CIVIL COURT FIRST HALL

JUDGE

ONOR. TONI ABELA LL.D.

Application number 203/22TA

Mr.Green Limited

vs

Michael Kugler

The Court;

Having seen the application of Michael Kugler (the applicant) of the 2nd August wherein he premised and demanded the following: (a' folio 2225).

Respectfully Sheweth

1. That Mr Green Limited filed these procedures in terms of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) ("Regulation") to obtain a declaration whereby, respectively, a judgment of the Regional Court of St Polten and a judgment of the Supreme Regional Court of Vienna, Republic Of Austria ("Judgments"), would not be recognised and executed in Malta, since, according to Mr Green Limited, the

recognition of these judgments should be refused as these go against the public policy (*ordre public*) of the executing Member State, namely the State of Malta;

2. That this is not an isolated case, as several gaming companies based in the State of Malta, are objecting to the enforcement of judgments delivered in other Member States, on the basis of the defence afforded by Article 45(1)(a) of the Regulation[1];

3. That the Maltese Government, in a blatant and discriminatory effort to protect the companies licenced by the Malta Gaming Authority under its legal regime, and in the processing undermining the rights of individuals trying to enforce their rights, has elected, in an effort to avert the obligations of the Regulation, to pass a law in Parliament[2], which amends the Gaming Act[3], by the introduction of the following *ad hoc* provision ("Provision"), in virtue of which the execution of the said judgments is excluded:

56A.Notwithstanding any provision of the Code of Organization and Civil Procedure or of any other law, as a principle of public policy:

(a) no action shall lie against a licence holder and, or current and, or former officers and, or key persons of a licence holder for matters relating to the provision of a gaming service, or against a player for the receipt of such gaming service, if such action:

(i) conflicts with or undermines the legality of the provision of gaming services in or from Malta by virtue of a licence issued by the Authority, or the legality of any legal or natural obligation resulting from the provision of such gaming services; and

(ii) relates to an authorised activity which is lawful in terms of the Act and other applicable regulatory instruments; and

[1] *Article 45 (1). On the application of any interested party, the recognition of a judgment shall be refused:*
(a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed;
[2] Act No. XXI of 2023 - Gaming (Amendment) Act
[3] Chapter 583 of the Laws of Malta

(b) The Court shall refuse recognition and, or enforcement in Malta of any foreign judgment and, or decision given upon an action of the type mentioned in sub-article (a).

4. That clearly this new Provision deprives the European consumer of a cardinal right to seek redress within the European Union, as the Maltese government has blatantly legislated with a view to usurping a function, namely the function of determining what constitutes public policy within a Member State, which is clearly the competence of the Courts of the said Member State;

5. In fact the Maltese Government is imposing its will on the Maltese Courts, to avoid the obligations of the Regulation, as well as principles established by case law, which bestow to the Courts the function of interpreting what constitutes public policy in a Member State, and which judgments, in exceptional cases should not be recognised (ie judgments the execution of which goes "***manifestly*** *contrary to public policy (ordre public) in the Member State addressed*");

6. That the Maltese Government's legislative efforts to restrict the enforcement of res judicata foreign judgments against companies operating under a licence issued by the Malta Gaming Authority ("MGA") is based on an unfounded argument that restrictions imposed by certain countries on the offering of gambling services are in breach of EU law regarding the free movement of services. There is however a plethora of ECJ case law which disproves this. The following ECJ judgment extracts outline how the risks which are inherent to gambling as well as the moral, religious and cultural differences between the Member States, are sufficient reason for the exception to the general rule of the freedom of services and are therefore a justification for each Member State to be well within its right to protect its citizens from being exposed to such services in an unfettered manner:

Digibet and Albers, C-156/13: "*the Court has repeatedly stated that the 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 in the field at EU level, it is for each Member State to determine in those areas, in accordance with its own scale of values, what is required in order to ensure that the interests in question are protected (Case C-42/07 Liga*

Portuguesa de Futebol Profissional and Bwin International EU:C:2009:519, paragraph 57, and Stanleybet International and Others, EU:C:2013:33, paragraph 24 and the case-law cited)"

Dickinger and Ömer, C-347/09: – "*The Member States are therefore in principle free to set the objectives of their policy on games of chance and, where appropriate, to define in detail the level of protection sought (see, to that effect, Liga Portuguesa de Futebol Profissional and Bwin International, paragraph 59).*"

Stanley International Betting and Stanleybet Malta, C-463/13: – "*Therefore, it is settled case-law that restrictions on betting and gambling may be justified by overriding reasons in the public interest, such as consumer protection and the prevention of both fraud and incitement to squander money on gambling (judgment in Digibet and Albers, EU:C:2014:1756, paragraph 23 and the case-law cited)*."

Gambelli and Others, C-243/01: – "*as the governments which submitted observations and the Commission pointed out, the Court stated in Schindler , Läärä and Zenatti that moral, religious and cultural factors, and the morally and financially harmful consequences for the individual and society associated with gaming and betting, could serve to justify the existence on the part of the national authorities of a margin of appreciation sufficient to enable them to determine what consumer protection and the preservation of public order require.*"

Zenatti, C-67/98: – "*As the Court pointed out in paragraph 37 of its judgment of 21 September 1999 in Case C-124/97 Läärä and Others [1999] ECR I-0000 in relation to slot machines, the fact that the games in issue are not totally prohibited is not enough to show that the national legislation is not in reality intended to achieve the public-interest objectives at which it is purportedly aimed, which must be considered as a whole. Limited authorisation of gambling 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, of preventing the risk of fraud or crime in the context of such exploitation, and of using the resulting profits for public-interest purposes, likewise falls within the ambit of those objectives.*"

Also from the above cited **Krombach v Bamberski** (C-7/98): "*Recourse to the public-policy clause in Article 27, point 1, of the Convention can be envisaged only*

where recognition or enforcement of the judgment delivered in another Contracting State would be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought inasmuch as it infringes a fundamental principle. In order for the prohibition of any review of the foreign judgment as to its substance to be observed, the infringement would have to constitute a manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought or of a right recognised as being fundamental within that legal order."

Eurofood IFSC Ltd (C-341/04):[par 62] "*In the context of the Brussels Convention, the Court of Justice has held that, since it constitutes an obstacle to the achievement of one of the fundamental aims of that Convention, namely to facilitate the free movement of judgments, recourse to the public policy clause contained in Article 27, point 1, of the Convention is reserved for exceptional cases (Case C-7/98 Krombach [2000] ECR I-1935, paragraphs 19 and 21)."*

OPINION OF ADVOCATE GENERAL KOKOTT, Case C-302/13 **flyLAL-Lithuanian Airlines AS** 71.: *The public-policy clause in that provision may therefore be relied on only in exceptional cases*. (Hoffmann, 145/86, EU:C:1988:61, paragraph 21; Hendrikman and Feyen, C-78/95, EU:C:1996:380, paragraph 23; Krombach, EU:C:2000:164, paragraph 21; Renault, EU:C:2000:225, paragraph 26; Apostolides, EU:C:2009:271, paragraph 55; and Trade Agency, EU:C:2012:531, paragraph 48).

OPINION OF ADVOCATE GENERAL KOKOTT, Case C-302/13 **flyLAL-Lithuanian Airlines AS** 74.: *A national court does not therefore exceed the limits imposed upon it with respect to the assumption that public policy has been infringed in any event where the refusal of enforcement prevents a clear breach of the fundamental rights recognised in the ECHR and in the European Union legal order* (Krombach, EU:C:2000:164, paragraphs 38 and 39; and Gambazzi, EU:C:2009:219, paragraph 28.).

