JUDGMENT OF THE COURT (Grand Chamber)

8 September 2010 *

In Case C-46/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Schleswig-Holsteinisches Verwaltungsgericht (Germany), made by decision of 30 January 2008, received at the Court on 8 February 2008, in the proceedings

Carmen Media Group Ltd

v

Land Schleswig-Holstein,

Innenminister des Landes Schleswig-Holstein,

* Language of the case: German.

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot and P. Lindh, Presidents of Chambers, K. Schiemann (Rapporteur), A. Borg Barthet, M. Ilešič, J. Malenovský, U. Lõhmus, A. Ó Caoimh, and L. Bay Larsen, Judges,

Advocate General: P. Mengozzi,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 8 December 2009,

after considering the observations submitted on behalf of:

— Carmen Media Group Ltd, by W. Hambach, M. Hettich and S. Münstermann, Rechtsanwälte, and by C. Koenig, professeur,

— the Land Schleswig-Holstein and the Innenminister des Landes Schleswig-Holstein, by L.-E. Liedke and D. Kock, acting as Agents, and by M. Hecker and M. Ruttig, Rechtsanwälte,

— the German Government, by M. Lumma, J. Möller and B. Klein, acting as Agents,

— the Belgian Government, by L. Van den Broeck, acting as Agent, and by P. Vlaemminck and A. Hubert, advocaten,

— the Greek Government, by A. Samoni-Rantou, M. Tassopoulou and O. Patsopoulou, acting as Agents,

— the Spanish Government, by F. Díez Moreno, acting as Agent,

— the Netherlands Government, by C. Wissels and M. de Grave, acting as Agents,

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

— the Norwegian Government, by K.B Moen, acting as Agent,

— the European Commission, by E. Traversa, P. Dejmek and H. Krämer, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 March 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 49 EC.

2 The reference was made in the context of a dispute between, on the one hand, Carmen Media Group Ltd ('Carmen Media') and, on the other, the Land Schleswig-Holstein and the Innenminister des Landes Schleswig-Holstein (interior minister of the Land Schleswig-Holstein) concerning the refusal by the two last-named of a request by Carmen Media for acknowledgement of the right to offer bets on sporting competitions via the internet in that Land.

National legal context

Federal law

3 Paragraph 284 of the Criminal Code (Strafgesetzbuch; 'the StGB') provides:

'(1) Whosoever without the authorisation of a public authority publicly organises or operates a game of chance or makes equipment for it available shall be liable to imprisonment of not more than two years or a fine.

...

(3) Whosoever in cases under subparagraph 1 above acts

1. on a commercial basis

...

shall be liable to imprisonment of between three months and five years.

...'

4 Apart from bets concerning official horse races, which fall primarily under the Law on Racing Bets and Lotteries (Rennwett- und Lotteriegesetz; 'the RWLG'), and the installation and use of gambling machines in establishments other than casinos (gaming arcades, cafes, hotels, restaurants and other accommodation), which fall primarily within the Trade and Industry Code (Gewerbeordnung) and the Regulation on Gambling Machines (Verordnung über Spielgeräte und andere Spiele mit Gewinnmöglichkeit), determination of the conditions under which authorisations within the meaning of Paragraph 284(1) of the StGB may be issued for games of chance has taken place at the level of the various *Länder*.

5 Paragraph 1(1) of the RWLG provides:

'An association wishing to operate a mutual betting undertaking on horse races or other public horse competitions must first obtain the authorisation of the competent authorities in accordance with the law of the *Land*.

6 Paragraph 2(1) of the RWLG provides:

'Any person wishing, on a commercial basis, to conclude bets on public horse competitions or serve as intermediary for such bets (Bookmaker) must first obtain the authorisation of the competent authorities in accordance with the law of the *Land*'.

The GlüStV

7 By the State treaty concerning lotteries in Germany (Staatsvertrag zum Lotteriewesen in Deutschland; 'the LottStV'), which entered into force on 1 July 2004, the *Länder* created a uniform framework for the organisation, operation and commercial placing of gambling, apart from casinos.

8 In a judgment of 28 March 2006, the Bundesverfassungsgericht (Federal Constitutional Court) held, concerning the legislation transposing the LottStV in the *Land* of Bavaria, that the public monopoly on bets on sporting competitions existing in that *Land* infringed Paragraph 12(1) of the Basic Law, guaranteeing freedom of occupation. That court held in particular that, by excluding private operators from the activity of organising bets, without at the same time providing a regulatory framework capable of ensuring, in form and in substance, both in law and in fact, effective pursuit of the aims of reducing the passion for gambling and combating addiction to it, that monopoly had a disproportionately adverse effect on the freedom of occupation thus guaranteed.

9 As the referring court explains, the State treaty on games of chance (Glücksspielstaatsvertrag; 'the GlüStV'), concluded between the *Länder* and which entered into force on 1 January 2008, establishes a new uniform framework for the organisation, operation and intermediation of games of chance aiming to satisfy the requirements laid down by the Bundesverfassungsgericht in the said judgment of 28 March 2006.

10 The referring court further states that the explanatory report on the draft of the GlüStV ('the explanatory report') shows that the main aim of the latter is the prevention and combating of addiction to games of chance. According to the explanatory report, a study dating from April 2006, carried out, at the request of the Commission of the European Communities, by the Swiss Institute of Comparative Law and concerning the market for games of chance in the European Union, clearly showed the effectiveness which may result, in that perspective, from legislation and a strict channelling of the activities concerned.

11 As regards the specific area of bets on sporting competitions, the explanatory report indicated that whilst, for the great majority of persons placing bets, such bets might be only for relaxation and entertainment, it was very possible, on the evidence contained in the available scientific studies and expert reports, that, if the supply of those bets were significantly increased, the potential for dependency likely to be generated by them would be significant. It was thus necessary to adopt measures for preventing such dependency by imposing limits on the organisation, marketing and operation of such games of chance. The channelling and limitation of the market for those games by the GlüStV was to be obtained, in particular, by maintaining the existing monopoly on the organisation of bets on sporting competitions and on lotteries with particular risk potential.

