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**Preliminary reference C-336/14**
**Ince**
**(Referring court: Amtsgericht Sonthofen - Germany)**

***Notification of the request for preliminary ruling***

The Registrar of the Court of Justice encloses a copy of the request for preliminary ruling lodged pursuant to Article 267 TFEU in the abovementioned case.

Pursuant to the second paragraph of Article 23 of the Protocol on the Statute of the Court of Justice, the parties in the case before the national court, the Member States, the Commission and, where appropriate, the European Parliament, the Council and the European Central Bank are entitled to submit written observations to the Court on the requests for preliminary ruling within **two months** of this notification.

Further, pursuant to the third paragraph of Article 23 of that Protocol, the States, other than the Member States, which are parties to the Agreement on the European Economic Area, as well as the EFTA Surveillance Authority, may, within two months of notification, where one of the fields of application of that Agreement is concerned, submit written observations.

The above time-limit of two months, which may **not** be **extended**, may be increased by a single period of **ten days** on account of distance as provided for by Article 51 of the Rules of Procedure.

The Registrar draws your attention to the fact that all the documents relating to the case must be placed on the court file during the written procedure.

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**Case C-336/14**

**Summary of the order for reference pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

11 July 2014

**Referring court:**

Amtsgericht Sonthofen (Germany)

**Date of the decision to refer:**

7 May 2013

**Criminal proceedings against:**

Sebat Ince

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**Subject-matter of the main proceedings**

Monopoly held by the public authorities on the organisation of games of chance in Germany – Permissibility of the requirement that the organiser must hold a German authorisation even though the monopoly is contrary to EU law – Criminal prosecution of a person who acts as an intermediary for the collection of bets on sporting events on behalf of a betting organiser established in another Member State which does not hold a German authorisation – Legal consequences of the failure to notify provisions amending national law

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

Interpretation of EU law, Article 267 TFEU

**Questions referred for a preliminary ruling**

I. On the first charge (January 2012) and the second charge in so far as it relates to the period up to the end of June 2012:

1(a) Must Article 56 TFEU be interpreted as meaning that criminal prosecution authorities are prohibited from penalising the intermediation of bets on sporting competitions carried on without German authorisation on behalf of betting

organisers licensed in other Member States, where such intermediation is subject to the condition that the betting organiser too must hold a German authorisation, but the legal position under statute that is contrary to EU law ('monopoly on sports betting') prohibits the national authorities from issuing an authorisation to non-State-owned betting organisers?

1(b) Is the answer to question 1(a) altered by the fact that, in one of the 15 German *Länder* which jointly established and jointly implement the State monopoly on sports betting, the State authorities maintain, in prohibition or criminal proceedings, that the statutory prohibition on the issue of an authorisation to private suppliers is not applied in the event of an application for an authorisation to operate as an organiser or intermediary in that federal *Land*?

1(c) Must the principles of EU law, in particular the freedom to provide services, and the judgment of the Court of Justice in Case C-186/11 be interpreted as precluding a permanent prohibition or an imposition of penalties (described as 'precautionary') on the cross-border intermediation of bets on sporting competitions, where this is justified on the ground that it '*was not obvious, that is to say recognisable without further examination*' to the prohibiting authority at the time of its decision that the intermediation activity fulfils all the substantive conditions of authorisation (apart from the reservation of such activities to a State monopoly)?

2 Must Directive 98/34/EC be interpreted as precluding the imposition of penalties for the intermediation of bets on sporting competitions via a gaming machine, without a German authorisation, on behalf of a betting organiser licensed in another EU Member State, where the interventions by the State are based on a law, not notified to the European Commission, which was adopted by an individual *Land* and has as its content the expired Staatsvertrag zum Glücksspielwesen (State Treaty on Gaming) ('the GlüStV')?