OPINION OF ADVOCATE GENERAL KOKOTT, Case C-302/13 **flyLAL-Lithuanian Airlines AS** 85. *Purely economic interests, such as the threat of pecuniary damage — however high –, are not, however, sufficient. In principle, this is true even where the interests involved are those of a public authority, such as*

*the Republic of Latvia in this case, See, in relation to a similar situation, the ECHR judgment De Luca v. Italy, no. 43870/04, §§ 54 and 55, 24 September 2013. which operates on the market via undertakings in public ownership and, in that connection, is at risk of sustaining damage (*ECHR judgment De Luca v. Italy, no. 43870/04, §§ 54 and 55, 24 September 2013).

flaLAL, C-302/13 46: *Next, according to Article 34(1) of Regulation No 44/2001, a judgment is not to be recognised if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought. The grounds of challenge that may be relied upon are expressly set out in Articles 34 and 35 of Regulation No 44/2001, to which Article 45 thereof refers. That list, the items of which must, in accordance with settled case-law, be interpreted restrictively, is exhaustive in nature* (see, to that effect, judgments in *Apostolides*, EU:C:2009:271, paragraph 55 and the case-law cited, and in *Prism Investments*, EU:C:2011:653, paragraph 33).

flaLAL, C-302/13 47: *Finally, according to settled case-law, while the Member States in principle remain free, by virtue of the provison in Article 34(1) of Regulation No 44/2001, to determine, according to their own national conceptions, what the requirements of their public policy are, the limits of that concept are a matter of interpretation of that regulation. Consequently, while it is not for the Court to define the content of the public policy of a Member State, it is none the less required to review the limits within which the courts of a Member State may have recourse to that concept for the purpose of refusing recognition of a judgment emanating from a court in another Member State* (see to that effect, judgments in *Krombach*, C-7/98, EU:C:2000:164, paragraphs 22 and 23, and in *Renault*, C-38/98, EU:C:2000:225, paragraphs 27 and 28).

flaLAL, C-302/13 48: *In that connection, by disallowing any review of a judgment delivered in another Member State as to its substance, Articles 36 and 45(2) of Regulation No 44/2001 prohibit the court of the State in which enforcement is sought from refusing to recognise or enforce that judgment solely on the ground that there is a discrepancy between the legal rule applied by the court of the State of origin and that which would have been applied by the court of the State in which enforcement is sought had it been seised of the dispute. Similarly, the court of the*

State in which enforcement is sought cannot review the accuracy of the findings of law or fact made by the court of the State of origin (see judgment in Apostolides, EU:C:2009:271, paragraph 58 and the case-law cited).

flaLAL, C-302/13 56: *As the Advocate General noted in points 84 and 85 of her Opinion, the concept of 'public policy' within the meaning of Article 34(1) of Regulation No 44/2001 seeks to protect legal interests which are expressed through a rule of law, and not purely economic interests. That also applies where, as set out in paragraph 37 of the present judgment, the public authority acts as a market participant, in the present case as a shareholder, and exposes itself to certain risks.*

flaLAL, C-302/13 58: *Consequently, it must be held that the mere invocation of serious economic consequences does not constitute an infringement of the public policy of the Member State in which recognition is sought, within the meaning of Article 34(1) of Regulation No 44/2001*.

flaLAL, C-302/13 60: … *nor the mere invocation of serious economic consequences constitute grounds establishing the infringement of public policy of the Member State in which recognition is sought which would permit the refusal of recognition and enforcement in that Member State of such a judgment given in another Member State.*

7. That in a similar vein academic **Tomaz Kerestes** in his work *'Public Policy in Brussels Regulation I: Yesterday, Today and Tomorrow*' states that:

"*First, it should be stressed that public policy considered in the Brussels I Recast is a special type of public policy or "ordre public". It is an international public policy (ordre public international) that does not cover all "jus cogens". However, neither in case law nor in literature we can find a full definition of public policy (substantive or procedural). As of procedural public policy we can ascertain that in includes those fundamental principles and institutes of civil procedure without which there can be no democratic court procedure or rule of law (Kramberger, 2005: 255). Even more dim is the notion of substantive public policy. It is clear that (international) public policy does not include all "jus cogens" as not all internally mandatory rules are appropriate to be applied in international environment. Only the most fundamental rules of "jus cogens" that form the essence of certain legal order can*

be applied in international environment. Such rules are the constitutional provisions, basis principles of national and EU law, European Human Rights principles (European Convention on Human Rights and Fundamental Freedoms – ECHR). Some authors also include customary international law, vital interests of a state etc."

8. That furthermore, and without prejudice to the above, the newly introduced Provision ignores the fact that case law of the Honourable Court of Justice of the European Union[4], has established that all appeal instances in the Member State of origin must be exhausted, before Article 45(1) of the Regulation may be relied upon in the Member State of enforcement;

9. That in fact the Provision does not make this distinction, as it simply provides a blanket defence that essentially provides that "*The Court shall refuse recognition and, or enforcement in Malta of any foreign judgment and, or decision"* whilst also creating an instance of discrimination against companies which are possibly licensed in other Member States, in favour of whom this defence does not apply.

10. That furthermore Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure ("**European Order for Payment Regulation**"), which governs the issuing of European orders for payment, does not provide for a defence which is analogous to that established by article 45(1) of the Regulation, hence the Provision, in that it is drafted as a principle of Public Policy, should not apply when enforcing a European Payment Order;

11. That it is thus obvious that the matter that the Maltese government is trying to regulate by means of specific legislation is a matter which should quintessentially be decided by the Courts as, amongst others, the notion of Public Order within a Member State should not be limited to the government's priorities, but should take several other factors into consideration, not least the interests of the consumer as opposed to the economic interests of the industry, in this case the gaming industry;

[4] **Diageo Brands v Simiramida** Case C - 681/13

12. That if the Maltese government's approach in this case is not restrained, the rights of consumers within the European Union shall be manifestly jeopardised as this approach shall send a signal to all the governments of the Member States, that they may legislate specifically to avoid the application of a regulation, which amongst others seeks to protect the rights and the interests of individuals as opposed to the interests of an industry which has significant economic relevance for that Government;

13. That in fact, economic interests of a Member State should not be a factor in determining whether or not a foreign judgment should be enforced in another Member State. On the notion of economic interests, the Advocate General Alber in his opinion in relation to the **Renault SA v Maxicar SpA and Orazio Formento** (C-38/98) in paragraph 56 states the following:

"[…] *the Commission even went so far as to ask whether considerations pertaining to economic matters could be included in the concept of 'public policy'. The Commission answered this question in the negative. It argued that Community law governs, influences or pervades all aspects of economic life in the Member States. The principles which form the basis of national laws and which represent Europe's de facto economic constitution can only be common to all Member States. It is therefore impossible to refuse recognition of a judgment by relying upon a discrepancy in the values and principles of Member States."*

14. That this goes manifestly contrary to principles which are of the essence and at the core of the European Single Market and the European Union itself;

15. That Article 3(2) of the European Union Act (Ch. 460 of the Laws of Malta) provides that "*Any provision of any law which from the said date is incompatible with Malta's obligations under the Treaty or which derogates from any right given to any person by or under the Treaty shall to the extent that such law is incompatible with such obligations or to the extent that it derogates from such rights be without effect and unenforceable."*

16. Furthermore in Amministrazione delle Finanze dello Stato v Simmenthal SpA. (case 106/77) the Court declared that "*Furthermore, in accordance with the principle of the precedence of Community law, the relationship between provisions of the Treaty and directly applicable measures of the institutions on the one hand*

and the national law of the Member State on the other is such that those provisions and measures not only by their entry into force render automatically inapplicable any conflicting provision of current national law but – in so far as they are an integral part of, and take precedence in, the legal order applicable in the territory of each of the Member States – also preclude the valid adoption of new national legislative measures to the extent to which they would be incompatible with Community provisions.

Indeed any recognition that national legislative measures which encroach upon the field within which the Community exercises its legislative power or which are otherwise incompatible with the provisions of Community law had any legal effect would amount to a corresponding denial of the effectiveness of obligations undertaken unconditionally and irrevocably by Member States pursuant to the Treaty and would thus imperil the very foundations of the Community".

17. That Article 267 of the Treaty on the Functioning of the European Union provides that

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

18. That moreover, Aurelio Lopez-Tarruella in his paper "***The Public Policy Clause in the System of Recognition and Enforcement of the Brussels Convention***" published on the European Legal Forum[5] explains that "*There are many reasons for the ECJ to interpret the clause in a restrictive way. A clause of an open nature, like Article 27(1)[6], whose content is not delimited, allows for the possibility that it be abused by the Contracting States. A restrictive interpretation is needed not only because these abuses would be a fraud to EC Legislation in themselves, but because they would be an obstacle to the recognition and enforcement of*

[5] http://www.simons-law.com/library/pdf/e/22.pdf
[6] 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters

judgments in the Community. Furthermore, the habitual use of the clause would not be compatible with the principle of mutual recognition on which the Convention is founded."

