles 43 and 49 EC concerning the freedom of establishment and the freedom to provide services. National legislation prohibiting or restricting the right to operate games of chance and gambling in a Member State may therefore be a restriction of those freedoms of movement. ( )
62. However, the Court has consistently held that such games
represent a particular economic activity for the following reasons. First, in all the Member States, moral, religious or cultural considerations tend to restrict, or even prohibit, such games to prevent them from being a source of private profit. Secondly, games of chance and gambling involve a high risk of crime or fraud, given the size of the potential winnings. In addition, they are an encouragement to spend which may have damaging individual and social consequences. Finally, although this cannot in itself be regarded as an objective justification, it is not without relevance that lotteries may make a significant contribution to the financing of benevolent or public interest activities such as social works, charitable works, sport or culture. ( )
63. Lotteries
organised on a large scale, ( ) gaming machines, ( ) betting on sporting events ( ) and casino gambling and games ( ) have been considered likely to create a high risk of crime and fraud because of the considerable sums involved, and also a risk to consumers

because they are an encouragement to spend. ( )
64. The Member States may legitimately provide for restrictions on the operation of games with those characteristics, on grounds of consumer protection (limiting the passion of human beings for gaming, preventing citizens from being tempted to spend excessively on gaming) and defending the social order (preventing the risks of crime and fraud created by gaming). These are reasons of overriding general interest which may justify restrictions on the freedoms of movement. ( )
65. On the other hand, using income from gaming to finance social activities cannot be a justification as such. The Court bases that assessment on the principle that the diminution or reduction of tax revenue is not one of the grounds listed in Article 46 EC and does not constitute a matter of overriding general interest. ( ) Using the income from gaming in that way is only an incidental beneficial consequence of a restriction. ( )
66. Determining the necessary degree of protection for consumers and the maintenance of public order with regard to games of chance and gambling is a matter for the Member States.
67. According to the Court, the national authorities must be allowed a sufficient margin of discretion to determine the requirements entailed by the protection of gamblers and, more generally, taking account of the social and cultural characteristics of each Member State, the preservation of public order, with regard to the organisational arrangements of gaming and betting and the amount of stakes, as well the use made of the profits to which they give rise. ( ) The Member States are therefore free to set the objectives of their policy on betting and gaming and, where appropriate, to define in detail the degree of protection sought. ( )
68. However, in order to be justified, a national measure restricting a freedom of movement must be applied in a non-discriminatory manner; must be appropriate for securing the attainment of the objective which it pursues; and must not go beyond what is necessary in order to attain that objective. ( )
69. In the context of monitoring compliance with those conditions, the Court has stated on several occasions that the reasons justifying the restrictions laid down by the measure in question must be considered together. ( )
70. The Court has accepted that the following restrictions may be justified.
71. A Member State has the right to prohibit entirely any gaming in its territory. ( ) According to the Court, it is for those authorities to consider whether, in the context of the aim pursued, it is necessary to prohibit activities of that kind, totally or partially, or only to restrict them and to lay down more or less rigorous procedures for controlling them. ( )
72. A Member State may also grant a single entity or a limited number of operators an exclusive right to operate gaming and betting. ( )
73. The Court considers that the authorisation by a Member State for the operation of gaming and betting activities by an entity with an exclusive right or by a specified number of operators is not incompatible with the aims of protecting consumers from being tempted to spend excessively and maintaining public order. According to the Court, limited authorisation of games of chance and gambling on an exclusive basis, which has the advantage of confining the desire to gamble and the operation of gambling within controlled channels, of preventing the risk of fraud or crime in the context of such operation, and of using the resulting profits for public interest purposes, likewise falls within the ambit of those objectives. ( )

74. In addition, 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 national authorities of the Member State concerned and the degree of protection which they are intended to provide. ( )

75. In Läärä and Others, the Court also examined the question of whether, to attain the objectives pursued by the Finnish law concerning the operation of gaming machines, it was preferable, rather than granting an exclusive operating right to the licensed public body, to adopt regulations imposing the necessary code of conduct on the operators concerned.

76. The Court stated that that question was a matter to be assessed by the Member States, subject however to the proviso that the choice made in that regard must not be disproportionate to the aim pursued. ( ) The Court took the view that that condition was fulfilled because the body with the exclusive right to operate the slot machines was a public-law association the activities of which were carried on under the control of the State and which was required to pay over to the State the amount of the net distributable proceeds received from the operation of the slot machines. ( )

77. The Court added that, while it was true that the sums thus received by the State for public interest purposes could equally be obtained by other means, such as taxation of the activities of the various operators authorised to pursue them within the framework of rules of a non-exclusive nature; however, the obligation imposed on the licensed public body, requiring it to pay over the proceeds of its operations, constituted a measure which, given the risk of crime and fraud, was certainly more effective in ensuring that strict limits were set to the lucrative nature of such activities. ( )

78. In Zenatti, Gambelli and Others, and Placanica and Others, cited above, the Court spelt out more clearly the conditions which national legislation must satisfy in order to be justified with particular regard to the Italian law granting a limited number of organisations fulfilling certain criteria an exclusive right to organise betting.

79. In Zenatti, the Court observed that the Italian legislation in question sought to prevent such gaming from being a source of private profit, to avoid risks of crime and fraud and the damaging individual and social consequences of the incitement to spend which it represents and to allow it only to the extent to which it may be socially useful as being conducive to the proper conduct of competitive sports. ( )

80. The Court stated that such legislation could be justified only if, from the outset, it reflected a concern to bring about a genuine diminution in gambling opportunities and if the financing of social activities through a levy on the proceeds of authorised games constituted only an incidental beneficial consequence and not the real justification for the restrictive policy adopted. ( ) The Court added that it was for the national court to verify whether, having regard to the specific rules governing its application, the national legislation is genuinely directed to realising the objectives which are capable of justifying it and whether the restrictions which it imposes do not appear disproportionate in the light of those objectives. ( )

81. In Gambelli and Others, cited above, the referring court stated that the Italian law on betting had been amended in 2000 and that the background documents of the amending measure showed that the Italian Republic was pursuing a policy of substantially expanding betting and gaming at national level with a view to obtaining funds, while

also protecting existing licensees.

82. The Court stated that restrictions on grounds of consumer protection and the prevention of both fraud and incitement to squander on gaming may be justified only if they are appropriate for achieving those objectives, inasmuch as they must serve to limit betting activities in a consistent and systematic manner. ( )

83. The Court added that, in so far as the authorities of a Member State incite and encourage consumers to participate in lotteries, games of chance and 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 betting in order to justify measures such as those at issue in the main proceedings. ( )

84. In view of the aim of avoiding gaming licensees being involved in criminal or fraudulent activities, the Court found that the Italian legislation on invitations to tender appeared disproportionate in so far as it prevented capital companies quoted on regulated markets of other Member States from obtaining licences to organise sporting bets in Italy. The Court pointed out there were other means of checking the accounts and activities of such companies. ( )

85. In Placanica and Others, the Court was once again confronted with the Italian law on betting on sporting events after the Corte Suprema di Cassazione (Italy) took the view that the law in question was compatible with Articles 43 and 49 EC. The Italian court found that that the true purpose of the Italian legislation was not to protect consumers by limiting their propensity to gamble, but to channel betting and gaming activities into systems that are controllable, with the objective of preventing their operation for criminal purposes.