II. The second charge in so far as it relates to the period from July 2012

3 Must Article 56 TFEU, the requirement of transparency, the principle of equality and the EU-law prohibition of preferential treatment be interpreted as precluding the imposition of penalties for the intermediation of bets on sporting competitions, without a German authorisation, on behalf of a betting organiser licensed in another EU Member State in a situation characterised by the Glücksspieländerungsstaatsvertrag (State Treaty amending the provisions on games of chance) ('the GlüÄndStV'), applicable for a period of nine years and containing an 'experimental clause for bets on sporting competitions', which, for a period of seven years, provides for the theoretical possibility of awarding also to non-State-owned betting organisers a maximum of 20 licences, legally effective in all German *Länder*, as a necessary condition of authorisation to operate as an intermediary, where:

(a) the licensing procedure and disputes raised in that connection are managed by the licensing authority in conjunction with the law firm which has regularly advised most of the *Länder* and their lottery undertakings on matters relating to the monopoly on sports betting that is contrary to EU law and represented them before the national courts in proceedings against private betting suppliers, and was entrusted with the task of representing the State authorities in the preliminary ruling proceedings in [Joined Cases C-316/07, C-358/07, C-359/07, C-360/07, C-409/07 and C-410/07] *Markus Stoß* [*and Others*, ECLI:EU:C:2010:504], [Case C-46/08] *Carmen Media* [*Group*, ECLI:EU:C:2010:505] and [Case C-409/06] *Winner Wetten* [ECLI:EU:C:2010:503];

(b) the call for tenders for licences published in the Official Journal of the European Union on 8 August 2012 gave no details of the minimum requirements applicable to the proposals to be submitted, the content of the other declarations and evidence required or the selection of the maximum of 20 licensees, such details not having been communicated until after the expiry of the deadline for submission of tenders, in a so-called 'information memorandum' and numerous other documents, and only to tenderers who had qualified for the 'second stage' of the licensing procedure;

(c) eight months after the start of the procedure, the licensing authority, contrary to the call for tenders, invites only 14 tenderers to present their social responsibility and safety policies in person, because these have fulfilled all of the minimum conditions for a licence, but, 15 months after the start of the procedure, announces that not one of the tenderers has provided 'verifiable' evidence that it fulfilled the minimum conditions;

(d) the State-controlled tenderer 'Ods' (Ods Deutschland Sportwetten GmbH), consisting of a consortium of State-owned lottery companies, is one of the 14 tenderers invited to present their proposals to the licensing authority but, because of its organisational links to organisers of sporting events, is probably not eligible for a licence because the law (Paragraph 21(3) of the GlüÄndStV) requires a strict separation of active sport and the bodies organising it from the organisation and intermediation of bets on sporting competitions;

(e) one of the requirements for a licence is to demonstrate 'the lawful origin of the resources necessary to organise the intended offer of sports betting facilities';

(f) the licensing authority and the gaming board that decides on the award of licences, consisting of representatives from the *Länder*, do not avail themselves of the possibility of awarding licences to private betting organisers, whereas State-owned lottery undertakings are permitted to organise bets on sporting competitions, lotteries and other games of chance

without a licence, and to operate and advertise them via their nationwide network of commercial betting outlets, for up to a year after the award of any licences?

**Provisions of European Union law relied on**

Article 56 TFEU

Directive 98/34/ EC of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations, in particular Article 8

**Provisions of national law relied on**

Strafgesetzbuch (Criminal Code) (StGB), in particular Paragraph 284

Staatsvertrag zum Glücksspielwesen in Deutschland (Glücksspielstaatsvertrag) (State Treaty on Gaming in Germany) (GlüStV), in particular Paragraphs 4 and 10

Bayerisches Gesetz zur Ausführung des Staatsvertrages zum Glücksspielwesen in Deutschland (Bavarian Law implementing the State Treaty on Gaming in Germany (AGGlüStV) of December 2007

Erster Staatsvertrag zur Änderung des Staatsvertrages zum Glücksspielwesen in Deutschland (Erster Glücksspieländerungsstaatsvertrag) (First State Treaty amending the State Treaty on Gaming) (GlüÄndStV), in particular Paragraphs 4, 10 and 10a

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

1 Ms Ince, who is a Turkish national, is charged with having, on 11 and 12 January 2012 (first charge) and in the period from 13 April to 7 November 2012 (second charge), acted as an intermediary for the collection of bets on sporting competitions, via a gaming machine installed in the 'Sportsbar' that she runs, on behalf of a betting organiser established and licensed in Austria which does not hold a German authorisation to offer sports betting. She is alleged to have thereby committed a criminal offence under Paragraph 284 of the StGB ('unauthorised organisation of a game of chance').

2 The classification of her conduct as a criminal offence depends in particular on whether the requirement of an authorisation for the organisation or intermediation of bets on sporting competitions is consistent with EU law.