19. That moreover, this arbitrary refusal of enforcement created by the Provision would in effect absolutely negate a consumer from his right of redress against a company in the consumer's state of domicile, since only judgments of Maltese courts would be effective against Maltese companies in this sector. This is a right which is established under 18(1) of the Regulation which reads as follows: "*A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled* ***or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled****.*" This would undoubtedly create a significant barrier for consumers outside of Malta to seek redress against MGA licensed companies, thus further undermining the intended effect of the Regulation which is directly applicable in Malta;

20. That in **Flaminio Costa v Enel** (C-6/64) the Court underlined the supremacy of EU law when a conflict arises with national laws:

"*The executive force of Community law cannot vary from one State to another in deference to subsequent domestic laws, without jeopardizing the attainment of the objectives of the Treaty set out in Article 5 (2) and giving rise to the discrimination prohibited by Article 7.*

The obligations undertaken under the Treaty establishing the Community would not be unconditional, but merely contingent, if they could be called in question by subsequent legislative acts of the signatories.

Wherever the Treaty grants the States the right to act unilaterally, it does this by clear and precise provisions (for example Articles 15, 93 (3), 223, 224 and 225). Applications, by Member States for authority to derogate from the Treaty are subject to a special authorization procedure (for example Articles 8 (4), 17 (4), 25, 26, 73, the third subparagraph of Article 93 (2), and 226) which would lose their purpose if the Member States could renounce their obligations by means of an ordinary law.

The precedence of Community law is confirmed by Article 189, whereby a regulation 'shall be binding' and 'directly applicable in all Member States'.

This provision, which is subject to no reservation, would be quite meaningless if a State could unilaterally nullify its effects by means of a legislative measure which could prevail over Community law".

21. This principle was echoed in **Lütticke** (C-57/1965) and very relevantly in **Kreil** (C-285/98), where the Court ruled against the German Government, quoting from the German Constitution, as the provision in question limiting Military Service exclusively to male applicants, was in conflict with the Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40), which inter alia provided that the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status;

22. That at this stage it is of paramount importance that the illegal and abusive steps undertaken by the Maltese government, by means of the introduction of the Provision, which has created an unbalanced situation which favours "*licence holder and, or current and, or former officers and, or key persons of a licence holder for matters relating to the provision of a gaming service*" as opposed to consumers attempting to enforce their rights in terms of the Regulation, be addressed with immediate effect.

Hence the applicant respectfully requests this Honourable Court, subject to any further order it may deem necessary or expedient, to refer the following questions to the Honourable Court of Justice of the European Union in terms of Article 267 of the Treaty on the Functioning of the European Union, so that the latter may provide a preliminary ruling in respect thereof:

1. Are the exclusively economic interests defined in Article 56A of Chapter 583 of the laws of Malta - the Gaming Act (attracting foreign gambling operators to Malta) a factor in determining whether the enforcement of Austrian and German judgments in Malta is manifestly contrary to public

policy (ordre public) in Malta in terms of Article 45(1) and Article 46 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (the "**Regulation**")?

2. Is article 56A of the Gaming Act, compatible with Articles 36, 39, 45 and 46 of the Regulation?

3. That subsidiarily, and without prejudice to the above questions, does the fact that article 56A of the Gaming Act does not provide that, before invoking Article 45(1) of the Regulation, one must have exhausted all the remedies available in the Member State of origin, contradict the case law of this Honourable Court and should the Maltese Courts, notwithstanding the terms of article 56A, still take into account whether the applicant has effectively exhausted all his remedies in the State of Origin?

4. Does article 56A of the Gaming Act conflict with Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, since the recognition and enforcement of a European Order for Payment cannot be prevented on the basis of the principles of public policy?

With costs.

Having seen the answer of Mr. Green Limited (the defendant Company) of 28th August 2023 by which it answered the following: (a' folio 2244).

1. That this reply is being filed by Mr Green Limited in reply to the application filed by Michael Kugler, as duly represented by his special mandatory Dr Damien Degiorgio, requesting the Hon. Court to refer a number of questions to the Court of Justice of the European Union ("**CJEU**") through the preliminary reference procedure established in terms of Article 267 of the Treaty on the Functioning of the European Union ("**TFEU**").

2. That through his application Michael Kugler is requesting the Honourable Court to refer the following questions to the CJEU:

    1. ***Are the exclusively economic interests defined in Article 56A of Chapter 583 of the laws of Malta - the Gaming Act (attracting foreign gambling operators to Malta) a factor in determining whether the enforcement of Austrian and German judgments in Malta is manifestly contrary to public policy (ordre public) in Malta in terms of Article 45(1) and Article 46 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (the "Regulation")?***

    2. ***Is article 56A of the Gaming Act, compatible with Articles 36, 39, 45 and 46 of the Regulation?***

    3. ***That subsidiarily, and without prejudice to the above questions, does the fact that article 56A of the Gaming Act does not provide that, before invoking Article 45(1) of the Regulation, one must have exhausted all the remedies: available in the Member State of origin, contradict the case law of this Honourable Court and should the Maltese Courts, notwithstanding the terms of article 56A, still take into account whether the applicant has effectively exhausted all his remedies in the State of Origin?***

    4. ***Does article 56A of the Gaming Act conflict with Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, since the recognition and enforcement of a European Order for Payment cannot be prevented on the basis of the principles of public policy?***

3. That preliminarily, Mr Green Limited notes the various misplaced and unjustified statements such as: "*illegal and abusive steps undertaken by the Maltese government by means of the introduction of the Provision", "imposing its will on the Maltese Court"* and "*usurping*" of functions from the Courts, which statements are misplaced, misguided and should – if anything – be raised in the appropriate judicial fora which are certainly not this Hon. Court. The applicant company contends that the comments made in this regard should not and cannot be dealt with in these proceedings instituted by Mr Green Limited in terms of the Regulation (EU) 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) ("**Brussels I Recast**"), and should also not serve to impact the applicant company's rights at law in the course of these proceedings. The applicant company reserves its right to make further submissions in this regard in the appropriate judicial forum.

4. That also preliminarily, the defendant Michael Kugler provides extensive submissions on the notion of public policy under Brussels I Recast and on the free movement of services in the gaming sector in order, presumably, to give context to the request for a preliminary reference. While parts of these submissions are dealt with in this Reply, the main thrust of this Reply remains the request for a preliminary reference and why the Hon. Maltese Court should refuse this request. Nevertheless, the submissions on the background and context behind the case made by the

defendant in this regard are contested in their entirety and Mr Green Limited reserves the right to make further submissions in this regard.

5. **That with respect, Mr Green Limited contends that the Honourable Court should reject Michael Kugler's request for a preliminary reference of the questions as proposed in terms of Art 267, TFEU, and this for the following reasons set out in this Reply and summarised below.**

   - **The need for a preliminary reference at this stage of the proceedings (First Instance) remains at the complete discretion of this Honourable Court, which "may" choose to refer;**

   - **That a preliminary reference is intended to clarify a matter of interpretation of EU law and not whether a provision of national law is compliant or otherwise with EU legislation since the CJEU does not have the jurisdiction to rule on such compatibility of national measures with EU law;**

   - **The questions are hypothetical, irrelevant, and not necessary for the Court "*to enable it to give judgment";***

   - **The <u>recognition</u> of the Austrian judgments obtained by defendant Michael Kugler would be "manifestly contrary to public policy (ordre public)" in Malta – a matter which is to be determined by this Honourable Court as the Court of the Member State addressed;**

<u>LEGAL CONTEXT</u>

6. That in considering whether a preliminary reference to the CJEU is indeed necessary in the circumstances, it is important to understand, in brief, the legal context underpinning these proceedings in the case in the names <u>Mr Green v Michael Kugler</u> (App no 203/2022 TA).

7. As the Court is aware, these proceedings, which are not an isolated case, have been filed by Mr Green Limited itself, as the *"person against whom enforcement is sought"*, asking the Maltese First Hall Civil Court, as the Court in the "*Member State concerned*" to declare that the recognition and enforcement of the Austrian judgments obtained by Michael Kugler against Mr Green Limited are "*manifestly contrary to public policy in the Member State addressed"* i.e. Malta, in terms of Article 45 and 46 of Brussels I Recast.

8. In line with Article 44 of the same Brussels I Recast, Mr Green Limited also requested a stay in enforcement pending the outcome of the Article 45/46 applications, with this application being acceded to by the First Hall Civil Court presided by Hon Judge Robert Mangion on the 12th April 2022. Through this decree Michael Kugler was prohibited from withdrawing any funds seized by the executive garnishee orders filed until the definitive outcome of the public policy case being heard before this Hon Court.

9. That since filing this application on the 10th March 2022, Mr Green Limited has maintained and brought evidence forward to convince this Court that the recognition and enforcement of Michael Kugler's Austrian judgments in Malta would be "*manifestly contrary to public policy in the Member State addressed*".