12 According to Paragraph 1 of the GlüStV, the objectives of the latter are as follows:

'1. to prevent dependency on games of chance and on bets, and to create the conditions for effectively combating dependency,

2. to limit the supply of games of chance and to channel the gaming instinct of the population in an organised and supervised manner, preventing in particular a drift towards unauthorised games of chance,

3. to ensure the protection of minors and players,

4. to ensure the smooth operation of games of chance and the protection of players against fraudulent manoeuvres, and to prevent criminality connected with and arising from games of chance.'

13 Paragraph 2 of the GlüStV states that, with regard to casinos, only Paragraphs 1, 3 to 8, 20 and 23 apply.

14 Paragraph 4 of the GlüStV states:

'(1) The organisation or intermediation of public games of chance may take place only with the authorisation of the competent authority of the *Land* concerned. All organisation or intermediation of such games is prohibited without such authorisation (unlawful games of chance).

(2) Such authorisation shall be refused where the organisation or intermediation of the game of chance is contrary to the objectives of Paragraph 1. Authorisation shall not be issued for the intermediation of games of chance unlawful according to the present State treaty. There is no established right to the obtaining of an authorisation.

...

(4) The organisation and intermediation of public games of chance on the internet are prohibited.'

15 Paragraph 10 of the GlüStV provides:

'(1) In order to attain the objectives set out in Paragraph 1, the *Länder* are under a statutory obligation to ensure a sufficient supply of games of chance. They shall be assisted by a technical committee composed of experts specialised in combating dependency on games of chance.

(2) In accordance with the law, the *Länder* may undertake that task either by themselves or through the intermediary of legal persons under public law or private law companies in which legal persons under public law hold a direct or indirect controlling shareholding.

...

(5) Persons other than those referred to in subparagraph 2 shall be authorised to organise only lotteries and games in accordance with the provisions of the third section.'

16 The third section of the GlüStV concerns lotteries with a low risk of danger, which may be authorised under highly restrictive conditions and exclusively for organisers pursuing public interest or charitable aims.

17 Paragraph 25(6) of the GlüStV states:

'The *Länder* may, for a maximum period of one year after the entry into force of the State treaty, in derogation from Paragraph 4(4), permit the organisation and intermediation of lotteries on the internet where there is no reason to refuse them pursuant to Paragraph 4(2) and where the following conditions are met:

— exclusion of minors or prohibited players guaranteed by identification and authentication measures, in compliance with the directives of the Commission for the protection of minors as a closed group of media users;

— limitation of stakes, as fixed in the authorisation, to EUR 1 000 per month, and guarantee that credit is prohibited;

— prohibition of particular incitements to dependency by rapid draws and of the possibility of participating interactively with publication of results in real time; as regards lotteries, limitation to two winning draws per week;

— localisation by use of the most modern methods, in order to ensure that only persons within the scope of the authorisation may participate;

— establishment and operation of a programme of social measures adapted to the specific conditions of the internet, the effectiveness of which is to be assessed scientifically.'

18 The referring court states that, according to the explanatory report, the transitional provision contained in Paragraph 25(6) of the GlüStV aims to provide equitable relief for two operators of commercial games who operate almost entirely on the internet and respectively employ 140 and 151 persons, by giving them sufficient time to bring their activity into conformity with the distribution channels authorised by the GlüStV.

The legislation of the Land Schleswig-Holstein

19 The GlüStV was transposed by the Land Schleswig-Holstein by the law implementing the State treaty on games of chance in Germany (Gesetz zur Ausführung des Staatsvertrages zum Glücksspielwesen in Deutschland) of 13 December 2007 (GVOBl. 2007, p. 524; 'the GlüStV AG').

20 Paragraph 4 of the GlüStV AG provides:

‘(1) In order to achieve the objectives set out in Paragraph 1 of the GlüStV, the Land Schleswig-Holstein shall concern itself with supervision of games of chance, the guarantee of a sufficient provision of games of chance, and scientific research in order to avoid and prevent the dangers of dependency connected with games of chance.

(2) In accordance with Paragraph 10(1) of the GlüStV, the Land Schleswig-Holstein shall fulfil that function through the intermediary of NordwestLotto Schleswig-Holstein GmbH & Co. KG. (NordwestLotto Schleswig-Holstein), the shares of which are held, directly or indirectly, in whole or in part, by the Land....

(3) NordwestLotto Schleswig-Holstein may organise lottery draws, scratch cards and sporting bets, as well as lotteries and additional games in the matter.

...’

21 Paragraph 5(1) of the GlüStV AG provides:

‘Authorisation under Paragraph 4(1) of the GlüStV for games of chance which are not lotteries having a low potential for danger (Paragraph 6) presupposes:

1. the absence of grounds for refusal set out in Paragraph 4(2), first and second sentences, of the GlüStV,

2. compliance with:

   (a) the requirements concerning the protection of minors in accordance with Paragraph 4(3) of the GlüStV,

   (b) the internet prohibition contained in Paragraph 4(4) of the GlüStV,

   (c) the restrictions on advertising contained in Paragraph 5 of the GlüStV,

   (d) the requirements concerning the programme of social measures contained in Paragraph 6 of the GlüStV, and

   (e) the requirements on explanations concerning the risks of dependency in accordance with Paragraph 7 of the GlüStV,

3. the reliability of the organiser or the intermediary, who must, in particular, ensure that the organisation and intermediation are carried out in a regular manner and easily verifiable by players and the competent authorities,

4. the participation, in accordance with Paragraph 9(5) of the GlüStV, of the technical committee in the introduction of new games of chance, of new distribution channels or in considerable enlargement of existing distribution channels and a guarantee that a report on the social repercussions of the new or enlarged supply of games of chance has been drafted,

5. a guarantee that the organisers, within the meaning of Paragraph 10(2) of the GlüStV, participate in the concerted system for prohibiting certain players in accordance with Paragraphs 8 and 23 of the GlüStV,

6. a guarantee that players prohibited from gambling in accordance with the first sentence of Paragraph 21(3) and the first sentence of paragraph 22(2) of the GlüStV are excluded, and

7. compliance by intermediaries in commercial gambling with Paragraph 19 of the GlüStV.

If the conditions in the first sentence are met, authorisation should be given.'

22 Paragraph 9 of the GlüStV AG provides:

'By derogation from Paragraph 4(4) of the GlüStV, in the case of lotteries, organisation and intermediation on the internet may be authorised until 31 December 2008 if compliance with the conditions set out in Paragraph 25(6) of the GlüStV is guaranteed....'