3 That requirement was laid down in Paragraph 4 of the GlüStV, Paragraph 10(2) and (5) of which also provided that an authorisation could not be issued to non-State-owned betting organisers (State monopoly on sports betting).

4 The GlüStV expired at the end of 2011. However, the German federal *Länder* (with the exception of Schleswig-Holstein) each adopted legislation under which the GlüStV continued to apply as *Land* law. In Bavaria, this took the form of the AGGlüStV. Neither that law nor the corresponding laws of the other *Länder* were notified to the Commission.

5 The GlüÄndStV entered into force in Bavaria on 1 July 2012. Paragraph 10(2) and (6) thereof, like Paragraph 10(2) and (5) of the GlüStV before it, provides for a State monopoly on sports betting. In accordance with Paragraph 4 of the GlüÄndStV, the obligation to obtain an authorisation for the organisation and intermediation of bets on sporting competitions continues to apply, although an authorisation is not to be issued for the intermediation of games of chance which are not authorised under the GlüÄndStV and there is no established right to the issue of an authorisation. A new feature of the GlüÄndStV is an 'experimental clause for sports betting' (Paragraph 10a). In accordance with that clause, the State monopoly on sports betting provided for in Paragraph 10(6) is not to be applied to the organisation of sports betting for a period of seven years as from the entry into force of the GlüÄndStV. During that period, sports betting may be organised only under licence and a maximum of 20 licences are to be issued. The licensing obligation is to apply initially only to non-State-owned betting organisers. In the case of the 16 State-owned organisers already active, it is not to apply until one year after the licences have been awarded. On 8 August 2012, the German authorities announced the commencement of the procedure for awarding those licences in Official Journal 2012/S151-253153. That process has not yet been concluded.

6 The laws enacted by the *Länder* to implement the GlüÄndStV were not notified to the Commission, even though, by letter of 20 March 2012, the Commission had pointed out in connection with the GlüÄndStV that future acts adopted in implementation of the provisions of the notified draft of the GlüÄndStV would have to be notified if they contained technical standards or rules on Information Society services within the meaning of Directive 98/34.

7 The first charge and the second charge in so far as it relates to the period from April to June 2012 are governed by the legal position outlined in paragraph 4. The second charge in so far as it relates to the period from July 2012 is governed by the legal position outlined in paragraph 5.

## Succinct presentation of the grounds for the reference

*Question 1(a)*

8 The referring court makes it clear at the outset that, as an intermediary for a service protected by Article 56 TFEU (the betting facilities offered by a betting organiser established in a Member State), Ms Ince is entitled to rely on the freedom to provide services despite the fact that she does not hold European Union citizenship.

9 On the effects of the judgments of the Court of Justice of 8 September 2010 referred to in the third question, the competent Bavarian ministry had informed the authorities under its direction, by letter of 27 September 2010, under the heading of 'future practice', that, as the Court of Justice gave only guidance on interpretation, it was for the national courts to examine in each case whether the objective of combating gambling addiction could no longer be effectively pursued by means of the State monopoly on lotteries and betting. That, it said, was not the case. Consequently, the provision establishing that monopoly in Paragraph 10(5) of the GlüStV was still to be applied. The fact that provision of the services in question is reserved to authorised suppliers ('the authorisation restriction'), in accordance with Paragraph 4(1) and (2) of the GlüStV, had also been confirmed by the Court of Justice as being in accordance with EU law. An authorisation to act as an intermediary was conditional on the existence of an authorisation to organise games of chance carried on via intermediaries in the Freistaat Bayern.

10 In the case of Ms Ince, the competent authority informed her, in response to her enquiry, that, thus far, betting organisers from other Member States had not obtained authorisation to organise bets on sporting competitions and that, for that reason, any applications from betting intermediaries for authorisation would have to be refused.

11 On the other hand, since the aforementioned judgments of the Court of Justice, it has been largely recognised by all German courts that the operation of a monopoly in respect of sports betting pursues illegitimate objectives. In dispute, however, is what consequences in EU law are to be drawn from those judgments and applied to administrative prohibitions and criminal-law penalties.

