

**Case C-719/23**

**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:**

23 November 2023

**Referring court:**

Tribunal Superior de Justicia de la Comunidad Valenciana (Spain)

**Date of the decision to refer:**

26 September 2023

**Applicants:**

Salones Comatel, S. L.

Inversiones Comatel, S. L.

Recreativos del Este, S. L.

SOS Hostelería

Unión de Trabajadores de Salones de Juego (UTSAJU)

ASVOMAR

**Defendant:**

Conselleria de Hacienda y Modelo Económico de la Generalitat Valenciana

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**Subject matter of the main proceedings**

Regulating gaming; legislation adopted by an Autonomous Community with the objective of regulating gaming; mandatory minimum distance of 500 metres between gaming establishments; mandatory minimum distance of 850 metres between gaming establishments and educational establishments; mandatory minimum distance of 850 metres between gaming establishments and educational establishments imposed retroactively; moratorium on the award of new licences or permits for gaming establishments and type B machines (slot machines) for a

maximum period of five years; obligations not imposed on publicly owned gaming establishments

### **Subject matter and legal basis of the request**

Article 267 TFEU; request for interpretation; compatibility of national legislation with Articles 26, 49 and 56 TFEU; suitability, necessity and proportionality; existence of less restrictive measures; equal treatment; distortion of competition

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

**1. Must Articles 26, 49 and 56 TFEU, setting out the principles of freedom to conduct a business, freedom of establishment and freedom to provide services, be interpreted as being compatible with national legislation (such as Article 5 of Decreto 97/2021, de 16 de julio, del Consell (Executive Decree 97/2021 of 16 July 2021) implementing Article 45(5) and (6) of Ley 1/2020, de 11 de junio, de la Generalitat, de regulaci3n del juego y de prevenci3n de la ludopatía en la Comunidad Valenciana (Law 1/2020 of 11 June 2020 of the Regional Government of Valencia on the regulation of gaming and the prevention of gambling addiction in the Autonomous Community of Valencia; ‘Law 1/2020’) establishing a system of minimum distances of 500 metres between gaming arcades and of 850 metres of separation between gaming arcades and educational establishments, when such legislation already has other less restrictive measures, but which may be deemed equally effective in protecting consumers, the public interest and *in particular minors*: such as (a) the prohibition of access and participation by minors, persons without legal capacity pursuant to a final court judgment, directors of sporting entities and referees of activities on which bets are placed, directors and shareholders of gambling companies, persons carrying weapons or who are intoxicated or under the influence of psychotropic substances, who disturb the conduct of gaming, persons registered in the register of persons banned from having access to gaming; and (b) the prohibition of advertising, promotion or sponsorship and of any type of commercial promotion, including remote methods using social media networks, and of the promotion of gaming outside premises, static advertising on public roads and means of transport, posters or images on any medium?**

**2. Irrespective of the answer to the above question: must Articles 26, 49 and 56 TFEU be interpreted as precluding national legislation such as that laid down in the second transitional provision of [Law 1/2020], retroactively establishing a mandatory minimum distance of 850 metres between gaming arcades and educational establishments for gaming arcades already in place that do not meet that distance requirement, when they request the renewal of their licence or permit following the entry into force of Law 1/2020, because such a requirement is incompatible with the principles referred to above of freedom to conduct a business, freedom of establishment and freedom to pursue a trade or business?**

3. Irrespective of the answers to the above questions: must Articles 26, 49 and 56 TFEU be interpreted as precluding national legislation such as that laid down in the tenth transitional provision of [Law 1/2020], establishing a moratorium of five years from the entry into force of that law on the award of new licences or permits for gaming establishments, because such a suspension of permits for a maximum period of five years is incompatible with the principles referred to above of freedom to conduct a business, freedom of establishment and freedom to pursue a trade or business?