10. This is based on the fact that as a matter of public policy, while the entire Maltese Gaming law framework is based on a point-of-supply license rooted in the free movement of services across the EU (adopted and defended by successive Maltese governments as a matter of public policy), the Austrian Gambling monopoly created by the *Gluckspielgesetz* (Austrian Gaming Act), disproportionately restricts the free movement of services in the EU, consequently prohibits Malta-licensed operators from providing services to Austrian consumers, and is not in compliance with CJEU case law on such restrictions to free movement. In this context, Mr Green Limited contends that the "recognition" of these Austrian judgments obtained by Michael Kugler, ordering the claimant company to repay all losses suffered by the same Kugler, would be in manifest breach of Maltese "public policy".

11. That in the meantime and pending the hearing of this case, on the 16th June 2023 the Parliament of Malta unanimously introduced Act No XXI of 2023 i.e. the Gaming (Amendment) Act which introduces a new Article 56A of the Gaming Act which provides as follows:

> *56A.Notwithstanding any provision of the Code of Organization and Civil Procedure or of any other law, as a principle of public policy:*
>
> *(a) no action shall lie against a licence holder and, or current and, or former officers and, or key persons of a licence holder for matters relating to the provision of a gaming service, or against a player for the receipt of such gaming service, if such action:*
> *(i) conflicts with or undermines the legality of the provision of gaming services in or from Malta by virtue of a licence issued by the Authority, or the legality of any legal or natural obligation resulting from the provision of such gaming services; and*
>
> *(ii) relates to an authorised activity which is lawful in terms of the Act and other applicable regulatory instruments, and*
>
> *(b) The Court shall refuse recognition and, or enforcement in Malta of any foreign judgment and, or decision given upon an action of the type mentioned in sub-article (a).*

12. That given that the new Article 56A enacted in 2023, clarifies, consolidates and expounds upon this "public policy" principle which the claimant Mr Green Limited maintained in the last two years, during the last sitting held on the 3rd July 2023, the text of Bill 55 was submitted in evidence and brought to the attention of this Honourable Court as Dok MRG26.

13. That notwithstanding the above, these proceedings remain exclusively based on Article 45/46 of Brussels I Recast Regulation.

14. That the proceedings in question have now been adjourned for the commencement of the defendant Player's evidence on the 7th November 2023.

15. A decision on the recognition and enforcement of the Austrian player claims in Malta in terms of Brussels I Recast is yet to be given by the Maltese Courts.

The Preliminary Reference procedure in terms of Article 267 of the TFEU

16. That Article 267 of the TFEU provides that:

> Article 267
>
> (ex Article 234 TEC)
>
> **The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:**
>
> **(a) the interpretation of the Treaties;**
>
> **(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;**
>
> **Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.**
>
> Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.
>
> If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.
>
> **(emphasis added)**

17. That as the text of the law implies, a national Court will refer questions for a preliminary reference, to either (a) clarify the interpretation of the EU Treaties or an EU law or (b) to challenge the validity of an EU law (other than the Treaties). The aim of the preliminary reference procedure is to ensure a uniform interpretation of EU law throughout the various Member States and this is typically achieved through the *"judicial dialogue"* exchanged between the national courts and the CJEU (see *Schwarze* (Case 16/65)).

18. That as affirmed in the judgment ***Jeremy S. Harris vs Patrick Spiteri and Sylvana Spiteri***[7]*,* given by the Maltese Court of Appeal, the procedure laid down under article 267 TFEU is limited as follows:

> *"referenza preliminarja tista' jew għandha ssir biss meta quddiem qorti nazzjonali tqum kwistjoni dwar it-tifsir tat-Trattati tal-Unjoni jew dwar is-siwi jew it-tifsir ta' atti tal-istituzzjonijiet, korpi jew organi tal-Unjoni.*
>
> *Ir-rinviju huwa meħtieġ meta jkun hemm bżonn ta' interpretazzjoni ta' dispożizzjoni ta' dritt Ewropew u mhux meta hemm bżonn ta' applikazzjoni ta' dritt Ewropew għall-fatti tal-kaz.*

19. That as repeatedly provided in case law of the CJEU on the subject, in order for a preliminary reference/ruling to be made to the CJEU, three essential conditions must subsist:

[7] *Jeremy S. Harris vs Patrick Spiteri and Sylvana Spiteri,* Court of Appeal (Superior), 6 July 2023 (Rik. Nru. 1099/2003/2)

a. The request needs to be made by a "*court or tribunal of a Member State"* as defined
b. A question of EU law needs to be raised before the court or tribunal of such Member state
c. A decision on the question of EU law needs to be "necessary to enable it to give judgment" in that particular case where a ruling is requested

THE NEED FOR A PRELIMINARY REFERENCE REMAINS IN THE COMPLETE DISCRETION OF THE NATIONAL COURT

20. That it is in the complete discretion and responsibility of the National Court, in our case this Honourable Court, to determine whether these criteria subsist and whether a preliminary reference is therefore required, irrespective of whether the Parties request it or not.

21. That as explained in ***Bacardi-Martini, C-318/00*** where the CJEU held that "*it is solely for the national court … to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court."*[8] (See also *Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings" (2019/C 380/01) para 1).*

22. That as is evident from the text of Art 267 TFEU, while a court of first instance "*may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon"*, in the case of a court "*against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.".*

23. While a Court against whose decisions there are no judicial remedies (such as the Honourable Court of Appeal) is bound to make such reference (subject to the other applicable conditions being satisfied); a Court of First Instance, such as this Honourable Court is not bound to do so and is free to decide whether a question of EU law necessitates a preliminary ruling. However even in these cases, such duty to refer is not absolute, and is nowadays subject to the exceptions laid out in the seminal *CILFIT*[9] case, which limits this obligation to refer, and which allows Courts of last instance, to refuse requests for a preliminary reference when the questions proposed cannot effect the outcome of the case, where there is a settled line of case law on the matter (*acte éclairé*) or where the answer to the EU Law question is obvious and undisputed *(acte clair)*.

24. That this is in fact corroborated by the fact that the Maltese Court of Appeal (against whose decisions there is no judicial remedy) regularly refuses requests for preliminary references under Article 267 TFEU (see for example ***L-Onor Kap Tal-Oppozizzjoni Dr Adrian Delia v Onor Prim Ministru ta' Malta Dr Joseph Muscat et***[10], ***Cassar Fuel Limited v Gozo Channel (Operations) Ltd et (Rikors 5/20 Qorti tal-Appell (Superjuri))*** and ***Servizi Malta Limited v Direttur tal-Kuntratti et (Rikors nru 84/2019 Qorti tal-Appell (Superjuri)*** where requests for a preliminary reference to the Honourable Court of Appeal (Superior) were refused.

[8] *vide* para. 41
[9] *CILFIT* (Case 283/81) ECLI:EU:C:1982:335.
[10] Rikors Appell nru 133/2018 Qorti tal-Appell Superjuri dated 18th July 2023

25. That as held by the First Hall Civil Court (Constitutional Jurisdiction) in the case ***Sharon Rose Roche nee Bellamy v Direttur tad-Dipartiment ghall-istandards fil-Harsien Socjali et*** **(Rikors 15/2018):-**

> "Illi fis-sentenza tal-Qorti tal-Gustizzja fl-ismijiet *Wien et* vs. *Wien & Co. HandelsgesmbH et*, datata d-*9 ta' Marzu, 2000* irriteniet is-segwenti:
>
> "*52. It should first be pointed out in this regard that, according to consistent case-law it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgement and the relevance of the questions which it submits to the Court"*, (sottolinear ta' din il-qorti);
>
> ***Illi konsegwenza tal-istess ghandu ampjament jirrizulta pacifiku li hi biss ir-responsabbilita` tal-qorti nazzjonali li tkun kolpita bil-lanjanza de quo li ghandha tistabbilixxi, fic-cirkostanzi partikolari tal-kaz imqajjem quddiemha, jekk it-talba ghar-referenza bhal dik in dizamina ghandiex tigi akkolta jew le;***
>
> *Illi sintetikament jigi sottolineat li s-suespost ifisser li tali kwistjoni hi allura esklussivament fid-diskrezzjoni tal-qorti nazzjonali;*
>
> ***Illi konsegwentement, qorti nazzjonali m'ghandha l-ebda obbligu li galadarba tkun kolpita b'talba ghal tali referenza hi ghandha takkolji l-istess b'mod awtomatiku kif donnu qed tippretendi r-rikorrenti;***
>
> *(emphasis added)*
> *…*

"NECESSITY" OF THE PRELIMINARY RULING IN CASES BEFORE A COURT OF FIRST INSTANCE

26. That as a cardinal rule and as explicitly held in the text of Art 267 TFEU, the Court of First Instance "may" submit questions through the preliminary reference procedure "**if it considers that a decision on the question is necessary to enable it to give judgment".**

27. On the point of necessity and as held by the First Hall Civil Court (Constitutional) in the judgment ***Patricia Graham et v L-Avukat Generali et (Rikors Nru: 19/13 JZM):-***

> *'As explained by Lord Denning M.R. in the English Champagne Case this means that "the judge must have got to the stage when he says to himself: "This clause of the Treaty is capable of two or more meanings. If it means*

*this, I give judgment for the plaintiff. If it means that, I give judgement for the defendant". **In short, the point must be such that, whichever way the point is decided, it is conclusive of the case. Nothing more remains but to give judgement."***

28. That it also established that the CJEU may refuse as inadmissible, generic or hypothetical questions when it is obvious that the ruling sought by the Courts of the Member State bears no relation to the facts of the main action or its purpose or where the problem in question is hypothetical. (***Bosman*, C 415/93** para 60).

