

**Case C-275/19**

**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

2 April 2019

**Referring court:**

Supremo Tribunal de Justiça (Portugal)

**Date of the decision to refer:**

21 March 2019

**Appellants and respondents at first instance:**

Internet Opportunity Entertainment Ltd

Sportingbet PLC

**Other respondents at first instance:**

Sporting Club de Braga

Sporting Club de Braga — Futebol, SAD

**Respondent on appeal and applicant at first instance:**

Santa Casa da Misericórdia de Lisboa

---

**Subject matter of the main proceedings**

This request for a preliminary ruling re-submits to the Court of Justice three (summarised as two) of the six questions considered to be inadmissible by the Court in the Order of 19 October 2017 in Case C-166/17. To that end, the referring court declares that it has now provided the information which was considered to be lacking and which led to that conclusion.

**Subject matter and legal basis of the reference**

Paragraphs 46 to 49 of that order of the Court of Justice are worded as follows:

‘46 By the eighth and tenth questions, the referring court asks in essence whether the technical regulations laid down by the legislation of a Member State, such as Decree-Law No 422/89 and Decree-Law No 282/2003, of which that State has not notified the Commission, apply to individuals.

47 In the present case, the order for reference does not reproduce the content of the legislation referred to in the eighth and tenth questions referred for a preliminary ruling and does not identify the exact provisions which may, potentially, constitute technical regulations. Moreover, the referring court has not identified the provisions of EU law which it is seeking to have interpreted or the relationship between that law and the national legislation at issue in the main proceedings. In addition, the questions do not fit within a context with which the Court of Justice is broadly familiar.

48 Given that the Court of Justice does not have the information needed to interpret the EU law concerned, it cannot reply to the eighth and tenth questions referred for a preliminary ruling.

49 In those circumstances, it must be concluded that the eighth and tenth questions are manifestly inadmissible.’

In the light of that reply, the referring court wishes to know whether Article 1(11) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 must be interpreted to the effect that national legislation conferring an exclusive right to organise and operate lotteries and mutual betting throughout the national territory by any electronic means of communication, in particular the internet, is a ‘technical regulation’ within the meaning of that provision.

### **Questions referred for a preliminary ruling**

(8) Given that the Portuguese State did not inform the European Commission of the technical regulations contained in Decree-Law No 442/89 of 2 December 1989, should those provisions – more specifically Article 3 (using the wording shown) and Article 9 mentioned below – be unenforceable, and can individuals rely on that lack of enforceability?

(9) Given that the Portuguese State did not inform the European Commission of the technical regulations contained in Decree-Law No 282/2003 of 8 November 2003, should those provisions – more specifically Article 2 and Article 3 mentioned below – be unenforceable as against service providers in Portugal?

### **Applicable provisions of EU law**

Directive of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical

standards and regulations and of rules on Information Society services, Article 1(11)

### **Provisions of national law relied on**

Decree Law No 422/89 of 2 December 1989 (the Gaming Law), Article 3 and Articles 6 to 9 (legislative texts attached, with the amendments successively introduced up to the date the present action was brought – 6 November 2006)

#### **Article 3**

##### **Gaming zones**

1 — The operation and playing of games of chance are only permitted in existing casinos in permanent or temporary gaming zones created by legislative decree or, otherwise, in the exceptional cases provided for in Articles 6 to 8.

2 — For the purposes of operating and playing games of fortune, there shall be gaming zones in the Algarve, Estoril, Figueira da Foz, Funchal, Porto Santo, Póvoa de Varzim, Tróia and Vidago-Pedras Salgadas.

3 — The minimum protective distance against competition between casinos in gaming zones shall be determined on a case-by-case basis in the administrative decree laying down the conditions for awarding each concession.

4 — By authorisation from the competent member of the Government, in consultation with the Inspeção-Geral de Jogos (Gaming Inspectorate), concession holders in the gaming zones may opt to operate bingo halls which comply with the regulatory requirements, subject to the same rules applicable to casinos, but provided also that those halls are located within the same municipal territory as the casinos.

Amendment to Article 3 introduced by Decree-Law No 10/95 of 19 January 1995:

#### **Article 3**

...

1 — The operation and playing of games of chance are only permitted in existing casinos in permanent or temporary gaming zones created by legislative decree or, otherwise, in the exceptional cases provided for in Articles 6 to 8.

2 — For the purposes of operating and playing games of fortune, there shall be gaming zones in the Azores, the Algarve, Estoril, Figueira da Foz, Funchal, Porto Santo, Póvoa de Varzim, Tróia and Vidago-Pedras Salgadas.

3 — The minimum protective distance against competition between casinos in gaming zones shall be determined on a case-by-case basis in the administrative decree laying down the conditions for awarding each concession.

4 — By authorisation from the competent member of the Government, in consultation with the Gaming Inspectorate, concession holders in the gaming zones may opt to operate bingo halls which comply with the regulatory requirements, subject to the same rules applicable to casinos, but provided also that those halls are located within the same municipal territory as the casinos.