4. Irrespective of the answers to the above questions: must Articles 26, 49 and 56 TFEU be interpreted as precluding national legislation such as that laid down in Articles 45(5) and (6) of [Law 1/2020], in so far as they impose obligations only on privately owned gaming arcades but not on publicly owned establishments, which are also not subject to the restrictions on advertising and access controls to which the former are subject, and do not have to comply with the following obligations: (a) compliance with a system of minimum distances of 500 metres between gaming arcades and of 850 metres of separation between gaming arcades and educational establishments; (b) retroactive compliance with the distance of 850 metres that must exist between gaming arcades and educational establishments for gaming arcades already in place that do not meet that distance requirement, when they apply for the renewal of their licence or permit following the entry into force of Law 1/2020; (c) a moratorium for a maximum period of five years from the entry into force of Law 1/2020 on the award of new licences or permits for gaming and betting establishments and the operation of slot machines?

Do the principles of market unity, of equal and uniform treatment, and of non-discrimination between and for the actors of the gaming sector preclude such provisions of national legislation? Does the situation described constitute an advantage that harms or distorts competition in the sector?

**Provisions of European Union law relied on**

TFEU, Articles 26, 49, 56, 106(1) and 107(1)

**Provisions of national law relied on**

*Law 1/2020*

Article 45(5) and (6) of Ley 1/2020, de 11 de junio, de la Generalitat, de regulaci3n del juego y de prevenci3n de la ludopatía en la Comunidad Valenciana (Law 1/2020 of 11 June 2020 of the Regional Government of Valencia on the regulation of gaming and the prevention of gambling addiction in the Autonomous Community of Valencia; ‘Law 1/2020’) provides:

‘5. Establishments which correspond to the types referred to in point 3(c) and (e) of this Article may not be located less than 850 metres away from an educational establishment accredited by the ministry responsible for education for the provision of compulsory secondary education, baccalaureate, basic vocational training and professional artistic education. That distance restriction does not apply to gaming establishments located outside residential land.

6. Establishments which correspond to the types referred to in point 3(b), (c) and (e) of this Article may not be located less than 500 metres away from another establishment which belongs to one of the types referred to in point 3(b), (c) and (e) of this Article.’

Points 3(c) and (e) of Article 45 refer, respectively, to gaming arcades and bookmakers. Point 3(b) refers to bingo halls.

Article 8(1), (2) and (6) of the above-mentioned law provides:

‘1. In the area of regional gaming and with respect to gaming operators authorised by the Generalitat, any type of advertising, promotion, sponsorship and any form of commercial communication, including that carried out online through social communication networks, referring to gaming activities and the establishments in which they are practised, are restricted.

2. The advertising and promotion of gaming outside gaming premises, as well as static advertising of gaming on public roads or means of transport, are prohibited within the Autonomous Community of Valencia.

...

6. Publicly owned media, with a broadcasting scope limited to part or all of the Valencian territory, shall not broadcast advertising about gaming activity, whether in person or online. This prohibition also includes information society services, and the broadcasting of programmes and images in which presenters, collaborators or guests appear to be gaming, or mention or show, directly or indirectly, establishments, arcades or premises associated with gaming, except in cases where the aim is to prevent or raise awareness about pathological gambling or compulsive gambling. The ministry responsible for gaming may authorise exceptions to this limitation in the case of publicly owned or national reserve games.’

The second transitional provision of the Law provides:

‘Licences issued prior to the entry into force of this law remain in effect for their entire original validity period. The possible renewal or extension of these licences after the entry into force of this law shall be subject to compliance with the requirements set out in this law and in the implementing regulations. However, the distance requirement between gaming establishments, regulated in Article 45(6) of this law, shall not apply to them.’

Finally, the tenth transitional provision of the Law provides:

‘For a maximum period of five years from the entry into force of this law, the suspension of new licences for gaming establishments is established, as well as new licences for the operation of type B or amusement machines with prizes, intended for installation in hospitality or similar premises.