29. It is also widely acknowledged that the CJEU may refuse references *"where it is quite obvious that the interpretation or the assessment of the validity of a provision of [EU] law … bears no relation to the actual facts of the main action or its purpose, or where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it".(**Bacardi-Martini C-318/00**)*.[11]

30. As the CJEU holds in the same ***Bacardi-Martini*,** "*In order that the Court may perform its task in accordance with the Treaty, it is essential for national courts to explain, when the reasons do not emerge beyond any doubt from the file, why they consider that a reply to their questions is necessary to enable them to give judgment (**Case 244/80 Foglia** [1981] ECR 3045, paragraph 17). Thus the Court has held that it is essential that the national court should give at the very least some explanation of the reasons for the choice of the Community provisions which it requires to be interpreted and of the link it establishes between those provisions and the national legislation applicable to the dispute (order in **Case C-116/00 Laguillaumie [**2000] ECR 1-4979, paragraph 16)*[12]

31. That as held by the Maltese Courts in ***Avukat Generali tar-repubblika, Ministru Responsabbli mill-Gustizzja u l-Intern, u l-Prim Ministru***[13], it is again in the discretion and power of the national Courts (in our case this Honourable Court) to determine the "necessity" of the preliminary reference to the case on the merits:

> *"…Daqstant ieħor hija l-Qorti domestika li għandha s-setgħa waħdanija li tiddeċiedi jekk deċiżjoni preliminari tal-Qorti Ewropeja <u>hijiex meħtieġa qabel ma tista' tingħata s-sentenza fil-mertu."</u>*
>
> *<u>(emphasis added)</u>*

<u>QUESTION ON INTERPRETATION OF EU LAW</u>

32. That as already indicated above, a preliminary reference is intended to clarify a matter of interpretation of EU law, and <u>not</u> whether a provision of national law is compliant (or otherwise) with EU legislation.

33. That as indicated in the *"Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings"* (2019/C 380/01) issued

[11] *Bacardi-Martini*, C-318/00 para. 42

[12] Ibid.

[13] *Carmelo Borg vs Avukat Generali tar-Repubblika, Ministru Responsabbli mill-Gustizzja u l-Intern, u l-Prim Ministru* deciza mill-Prim Awla tal-Qorti Civili (Gurisdizzjoni Kostituzzjonali) fit-24 ta' Novembru 2005 (Rik. Nru. 53/2005)

by the CJEU, it is held that the preliminary reference procedure is "*designed to ensure the uniform interpretation and application of EU law within the European Union, by offering the courts and tribunals of the Member States a means of bringing before the Court of Justice of the European Union ('the Court') for a preliminary ruling questions concerning the interpretation of EU law or the validity of acts adopted by the institutions, bodies, offices or agencies of the Union."*[14]

34. That it therefore follows that the same preliminary reference procedure "*must concern the interpretation or validity of EU law, not the interpretation of rules of national law or issues of fact raised in the main proceedings.."*[15] *[emphasis added].*

35. That this point has been considered time and again by the CJEU (*vide* e.g. ***Centro-Europa 7 Srl ((C-380/05),*** where the CJEU held the following:

> *"As a preliminary point, it must be stated, first, that by some of its questions the national court is inviting the Court to give a ruling on the compatibility with Community law of certain provisions of the Italian legislation relevant in this case.*
>
> *It is not the task of the Court, in preliminary ruling proceedings, to rule upon the compatibility of provisions of national law with Community law or to interpret national legislation or regulations (see Case C-151/02 Jaeger [2003] ECR I-8389, paragraph 43, and Case C-237/04 Enirisorse [2006] ECR I-2843, paragraph 24 and the case-law cited).*
> *[enfasi mizjuda].*[16]

36. That as held in ***Inter-Huilles***[17] the CJEU (in the context of a preliminary reference procedure) does not have the power to assess whether a Member State has breached EU law or whether some provision of national/domestic law is compatible or not with EU law. Thus, while the CJEU "*does not have jurisdiction to rule on the compatibility of a national measure with Community law*"[18]; it "*is competent to provide the national court with all criteria for the interpretation of Community law" (*see ***Gebhardt C-55/94 para 19****).*

37. That as confirmed by the First Hall Civil Court (Constitutional Jurisdiction) in ***Patricia Graham et v L-Avukat Generali et (*****Rikors Nru: 19/13 JZM),:-**

> *"Indeed, the ECJ may only interpret EU law and thus it may not decide on questions relating to the interpretation or validity of provisions of national law, nor is it up to the European Court of Justice to apply EU law to the facts in the main action [C-380/05 Centro Europa 7)*
>
> *Consequently, in principle, as outlined by Morten Broberg and Niels Fenger in Preliminary References to the European Court of Justice , the ECJ does*

[14] Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings" (2019/C 380/01) para 1

[15] Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings" (2019/C 380/01) *para 8*

[16] Centro-Europa 7 Srl (C-380/05) para 48-50

[17] *Inter-Huilles C*-172/82, para. 8

[18] *Gebhardt C-55/94 para 19).*

not pronounce itself on the concrete application of EU law in the main proceedings before the referring court."

APPLICATION OF THE ABOVE PRINCIPLES TO THE QUESTIONS PROPOSED BY DEFENDANT MICHAEL KUGLER

38. That in light of the above principles and caselaw which regulate the preliminary reference procedure in terms of Article 267 TFEU, the claimant company, with respect, submits that the questions as proposed should not be referred to the CJEU and this for the following reasons:

Q1 - Are the exclusively economic interests defined in Article 56A of Chapter 583 of the laws of Malta – the Gaming Act (attracting foreign gambling operators to Malta) a factor in determining whether the enforcement of Austrian and German judgments in Malta is manifestly contrary to public policy (ordre public) in Malta in terms of Article 45(1) and Article 46 of Brussels I Recast?

39. That the first question posed by the defendant concerns whether the alleged *'exclusively economic interests'* defined in Article 56A of Chap 583 of the laws of Malta' are a factor in determining whether the enforcement of Austrian and German judgments in Malta "*manifestly contrary to public policy (ordre public) in Malta in terms of Article 45(1) and Article 46 of* the Brussels I Recast Regulation.

40. That preliminarily, Mr Green Limited highlights the fact that these proceedings (Mr Green Limited v Michael Kugler) are related to an Austrian Judgment given by the Austrian Courts. Therefore, any reference to German Judgments is misplaced and absolutely irrelevant to the proceedings in question.

41. That also preliminarily, the claimant company Mr Green Limited reiterates that Article 56A of the Gaming Act is an ancillary point in the proceedings, and does not form the basis of Mr Green Limited's requests, for a number of reasons, including the fact that Article 56A of the Gaming Act was enacted well-after the start of these proceedings in June 2023, whereas these proceedings were initiated in early 2022. That as explained, and given that the basis of these proceedings remains exclusively based on the Brussels I Recast Regulation, with all due respect, the interpretation of the same Article 56A is not only completely unnecessary for this Hon. Court to give its judgment, but also irrelevant to the case at hand.

42. That without prejudice to, and in addition to the above, as already explained in para 32-37 of this Reply, it is not within the competence of the CJEU in a preliminary reference procedure, to rule upon the compatibility of a provision of domestic law with Community law or interpret domestic legislation or regulations, especially when that domestic legislation is not transposing any EU law which has harmonised or approximated a substantive area of law such as online gambling. Therefore and on this basis, Q1 should also be refused and should not be referred to the CJEU.