12 According to a view held in particular by the higher administrative courts, a prohibition on intermediation is contrary to EU law only where it is based on Paragraph 10(2) and (5) of the GlüStV; this does not mean, however, that a private operator may act as an intermediary without the authorisation required by Paragraph 4 of the GlüStV and that Paragraph 284 of the StGB becomes inapplicable. These courts examine whether private organisers or intermediaries would be able to obtain authorisation under the conditions which the GlüStV and its implementing laws lay down for State monopoly holders and their intermediaries. This (fictitious) 'eligibility for authorisation' is always found not

to obtain. One of the reasons given for that finding is that a private betting organiser does not comply with the marketing restrictions or other provisions laid down in the GlüStV as being applicable to monopoly holders by way of justification for the monopoly.

13 In this regard, the Bundesverwaltungsgericht (Federal Administrative Court) (BVerwG) held in a number of judgments in May and June 2013 that the German authorities may 'as a precaution' prohibit the organisation and intermediation of bets on sporting competitions without a German authorisation, unless the organiser or intermediary concerned fulfilled the substantive conditions for authorisation – with the exception of the potentially unlawful monopoly provisions – and this was obvious, that is to say recognisable without further examination, to the prohibiting authority at the time of its decision.

14 Other courts, on the other hand, consider that the authorisation restriction must not be applied in isolation from the prohibition laid down in Paragraph 10(2) and (5) of the GlüStV. The fiction of a judicial authorisation procedure for private operators is unlawful. Moreover, the authorisation procedure laid down in the GlüStV and its implementing laws is designed not for private betting organisers and their intermediaries but only for State monopoly holders and their intermediaries.

15 The referring court, too, takes the view that the prohibition on issuing an authorisation to a private betting supplier laid down in Paragraph 10(2) and (5) of the GlüStV is inextricably linked to the authorisation restriction contained in Paragraph 4 of the GlüStV. The authorisation restriction is an indispensable factor in safeguarding the prohibition laid down in Paragraph 10(2) and (5) of the GlüStV. Without the authorisation restriction, the objective pursued by the Länder and the GlüStV of making the organisation of sports betting the subject of a monopoly operated by State-owned suppliers would be unattainable. After all, the provisions contained in Paragraph 10(2) and (5) of the GlüStV prohibit only the issue of an authorisation to private organisers or intermediaries, but not the private offering of betting facilities without a German authorisation. Only Paragraph 4 of the GlüStV contains a prohibition on private activities in the area of sports betting. If the monopoly on sports betting is inapplicable under EU law, the authorisation restriction is therefore, necessarily, inapplicable too.

16 As far as EU law is concerned, the practice whereby the administrative and judicial authorities justify prohibitions or penalties by reference to the authorisation restriction considered in isolation and fabricate an authorisation procedure is potentially questionable from the point of view of legal certainty and legal clarity. The Court of Justice has held that the incompatibility of national law with European Union law cannot be remedied by a judicial or administrative practice but, ultimately, only by means of national provisions of a binding nature which have the same legal force as those which must be amended (see, inter alia, the judgments in Case C-334/94, *Commission* v *France*, ECLI:EU:C:1996:90,

paragraph 30; Case C-197/96, *Commission* v *France*, ECLI:EU:C:1997:155, paragraph 14; Case C-58/98, *Commission* v *Italy*, ECLI:EU:C:2000:527, paragraph 17; and Case C-145/99, *Commission* v *Italy*, ECLI:EU:C:2002:142, paragraph 30.

17 Militating against the applicability of the authorisation restriction in isolation is the fact that, in the context of the separation of powers, it is not for the administrative or judicial authorities to assume the position of the legislature and to give new content to the GlüStV, in particular by fabricating an authorisation procedure. The legislature has many options left open to it should the monopoly at issue be contrary to EU law. It must not be deprived of those options.

18 It must also be borne in mind that the GlüStV was created in order to justify the monopoly – the worst conceivable form of interference with the fundamental freedoms – as a whole, not the authorisation restriction in isolation. The marketing restrictions and the provisions restricting the type and form of sports bets offered which are laid down by the GlüStV serve first and foremost to justify the complete exclusion of private betting organisers and, in accordance with the case-law of the Bundesverfassungsgericht, are directed only at monopoly holders and their intermediaries.

