JUDGMENT OF THE COURT (First Chamber)

11 June 2015 (*)

(Reference for a preliminary ruling — Freedom to provide services — Games of chance — National taxes on the operation of slot machines in amusement arcades — National legislation prohibiting the operation of slot machines outside casinos — Principles of legal certainty and of the protection of legitimate expectations — Directive 98/34/EC — Obligation to notify draft technical regulations to the Commission — Member State liability for damage caused by legislation contrary to EU law)

In Case C-98/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Törvényszék (Hungary), made by decision of 13 February 2014, received at the Court on 3 March 2014, in the proceedings

Berlington Hungary Tanácsadó és Szolgáltató kft,

Lixus Szerencsejáték Szervező kft,

Lixus Projekt Szerencsejáték Szervező kft,

Lixus Invest Szerencsejáték Szervező kft,

Megapolis Terminal Szolgáltató kft

v

Magyar Állam (Hungarian State),

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, S. Rodin (Rapporteur), A. Borg Barthet, M. Berger and F. Biltgen, Judges

Advocate General: N. Jääskinen,

Registrar: I. Illéssy,

having regard to the written procedure and further to the hearing on 14 January 2015,

after considering the observations submitted on behalf of:

– Berlington Hungary Tanácsadó és Szolgáltató kft, Lixus Szerencsejáték Szervező kft, Lixus Projekt Szerencsejáték Szervező kft, Lixus Invest Szerencsejáték Szervező kft and Megapolis Terminal Szolgáltató kft, by L. Kelemen, ügyvéd,

– the Hungarian State, by T. Bogdán and I. Janitsáry, ügyvédek,

– the Hungarian Government, by M. Fehér and G. Koós, acting as Agents,

– the Belgian Government, by L. Van den Broeck and J.-C. Halleux, acting as Agents, assisted by P. Vlaemminck and B. Van Vooren, advocaten,

– the Czech Government, by M. Smolek, J. Vláčil and T. Müller, acting as Agents,

– the Portuguese Government, by L. Inez Fernandes and P. de Sousa Inês, acting as Agents,

– the European Commission, by D. Loma-Osorio Lerena and A. Tokár, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6(3) TEU, Articles 34, 36, 52(1), 56 and 61 TFEU, and Articles 1, 8 and 9 of Directive 98/34/EC 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 (OJ 1998 L 204, p. 37), as amended by Council Directive 2006/96/EC of 20 November 2006 (OJ 2006 L 363, p. 81) (‘Directive 98/34’).

2 The request has been made in proceedings brought by Berlington Hungary Tanácsadó és Szolgáltató kft, Lixus Szerencsejáték Szervező kft, Lixus Projekt Szerencsejáték Szervező kft, Lixus Invest Szerencsejáték Szervező kft and Megapolis Terminal Szolgáltató kft against the Hungarian State concerning an action seeking compensation brought by those companies for the damage that they allegedly suffered as a result of the application of national legislation concerning the operation of slot machines contrary to EU law.

Legal context

EU law

3 Article 1 of Directive 98/34 is worded as follows:

‘For the purposes of this Directive the following meanings shall apply:

...

3. “technical specification”, a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking or labelling and conformity assessment procedures.

...

4. “other requirements”, a requirement, other than a technical specification, imposed on a product for the purpose of protecting, in particular, consumers or the environment, and which affects its life cycle after it has been placed on the market, such as conditions of use, recycling, reuse or disposal, where such conditions can significantly influence the composition or nature of the product or its marketing;

...

11. “technical regulation”, technical specifications and other requirements or rules on services, including the relevant administrative provisions, the observance of which is compulsory, *de jure* or *de facto*, in the case of marketing, provision of a service, establishment of a service operator or use in a Member State or a major part thereof, as well as laws, regulations or administrative provisions of Member States, except those provided for in Article 10, prohibiting the manufacture, importation, marketing or use of a product or prohibiting the provision or use of a service, or establishment as a service provider.

De facto technical regulations include:

– ...

– ...

– technical specifications or other requirements or rules on services which are linked to fiscal or financial measures affecting the consumption of products or services by encouraging compliance with such technical specifications or other requirements or rules on services; technical specifications or other requirements or rules on services linked to national social security systems are not included.

...’

4 Article 8(1) of that directive provides:

‘Subject to Article 10, Member States shall immediately communicate to the Commission any draft technical regulation, except where it merely transposes the full text of an international or European standard, in which case information regarding the relevant standard shall suffice; they shall also let the Commission have a statement of the grounds which make the enactment of such a technical regulation necessary, where these have not already been made clear in the draft.’

...’

5 According to Article 9 of that directive:

‘1. Member States shall postpone the adoption of a draft technical regulation for three months from the date of receipt by the Commission of the communication referred to in Article 8(1).

...

7. Paragraphs 1 to 5 shall not apply in cases where:

– for urgent reasons, occasioned by serious and unforeseeable circumstances relating to the protection of public health or safety, the protection of animals or the preservation of plants, and for rules on services, also for public policy, notably the protection of minors, a Member State is obliged to prepare technical regulations in a very short space of time in order to enact and introduce them immediately without any consultations being possible or

...

In the communication referred to in Article 8, the Member State shall give reasons for the urgency of the measures taken. The Commission shall give its views on the communication as soon as possible. It shall take appropriate action in cases where improper use is made of this procedure. The European Parliament shall be kept informed by the Commission.'

6 Article 10(4) of that directive is worded as follows:

'Article 9 shall not apply to the technical specifications or other requirements or the rules on services referred to in the third indent of the second subparagraph of point 11 of Article 1.'

Hungarian law

7 Paragraph 26(3) of Law XXXIV of 1991 on the organisation of games of chance ('the Law on games of chance'), in the version applicable until 9 October 2012, authorised the operation of slot machines in both casinos and amusement arcades operated by commercial companies established for that sole purpose.

8 Under Paragraph 33 of that Law, as applicable until 31 October 2011, the flat-rate tax on games concerning the operation of slot machines amounted to 100 000 Hungarian forints (HUF) per playing position per month for slot machines installed in category I and II amusement arcades. By way of derogation from that rule, slot machines installed in 'electronic casinos' were subject to a tax amounting to HUF 120 000, even though they were considered to be a specific type of category I amusement arcade. The tax was due for each month or part thereof. The operation of slot machines in gaming casinos was subject to a separate system of taxation.

