JUDGMENT OF THE COURT (Second Chamber)

3 June 2010 *

In Case C-258/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 13 June 2008, received at the Court on 18 June 2008, in the proceedings

Ladbrokes Betting & Gaming Ltd,

Ladbrokes International Ltd

v

Stichting de Nationale Sporttotalisator,

* Language of the case: Dutch.

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues (Rapporteur), President of the Chamber, P. Lindh, A. Rosas, U. Lõhmus and A. Arabadjiev, Judges,

Advocate General: Y. Bot,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 12 November 2009,

after considering the observations submitted on behalf of:

— Ladbrokes Betting & Gaming Ltd and Ladbrokes International Ltd, by W. Hoyng and M. Meulenbelt, advocaten, instructed by S. Kon and M. Evans, Solicitors,

— Stichting de Nationale Sporttotalisator, by E. Pijnacker Hordijk, J. van Manen and M. van Wissen, advocaten,

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

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

— the Danish Government, by J. Bering Liisberg and V. Pasternak Jørgensen, acting as Agents,

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

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

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

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

— the Finnish Government, by A. Guimaraes-Purokoski, acting as Agent,

— the Norwegian Government, by P. Wennerås and K. Moe Winther, acting as Agents,

— the Commission of the European Communities, by E. Traversa, A. Nijenhuis and S. Noë, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 December 2009,

gives the following

Judgment

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

2 The reference has been made in proceedings between the Stichting de Nationale Sporttotalisator, a foundation governed by Netherlands law ('De Lotto'), and Ladbrokes Betting & Gaming Ltd and Ladbrokes International Ltd, companies established in the United Kingdom ('the Ladbrokes companies'), concerning the possibly unlawful conduct of those companies on the Netherlands market for games of chance.

Legal context

3 Article 1 of the Law on games of chance (Wet op de kansspelen; 'the Wok') provides:

'Subject to the provisions of Title Va of this Law, the following are prohibited:

(a) providing an opportunity to compete for prizes if the winners are designated by means of any calculation of probability over which the participants are generally unable to exercise a dominant influence, unless a licence therefor has been granted pursuant to this Law;

(b) promoting participation either in an opportunity as referred to under (a), provided without a licence pursuant to this Law, or in a similar opportunity, provided outside the Kingdom of the Netherlands in Europe, or to maintain a stock of materials intended to publicise or disseminate knowledge of such opportunities; …'

4 Article 16 of the Wok is worded as follows:

'1. The Minister for Justice and the Minister for Welfare, Public Health and Culture may grant to one legal person with full legal capacity a licence, for a period to be determined by them, to organise sports-related prize competitions in the interests of bodies operating for public benefit, particularly in the area of sport and physical education, culture, social welfare and public health.

2. The proceeds from prize competitions … shall be applied in respect of the interests which the legal person intends to serve by organising and operating sports-related prize competitions.

3. At least 47.5% of total proceeds from games of chance organised pursuant to this Title and to Title IVa, to be calculated on the basis of a calendar year, shall be allocated to the distribution of prizes. …'

5 Article 21 of the Wok states:

'1. The Ministers referred to in Article 16 shall lay down rules concerning licences for the organisation of sports-related prize competitions.

2. Those rules relate, inter alia, to:

a. the number of competitions to be organised;

b. the method of determining results and the prize scheme;

c. the management and covering of organisational costs;

d. the allocation of revenue from competitions organised;

e. the constitution and regulations of the legal person;

f. monitoring of compliance with the legislation by the authorities;

g. delivery and publication of the report to be drawn up annually by the legal person concerning its activities and financial results.'

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

6 Netherlands legislation in relation to games of chance is based on a system of exclusive licences under which (i) the organisation or promotion of games of chance is prohibited unless an administrative licence for that purpose has been issued, and (ii) only one licence is granted by the national authorities in respect of each of the games of chance authorised.

7 Furthermore, it is apparent from the case-file in the main proceedings as supplied to the Court by the referring court that there is no possibility at all of offering games of chance interactively via the internet in the Netherlands.