86. The Court stated that, in so far as that was the only aim of the licensing system laid down by the Italian law, a ‘policy of controlled expansion’ in the betting and gaming sector may be entirely consistent with the objective of drawing players away from clandestine betting and gaming to activities which are authorised and regulated. According to the Court, in order to achieve that objective, authorised operators must represent a reliable, but at the same time attractive, alternative to a prohibited activity, and this may necessitate the offer of an extensive range of games, advertising on a certain scale and the use of new distribution techniques. ( )

87. As the facts referred to by the Italian Government showed that clandestine betting and gaming were a considerable problem in Italy, the Court concluded that a licensing system may constitute an efficient mechanism enabling operators active in the betting and gaming sector to be controlled with a view to preventing the operation of those activities for criminal or fraudulent purposes. ( )

88. However, the Court confirmed that the law in question appeared disproportionate in that it prevented companies whose shares are quoted on the regulated markets of other Member States from being able to obtain licences for the business of sporting betting in Italy. ( )

B – National law

a) Information provided by the referring court

89. Article 2 of Decree-Law No 282/2003 of 8 November 2003 ( ) grants the Santa Casa the monopoly for the operation by electronic means of State gambling of a social nature, that is to say, of lotteries and off-course betting. The monopoly covers the entire national territory, including radioelectric space, the internet and any other public telecommunications network.

90. Under Article

11(1)(a) and (b) of Decree-Law No 282/2003 the following are illegal:
– the promotion,
organisation or operation by electronic means of State gambling of a social nature (that is to say, lotteries and off-course betting) in contravention of the monopoly rules;
– the advertising of those number lotteries, whether they take place in national territory or not.
2. Additional information provided by the Portuguese Government
91.
In Portugal games of chance and gambling are prohibited in principle. Nevertheless, the State has reserved the right to authorise, in accordance with the system it deems the most appropriate, the operation of one or more games, directly or through a body under its control, or to grant the right to operate games to private entities, whether non-profit-making or not, by calls for tender.
a) The types of games
92. The Portuguese
legislation distinguishes between three categories of games of chance and gambling, namely casino games, lotteries, tombolas and publicity competitions, and games of lotto and betting.
i) Casino games
93. Casino games comprise table games such as roulette and
poker, as well as other types of games such as bingo and slot machines.
94. The
operation of these games is regulated by Decree-law No 422/89 of 2 December 1989, ( ) which was considered by the Court in Anomar and Others.
95. The right to operate casino
games is in principle reserved by the State and it can be exercised only by undertakings constituted in the form of limited companies licensed by the State, by an administrative contract. These games are permitted only in casinos in gaming zones created and defined by legislative measure.
96. There are at present nine casinos of
that type operating in Portugal and licences have recently been granted for four others.
ii) Lotteries, tombolas and publicity competitions
97. This category of games
comprises lotteries, tombolas, draws, publicity competitions, general knowledge contests and pastimes. They are subject to prior licensing by the Government, which is granted case by case on specific conditions.
98. In practice, this category of games
has no commercial impact in Portugal.
iii) Lotto games and betting
99. This category of
games comprises all games in which the contestants predict the results of one or more contests or draws. These games are known in Portugal as ‘games of a social nature’ or ‘State games of a social nature’.
100. The operation of these games is regulated by
Decree-Law No 84/85 of 28 March 1985. ( )
101. Under Article 1(1) of that Decree-Law,
the right to promote lotto games and betting is reserved by the State, which grants the Santa Casa the exclusive right to organise and operate them throughout Portugal.
102.
According to the statements in the preambles to the measures providing for this exclusive right, the Portuguese Government considered that it could no longer overlook

the fact that such gaming was carried on clandestinely, together with the excesses to which it gave rise. The Government's purpose was therefore to give it a legal framework so as to ensure that gaming was fair and to limit its excesses. The Government also intended that the revenue from gaming, which was morally reprehensible in the culture of that Member State, should not be a source of private profit, but should serve to finance social causes or causes of general interest.

103. Originally the Santa Casa organised contests called 'Totobola' and 'Totoloto'. The former covers games in which the contestants predict the results of one or more sporting events. The latter covers all games in which the contestants predict the results of drawing numbers by lot .

104. The range of games was subsequently extended in 1993 to include 'Joker'; ( ) in 1994 'Lotaria instantânia', an instant game with a scratch card, commonly called 'raspadinha'; ( ) in 1998 'Totogolo', ( ) and in 2004 'Euromilhões', or European lotto. ( )

105. In 2003 the legal framework of lotto games and betting was adapted to take account of technical developments enabling the games to be offered by electronic medium, in particular the internet. These measures appear in Decree-Law 282/2003 and they aim, in substance, first, to license the Santa Casa to sell its products by electronic medium and, secondly, to extend the Santa Casa's exclusive right of operation to include games offered by electronic medium, in particular the internet.

106. Article 12(1) of DecreeLaw No 282/2003 sets the maximum and minimum fines for the administrative offences laid down in Article 11(1)(a) and (b) of that Decree-Law. For natural 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, provided that the triple figure is greater than EUR 2 000 but does not exceed a maximum of EUR 44 890.

b) The regulations of the Santa Casa

107. The Santa Casa is a social solidarity institution established on 15 August 1498. It has always been devoted to charitable work for assisting the most disadvantaged.

108. In Portugal, State games of a social nature are assigned to the Santa Casa. The 'Lotaria Nacional' (national lottery), established by a royal edict of 18 November 1783, was contracted out to that institution and the contract was renewed regularly. In 1961 the Santa Casa was granted the exclusive right to organise other forms of lotto games and betting such as Totobola and, in 1985, Totoloto.

109. The activities of the Santa Casa are regulated by Decree-Law No 322/91 of 26 August 1991. ( )

110. According to its statutes, the Santa Casa is a 'legal person in the public administrative interest', that is to say, a private legal person, recognised by the authorities as pursuing non-profit-making objects of general interest.

111. The administrative organs of the Santa Casa consist of a director, appointed by decree of the Prime Minister, and a board of management whose members are appointed by decrees of the members of the Government under whose supervision the Santa Casa falls.

112. The operation of games of chance falls within the responsibilities of the Gaming Department of the Santa Casa, which has its own administrative and control organs.