9 Paragraph 33 of the Law on games of chance was amended by Paragraph 27 of Law CXXV of 2011, amending certain tax laws to promote budgetary stability ('the amending Law of 2011'), with effect from 1 November 2011, bringing those amounts to HUF 700 000 for slot machines installed in electronic casinos and to HUF 500 000 for those installed in other category I and II amusement arcades. Paragraph 27 of that Law also instituted a proportional tax on gambling in respect of the operation of slot machines in amusement arcades, provided that the net revenue per machine reaches or exceeds, in a given quarter, the sum of HUF 900 000. For machines allowing more than one playing position, the applicable threshold was calculated by multiplying HUF 900 000 by the number of playing positions. That tax amounted to 20% of the part of the net quarterly revenue from the machine in excess of HUF 900 000.

10 Furthermore, the amending law of 2011 provided that slot machines installed in amusement arcades must, as from 1 January 2013, be connected to a central server operated by a commercial company fulfilling certain specified conditions and to which the gambling inspection authorities would have access in real time.

11 Paragraph 26(3) of the Law on games of chance was then amended, with effect from 10 October 2012, by Paragraph 5 of Law CXLIV of 2012 amending Law XXXIV of 1991 on the organisation of games of chance ('the amending law of 2012') so as to grant to gaming casinos the exclusive right to operate slot machines.

12 Paragraph 8 of the amending Law of 2012 inserted into the Law on games of chance Paragraph 40/A, subsection 1 of which provided that licences for the operation of slot machines installed in amusement arcades issued before the effective date of that amending Law would lapse on the day following that date and that organisers of games of chance would be required to return those licences to the tax authorities within fifteen days of that date.

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

13 The applicants in the main proceedings are commercial companies which, until the entry into force of the amending Law of 2012, operated slot machines in amusement arcades. They provided their activities using gaming machines mainly from other Member States. A number of their customers were European Union citizens holidaying in Hungary.

14 Under the Hungarian legislation in force between 16 August 1991 and 9 October 2012, slot machines could be operated in casinos and in amusement arcades, conditional upon obtaining licences granted by the gambling inspection services. Operators of amusement arcades, such as the applicants in the main proceedings, were required to pay a monthly flat-rate tax the amount of which, up until 31 October 2011, was HUF 100 000 per slot machine.

15 The amending Law of 2011 required that from 1 January 2013 slot machines operated in amusement arcades be connected to a central server.

16 With effect from 1 November 2011, that Law also introduced a five-fold increase in the previous amount of monthly flat-rate tax in respect of the operation of slot machines installed in amusement arcades, together with a proportional tax in the form of a percentage of the net quarterly revenue from each machine. The amount of the tax levied on the operation of slot machines installed in casinos, however, remained unchanged.

17 On 30 September 2011, that is on the day following the publication of the amending Law of 2011, the Hungarian Government notified the text of that law to the European Commission, but did not indicate that the tax increases introduced by that law fell within the scope of Directive 98/34. The postponement provided for by Article 9(1) of that directive was not respected.

18 The implementation of the slot machine operating system based on a central server, as provided for by the amending Law of 2011, was finally abandoned when the Hungarian Parliament adopted, on 2 October 2012, on a proposal of the Hungarian Government dated 1 October 2012, the amending Law of 2012, which prohibited the operation of slot machines outside casinos. To justify such a prohibition, the legislature cited the prevention of crime and gambling addiction and public health considerations related to the prevention of gambling addiction. That law came into force on 10 October 2012, the day following its publication. The next day, on 11 October 2012, licences to operate slot machines in amusement arcades automatically expired without the legislature having provided for compensation for the operators concerned.

19 On 1 October 2012, the Hungarian Government notified the Commission of the draft amending Law of 2012, classifying it as a financial measure within the meaning of Article 1(11) of Directive 98/34. Pursuant to Article 10(4) of that directive, no postponement was applied. On 15 October 2012, the Commission informed the Hungarian Government that it disagreed with that classification. That Government then cited the existence of urgent reasons within the meaning of Article 9(7) of that directive.

20 The applicants in the main proceedings brought an action against the Hungarian State before the Fővárosi Törvényszék (Budapest Municipal Court) seeking compensation for the damage they claim to have suffered, resulting from the application of certain provisions of the amending Law of 2011 and the amending Law of 2012. According to the applicants, the alleged damage results from the imposition of gambling taxes which they have paid, the depreciation of their slot machines and the expenses incurred in the main proceedings.

21 The Hungarian State contends that the action should be dismissed, challenging both the legal basis of that action and the amounts claimed by the applicants in the main proceedings.

22 By order of 13 February 2014, the Fővárosi Törvényszék stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

‘(1) Is non-discriminatory legislation of a Member State compatible with Article 56 TFEU if, by a single measure and with no transitional period, it introduces a five-fold increase in the previous amount of direct tax, known as gambling tax, to be paid on slot machines operated in amusement arcades and, in addition, introduces a tax on gambling at a percentage rate, in such a way that it restricts the activity of operators of games of chance who run amusement arcades?

(2) May Article 34 TFEU be interpreted as meaning that its scope covers non-discriminatory legislation of a Member State which, by a single measure and with no transitional period, introduces a five-fold increase in the previous amount of direct tax, known as gambling tax, to be paid on slot machines operated in amusement arcades and, in addition, introduces a tax on gambling at a percentage rate, in such a way that it restricts the importation of slot machines into Hungary from elsewhere in the European Union?

(3) If questions 1 and/or 2 are answered in the affirmative, may a Member State rely exclusively on the regularisation of the budgetary position in the context of the application of Article 36 TFEU, Article 52(1) TFEU and Article 61 TFEU or where there are overriding requirements?

(4) If questions 1 and/or 2 are answered in the affirmative, having regard to Article 6(3) TEU, must account be taken of the general principles of law, as regards the restrictions imposed by a Member State and the grant of a period of adjustment to new tax rules?

(5) If questions 1 and/or 2 are answered in the affirmative, must the judgment in *Brasserie du pêcheur* and *Factortame* (Joined Cases C-46/93 and C-48/93, EU:C:1996:79) be interpreted as meaning that infringement of Articles 34 TFEU and/or 56 TFEU may give rise to liability for damages on the part of the Member State on the ground that those provisions — because of their direct effect — confer rights on individuals in the Member States?

(6) Can Directive 98/34 be interpreted as meaning that a tax provision of a Member State which introduces, in a single step, a fivefold increase in the amount of a direct tax on gambling which has to be paid in respect of slot machines operated in amusement arcades and, in addition, introduces a tax at a percentage rate constitutes a “*de facto* technical regulation”?

