Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

30 April 2014*

(Article 56 TFEU — Freedom to provide services — Charter of Fundamental Rights of the European Union — Articles 15 to 17, 47 and 50 — Freedom to choose an occupation, right to engage in work, freedom to conduct a business, right to property, right to an effective remedy and access to an impartial tribunal, ne bis in idem principle — Article 51 — Scope — Implementation of EU law — Games of chance — Restrictive legislation of a Member State — Administrative and criminal penalties — Overriding reasons in the public interest — Proportionality)

In Case C-390/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Unabhängiger Verwaltungssenat des Landes Oberösterreich (now Landesverwaltungsgericht Oberösterreich, Austria), made by decision of 10 August 2012, received at the Court on 20 August 2012, in the proceedings brought by

Robert Pfleger,

Autoart as,

Mladen Vucicevic,

Maroxx Software GmbH,

Hans-Jörg Zehetner,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: E. Sharpston,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 17 June 2013,

after considering the observations submitted on behalf of:

— Mr Vucicevic, by A. Rabl and A. Auer, Rechtsanwälte,

— Maroxx Software GmbH, by F. Wennig and F. Maschke, Rechtsanwälte,

— Mr Zehetner, by P. Ruth, Rechtsanwalt,

* Language of the case: German.

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Belgian Government, by M. Jacobs and L. Van den Broeck, acting as Agents, and P. Vlaemminck, advocaat,

— the Netherlands Government, by K. Bulterman and C. Wissels, acting as Agents,

— the Polish Government, by B. Majczyna and M. Szpunar, acting as Agents,

— the Portuguese Government, by L. Inez Fernandes, A. Silva Coelho and P. de Sousa Inês, acting as Agents,

— the European Commission, by B.-R. Killmann and I. Rogalski, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 November 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 56 TFEU and Articles 15 to 17, 47 and 50 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings brought by Mr Pfleger, Autoart as ('Autoart'), Mr Vucicevic, Maroxx Software GmbH ('Maroxx') and Mr Zehetner concerning administrative penalties imposed on them for the unauthorised operation of games of chance using machines.

Austrian legal context

The Federal Law on games of chance

3 Paragraph 2, 'Lotteries', of the Federal Law of 28 November 1989 on games of chance (Glücksspielgesetz, BGBl. 620/1989), in the version applicable to the main proceedings ('the GSpG'), provides:

'(1) Lotteries are games of chance

1. which an operator arranges, organises, offers or makes available, and

2. in which gamblers or other persons make a payment (stake) in connection with participation in a game of chance, and

3. in which the prospect of a payment (payout) is provided by the operator, gamblers or other persons.

(2) An operator is a person who, independently, exercises a permanent activity in order to receive income from the operation of games of chance, even if that activity is not intended to make a profit. Where several persons, in agreement with each other, offer in one place partial services in order to operate games of chance with the making of payments within the meaning of points 2 and 3 of subparagraph 1, all the persons participating directly in the operation of the game of chance are deemed to be operators, even if some of them do not have the intention of receiving income or participate only in the arrangement, organisation or offer of the game of chance.

(3) There is a lottery using gaming machines where the decision on the outcome of the game is taken not centrally, but by a mechanical or electronic device incorporated in the gaming machine itself. …

(4) Prohibited lotteries are lotteries for which no licence or authorisation under the present Federal law has been granted, and which are not excluded from the Federal State's monopoly of games of chance provided for in Paragraph 4.'

4 Under Paragraph 3 of the GSpG, 'Monopoly of games of chance', the right to organise games of chance is reserved to the Federal State.

