Case C-194/25

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:

11 March 2025

Referring court:

Consiglio di Stato (Italy)

Date of the decision to refer:

7 March 2025

Appellant:

Leovegas Gaming plc

Respondent:

Autorità per le Garanzie nelle Comunicazioni

Other party:

Presidenza del Consiglio dei Ministri

Subject matter of the main proceedings

Leovegas Gaming plc challenges before the Consiglio di Stato (Council of State, Italy) the judgment of the Tribunale Amministrativo Regionale per il Lazio (Regional Administrative Court, Lazio, Italy) dismissing its appeal against a decision by which the Autorità per le Garanzie nelle Comunicazioni (Communications Regulatory Authority, Italy; 'AGCOM') had imposed a pecuniary penalty on it for advertising gambling on a television channel, in infringement of the applicable Italian legislation.

Subject matter and legal basis of the request

Article 267 TFEU. Interpretation of Articles 1 and 5 of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations

WORKING DOCUMENT

and of rules on Information Society services, in conjunction with Article 1(1)(e) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

First, the Court is asked whether national legislation that does not specifically concern the type of service offered, but its advertising – in the present case, a prohibition on the advertising of games or betting with monetary winnings by any means, in particular television broadcasts – constitutes a technical regulation falling within the scope of that directive, and thus subject to the obligation to notify the Commission provided for in Article 5 thereof. If the answer is in the affirmative, the Court is asked whether the breach of that notification requirement may be relied on by a private individual and whether the national court is obliged to declare the national provision laying down such a prohibition on advertising ineffective, even though that prohibition does not concern a technical aspect of the service provided, but the advertising of that service, prohibited in the overriding interests of public health and the prevention of gambling addiction.

Second, the Court is asked whether the prohibition of all advertising of gambling under national legislation is compatible with EU law, and in particular with the principle of proportionality, freedom of establishment and freedom to provide services within the EU, and the principles of legal certainty, equal treatment, non-discrimination and protection of legitimate expectations deriving from EU law.

Questions referred for a preliminary ruling

(1) Do the provisions of Directive (EU) 2015/15[3]5, and in particular Articles 1 and 5, apply even where the service, having the characteristics referred to in Article 1(1)(b) of Directive (EU) 2015/15[3]5, is provided via television broadcasting, as defined in Article 1(1)(e) of Directive (EU) 2010/13, having regard to the provisions of Article 1(2) of Directive (EU) 2015/15[3]5?

(2) If question (1) is answered in the affirmative, is Article 1(1)(e) of Directive (EU) 2015/1535 to be interpreted as including in its scope of application a rule such as that applied in the main proceedings, and, in particular, is it to be understood as relating specifically to the service in so far as it concerns a requirement of a general nature relating to the provision of the service referred to in Article 1(1)(b), namely a prohibition on advertising as applied in the main proceedings, imposed by legislation other than that governing the service itself, and is such a rule therefore subject to the notification requirement laid down in Article 5 of that directive?

(3) If questions (1) and (2) are answered in the affirmative, may the absence of notification pursuant to Article 5 of Directive (EU) 2015/1535 be relied on by a private individual in a case such as that in the main proceedings, and, if so, and in the event of a finding of infringement, does that entail an obligation for the

WORKING DOCUMENT

national court to declare the provision of national law ineffective, even in a case such as that in the main proceedings, where the internal rule potentially concerns an aspect that is neither extrinsic nor central to the service, whereas its non-application would be detrimental to values and principles that are protected by the same field of law [of the European Union], in particular consumer protection and the protection of human health?

(4) Must European Union law and, in particular, Articles 6 [of the Charter of Fundamental Rights of the European Union], 4(3) [TEU], 5(4) [TEU], 49 [TFEU] and 56(1) [TFEU], and the principles of legal certainty, equal treatment, non-discrimination and protection of legitimate expectations be interpreted as precluding a national rule such as that applied in the main proceedings which prohibits any form of advertising, including indirect advertising, in relation to games or betting with monetary winnings and gambling, however carried out and by any means, including sports, cultural or artistic events, television or radio broadcasts, daily and periodic press, publications in general, posters and online, digital and electronic channels, including social media?