(7) If question 6 is answered in the affirmative, may individuals of a Member State allege that the Member State has infringed Articles 8(1) and/or 9(1) of Directive 98/34, and therefore failed to fulfil its obligations, thereby giving rise to liability for damages; in other words, is that directive intended to confer rights on individuals? What matters must the national court take into account in order to determine whether the [Hungarian State] has committed a sufficiently serious infringement and what type of claim for damages can such an infringement give rise to?

(8) Is non-discriminatory legislation of a Member State compatible with Article 56 TFEU if it prohibits with immediate effect the use of slot machines in amusement arcades, without allowing the operators of games of chance affected a transitional or adjustment period or offering them appropriate compensation, and, at the same time, establishes in favour of casinos a monopoly in the operation of slot machines?

(9) Can Article 34 TFEU be interpreted as meaning that it must also be relevant and applicable in the event that a Member State adopts non-discriminatory legislation which, although it

does not directly prohibit the purchase of slot machines from elsewhere in the European Union, restricts or prohibits the effective use and operation of such machines in the organisation of games of chance, without allowing the operators of games of chance affected who carry out that activity a transitional or adjustment period or any compensation?

(10) If questions 8 and/or 9 are answered in the affirmative, what criteria must the national court take into account to determine whether the restriction was necessary, appropriate and proportionate in the context of the application of Articles 36 TFEU, 52(1) TFEU and 61 TFEU or where there are overriding requirements?

(11) If questions 8 and/or 9 are answered in the affirmative, having regard to Article 6(3) TEU, must account be taken of the general principles of law, as regards the prohibitions laid down by a Member State and the grant of a period of adjustment? Must account be taken of fundamental rights — such as the right to property and the prohibition on depriving a person of property without compensation — in connection with the restriction arising in the present case and, if so, in what way?

(12) If questions 8 and/or 9 are answered in the affirmative, must the judgment in *Brasserie du pêcheur* and *Factortame* (C-46/93 and C-48/93, EU:C:1996:79) be interpreted as meaning that infringement of Articles 34 TFEU and/or 56 TFEU may give rise to liability for damages on the part of the Member State on the ground that those provisions — because of their direct effect — confer rights on individuals in the Member States?

(13) Can Directive 98/34/EC be interpreted as meaning that a provision of a Member State which, by restricting the use of slot machines to casinos, prohibits their use in amusement arcades constitutes “other requirements”?

(14) If question 13 is answered in the affirmative, may individuals of a Member State allege that the Member State has infringed Articles 8(1) and/or 9(1) of Directive 98/34/EC and therefore failed to fulfil its obligations, thereby giving rise to liability for damages; in other words, is that directive intended to confer rights on individuals? What matters must the national court take into account in order to determine whether the defendant has committed a sufficiently serious infringement and what type of claim for damages can such an infringement give rise to?

(15) Is the principle of EU law applicable according to which the Member States are obliged to pay compensation to individuals for damage resulting from infringements of EU law attributable to the Member States also where the Member State has sovereignty in the area which the adopted legislation concerns? In such a case do fundamental rights and the general principles of law derived from the common constitutional traditions of the Member States also serve as a guide?’

Consideration of the questions referred

The jurisdiction of the Court

23 At the outset, the Hungarian Government challenges, in essence, the jurisdiction of the Court to answer the questions referred on the ground that, in the absence of a cross-border element, the dispute in the main proceedings does not have any connecting factor with EU law.

24 In that regard, it should be noted that national legislation such as that at issue in the main proceedings — which applies to Hungarian nationals and the nationals of other Member States

alike — is, generally, capable of falling within the scope of the provisions relating to the fundamental freedoms established by the TFEU only to the extent that it applies to situations connected with trade between the Member States (see, to that effect, judgments in *Anomar and Others*, C-6/01, EU:C:2003:446, paragraph 39, and *Garkalns*, C-470/11, EU:C:2012:505, paragraph 21).

25 In the present case, it is stated in the decision to refer that a number of the customers of the applicants in the main proceedings were European Union citizens holidaying in Hungary.

26 Services which a provider carries out without moving from the Member State in which he is established for recipients established in other Member States constitute the provision of cross-border services for the purposes of Article 56 TFEU (see, to that effect, judgments in *Alpine Investments*, C-384/93, EU:C:1995:126, paragraphs 21 and 22; *Gambelli and Others*, C-243/01, EU:C:2003:597, paragraph 53, and *Commission* v *Spain*, C-211/08, EU:C:2010:340, paragraph 48).

27 Furthermore, it is far from inconceivable that operators established in Member States other than Hungary have been or are interested in opening amusement arcades in Hungary (see, to that effect, judgments in *Blanco Pérez* and *Chao Gómez*, C-570/07 and C-571/07, EU:C:2010:300, paragraph 40, and *Garkalns*, C-470/11, EU:C:2012:505, paragraph 21).

28 In those circumstances, the Court has jurisdiction to answer the questions referred.

The existence of restrictions on the fundamental freedoms

Questions 1 and 2

29 By its questions 1 and 2, which should be considered together, the referring court asks whether national legislation, such as the amending law of 2011, which, without providing for a transitional period, introduces a five-fold increase in the flat-rate tax to be paid on slot machines operated in amusement arcades and, in addition, introduces a proportional tax on that activity, constitutes a restriction on the free movement of goods and freedom to provide services, guaranteed by Articles 34 TFEU and 56 TFEU respectively.

30 At the outset, it must be noted that legislation of that kind directly affects the activity of operating slot machines. However, the influence of such legislation on that activity could only indirectly affect the importation of those machines.

31 Without there being any need to regard the importation of slot machines as ancillary to their use, it must be noted that, even though the use of such devices is linked to operations to import them, the former activity comes under the provisions of the Treaty relating to the freedom to provide services and the latter under those relating to the free movement of goods (judgment in *Anomar and Others*, C-6/01, EU:C:2003:446, paragraph 55).

32 However, even assuming that national legislation such as the amending Law of 2011 hinders the importation of slot machines in so far as it limits the opportunities for their use, the Court is unable, in the present proceedings, to rule on the question whether Article 34 TFEU precludes the application of such legislation in the absence of adequate detailed information concerning the practical effect which that legislation has on the importation of slot machines (see, to that effect, judgment in *Läärä and Others*, C-124/97, EU:C:1999:435, paragraph 26).

33 In those circumstances, it is necessary to examine legislation of this kind from the perspective of Article 56 TFEU only.

34 In that regard, it must be stated at the outset that, although direct taxation falls within the competence of the Member States, they must none the less exercise that competence consistently with EU law and, in particular, the fundamental freedoms guaranteed in the Treaty (see, to that effect, judgment in *Blanco* and *Fabretti*, Joined Cases C-344/13 and C-367/13, EU:C:2014:2311, paragraph 24 and the case-law cited).