5 However, under Paragraph 5 of the GSpG, lotteries using gaming machines are governed by provincial law. Furthermore, that paragraph provides that each of the nine provinces may grant a third party, by means of a licence, the right to operate lotteries using gaming machines, in accordance with the minimum requirements of a public policy nature, set out in detail in that provision, concerning applicants for authorisation and special accompanying measures for the protection of gamblers. Such lotteries, called 'minor games of chance', are operated either in arcades containing a minimum of 10 and a maximum of 50 gaming machines, a maximum stake of up to EUR 10 and a maximum payout of up to EUR 10 000 per game, or in the form of an individual installation of gaming machines, with a maximum of three gaming machines, a maximum stake of up to EUR 1 and a maximum payout of up to EUR 1 000 per game, the number of authorisations for the operation of gaming machines for a maximum duration of 15 years each being limited to three per province.

6 Paragraph 52 of the GSpG, 'Provisions on administrative penalties', provides:

'(1) An administrative offence punishable by a fine imposed by the administrative authorities of up to EUR 22 000 is committed where:

1. a person, for the purpose of participation from national territory, arranges, organises or makes available in the course of business prohibited lotteries within the meaning of Paragraph 2(4), or participates in them as an operator within the meaning of Paragraph 2(2);

…

(2) Where, in connection with participation in lotteries, payments of more than EUR 10 per game are made by gamblers or other persons, those are no longer regarded as minor amounts, and in that respect any liability under the present Federal law is superseded by any liability under Paragraph 168 of the Criminal Code [(Strafgesetzbuch)].

(3) Where administrative offences within the meaning of subparagraph 1 are not committed on the national territory, they are deemed to have been committed in the place from which the participation in the national territory takes place.

(4) Participation in electronic lotteries for which no licence has been granted by the Federal Minister of Finance is an offence if the necessary stakes are placed from the national territory. Infringement of that prohibition is punishable by a fine of up to EUR 7 500 where it is committed intentionally, and otherwise by a fine of up to EUR 1 500.

…'

7 In accordance with Paragraphs 53, 54 and 56a of the GSpG, that power of the administration to impose penalties is accompanied by extensive powers to take precautionary measures to prevent further infringements of the monopoly of games of chance within the meaning of Paragraph 3 of the GSpG. Those powers consist of the provisional or definitive seizure of gaming machines and other

infringing objects, their confiscation and subsequent destruction, and the closure of the establishment in which those machines were made available to the public, as laid down in Paragraphs 53(1) and (2), 54(1) and (3), and 56a of the GSpG.

The Criminal Code

8 In addition to administrative penalties that may be imposed under the GSpG, the organisation of games of chance for commercial purposes by a person who does not hold a licence may also give rise to criminal proceedings in Austria. In accordance with Paragraph 168(1) of the Criminal Code, 'any person who organises a game in which winning and losing depend exclusively or predominantly on chance or which is expressly prohibited, or who promotes a meeting organised with a view to such a game taking place, in order to obtain a pecuniary advantage for himself or another person from that organisation or meeting' commits an offence. The penalties are imprisonment for up to six months or a fine of up to 360 daily rates. Under Paragraph 168(2) of the code, 'any person who participates in such a game in the course of a business' is liable to the same penalties.

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

9 It is apparent from the order for reference and the file before the Court that the present request for a preliminary ruling is the result of four disputes pending before the referring court, in all of which gaming machines operated without authorisation and thus allegedly used to organise games of chance prohibited under the GSpG were provisionally seized following controls carried out in various places in Upper Austria.

10 In the context of the first set of proceedings, on 29 March 2012 executive agents of the finance police carried out an inspection of the 'Cash-Point' establishment in Perg (Austria) and, following that inspection, six gaming machines which did not have administrative authorisation were seized provisionally. On 12 June 2012 the Bezirkshauptmannschaft (district authority) of Perg adopted decisions confirming the provisional seizure against Mr Pfleger, as organiser of unlawful games of chance, and against Autoart, established in the Czech Republic, as presumed owner of the machines seized.