113. The administrative organ of the Gaming Department consists of the director of the Santa Casa, who is the ex officio chairman,

and two deputy directors appointed by joint decree of the Minister of Employment and Solidarity and the Minister of Health.

114. Each type of game of chance organised by the Santa Casa is instituted separately by a decree-law and the entire organisation and operation of the game, 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, the methods and periods for payment of prizes, are governed by government regulation.

115. The members of the competition committee, the draw committee and the claims committee are mostly representatives of the public authorities. The chairman of the claims committee, who has a casting vote, is a judge.

116. The Gaming Department has a budget and its own accounts which are annexed to the budget and the accounts of the Santa Casa, and as such are under government supervision.

117. The Gaming Department has administrative authority powers to open and organise proceedings concerning offences of illegal operation of games of chance in relation to which the Santa Casa has the exclusive rights, and to investigate such offences.

118. Article 14 of Decree-Law No 282/2003 confers upon the Gaming Department the necessary administrative powers to impose fines such as those imposed on the Liga and Baw.

119. An appeal may be lodged against any decision of the Gaming Department in contravention cases and any other decision with effect outside the Gaming Department, such as decisions concerning the purchase of goods and services and the grant of authorisation to third parties to sell tickets for games of a social nature.

120. The Santa Casa has 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.

121. Under the law in force at the material time, the Santa Casa retains only 25% of the earnings from the various games. The balance is shared among other public-interest institutions such as associations of voluntary firemen, private social solidarity institutions, establishments for the safety and rehabilitation of handicapped persons, the cultural development fund or social projects. Accordingly 50% of the earnings from Totobola go towards the promotion and development of football and 16% of the earnings from Totoloto serve to finance sports activities.

III – The main proceedings and the question referred

122. The Liga is a private-law legal person with the structure of a nonprofitmaking association. It brings together all the clubs taking part in football competitions at professional level in Portugal. It is responsible for the commercial operation of the competitions it organises.

123. Bwin is an on-line gaming undertaking with registered office in Gibraltar. It offers games of chance on its Portuguese-language website. It is governed by the special legislation of Gibraltar on the regulation of games of chance and has obtained all the requisite licences from the Government of Gibraltar. 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 website or by some other means of direct communication.

124. Bwin offers a wide range of on-line games of

chance covering sporting bets, lotto and casino games such as roulette and poker. Betting is on the results of football matches and other sports such as rugby, formula 1 motor racing and American basketball.

125. The referring court states that the Liga and Bwin are charged with the following offences:

– concluding a sponsorship agreement for four playing seasons starting in 2005/2006, under which Bwin is the institutional sponsor of the First National Football Division, previously known as the 'Super Liga', which is now called 'Liga betandwin';

– under that agreement, Bwin acquired rights allowing it to display the logo 'betandwin' on the sports kit worn by the players of the clubs whose teams take part in the Super Liga championship and to affix the logo 'betandwin' in the stadiums of those clubs; in addition, the Liga's internet site began to include a reference and a link enabling access to Bwin's website;

– the Bwin site makes it possible to place sporting bets electronically, whereby the participants predict the result of football matches taking place each day in the Super Liga, and of football matches abroad, in order to win money prizes; the same site also makes it possible to play lottery games electronically, in which the participants predict the results of drawing numbers by lot.

126. The directors of the Gaming Department of the Santa Casa fined the Liga and Bwin EUR 75 000 and EUR 74 500 respectively for promoting, organising and operating electronically, as accomplices, State gaming of a social nature, that is to say, off-course betting, and for advertising such gaming electronically, contrary to the monopoly provided for by national law.

127. The Liga and Bwin brought an action for the annulment of those decisions on the basis of Community rules and case-law.

128. The Tribunal de Pequena Instância Criminal do Porto (Portugal) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'In essence, the question is whether the monopoly granted to the 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, constitutes 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 [EC], 43 [EC] and 56 [EC].

This court seeks therefore to know whether it is 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 establish a monopoly in favour of a single body for the operation of lotteries and off-course betting and then to extend that monopoly to "the entire national territory, including … the internet".'

IV – Analysis

A – Admissibility of the question referred

129. The question from the national court seeks to establish whether its national law, whereby the exclusive right conferred on a single non-profit-making entity controlled by the State to organise and operate lotteries and off-course betting in the whole of Portuguese territory is extended to all electronic means of communication, in particular the internet, is compatible with Community law.

130. The Italian,

Netherlands and Norwegian Governments and the Commission dispute or question the admissibility of the question on the ground that the order for reference does not provide sufficient information on the nature and the aims of the Portuguese legislation applicable to the main proceedings.

131. I do not think the question can be ruled inadmissible.

132. The national court's description of its national legislation makes it clear that it, first, grants the Santa Casa an exclusive right to organise and operate lotteries and off-course betting on the internet and, second, provides for penalties for operators who disregard that monopoly. Likewise, the account of the facts describes the issue in the main proceedings. Furthermore, the order for reference shows that the national court is uncertain as to whether the Portuguese legislation is compatible with Community law in so far as the former prevents an operator legally pursuing its activities in a Member State of the European Union from providing services in Portugal.

133. No doubt, in the light of the criteria developed in the Court's case-law on the basis of which the compatibility with Community law of a national measure concerning games of chance and betting must be assessed, I could have expected the national court to give a fuller account of its domestic law and the implementation thereof, with regard to the Santa Casa's monopoly, together with the reasons why the monopoly has been extended to games of chance and gambling on the internet. It would also have been desirable for the national court to state the reasons why the Court's previous judgments did not answer those questions and did not enable the national court to give judgment in the main proceedings.

134. However, the lack of information in the order for reference does not justify dismissing the question as inadmissible.

135. The question concerns the interpretation of Community law as it is necessary to interpret the articles of the Treaty establishing the freedoms of movement. The question is relevant to the outcome of the main proceedings because, if the relevant freedom of movement were interpreted by the Court as meaning that it precludes the grant of exclusive rights of that kind, the action brought by the Liga and Bwin would have to be ruled well-founded.

136. Finally, the information provided by the national court is sufficient to enable the Court to give a helpful reply, at least to the question whether the grant of exclusive rights to a single entity in relation to the organisation and operation of games of chance and gambling on the internet is, in principle or necessarily, contrary to Community law.