8 De Lotto is a non-profit-making foundation governed by private law which holds a licence for the organisation of sports-related prize competitions, the lottery and numbers games. Its objects, according to its constitution, are the collection of funds by means of the organisation of games of chance and the distribution of those funds among institutions working in the public interest, particularly in the fields of sport, physical education, general welfare, public health and culture.

9 The Ladbrokes companies are engaged in the organisation of sports-related prize competitions and are particularly well known for their bookmaking business. They offer a number of mainly sports-related games of chance on their internet site. They also offer the possibility of participating via a freephone number in the betting activities which they organise. The companies do not physically carry on any activity in the Netherlands.

10 De Lotto alleged that the Ladbrokes companies were, via the internet, offering games of chance to persons residing in the Netherlands for which they did not have the requisite licence under the Wok, and made an application for interim relief to the Rechtbank Arnhem (District Court, Arnhem) for the Ladbrokes companies to be required to put an end to that activity.

11 By judgment of 27 January 2003, the Rechtbank judge hearing the application for interim relief allowed the application and ordered the Ladbrokes companies to take steps to block access to their internet site for persons residing in the Netherlands and to make it impossible for such persons to participate in telephone betting. Those measures were confirmed by the judgments of the Gerechtshof te Arnhem (Regional Court of Appeal, Arnhem) and the Hoge Raad der Nederlanden (Supreme Court) of 2 September 2003 and 18 February 2005, respectively.

12 On 21 February 2003, De Lotto also issued proceedings against the Ladbrokes companies in a substantive action before the Rechtbank Arnhem. In its application, De Lotto sought confirmation of the coercive measures imposed on those companies by the judge who had heard the application for interim relief. By decision of 31 August 2005, the Rechtbank allowed De Lotto's application and ordered the Ladbrokes companies, on pain of imposition of a periodic penalty, to maintain the measures blocking access to games of chance via the internet or by telephone for persons residing in the Netherlands. That decision was upheld by the judgment of the Gerechtshof te Arnhem of 17 October 2006; the Ladbrokes companies therefore appealed in cassation to the referring court.

13 The Hoge Raad der Nederlanden took the view that an interpretation of European Union law was required to enable it to determine the dispute before it, and decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does a restrictive national gaming policy which is aimed at channelling the propensity to gamble and which in fact contributes to the achievement of the objectives pursued by the national legislation in question, namely the curbing of gambling addiction and the prevention of fraud, inasmuch as, by reason of the regulated offer of games of chance, participation in gambling activities occurs on a (much) more limited scale than would be the case if there were no national regulatory system, satisfy the condition set out in the case-law of the Court of Justice of the European Communities, particularly in the judgment in Case C-243/01 *Gambelli and Others* [2003] ECR I-13031, that such restrictions must limit betting activities in a consistent and systematic manner, even where the licence-holder/s is/are permitted to make the games of chance which they offer attractive by introducing new games, to bring the games which they offer to the notice of a wide public by means of advertising and thereby to keep (potential) gamblers away from the unlawful offer of games of chance (see Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* [2007] ECR I-1891, paragraph 55, *in fine*)?

(2) (a) Assuming that national legislation governing gaming policy is compatible with Article 49 EC, is it for the national courts to determine, on every occasion on which they apply that legislation in practice in an actual case, whether the measure to be imposed, such as an order that a particular website be made inaccessible to residents of the Member State concerned by means of software designed for that purpose, in order to prevent them from participating in the games of chance offered thereon, in itself and as such satisfies the condition, in the specific circumstances of the case, that it should actually serve the objectives which might justify the national legislation in question, and whether the restriction resulting from that legislation and its application on the freedom to provide services is not disproportionate in the light of those objectives?

(b) In answering Question 2a, does it make any difference if the measure to be implemented is not ordered and imposed in the context of the application of the national legislation by the authorities, but in the context of a civil action in which an organiser of games of chance operating with the required licence requests imposition of the measure on the ground that an unlawful act has been committed in its regard under civil law, inasmuch as the opposing party contravened the national legislation in question, thereby gaining an unfair advantage over the party operating with the required licence?

(3) Should Article 49 EC be interpreted in such a way that the application of that article results in the competent authority of a Member State being unable, on the basis of the closed licensing system that exists in that State for the provision of gaming services, to prohibit a service provider which has already been granted a licence in another Member State for the online provision of such services from also offering those services online in the first Member State?'