11 In the context of the second set of proceedings, on 8 March 2012 executive agents of the finance police carried out an inspection of the 'SJ-Bet Sportbar' establishment in Wels (Austria) and, following that inspection, eight gaming machines which did not have administrative authorisation were seized provisionally. On 4 July 2012 the Bundespolizeidirektion (Federal police directorate) of Wels adopted a decision confirming the provisional seizure against Mr Vucicevic, a Serbian national, the presumed owner of two of the eight machines seized.

12 In the context of the third set of proceedings, on 30 November 2010 executive agents of the finance police carried out an inspection at a service station in Regau (Austria) and, following that inspection, two gaming machines which did not have administrative authorisation and belonged to Maroxx, a company registered in Austria, were provisionally seized. On 16 December 2010 the Bezirkshauptmannschaft of Vöcklabruck adopted a decision confirming the provisional seizure against Mrs Baumeister, a German national, who was the operator of that service station and an operator within the meaning of the GSpG. The referring court dismissed Mrs Baumeister's action against that decision for being out of time. By decision of 31 May 2012 the Bezirkshauptmannschaft of Vöcklabruck also ordered the confiscation of the two machines seized.

13 In the context of the fourth set of proceedings, on 13 November 2010 executive agents of the finance police carried out an inspection at a service station in Enns (Austria) and, following that inspection, three gaming machines which did not have administrative authorisation were seized provisionally. A decision confirming the seizure was adopted by the Bezirkshauptmannschaft of Vöcklabruck against the owner of the machines, Maroxx.

14 By decision of 3 July 2012, that authority imposed on the operator of the service station, Mr Zehetner, an Austrian national, a fine of EUR 1 000 or, alternatively, a term of imprisonment of 15 hours in the event of non-payment and also, by that decision, imposed on the owner and lessor of the machines, Maroxx, a fine of EUR 10 000 or, alternatively, a term of imprisonment of 152 hours.

15 All those decisions were the subject of actions brought before the referring court.

16 According to that court, the Austrian authorities failed to show, for the purposes of the judgment in Case C-347/09 *Dickinger and Ömer* EU:C:2011:582, that the crime and/or addiction to gambling constituted a significant problem during the period at issue. They also failed to show that fighting crime and protecting gamblers, and not merely increasing State tax revenue, constituted the real objective of the monopoly system of games of chance. It further considers that 'enormous advertising efforts' were carried out in the context of an 'aggressive' campaign, so that the commercial policy of the holders of that monopoly is not restricted to a controlled expansion coupled with moderate advertising.

17 The referring court considers, therefore, that the legal system analysed in the present case, examined in its entirety, is not capable of guaranteeing the coherence required by the Court's case-law (see, inter alia, Case C-46/08 *Carmen Media Group* EU:C:2000:505, paragraphs 69 and 71) and is therefore not compatible with the freedom to provide services guaranteed by Article 56 TFEU.

18 If the Court were, however, to take the view that Article 56 TFEU and Articles 15 to 17 of the Charter do not, for the reasons set out above, prohibit such national legislation, the referring court questions whether, in any event, Article 56 TFEU and Articles 15 to 17, 47 and 50 of the Charter prohibit national legislation in accordance with which the concept of operator, as a person who can potentially be punished in the case of the unauthorised use of gaming machines, is defined very broadly and characterised, in the absence of clear legislative provisions, by the unpredictability associated with the application of administrative and criminal penalties.

19 In those circumstances the Unabhängiger Verwaltungssenat des Landes Oberösterreich (Independent Administrative Tribunal of the Province of Upper Austria) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Does the principle of proportionality laid down in Article 56 TFEU and in Articles 15 to 17 of the Charter preclude national legislation such as the relevant provisions in the main proceedings, namely Paragraphs 3 to 5 and Paragraphs 14 and 21 of the GSpG, which permits the organisation of games of chance using machines only on the condition — which may be enforced by both criminal penalties and direct intervention — of the prior issue of a licence, which are available only in limited numbers, even though — as far as can be seen — the State has not shown thus far in a single judicial or administrative procedure that associated crime and/or addiction to gambling actually constitute a significant problem which cannot be remedied by a controlled expansion of authorised gaming activities to a large number of individual providers, but only by a controlled expansion, coupled with only moderate advertising, by one monopoly holder (or a small number of oligopolists)?