...

## **Article 6**

### **Operating games on tourist routes and in airports**

1 — The competent member of the Government, in consultation with the Gaming Inspectorate and the Direcção-Geral do Turismo (Directorate-General for Tourism), may authorise, for a fixed period, the operation and playing of:

- (a) any games of fortune on board ships or aircraft outside the national territory operating on major tourist routes;
- (b) games on machines which pay prizes directly in coins or tokens in the transit zone of the international departure areas of airports.

2 — The operation of games referred to in paragraph 1(a) above may only be awarded to undertakings which own or charter national ships or aircraft or to undertakings holding a concession from the gaming zones with the authorisation of the latter, and the authorisation referred to in subparagraph (b) may only be awarded to an undertaking holding a concession from the gaming zone whose casino is closest to the airport, in a straight line, notwithstanding the provisions of Article 3(3).

3 — The operation and playing of games of fortune authorised in accordance with this article shall be subject to the rules laid down for operating and playing games in casinos, and the specific conditions which must be adhered to shall be laid down by order of the competent member of the Government.

Amendment to Article 6 introduced by Decree-Law No 10/95 of 19 January 1995:

## **Article 6**

### **Operating games on ships and aircraft**

1 — The member of the Government with responsibility for tourism, in consultation with the Gaming Inspectorate and the Directorate General for Tourism, may authorise, for a fixed period, the operation and playing of games of

chance of any kind on board aircraft or ships registered in Portugal when they are outside the national territory.

2 — The operation of games referred to in paragraph 1 above may only be awarded to undertakings which own or charter national ships or aircraft or to undertakings holding a concession from the gaming zones with the authorisation of the latter.

3 — The operation and playing of games of fortune authorised in accordance with this article shall be subject to the rules laid down for operating and playing games in casinos, and the specific conditions which must be adhered to shall be laid down by order of the competent member of the Government.

### **Article 7**

#### **Operating non-banked games and gaming machines outside casinos**

1 — During major tourist events, the competent member of the Government, in consultation with the Gaming Inspectorate and the Directorate-General for Tourism, may authorise the operation and playing of non-banked games.

2 — In localities where tourism is the predominant activity, the competent member of the Government, in consultation with the Gaming Inspectorate and the Directorate-General for Tourism, may authorise the operation and playing of slot machines in hotel or ancillary establishments with the features and dimensions determined by administrative regulation.

3 — The authorisations referred to in the preceding paragraphs may only be granted to a concession holder from the gaming zone whose casino is closest, in a straight line, to the location where the operation is to take place, notwithstanding the provisions of Article 3(3).

4 — The operation and playing of games in accordance with the preceding paragraphs shall be subject to the rules laid down for operating and playing games in casinos, and the specific conditions which must be adhered to shall be laid down by way of an order.

### **Article 8**

#### **Bingo games**

Bingo games may also be operated and played in dedicated halls outside the territory of the municipalities where the casinos are located and the adjacent territories, in accordance with the applicable special legislation.

## **CHAPTER II**

### **The concessions**

## **Article 9**

### **Concession rules**

The right to operate games of chance shall be reserved to the State and may be exercised only by undertakings which are established as limited liability companies and to which the Government has awarded the appropriate concession by administrative contract, save for the situations referred to in Article 6(2).

Decree-Law No 282/2003 of 8 de November 2003, Articles 2 and 3.

## **Article 2**

### **Scope**

The operations referred to in the preceding article shall be undertaken exclusively, throughout the national territory, including the radio spectrum, the analogical and digital terrestrial Hertzian spectrum, the internet and any other public telecommunications networks, by Santa Casa da Misericórdia de Lisboa through its Gaming Department, subject to the statutory provisions governing each of the games and Decree-Law No 322/91 of 26 August 1991.

## **Article 3**

### **Gaming contract**

1 — The gaming contract shall be concluded directly by the player and the Gaming Department of Santa Casa da Misericórdia de Lisboa, whether or not through intermediaries.

2 — A gaming contract is one in which one of the parties, after paying a given sum, receives numbers or predictions with which that party, in return, has the possibility of receiving a prize of a fixed or variable amount, to be paid out by the other party, depending on the outcome of a process based solely or primarily on chance and in accordance with predefined rules.

3 — The payment of a given sum by the player, giving him the possibility of receiving the game prize, may be made in cash, by direct debit into a current bank account or using the gamer card.

4 — The gaming contract shall be concluded only when the Gaming Department of Santa Casa da Misericórdia de Lisboa has received the sum referred to in the preceding paragraph and issued the receipt confirming that the bet has been made.

### **Brief summary of the facts and procedure**

(See request for a preliminary ruling in Case C-297/17)

**The essential arguments of the parties to the main proceedings**

(See request for a preliminary ruling in Case C-297/17)

**Brief summary of the basis for the request for a preliminary ruling**

(See request for a preliminary ruling in Case C-297/17)

WORKING DOCUMENT