137. According to settled case-law, 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 Community law, the Court of Justice is, in principle, bound to give a ruling. ( )

138. It is true that the Court has also held that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court It is regularly observed in judgments giving preliminary rulings that 'the spirit of cooperation which must prevail in [such] proceedings requires the national court for its part to have regard to the function entrusted to the Court of Justice, which is to contribute to the administration of justice in the Member States and not to give opinions on general or hypothetical questions'. ( )

139.
Accordingly, the Court has held that it has no jurisdiction to give a preliminary ruling on a question submitted by a national court where it is quite obvious that the interpretation or the assessment of the validity of a provision of Community law sought by that court bears no relation to the actual facts of the main action or its purpose, 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. ( )
140. The question at present
before the Court does not fall within any of those cases.
141. I also wish to point out
that, in spite of the lack of information from the national court concerning the nature and the purpose of its national law, nine Member States other than the Portuguese Republic have been able to submit written observations, in addition to the latter, the parties to the main proceedings and the Commission.
142. It transpires, however, that
the Liga and Bwin, as well as the interveners, in particular the Portuguese Government, have set out in detail the substance and the aims of the legislation in question and that these matters were discussed at length in the oral procedure. Therefore the Court could go further than examining only the question whether a national measure granting a single entity the exclusive right to offer off-course betting on the internet is in principle compatible with Community law.
143. The Italian Government also argues that
the question referred is inadmissible on the ground that the national court is requesting the Court of Justice to give a ruling on the compatibility of its domestic law with Community law.
144. No doubt, as the Italian Government says, and in
accordance with settled case-law, in accordance with the division of responsibilities under the cooperative arrangements established by Article 234 EC, the interpretation of provisions of national law is a matter for the national courts, not for the Court of Justice, and the Court has no jurisdiction, in proceedings brought on the basis of that article, to rule on the compatibility of national rules with Community law. ( )
145.
However, even if the question referred has to be construed in the way suggested by the Italian Government, it would still not be inadmissible. Where the Court is expressly questioned on the compatibility of a national provision with Community law, the Court rewords the question in accordance with its powers and points out that it 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. ( )
146. I therefore propose
that the Court should find that the question from the national court is admissible.
B –
Substance of the case
147. According to the information from the national court, the
provisions of Article 11(1)(a) and (b) of Decree-Law No 282/2003 prohibit, first, the organisation and operation of lotteries and off-course betting on the internet, contrary to the exclusive right conferred upon the Santa Casa and, second, advertising them on line, contrary to that right.
148. It is also clear that the Liga and Bwin were
fined EUR 75 000 and EUR 74 500 respectively for, first, organising and operating off-course betting on the internet, contrary to the Santa Casa's exclusive right, and, second, advertising such betting.
149. Consequently it seems to me that the

compatibility of the national law in question with Community law must be assessed by reference to two sets of provisions. First, in so far as it confers upon the Santa Casa an exclusive right to offer lotteries and betting on the internet and prevents any other service provider established within the Union from offering such services on line in Portugal, the legislation in question may be covered by Directive 98/34. Second, in so far as it prohibits all advertising for lotteries and off-course betting organised contrary to the Santa Casa's exclusive right, such legislation may fall within the ambit of Article 49 EC.

1. Application of Directive 98/34

150. It is necessary to determine whether Article 1(11) of Directive 98/34 must be interpreted as meaning that a national measure whereby the exclusive right to organise and operate lotteries and off-course betting in the whole of national territory is extended to all electronic means of communication, in particular the internet, is a technical rule within the meaning of that provision.

151. In its written observations, the Commission argued that the legislation in question was within the ambit of Directive 98/34.

152. The interveners, which were asked state their position on that point in the oral procedure, took different positions. The Liga and Bwin agree with the Commission's analysis.

153. The Portuguese Government points out that Directive 93/84 was not relied upon by the Liga and Bwin in the context of the main proceedings and that the national court raised no question concerning the directive. The Government adds that it is for the national court to ascertain the Community law applicable to the dispute which is to be determined and concludes that the Directive is not relevant in the present case.

154. In the alternative, the Portuguese Government claims that Directive 98/34 did not require Portugal to notify the Commission of the legislation in question. The Government notes that games of chance and gambling were excluded from the ambit of Directive 2000/31 on electronic commerce and Directive 2006/123 on services in the internal market.

155. The Danish Government, supported by the Greek Government, takes the same view as the Portuguese Government. In addition, it states that the disputed legislation, which prohibits the operation of a certain activity in the territory of a State, is similar to national law which makes an occupational activity conditional on the grant of authorisation and that, according to the case-law, such legislation does not constitute a technical regulation. The Danish Government submits that that term is interpreted by the case-law as meaning specifications defining the characteristics of products. ( )

156. The Greek Government also considers that a national law providing for a State monopoly of games of chance and gambling does not fall within the scope of Directive 98/34.

157. I do not agree with the position of those governments. First of all, I shall show that it is open to the Court to interpret the provisions of Directive 98/34 although the national court's question does not relate to it. Next, I shall set out the reasons why, in my view, the disputed legislation falls within the scope of the Directive. I shall also describe the consequences of failure to give notice of such legislation. Finally, in view of the Member States' observations on the relevance of Directive 98/34 for the outcome of the main proceedings, it seems to me useful to mention that the judgment to be given binds the national court with regard, inter alia, to the interpretation of the Directive, as the case may be.

a) The Court's opportunity

to interpret Directive 98/34, although the national court does not refer to it

158. The fact that the Court may interpret Directive 98/34 although the national court has not submitted a question on it is clear from settled case-law. Where the Court considers that the national court has not questioned it on the provision of Community law applicable in the main proceedings, it examines of its own motion the meaning of that provision. Accordingly, as has often been said, in order to provide a satisfactory answer to the national court which has referred a question to it, the Court of Justice may deem it necessary to consider provisions of Community law to which the national court has not referred in its question. ( )

159. It follows that where, as in the present case, the national court has questioned the Court on the meaning of the Treaty articles establishing the freedoms of movement, the Court may reply by interpreting a directive which specially regulates the facts of the main proceedings. ( )

b) The contested provisions fall within the scope of Directive 98/34

160. Contrary to the Member States which have stated their position on this question, I am of the opinion, like the Liga and Bwin as well as the Commission, that the contested provisions are 'technical regulations' within the meaning of Directive 98/34 in so far as they prohibit any other operator from offering lotteries and off-course betting on the internet in Portugal.

161. I base my position on, first, the definitions of 'service' and 'technical regulation' in the directive.

162. Thus an 'Information Society service', within the meaning of Article 1, point 2, of Directive 98/34, is any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services. However, it is clear from the nineteenth recital of the preamble to the directive that it is also necessary to refer to the definition of 'services' in Article 50 EC, as interpreted in the Court's case-law.

163. As we have already seen, the case-law shows that a provider established in one Member State who offers by internet, without moving from that State, games on line to recipients established in another Member State provides services within the meaning of Article 50 EC. ( )

164. Next, Article 1(11) of Directive 98/34 expressly states that the term 'technical regulation' covers rules prohibiting the provision or use of a service. Therefore, contrary to the position adopted by several Member States, since the ambit of Directive 98/34 was extended to Information Society services, 'technical regulation' has not been confined to specifications defining the characteristics of products, as was the case under Directive 83/189/EEC, ( ) as interpreted in the judgments cited above, CIA Security International, ( )van der Burg, ( ) and Canal Satélite Digital, ( ) to which those States refer.