2. If the first question is to be answered in the negative: Does the principle of proportionality laid down in Article 56 TFEU and in Articles 15 to 17 of the Charter preclude national legislation like Paragraphs 52 to 54 of the GSpG, Paragraph 56a of the GSpG and Paragraph 168 of the [Criminal

Code] by which, as a result of imprecise legal definitions, there is almost complete criminal liability, even for many forms of only very remotely involved (possibly resident in other European Union Member States) persons (such as the mere sellers or lessors of gaming machines)?

3. If the second question is also to be answered in the negative: Do the requirements relating to democracy and the rule of law on which Article 16 of the Charter is clearly based and/or the requirement of fairness and efficiency under Article 47 of the Charter and/or the obligation of transparency under Article 56 TFEU and/or the right not to be tried or punished twice under Article 50 of the Charter preclude national rules such as Paragraphs 52 to 54 of the GSpG, Paragraph 56a of the GSpG and Paragraph 168 of the [Criminal Code], the delimitation between which is scarcely foreseeable or predictable *ex ante* for a citizen, in the absence of clear legislative provision, and can be clarified in each specific case only through an expensive formal procedure, but which are associated with extensive differences in terms of competences (administrative authority or court), powers of intervention, the connected stigmatisation in each case and the procedural position (e.g. reversal of the burden of proof)?

4. If one of the first three questions is to be answered in the affirmative: Does Article 56 TFEU and/or Articles 15 to 17 of the Charter and/or Article 50 of the Charter preclude the punishment of persons who have one of the close connections with a gaming machine mentioned in Paragraph 2(1)(1) and Paragraph 2(2) of the GSpG and/or the seizure or confiscation of such machines and/or the closure of the entire undertaking owned by such persons?'

Consideration of the questions referred

Jurisdiction of the Court

20 The Austrian Government maintains that the Court has no jurisdiction, claiming that the questions referred concern a purely internal situation and have no connection with EU law given that, in the present case, no cross-border factors can be identified.

21 In that regard, it is true that, as regards the interpretation of Article 56 TFEU, where all the facts in the proceedings are confined within a single Member State, it is necessary to ascertain whether the Court has jurisdiction to give a ruling on that provision (see, to that effect, Joined Cases C-357/10 to C-359/10 *Duomo Gpa and Others* EU:C:2012:283, paragraph 25 and the case-law cited).

22 However, as is apparent from the order for reference, on 12 June 2012 the Perg district authority adopted decisions confirming the provisional seizure also against Autoart, as the presumed owner of the seized machines.

23 The involvement of Autoart, established in the Czech Republic, in the context of the main proceedings shows therefore, in any event, that those proceedings do not concern a purely internal situation.

24 Consequently, it must be held that the Court has jurisdiction to answer the questions referred.

Admissibility

25 The Austrian Government considers also that the request for a preliminary ruling must be dismissed as inadmissible, since the order for reference does not set out the factual context sufficiently to allow the Court to provide a useful answer.

26 In that regard, it should be noted that, according to settled case law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (Joined Cases C-188/10 and C-189/10 *Melki and Abdeli* EU:C:2010:363, paragraph 27 and the case-law cited).

27 It is also apparent from settled case-law that the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for the national court to define the factual and legal context of the questions it is asking or, at the very least, to explain the assumptions of fact on which those questions are based. The order for reference must, moreover, set out the precise reasons why the national court is unsure as to the interpretation of EU law and finds it necessary to refer a question to the Court for a preliminary ruling (Case C-548/11 *Mulders* EU:C:2013:249, paragraph 28 and the case-law cited).

28 In the present case, the order for reference sets out in sufficient detail the legal and factual context of the disputes in the main proceedings and the information provided by that court makes it possible to determine the scope of the questions referred.