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

23 Carmen Media is established in Gibraltar, where it obtained a licence authorising it to market bets on sporting competitions. For tax reasons, however, that licence is limited to the marketing of bets abroad ('offshore bookmaking').

24 In February 2006, wishing to offer such bets via the internet in Germany, Carmen Media applied to the Land Schleswig-Holstein for a declaration that that activity was lawful, having regard to the licence which Carmen Media holds in Gibraltar. In the alternative, it applied for the issuing of an authorisation for its activity, or, failing that, for tolerance of that activity until the establishment of an authorisation procedure for private offerors of bets which complies with Community law.

25 Those applications having been rejected on 29 May 2006, Carmen Media brought an action on 30 June 2006 before the Schleswig-Holsteinisches Verwaltungsgericht (Schleswig-Holstein Administrative Court). In support of that action, it argued, in particular, that the public monopoly on bets on sporting competitions in force in the Land Schleswig-Holstein infringed Article 49 EC. Contrary to the requirements laid down by the Court of Justice, in particular in Case C-243/01 *Gambelli and Others*

[2003] ECR I-13031), the legal and practical configuration of the public monopoly on bets on sporting competitions and lotteries arising from the LottStV did not enable a consistent and systematic fight against gambling addiction to be ensured. According to Carmen Media, other forms of gambling and bets, such as automated games, bets on horse races or bets offered by gaming establishments, are not subject to such a public monopoly, and, moreover, are experiencing increasingly extensive development, even though such games and bets generate a higher risk of addiction than bets on sporting competitions and lotteries. In the course of the judicial proceedings, Carmen Media has argued that such inconsistencies persist after the entry into force of the GlüStV and the GlüStV AG.

26 The Land Schleswig-Holstein counters that the fact that the licence held by Carmen Media is limited to 'offshore bookmaking' prevents it from relying on the Community provisions on the freedom to provide services, given that that operator cannot legally provide such services in the Member State in which it is established. The Land further argues that Community law does not contain any requirement of overall consistency between all regulatory provisions on games of chance. The various sectors of gambling are not comparable, and any shortcomings in one of those sectors cannot have an impact on the legality of the regime applicable to the others. The compliance of a public monopoly with Community law should therefore be assessed only in relation to the gambling sector concerned. In this case, the Land argues, that compliance is certain, particularly since the entry into force of the GlüStV and the GlüStV AG.

27 The referring court states that the success or otherwise of Carmen Media's application to become a private online provider of bets on sporting competitions in the Land Schleswig-Holstein depends in particular on the answer to be given to the two arguments thus put forward by the Land Schleswig-Holstein.

28 Regarding the first of those arguments, the referring court is of the opinion that, for a provider wishing to offer services via the internet to have applied to it the rules on the freedom to provide services, it is sufficient for the activity concerned not to be illegal in the Member State of establishment of the said provider. The question whether or not such a service is actually offered by that provider, on the other hand, is irrelevant. In this case, the offering of bets is not prohibited in Gibraltar, and it is only for tax reasons that the authorisation issued to Carmen Media covers only bets abroad.

29 Regarding the second argument, the referring court, which states that the internal legal regulations which must henceforward be considered are those arising from the GlüStV and the GlüStV AG, is in doubt as to whether the public monopoly, and the corresponding exclusion of private operators, in relation to bets on sporting competitions and all lotteries save for those presenting only a slight risk of danger, arising from the combined provisions of Paragraph 10(1), (2) and (5) of the GlüStV and Paragraph 4(2) of the GlüStV AG, infringes Article 49 EC.

30 That court states that, as is shown in particular by the explanatory report, the main objective of the GlüStV is to prevent and combat dependency on gambling. It considers in that respect that the case-law of the Court of Justice shows that, whilst the discretion which Member States enjoy in setting the objectives of their policy on gambling, particularly as regards the pursuit of a policy of preventing citizens from being encouraged to spend excessively in that area, while defining with precision the level of protection sought, authorises them in principle to create a monopoly, that is nevertheless on condition that the regulations adopted in that regard satisfy the principle of proportionality. The referring court cites in particular the judgment in Case C-124/97 *Läärä and Others* [1999] ECR I-6067, paragraph 39). The referring court doubts whether the public monopoly on bets on sporting competitions at issue in the main proceedings satisfies the requirement arising from paragraph 67 of the judgment in *Gambelli and Others* that the fight against dependence on gambling must be consistent and systematic.

31 The referring court points out in that regard, first, that, in relation to gaming machines, despite the fact that, in the current state of scientific knowledge and as is shown in particular by the explanatory report, they are demonstrated to present the highest potential risk of dependency amongst games of chance, the Federal Minister for the Economy has recently relaxed the conditions for their commercial exploitation by modifying the Regulation on Gambling Machines (BGBl. 2006 I, p. 280). The modifications which thus entered into force on 1 January 2006 include an increase in the number of gaming machines authorised in cafes from 2 to 3, a reduction in the minimum surface per machine in gaming arcades from 15 m2 to 12 m2, and an increase in the maximum number of machines in those arcades from 10 to 12. Similarly, the minimum gaming duration per machine has been reduced from 12 to 5 seconds, and the maximum loss has been fixed at EUR 80 instead of EUR 60.

32 Secondly, the referring court sees a contradiction between, on the one hand, the objectives justifying the public monopoly on bets on sporting competitions and, on the other, the expansionist policy of the German authorities on casino games, the dependency risk of which is also higher than that for sporting bets. During the period from 2000 to 2006, the number of authorised casinos rose from 66 to 81.

33 Thirdly, bets on public horse races or other horse trials are excluded from the scope of the GlüStV and are governed in particular by the RWLG, which authorises bets exploited commercially by private undertakings.

34 In the view of the referring court, the consistency of the legislation on games of chance should be assessed in the context of an overall view of the offers of games of chance which are authorised, that being the only approach capable of allowing the legislature effectively to remedy the dangers of addiction to gambling.

35 According to that court, the fact that those various forms of gaming and bets fall sometimes within the competence of the *Länder* and sometimes within the competence of the federal State should not, in that respect, be relevant for the purposes of assessing the conformity of the monopoly at issue in the main proceedings with Community law.