165. The contested provisions, which give the Santa Casa an exclusive right to organise and operate lotteries and off-course betting on the internet in the whole of Portugal and which lay down penalties for any operator which disregards that exclusive right, does have the effect of prohibiting a provider of games on the internet from providing its services.

166. Having regard to the abovementioned definitions, the provisions in question constitute a 'technical regulation' within the meaning of Article 1(11) of Directive 98/34.

167. In the second place, this conclusion seems to me to accord with the reasons why the ambit of the

directive was extended to Information Society services.

168. It is clear from the preamble to Directive 98/48 that the Community legislature aimed to extend to specific services of that kind the system of transparency and supervision originally provided for in relation only to goods, so as to avoid the barriers to the free movement of such services which could be caused by national regulations.

169. The application of the mandatory notification system provided for by Directive 98/34 to such regulations does not mean that they are contrary to Community law.

170. As we have seen, Directive 98/34 aims only to establish a system of preventive control. First, by requiring Member States to notify the Commission of any draft technical regulation, the Community legislature asks them to carry out a prior detailed check of its conformity with Community law. Consequently the directive has the effect of making it clear that, if the proposed regulation impedes the free movement of goods or the freedom to provide Information Society services, the Member State must be able to justify it in conformity with the conditions laid down by the case-law.

171. The notification system provided for by Directive 98/34 then enables the Commission and the other Member States to examine the draft regulation to see whether it creates barriers. If so, the other Member States may propose that the author of the draft should amend it. The Commission for its part may propose or adopt joint measures regulating the topic which is the subject of the proposed measure.

172. Such a system reconciles the sovereign power of the Member States to adopt technical regulations in fields where they have not been harmonised with the obligation they have undertaken to each other in the Treaty to establish a common market, that is to say, a space within which goods and services in particular circulate freely.

173. It follows that Directive 98/34 is really effective only if all technical regulations are notified, ( ) including those relating to games of chance and gambling, because these constitute an economic activity and are covered by the freedom of establishment and the freedom to provide services.

174. In addition, we find that, where the Community legislature wished to exclude games of chance and gambling from a measure relating to services, such as Directive 2000/31 on electronic commerce and Directive 2006/123 on services in the internal market, it provided for such exclusion expressly. However, Directive 98/34 contains no provision excluding technical regulations concerning games of chance and gambling from its ambit.

175. In the third place, this reasoning seems to be in conformity with the Court's position in Commission v Greece, concerning the Greek law prohibiting the use of games on computers in undertakings providing internet services. The Court found that such measures must be considered to be 'technical regulations' within the meaning of Article 1(11) of Directive 98/34. ( )

176. In the abovementioned judgment the Court found that a measure of a Member State such as that in issue in the main proceedings, which prohibits access to internet games, concerns access to or the provision of Information Society services and is therefore within the ambit of Directive 98/34.

177. Consequently I propose that the Court's reply to the national court should be that Article 1(11) of Directive 98/34 must be interpreted as meaning that a measure of a Member State whereby an exclusive right to organise and operate lotteries and off-course betting in the entire territory of that State is extended to all means of electronic communication, in particular the

internet, constitutes a ‘technical regulation’ within the meaning of that provision. ( )

c) The consequences of failing to give notice of the contested measures

178. Article 8(1) of Directive 98/34 requires the Member States to notify the Commission of any draft technical regulation. ( ) Article 9 requires them to postpone the adoption of any such regulation for such period as the Commission may determine.

179. According to those provisions, the draft Decree-Law No 282/2003 which, first, extends the Santa Casa’s exclusive right to operate games offered by electronic medium, in particular the internet, and, secondly, provides for administrative fines on operators who infringe that right, ought to have been notified to the Commission.

180. In its written observations, the Commission stated that it was not notified of the draft Decree-Law. The Portuguese Government confirmed that it had not notified the Commission.

181. In CIA Security International, the Court described the consequences of failure to notify the Commission. The Court took the view that the obligations of notification and postponement laid down in Articles 8 and 9 of Directive 83/189 are unconditional and sufficiently precise to be relied on by individuals before national courts. ( ) A technical regulation which has not been notified is therefore inapplicable to individuals and national courts must decline to apply it. ( )

182. That case-law can be applied to Articles 8 and 9 of Directive 98/34 as they in similar terms to those of Directive 83/189.

183. As Directive 98/34 aims in particular to protect the freedom to provide Information Society services, an operator such as Bwin, established in Gibraltar, has a right to avail itself of those precise and unconditional provisions.

184. Gibraltar is a European territory for whose external relations the United Kingdom is responsible. Consequently the Treaty provisions are applicable to it in accordance with Article 299(4) EC, subject to the exclusions provided for in the Act concerning the conditions of accession of Denmark, Ireland and the United Kingdom and the adjustments to the treaties. ( )

185. The Court has concluded from the Act that the Treaty rules on free movement of goods and the rules of secondary Community legislation intended, as regards free circulation of goods, to ensure approximation of the laws of the Member States, do not apply to Gibraltar. ( )

186. However, those exclusions must, in my view, be deemed exceptions to the principle laid down in Article 299(4) EC that the provisions of the Treaty apply to a European territory such as Gibraltar. Therefore the Treaty provisions on the freedom to provide services and the secondary legislation adopted to ensure the establishment of that freedom apply to Gibraltar. To prove this, I wish to cite the judgments in actions brought by the Commission against the United Kingdom for failing to implement such directives on its territory. ( )

187. I conclude from this that an operator such as Bwin, established in Gibraltar, has a right to plead Articles 8 and 9 of Directive 98/34 in so far as they relate to technical regulations concerning Information Society services.

188. The fact that the provisions in question are included in a measure which also relates to the free movement of goods does not seem to me inconsistent with that conclusion. A technical regulation may be clearly connected with the free movement of goods or the freedom to provide Information Society

services on the basis of the delimitation of the respective fields to which those freedoms apply, as defined by the Court.

189. In conformity with the position taken by the Court in CIA Security International, if the Commission was not duly notified of the national provisions in question, in so far as, first, they grant the Santa Casa an exclusive right to organise and operate lotteries and off-course betting on the internet and, second, they provide for administrative fines on providers of services who, in breach of that right, offer internet games to persons residing in Portugal, those national provisions are not applicable as against Bwin and the national court must decline to apply them.

190. This conclusion should also apply to the Liga, which was fined as Bwin's accomplice for organising and operating off-course betting by electronic means.

191. The national court, which alone has jurisdiction to establish the facts in the main proceedings, will have to determine whether the draft Decree-Law 282/2003 which aims, in substance, to extend the Santa Casa's exclusive right to operate games offered by electronic media, in particular the internet, and to impose a penalty in the form of a fine for infringing that exclusive right, was notified to the Commission in accordance with Article 8 of Directive 98/34.