29 In those circumstances, the request for a preliminary ruling must be held to be admissible.

The applicability of the Charter

30 The Austrian, Belgian, Dutch and Polish Governments consider that the Charter is not applicable in the main proceedings since, in the non-harmonised area of games of chance, the national legislation concerning that area is not an implementation of EU law within the meaning of Article 51(1) of the Charter.

31 It should be recalled in this respect that the Charter's field of application so far as concerns action of the Member States is defined in Article 51(1) of the Charter, according to which its provisions are addressed to the Member States only when they are implementing EU law (Case C 617/10 *Åkerberg Fransson* EU:C:2013:105, paragraph 17).

32 That article of the Charter thus confirms the Court's case-law relating to the extent to which actions of the Member States must comply with the requirements flowing from the fundamental rights guaranteed in the legal order of the European Union (*Åkerberg Fransson* EU:C:2013:105, paragraph 18).

33 The Court's settled case-law indeed states, in essence, that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations. In this respect the Court has already observed that it has no power to examine the compatibility with the Charter of national legislation lying outside the scope of EU law. On the other hand, if such legislation falls within the scope of EU law, the Court, when requested to give a preliminary ruling, must provide all the guidance as to interpretation needed in order for the national court to determine whether that legislation is compatible with the fundamental rights the observance of which the Court ensures (*Åkerberg Fransson* EU:C:2013:105, paragraph 19).

34 Since the fundamental rights guaranteed by the Charter must therefore be complied with where national legislation falls within the scope of EU law, situations cannot exist which are covered in that way by EU law without those fundamental rights being applicable. The applicability of EU law entails applicability of the fundamental rights guaranteed by the Charter (*Åkerberg Fransson* EU:C:2013:105, paragraph 21).

35 In that regard, the Court has already held that, where a Member State relies on overriding requirements in the public interest in order to justify rules which are liable to obstruct the exercise of the freedom to provide services, such justification, provided for by EU law, must be interpreted in the light of the general principles of EU law, in particular the fundamental rights henceforth guaranteed by the Charter. Thus the national rules in question can fall under the exceptions provided for only if they are compatible with the fundamental rights the observance of which is ensured by the Court (see, to that effect, Case C-260/89 *ERT* EU:C:1991:254, paragraph 43).

36 As follows from that case-law, where it is apparent that national legislation is such as to obstruct the exercise of one or more fundamental freedoms guaranteed by the Treaty, it may benefit from the exceptions provided for by EU law in order to justify that fact only in so far as that complies with the fundamental rights enforced by the Court. That obligation to comply with fundamental rights manifestly comes within the scope of EU law and, consequently, within that of the Charter. The use by a Member State of exceptions provided for by EU law in order to justify an obstruction of a fundamental freedom guaranteed by the Treaty must, therefore, be regarded, as the Advocate General states in point 46 of her Opinion, as 'implementing Union law' within the meaning of Article 51(1) of the Charter.

37 It is in the light of those principles that the questions referred for a preliminary ruling must be answered.

Substance

Question 1

38 By its first question, the referring court essentially asks whether Article 56 TFEU and Articles 15 to 17 of the Charter must be interpreted as precluding national legislation such as that at issue in the main proceedings.

– Examination under Article 56 TFEU

39 Legislation of a Member State, such as that at issue in the main proceedings, which prohibits the operation of gaming machines in the absence of the prior authorisation of the administrative authorities constitutes a restriction of the freedom to provide services guaranteed by Article 56 TFEU (see, to that effect, inter alia, Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* EU:C:2007:133, paragraph 42).

40 It must, however, be determined whether such a restriction may be allowed as a derogation, on grounds of public policy, public security or public health, as expressly provided for in Articles 51 TFEU and 52 TFEU, which are also applicable in the area of freedom to provide services by virtue of Article 62 TFEU, or justified, in accordance with the case-law of the Court, by overriding reasons in the public interest (Case C-470/11 *Garkalns* EU:C:2012:505, paragraph 35 and the case-law cited).