36 Should the Court of Justice reply to the first two questions referred that Article 49 EC applies to a situation such as that of the applicant in the main proceedings and that the said monopoly infringes that article, the question would then arise as to the form in which national law must satisfy the obligation to ensure the safeguarding of the rights which operators derive from that article, and, more particularly, the question would arise as to the conformity with that article of Paragraph 4(2) of the GlüStV, making the possibility of obtaining an authorisation subject to the conditions set out in that latter provision.

37 Similarly, the question would arise as to the compatibility with Article 49 EC of the prohibition on the organisation and intermediation of public games of chance on the internet, laid down by Paragraph 4(4) of the GlüStV. The referring court doubts in that respect whether such a measure may be regarded as suitable for attaining the objectives, here being pursued, of protecting minors and combating the risk of addiction to gambling.

38 In those circumstances, the Schleswig-Holsteinisches Verwaltungsgericht decided to stay the proceedings before it and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is Article 49 EC to be interpreted as meaning that reliance on the freedom to provide services requires that a service provider be permitted, in accordance with the provisions of the Member State in which it is established, to provide that service there as well (in the present case, restriction of the Gibraltar gambling licence to “offshore bookmaking”)?

(2) Is Article 49 EC to be interpreted as precluding a national monopoly on the operation of sports betting and lotteries (with more than a low potential risk of addiction), justified primarily on the grounds of combating the risk of gambling addiction, whereas other games of chance, with important potential risk of addiction, may be provided in that Member State by private service providers, and the different legal rules for sports betting and lotteries, on the one hand, and other games of chance, on the other, are based on the differing legislative powers of the *Bund* and the *Länder*?

Should the second question be answered in the affirmative:

(3) Is Article 49 EC to be interpreted as precluding national rules which make entitlement to the grant of a licence to operate and arrange games of chance subject to the discretion of the competent licensing authority, even where the conditions for the grant of a licence as laid down in the legislation have been fulfilled?

(4) Is Article 49 EC to be interpreted as precluding national rules prohibiting the operation and brokering of public games of chance on the internet, in particular where, at the same time, although only for a transitional period of one year, their online operation and brokering [are] permitted, subject to legislation protecting minors and players, for the purposes of compensation in line with the principle of proportionality and to enable two commercial gambling brokers who have previously operated exclusively online to switch over to those distribution channels permitted by the [GlüStV]?'

The questions referred

The first question

39 By its first question, the referring court asks whether an operator wishing to offer bets on sporting competitions in a Member State other than the one in which it is established may rely on the provisions of Article 49 EC in a case where it does not hold an authorisation allowing it to offer such bets to persons within the territory of the Member State in which it is established, but holds only an authorisation to offer those services to persons outside that territory.

40 In that regard, it should be noted that activities which consist in allowing users to participate, for remuneration, in a game of chance constitute 'services' for the purposes of Article 49 EC (see, to that effect, Case C-275/92 *Schindler* [1994] ECR I-1039, paragraph 25, and Case C-67/98 *Zenatti* [1999] ECR I-7289, paragraph 24).

41 Therefore, as consistent case-law shows, such services fall within the scope of Article 49 EC where the provider is established in a Member State other than the one in which the service is offered (see, to that effect, *Zenatti*, paragraphs 24 and 25). That is particularly so in the case of services which the provider offers via the internet to potential recipients established in other Member States and which he provides without moving from the Member State in which he is established (see, to that effect, *Gambelli and Others*, paragraphs 53 and 54).

42 The fact that the authorisation issued to an operator established in a Member State covers only bets offered, via the internet, to persons located outside the territory of that Member State cannot, by itself, have the consequence of taking such an offer of bets outside the scope of the freedom to provide services guaranteed by Article 49 EC.

43 The right of an economic operator, established in a Member State, to provide services in another Member State, which that provision lays down, is not subject to the condition that the said operator also provides such services in the Member State in which he is established (see Case C-56/96 *VT4* [1997] ECR I-3143, paragraph 22). In that regard, Article 49 EC requires only that the provider be established in a Member State other than that of the recipient.

44 Such a finding is, moreover, without prejudice to the ability of any Member State whose territory is covered by an offer of bets emanating, via the internet, from such an operator, to require the latter to comply with restrictions laid down by its legislation in that area, provided those restrictions comply with the requirements of European Union law ('EU law'), particularly that they be non-discriminatory and proportionate (Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* [2007] ECR I-1891, paragraphs 48 and 49).

45 In that regard, it should be noted that, with regard to the justifications which may be accepted where internal measures restrict the freedom to provide services, the Court has held several times that the objectives pursued by national legislation in the area of gambling and bets, considered as a whole, usually concern the protection of the recipients of the services in question, and of consumers more generally, and the protection of public order. It has also held that such objectives are amongst the overriding reasons in the public interest capable of justifying obstacles to the freedom to provide services (see to that effect, in particular, *Schindler*, paragraph 58; *Läärä and*

Others, paragraph 33; *Zenatti*, paragraph 31; Case C-6/01 *Anomar and Others* [2003] ECR I-8621, paragraph 73; and *Placanica and Others*, paragraph 46).

46 The case-law of the Court of Justice thus shows that it is for each Member State to assess whether, in the context of the legitimate aims which it pursues, it is necessary wholly or partially to prohibit activities of that nature, or only to restrict them and to lay down more or less strict supervisory rules for that purpose, the necessity and the proportionality of the measures thus adopted having only to be assessed having regard to the objectives pursued and the level of protection sought to be ensured by the national authorities concerned (see to that effect, in particular, *Läärä and Others*, paragraphs 35 and 36; *Zenatti*, paragraphs 33 and 34; and Case C-42/07 *Liga Portuguesa de Futebol Profissional and Bwin International* [2009] ECR I-7633, paragraph 58).

47 Doubts have been cast by the Belgian and Austrian Governments, with reference in particular to Case C-148/91 *Veronica Omroep Organisatie* [1993] ECR I-487 and Case C-196/04 *Cadbury Schweppes and Cadbury Schweppes Overseas* [2006] ECR I-7995, as to whether Carmen Media may, in the circumstances of the case at issue in the main proceedings, rely on rules on the freedom to provide services, given that that operator established itself in Gibraltar, encouraged in that respect by a tax incentive, only in order to escape the stricter rules that would have been applicable to it if it had established itself in the territory of the Member State towards which its business is directed.