Provisions of European Union law relied on

Charter of Fundamental Rights of the European Union: Articles 6, 35, 38 and 52(1)

TEU: Articles 4(3) and 5(4)

TFEU: Articles 4(1)(f), 6(a), 9, 12, 36, 49, 56(1), 114(3), 168 and 169

Directive (EU) 2015/1535: recitals 2, 3, 4, 5, 11, 12 and 16; Article 1(1)(a), (b), (c), (d), (e), (f) and (2)(b); Article 5(1); Article 7

In particular, Article 1(2)(b) of Directive (EU) 2015/1535 excludes from the scope of that directive the television broadcasting services referred to in Article 1(1)(e) of Directive 2010/13/EU.

Judgments of the Court of 4 February 2016, *Sebat Ince* (C-336/14, EU:C:2016:72); of 20 December 2017, *Bent Falbert and Others* (C-255/16, EU:C:2017:983); and of 12 September 2019, *VG Media* (C-299/17, EU:C:2019:716); of 30 April 1996, *CIA Security International* (C-194/94); of 8 September 2005, *Lidl Italia* (C-303/04, EU:C:2005:528); of 26 September 2000, *Unilever Italia* (C-443/98, EU:C:2000:496); Opinion of Advocate General Jacobs of 27 January 2000 in Case C-443/98.

Judgments of the Court of 22 January 2015, *Stanley International Betting* (C-463/13, EU:C:2015:25); of 28 February 2018, *Sporting Odds* (C-463/13, EU:C:2018:130); and of 11 July 2019, *Agrienergy and Fusignano Due* (C-180/18, C-286/18 and C-287/18, EU:C:2019:605).

WORKING DOCUMENT

Provisions of national law relied on

Legge 21 giugno 1986, n. 317 (Law No 317 of 21 June 1986), as amended by decreto legislativo n. 223/2017 (Legislative Decree No 223/2023), implementing Directive (EU) 2015/1535: Article 1, which reproduces the definition of technical regulation contained in Article 1(1)(f) of the directive; Article 5-bis(1), according to which, without prejudice to Article 9-ter [reproducing the text of Article 7 of Directive (EU) No 2015/1535], any draft technical regulation must be immediately notified by the authority responsible for its enactment to the European Commission, except where it merely transposes the full text of an international or European standard, in which case information regarding the relevant standard, together with the draft act enacting the standard, will suffice.

Decree-Law No 87 of 12 July 2018: Article 9. That article prohibits, for the specific purpose of strengthening consumer protection and effectively combating gambling addiction, any form of advertising, including indirect advertising, in relation to games or betting with monetary winnings and gambling, however carried out and by any means, including television broadcasts, and introduces an administrative financial penalty in the event of infringement of that prohibition, payable by, inter alia, the 'owner of the means or the site on which those advertisements are broadcast', of an amount equal to 20% of the value of the sponsorship or advertising and, in any event, not less than EUR 50 000. It gives AGCOM the power to impose those penalties.

Decreto-legge 13 settembre 2012, n. 158 (Decree-Law No 158 of 13 September 2012): Article 7(4), pursuant to which advertising related to games with monetary winnings is prohibited during television or radio broadcasts, theatre performances or cinema screenings, and in the daily and periodic press aimed at minors. That provision also prohibits, in general, advertising related to games with monetary winnings in newspapers, magazines and other publications, during television and radio broadcasts, cinema screenings and theatre performances, and on the internet, in which any of the following are apparent: (a) incitement to gamble or the glorification of gambling; (b) presence of minors; (c) absence of warnings about the risks of addiction to gambling, as well as an indication of where to find information on the odds of winning published by the Agenzia delle dogane e dei monopoli (Customs and Monopolies Agency, Italy) and available at betting outlets.

