

Article 4(2) and Article 5 of Directive 93/13/[EEC]

preclude binding national case-law that a) and/or b)

- a) imposes no obligation on the counterparty of the consumer, as a condition of validity of the contract, to enable the consumer, before entering into a contract, to read the terms of the contract, written in clear and intelligible language, which form the main subject matter of that contract, including the exchange rate applicable to payments for a currency loan contract, in order to prevent the invalidity of the contract;
- b) enables the counterparty of the consumer to communicate (in a specific document, for example), the terms of the contract, written in clear and intelligible language, which form the main subject matter of that contract, including the exchange rate applicable to payments for a currency loan contract, only at a time when the consumer has already irrevocably committed himself to performing the contract, without this circumstance alone being a ground for the invalidity of the contract?

⁽¹⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 1993, p. 29).

Request for a preliminary ruling from the Landesverwaltungsgericht Oberösterreich (Austria) lodged on 14 February 2017 — Gmalieva s.r.o. and Others v Landespolizeidirektion Oberösterreich

(Case C-79/17)

(2017/C 178/03)

Language of the case: German

Referring court

Landesverwaltungsgericht Oberösterreich

Parties to the main proceedings

Applicants: Gmalieva s.r.o., Celik KG, PBW GmbH, Antoaneta Claudia Gruber, Play For Me GmbH, Haydar Demir

Defendant authority: Landespolizeidirektion Oberösterreich

Questions referred

1. Is a national statutory monopoly scheme in respect of games of chance to be regarded as coherent, within the meaning of Article 56 TFEU et seq., where
 - on the basis that
 - (a) the facts can be established and assessed by reference to the evidence provided by public bodies and private individuals who are parties to the proceedings, as well as evidence that is a matter of public knowledge (see, in that regard, Case C-685/15); and
 - (b) the legal analysis of other national courts which did not base themselves on an autonomous assessment of coherence is not binding (see, in that regard, Case C-589/16) —

judicial proceedings which, taking account of the abovementioned provisos, are thus presumed to be in compliance with the principle of fairness under Article 6 ECHR and Article 47 of the Charter of Fundamental Rights of the European Union, established the essential points of the context to which that statutory scheme belongs by finding that:

- gambling addiction does not represent a societal problem justifying State intervention;
- the playing of prohibited games of chance does not appear to be a criminal act, but a mere (albeit frequent) cause of trouble involving police involvement in an administrative context;

- annual State income from games of chance exceeds EUR 500 million (= 0,4 % of the overall State budget); and
 - the advertising measures undertaken by licensees also seek principally to entice persons who have not previously played games of chance to do so?
2. If Question 1 is answered in the affirmative: is such a scheme, which does not explicitly establish in law the objectives that it pursues and does not require the State to prove that those objectives have in fact been achieved, but which shifts the task of preparing and verifying the essential criteria of coherence onto the national courts, in such a way that the requirement of a fair trial under Article 6(1) of the ECHR and Article 47 of the Charter of Fundamental Rights of the European Union is ultimately not guaranteed with certainty, to be viewed as coherent within the meaning of Article 56 TFEU et seq.?
 3. If Question 1 and/or Question 2 is/are answered in the affirmative: is such a scheme to be regarded as proportionate within the meaning of Article 56 TFEU et seq. in light of the broad, statutorily regulated, powers of intervention enjoyed by the authorities, which are not subject to any prior authorisation or review by a judicial body?
 4. If Questions 1, 2 and 3 are answered in the affirmative: is such a scheme to be regarded as proportionate within the meaning of Article 56 TFEU et seq. in view of the fact that the mere definition of strict conditions of access which do not, at the same time, restrict the number of licences to be granted would result in comparatively less interference with the freedom to provide services?
 5. If one of the preceding questions is answered in the negative: must a national court, which has ruled that the monopoly scheme of the GSpG (Glücksspielgesetz; the Law on Gambling) is not in accordance with EU law, not only find, on that basis, that the interventionist measures taken in the proceedings before it are unlawful, but also, of its own motion, in the exercise of its own jurisdictional powers (for example, by reopening the proceedings), reverse the legal sanctions (such as, for instance, administrative penalties) which have already become final?

Appeal brought on 15 February 2017 by Société des produits Nestlé SA against the judgment of the General Court (Fifth Chamber) delivered on 15 December 2016 in Case T-112/13: Mondelez UK Holdings & Services Ltd v European Union Intellectual Property Office

(Case C-84/17 P)

(2017/C 178/04)

Language of the case: English

Parties

Appellant: Société des produits Nestlé SA (represented by: G.S.P. Vos, advocaat)

Other parties to the proceedings: Mondelez UK Holdings & Services Ltd, European Union Intellectual Property Office (EUIPO)

Form of order sought

The appellant claims that the Court should:

- annul the contested judgment of the General Court of the European Union of 15 December 2016, case T-112/13, on that basis that the General Court infringed article 7(3) and 52(2) of the European Union Trade Mark Regulation ('EUTMR')⁽¹⁾; and
- order the respondent, applicant before the General Court, Mondelez UK Holdings & Services Ltd, to pay the costs.

Pleas in law and main arguments

Nestlé appeals the General Court's judgment on the ground that the General Court infringed article 7(3) and article 52(2) of Regulation (EU) No. 207/2009 amended by Regulation (EU) No. 2015/2424⁽²⁾, also known as EUTMR.