48 However, such considerations are outside the scope of this reference for a preliminary ruling.

49 This reference concerns only the point whether lack of an authorisation issued by the Gibraltar authorities, permitting it also to offer bets in the territory of Gibraltar, is capable of taking an operator such as Carmen Media outside the scope of the provisions of the EC Treaty on the freedom to provide services. The referring court has not supplied precise information or raised any particular doubts as to the reasons which led Carmen Media to establish itself in Gibraltar, or put any questions to the Court as to the consequences which might follow therefrom.

50 It should also be remembered that the Court of Justice has previously held that the question of the applicability of Article 49 EC is distinct from that of whether a Member State may take measures to prevent a provider of services established in another Member State from circumventing its internal legislation (see, to that effect, Case C-23/93 *TV10* [1994] ECR I-4795, paragraph 15, and, by analogy, concerning the freedom of establishment, Case C-212/97 *Centros* [1999] ECR I-1459, paragraph 18).

51 In those circumstances, there is no need for the Court to rule, in these proceedings, on the doubts thus expressed by the Belgian and Austrian Governments.

52 Having regard to all the foregoing, the answer to the first question is that, on a proper interpretation of Article 49 EC, an operator wishing to offer via the internet bets on sporting competitions in a Member State other than the one in which it is established does not cease to fall within the scope of the said provision solely because that operator does not have an authorisation permitting it to offer such bets to persons within the territory of the Member State in which it is established, but holds only an authorisation to offer those services to persons located outside that territory.

The second question

53 Having regard to the information contained in the order for reference, as reported in paragraphs 29 to 35 of this judgment, this Court considers that, by its second question, the referring court is asking, in essence, whether Article 49 EC must be interpreted as precluding the establishment, by a regional entity, of a public monopoly on the organisation of bets on sporting competitions and lotteries, essentially motivated by prevention of the incitement to squander money on gambling and the fight against addiction to the latter, inasmuch as it is doubtful, in this case, that that objective is being pursued in a consistent and systematic manner, having regard:

— first, to the fact that the exploitation of other games of chance, such as bets on competitions involving horses or automated games, is authorised on the part of private operators, and

— secondly, to the fact that offers relating to other games of chance, such as casino games or automated games installed in gaming arcades, cafes, restaurants and places of accommodation are subject to a policy of expansion.

54 The referring court also asks whether the answer to that question may be affected by the fact that the regulation of those other games of chance falls at least partly within the competence of the federal State.

55 As a preliminary observation, it should be noted that, in paragraph 67 of the judgment in *Gambelli and Others*, after stating that restrictions on gaming activities might be justified by imperative requirements in the public interest, such as consumer

protection and the prevention of both fraud and incitement to squander money on gambling, the Court held that that applied only in so far as such restrictions, based on such grounds and on the need to preserve public order, were suitable for achieving those objectives, inasmuch as they must serve to limit betting activities in a consistent and systematic manner.

56 As is apparent from paragraph 53 of this judgment, the referring court has doubts as to the scope of that latter requirement.

57 According to that court, it is doubtful whether a public monopoly such as that at issue in the main proceedings relating to bets on sporting competitions and established for purposes of preventing incitement to squander money on gambling and combating addiction to the latter is capable of contributing to limiting betting activities in a consistent and systematic manner, given the way in which other games of chance are marketed.

58 In that regard, as is apparent from the case-law referred to in paragraph 46 of this judgment, it is for each Member State to assess whether, in the context of the legitimate aims which it pursues, it is necessary wholly or partially to prohibit activities of that nature, or only to restrict them and to lay down more or less strict supervisory rules for that purpose, the need for and the proportionality of the measures thus adopted having to be assessed solely in relation to the objectives pursued and the level of protection which the national authorities concerned seek to ensure.

59 The Court has also held that, in the context of legislation which is compatible with the Treaty, the choice of methods for organising and controlling the operation and playing of games of chance or gambling, such as the conclusion with the State of an administrative licensing contract or the restriction of the operation and playing of certain games to places duly licensed for that purpose, falls within the margin of discretion which the national authorities enjoy (*Anomar and Others*, paragraph 88).

60 The Court has also held that, in the matter of games of chance, it is in principle necessary to examine separately for each of the restrictions imposed by the national legislation whether, in particular, it is suitable for achieving the objective or objectives invoked by the Member State concerned and whether it does not go beyond what is necessary in order to achieve those objectives (*Placanica and Others*, paragraph 49).

61 In paragraphs 50 to 52 of its judgment in *Schindler*, delivered in relation to legislation of a Member State prohibiting lotteries, the Court observed in particular that, whilst they might give rise to stakes comparable to those of lotteries and involve a significant element of chance, other games for money such as football pools or 'bingo', which remained authorised in that Member State, differed in their object, rules and methods of organisation from lotteries established in other Member States. They were therefore not in a comparable situation to that of lotteries prohibited by the legislation of that Member State and could not be assimilated to them.

62 As all the governments which have submitted observations before the Court have observed, it is undisputed that the various types of games of chance can exhibit significant differences, particularly as regards the actual way in which they are organised, the size of the stakes and winnings by which they are characterised, the number of potential players, their presentation, their frequency, their brevity or repetitive character and the reactions which they arouse in players, or, again, by reference to

whether, as in the case of games offered in casinos and slot machines in casinos or other establishments, they require the physical presence of the player.

63 In those circumstances, the fact that some types of games of chance are subject to a public monopoly whilst others are subject to a system of authorisations issued to private operators, cannot, in itself, render devoid of justification, having regard to the legitimate aims which they pursue, measures which, like the public monopoly, appear at first sight to be the most restrictive and the most effective. Such a divergence in legal regimes is not, in itself, capable of affecting the suitability of such a public monopoly for achieving the objective of preventing citizens from being incited to squander money on gambling and of combating addiction to the latter, for which it was established.

64 However, as pointed out in paragraph 55 of this judgment, the case-law of the Court of Justice also shows that the establishment, by a Member State, of a restriction on the freedom to provide services and the freedom of establishment on the grounds of such an objective is capable of being justified only on condition that the said restrictive measure is suitable for ensuring the achievement of the said objective by contributing to limiting betting activities in a consistent and systematic manner.

65 The Court has, similarly, held that it is for the national courts to ensure, having regard in particular to the actual rules for applying the restrictive legislation concerned, that the latter genuinely meets the concern to reduce opportunities for gambling and to limit activities in that area in a consistent and systematic manner (see to that effect, in particular, *Zenatti*, paragraphs 36 and 37, and *Placanica and Others*, paragraphs 52 and 53).