35 Article 56 TFEU requires not only the elimination of all discrimination on grounds of nationality against providers of services who are established in another Member State, but also the abolition of any restriction on the freedom to provide services, even if that restriction applies without distinction to national providers of services and to those of other Member States, which is liable to prohibit, impede or render less attractive the activities of a service provider established in another Member State where it lawfully provides similar services (see, to that effect, judgments in *Sporting Exchange*, C-203/08, EU:C:2010:307, paragraph 23 and the case-law cited, and *HIT and HIT LARIX*, C-176/11, EU:C:2012:454, paragraph 16).

36 By contrast, measures, the only effect of which is to create additional costs in respect of the service in question and which affect in the same way the provision of services between Member States and that within one Member State, do not fall within the scope of Article 56 TFEU (judgment in *Mobistar* and *Belgacom Mobile*, Joined Cases C-544/03 and C-545/03, EU:C:2005:518, paragraph 31).

37 It is not disputed that the amending Law of 2011 does not establish any direct discrimination between Hungarian companies and companies established in other Member States operating slot machines in amusement arcades in Hungarian territory, since the flat-rate tax and the proportional tax introduced by that Law are levied under identical conditions for all those companies.

38 Moreover, it is not apparent, from the decision to refer or the observations submitted by the parties to the proceedings, that companies operating amusement arcades in the Hungarian market are mainly established in other Member States, in which case the legislation at issue would be liable to constitute indirect discrimination against service providers established in other Member States (see, to that effect, judgments in *Spotti*, C-272/92, EU:C:1993:848, paragraph 18, and *Hervis Sport- és Divatkereskedelmi*, C-385/12, EU:C:2014:47, paragraphs 39 and 41).

39 However, the applicants allege that the amending Law of 2011, by drastically increasing the amount of taxes on the operation of slot machines in amusement arcades, has hindered profitable operation of those machines by operators of amusement arcades and has thus granted *de facto* exclusivity for that activity to casino operators. In particular, since a category I amusement arcade generated, it is claimed, an average monthly revenue of HUF 200 000 per slot machine, the levy of HUF 500 000 in monthly flat-rate tax, on its own, resulted in an immediate average monthly loss of HUF 300 000 per slot machine. In any event, even assuming that some amusement arcade operators received more revenue, the profit remaining after the deduction of those taxes and expenses would have been non-existent or, at most, minimal.

40 In that regard, it should be noted that in the event that the amending Law of 2011 was actually liable to prohibit, impede or render less attractive the exercise of the freedom to provide the services of operating slot machines in amusement arcades in Hungary, which it is for the national court to determine, it should be considered to be a restriction on the freedom to provide services guaranteed by Article 56 TFEU.

41 That would be the case if the referring court found that the tax increase provided for by the amending Law of 2011 had the effect of restricting the operation of slot machines to casinos, to which that increase did not apply. Thus, it is claimed, that increase produced an effect comparable

to that of prohibiting the operation of slot machines outside casinos, which settled case-law considers to be a restriction on the freedom to provide services (see, inter alia, judgments in *Anomar and Others*, C-6/01, EU:C:2003:446, paragraph 75, and *Commission* v *Greece*, C-65/05, EU:C:2006:673, paragraph 53).

42 Therefore, the answer to question 1 is that national legislation, such as that at issue in the main proceedings, which, without providing for a transitional period, introduces a five-fold increase in the flat-rate tax to be paid on slot machines operated in amusement arcades and, in addition, introduces a proportional tax on that activity, constitutes a restriction on the freedom to provide services, guaranteed by Article 56 TFEU provided that it is liable to prohibit, impede or render less attractive the exercise of the freedom to provide the services of operating slot machines in amusement arcades, this being a matter which it is for the national court to determine.

43 For the reasons stated in paragraphs 30 to 32, there is no need to answer question 2.

Questions 8 and 9

44 By questions 8 and 9, which should be considered together, the referring court asks whether national legislation such as the amending Law of 2012, which, without providing for either a transitional period or compensation for operators of amusement arcades, prohibits the operation of slot machines outside casinos, constitutes a restriction on the free movement of goods and freedom to provide services, guaranteed by Articles 34 TFEU and 56 TFEU.

45 It should be observed, at the outset, that certain arguments presented to the Court by the parties to the main proceedings concern issues that do not fall within the scope of the abovementioned questions referred for a preliminary ruling and which relate to facts unconnected with the factual background as described in the decision to refer.

46 In particular, the applicants in the main proceedings argued in their written observations, and the Hungarian Government confirmed at the hearing, that only persons holding a licence granted by the Hungarian State were authorised to operate a casino in Hungarian territory. However, casino operating licences are granted to a limited number of establishments only and could, in certain circumstances, be granted without a prior tendering procedure. Moreover, according to the applicants in the main proceedings, only companies established in Hungary have, so far, obtained a licence. Accordingly, the Hungarian procedures for granting those licences in practice discriminated against operators established in other Member States.

47 The issue of the compliance of those procedures with EU law is, however, distinct from the issue of whether the prohibition on operating slot machines outside casinos complies with EU law, which is the sole subject of the questions asked by the national court.

48 In that regard, it should be stated that it is for the national court alone to determine the subject-matter of the questions which it wishes to refer to the Court. The Court cannot, at the request of one party to the main proceedings, examine questions which have not been submitted to it by the national court. If, in view of the course of the proceedings, the national court were to consider it necessary to obtain further interpretations of EU law, it would be for it to make a fresh reference to the Court (see, to that effect, judgments in *CBEM*, 311/84, EU:C:1985:394, paragraph 10; *Syndesmos Melon tis Eleftheras Evangelikis Ekklisias and Others*, C-381/89, EU:C:1992:142, paragraph 19, and *Slob*, C-236/02, EU:C:2004:94, paragraph 29). There is therefore no need for the Court to examine the arguments referred to in paragraph 46 above.

49 It is therefore necessary to determine whether national legislation such as the amending Law of

2012 restricts the free movement of goods and the freedom to provide services in so far as it prohibits the operation of slot machines outside casinos, that issue being independent of whether, in addition, the Hungarian regulations on the procedure for granting casino operating licences also entail restrictions on those freedoms.

50 For the reasons set out in paragraphs 30 to 32, it is necessary to examine such national legislation from the perspective of Article 56 TFEU only.

51 In that regard, it follows, inter alia, from the case-law cited in paragraph 41 that national legislation which authorises the operation and playing of certain games of chance in casinos only constitutes an obstacle to the freedom to provide services.