In the event that, in the course of processing the renewal of a gaming establishment licence, the current location of the establishment does not comply with the distance requirement laid down in Article 45(5) of this law, the suspension referred to in the previous paragraph shall not apply to the processing of a new licence in another location.

During that period, the ministry responsible for gaming must coordinate a study that analyses the social and public health impact of existing gaming facilities (specific gaming premises and gaming machines in hospitality premises). Based on the outcome of that study, the ministry responsible for gaming must propose the limitations in the Valencian territory on the permissible number and distribution of gaming premises and type B or amusement machines with prizes for hospitality or similar premises, taking into account public health, population, socio-economic and territorial criteria.’

#### *Decree 97/2021*

Decreto 97/2021, de 16 de julio, del Consell, de medidas urgentes para la aplicación de la Ley 1/2020, de 11 de junio, de la Generalitat Valenciana de regulación del juego y de prevención de la ludopatía en la Comunidad Valenciana (Executive Decree 97/2021 of 16 July 2021 on urgent measures for the application of Law 1/2020 of 11 June 2020 of the Regional Government of Valencia on the regulation of gaming and the prevention of gambling addiction in the Autonomous Community of Valencia, ‘the contested decree’) is the regulatory provision against which the applicants have brought the present action.

Article 5, entitled ‘Authorisation for the renewal of licences of gaming establishments that do not comply with the distance requirement’, provides in paragraph 1, in essence, that, for the renewal of the licence of gaming establishments that do not comply with the distance requirement set out in Article 45(5) of Law 1/2020, to which the second paragraph of the law’s tenth transitional provision refers, the owners must request authorisation for the new location. Paragraph 2 of that article permits such establishments to remain temporarily in their current location for a maximum of nine months, provided that they comply with certain conditions.

Article 9(1) of the contested decree provides: ‘the installation of type B or amusement machines with prizes in hospitality or similar premises may only be authorised when the relevant licence has been obtained or requested prior to the entry into force of the law.’

Article 18 of the contested decree governs the commercial information that may be displayed on the outside of gaming establishments in a very restrictive manner. Specifically, it prohibits the display on the outside of such establishments of any type of advertising.

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 The applicants in the main proceedings have brought an action against the contested decree, published in the Official Gazette of the Government of Valencia of 4 August 2021. In particular, they challenge Articles 4, 5, 6, 9 and 18 of the decree.

### **The essential arguments of the parties in the main proceedings**

- 2 The applicants believe that Article 45(5) and (6) and the second and tenth transitional provisions of Law 1/2020, on which the contested decree is based, are contrary to Articles 49 and 56 TFEU and Articles 16 and 20 of the Charter of Fundamental Rights of the European Union ('the Charter'). They argue that the Valencian regulation makes it impossible for national operators or operators of other Member States to exercise their freedom of establishment or freedom to provide services by installing gaming arcades or type B machines in the Autonomous Community of Valencia or, of course, to provide their services freely.
- 3 In their view, a measure restricting freedom of establishment adopted by a Member State may be considered lawful under EU law provided that it complies with Article 16 of the Charter and is suitable for guaranteeing the attainment of the objectives at issue, not going beyond what is necessary in order to achieve them; they consider, however, that the Valencian legislation clearly infringes those criteria. There is already detailed regulation on the operation of gaming arcades that expressly prohibits the entry and presence of minors, accompanied by the strict application of a system of sanctions. The national legislature (the Valencian Parliament) does not set out any overriding reason in the public interest that could provide the basis for such an unnecessary and disproportionate restriction. In that respect, the applicants cite the judgments of 6 March 2007, *Placanica* (C-338/04, C-359/04 and C-360/04, EU:C:2007:133); of 30 April 2014, *Pfleger and Others* (C-390/12, EU:C:2014:281); and of 11 December 2014, *Commission v Spain* (C-678/11, EU:C:2014:2434).
- 4 The defendant takes the view that the contested decree is fully compatible with EU law and passes the test of proportionality (suitability, necessity and proportionality *stricto sensu*) established in both domestic law and the settled case-law of the Court of Justice. In that respect, it cites the judgment of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International* (C-42/07, EU:C:2009:519).