66 As the Court has already held in those various respects, in *Gambelli and Others*, paragraphs 7, 8 and 69, in so far as the authorities of a Member State incite and encourage consumers to participate in lotteries, games of chance or 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 gambling in order to justify restrictive measures, even if, as in that case, the latter relate exclusively to betting activities.

67 In the present case, after stating that bets on competitions involving horses and automated games can be exploited by private operators which hold an authorisation, the referring court has also established that, in regard to casino games and automated games, even though such games present a higher risk of addiction than bets on sporting competitions, the competent public authorities are pursuing a policy of expanding supply. Thus, the number of casinos has risen from 66 to 81 between 2000 and 2006, while the conditions under which automated games may be exploited in establishments other than casinos, such as gaming arcades, restaurants, cafes and places of accommodation, have recently been the subject of major relaxations.

68 In that respect, on the basis of such findings, it must be acknowledged that the referring court may legitimately be led to consider that the fact that, in relation to games of chance other than those covered by the public monopoly at issue in the main proceedings, the competent authorities thus pursue policies seeking to encourage participation in those games rather than to reduce opportunities for gambling and to limit activities in that area in a consistent and systematic manner has the effect that the aim of preventing incitement to squander money on gambling and of combating addiction to the latter, which was at the root of the establishment of the said monopoly, can no longer be effectively pursued by means of the monopoly, with the result that the latter can no longer be justified having regard to Article 49 EC.

69 As for the fact that the various games of chance concerned are partially within the competence of the *Länder* and partially within the competence of the federal State, it should be recalled that, according to consistent case-law, a Member State may not rely on provisions, practices or situations of its internal legal order in order to justify non-compliance with its obligations under EU law. The internal allocation of competences within a Member State, such as between central, regional or local authorities, cannot, for example, release that Member State from its obligation to fulfil those obligations (see to that effect, in particular, Case C-417/99 *Commission* v *Spain* [2001] ECR I-6015, paragraph 37).

70 It follows from the above that, whilst EU law does not preclude an internal allocation of competences whereby certain games of chance are a matter for the *Länder* and others for the federal authority, the fact remains that, in such a case, the authorities of the *Land* concerned and the federal authorities are jointly required to fulfil the obligation on the Federal Republic of Germany not to infringe Article 49 EC. It follows that, in the full measure to which compliance with that obligation requires it, those various authorities are bound, for that purpose, to coordinate the exercise of their respective competences.

71 Having regard to the whole of the above, the answer to the second question referred is that, on a proper interpretation of Article 49 EC, where a regional public monopoly on sporting bets and lotteries has been established with the objective of preventing incitement to squander money on gambling and of combating gambling addiction, and yet a national court establishes at the same time:

— that other types of games of chance may be exploited by private operators holding an authorisation; and

— that in relation to other games of chance which do not fall within the said monopoly and which, moreover, pose a higher risk of addiction than the games which are subject to that monopoly, the competent authorities pursue policies of expanding supply, of such a nature as to develop and stimulate gaming activities, in particular with a view to maximising revenue derived from the latter;

that national court may legitimately be led to consider that such a monopoly is not suitable for ensuring the achievement of the objective for which it was established by contributing to reducing the opportunities for gambling and to limiting activities within that area in a consistent and systematic manner. The fact that the games of chance subject to the said monopoly fall within the competence of the regional authorities, whereas those other types of games of chance fall within the competence of the federal authorities, is irrelevant in that respect.

The third question

72 By its third question, the referring court asks whether Article 49 EC must be interpreted as precluding national legislation which leaves it to the discretion of the competent authority whether to issue an authorisation for the organisation and intermediation of games of chance, even though the statutory conditions for grant are satisfied.

73 That question has been raised only in the alternative, in case the answer to the second question should make it appear that the monopoly at issue in the main proceedings infringes Article 49 EC. Given, however, that it is for the referring court, on the basis of the answer given by the Court of Justice to that second question, to determine whether or not that monopoly may be justified by the legitimate objectives in the general interest underlying its establishment, the Court should reply to the third question.

74 The Land Schleswig-Holstein has, however, cast doubt on the admissibility of that latter question by reason of a lack of sufficient reasoning in relation thereto in the order for reference.

75 In that regard, according to settled case-law, in proceedings under Article 267 TFEU, 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 EU law, the Court is, in principle, bound to give a ruling (see, in particular, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38, and Case C-169/07 *Hartlauer* [2009] ECR I-1721, paragraph 24).

76 The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite clear 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 (*PreussenElektra*, paragraph 39, and *Hartlauer*, paragraph 25).

77 In this case, as is apparent from paragraph 24 of this judgment, the action brought by Carmen Media seeks, in the case, in particular, of the monopoly at issue in the main proceedings being recognised as contrary to EU law, to obtain an order against the defendants in the main proceedings to issue an authorisation to Carmen Media to market bets on sporting competitions in the Land Schleswig-Holstein or, in the alternative, to tolerate that activity until the establishment of a procedure for authorisation in conformity with Community law.

78 In addition, the national legal background applicable to the dispute in the main proceedings shows that Paragraphs 4(1) and (2) of the GlüStV and Paragraph 5(1) of the GlüStV AG lay down different conditions to which the issuing of authorisations for the organisation and intermediation of games of chance is subject, Paragraph 4(2) of the GlüStV stating however, in particular, that there is no established right to the obtaining of an authorisation.

79 Such indications give an understanding of the reasons which prompted the referring court to ask its third question and to grasp the relevance which a reply to the latter might have for the resolution of the dispute in the main proceedings. Similarly, they are sufficient to allow the Court to give a useful answer to the question thus asked.

80 The third question referred is therefore admissible.

81 On the substance, it should be noted that, although the information supplied by the referring court shows that the Land Schleswig-Holstein has, as regards lotteries and bets on sporting competitions, established a public monopoly of which NordwestLotto Schleswig-Holstein GmbH & Co. KG is the holder, the possibility of issuing authorisations in this area appears, at least theoretically, to have been reserved by Paragraph 4(1) and (2) of the GlüStV and Paragraph 5(1) of the GlüStV AG.