52 In those circumstances, the answer to question 8 is that national legislation, such as that at issue in the main proceedings, which, without providing for either a transitional period or compensation for operators of amusement arcades, prohibits the use of slot machines outside casinos constitutes a restriction on the freedom to provide services guaranteed by Article 56 TFEU.

53 There is no need to answer question 9.

The justification of the restrictions on the freedom to provide services

54 By questions 3, 4, 10 and 11, which should be considered together, the referring court asks, in essence, to what extent the restrictions that could result from national legislation, such as that at issue in the main proceedings, may be allowed as exceptional measures expressly provided for in Articles 51 TFEU and 52 TFEU, applicable in this area under Article 62 TFEU, or justified, in accordance with the case-law of the Court, by overriding reasons in the public interest.

55 Since the amending Law of 2011 and the amending Law of 2012 both fall within the scope of a national reform aimed at hindering the use of slot machines and the Hungarian legislature cited the same objectives to justify those two laws, it is appropriate to jointly examine the possible justification of the restrictions arising from those laws.

The existence of overriding reasons in the public interest

56 It should be noted at the outset that legislation on games of chance is one of the areas in which there are significant moral, religious and cultural differences between the Member States. In the absence of harmonisation at EU level, the Member States are, in principle, free to set the objectives of their policy on betting and gaming and, where appropriate, to define in detail the level of protection sought (see, to that effect, judgments in *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 47, and in *Digibet and Albers*, C-156/13, EU:C:2014:1756, paragraph 24).

57 The identification of the objectives in fact pursued by the national legislation is, in the context of a case referred to the Court under Article 267 TFEU, within the jurisdiction of the referring court (judgment in *Pfleger and Others*, C-390/12, EU:C:2014:281, paragraph 47).

58 However, it must be stated that the declared objectives pursued by the legislation at issue in the main proceedings, namely the protection of consumers against gambling addiction and the prevention of crime and fraud linked to gambling, constitute overriding reasons in the public interest capable of justifying restrictions on gambling (see, to that effect, judgments in *Carmen Media Group*, C-46/08, EU:C:2010:505, paragraph 55, and in *Stanley International Betting and Stanleybet Malta*, C-463/13, EU:C:2015:25, paragraphs 48 and 49 and the case-law cited).

59 The applicants in the main proceedings argue, however, that the main purpose of the amending

Law of 2011 is, in fact, to increase the tax revenue generated by the operation of slot machines.

60 In that regard, the Court has repeatedly held that the objective of maximising public revenue alone cannot permit a restriction of the freedom to provide services (see, inter alia, judgments in *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 55, and in *Pfleger and Others*, C-390/12, EU:C:2014:281, paragraph 54).

61 However, the fact that a restriction on gambling activities incidentally benefits the budget of the Member State concerned does not prevent that restriction from being justified in so far as it actually pursues objectives relating to overriding reasons in the public interest (see, to that effect, judgments in *Zenatti*, C-67/98, EU:C:1999:514, paragraph 36, and *Gambelli and Others*, C-243/01, EU:C:2003:597, paragraph 62), which is for the national court to determine.

The proportionality of the restrictions to Article 56 TFEU

62 As a preliminary point, it should be noted that the choice of methods for organising and controlling the operation and playing of games of chance or gambling, such as the conclusion with the State of an administrative licensing contract or the restriction of the operation and playing of certain games to places duly licensed for that purpose, falls within the margin of discretion which the national authorities enjoy (see judgments in *Anomar and Others*, paragraph 88 and *Carmen Media Group*, C-46/08, EU:C:2010:505, paragraph 59).

63 A limited authorisation of those games on the basis of special or exclusive rights granted or assigned to certain bodies, which has the advantage of confining the desire to gamble and the exploitation of gambling within controlled channels, is capable of falling within the pursuit of the public interest objectives of protecting the consumer and public order (see, inter alia, judgments in *Läärä*, C-124/97, EU:C:1999:435, paragraph 37; *Zenatti*, C-67/98, EU:C:1999:514, paragraph 35, and *Anomar and Others*, C-6/01, EU:C:2003:446, paragraph 74).

64 The restrictions imposed by the Member States must, nevertheless, satisfy the conditions laid down in the case-law of the Court as regards their proportionality, that is to say, be suitable for ensuring attainment of the objective pursued and not go beyond what is necessary in order to attain that objective. It should also be recalled in this connection that national legislation is appropriate for ensuring attainment of the objective relied on only if it reflects a concern to attain it in a consistent and systematic manner (see judgment in *HIT and HIT LARIX*, C-176/11, EU:C:2012:454, paragraph 22 and the case-law cited).

65 It is the Member State wishing to rely on an objective capable of justifying the restriction of the freedom to provide services which must supply the court called on to rule on that question with all the evidence of such a kind as to enable the court to be satisfied that the measure does indeed comply with the requirements deriving from the principle of proportionality (see judgments in *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 54, and in *Pfleger and Others*, C-390/12, EU:C:2014:281, paragraph 50).

66 In the present case, the applicants in the main proceedings allege that the laws at issue in those proceedings do not genuinely reflect a concern to attain, in a consistent and systematic manner, the public interest objectives cited.

67 They argue, first, that the Hungarian legislature, following the reforms introduced by those laws, liberalised the operation by casinos of online gambling, including online slot machines, from 19 July 2013. Secondly, seven new casino operating licences were issued during 2014, as indeed the Hungarian Government confirmed at the hearing.

68 It must be held that such circumstances may, subject to verification by the referring court, form part of a policy of controlled expansion of gambling activities.

69 The Court has held that such a policy may be consistent both with the objective of preventing the use of gambling activities for criminal or fraudulent purposes and with that of preventing incitement to squander money on gambling and of combating addiction to gambling, by directing consumers towards the offer emanating from authorised operators, that offer being deemed to be protected from criminal elements and also designed to safeguard consumers more effectively against squandering of money and addiction to gambling (see, to that effect, judgments in *Stoß and Others*, Joined Cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, EU:C:2010:504, paragraphs 101 and 102, and in *Zeturf*, C-212/08, EU:C:2011:437, paragraph 67).

70 In order to achieve that objective of channelling into controlled circuits, the authorised operators must provide a reliable, but at the same time attractive, alternative to a prohibited activity, which may necessitate, inter alia, the use of new distribution techniques (see, to that effect, judgments in *Placanica and Others*, C-338/04, C-359/04 and C-360/04, EU:C:2007:133, paragraph 55; *Ladbrokes Betting & Gaming and Ladbrokes International*, C-258/08, EU:C:2010:308, paragraph 25, and *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 64).