- 5 The defendant argues that the necessity for the measures established for the renewal of licences and authorisations is based on the fact that it is of the utmost importance to reduce the exposure of minors to gaming on their daily journeys to educational establishments, since, as has been concluded by the studies and reports provided, such a situation leads to the normalisation of such establishments as leisure sites within their group leisure model. In that regard, Report No 28/20030 issued by the secretariat of the Council for Market Unity on 11 March 2021 takes the view that the minimum distances of 500 metres imposed between bingo halls, gaming arcades and amusement arcades and the restrictive measures on the installation of type B or amusement machines with prizes in hospitality or similar premises are suitable, necessary and proportionate restrictions.
- 6 According to the defendant, prevention is of the utmost importance in forestalling the development of addictive conduct associated with gaming, particularly in adolescence, and it is an important good starting point for access by minors to such establishments to be expressly prohibited. However, it is equally important to prevent the over-exposure of minors to establishments of such a type, since reducing their exposure on their daily journeys to educational establishments will prevent the normalisation of such establishments as leisure sites within their group leisure model.
- 7 In addition, the defendant cites the reference in the preamble to Law 1/2020, namely that, according to the study ‘Young people, games of chance and betting. A qualitative approach’, published in 2020 by the Reina Sofía Centre for Childhood and Adolescence and the Foundation for Help to combat Drug Addiction, one of the main risk factors for the development of gambling addiction in adolescents and young people is the incorporation of gaming for money into the normalised leisure model for young people.
- 8 Finally, with regard to the measures concerning advertising, the defendant argues that the right to health takes precedence over other economic rights such as freedom to conduct a business. It is clear that the consumption of games of chance and betting has a serious impact on health, particularly for children, adolescents and other vulnerable groups, as declared by the Tribunal Supremo de España (Supreme Court of Spain), precisely in accordance with the case-law of the Court of Justice as set out, inter alia, in the judgment of 25 July 1991, *Aragonesa de Publicidad Exterior and Publivia* (C-1/90 and C-176/90, EU:C:1991:327).

### **Succinct presentation of the reasoning in the request for a preliminary ruling**

- 9 The Court of Justice has laid down limits on the discretion granted to Member States to determine the objectives and instruments of gaming policies, by requiring that restrictions imposed by national authorities meet the following requirements:
  - (a) They must apply, in all cases, in a non-discriminatory manner.

- (b) They must be consistent and suitable for securing the attainment of the objectives invoked by the national authorities.
  - (c) They must be proportionate and must not go beyond what is necessary to attain the objective or objectives on which their adoption is based.
  - (d) The national authorities may not act in an arbitrary manner and are subject, in particular, to a transparency obligation, to which there are certain exceptions.
- 10 With regard to the prohibition of discrimination, it must be pointed out that the prohibition of discrimination on the grounds of nationality is an EU value and a fundamental principle of EU law. That explains why the Court of Justice has shown itself to be particularly rigorous when requiring that any restrictions imposed by Member States do not discriminate on grounds of nationality, and such restrictions are only considered lawful when they impact indiscriminately all those concerned who are established in any Member State. In that connection, the Court of Justice has held that domestic legislation is incompatible with EU law in certain disputes relating to the taxation of gaming. To that effect, in its judgment of 13 November 2003, *Lindman* (C-42/02, EU:C:2003:613), the Court of Justice held that Finnish tax legislation that granted an exemption from tax for winnings from lotteries organised in Finland, while it made winnings obtained in other Member States, specifically Sweden, subject to tax, was discriminatory.
- 11 Of greater importance is the issue raised in the judgment of 9 September 2010, *Engelmann* (C-64/08, EU:C:2010:506), which examined the compatibility with EU law of Austrian legislation requiring concessionaires operating casinos to adopt the legal form of a public limited company and requiring them to have their company seat in Austria. The Court of Justice held that that latter obligation restricted freedom of establishment within the meaning of Article 49 TFEU and discriminated against operators with their company seat in other Member States.
- 12 With regard to the consistency of restrictions with the objectives of gaming policy, the power granted to Member States to establish the objectives of their national gaming policies also includes the power to determine the measures necessary in order to attain the objective pursued. In order to do that, Member States have discretion that, while being broad, is not unlimited. In accordance with the requirement for consistency, national regulations that establish restrictions on or obstacles to the internal market are required to be consistent with the objective pursued and capable of being justified in the light of the objective on which the restriction in question is based. In general, national legislation is appropriate for guaranteeing attainment of the objective invoked only if it genuinely reflects a concern to attain that objective in a consistent and systematic manner.
- 13 The Court of Justice has held that it is for national courts to assess the coherence and consistency of national legislation, indicating that they must evaluate whether the measures are appropriate for the objectives of public interest providing the