Consideration of the questions referred

The first question

14 By its first question, the national court asks, in essence, whether national legislation such as that at issue in the main proceedings, which seeks to curb addiction to games of chance and to combat fraud, and which in fact contributes to the achievement of those objectives, can be regarded as limiting betting activities in a consistent and systematic manner even where the holder(s) of an exclusive licence are entitled to make what they are offering on the market attractive by introducing new games and by means of advertising.

15 Article 49 EC requires the abolition of all restrictions on the freedom to provide services, even if those restrictions apply without distinction to national providers of services and to those from other Member States, when they are liable to prohibit, impede or render less advantageous the activities of a service provider established in another Member State where it lawfully provides similar services. The freedom to provide services is for the benefit of both providers and recipients of services (Case C-42/07 *Liga Portuguesa de Futebol Profissional and Bwin International* [2009] ECR I-7633, paragraph 51 and the case-law cited).

16 It is common ground that the legislation of a Member State under which exclusive rights to organise and promote games of chance are conferred on a single operator, and which prohibits any other operator, including an operator established in another Member State, from offering via the internet services within the scope of that regime in the territory of the first Member State, constitutes a restriction on the freedom to provide services enshrined in Article 49 EC (*Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 52, and Case C-203/08 *Sporting Exchange* [2010] ECR I-4695, paragraph 24).

17 However, it is necessary to assess whether such a restriction may be allowed as a derogation expressly provided for by Articles 45 EC and 46 EC, applicable in this area by virtue of Article 55 EC, or justified, in accordance with the case-law of the Court, by overriding reasons in the public interest (see, to that effect, *Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 55).

18 Article 46(1) EC allows restrictions justified on grounds of public policy, public security or public health. A certain number of overriding reasons in the public interest which may also justify such restrictions have been recognised by the case-law of the Court, including, in particular, the objectives of consumer protection and the prevention of both fraud and incitement to squander money on gambling, as well as the general need to preserve public order (*Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 56).

19 In that context, moral, religious or cultural factors, as well as the morally and financially harmful consequences for the individual and for society associated with betting and gaming, may serve to justify a margin of discretion for the national authorities, sufficient to enable them to determine what is required in order to ensure consumer protection and the preservation of public order (*Gambelli and Others*, paragraph 63, and *Placanica and Others*, paragraph 47).

20 The Member States are free to set the objectives of their policy on betting and gambling according to their own scale of values and, where appropriate, to define in detail the level of protection sought. The restrictive measures that they impose must, however, satisfy the conditions laid down in the case-law of the Court, in particular as regards their proportionality (see, to that effect, *Placanica and Others*, paragraph 48, and *Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 59).

21 Specifically, restrictions based on the reasons referred to in paragraph 18 of the present judgment must be suitable for achieving those objectives, inasmuch as they must serve to limit betting activities in a consistent and systematic manner (see, to that effect, *Gambelli and Others*, paragraph 67).

22 According to the case-law of the Court, it is for the national courts to determine whether Member States' legislation actually serves the objectives which might justify it and whether the restrictions it imposes do not appear disproportionate in the light of those objectives (*Gambelli and Others*, paragraph 75, and *Placanica and Others*, paragraph 58).

23 In the present case, the wording of the first question put by the referring court shows that the objectives of the Wok are clearly identified by that court, namely protection of consumers by the curbing of addiction to games of chance and prevention of fraud, and that, in the referring court's view, the national legislation at issue in the main proceedings does in fact serve those objectives and does not go beyond what is required in order to achieve them.

24 The referring court nevertheless has doubts as to the consistent and systematic nature of the national legislation, since the legislation pursues the objectives referred to in the preceding paragraph while allowing economic operators who have exclusive rights to organise games of chance in the Netherlands, such as De Lotto, to offer new games and to use advertising to make what they are offering on the market attractive.

25 As the Court has already held, it is possible that a policy of controlled expansion in the betting and gaming sector may be entirely consistent with the objective of drawing players away from clandestine betting and gaming – and, as such, activities which are prohibited – to activities which are authorised and regulated. In order to achieve that objective, authorised operators must represent a reliable, but at the same time attractive, alternative to a prohibited activity. This may as such necessitate the offer of an extensive range of games, advertising on a certain scale and the use of new distribution techniques (*Placanica and Others*, paragraph 55).