43. That moreover, and without prejudice to the above, the statement defining Article 56A of Chapter 583 as being an *"exclusively economic interest"* is the defendant Michael Kugler's highly subjective interpretation of this legal provision and is a statement which is contested in its entirety as completely unfounded in fact and at law.

44. That as the wording of Bill 55 of 2023 which first proposed the introduction of Article 56A of the Gaming Act states, "*the object and reason of this Bill is to codify in law*

the longstanding public policy of Malta encouraging the establishment of gaming operators in Malta who offer the local and cross-border supply of their services in a manner compliant with local legislation, in an effort to encourage private enterprise in line with article 18 of the Constitution of Malta."

45. That at its very core, Article 56A is crystallising the long-standing position of the Republic of Malta on the application, interpretation, and possible limitation to the free movement of services enshrined in Articles 26 and 56 of the TFEU, which position also finds comfort in the extensive case law of the CJEU on the matter, which case law provides that limits to the free movement of services in the Union must:

    a. be justified by objectives of public interest;[19]
    b. be proportionate and suitable to achieve the objectives in a "consistent and systematic manner"[20]
    c. be constantly reviewed in view of the emergence of new facts and circumstances[21]
    d. be subject to an assessment which must examine, in particular, whether the national provisions actually relate to the concern to reduce opportunities for gambling, to limit activities in that area and to combat the crime associated with those games in a systematic and consistent manner[22] and
    e. that such assessment by the national courts in the context of the proportionality test cannot be static, but must be dynamic, so that it must take into account the evolving circumstances after the adoption of the legislation in question[23]

46. That all this is also said in the context that in the field of gaming, Member States (such as Austria and Malta) remain autonomous in the way they organise their gambling service within the EU, provided that the rules regulating the fundamental freedoms of the Treaty (and restrictions thereto) are respected.

47. That as submitted to this Honourable Court in evidence provided (including but not limited evidence from Mr Green Limited's Austrian lawyers, the MGA, Representatives of the Maltese Government and legal opinions prepared by Austrian academics, the Austrian judgments against Maltese operators such as the ones obtained by Michael Kugler against Mr Green are the direct result of the monopolistic Austrian Gaming law framework which severely restricts the provision of gaming services to Austrian consumers to the monopolist (Austria Lotteries/Casinos Austria), through a concession tied to the provision of land-based Casinos, which system, Mr Green contends is not following the principles outlined by the CJEU which apply to restrictions to the free movement of services.

48. That to make matters worse, the Austrian Courts continue to refuse to refer the matter to a preliminary reference to the CJEU, and continue to refuse to carry out a dynamic assessment of the Austrian Gaming Framework which takes into account the evolving circumstances after the adoption of the legislation in question in line with CJEU direction.

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[19] vide C-243/01, Gambelli and others, para 54; C338/04, Placanica and others, paragraph 42);

[20] C-*243/01, Gambelli and others, para 67*

[21] *Admiral Casinos & Entertainment AG (C-464/15, paragraph 36*)

[22] *Fluctus & Fluentum* (C-920/19)(vide para 46) and *Pfleger and others C390/12* and *Online Games and Others C685-15*

[23] *Fluctus & Fluentum* (C-920/19)(vide para 46)

49. That therefore, the issue is far from being an "*exclusively economic*" one, and is tied to an intrinsic public policy divergence related to the free movement of services, being one of the fundamental cornerstones of the Single Market and the European Union, and a matter of not only Maltese public policy, but also EU public policy.

50. That in addition to and without prejudice to the above, it must be reiterated that as confirmed by the CJEU in a number of cases, Member States such as Malta, remain free to determine, *"according to their own national conceptions, what the requirements of their public policy are*"[24]. However "the *limits of that concept are a matter of interpretation of that regulation*".[25]

51. Therefore, the notion of public policy is to be determined by the Member State concerned (i.e. Malta) within the limits established by the CJEU and can apply where the recognition of such foreign judgment (and not the contents of such judgment) would "*constitute a manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought or of a right recognised as being fundamental within that legal order"*[26] *and/or* where *"the recognition of the judgment concerned in the State in which recognition is sought would result in the manifest breach of an essential rule of law in the EU legal order and therefore in the legal order of that Member State*."[27] (emphasis added)

52. That therefore and in light of the above, the underlying rationale behind Article 56A of the Gaming Act (which the defendant purported to constitute *'exclusively economic* interests') and whether or not the recognition of the judgments obtained by Michael Kugler are in "*manifest breach of public policy*" in Malta, is to be determined by the Member State (i.e. Malta) and the Honourable Maltese Courts, and consequently the defendant's interpretation of the underlying rationale behind Article 56A of the Gaming Act has no legal standing whatsoever.

53. That without prejudice to the above, it is uncontested that as confirmed by the CJEU in its preliminary reference in ***Case C-302/13 FLYLAL-Lithuanian Airlines AS***[28] **:**

> *"the mere invocation of serious economic consequences does not constitute an infringement of the public policy of the Member State in which recognition is sought, within the meaning of Article 34(1) of Regulation No 44/2001." (emphasis added)* (now Art 45(1) of Brussels I Recast)"

Together with a number of other detailed reasons and considerations.

54. It is therefore clear that the CJEU has already considered in detail the underlying EU law question raised in Q1 by the defendant Michael Kugler, although it is blatantly obvious, these proceedings do not relate to a *"mere invocation of serious economic consequences*" but are related to a much wider-issue related to the free movement of services in the EU as one of the fundamental pillars of the Single Market.

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[24] Case C-681/13, *Diageo Brands* BV para 42

[25] ibid

[26] Case C-7/98 *Krombach v Bamberski* ECLI:EU:C:2000:164 [2000] ECR I-1935

[27] Case C-681/13, *Diageo Brands* BV para 50

[28] Case C-302/13, *flyLAL-Lithuanian Airlines AS v Starptautiskā lidosta Rīga VAS and Air Baltic Corporation AS* Request for a preliminary ruling (2014)

55. In fact the same *FlyLal* case quoted by the defendant, also provides that substantive public policy "*seeks to protect legal interests which are expressed through a rule of law, and not purely economic interests. [emphasis added]"*[29]. This fits perfectly within the context of the case at hand – the clearest manifestation of any rule of law is within the law itself

56. That insofar however that the question relates to *"the mere invocation of serious economic consequences"* (and without prejudice to Mr Green's position above);it must follow that the first question posed by the defendant has already been to an extent answered by the preliminary ruling given by the CJEU in ***Case C-302/13, FLYLAL-Lithuanian Airlines AS.***

57. That consequently and in view of the foregoing, the first question posed by the defendant does not need to be referred, not only because it is unnecessary for this Court to reach judgment, but also in line with the principle *clara non sunt interpretanda* and the doctrine of 'acte éclairé.

58. That as affirmed by the CJEU in its preliminary ruling in ***Joined cases 28-30-62, Da Costa***[30] a Court that would normally be under a duty to submit the preliminary reference may refrain from doing so if:

> *"the question raised [by the referring court] is materially identical with a question which has already been the subject of a preliminary ruling in a similar case"*.

59. That furthermore, in its preliminary reference in ***Case C-283/81, Cilfit and Others***[31]**,** the CJEU confirmed that the existence of an *'acte clair' or 'acte éclairé'* constitutes an exception to the obligation on a national court to request a preliminary reference (when the court is a court of last instance). In this judgement the CJEU affirmed that:

> *" …the EC treaty is to be interpreted as meaning that a court or tribunal against whose decisions there is no judicial remedy under national law is required , where a question of community law is raised before it, to comply with its obligation to bring the matter before the court of justice , **unless** it has established that the question raised is irrelevant or **that the community provision in question has already been interpreted by the court or that the correct application of community law is so obvious as to leave no scope for any reasonable doubt.**"*

60. That in view of the foregoing, the first question from a preliminary standpoint falls outside the jurisdiction of the CJEU and furthermore and without prejudice, the relevance of '*economic interests'* in the context of public policy (ordre public) under Article 45(1) and Article 46 of Brussels I Recast constitutes an *acte claire/acte éclairé* and any request for a preliminary ruling on this point should therefore be refused.

Q2 – Is article 56A of the Gaming Act, compatible with Articles 36, 39, 45 and 46 of the Regulation?

