COURT OF JUSTICE
OF THE EUROPEAN UNION

PRESS RELEASE No 65/26
Luxembourg, 23 April 2026

Advocate General's Opinion in Case C-683/24 | Spielerschutz Sigma

Gambling: According to Advocate General Emiliou, the request from an Austrian Court for a preliminary ruling concerning a new provision in the Maltese Gaming Act is inadmissible

However, should the Court of Justice take a different view, he proposes to find that such a provision, which is designed to prevent the recognition and enforcement of certain foreign judgments against Maltese-licenced gaming operators, is contrary to EU law

In June 2023, Malta introduced a new provision into the Maltese Gaming Act through an amendment tabled in Parliament as Bill 55. [1] Under that provision, [2] Maltese courts, as a matter of public policy, shall refuse to recognize and/or enforce in Malta any foreign judgment which, in essence, (i) upholds a claim against a Maltese-licenced gaming operator, (ii) based on the illegality of the services provided by that operator in a Member State, [3] whereas (iii) those services were lawful under Maltese law.

An Austrian court asked the Court of Justice whether such a provision is compatible with EU law, more precisely with the Brussels I *bis* Regulation [4] rules on recognition and enforcement of judgments. The Austrian Court is called upon to determine the liability of a lawyer who drafted, for a company financing claims of consumers seeking to recover stakes they placed with Maltese online gaming operators, an opinion on that very issue of compatibility. [5]

In today's opinion, Advocate General Nicholas Emiliou takes the view that the request for a preliminary ruling is inadmissible, since an answer to the questions referred does not appear necessary for the resolution of the dispute pending before the Austrian court. Indeed, the central issue there is not whether the new provision of the Maltese Gaming Act is, in fact, compatible with EU law, but rather whether the legal adviser's assessment was diligent at the time it was made.

That assessment is governed by national law and typically involves a comparison with the conduct expected by a reasonably prudent and well-informed member of the legal profession. What matters, in that context, is not whether the opinion ultimately proves to be correct, but whether it was reasonably defensible in the light of the legal framework and the information available at the relevant time. Such an assessment falls outside the scope of the Court's jurisdiction for preliminary rulings. The Court may interpret EU law, but it cannot determine whether a particular legal opinion was plausible or sufficiently diligent. [6]

Thus, according to Advocate General Emiliou, the Court should not answer the questions referred. However, should the Court take a different view and, for the sake of completeness, **he addresses the substance of the questions**.

To his mind, a national measure such as the new provision of the Maltese Gaming Act in question is manifestly incompatible with the rules governing the recognition and enforcement of judgments laid down in the Brussels I *bis* Regulation.

Under the Regulation, **judgments delivered by the courts of the Member States upholding players' claims for**

restitution against Maltese online gaming operators are, as a matter of principle, to be recognised and enforced in all other Member States, including Malta.

According to the Advocate General, **Malta cannot validly put forward the 'public policy (*ordre public*)' clause laid down in the Brussels I *bis* Regulation, together with the argument that the judgments targeted by the new provision of the Maltese Gaming Act are contrary to the freedom to provide services, to justify such a provision**.

Indeed, in general terms, the courts of a Member State may not refuse recognition of a judgment delivered in another Member State, on the basis of that 'public policy' clause, solely on the ground that they consider that EU law – including the freedom to provide services – has been incorrectly applied in that judgment. Substantive issues of EU law cannot be re-examined at the stage of recognition and enforcement, before the courts of the Member State addressed, under the guise of that clause.

Besides, the Maltese legislature could not legitimately proceed, in an abstract and general manner, as the new provision of the Maltese Gaming Act does, on the premiss that any judgment in civil and commercial matters which treats the services provided by a Maltese-licensed operator as unlawful in a Member State – notwithstanding the fact that those services are lawful under Maltese law – is necessarily incompatible with the freedom to provide services.

Indeed, the provision in question appears to rest on a particularly expansive interpretation of the freedom to provide services. According to that interpretation, operators holding a Maltese gaming licence would be entitled to provide their services freely and lawfully throughout the Union, as long as they comply with Maltese law. That interpretation has, however, been consistently rejected by the Court.

In fact, Member States may, in principle, apply their respective gambling law also to operators which provide services to consumers within their territory from another Member State, such as Malta. The 'country of origin' principle does not apply in the field of online gambling. Furthermore, **under the current state of EU law, Member States are under no obligation to recognise gambling licences issued by other Member States. Accordingly, a Maltese gaming licence is, in principle, valid only in Malta** and, where appropriate, in those Member States which choose to recognise such licences.

Thus, **as a rule, other Member States are entitled to apply their respective gambling laws to operators licenced in Malta**. [7] **Accordingly, situations are bound to arise in which the services provided by a gaming operator holding a Maltese licence[8] are unlawful in a Member State while being lawful under Maltese law – without that disparity, in itself, being at odds with the EU rules on the freedom to provide services.**

Finally, the Advocate General observes that the new provision of the Maltese Gaming Act in question reveals, at its core, a protective purpose. It **is designed to shield an industry which the Maltese Government itself describes as 'essential' to the national economy** from the potentially significant financial consequences that could arise if the operators concerned were required to satisfy the player's claims concerned. Those claims may, furthermore, have broader repercussions on the industry, and ultimately an impact on employment and public revenues in Malta. However, according to the case law of the Court of Justice, the fact that the enforcement of certain judgments may entail serious economic consequences for a national operator, an industry or even the Member State addressed does not justify recourse to the 'public policy' clause.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have

been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Press contact: Jacques René Zammit ✆ (+352) 4303 3355.

[1] The amendment, commonly referred to as "Bill 55", was introduced by Bill 55 of 2023, tabled in Parliament on 24 April and enacted into law in June 2023 (Act XXI of 2023 – Gaming (Amendment) Act 2023). It introduced Article 56A (the provision) into the Maltese Gaming Act.

[2] Notwithstanding any provision of the Code of Organization and Civil Procedure or any other law.

[3] Generally or with respect to a particular game of chance.

[4] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

[5] The lawyer concluded that the new provision of the Maltese Gaming Act was manifestly contrary to EU law and, accordingly, could not conceivably be applied by Maltese courts. The opinion further stated that pursuant to the Brussels I *bis* Regulation, enforcement proceedings in Malta ought, at first instance, to be completed within six months. (Relying on that opinion, the company continued to finance the legal proceedings in question in Austria. However, a few weeks later, a Maltese court refused, on the basis of the new provision, to grant recognition and enforcement in proceedings financed by that company.

[6] The Advocate General admits that the Court's answers might be of some interest to the Austrian court. However, they would not enable it to draw legally binding conclusions for the purposes of resolving the dispute. At most, they would constitute elements which that court could take into account, should it see it fit. In those circumstances, the link between the provisions of EU law at issue and the dispute in the main proceedings is too uncertain and indirect to justify the requirement of necessity.

[7] They may require those operators to comply with national rules governing, as the case may be, monopolies, licensing requirements and other regulatory constraints. They may also choose to prohibit certain games of chance altogether or to regulate them in a manner that departs significantly from the approach adopted in Malta.

[8] Or a particular game of chance offered by it.