26 While it is true that the grounds of the judgment in *Placanica and Others* refer solely to the objective of crime prevention in the betting and gaming sector, whereas, in the present case, the Netherlands legislation is also designed to curb gambling addiction, the fact remains that those two objectives must be considered together, since they relate both to consumer protection and to the preservation of public order (see, to that effect, Case C-275/92 *Schindler* [1994] ECR I-1039, paragraph 58; Case C-124/97 *Läärä and Others* [1999] ECR I-6067, paragraph 33; and Case C-67/98 *Zenatti* [1999] ECR I-7289, paragraph 31).

27 It is for the national court to determine, in the light of the facts of the dispute before it, whether, in so far as the national legislation at issue in the main proceedings allows the holders of an exclusive licence to offer new games and to advertise, it may be regarded as forming part of a policy of controlled expansion in the betting and gaming sector, aiming, in fact, to channel the propensity to gamble into activities that are lawful.

28 If it were established that the Kingdom of the Netherlands is pursuing a policy of substantially expanding betting and gaming, by excessively inciting and encouraging consumers to participate in such activities, principally with a view to obtaining funds, and that, for that reason, the financing of social activities through a levy on the proceeds of authorised games of chance constitutes not an incidental beneficial consequence but the real justification for the restrictive policy adopted by that Member

State, it would have to be concluded that such a policy does not limit betting and gaming activities in a consistent and systematic manner and is not, therefore, suitable for achieving the objective of curbing consumer addiction to such activities.

29 In the context of that assessment, it is, specifically, for the national court to determine whether unlawful gaming activities may constitute a problem in the Netherlands and whether the expansion of authorised and regulated activities would be liable to solve such a problem.

30 Since the objective of protecting consumers from gambling addiction is, in principle, difficult to reconcile with a policy of expanding games of chance characterised, inter alia, by the creation of new games and by the advertising of such games, such a policy cannot be regarded as being consistent unless the scale of unlawful activity is significant and the measures adopted are aimed at channelling consumers' propensity to gamble into activities that are lawful.

31 The fact that demand for games of chance in the Netherlands has already increased noticeably, particularly at a clandestine level – assuming that is established as De Lotto indicated at the hearing – must be taken into consideration.

32 The national legislation at issue in the main proceedings aims not only to combat fraud and other crimes in the sphere of games of chance, but also to safeguard consumer protection. Thus, a fair balance has to be drawn between demand for the controlled expansion of authorised games of chance with the aim of making the provision of such games attractive for the public and the need to reduce as far as possible consumer addiction to such games.

33 Some of the evidence in the case-file submitted to the Court may be relevant for the purposes of that assessment.

34 According to the terms of the 2004 decision in relation to De Lotto's exclusive licence to organise sports-related prize competitions, that 'foundation shall ensure that marketing and advertising activities are sensible and balanced in content, and shall seek, in particular, to combat disproportionate participation in games of chance organised pursuant to the present decision'.

35 Furthermore, by letter of 23 June 2004, the Netherlands Minister for Justice requested that licensees 'severely restrict the amount of advertising and give shape and substance to that restrictive policy on advertising by drawing up a code of conduct and on advertising for operators of games of chance that is to be applicable to all of them'. That code came into force in the Netherlands on 15 February 2006.

36 That evidence may establish an intention on the part of the national authorities narrowly to circumscribe the expansion of games of chance in the Netherlands.

37 However, it is for the national court to determine whether the development of the market for games of chance in the Netherlands is such as to demonstrate that the expansion of games of chance is being supervised effectively by the Netherlands authorities, both with regard to the scale of advertising undertaken by holders of exclusive licences and with regard to the latter's creation of new games, and, in consequence, to reconcile appropriately the simultaneous achievement of the objectives pursued by the national legislation.