grounds for such measures. To that end, such an assessment must be carried out by adopting a process in which, first, the objectives pursued by the national authorities of the Member State in question are taken into consideration as a whole, and, second, each of the restrictions imposed by the national legislation are examined separately in order to determine whether they are appropriate for guaranteeing attainment of the objectives invoked.

- 14 The Court of Justice usually holds that the measures adopted by national authorities are consistent. However, on some occasions, it has openly questioned the consistency of restrictions imposed, as in the judgment of 6 November 2003, *Gambelli and Others* (C-243/01, EU:C:2003:597), in which it stated that ‘in so far as the authorities of a Member State incite and encourage consumers to participate in lotteries, games of chance and 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 betting in order to justify measures such as those at issue in the main proceedings’. It also held that the decision adopted by the Italian authorities to automatically renew, without a competitive procedure, the licences required in order to manage and operate betting on horse races was not consistent with the objective of preventing fraudulent or criminal activities by gaming operators.
- 15 In its judgment of 8 September 2010, *Stoß and Others* (C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, EU:C:2010:504), the Court of Justice questioned the consistency of public monopolies on bets on sporting competitions put in place by the Länder of Hesse and Baden-Württemberg with the objective of preventing incitement to squander money on gambling and fighting addiction to gambling. In that regard, it agreed with the position taken by the referring courts, which questioned whether such a monopoly was consistent with the objectives pursued by the legislation.
- 16 The reasoning in the judgment of 3 June 2010, *Ladbrokes Betting & Gaming and Ladbrokes International* (C-258/08, EU:C:2010:308) is highly enlightening. That judgment analyses the compatibility with EU law of Dutch legislation conferring exclusive rights to organise or promote games of chance on a single operator. In the case in question, the Hoge Raad der Nederlanden (Supreme Court, the Netherlands) expressed certain doubts regarding the consistent and systematic nature of legislation that, despite having the objectives of consumer protection, the curbing of gambling addiction and the prevention of fraud, permitted holders of exclusive rights to expand the range of games of chance they offered and to use advertising to make their offer more attractive. The Court of Justice held that the simultaneous existence of two objectives (consumer protection and the prevention of fraud and crime within games of chance) makes it necessary to find a fair balance between the two. As already indicated in the judgment of 6 March 2007, *Placanica* (C-338/04, C-359/04 and C-360/04, EU:C:2007:133), the development of a policy of controlled expansion effectively designed to channel the propensity to gamble into activities that are lawful is consistent with the objective of preventing fraud and crime.