192. The national court will also have to draw the appropriate conclusions with regard to the fines imposed on the Liga and Bwin as the fines relate to the organisation and operation of off-course betting on the internet, in breach of the Santa Casa's exclusive right.

d) The effects of the Court's judgment for the referring court

193. The replies given by several Member States in the course of the hearing to the question concerning the relevance of Directive 98/34 to the outcome of the main proceedings could be understood as meaning that the judgment which will give a preliminary ruling would not, according to those States, be binding on the referring court in so far as it relates to the interpretation of the abovementioned directive.

194. I take the opposite view. Judgments giving a preliminary ruling are binding on the referring court even where the Court of Justice rules on a Community-law measure to which the question from the national court does not refer.

195. I base this conclusion on, first, the relationship between Community law and national law and, secondly, the function of the preliminary ruling procedure.

196. On the first point, as the Court observed in van Gend en Loos ( ) and Costa ( ) by signing and ratifying the Treaty establishing the European Economic Community, the Member States agreed that the Treaty and the measures adopted on the basis thereof should form part of their national law, should take precedence to any contrary national rule, whatever it may be, and should be intended to create rights directly in favour of individuals.

197. They also undertook to take all appropriate measures to ensure the effective application of Community law and that obligation must be accepted by their judicial authorities. Consequently national courts have an obligation to maintain the rights conferred by measures of the Community legal order.

198. The national courts must of their own motion refuse to apply any provision of national legislation conflicting with directly applicable Community law, without having to request or await the prior setting-aside of such legislation in the internal system. ( ) If a Community measure is not directly applicable, the national court must interpret the whole of its

national law so far as possible so as to achieve the result intended by that measure, in accordance with the requirement of interpretation in conformity with Community law. ( )

199. Therefore the national court's task is to ensure the effective application of Community law.

200. It is true that the national court discharges those obligations in conformity with its domestic rules of procedure, in accordance with the principle of procedural autonomy, subject to the principles of equivalence and effectiveness by virtue of which, first, those rules must not be less favourable than those applicable to maintain the rights conferred by domestic law and, second, they must not be framed in such a way as to render impossible in practice or excessively difficult the exercise of rights conferred by Community law. ( )

201. Where, in the context of a dispute before a national court, the parties have not invoked the relevant Community rule, it may happen that that rule is not applied, as the Court's case-law concerning the significance of the principles of equivalence and effectiveness stands at present.

202. According to the Court's case-law, a national court must raise of its own motion the relevant point of Community law where, under national law, it must or may do so in relation to a binding rule of national law. ( ) On the other hand, it is not obliged to do so where it has no such obligation or option under national law and where the parties were given a genuine opportunity to raise a plea based on Community law in the course of the proceedings. ( ) Furthermore, national courts are not required to raise of their own motion a plea alleging infringement of Community provisions where examination of that plea would oblige them to go beyond the ambit of the dispute as defined by the parties. ( )

203. However, those limits to the application of Community law cannot be transposed where the Court, in the context of preliminary ruling proceedings, examines of its own motion the rule applicable to the facts of the main proceedings.

204. The object of the preliminary ruling procedure is to secure the uniform interpretation of Community law by national courts and tribunals. ( ) Uniform interpretation can be secured only if the Court's judgments are binding on national courts. As the Court observed in Benedetti, ( ) a preliminary ruling is binding on the national court as to the interpretation of the Community provisions and acts in question.

205. The binding nature of the ruling is also the corollary of the national courts' obligation to ensure the effective application of Community law.

206. This reasoning is confirmed by the third paragraph of Article 234 EC, which states that a reference for a preliminary ruling is mandatory where a question on the interpretation of Community law arises before a court or tribunal against whose decisions there is no judicial remedy under national law. In order to prevent Community law from being infringed, a court against whose decisions there is no judicial remedy under national law, which is by nature the last judicial body before which individuals may assert the rights conferred on them by Community law, is required to make a reference to the Court of Justice. ( )

207. This reasoning is supported by the judgment in a case where it was held that a manifest infringement of Community law by a court adjudicating at last instance was likely to give rise to liability on the part of the State, ( ) and also where an action for failure to fulfil obligations could be brought against a Member State by reason of a national judicial interpretation contrary to Community law, where that interpretation is confirmed or not disowned by the supreme court. ( )

208.
Consequently the object of the preliminary ruling procedure itself is to ensure the effective application of Community law. That is why, contrary to the submissions of the Portuguese Government, the Court cannot be bound by the national court's assessment with regard to the Community provisions applicable to the facts of the main proceedings. The Court's task is to give the national court a reply which is of help to the outcome of the dispute which it must determine, that is to say, which enables it to perform its function of ensuring the effective application of Community law.
209. In
addition, the Court's examination of a point of Community law of its own motion which was not raised by the national court would be of little use if the preliminary ruling, in so far it related to that point, were not binding on that court.
210. The fact that
the parties to the main proceedings did not refer, before the national court, to the provision of Community law examined by the Court of its own motion is not an obstacle to the binding effect of the preliminary ruling in so far as the parties had an opportunity to make their observations on that provision known in the course of the preliminary ruling procedure. It must be observed that, in the present case, the parties were asked by the Court, prior to the hearing, to submit in the course of the hearing their observations on the relevance of Directive 98/34 to the outcome of the main proceedings.
211. It follows that preliminary rulings are, in my opinion,
necessarily binding where the Court interprets a provision of Community law to which the national court has not referred.
212. Consequently I propose that the Court's reply
to the national court should, in addition, rule that a preliminary ruling binds the referring court even in so far as the ruling relates to a provision of Community law that was not referred to in the national court's question.
2. The compatibility of the
national legislation in issue with the freedoms of movement
213. Even if the Court
concurs with my reasoning concerning the relevance of Directive 98/34 to the present case and the consequences of failure to notify the Commission, an examination of the compatibility of the national law in question with the freedoms of movement, in so far as it prohibits advertising of on-line games organised and operated in breach of the Santa Casa's exclusive right, does not appear to be manifestly irrelevant to the outcome of the main proceedings.
214. It is for the national court to determine whether
the fact that Decree-Law No 282/2003, in so far as it grants the Santa Casa an exclusive right to organise and operate lotteries and off-course betting on the internet, is unenforceable as against the Liga and Bwin, must lead to setting aside the whole of the single fine imposed on each of them or whether the amount of the fine should be divided between what is due on account of organising on-line games and what is due on account of advertising them.
215. The question therefore is whether a
national measure prohibiting advertising for on-line games organised and operated in breach of an exclusive right conferred on a single nonprofitmaking entity, is inconsistent with the freedom to provide services.
216. To reply to that question, it
would certainly appear to be helpful to consider the question from the referring court as to whether its national legislation granting the Santa Casa an exclusive right to organise and operate in Portugal lotteries offcourse betting on the internet is compatible with the freedoms of movement. If that exclusive right is consistent with

Community law, the question whether the prohibition of advertising lotteries and off-course betting organised and operated in breach of that right is compatible with Community law no longer arises.