Legge 28 dicembre 2015, n. 208 (Law No 208 of 28 December 2015): Article 1(938), according to which all advertising is prohibited that: (a) encourages excessive or uncontrolled gambling; (b) denies that gambling may involve risks; (c) fails to make explicit the terms and conditions of incentives or bonuses; (d) implies or suggests that gambling is a means of solving financial or personal problems, or that it is a source of income or an alternative to work, rather than merely a form of entertainment; (e) implies that the player's experience, expertise or skill can reduce or eliminate the uncertainty of winning or allow him or her to win systematically; (f) targets or refers, even indirectly, to minors; (g)

WORKING DOCUMENT

uses signs, illustrations, characters and people directly and primarily of interest to minors; (h) implies that gambling contributes to improved social status and relationships; (i) depicts abstention from gambling in negative terms; (l) conflates the ease of gambling with the ease of winning; (m) makes unsubstantiated claims about the chances of winning; (n) refers to consumer credit services that can be used for gambling. Article 1(939), which prohibits the advertising of games with monetary winnings during general-interest radio and television broadcasts, in accordance with the principles of the European Union, between the hours of 7:00 and 22:00 daily, as well as the sponsorship of cultural, sports and research events.

Succinct presentation of the facts and procedure in the main proceedings

1 Leovegas Gaming Plc is a company active in the online international gambling sector whose registered office is in Malta. Since 2017, it has operated in Italy under a licence issued by the Italian Customs and Monopolies Agency (ADM), providing remote collection services for games, betting and gambling, inter alia, on channel 237 of the Sky television platform.

2 By decision of 17 October 2019, AGCOM imposed a pecuniary penalty of EUR 50 000 on Leovegas for having advertised several of its games on that television channel, in infringement of the prohibition on any form of advertising, even indirect advertising, related to games or betting with monetary winnings and gambling, laid down in Article 9 of Decree-Law No 87/2018.

3 Leovegas challenged the decision before Lazio Regional Administrative Court, which dismissed its appeal in its entirety; that judgment was then challenged before the Council of State, the referring court.

The essential arguments of the parties in the main proceedings

4 In the first place, Leovegas submits that its business activity (to which the advertisements which are the subject of the contested penalty relate) is covered by the concept of 'information society services', as defined in Article 1(1)(b) of Directive 2015/1535. More specifically, the prohibition on advertising laid down in Article 9 of Decree-Law No 87/2018 constitutes a technical rule in relation to those services, and is thus subject to the obligation of prior notification to the Commission laid down in Article 5(1) of that directive. Since the Italian Government did not notify the Commission of the prohibition in question, the referring court is obliged to disapply it and consequently annul the contested decision.

5 In the second place, Leovegas submits that the introduction of the prohibition on advertising amounts to a restriction on both the freedom of establishment and the freedom to provide services within the European Union, enshrined in Articles 49 and 56 TFEU, respectively. As such, it is contrary to the principles of necessity and proportionality under Article 5(4) TEU, as well as the principle of sincere

WORKING DOCUMENT

cooperation under Article 4(3) TEU. Furthermore, such a prohibition, by failing to distinguish between illegal operators and operators carrying out an activity under the necessary licences and permits, infringes the principle of non-discrimination. Lastly, Leovegas submits that the prohibition breaches the principles of legal certainty and legitimate expectations, given that it has been operating in Italy since 2017 after taking over a licence previously issued by the ADM, which provided, inter alia, for the obligation to take steps to promote legal and responsible gambling and on the basis of which it had made several investments.

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

6 In the light of the Court's case-law on the rules on information society services – and in particular the judgments of 4 February 2016, *Sebat Ince* (C-336/14, EU:C:2016:72), of 20 December 2017, *Bent Falbert and Others* (C-255/16, EU:C:2017:983), and of 12 September 2019, *VG Media* (C-299/17, EU:C:2019:716) – the referring court considers that, in principle, a distinction must be made between: (a) the general service of the remote collection of games, betting and gambling provided by Leovegas; (b) the same service provided by it via television; (c) the advertising of those services.

