**Questions referred**

(1) Must Directive 2002/46/EC of 10 June 2002 [1], and in particular Articles 5(4) and 11(2) thereof, be interpreted as meaning that, although in principle it is for the Commission to determine the maximum amounts of vitamins and minerals present in food supplements, the Member States remain competent to adopt legislation in this field so long as the Commission has not adopted the necessary Community measure?

(2) If that question is answered in the affirmative:

(a) If the Member States are required, in order to set those maximum amounts, to comply with the provisions of Articles 28 EC and 30 EC, must they also be guided by the criteria laid down in Article 5 of Directive 2002/46/EC, including the requirement for a risk assessment based on generally accepted scientific data, in an area in which there is still relative uncertainty?

(b) May a Member State set maximum levels when it is impossible, as in the case of fluoride, to calculate precisely the intake of vitamins and minerals from other dietary sources, mains water in particular, for each consumer group and on a territory-by-territory basis? May it in that case set a zero level where risks are known to exist, without resorting to the safety procedure provided for in Article 12 of Directive 2002/46/EC?

(c) When setting maximum levels, if it is possible to take into account differences in the degrees of sensitivity of different consumer groups, as provided for in Article 5(1)(a) of Directive 2002/46/EC, can a Member State also take into account the fact that a measure addressed solely to sections of the population who are particularly exposed to risk, appropriate labelling for example, might dissuade that group from using a nutrient that would be beneficial to it in small amounts? Might taking into account that difference in sensitivity result in the application to the entire population of the maximum level appropriate for sensitive sections of the population, in particular children?

(d) To what extent may maximum levels be set in the case where no safe limits have been laid down because there is no established danger to health? More generally, to what extent and in what circumstances might the weighting of criteria to be taken into account lead to the setting of maximum levels that are significantly lower than the safe limits accepted for those nutrients?

[1] Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ L 183, 12.7.2002, p. 51).

## Reference for a preliminary ruling from the Svea hovrätt (Sweden) lodged on 13 October 2008 — Otto Sjöberg v Åklagaren

**(Case C-447/08)**

(2008/C 327/28)

*Language of the case: Swedish*

**Referring court**

Svea hovrätt

**Parties to the main proceedings**

*Applicant:* Otto Sjöberg

*Defendant:* Åklagaren

**Questions referred**

1. May discrimination on grounds of nationality be accepted, under some circumstances, on national gaming and lottery markets on the basis of overriding reasons in the general interest?

2. If there are a number of objectives pursued by the restrictive policy adopted on a national gaming and lottery market and one of them is the financing of social activities, can the latter then be said to be an incidental beneficial consequence of the restrictive policy? If this question is answered in the negative, can the restrictive policy pursued still be acceptable if the objective of financing social activities cannot be said to be the principal objective of the restrictive policy?

3. Can the State rely on overriding reasons in the general interest as justification for a restrictive gaming policy if State-controlled companies market gaming and lotteries, the revenue from which accrues to the State, and one of several objectives of that marketing is the financing of social activities? If this question is answered in the negative, can the restrictive policy pursued still be acceptable if the financing of social activities is not found to be the principal objective of the marketing?

4. Can a total prohibition on the marketing of gaming and lotteries organised in another Member State by a gaming company established there and supervised by that Member State's authorities be proportionate to the objective of controlling and supervising gaming activity, when at the same time there are no restrictions on the marketing of gaming and lotteries organised by gaming companies established in the Member State which pursues the restrictive policy? What is the answer to the question if the objective of such an arrangement is to limit gaming?

5. Is a gaming operator who has been granted a licence to operate certain gaming activities in a State and is supervised by the competent authority in that State entitled to market its gaming products in other Member States through, for example, advertisements in newspapers, without first applying for a licence from those States' competent authorities? If this question is answered in the affirmative, does this mean that a Member State's rules which are based on the imposition of criminal penalties on the promotion of participation in lotteries organised abroad constitute an obstacle to the freedom of establishment and the freedom to provide services which can never be accepted on the basis of overriding reasons in the general interest? Is it of any significance for the answer to the first question whether the Member State where the gaming operator is established invokes the same overriding reasons in the general interest as the State where the operator wishes to market its gaming activities?

---

**Reference for a preliminary ruling from the Svea hovrätt (Sweden) lodged on 13 October 2008 — Anders Gerdin v Åklagaren**

**(Case C-448/08)**

(2008/C 327/29)

*Language of the case: Swedish*

**Referring court**

Svea hovrätt

**Parties to the main proceedings**

*Applicant:* Anders Gerdin

*Defendant:* Åklagaren

**Questions referred**

1. May discrimination on grounds of nationality be accepted, under some circumstances, on national gaming and lottery markets on the basis of overriding reasons in the general interest?

2. If there are a number of objectives pursued by the restrictive policy adopted on a national gaming and lottery market and one of them is the financing of social activities, can the latter then be said to be an incidental beneficial consequence of the restrictive policy? If this question is answered in the negative, can the restrictive policy pursued still be acceptable if the objective of financing social activities cannot be said to be the principal objective of the restrictive policy?

3. Can the State rely on overriding reasons in the general interest as justification for a restrictive gaming policy if State-controlled companies market gaming and lotteries, the revenue from which accrues to the State, and one of several objectives of that marketing is the financing of social activities? If this question is answered in the negative, can the restrictive policy pursued still be acceptable if the financing of social activities is not found to be the principal objective of the marketing?

4. Can a total prohibition on the marketing of gaming and lotteries organised in another Member State by a gaming company established there and supervised by that Member State's authorities be proportionate to the objective of controlling and supervising gaming activity, when at the same time there are no restrictions on the marketing of gaming and lotteries organised by gaming companies established in the Member State which pursues the restrictive policy? What is the answer to the question if the objective of such an arrangement is to limit gaming?

5. Is a gaming operator who has been granted a licence to operate certain gaming activities in a State and is supervised by the competent authority in that State entitled to market its gaming products in other Member States through, for example, advertisements in newspapers, without first applying for a licence from those States' competent authorities? If this question is answered in the affirmative, does this mean that a Member State's rules which are based on the imposition of criminal penalties on the promotion of participation in lotteries organised abroad constitute an obstacle to the freedom of establishment and the freedom to provide services which can never be accepted on the basis of overriding reasons in the general interest? Is it of any significance for the answer to the first question whether the Member State where the gaming operator is established invokes the same overriding reasons in the general interest as the State where the operator wishes to market its gaming activities?

---

**Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 17 October 2008 — Panagiotis I. Karanikolas, Valsamis Daravanis, Georgios Kouvoukliotis, Panagiotis Dolou, Dimitrios Z. Parisis, Konstantinos Emmanouil, Ioannis Anasoglou, Pantelis A. Beis, Dimitrios Khatziandreou, Ioannis A. Zaragkoulias, Triantafillos K. Mavrogiannis, Sotirios T. Liotakis, Vasilios Karampasis, Dimitrios Melissidis, Ioannis V. Kleovoulos, Dimitrios I. Patsakos, Theodoros Fournarakis, Dimitrios K. Dimitrakopoulos and Sinetairismos Paraktion Alieon Kavalas v Ipourgos Agrotikis Anaptixis kai Trofimon and Nomarkhiaki Aftodiikisi Dramas — Kavalas — Xanthis**

**(Case C-453/08)**

(2008/C 327/30)

*Language of the case: Greek*

**Referring court**

Simvoulio tis Epikratias