82 The referring court asks, in essence, whether an authorisation regime such as that established by those provisions is able to satisfy the requirements under Article 49 EC even though it leaves the issuing of an authorisation for the organisation or the intermediation of games of chance to the free discretion of the competent authority, even though the conditions for grant laid down by those provisions are satisfied.

83 As stated in paragraph 46 of this judgment, it is for each Member State to assess whether, in the context of the legitimate aims which it pursues, it is necessary wholly or partially to prohibit gambling activities, or only to restrict them and to lay down more or less strict supervisory rules for that purpose.

84 The Court's case-law shows that, if a Member State pursues an objective seeking to reduce gambling opportunities, it is entitled, in principle, to establish a system of authorisation and in that respect to lay down restrictions as to the number of operators authorised (*Placanica and Others*, paragraph 53).

85 However, the margin of discretion which the Member States thus enjoy in restricting gambling does not exonerate them from ensuring that the measures they impose satisfy the conditions laid down in the case-law of the Court, particularly as regards their proportionality (see, in particular, *Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 59 and case-law cited).

86 According to consistent case-law, where a system of authorisation pursuing legitimate objectives recognised by the case-law is established in a Member State, such a system cannot render legitimate discretionary conduct on the part of the national authorities which is liable to negate the effectiveness of provisions of EU law, in particular those relating to a fundamental freedom such as that at issue in the main proceedings (see, in particular, Case C-203/08 *Sporting Exchange* [2010] ECR I-4695, paragraph 49).

87 Also, if a prior administrative authorisation scheme is to be justified, even though it derogates from a fundamental freedom, it must be based on objective, non-discriminatory criteria known in advance, in such a way as to circumscribe the exercise of the authorities' discretion so that it is not used arbitrarily. Furthermore, any person affected by a restrictive measure based on such a derogation must have an effective judicial remedy available to them (see *Sporting Exchange*, paragraph 50 and case-law cited).

88 In its written observations, the Land Schleswig-Holstein has argued in particular, concerning the authorisation referred to in Paragraph 4 of the GlüStV, that the discretion enjoyed by the competent authority is not absolute, but is limited by the legislative aim pursued, the principle of proportionality and fundamental rights. That would in particular exclude any arbitrary treatment and allow judicial review satisfying the requirements of a State governed by the rule of law. Moreover, the Land argues, Paragraph 5(1) of the GlüStV AG fixes the limits of the discretion of the said authority by laying down various conditions and specifying that, if those are fulfilled, the said authorisation should be granted. For its part, the German Government argues that the German legal order provides suitable remedies against discretionary administrative decisions which are revealed to be arbitrary.

89 It is for the national court, which alone has jurisdiction to interpret national law, where appropriate, to verify whether or not the legislation at issue in the main proceedings, namely Paragraph 4(1) and (2) of the GlüStV and Paragraph 5(1) of the GlüStV AG, satisfies the requirements of EU law as described in paragraphs 85 to 87 of this judgment.

90 Having regard to the above, the answer to the third question is that, on a proper interpretation of Article 49 EC, where a system of prior administrative authorisation is established in a Member State as regards the supply of certain types of gambling,

such a system, which derogates from the freedom to provide services guaranteed by Article 49 EC, is capable of satisfying the requirements of that latter provision only if it is based on criteria which are objective, non-discriminatory and known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion so that it is not used arbitrarily. Furthermore, any person affected by a restrictive measure based on such a derogation must have an effective judicial remedy available to them.

The fourth question

91 By its fourth question, the referring court asks whether Article 49 EC must be interpreted as precluding national legislation prohibiting the organisation and intermediation of games of chance on the internet, in particular where it appears that those activities remain authorised for a transitional period of one year in order to enable operators who had hitherto operated only on the internet to effect a conversion of their business to other means of authorised communication, such transitional authorisation being granted on condition that, during the transitional period, various rules concerning the protection of minors and players are complied with.

92 The Land Schleswig-Holstein argues that it is not clear from the wording of the present question whether it concerns only the conformity with EU law of a transitional period such as that arranged by the legislation at issue in the main proceedings, or whether it also concerns the prohibition in principle on offering games of chance on the internet.

93 Those doubts are unfounded, however.

94 In the first place, it is clear from the wording of the question that the referring court enquires generally and primarily as to the conformity with EU law of a prohibition on the organisation and intermediation of games of chance on the internet, whereas the existence of the abovementioned transitional provisions is referred to, as the phrase 'in particular' indicates, only as a particularity to which regard must also be had in the case in the main proceedings.

95 In addition, as is shown by paragraph 37 of this judgment, the doubts expressed in the order for reference concern, in very general terms, the question whether a prohibition such as that in Paragraph 4(4) of the GlüStV may be regarded as suitable for pursuing the objectives of combating the risk of gambling addiction and protecting minors, which are deemed to underlie the adoption of the legislation at issue in the main proceedings.

96 Finally, it is clearly only on condition that the prohibition in principle on using the internet for offering games of chance may be regarded as suitable for achieving the legitimate objectives pursued that it may be asked whether the arrangement of a transitional period such as that at issue in the main proceedings is, or is not, likely to affect that suitability.

97 Concerning, first, the prohibition on the organisation and intermediation of games of chance on the internet, it should be noted that the referring court has confined itself to casting doubt on the conformity of that prohibition with EU law in the very general terms which have just been referred to in paragraph 95 of this judgment.

98 Since the referring court has not been more specific about the nature of the doubts which it has in that regard, merely referring to positions which the Commission is said to have adopted in a reasoned opinion addressed to the Federal Republic of Germany following notification by the latter of the draft of the GlüStV, without however explaining them in any way, the Court will limit its examination to the question whether a measure prohibiting offers of games of chance on the internet such as that contained in Paragraph 4(4) of the GlüStV may, in principle, be regarded as suitable for achieving the objectives of preventing incitement to squander money on gambling, combating gambling addiction, and protecting young people.

99 In that regard, it should be noted as a preliminary observation that the Court has previously acknowledged that a measure prohibiting, purely and simply, the practice of a form of gambling on the territory of a Member State, in that case lotteries, is capable of being justified by such overriding reasons in the public interest (see *Schindler*).

100 In the main proceedings, the prohibition in dispute concerns not the marketing of a particular type of gambling, but a channel through which games of chance may be offered, namely the internet.

101 The Court has already had occasion to emphasise the particularities concerned with the offering of games of chance on the internet (see *Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 72).