7 In the first place, the regulatory provisions relating to the general service provided by Leovegas may be covered by the concept of the rules on information society services within the meaning of Article 1(b) of Directive 2015/1535, in so far as that service concerns the collection of games, betting and gambling 'at a distance' (the requirement stipulated in point (i) of subparagraph (b) of that article), 'by electronic means', via the internet and digital, terrestrial and satellite television, as well as through fixed and mobile telephony (the requirement stipulated in point (ii) of subparagraph (b) of that article), and 'at the individual request of a recipient' of the service, namely the player (the requirement stipulated in point (iii) of subparagraph (b) of that article). In addition, Leovegas holds a valid licence issued by the ADM following the outcome of proceedings related to online gambling.

8 In the second place, that service retains the same characteristics when provided via television, since the collection of bets still takes place, with user interaction through the medium of television using technology enabling such interaction.

9 In the third place, the nature of the advertising is different, in so far as the service offered by Leovegas is merely the subject matter of the advertisement and is not at issue, given that the prohibition on advertising concerns the advertising per se, and not its subject matter.

10 In those circumstances, the referring court refers four questions to the Court of Justice for a preliminary ruling relating, first, to the interpretation of Directive 2015/1535 and, second, to the interpretation of certain principles of EU law. The answer to those questions is considered necessary in order to rule on the lawfulness of the punitive measure at issue in the main proceedings.

WORKING DOCUMENT

11 **By the first question**, the referring court asks whether the remote collection of bets, a service offered by Leovegas via a television broadcast (in this case, channel 237 of the Sky platform) is covered by the concept of information society services under Directive 2015/1535. That doubt arises from the fact that Article 1(2)(b) of Directive 2015/1535 expressly excludes from its scope 'television broadcasting services covered by point (e) of Article 1(1) of Directive 2010/13/EU [on audiovisual media services]'. The same exclusion had already been introduced in Article 1 of Directive 98/34/EC, later reproduced in the equivalent article of Directive (EU) 2015/1535, which replaced it.

12 Although in the judgments mentioned in paragraph 6 above, it is assumed that Directive 2015/1535 applies to national rules on activities carried out via television programmes, in the opinion of the referring court, the Court of Justice has never directly examined the scope of the exception provided for in Article 1(2)(b) of Directive 2015/1535, which, on the surface, appears to be general. According to the wording of that rule, it could be argued that a service, despite having the characteristics of an information society service within the meaning of Article 1(1)(b) of the directive in question (such as the general service provided by Leovegas; see paragraph 11 above), if it is provided via a television broadcast, it must be excluded from the application of Directive 2015/1535, and thus from the obligation to notify the Commission of the relevant technical regulations referred to in Article 5 thereof.

13 However, the referring court is unconvinced by that solution, since it could be argued that the reasons stated in recitals 4 and 20 of Directive 98/48/EC, which introduced the exception in question, mainly concern cultural policy measures implemented via television. Therefore, the non-application of Directive 2015/1535 cannot be relied on in relation to the types of services at issue in the main proceedings, namely games, betting and gambling. The referring court thus seeks clarification as to the correct interpretation in the first question referred for a preliminary ruling.

14 **By the second question referred for a preliminary ruling**, raised in the event that the Court answers the first question in the affirmative, the referring court asks whether the concept of technical regulation provided for in Article 1(1)(f) of Directive 2015/1535 also includes the prohibition on advertising the service related to games or betting with monetary winnings and gambling imposed by AGCOM in the punitive measure at issue in the main proceedings.

15 The referring court considers that that prohibition does not fall within the scope of the directive, since it is a rule that does not specifically concern an aspect of the information society service, but only the advertising of that service.