71 However, a policy of controlled expansion of gambling activities can only be regarded as being consistent if, first, criminal and fraudulent activities linked to gambling and, secondly, addiction to gambling could have been a problem in Hungary at the material time and if the expansion of authorised and regulated activities could have solved that problem (see, to that effect, judgments in *Ladbrokes Betting & Gaming and Ladbrokes International*, C-258/08, EU:C:2010:308, paragraph 30; *Zeturf*, C-212/08, EU:C:2011:437, paragraph 70, and in *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 67).

72 It is for the referring court to determine, in the context of the case before it, whether those conditions are satisfied and, if applicable, whether the expansion in question is on such a scale as to make it impossible to reconcile with the objective of curbing addiction to gambling (see, to that effect, judgment in *Ladbrokes Betting & Gaming and Ladbrokes International*, C-258/08, EU:C:2010:308, paragraph 38).

73 To that end, that referring court must carry out a global assessment of the circumstances in which the restrictive legislation at issue was adopted and implemented.

The examination of the justifications in the light of fundamental rights

74 Moreover, it should be noted that, where a Member State relies on overriding requirements in the public interest in order to justify rules which are liable to obstruct the exercise of the freedom to provide services, such justification must also be interpreted in the light of the general principles of EU law, in particular the fundamental rights now guaranteed by the Charter of Fundamental Rights of the European Union (‘the Charter’). Thus, the national rules in question can fall under the exceptions provided for only if they are compatible with the fundamental rights the observance of which is ensured by the Court (see, to that effect, judgments in *ERT*, C-260/89, EU:C:1991:254, paragraph 43; *Familiapress*, C-368/95, EU:C:1997:325, paragraph 24, and *Ålands Vindkraft*, C-573/12, EU:C:2014:2037, paragraph 125).

75 In the present case, the applicants in the main proceedings argue that the legislation at issue infringes, first, the principles of legal certainty and the protection of legitimate expectations and, secondly, the right to property enshrined in Article 17 of the Charter.

– The principles of legal certainty and the protection of legitimate expectations

76 The applicants in the main proceedings argue that the legislation at issue in those proceedings, by increasing dramatically the amount of gambling taxes levied on the operation of slot machines in amusement arcades, while providing for the transition to an operating system based on a central server, then by prohibiting the operation of those machines outside casinos, without an appropriate transitional period or compensation for the operators concerned, infringes the principles of legal certainty and the protection of legitimate expectations.

77 In that regard, it must be pointed out that the principle of legal certainty, the corollary of which is the principle of the protection of legitimate expectations, requires, inter alia, that rules of law be clear and precise and predictable in their effect, especially where they may have negative consequences on individuals and undertakings (see, to that effect, judgments in *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 80 and the case-law cited; *ASM Brescia*, C-347/06, EU:C:2008:416, paragraph 69, and *Test Claimants in the Franked Investment Income Group Litigation*, C-362/12, EU:C:2013:834, paragraph 44).

78 The Court has also held that a trader cannot place reliance on there being no legislative amendment whatever, but can only call into question the arrangements for the implementation of such an amendment (see, to that effect, judgment in *Gemeente Leusden* and *Holin Groep*, Joined Cases C-487/01 and C-7/02, EU:C:2004:263, paragraph 81).

79 Likewise, the principle of legal certainty does not require that there be no legislative amendment, requiring as it does, rather, that the national legislature take account of the particular situations of traders and provide, where appropriate, adaptations to the application of the new legal rules (judgments in *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 81, and *Plantanol*, C-201/08, EU:C:2009:539, paragraph 49; see, to that effect, judgment in *Gemeente Leusden and Holin Groep*, Joined Cases C-487/01 and C-7/02, EU:C:2004:263, paragraph 70).

80 In accordance with settled case-law, it is for the referring court alone to determine whether national legislation complies with the principles of legal certainty and the protection of legitimate expectations, the Court, in a reference for a preliminary ruling under Article 267 TFEU, being solely competent to provide the referring court with all the criteria for the interpretation of EU law which may enable it to determine the issue of compatibility (see, inter alia, *Plantanol*, C-201/08, EU:C:2009:539, paragraph 45 and the case-law cited, and *Ålands Vindkraft*, C-573/12, EU:C:2014:2037, paragraph 126).

81 The referring court may take into account, for that purpose, all relevant elements which emerge from the terms, objectives or general scheme of the legislation concerned (see, to that effect, *Ålands Vindkraft*, C-573/12, EU:C:2014:2037, paragraph 129).

82 In order to provide a useful answer to the referring court, the following matters, which are apparent from the file submitted to the Court, must in particular be noted.

83 As regards, in the first place, the amending Law of 2011, the applicants in the main proceedings argue that it introduced a five-fold increase in the amount of the flat-rate tax in respect of the operation of slot machines in amusement arcades, while at the same time introducing a proportional tax, with effect from 1 November 2011, that is, from the first monthly payment following the publication of that law, whereas the tax regime applicable to that activity had not been the subject of any legislative change for nearly twenty years. Thus, according to the applicants in the main proceedings, because of this lack of an appropriate adaptation period, operators who were planning

to open new amusement arcades found themselves unable to make the necessary arrangements in time to defer the implementation of their project or to abandon it. The increase in the amount of taxes in respect of the operation of slot machines in amusement arcades, it is claimed, also compelled many operators to cease that activity.

84 As regards, in the second place, the amending Law of 2012, it is apparent from the decision to refer that that Law resulted, on the day following its entry into force, in the automatic revocation of the licences to operate slot machines in amusement arcades, without providing for either a transitional period or compensation for the operators concerned.

85 In that regard, it should be noted that, when the national legislature revokes licences that allow their holders to exercise an economic activity, it must provide, for the benefit of those holders, a transitional period of sufficient length to enable them to adapt or reasonable compensation system (see, to that effect, European Court of Human Rights, *Vékony v. Hungary*, no. 65681/13, §ì34 and 35, 13 January 2015).

86 Moreover, the applicants in the main proceedings argue that, before the entry into force of the amending Law of 2012, they incurred expenses in order to adapt to the implementation, under the amending Law of 2011, of the new system for the operation of slot machines. That operating system, which was supposed to enter into force on 1 January 2013, required that slot machines operated in amusement arcades would function online and would be connected to a central server. That legitimate expectation was undermined with immediate effect following the adoption of the amending Law of 2012.

87 In that regard, it must be noted that a trader who has made costly investments in order to comply with the scheme adopted previously by the legislature could see his interests considerably affected by the withdrawal of that scheme before the date announced, all the more so if that withdrawal takes place suddenly and unforeseeably, without leaving him enough time to adapt to the new legal situation (see, to that effect, *Plantanol*, C-201/08, EU:C:2009:539, paragraph 52).