38 In the light of the foregoing considerations, the answer to the first question is that national legislation, such as that at issue in the main proceedings, which seeks to curb addiction to games of chance and to combat fraud, and which in fact contributes to the achievement of those objectives, can be regarded as limiting betting activities in a consistent and systematic manner even where the holder(s) of an exclusive licence are entitled to make what they are offering on the market attractive by introducing new games and by means of advertising. It is for the national court to determine whether unlawful gaming activities constitute a problem in the Member State concerned which might be solved by the expansion of authorised and regulated activities, and whether that expansion is on such a scale as to make it impossible to reconcile with the objective of curbing such addiction.

The second question

39 By its second question, the national court asks, in essence, whether, for the purpose of applying legislation of a Member State on games of chance which is compatible with Article 49 EC, it is for the national courts to determine, in each case, whether the implementing measure intended to ensure compliance with that legislation is suitable for achieving the objective of that legislation and is compatible with the principle of proportionality. The national court also asks whether it makes any difference if the measure to be taken is required not by the public authorities but by an individual in the context of a civil action.

40 As stated in paragraph 22 of the present judgment, it is for the national courts to determine whether Member States' legislation which restricts a fundamental freedom enshrined in the Treaty is suitable for achieving the public interest objectives that might justify it, and whether the restrictions it imposes do not appear disproportionate in the light of those objectives.

41 The wording of the second question is based on the premiss that the Netherlands legislation on games of chance is compatible with Article 49 EC.

42 In the case at issue in the main proceedings, the restriction on the freedom to provide services enshrined in Article 49 EC derives directly from the provisions of the Wok, in so far as, under the latter, exclusive rights to organise and promote games of chance are conferred on a single operator and any other operator, including an operator established in another Member State, is prohibited from offering via the internet services within the scope of that regime in the territory of the Member State concerned.

43 A measure which implements the national legislation at issue in the main proceedings, such as the injunction which the judge who heard the application for interim relief imposed on the Ladbrokes companies in order to block access to their internet site for persons residing in the Netherlands and to make it impossible for such persons to participate in telephone betting, is an indispensable element of the protection in respect of games of chance that is intended to be provided by the Netherlands within its own territory and cannot, therefore, be regarded as an additional restriction over and above that which arises directly from the provisions of the Wok.

44 That implementing measure merely ensures the effectiveness of Netherlands legislation concerning games of chance. Without such a measure, the prohibition laid down by the Wok would be ineffective, since economic operators who are not licensed by the national authorities would be able to provide games of chance on the Netherlands market.

45 Since the implementing measure laid down by the national legislation does not, in itself, impose additional restrictions on the market, consideration of its conformity with European Union law is closely linked to the national court's examination of the compatibility of the Wok with Article 49 EC.

46 In those circumstances, contrary to what is submitted by the Ladbrokes companies, there is no further need to consider whether the implementing measure is actually justified by an overriding reason in the public interest, whether it is suitable for achieving the objectives of limiting addiction to gambling and preventing fraud or whether it does not go beyond what is necessary to achieve those objectives.

47 Moreover, whether that implementing measure was adopted as a result of action by the public authorities to ensure compliance with national legislation or of an application by an individual in the context of a civil action to protect his rights under that legislation has no bearing on the outcome of the dispute before the national court.

48 The subject-matter of that dispute concerns the application of Article 49 EC, which confers on individuals rights which are enforceable by them and which the national courts must protect (see Case 33/74 *van Binsbergen* [1974] ECR 1299, paragraph 27, and Case C-208/05 *ITC* [2007] ECR I-181, paragraph 67).

49 It is for the national courts, irrespective of the procedure by which the matter has been brought before them, to take any measures necessary to ensure that economic operators may exercise their freedom to provide services in a Member State and in situations falling within the scope of European Union law.

50 It follows from the foregoing observations that the answer to the second question is that, for the purpose of applying legislation of a Member State on games of chance which is compatible with Article 49 EC, the national courts are not required to determine, in each case, whether the implementing measure intended to ensure compliance

with that legislation is suitable for achieving the objective of that legislation and is compatible with the principle of proportionality, in so far as that measure is necessary to ensure the effectiveness of that legislation and does not include any additional restriction over and above that which arises from the legislation itself. Whether that implementing measure was adopted as a result of action by the public authorities to ensure compliance with national legislation or of an application by an individual in the context of a civil action to protect his rights under that legislation has no bearing on the outcome of the dispute before the national court.