41 According to the Court's established case-law, restrictions on games of chance may be justified by overriding requirements in the public interest, such as consumer protection and the prevention of both fraud and incitement to squander money on gambling (see, to that effect, *Carmen Media Group* EU:C:2010:505, paragraph 55 and the case-law cited).

42 In the present case, with regard to the declared objectives pursued by the Austrian legislation at issue in the main proceedings, namely the protection of gamblers by restricting the supply of games of chance and the fight against crime connected with those games by channelling them through controlled expansion, it should be noted that they are among those recognised by the Court's case-law as capable of justifying restrictions on fundamental freedoms in the sector of games of chance (see, to that effect, Joined Cases C-72/10 and C-77/10 *Costa and Cifone* EU:C:2012:80, paragraph 61 and the case-law cited).

43 In addition, it should be recalled that the restrictions imposed by the Member States must satisfy the relevant conditions of proportionality and non-discrimination, as laid down in the Court's case-law. Thus, national legislation is appropriate for guaranteeing attainment of the objective pursued only if it genuinely reflects a concern to attain it in a consistent and systematic manner (see, to that effect, Case C-42/07 *Liga Portuguesa de Futebol Profissional and Bwin International* EU:C:2009:519, paragraphs 59 to 61 and the case-law cited).

44 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 proportionality of the provisions enacted to that end. Those provisions must be assessed solely by reference to the objectives pursued by the competent authorities of the Member State concerned and the level of protection which they seek to ensure (Case C-176/11 *HIT and HIT LARIX* EU:C:2012:454, paragraph 25 and the case-law cited).

45 In the specific area of the organisation of games of chance, national authorities enjoy a sufficient measure of discretion to enable them to determine what is required in order to ensure consumer protection and the preservation of order in society and — provided that the conditions laid down in the Court's case-law are in fact met — it is for each Member State to assess whether, in the context of the legitimate aims which it pursues, it is necessary to prohibit betting and gaming wholly or in part or only to restrict them and, to that end, to lay down more or less strict supervisory rules (see, to that effect, Joined Cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07 *Stoß and Others* EU:C:2010:504, paragraph 76, and *Carmen Media Group* EU:C:2010:505, paragraph 46).

46 Furthermore, it is not disputed that, unlike the introduction of free, undistorted competition in a traditional market, the presence of that kind of competition in the very specific market of games of chance, that is to say, between several operators authorised to run the same games of chance, is liable to have detrimental effects, owing to the fact that those operators would be led to compete with each other in inventiveness to make what they offer more attractive than what their competitors offer, and thereby to increase consumers' expenditure on gaming and the risks of their addiction (Joined Cases C-186/11 and C-209/11 *Stanleybet International and Others* EU:C:2013:33, paragraph 45).

47 However, the identification of the objectives in fact pursued by the national legislation is, in the context of a case referred to the Court under Article 267 TFEU, within the jurisdiction of the referring court (see, to that effect, *Dickinger and Ömer* EU:C:2011:582, paragraph 51).

48 It is also for the referring court, while taking account of the information provided by the Court, to determine whether the restrictions imposed by the Member State concerned satisfy the conditions laid down in the Court's case-law as regards their proportionality (see *Dickinger and Ömer* EU:C:2011:582, paragraph 50).

49 In particular, it is for that court to satisfy itself, having regard inter alia to the actual rules for applying the restrictive legislation concerned, that the legislation genuinely meets the concern to reduce opportunities for gambling, to limit activities in that area and to fight gambling-related crime in a consistent and systematic manner (see *Dickinger and Ömer* EU:C:2011:582, paragraphs 50 and 56).

50 In that regard, the Court has previously held that it is the Member State wishing to rely on an objective capable of justifying the restriction of the freedom to provide services which must supply the court called on to rule on that question with all the evidence of such a kind as to enable the court to be satisfied that the measure does indeed comply with the requirements deriving from the principle of proportionality (see *Dickinger and Ömer* EU:C:2011:582, paragraph 54 and the case-law cited).