217. The national court's question seeks to establish whether its national legislation which provides that the Santa Casa's exclusive right to organise and operate lotteries and off-course betting in the entire State territory is extended to all means of electronic communication, in particular the internet, is inconsistent with Community law and, in particular, the freedom to provide services, the freedom of establishment and the free movement of capital and payments, as laid down in Articles 43 EC, 49 EC and 56 EC.

218. At this stage of the discussion, it could be asked whether the freedoms of movement are relevant to the main proceedings in view of the fact that the Santa Casa has been granted a monopoly of the operation of lotteries and off-course betting on the internet on grounds of consumer protection and safeguarding public order against the adverse effect of such gaming. A national monopoly based on such grounds could be regarded as pursuing a public interest aim. ( )

219. It could therefore have been asked whether the Santa Casa could avail itself of Article 86(2) EC, which states that undertakings entrusted with the operation of services of general economic interest are to be subject to the rules of the Treaty in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

220. However, neither the referring court nor the Portuguese Government have mentioned those provisions. Assuming that they had done so, I do not think an examination of the present case from the viewpoint of Article 86(2) EC would have led to a different result from the reply which I am going to propose should be given by the Court to the question from the referring court.

221. In view of the case-law on the implications of Article 86(2) EC, the exception, provided for by that Article, to the application of the rules of the Treaty aiming to establish a common market can apply only if the task of the entity holding the monopoly makes it necessary to set aside those rules. In other words, the applicability of the exception is subject to proof that application of the rules would make it impossible to perform that task. ( )

222. I believe that examination of that condition would have led to consideration of the adequacy of the disputed legislation for achieving its aims and of its proportionality comparable with the examination which I shall make in the context of its compatibility by reference to the relevant freedom of movement.

223. I shall show that the disputed legislation should, with regard to the facts of the main proceedings, be examined by reference to Article 49 EC because it constitutes a restriction within the meaning of that Article. I shall then consider whether such legislation can be justified.

a) The relevant freedom of movement

224. Like the Liga, Bwin, the Netherlands, Austrian and Portuguese Governments and also the Commission, I am of the opinion that the compatibility of the legislation in question with Community law must be examined by reference to the articles of the Treaty concerning the freedom to provide services, and by reference to them alone.

225. It is clear from the information provided by the referring court that Bwin is established in Gibraltar and that it carries on its activities in Portugal by means of the internet. We have already seen that it has been held that a provider established in one Member State who offers

by internet, without moving from that State, games on line to recipients established in another Member State, provides services within the meaning of Article 50 EC. ( )
226.
It is true that the contested provisions, in so far as they reserve such activities for the Santa Casa, are also capable of constituting a restriction of the freedom of establishment. However, as Bwin has not sought to establish itself in Portugal, that freedom of movement is not relevant to the outcome of the main proceedings. The Belgian Government's claim that the Liga acts de facto as Bwin's intermediary does not refute this conclusion.
227. It must be borne in mind that the freedom of establishment
confers upon companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community, the right to exercise their activity in the Member State concerned through a subsidiary, a branch or an agency, ( ) that is to say, a secondary establishment controlled by the company or firm in question. However, the agreement between the applicants in the main proceedings does not have the object or effect of placing the Liga under Bwin's control or of making it a secondary establishment of Bwin.
228. Finally, with regard to the free movement of capital and payments, it cannot be denied that the contested provisions are capable of restricting payments between persons residing in Portugal and Bwin. However, that is only a consequence of the fact that the latter is prohibited from supplying on-line games services to persons residing in Portuguese territory.
229. As the Commission correctly observes, given that the
restrictive effects of national legislation on the free movement of payments are merely an inevitable consequence of the restriction imposed on the provision of services, it is not necessary to consider whether that legislation is compatible with Article 56 EC. ( )
230. I therefore propose that Court should construe the referring court's question in the following way: must Article 49 EC be interpreted as meaning that it precludes legislation of a Member State whereby the exclusive right to organise and operate lotteries and off-course betting in the entire territory of that State conferred on a single non-profit-making entity controlled by that State is extended to all means of electronic communication, in particular the internet?
b) The existence of a
restriction
231. There appears to be no doubt, and the Portuguese Government does not deny, that the provisions in question constitute a restriction of the freedom to provide services.
232. Those provisions prohibit a provider of on-line games
established in a Member State other than the Portuguese Republic from offering lotteries and offcourse betting on the internet to consumers residing in the latter State. As we have seen, Article 49 EC requires the elimination of measures prohibiting the activities of a provider of services established in another Member State where he lawfully provides similar services. Moreover, Article 49 EC is for the benefit of both providers and recipients of services. ( )
233. Finally, it has already been held that
legislation of a Member State prohibiting an undertaking established in another Member State collecting bets from offering its services on the internet to recipients
established in the first State constitutes a restriction within the meaning of Article 49 EC. ( )
c) The justification for the restriction
234. A restriction such as that

provided for by the legislation in question conforms with Community law if it is justified by an overriding reason relating to the public interest, if it is appropriate for ensuring the attainment of the aim which it pursues and if it does not exceed what is necessary for attaining it. In any event, it must not be applied in a discriminatory way.

235. In accordance with that principle common to all economic activities which have not been harmonised, the Member State responsible for the restriction in question must demonstrate that it is necessary in order to achieve the declared objective, and that that objective could not be achieved by less restrictive measures. ( )

i)

Arguments of the parties

236. The Liga and Bwin assert that the Santa Casa's exclusive right to offer lotteries and off-course betting on the internet to consumers residing in Portuguese territory amounts to the complete closure of the market for on-line games in that State, which constitutes the most serious breach of the freedom to provide services. They claim that the restriction is not justified.

237. According to the Liga and Bwin, Portugal ought to have demonstrated, first, that the problem alluded to by the restrictive measure is really a serious problem in its territory, second, that that measure is capable of remedying the problem and, finally, that there was no less restrictive way of resolving it.

238. The Liga and Bwin contend that the Santa Casa's exclusive rights are unlikely to achieve the desired purposes because Portugal is not pursuing a consistent and systematic policy of restricting gaming activities, as required by the case-law. In reality, it is only aiming to increase the revenue from games of chance and gambling. The Liga and Bwin assert that the games offered by the Santa Casa have expanded considerably in recent years, encouraged by aggressive advertising. They also state that the Portuguese Republic is actively pursuing a policy of increasing the level of gaming taking place in casinos.