The third question

51 By its third question, the national court asks, in essence, whether Article 49 EC must be interpreted as precluding legislation of a Member State, such as the legislation at issue in the main proceedings, under which exclusive rights to organise and promote games of chance are conferred on a single operator, and which prohibits any other operator, including an operator established in another Member State, from offering via the internet services within the scope of that regime in the territory of the first Member State.

52 That question falls within the same legal framework as the first question referred in the case giving rise to the judgment in *Sporting Exchange* and is identical to it.

53 The Ladbrokes companies submit that they are holders of a licence issued by the authorities of the United Kingdom of Great Britain and Northern Ireland which allows them to offer sports-related prize competitions and other games of chance via the internet and by telephone, and are subject in the United Kingdom to very strict legislation for the prevention of fraud and of addiction to games of chance. They also allege that, where a Member State imposes restrictions relating to the organisation of such games, it must take into account the fact that the public interest justifying the restriction in question is already protected by the rules laid down by the Member State in which the provider of services is licensed to operate such games. There should be no duplication of controls and safeguards.

54 In that regard, it should be noted that the internet gaming industry has not been the subject of harmonisation within the European Union. A Member State is therefore entitled to take the view that the mere fact that an operator such as the Ladbrokes companies lawfully offers services in that sector via the internet in another Member State, in which it is established and where it is in principle already subject to statutory conditions and controls on the part of the competent authorities in that State, is not a sufficient assurance that national consumers will be protected against the risks of fraud and crime, in the light of the difficulties liable to be encountered in such a context by the authorities of the Member State of establishment in assessing the professional qualities and integrity of operators (see, to that effect, *Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 69).

55 In addition, 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).

56 The fact that an operator who offers games of chance via the internet does not pursue an active sales policy in the Member State concerned, particularly because he is not making use of advertising in that State, cannot be regarded as running counter to the considerations set out in the two preceding paragraphs. Those considerations are based solely on the effects of the mere accessibility of games of chance via the internet and not on the potentially different consequences of the active or passive provision of services by that operator.

57 It follows from this that, in the light of the specific features associated with the provision of games of chance via the internet, the restriction at issue in the main proceedings may be regarded as justified by the objective of combating fraud and crime (see, to that effect, *Liga Portuguesa de Futebol Profissional and Bwin International*, paragraph 72).

58 Therefore, the answer to the third question is that Article 49 EC must be interpreted as not precluding legislation of a Member State, such as the legislation at issue in the main proceedings, under which exclusive rights to organise and promote games of chance are conferred on a single operator, and which prohibits any other operator, including an operator established in another Member State, from offering via the internet services within the scope of that regime in the territory of the first Member State.

Costs

59 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 (Second Chamber) hereby rules:

1. **National legislation, such as that at issue in the main proceedings, which seeks to curb addiction to games of chance and to combat fraud, and which in fact contributes to the achievement of those objectives, can be regarded as limiting betting activities in a consistent and systematic manner even where the holder(s) of an exclusive licence are entitled to make what they are offering on the market attractive by introducing new games and by means of advertising. It is for the national court to determine whether unlawful gaming activities constitute a problem in the Member State concerned which might be solved by the expansion of authorised and regulated activities, and whether that expansion is on such a scale as to make it impossible to reconcile with the objective of curbing such addiction.**

2. **For the purpose of applying legislation of a Member State on games of chance which is compatible with Article 49 EC, the national courts are not required to determine, in each case, whether the implementing measure intended to ensure compliance with that legislation is suitable for achieving the objective of that legislation and is compatible with the principle of proportionality, in so far as that measure is necessary to ensure the effectiveness of that legislation and does not include any additional restriction over and above that which arises from the legislation itself. Whether that implementing measure was adopted as a result of action by the public authorities to ensure compliance with national legislation or of an application by an individual in the context of a civil action to protect his rights under that legislation has no bearing on the outcome of the dispute before the national court.**

3. Article 49 EC must be interpreted as not precluding legislation of a Member State, such as the legislation at issue in the main proceedings, under which exclusive rights to organise and promote games of chance are conferred on a single operator, and which prohibits any other operator, including an operator established in another Member State, from offering via the internet services within the scope of that regime in the territory of the first Member State.

[Signatures]