- 17 In order to do so, authorised operators must be a reliable and attractive alternative to illegal gambling, and therefore they must be able to offer an extensive range of games, carry out advertising on a certain scale and use new distribution techniques. However, such a policy of controlled expansion in the betting and gaming sector is difficult to reconcile with the objective of protecting consumers from gambling addiction, and therefore 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 and not to increase the proceeds of authorised games of chance, which is merely an incidental beneficial consequence.
- 18 With regard to proportionality, it extends to the content and limits of fundamental rights. Such an aspect, namely a limit on public intervention, means that the principle of proportionality includes the following elements:
- (a) suitability, which requires the measures adopted at State level to be appropriate for the attainment of the objective pursued;
  - (b) necessity, which requires that there be no other less restrictive measure for the attainment of the desired objective and, if there are various alternatives, for the least restrictive one to be chosen;
  - (c) proportionality *stricto sensu*, pursuant to which the advantages of the measure for the public interest must in all cases be greater than the detriment caused to other rights.
- 19 The case-law of the Court of Justice on games of chance has emphasised that the necessity and proportionality of the measures adopted by a Member State must be assessed solely in relation to the objectives pursued and the level of protection which the national authorities concerned seek to ensure. In that regard, the Court of Justice considers that the criterion of proportionality does not require a restrictive measure to correspond to a view shared by all Member States concerning the means of protecting the legitimate interest.
- 20 It is therefore extraordinarily complicated to draw general conclusions concerning the proportionality of restrictions imposed in particular cases by Member States, since the impact of the specific circumstances of each case in this matter is significant and the Court of Justice notes that it is the judicial authorities of the Member State in question that must assess proportionality.
- 21 Initially, the Court of Justice opted not to analyse in great detail the proportionality of specific measures, refraining from making express decisions on that aspect. To that effect, in the judgment of 24 March 1994, *Schindler* (C-275/92, EU:C:1994:119), it did not consider the monopoly on lotteries put in place by UK law to be disproportionate. However, starting with the *Gambelli* case and, in particular, the *Placanica* judgment, the Court of Justice has been making a more detailed and systematic examination of the issue and, on occasions, even questions the proportionality of certain measures imposed by Member States. In

*Placanica*, the Court of Justice held that the requirement for a police authorisation was entirely commensurate with the objective pursued (preventing the involvement of operators in criminal or fraudulent activities). However, in both *Placanica* and *Gambelli*, the prohibition of companies whose shares are quoted on the regulated markets of other Member States being holders of a sports betting concession was held to be disproportionate, on the grounds that such a measure went beyond what was necessary to achieve the objective of preventing the involvement of gaming operators in criminal or fraudulent activities. In particular, the Court of Justice pointed out that less restrictive methods existed.

- 22 Such an increased involvement on the part of the Court of Justice in assessing the proportionality of restrictions imposed by national regulations on games of chance has led it to cast doubt upon compliance with that requirement in subsequent judgments. Thus, in the judgment of 13 September 2007, *Commission v Italy* (C-260/04, EU:C:2007:508), it held that the renewal by the Italian authorities, without a competitive procedure, of licences to operate betting on horse races was disproportionate.
- 23 Such a more detailed and exhaustive approach has not prevented the Court of Justice from upholding the proportionality of other restrictions imposed in the area by national authorities. In that regard, it is worth noting its support for the Dutch system of exclusive licences for operating sports-related betting in the judgment of 3 June 2010, *Sporting Exchange* (C-203/08, EU:C:2010:307), in which it emphasised that the decision to authorise just one operator simplifies supervision and prevents strong competition from arising between operators and resulting in an increase in gambling addiction.
- 24 To conclude the analysis of the present question, it is worth examining the guidelines and indications addressed to the national authorities in the *Stoß* judgment, in relation to the monopoly on sport-related betting established by various German Länder. The Court of Justice points out, first, that the institution of a monopoly does not require the authorities of the Member State to demonstrate, before the monopoly in question is instituted, that they have carried out a study on the proportionality of that measure. It also adds that a system of authorising just one operator (monopoly or exclusive rights) simplifies supervision of the supply of games of chance and offers better guarantees of effectiveness than systems where private operators operate in competition with each other. Despite the advantages offered by the above regulation model, the Court of Justice recalls that the institution of a monopoly is a highly restrictive measure, and that it is only justified when the objective is to offer a particularly high level of consumer protection; and therefore stresses that the legislative framework must ensure that the holder of the monopoly is able to pursue the objective by means of a supply that is quantitatively modest and qualitatively focused on the said objective and is subject to rigorous control by the public authorities.