239. Finally, the Liga and Bwin submit that the objectives pursued by the Portuguese legislation in question could be attained in the same way, if not better, by a less restrictive measure, such as opening the market to a limited number of private operators who would have specific obligations. In that connection, the Liga and Bwin point out that the Gibraltar legislation to which Bwin is subject is some of the strictest in Europe. In addition, Bwin is said to be a pioneer in drawing up rules intended to ensure responsible gaming to protect consumers, and also in setting up internal procedures to prevent money laundering.

240. The Portuguese Government observes that the monopoly which the Santa Casa has had since the 18th century is a legitimate expression of the Government's discretionary power. The grant of an exclusive right to the Santa Casa accords with the aim of restricting the practice of lotteries and off-course betting in order to limit the social risks associated with gaming of that kind and to employ the revenue from them for social causes. The extension of the monopoly to internet games was a necessary and appropriate measure for offering such games on line in a safe and controlled way.

241. The Portuguese Government submits that the Santa Casa's monopoly conforms with Community law because it is a non-discriminatory and proportionate measure. The Government adds that the grant of an exclusive right to a body such as the Santa Casa, which functions under the strict control of the Government, is more likely to attain the objectives pursued.

ii) My assessment

242. I shall begin by indicating what ought

to be the effect, in my view, of the limits imposed on the powers of the Member States by the freedoms of movement in the area of games of chance and gambling. I shall then set out the reasons why the protection of consumers and the maintaining of public order may justify measures restricting the freedom to provide off-course betting on the internet. Next I shall describe the criteria for determining whether the legislation in question is appropriate for attaining the aims it pursues and whether it goes beyond those aims. Finally, I shall point out that the referring court must ensure that the contested restriction is applied in a non-discriminatory way.

– The effect of the limits imposed on the powers of the Member States in the area of games of chance and gambling

243. It is not disputed that, in the absence of harmonised rules at Community level in the gaming sector, Member States remain competent to define the conditions for the pursuit of activities in that sector. However, they must, when exercising their powers in this area, respect the freedoms of movement. ( )

244. I think an assessment of the effect of that limitation on the powers of the Member States should start from the following premise.

245. In my view, Community law does not aim to subject games of chance and gambling to the laws of the market. The establishment of a market which would be as open as possible was intended by the Member States as the basis of the European Economic Community because competition, if it is fair, generally ensures technological progress and improves the qualities of a service or product while ensuring a reduction in costs. It therefore benefits consumers because they can also benefit from products and services of better quality at a better price. In that way competition is a source of progress and development.

246. However, these advantages do not arise in the area of games of chance and gambling. Calling for tenders from service providers in that field, which would necessarily lead them to offer ever more attractive games in order to make bigger profits, does not seem to me a source of progress and development. Likewise I fail to see what progress there would be in making it easier for consumers to take part in national lotteries organised in each Member State and to bet on all the horse races or sporting events in the Union.

247. The situation is not comparable in any way with, for example, the movement of patients within the Union, which the Court has perfectly legitimately promoted because it extends the range of medical treatment offered to every citizen of the Union by giving him or her access to the health services of other Member States.

248. Games of chance and gambling, for their part, can only function and continue if the great majority of players lose more than they win. Opening the market in that field, which would increase the share of household budgets spent on gaming, would only have the inevitable consequence, for most of them, of reducing their resources.

249. Therefore limiting the powers of the Member States in the field of games of chance and gambling does not have the aim of establishing a common market and the liberalisation of that area of activity.

250. This is shown by the fact that the Court has consistently held that the Member States have a broad discretion, not only to determine the level of consumer protection and to maintain public order in relation to games of chance and gambling, but also in relation to the arrangements for organising them.

251. This conclusion also appears to be corroborated by the fact that the Court has held that the Member States

may legitimately determine the appropriation of the revenue from games of chance and gambling and may thus decide that private interests should not profit from them.
252.
Consequently a Member State has sovereign power to prohibit a game in its territory, as the Court held with regard to the prohibition of large-scale lotteries in the United Kingdom in Schindler. In order to channel the provision of games into a controlled system and to protect consumers from being exposed to improper encouragement, a Member State may also grant an exclusive right to organise a game to a single entity or to a limited number of operators.
253. The difficulties in determining whether national law
conforms with Community law arise mainly where Member States grant a single entity or a limited number of operators an exclusive right to operate games of chance and gambling.
254. The problem for national courts is in ascertaining the level above which
the provision of games in the context of an exclusive right exceeds what is justified by the aim of channelling them into a controlled system to maintain public order and to protect consumers from harmful gambling habits.
255. The national courts must therefore
determine whether the restrictive measures laid down by their domestic law are appropriate for attaining their objectives of protection and proportionate when the single entity or the operators with the exclusive right to operate a game of chance or gambling offer a certain range of games and carry out some advertising.
256. In
considering whether the restrictive measures can attain the objectives pursued and whether they are proportionate, I think account must be taken of the fact that, as there is no Community harmonisation, determining the range of games offered and the conditions for operating them are matters within the discretion of the Member States. It falls to each Member State to assess, having regard to its own situation and its social and cultural characteristics, the balance to find between, on the one hand, an attractive range of games in order to satisfy the desire to gamble and to channel it into a lawful system and, on the other, a range which encourages too much gambling.
257. With regard to my premiss concerning the role of competition in relation
to the aims of the Union, I think that the power of the Member States should be limited by Community law only to the extent of prohibiting conduct whereby a Member State deflects restrictive measures from their purpose and seeks the maximum profit. In ot

bwin freeroll :jogos automático para ganhar dinheiro

zar De caça-níqueis em bwin freeroll Alien CLORT jogos NetEnt 98% Starmania NextGen Gaming Coelho Branco Big TimeGaing 17,72% Medusa Megaway. NetworkGeneral gasing 097,63% reTL Sat & Silão com maior FPT (fevereiro 2024) Miami Herald miamiherald : Os Jogos da "shll machine que geralmente oferecem uma TVI por mais e 90 são considerados os piores ara selecionar: O segredopara escolher um jogador do Sullon vencedor -
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bwin freeroll :casa de aposta betano

Galería: arte centenária china de fabricación artesanal de esteras de Gongchuan

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Deng Lidi, de 83 años, es una artesana de esteras de junco de Gongchuan, en el condado de Gongchuan en Yong'an, provincia de Fujian.

El condado de Gongchuan tiene una historia de más de 1000 años en la fabricación de esteras de junco.

Con su origen en la dinastía Song (960-1279), las esteras de Gongchuan eran ofrecidas como tributo a la corte imperial.

Durante la dinastía Ming (1368-1644), las esteras comenzaron a venderse en toda la región de Fujian.

Actualmente, la técnica de fabricación ha sido reconocida como un proyecto de protección del patrimonio cultural inmaterial de la provincia de Fujian, y las esteras han sido designadas como una marca registrada de indicación geográfica nacional.

0 comentarios

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