19 The argument that Ms Ince should have brought an action for the issue of an authorisation also seems problematic from the point of view of EU law. If that were so, she would have to apply to the courts for something which the administrative authorities would not be permitted to give her under national law. Such a difficulty in providing a service can hardly be justified by overriding reasons in the public interest. Indeed, such a practice might entirely frustrate the viability of the internal market, because an authorisation to act as an intermediary is conditional on the existence of a German authorisation to act as an organiser, but there is no non-State-owned organiser with such an authorisation.

20 It is true that the Court of Justice has made it clear that the Member States may, in principle, make the organisation or intermediation of sports betting subject to national authorisation, even if this gives rise to a severe restriction of the freedom to provide services. However, the Court has also made it clear that such a scheme must be based on objective, non-discriminatory criteria known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion so that it is not used arbitrarily (judgments in *Carmen Media Group,* ECLI:EU:C:2010:505, paragraph 87; and Case C-64/08, *Engelmann*, ECLI:EU:C:2010:506, paragraph 55). It seems questionable, however, whether the authorisation scheme laid down in the GlüStV is based on 'objective criteria'. After all, it was created not for private betting organisers and their intermediaries but for State monopoly holders and their intermediaries. The GlüStV contains rules on the monopolistic cooperation between betting outlets and State-owned monopoly holders which cannot readily be transposed to the relationship between private organisers and private intermediaries.

21 It is also questionable whether the authorisation restriction meets the requirements of transparency. After all, neither the GlüStV nor the implementing laws make it unequivocally clear which requirements private applicants for authorisation ultimately have to fulfil.

22 The argument put forward by the Freistaat Bayern to the effect that the Court of Justice approved the authorisation restriction in the judgment in *Carmen Media Group,* ECLI:EU:C:2010:505, is probably based on a misunderstanding of that decision. The Court's answer to the question whether the lack of an established right to authorisation is compatible with EU law was based on a factual situation which assumed that it was theoretically possible for an authorisation to be issued for private sports betting. In 2012, however, the law did not make it possible for Ms Ince to obtain an authorisation.

*Question 1(b)*

23 This question relates to the German case-law which considers that a prohibition on the intermediation of bets on sporting competitions without authorisation or the fact that such intermediation constitutes a criminal offence is justified because the State authorities do not apply the prohibition laid down in Paragraph 10(5) of the GlüStV if they receive an application for authorisation made by an intermediary or organiser.

24 In the light of the practice in Bavaria as described in paragraphs 10 and 11, however, it is doubtful whether that premise is correct. That notwithstanding, the referring court asks the Court of Justice for an interpretation of EU law based on the assumption that, in 2012, the Freistaat Bayern would no longer have refused an application for authorisation from a betting intermediary or betting organiser by reason of the prohibition contained in Paragraph 10(2) and (5) of the GlüStV.

25 Even in that assumed scenario, however, it is questionable whether the non-application of Paragraph 10(5) of the GlüStV, in and of itself, creates a situation which is in conformity with EU law. First, there are the concerns with regard to legal certainty and legal clarity which have already been raised in connection with question 1(a). From that point of view, the question also arises whether a private betting supplier has to expect that the lack of authorisation will be relied on against it by way of the argument that, although it is not (any longer) generally excluded from authorisation under Paragraph 10(5) of the GlüStV, it *is* excluded on the ground of non-compliance with other requirements of the GlüStV.

*Question 1(c)*

26 This question supplements questions 1(a) and 1(b) and relates specifically to the case-law of the BVerwG in the judgments of May and June 2013. The BVerwG states in those judgments that the authorisation restriction justifies a 'precautionary' outright prohibition 'pending clarification of the conditions of authorisation which are not dictated by the monopoly applicable to the services in

question', unless the unauthorised activity fulfils the substantive conditions and this is 'obvious, that is to say recognisable without further examination', to the prohibiting authority 'at the time of its decision'. The BVerwG takes the view that, if the prohibiting authority is still unclear or has any doubts about whether all the substantive conditions of authorisation have been fulfilled, a permanent 'precautionary' prohibition is justified under EU law. The Court of Justice, it says, endorsed that approach in the judgment in Joined Cases C-186/11 and C-209/11, *Stanleybet International and Others*, ECLI:EU:C:2013:33.