- 25 With regard to Spanish national case-law, judgment 1408/2019 of the Supreme Court of 22 October 2019 must be highlighted. That declared the previous Valencian system for regulating gaming establishments, which imposed a minimum distance of 800 metres between gaming establishments, to be unlawful. In essence, the Supreme Court held that such regulation was not sufficiently justified and was disproportionate.
- 26 In the present case, in order to assess the compatibility of the contested decree with EU law, it is necessary to examine the following elements: (a) the principle of proportionality, in relation to the appropriateness, suitability and necessity of the measures and their non-discriminatory nature; (b) the principles of freedom to conduct a business, of establishment and access to the market and to carry on activities; (c) the principle of market unity and equal treatment irrespective of whether the economic operator is public or private, with a prohibition of any type of advantage that distorts competition or favours the public sector; and (d) in connection with the prohibition of discrimination, a ban on advantages that distort competition or are disguised forms of State monopoly.
- 27 From the point of view of the requirements of proportionality, suitability, appropriateness and necessity of the measures imposing a system of minimum distances of 500 metres between gaming establishments and 850 metres between gaming establishments and educational establishments, such measures may be incompatible with those requirements when the legislation has already provided for and established other less restrictive measures that may be considered equally appropriate and effective for consumer protection, and in particular for the protection of minors, such as the following: (a) prohibition of access and participation by minors, among other categories, and (b) prohibition of advertising, promotion or sponsorship and any type of commercial promotion, including remote methods using social media networks, as well as the promotion of gaming outside premises, static advertising on public roads and means of transport, posters or images on any medium.
- 28 It does not appear necessary to add the measures contained in the contested decree to the existing restrictive measures listed in the paragraph above, when the latter are judged to be appropriate for achieving the objectives that the provision seeks to attain, are less harmful and more respectful of the principles of the freedom to conduct a business, of establishment and access to the market and the carrying on of activities that the provisions of EU law seek to preserve (Articles 26, 49 and 56 TFEU) and act as useful tools in attaining such objectives without being detrimental to or sacrificing rights.
- 29 It appears that the same may be said of the imposition of a distance of 850 metres between gaming establishments and educational establishments on those establishments that are already in place but do not comply with the requirement, when they apply for the renewal of their licence or permit following the entry into force of Law 1/2020, as that constitutes a retroactive imposition of such a distance.

- 30 The same may be said of the five-year moratorium, following the entry into force of Law 1/2020, on the award of new licences for gaming establishments and new permits for the operation of type B machines (slot machines), because such a moratorium over such a long period constitutes a form of damage to the right to carry on a lawful activity.
- 31 Because of their harmfulness and severe impact, such measures appear to entail the suppression of genuine rights such as freedom to access markets and the freedom to establish companies and businesses, and are contrary to the above-mentioned articles of the TFEU.
- 32 Finally, with regard to equal treatment and the consistency of the restrictions imposed, in the *Gambelli* case the Court of Justice stated: ‘in so far as the authorities of a Member State incite and encourage consumers to participate in lotteries, games of chance and 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 betting in order to justify measures such as those at issue in the main proceedings.’
- 33 Such guidelines, which outlaw discrimination of any kind, are not guaranteed in the present case, since minimum distance restrictions only apply to privately owned gaming establishments, and not to those that are considered to be public establishments (State lotteries, pools and sports-related betting, the lottery run by ONCE, the Spanish National Organisation for the Blind, and so forth), which are also exempt from restrictions regarding advertising and controls on access to which the former are subject. It appears that restrictions of such a type, being only imposed on privately owned establishments, lead to the distortion of competition and a tendency towards a State monopoly on gaming.