[29] FlyLal Lithuanian Airlines (Case-302/13) para 56

[30] Joined cases 28 to 30-62 Da Costa en Schaake NV, Jacob Meijer NV, Hoechst-Holland NV v Netherlands Inland Revenue Administration. - Reference for a preliminary ruling:

[31] Case C-283/81, Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health. -Reference for a preliminary ruling (1982)

61. That with regards to the second question proposed by the defendant Michael Kugler, the applicant company Mr Green Limited refers to the above-mentioned principles regulating preliminary references under Art 267 TFEU, explained in para 32-37 of this Reply, where it has been made amply clear that it is not within the competence of the CJEU in a preliminary reference procedure, to rule upon the compatibility of a provision of domestic law with Community law or to interpret domestic legislation, especially when the domestic legislation is not subject to any harmonisation or approximation of the underlying substantive law in question .

62. These proceedings before the Hon. First Hall Civil Court were filed on the basis of Article 45/46 of the Brussels I Recast Regulation and not on the basis of Article 56A of the Gaming Act.

63. That reference is once again also made to the fact that these proceedings remain are based on a request to the Honourable Maltese Court to declare that the recognition of the Austrian judgments is manifestly contrary to public policy (ordre public) in Malta and to consequently refuse the recognition and enforcement of the same judgments in Malta in line with Brussels I Recast.

64. Therefore, whether or not Article 56A of the Gaming Act is compatible with Art 36, 39, 45 and 46 of Brussels I Recast, remains a hypothetical question and wholly unnecessary for the resolution of this case, and therefore in line with the principles outlined above, the Honourable Maltese Court is well within its rights to refuse the request for a preliminary reference made by defendant Kugler.

65. That without prejudice to the above, and on the merits of the question, it is settled case law of the CJEU that "*while the Member States in principle remain free, by virtue of the proviso in Article 34(1) of Regulation No 44/2001, to determine, according to their own national conceptions, what the requirements of their public policy are, the limits of that concept are a matter of interpretation of that regulation."*[32]

66. Member States (such as Malta) and their Courts are therefore free to determine "*according to their own national conceptions*" what constitutes their public policy and what doesn't.

67. The notion of refusal of "recognition" of judgments in terms of "public policy" (under Article 45 of Brussels I Recast) remains an intrinsically national concept which is not uniformly understood in the different Member States and which finds its roots in a *"manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought or of a right recognised as being fundamental within that legal order."*[33]

68. As held in *FlyLal*, the "public policy" rule *"seeks to protect legal interests which are expressed through a rule of law, and not purely economic interests."* The public policy being put forward by applicant Mr Green Limited is a legal interest expressed through a rule of law – being the TFEU (specifically Article 26 and 56) as evidenced by case law and the evidence brought forward, and more recently, Article 56A of the Maltese Gaming Act.

[32] Case C-681/13, Diageo Brands BV para 42

[33] see *Krombach*, paragraph 37; *Renault*, paragraph 30; and *Apostolides*, paragraph 59).

69. In light of the above, an answer to Q2 as proposed is absolutely not "necessary" to give judgment in these proceedings and should therefore be refused by this Honourable Court.

70. Respectfully, any allegation that Article 56A of the Gaming Act breaches EU law should - if anything - be raised within the competent judicial forum which has the competence to consider the validity of laws enacted by the Parliament in terms of the Maltese Constitutional framework.

71. Reference is made to the decrees given by this Honourable Court on the 27th July 2023 in a number of cases including *Michael Christian Felsberger et vs TSG Interactive Gaming Europe Ltd* where this Honourable Court has already pronounced itself in a landmark decree on the validity of Article 56A of the Gaming Act vis-à-vis Brussels I Recast and the Constitutional permutations of the matter. Any further dispute on the perceived constitutionality (or lack thereof) of these provisions cannot be raised before the CJEU given that this is not the appropriate forum to deal with such matters.

Q3 - That subsidiarily, and without prejudice to the above questions, does the fact that article 56A of the Gaming Act does not provide that, before invoking Article 45(1) of the Regulation, one must have exhausted all the remedies: available in the Member State of origin, contradict the case law of this Honourable Court and should the Maltese Courts, notwithstanding the terms of article 56A, still take into account whether the applicant has effectively exhausted all his remedies in the State of Origin?

72. That, once again, Mr Green Limited reiterates that the question is unrelated to these proceedings, and therefore a hypothetical one which is not necessary for the Court to reach its judgment, and this given that Article 56A of the Gaming Act is not the basis of these proceedings before the Hon. Court.

73. That moreover and as already explained above, the preliminary reference procedure is not the appropriate forum to consider the compatibility of a domestic law with EU Law. Therefore once again, Q3 as proposed does not raise a question of interpretation of EU law which is required for this Court to give its judgment in these proceedings.

74. That in addition to the above, and more importantly, it must also be noted that the principle related to the so-called *"exhaustion of remedies"* - has to date – never been raised by the defendant in these proceedings in the names *Mr Green Limited v Michael Kugler* – and no plea has been raised by the defendant Kugler to this effect in his initial reply to the case based on Art 45/46 of Brussels I Recast.

75. Moreover, and in the context of this particular case, this issue becomes even more irrelevant when one considers that Mr Green Limited, defended itself fully against the claims made by Michael Kugler in the Court of First Instance, i.e. the Regional Court of St. Polten (*Landesgericht St.Polten*) decided on the 26 January 2021 (4 Cg 36/20z) and further on appeal before the Higher Regional Court of Vienna Austria as a Court of Appeal, decided on the 30th March 2021 (5R 27/21h), in which judgments the Austrian Court ruled against Mr Green as the Malta-licensed operator, as it has done in thousands of other identical cases filed on the basis of the Austrian Gaming Act and its application (or misapplication) of EU law.

76. That this is further compounded by the fact that in the Austrian proceedings filed by Michael Kugler v Mr Green Limited, which led to the judgments whose enforcement is currently being contested in Malta in these present proceedings, Mr Green Limited also requested the Austrian Court to refer the matter to a preliminary reference to the CJEU in terms of Art 267 TFEU, and this "*with a view to preventing a breach of public policy before it occurs. That rule is all the more justified where the alleged breach of public policy stems, as in the main proceedings, from an alleged infringement of EU law."*[34]

77. That, the Austrian Court chose to refuse this request, as it has in a multitude of similar proceedings, since according to the Austrian courts, the legal situation (on the conformity of the Austrian gaming monopoly with Union law) is considered clarified. This Austrian Court's reluctance to reconsider the legality and proportionality of their restrictive gaming regime is explained in further detail in the evidence presented by Mr Green Limited including in legal opinions and affidavits prepared by Austrian lawyers representing Mr Green in these particular Austrian proceedings marked *inter alia* as Doc MRG21.

78. That in light of the above, it is once again evident that Q3 as proposed is also wholly unnecessary for this Hon Court to give its judgment in this particular dispute, given that the matter raised in the same question is absolutely hypothetical (within the factual context of this dispute) and this since:

    a. these proceedings before the Maltese Court remain based on Article 45/46 of the Brussels I Recast Regulation
    b. the "exhaustion of remedies" plea has not been raised by the defendant in his reply filed in these proceedings and that
    c. in any case Mr Green Limited has exhausted its legal remedies in Austria (to the extent that it wasn't impossible or too difficult in line with applicable case law) with a view to avoid the breach of public policy before it occurred.

79. That it must be noted, that whilst para 8 of the defendant's application provides that the CJEU "*has established that all appeal instances in the Member State of origin must be exhausted, before Article 45(1) of the Regulation may be relied upon in the Member State of enforcement"* – the principle known as the "exhaustion of remedies" principle does not speak of "appeal instances" but provides that the notion of mutual trust between member states which leads to the inference that the EU system of legal remedies provides sufficient guarantees to individuals, leads to the generic notion that the Court of the Member State of enforcement "*must take account of the fact that, save where specific circumstances make it too difficult or impossible to make use of the legal remedies in the Member State of origin the individuals concerned must avail themselves of all the legal remedies available in that Member State with a view to preventing a breach of public policy before it occurs."* [35]

80. That this rule is not explicitly provided in the Brussels I Recast Regulation but emanates from very limited case law which is applied differently throughout the various EU Member States. That as the case law implies, national Courts "*must take account of the fact*", but this should not be seen as the sole pre-requisite; it is

[34] Case C-681/13, Diageo Brands BV v Simiramida -04 EOOD,ECLI:EU:C:2015:471 para 64
[35] Paragraph 64 of the judgment of 16 July 2015, Diageo Brands (C–681/13, EU:C:2015:471)

only one factor used in the assessment of the ground for refusal based "public policy"[36].