102 It has thus observed in particular that, because of the lack of direct contact between consumer and operator, games of chance accessible via the internet involve different and more substantial risks of fraud by operators against consumers compared with

the traditional markets for such games (*Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 70).

103 It should be noted that, in the same way, the characteristics specific to the offer of games of chance by the internet may prove to be a source of risks of a different kind and a greater order in the area of consumer protection, particularly in relation to young persons and those with a propensity for gambling or likely to develop such a propensity, in comparison with traditional markets for such games. Apart from the lack of direct contact between the consumer and the operator, previously referred to, the particular ease and the permanence of access to games offered over the internet and the potentially high volume and frequency of such an international offer, in an environment which is moreover characterised by isolation of the player, anonymity and an absence of social control, constitute so many factors likely to foster the development of gambling addiction and the related squandering of money, and thus likely to increase the negative social and moral consequences attaching thereto, as underlined by consistent case-law.

104 Moreover, it should be noted that, having regard to the discretion which Member States enjoy in determining the level of protection of consumers and the social order in the gaming sector, it is not necessary, with regard to the criterion of proportionality, that a restrictive measure decreed by the authorities of one Member State should correspond to a view shared by all the Member States concerning the means of protecting the legitimate interest at issue (see, by analogy, Case C-518/06 *Commission* v *Italy* [2009] ECR I-3491, paragraphs 83 and 84).

105 Having regard to the whole of the above, it must be acknowledged that a prohibition measure covering any offer of games of chance via the internet may, in principle, be regarded as suitable for pursuing the legitimate objectives of preventing incitement to squander money on gambling, combating addiction to the latter and protecting

young persons, even though the offer of such games remains authorised through more traditional channels.

106 Secondly, concerning the establishment of a transitional period such as that at issue in the main proceedings, it needs in particular to be verified whether the latter might not undermine the consistency of the legislation concerned by leading to a result contrary to the objective pursued.

107 In that respect, it should first be noted that the transitional measure at issue in the main proceedings applies only to lotteries, and not to other types of gambling.

108 Next, the explanations provided by the referring court show that that transitional measure is designed only to allow certain economic operators, who had hitherto legally offered lotteries via the internet in the Land concerned, to carry out a conversion of their business following the entry into force of the prohibition affecting their initial business, and that it is limited in duration to one year, which cannot be regarded as unreasonable in the said perspective.

109 Finally, it should also be emphasised, first, that, according to Paragraph 25(6) of the GlüStV and Paragraph 9 of the GlüStV AG, during the said transitional period, the operators concerned are obliged to comply with a series of conditions concerning the exclusion of minors and prohibited players, the limitation of stakes, the rules for and the frequency of the offer of games and the implementation of social measures, and, secondly, that the Land Schleswig-Holstein has stated before the Court that the benefit of that transitional measure was to be available, without discrimination, to all lottery operators who might be concerned.

110 It does not therefore appear that such a transitional period, in appearance justified by considerations of legal certainty (see, by analogy, Case C-347/06 *ASM Brescia* [2008] ECR I-5641, paragraphs 68 to 71), is likely to affect the consistency of the measure

prohibiting the offer of gambling on the internet and its suitability for achieving the objectives which it pursues (see, by analogy, in relation to a temporary exception from a prohibition on the operation of pharmacies by non-pharmacists, Joined Cases C-171/07 and C-172/07 *Apothekerkammer des Saarlandes and Others* [2009] ECR I-4171, paragraphs 45 to 50).

111 Having regard to all the foregoing, the answer to the fourth question is that, on a proper interpretation of Article 49 EC, national legislation prohibiting the organisation and intermediation of games of chance on the internet for the purposes of preventing the squandering of money on gambling, combating addiction to the latter and protecting young persons may, in principle, be regarded as suitable for pursuing such legitimate objectives, even if the offer of such games remains authorised through more traditional channels. The fact that such a prohibition is accompanied by a transitional measure such as that at issue in the main proceedings is not capable of depriving the said prohibition of that suitability.

Costs

112 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 (Grand Chamber) hereby rules:

1. On a proper interpretation of Article 49 EC, an operator wishing to offer via the internet bets on sporting competitions in a Member State other than the

one in which it is established does not cease to fall within the scope of the said provision solely because that operator does not have an authorisation permitting it to offer such bets to persons within the territory of the Member State in which it is established, but holds only an authorisation to offer those services to persons located outside that territory.

2. On a proper interpretation of Article 49 EC, where a regional public monopoly on sporting bets and lotteries has been established with the objective of preventing incitement to squander money on gambling and of combating gambling addiction, and yet a national court establishes at the same time:

— that other types of games of chance may be exploited by private operators holding an authorisation; and

— that in relation to other games of chance which do not fall within the said monopoly and which, moreover, pose a higher risk of addiction than the games which are subject to that monopoly, the competent authorities pursue policies of expanding supply, of such a nature as to develop and stimulate gaming activities, in particular with a view to maximising revenue derived from the latter;

that national court may legitimately be led to consider that such a monopoly is not suitable for ensuring the achievement of the objective for which it was established by contributing to reducing the opportunities for gambling and to limiting activities within that area in a consistent and systematic manner.

The fact that the games of chance subject to the said monopoly fall within the competence of the regional authorities, whereas those other types of games of chance fall within the competence of the federal authorities, is irrelevant in that respect.

3. **On a proper interpretation of Article 49 EC, where a system of prior administrative authorisation is established in a Member State as regards the supply of certain types of gambling, such a system, which derogates from the freedom to provide services guaranteed by Article 49 EC, is capable of satisfying the requirements of that latter provision only if it is based on criteria which are objective, non-discriminatory and known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion so that it is not used arbitrarily. Furthermore, any person affected by a restrictive measure based on such a derogation must have an effective judicial remedy available to them.**

4. **On a proper interpretation of Article 49 EC, national legislation prohibiting the organisation and intermediation of games of chance on the internet for the purposes of preventing the squandering of money on gambling, combating addiction to the latter and protecting young persons may, in principle, be regarded as suitable for pursuing such legitimate objectives, even if the offer of such games remains authorised through more traditional channels. The fact that such a prohibition is accompanied by a transitional measure such as that at issue in the main proceedings is not capable of depriving the said prohibition of that suitability.**

[Signatures]