27 However, the referring court has doubts about whether that interpretation of EU law and that understanding of the aforementioned judgment are correct. If the State monopoly is unjustified under EU law, the authorisation restriction cannot in its view be otherwise, for, without that authorisation, the prohibition laid down in Paragraph 10(5) of the GlüStV would be redundant.

28 Moreover, the factual situation on which the Court of Justice was called upon to give a ruling in *Stanleybet International and Others* is different from the situation in the main proceedings [in this case] and from the situation in the main proceedings on which the BVerwG gave judgment. The cases on which the Court of Justice ruled did not concern either an outright prohibition or a penalty under criminal law. Furthermore, the Court of Justice did not rule that it was permissible for the activity of the betting supplier which had brought the action to be the subject of a 'precautionary' prohibition and criminal penalties pending conclusion of the examination of the applications for authorisation. Indeed, such an interpretation seems improbable given that the Court of Justice specifically held in paragraph 38 of that judgment that the Greek monopoly forming the subject-matter of those proceedings, which was not justified under EU law, could *not* continue to apply during a transitional period. In all probability, therefore, it was simply expressing the view that the fact that a monopoly is contrary to European Union law does not give rise to the immediate obligation to issue authorisations for a number of years.

29 The case-law of the Bundesverwaltungsgericht also gives cause for concern because the burden of demonstration and proof in relation to the justification of outright prohibitions and criminal-law penalties lies in principle with the Member States. In accordance with the view taken by the BVerwG, it would in fact be the intermediary who would have to prove that he and his organiser 'obviously' fulfil all the conditions of authorisation. What is more, furnishing such proof seems to be a practical impossibility.

30 A further question is whether the conditions of authorisation which must be 'obviously' fulfilled are framed in such a way as to justify a restriction on the freedom to provide services, even though they were not designed for private betting suppliers and their intermediaries but, primarily, in order to justify the monopoly.

31 The BVerwG justifies its interpretation of EU law on the ground that the 'precautionary' prohibition is necessary in order 'to ensure that unauthorised activities do not create *faits accomplis* and give rise to unanalysed risks'. Whether that consideration justifies a restriction on the freedom to provide services in the area of sports betting is highly questionable. The appropriateness of the reference to 'unanalysed' risks is probably debatable, too, given that the authority is in principle responsible for demonstrating and proving that its intervention is justified and should therefore analyse risks before it prohibits or penalises an activity.

*The second question*

32 The second question is raised because there are differing opinions in German case-law on the issue of whether an unnotified law of a federal *Land*, the content of which is the same as that of the expired GlüStV, is inapplicable, be it in its entirety or only in relation to its technical standards. The activity of betting intermediary carried on by Ms Ince would not constitute a criminal offence at the time of the first charge if the lack of notification rendered the authorisation restriction, which continues in being under the AGGlüStV, inapplicable.

33 The proposition that the AGGlüStV should have been notified is supported by the fact that the authorisation restriction is thereby given effect by a *Land* law. A *Land* law having as its content the GlüStV appears to be a 'substantial amendment' within the meaning of Directive 98/34. Without that amendment, the monopolistic restrictions contained in the GlüStV would have ceased to exist without being replaced. Notification of the AGGlüStV might have been necessary in particular because, in the view of many courts, the fictitiously examined eligibility for authorisation is excluded where the internet prohibition, directed primarily at monopoly holders, or the prohibition of live betting is not observed by the organiser or intermediary. These rules on marketing and on the type and form of sports bets which are eligible for authorisation almost certainly constitute rules on services within the meaning of Article 8 of Directive 98/34.

*The third question*

34 The third question is raised because Ms Ince ceases to be liable to prosecution for the period as from the entry into force of the GlüÄndStV if the licensing procedure, as regards its legal regime or practical application, is not in accordance with the requirements of EU law clarified and specified by the Court of Justice. Relevant to the judgment to be given in this regard, in addition to the law governing, and practice of, the licensing procedure in the relevant period, which extends up to November 2012, is the further conduct of that procedure. After all, if, as regards its legal regime and/or practical application, the procedure proves to be contrary to EU law after the relevant period, the lack of authorisation certainly could not be relied on against Ms Ince in relation to the previous period.

35 The referring court therefore asks the Court of Justice for an interpretation of the freedom to provide services and the principles of European Union law in the context of the particular features of the licensing procedure laid down in the GlüÄndStV, which are set out as subparagraphs to the third question.