51 It cannot, however, be inferred from that case-law that a Member State is deprived of the possibility of establishing that an internal restrictive measure satisfies those requirements, solely on the ground that that Member State is not able to produce studies serving as the basis for the adoption of the legislation at issue (see, to that effect, *Stoß and Others* EU:C:2010:504, paragraph 72).

52 Accordingly, the national court must carry out a global assessment of the circumstances in which restrictive legislation, such as that at issue in the main proceedings, was adopted and implemented.

53 In the present case, the referring court considers that the national authorities have not shown that crime and/or addiction to gambling actually constituted, during the period at issue, a significant problem.

54 That court appears, in addition, to consider that the real purpose of the restrictive system at issue is not the fight against crime and the protection of gamblers, but a mere increase of State tax revenue, whereas, as the Court has already held, the mere aim of increasing public tax revenue cannot allow such a restriction of freedom to provide services (see *Dickinger and Ömer* EU:C:2011:582, paragraph 55). In any event, that system appears to be disproportionate, since it is not appropriate for the purpose of guaranteeing the consistency required by the Court's case-law and goes beyond what is necessary in order to attain the declared objectives pursued.

55 If that assessment were finally to be adopted by the referring court, it would have to conclude that the system at issue in the main proceedings is incompatible with EU law.

56 In the light of all of the foregoing, the answer to the first question is that Article 56 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, where that legislation does not actually pursue the objective of protecting gamblers or fighting crime and does not genuinely meet the concern to reduce opportunities for gambling or to fight gambling-related crime in a consistent and systematic manner.

– Examination under Articles 15 to 17 of the Charter

57 National legislation that is restrictive from the point of view of Article 56 TFEU, such as that at issue in the main proceedings, is also capable of limiting the freedom to choose an occupation, the freedom to conduct a business and the right to property enshrined in Articles 15 to 17 of the Charter.

58 Under Article 52(1) of the Charter, for such a limitation to be admissible, it must be provided for by law and respect the essence of those rights and freedoms. Furthermore, subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

59 As the Advocate General states in points 63 to 70 of her Opinion, in circumstances such as those at issue in the main proceedings, an unjustified or disproportionate restriction of the freedom to provide services under Article 56 TFEU is also not permitted under Article 52(1) of the Charter in relation to Articles 15 to 17 of the Charter.

60 It follows that, in the present case, an examination of the restriction represented by the national legislation at issue in the main proceedings from the point of view of Article 56 TFEU covers also possible limitations of the exercise of the rights and freedoms provided for in Articles 15 to 17 of the Charter, so that a separate examination is not necessary.

Questions 2 and 3

61 The second and third questions were referred to the Court solely in case the answer to the first question was in the negative.

62 In view of the answer given to the first question, there is no need to answer the second and third questions.

Question 4

63 By its fourth question, the referring court asks, in essence, whether Article 56 TFEU and Articles 15 to 17 and 50 of the Charter must be interpreted as precluding penalties, such as those provided for by the national legislation at issue in the main proceedings, which include the confiscation and destruction of gaming machines and the closure of the establishment in which those machines are made available to the public.

64 In the context of the main proceedings, it should be emphasised that, where a restrictive system has been established for games of chance and that system is incompatible with Article 56 TFEU, an infringement of the system by an economic operator cannot give rise to penalties (see, to that effect, *Placanica and Others* EU:C:2007:133, paragraphs 63 and 69, and *Dickinger and Ömer* EU:C:2011:582, paragraph 43).

Costs

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

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

Article 56 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, where that legislation does not actually pursue the objective of protecting gamblers or fighting crime and does not genuinely meet the concern to reduce opportunities for gambling or to fight gambling-related crime in a consistent and systematic manner.

[Signatures]