16 More specifically, the prohibition does not share the same purpose as the technical regulations and rules on information society services referred to in Directive 2015/1535, consisting of regulating 'such services in an explicit and targeted manner' (Article 1(1)(e)(i) of the directive), nor does it affect the service

WORKING DOCUMENT

provider's business activity (in this case, the collection of bets) or the requirements for the pursuit of that activity. Rather, the prohibition on advertising in question is expressly aimed at protecting consumers and public health, considering the 'significant growth in gambling in Italy, leading to a higher risk, especially for the most vulnerable individuals, of developing a socio-economic dependency with real pathological effects, compromising family life, work and finances, especially since the risk of running into debt and having to resort to high-interest loans often increases in those situations', as is apparent from the preparatory work for Article 9 of Decree-Law No 87 of 12 July 2018.

17 In other words, the prohibition on advertising does not prevent Leovegas from providing its services for the collection of bets, nor does it preclude other operators from becoming established in Italy to provide services of that type, but – merely by prohibiting the advertising of that service – it operates on a different level from Directive (EU) 2015/1535.

18 Accordingly, in the opinion of the referring court, if the Court of Justice were to find that the prohibition on advertising constitutes a technical regulation within the meaning of the directive, thereby breaching the obligation to notify the Commission and rendering that prohibition ineffective, it would paradoxically have the effect of depriving of protection situations for which the same EU law recognises primary protection and confers on the Union the competence to support, coordinate and supplement the actions of the Member States, such as in the area of the protection and improvement of human health, under Article 6(a) TFEU, and of consumer protection, under Article 4(2)(f) TFEU. The referring court further recalls that, in defining and implementing its actions and policies, the EU is promoting the fight against social exclusion, the protection of human health and consumer protection, taking as a base a high level of protection, and taking into account any new developments based on scientific evidence, pursuant to Articles 9, 12, 36, 114(3), 168 and 169 TFEU and Articles 35 and 38 of the Charter of Fundamental Rights of the EU.

19 On that specific point, the referring court raises, in the event that the Court of Justice should answer the second question in the affirmative, a **third question for a preliminary ruling**, on whether the absence of notification under Article 5 of Directive 2015/1535 may be relied on by a private individual and whether, in the event that the question is answered in the affirmative with a finding of the absence of notification, the referring court must disapply the prohibition on advertising at issue.

20 In principle, this 'disapplication' requirement has been asserted by the Court, for example in the judgments of 8 September 2005, *Lidl Italia* (C-303/04, EU:C:2005:528, paragraph 24), and of 30 April 1996, *CIA Security International* (C-194/94), on the grounds that the directive in question sets out a procedure for the notification of technical regulations and rules on information society services in order to protect, by means of preventive monitoring, the free movement of goods, such control serving a useful purpose in cases where those regulations may

WORKING DOCUMENT

constitute obstacles to trade in goods between Member States, such obstacles being permissible only if they are necessary to satisfy compelling requirements relating to the public interest (see paragraph 22 of the judgment in *Lidl Italia*).

21 In those circumstances, the referring court considers it necessary for the Court to clarify whether the mechanism applied in the event of failure to notify the technical regulations must always be that of the 'disapplication' of the national law: indeed, in the present case, if the prohibition on all advertising related to gambling, on the ground that it was not notified to the Commission, were to be disapplied, there would no longer be any substantive rule of EU law applicable to the disapplication, but the mere ineffectiveness of the prohibition itself, with deleterious effects on the protection it seeks to offer for public health and consumers.

22 In that case, the referring court questions whether it is the responsibility of the national court to find the national law ineffective owing to the breach of a procedural obligation by the Member State, or whether it should instead give rise to an action for failure to fulfil an obligation brought by the Commission against that Member State.

23 Moreover, the referring court points out that, in the present case, the declaration of ineffectiveness would undermine a rule that, although abstractly attributable to the technical regulations provided for in Directive 2015/1535, does not, as already observed, concern the service itself, but the advertising of that service, and thus does not directly affect the provision of the service or the freedom of establishment. In that respect, the resulting ineffectiveness would be too strict and disproportionate to the requirements relating to cooperation between the EU and the Member States, the freedom to provide services and the freedom of establishment.