88 It is for the national court to ascertain, in the light of all the foregoing considerations, whether national legislation such as that at issue in the main proceedings meets the requirements arising from the principles of legal certainty and the protection of legitimate expectations.

– The right to property

89 The applicants in the main proceedings also allege that national legislation such as that at issue in those proceedings infringes the right to property of amusement arcade operators, enshrined in Article 17 of the Charter.

90 In that regard, it should be noted that national legislation that is restrictive from the point of view of Article 56 TFEU is also capable of limiting the right to property enshrined in Article 17 of the Charter. Likewise, the Court has already held that an unjustified or disproportionate restriction of the freedom to provide services under Article 56 TFEU is also not permitted under Article 52(1) of the Charter, in relation to Article 17 thereof (*Pfleger and Others*, C-390/12, EU:C:2014:281, paragraphs 57 and 59).

91 It follows that, in the present case, the examination, carried out in paragraphs 56 to 73 of the present judgment, of the restriction represented by legislation such as that at issue in the main proceedings from the point of view of Article 56 TFEU also covers possible limitations of the exercise of the right to property guaranteed by Article 17 of the Charter, so that a separate examination is not necessary (see, to that effect, *Pfleger and Others*, C-390/12, EU:C:2014:281,

paragraph 60).

Answers to questions 3, 4, 10 and 11

92 In the light of the foregoing, the answer to questions 3, 4, 10 and 11 is that restrictions on freedom to provide services which may result from national legislation such as that at issue in the main proceedings can only be justified by overriding reasons in the public interest if the national court finds, after an overall assessment of the circumstances surrounding the adoption and implementation of that legislation:

– that it actually pursues, primarily, objectives relating to the protection of consumers against gambling addiction and the prevention of criminal and fraudulent activities linked to gambling; the mere fact that a restriction on gambling activities incidentally benefits, through an increase in tax revenue, the budget of the Member State concerned, does not prevent that restriction from being considered actually to be pursuing, primarily, those objectives;

– that it pursues those goals consistently and systematically, and

– that it meets the requirements arising from general principles of EU law, in particular the principles of legal certainty and the protection of legitimate expectations and the right to property.

The existence of infringements of Directive 98/34

93 By questions 6 and 13, which it is appropriate to examine together, the referring court asks, in essence, whether Article 1(11) of Directive 98/34 must be interpreted as meaning that national provisions, such as the tax rules provided for under the amending Law of 2011 and the prohibition on operating slot machines outside casinos introduced by the amending Law of 2012, constitute 'technical regulations' within the meaning of that provision, drafts of which must be communicated in accordance with the first subparagraph of Article 8(1) of that directive.

94 As regards, in the first place, national provisions such as those of the amending Law of 2011, that court seeks to ascertain, in particular, whether such provisions may be described as '*de facto* technical regulations' within the meaning of the third indent of Article 1(11) of Directive 98/34.

95 Under the third indent of Article 1(11) of that directive, the '*de facto* technical regulations' within the meaning of that provision consist of 'technical specifications or other requirements or rules on services which are linked to fiscal or financial measures affecting the consumption of products or services by encouraging compliance with such technical specifications or other requirements or rules on services'.

96 It follows from that wording that the concept of '*de facto* technical regulations' means, not the tax measures themselves, but the technical specifications or other requirements linked to it.

97 Accordingly, tax legislation such as that at issue in the main proceedings, which is not accompanied by any technical specification or any other requirement with which it is purportedly intended to ensure compliance, cannot be described as a '*de facto* technical regulation'.

98 As regards, in the second place, national provisions such as those of the amending Law of 2012, the Court has already held that a national measure which restricts the organisation of certain games of chance to casinos only constitutes a 'technical regulation', within the meaning of Article 1(11) of the directive, in so far as it can significantly influence the nature or the marketing of the products used in that context (see, to that effect, judgments in *Commission* v *Greece*, C-65/05,

EU:C:2006:673, paragraph 61, and *Fortuna and Others*, Joined Cases C-213/11, C-214/11 and C-217/11, EU:C:2012:495, paragraphs 24 and 40).

99 However, a prohibition on operating slot machines outside casinos, such as the one introduced by the amending Law of 2012, can significantly influence the nature or the marketing of those machines, which constitute goods that may be covered by Article 34 TFEU (see judgment in *Läärä and Others*, C-124/97, EU:C:1999:435, paragraphs 20 and 24), by reducing the outlets in which they can be used.

100 In those circumstances, the answer to questions 6 and 13 is that Article 1(11) of Directive 98/34 must be interpreted as meaning that:

– the provisions of national legislation that introduce a five-fold increase in the flat-rate tax to be paid on slot machines operated in amusement arcades and, in addition, introduce a proportional tax on that activity, do not constitute 'technical rules' within the meaning of that provision, and that

– the provisions of national legislation that prohibit the operation of slot machines outside casinos constitute 'technical rules' within the meaning of that provision, drafts of which must be communicated in accordance with the first subparagraph of Article 8(1) of that directive.

The existence of an obligation to provide compensation on the part of Member State concerned

Questions 5 and 12

101 By questions 5 and 12, the referring court asks, in essence, whether Article 34 TFEU and/or 56 TFEU are intended to confer rights on individuals, in such a way that their infringement by a Member State, including as a result of its legislative activity, gives rise to a right of individuals to obtain from that Member State compensation for the damage suffered as a result of that infringement.

102 In that regard, given the considerations developed in paragraphs 30 to 32 of the present judgment, it is necessary to answer those questions only in so far as they refer to Article 56 TFEU.

103 It should be noted at the outset that the principle of Member State liability for loss and damage caused to individuals as a result of infringements of EU law for which the Member State can be held responsible applies to any case in which a Member State infringes EU law, whichever is the authority of the Member State whose act or omission was responsible for the infringement (judgments in *Brasserie du pêcheur* and *Factortame*, Joined Cases C-46/93 and C-48/93, EU:C:1996:79, paragraph 32, and in *Köbler*, C-224/01, EU:C:2003:513, paragraph 31 and the case-law cited). That principle is therefore applicable, inter alia, where the national legislature was responsible for the infringement (*Brasserie du pêcheur* and *Factortame*, Joined Cases C-46/93 and C-48/93, EU:C:1996:79, paragraph 36).

104 According to settled case-law, EU law confers a right to compensation where three conditions are met: the rule of law infringed must be intended to confer rights on individuals; the infringement must be sufficiently serious; and there must be a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured parties (see, inter alia, judgments in *Brasserie du pêcheur* and *Factortame*, Joined Cases C-46/93 and C-48/93, EU:C:1996:79, paragraph 51; *Danske Slagterier*, C-445/06, EU:C:2009:178, paragraph 20, and *Commission* v *Italy*, C-379/10, EU:C:2011:775, paragraph 40).

