



C/2023/14

9.10.2023

**Reference for a preliminary ruling from Prim'Awla tal-Qorti Ċivili (Malta) made on 14 July 2023 —
FB v European Lotto and Betting Ltd and Deutsche Lotto-und Sportwetten ltd.**

(Case C-440/23, European Lotto and Betting and Deutsche Lotto- und Sportwetten)

(C/2023/14)

Language of the case: English

Referring court

Prim'Awla tal-Qorti Ċivili

Parties to the main proceedings

Applicant: FB

Defendants: European Lotto and Betting Ltd and Deutsche Lotto-und Sportwetten ltd.

Questions referred

1. Is article 56 TFEU to be interpreted to the effect that the infringement of the freedom of services by a general prohibition of online slots in the member state of the consumer (state of destination) towards online casino operators that are licensed and regulated in their state of origin (Malta) cannot be justified by compelling reasons of the common good,

— if the member state of destination is at the same time permitting similar land-based gaming ubiquitously with licensed slots in arcades and restaurants for private operators, more intense gaming in land-based casinos, licensed national lottery operations by state lotteries in more than 20,000 agents shops that addressing the public, and

— allowing licensed online gaming operations for private sports betting and horse betting operators and for private online lottery brokers selling the products of the state owned lotteries and other licensed lotteries,

while that same member state — contrary to judgments of the Court of justice in C-148/15 ⁽¹⁾ *Deutsche Parkinson* (par 35), C-316/07 ⁽²⁾ *Markus Stoß* and C-42/02 ⁽³⁾ *Lindman* — did apparently not provide scientific evidence showing that there are specific dangers in these games that significantly contribute to achieving the goals pursued by its regulation, in particular the prevention of problematic gaming,

and that in view of these dangers restricting the prohibition to online slots — in contrast to all the gaming offers that are allowed for online and land-based slots — can be considered suitable, mandatory and proportionate to reach the regulatory goals.

2. Is Article 56 TFEU to be interpreted as precluding the application of a total ban on online casino gambling contained in Paragraph 4 (1) and (4) of the German Interstate Treaty on Gaming ('GlüStV') if the German gambling regulation (State Gambling Treaty, 'GlüStV'), according to its § 1, does not aim at a total ban of gambling, but at 'steering the natural gambling instinct of the population into orderly and supervised channels as well as counteracting the development and spread of unauthorised gambling in black markets' and a considerable demand from players for online slots exists?

3. Is Article 56 TFEU to be interpreted in such a way that a general ban of online casino offers cannot be applied if

— governments in all federal states of this member state have already agreed that the dangers of such online gambling offers can be combated more effectively via a system of prior official approval than by a total ban and

— have drafted and agreed on a future regulatory framework by a corresponding state treaty that replaces the total ban by a system of prior approval,

⁽¹⁾ EU:C:2016:776

⁽²⁾ EU:C:2010:504

⁽³⁾ EU:C:2003:613

- and in anticipation of this future regulation, decide to accept corresponding gambling offers without a German permit subject to compliance with certain requirements until German licenses are issued,
although according to C-409/06 ⁽⁴⁾ *Winner Wetten*, Union law may not be temporarily suspended.
4. Is Article 56 TFEU to be interpreted to the effect that a member state (of destination) cannot justify a national regulation with compelling reasons of the common good, if
- that regulation prohibits consumers to place licensed cross-border bets in another member state (of origin) on licensed Lotteries in the member state of destination that are permitted and regulated there and
 - if the lotteries are licensed in the member state of destination and the regulation aims to protect players and minors
 - and if the regulation of the licensed betting on lotteries in the member state of origin also aims to protect players and minors and provides the same level of protection as the regulation of lotteries in the state of destination?
5. Is Article 56 TFEU to be interpreted to the effect that this rule precludes the recovery of stakes lost in the course of participation in (secondary) lotteries based on the asserted illegality of transactions because of the lack of a licence in the member state of the consumer, if
- such a licence for private (secondary) lotteries is excluded in the law,
 - and that exclusion is justified by the national courts with an asserted difference between a tip placed with a state operator on the outcome of a lottery organised by a state and a bet with a private organiser on the outcome of a state lottery?
6. Is Article 56 TFEU to be interpreted to the effect that it precludes the recovery of stakes lost in the course of participation in (secondary) lotteries based on the asserted illegality of transactions because of the lack of a licence in the member state of the consumer if
- there is an exclusion of such a licence for private (secondary) lotteries in the law
 - and if that exclusion in favour of state lottery organisers is justified by the national courts with an asserted difference between a tip placed with a state operator on the outcome of a lottery organised by a state and a bet with a private organiser on the outcome of a same state lottery?
7. Is Article 56 TFEU and the prohibition of abuse of rights C-423/15 ⁽⁵⁾ *Niels Kratzer*, to be interpreted as precluding the claim for reimbursement of lost stakes based on the lack of a German permit and unjust enrichment where the organiser is licensed and supervised by the authorities in another Member State and the player's claim assets and claims to payment are secured by the law of the Member State in which the organiser is established?
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⁽⁴⁾ EU:C:2010:503

⁽⁵⁾ EU:C:2016:604