24 Lastly, **by the fourth question referred for a preliminary ruling**, raised independently of the answer to the previous questions, the referring court asks the Court whether the prohibition of all advertising of gambling, such as the one at issue, is compatible with EU law, and in particular with Article 6 of the Charter, Articles 4(3) and 5(4) TEU and Articles 49 and 56, first subparagraph TFEU, and with the principle of proportionality, freedom of establishment and freedom to provide services within the EU, and the principles of legal certainty, equal treatment, non-discrimination and the protection of legitimate expectations deriving from EU law.

25 The referring court observes that the case-law of the Court allows restrictions on the freedom of establishment and the freedom to provide services where they are justified by overriding reasons in the public interest, such as, for example, requirements of a social nature or for crime prevention, consumer protection, the prevention of fraud or the limitation of the propensity to gamble, provided that the criteria of effective purpose, proportionality and effectiveness, equivalence and non-discrimination are met (see, in the matter of gambling, judgments of

WORKING DOCUMENT

22 January 2015, *Stanley International Betting* (C-463/13, EU:C:2015:25), and of 28 February 2018, *Sporting Odds* (C-463/13, EU:C:2018:130)).

26 In the opinion of the referring court, the prohibition of all advertising of gambling introduced by the national legislature appears justified by objective reasons in the public interest and does not exceed the purposes pursued by it, given the significant growth in gambling in Italy, and avoids encouraging, through advertising, an activity that, although lawful, can have deleterious effects on health, social life and family life, and lead to an increase in criminality linked to high-interest loans. For example, various studies conducted by the Istituto Superiore di Sanità (National Institute of Health, Italy) have shown that gambling affects 18 million Italians. Approximately 80% of gamblers say that they have seen or heard an advertisement for gambling, and of these, 19.3% say that they chose to gamble based on that advertisement. Accordingly, even in the absence of a general prohibition on advertising deriving from EU law, the referring court considers that a measure such as that provided for by Italian law does not conflict with the abovementioned principles of EU law (see, in particular, paragraphs 22 and 29 above), with the consequence that the questions raised by Leovegas are unfounded.

27 Furthermore, it must be excluded that such a prohibition, by failing to distinguish between illegal operators and operators carrying on an activity on the basis of the necessary licences and permits, violates the principle of equal treatment as Leovegas claims, since, according to the referring court, lawful gambling is also capable of causing the abovementioned risks.

28 Lastly, the referring court considers unfounded Leovegas' argument that it has been operating in Italy since 2017 after taking over a licence previously issued by the ADM, requiring it, inter alia, to take steps to promote lawful and responsible gambling, such that the prohibition of all advertising at issue, subsequently introduced by Article 9 of Decree-Law No 87/2018, breached its legitimate expectation that the rules on the existing arrangement would remain unchanged, and affected its investments under the previous regulatory framework. However, the referring court does not consider that any legitimate expectations have been breached and observes that the Court has already declared admissible regulatory measures that affect existing arrangements, provided that the solution is necessary in view of the intended purpose of the new legislation and it is clearly in the public interest [see, inter alia, judgment of 11 July 2019, *Agrienergy and Fusignano Due* (C-180/18, C-286/18 and C-287/18, EU:C:2019:605)]. Moreover, in the present case, the ADM gave no assurances that the existing licensing arrangements would be maintained, since it was a legislative amendment that introduced a mandatory rule – justified by the overriding requirements in the public interest described above – and was thus beyond the ADM's control. In any event, it represented a development of the existing prohibition on advertising, for example in relation to smoking or gambling addiction in minors, which a prudent operator could have foreseen.

WORKING DOCUMENT

29 In those circumstances, and for the reasons set out, the referring court stays the proceedings and refers the abovementioned four questions to the Court for a preliminary ruling.

WORKING DOCUMENT