105 With regard to the first of those conditions, which falls within the scope of the questions raised by the referring Court, it is apparent from the case-law that the provisions of the Treaty relating to fundamental freedoms gives rise to rights for individuals which the national courts must protect (see, to that effect, *Brasserie du pêcheur* and *Factortame*, Joined Cases C-46/93 and C-48/93, EU:C:1996:79, paragraph 54).

106 Consequently, the answer to questions 5 and 12 referred for a preliminary ruling is that Article 56 TFEU is intended to confer rights on individuals, in such a way that its infringement by a Member State, including as a result of its legislative activity, gives rise to a right of individuals to obtain from that Member State compensation for the damage suffered as a result of that infringement, provided that that infringement is sufficiently serious and there is a direct causal link between that infringement and the damage sustained, which it is for the national court to determine.

Questions 7 and 14

107 By questions 7 and 14, which should be considered together, the referring court asks, in essence, whether Articles 8 and 9 of Directive 98/34 are intended to confer rights on individuals, in such a way that their infringement by a Member State gives rise to a right of individuals to obtain from that Member State compensation for the damage suffered as a result of that infringement.

108 In that regard, it is apparent from the case-law that, although Directive 98/34 is intended to ensure the free movement of goods by organising a preventive control the effectiveness of which requires the disapplication, in the context of a dispute between individuals, of a national measure adopted in breach of Articles 8 and 9 thereof, that directive does not in any way define the substantive scope of the legal rule on the basis of which the national court must decide the case before it. Thus, that directive creates neither rights nor obligations for individuals (judgment in *Unilever*, C-443/98, EU:C:2000:496, paragraph 51).

109 In those circumstances, it must be held that the first of the conditions listed in paragraph 104 is not fulfilled, so that individuals cannot rely on the infringement of Articles 8 and 9 of that directive to establish liability on the part of the Member State concerned on the basis of EU law.

110 Consequently, the answer to questions 7 and 14 is that Articles 8 and 9 of Directive 98/34 are not intended to confer rights on individuals, in such a way that their infringement by a Member State gives rise to a right of individuals to obtain from that Member State compensation for the damage suffered as a result of that infringement on the basis of EU law.

Question 15

111 By question 15, the referring court asks, in essence, to what extent the fact that national legislation such as that at issue in the main proceedings concerns an area falling within the competence of the Member States affects the answers to questions 5, 7, 12 and 14.

112 It suffices to note, in that regard, that, as was pointed out in paragraph 34 above, the Member States must exercise their competences consistently with EU law and, in particular, the fundamental freedoms guaranteed in the Treaty, which apply to situations such as those at issue in the main proceedings, which fall within the scope of EU law.

113 In those circumstances, the justifications put forward by a Member State in support of a restriction on those freedoms must be interpreted in the light of the fundamental rights, even where that restriction concerns an area falling within the competence of that Member State, provided that the situation at issue falls within the scope of EU law (see, to that effect, judgment in *Åkerberg*

Fransson, C-617/10, EU:C:2013:105, paragraph 21).

114 Likewise, any infringement of EU law by a Member State, including when it concerns an area falling within the competence of that Member State, renders that Member State liable in so far as the conditions set out in paragraph 104 of the present judgment are satisfied.

115 Accordingly, the answer to question 15 is that the fact that national legislation such as that at issue in the main proceedings concerns an area falling within the competence of the Member States does not affect the answers to the questions raised by the referring court.

Costs

116 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (First Chamber) hereby rules:

1. **National legislation such as that at issue in the main proceedings, which, without providing for a transitional period, introduces a five-fold increase in the flat-rate tax to be paid on slot machines operated in amusement arcades and, in addition, introduces a proportional tax on that activity, constitutes a restriction on the freedom to provide services guaranteed by Article 56 TFEU provided that it is liable to prohibit, impede or render less attractive the exercise of the freedom to provide the services of operating slot machines in amusement arcades, this being a matter which it is for the national court to determine.**

2. **National legislation such as that at issue in the main proceedings, which, without providing for either a transitional period or compensation for operators of amusement arcades, prohibits the operation of slot machines outside casinos constitutes a restriction on the freedom to provide services guaranteed by Article 56 TFEU.**

3. **Restrictions on the freedom to provide services which may result from national legislation such as that at issue in the main proceedings can only be justified by overriding reasons in the public interest if the national court finds, after an overall assessment of the circumstances surrounding the adoption and implementation of that legislation:**

   that it actually pursues, primarily, objectives relating to the protection of consumers against gambling addiction and the prevention of criminal and fraudulent activities linked to gambling; the mere fact that a restriction on gambling activities incidentally benefits, through an increase in tax revenue, the budget of the Member State concerned, does not prevent that restriction from being considered actually to be pursuing, primarily, those objectives;

   that it pursues those goals consistently and systematically, and

   that it meets the requirements arising from general principles of EU law, in particular the principles of legal certainty and the protection of legitimate expectations and the right to property.

4. Article 1(11) of Directive 98/34/EC 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, as amended by Council Directive 2006/96/EC of 20 November 2006, must be interpreted as meaning that:

the provisions of national legislation that introduce a five-fold increase in the flat-rate tax to be paid on slot machines operated in amusement arcades and, in addition, introduce a proportional tax on that activity, do not constitute 'technical rules' within the meaning of that provision, and that

the provisions of national legislation that prohibit the operation of slot machines outside casinos constitute 'technical rules' within the meaning of that provision, the drafts of which must be communicated in accordance with the first subparagraph of Article 8(1) of that directive.

5. Article 56 TFEU is intended to confer rights on individuals, in such a way that its infringement by a Member State, including as a result of its legislative activity, gives rise to a right of individuals to obtain from that Member State compensation for the damage suffered as a result of that infringement, provided that that infringement is sufficiently serious and there is a direct causal link between that infringement and the damage sustained, this being a matter which it is for the national court to determine.

6. Articles 8 and 9 of Directive 98/34, as amended by Directive 2006/96, are not intended to confer rights on individuals, in such a way that their infringement by a Member State gives rise to a right of individuals to obtain from that Member State compensation for the damage suffered as a result of that infringement on the basis of EU law.

7. The fact that national legislation such as that at issue in the main proceedings concerns an area falling within the competence of the Member States does not affect the answers to the questions raised by the referring court.

[Signatures]

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* Language of the case: Hungarian.