81. Moreover, and when dealing with substantive public policy divergences i.e. "*the essential values peculiar to that State translated into legal rules or principles that are not necessarily shared by the Member State of origin"*[37] AG Pikamae acknowledges that "*It may therefore seem inappropriate to ask the court of the Member State of origin to play a role in defending those values and to make the issue dependent on the manifest nature of the breach of public policy in the Member State addressed."*[38]

82. That this perfectly encapsulates the matters raised in these proceedings. Essential values peculiar to the states of Malta and Austria (i.e. how they regulate gambling as an unharmonized area of EU law where the EU allows a *"sufficient margin of discretion*" based on *"moral, religious or cultural factors"*[39]) are contrasted by the fact *"that the restrictions imposed by the Member States must satisfy the conditions laid down in the Court's case-law as regards their proportionality, a matter which it is for the national courts to determine"*[40] - a matter in relation to which – Mr Green Limited contends - the Austrian Courts are not following the principles laid out in caselaw of the CJEU on proportionality and the dynamic assessment required. In this context, it is inappropriate and to an extent futile to expect the Austrian Courts to defend the values and public policy position of Malta, when such positions are very evidently diametrically opposed to each other.

83. In the circumstances therefore and in light of the above, Q3 on the exhaustion of remedies principle should also not be referred to the CJEU, given that it is absolutely irrelevant and unnecessary to the dispute at hand, and that in any case the principles laid out in case law of the CJEU are clear enough (*acte eclaire*) for the Maltese Court to apply itself, as a Court which interprets and applies EU law.

Q4 - Does article 56A of the Gaming Act conflict with Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, since the recognition and enforcement of a European Order for Payment cannot be prevented on the basis of the principles of public policy?

84. That without prejudice to the foregoing, and in line with the above, Mr Green Limited submits that any conflict between Article 56A of the Gaming Act *and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure* ('**EPO Regulation**') has no relevance whatsoever to the proceedings in question (i.e. Mr Green Limited v Michael Kugler Application no 203/2022 TA) since no European Payment Order ("**EPO**") was requested or issued within the ambit of these proceedings, and this given that the claimant company Mr Green Limited has contested the case filed by Michael Kugler in Austria in its totality, both before the Court of First Instance, i.e.

[36] Advocate General Pikamae's Opinion in *Case C-568/20 J v H Limited*

[37] ibid

[38] ibid

[39] vide C-347/09 Dickinger & Ömer para 45 and Stoß and others, para 76)

[40] (Liga Portuguesa de Futebol Profissional and Bwin International, paragraphs 59 and 60, and Stoß and Others, paragraphs 77 and 78).

moreover this is further compounded by the fact that

the Regional Court of St. Polten (*Landesgericht St.Polten*) decided on the 26 January 2021 (4 Cg 36/20z) and further on appeal before the Higher Regional Court of Vienna Austria as a Court of Appeal, decided on the 30th March 2021 (5R 27/21h)

85. Therefore, and with all due respect, any reference for a preliminary ruling on this point related to the application of Article 56A and the EPO Regulation is completely hypothetical and is absolutely not "necessary" for this Honourable Court to give its judgment in this particular case, and this given that there is absolutely no issue related to an EPO in these proceedings. Therefore, such preliminary reference (and any replies thereto) would have absolutely no bearing and/or effect (whether concrete or incidental) on the final judgment given by this Hon. Court.

86. That as affirmed numerous times by the Maltese Courts, a request for a preliminary reference should only be made when the Hon. Court deems that it is necessary to do so. To this effect see: ***Carmelo Borg vs Avukat Generali tar-repubblika, Ministru Responsabbli mill-Gustizzja u l-Intern, u l-Prim Ministru***[41] which confirmed that:

> *"Illi madankollu, taħt l-imsemmi artikolu, Qorti nazzjonali għandha l-jedd li tagħżel li ma tressaqx riferenza lill-Qorti Ewropeja* ***fejn il-kwestjoni tat-tifsir tal-att komunitarju ma tkunx rilevanti fis-sens lit-tweġiba għall-mistoqsija, tkun xi tkun, ma jkollha l-ebda effett fuq is-sentenza aħħarija."; (emphasis added)***

and
Sharon Rose Roche nee' Bellamy vs Direttur tad-dipartiment ghall-iStandards fil-harsien Socjali u l-Avukat Generali[42] which confirmed that:

> *"Illi in vista tal-premess ghandu jirrizulta pacifiku li referenza preliminari a tenur tal-artiklu 267 TFUE ghandha tigi ordnata u awtorizzata biss meta l-qorti involuta tqis li tali referenza tkun wahda necessarja."*

87. That furthermore, the principles affirmed in the aforementioned judgements have also been confirmed by the CJEU in its preliminary reference in ***Case C-283/81, Cilfit and Others*** which were also found to apply to a Court of Last Instance – which is obliged to refer – as opposed to a Court of First Instance, such as this Hon. Court which may choose to refer questions to the CJEU.

88. That in view of the foregoing and the principles affirmed by the Maltese Courts, the fourth question posed by the defendant should also be deemed to be irrelevant and consequently not necessary in the ambit of the proceedings in question.

[41] Carmelo Borg vs Avukat Generai tar-repubblika, Ministru Responsabbli mill-Gustizzja u l-Intern, u l-Prim Ministru deciza mill-Prim Awla tal-Qorti Civili (Gurisdizzjoni Kostituzzjonali) fit-24 ta' Novembru 2005 (Rik. Nru. 53/2005)

[42] Sharon Rose Roche nee' Bellamy vs Direttur tad-dipartiment ghall-iStandards fil-harsien Socjali u l-Avukat Generali deciza mill-Prim Awla tal-Qorti Civili (Sede Kostituzzjonali) fis-26 ta' April 2019 (Rik. Nru. 15/2018)

CONCLUSION

89. In view of the foregoing, Mr Green Limited respectfully submits that this Hon Court, has the faculty to, and should choose to refuse the request for a preliminary reference in terms of Art 267 TFEU and on the basis of the questions as proposed.

90. That with respect, it appears abundantly clear from a reading of the application filed by Michael Kugler, that the grievance related to Article 56A is being misdirected towards Mr Green Limited in a request for a preliminary reference to the CJEU, which does not have the competence to rule on the validity of a provision of national law.

91. Lastly and absolutely without prejudice to the above, while Mr Green Limited maintains that the preliminary reference request should be turned down by this Hon. Court, Mr Green Limited reserves all its rights at law to make further submissions to this Hon. Court on the wording of the proposed questions, the addition of supplementary questions, and the factual background given to the CJEU, should this Hon. Court (*dato ma non concesso*) decide to refer the matter to the CJEU.

92. As paragraph 15 of the *Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings" (2019/C 380/01)* provides:

> *15. The content of any request for a preliminary ruling is prescribed by Article 94 of the Rules of Procedure of the Court and is summarised, by way of a reminder, in the annex hereto. In addition to the text of the questions referred to the Court for a preliminary ruling,* ***the request for a preliminary ruling must contain:***
>
> ***— a summary of the subject matter of the dispute in the main proceedings and the relevant findings*** *of fact as determined by the referring court or tribunal, or, at the very least, an account of the facts on which the questions referred are based,*
>
> ***— the tenor of any national provisions applicable in the case*** *and, where appropriate, the relevant national case-law, and*
>
> ***— a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings.***
>
> *In the absence of one or more of the above,* ***the Court may find it necessary, notably on the basis of Article 53(2) of the Rules of Procedure, to decline jurisdiction to give a preliminary ruling on the questions referred or dismiss the request for a preliminary ruling as inadmissible.***
>
> *(emphasis added)*

93. That in light of and without prejudice to the above (and *dato ma non concesso* that the Hon Court considers that a preliminary reference is necessary), given that both defendant and claimant Mr Green Limited have not provided the above in their submissions, Mr Green Limited reserves its rights to make further submissions for the wise consideration of this Hon. Court, to ensure that the correct and objective

factual context is given to the CJEU, in the context of a preliminary reference which the Maltese Court may deem necessary.

Having seen all the acts and documents related to this present procedure.

Having seen that the application has been adjourned for today to be determined.

Considerations

It is amply clear that the applicant is requesting to refer the above set of questions to the CJEU in terms of article 267 of the Treaty on the Functioning of the European Union. This article lays down the following:

"*The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:*

(a) the interpretation of the Treaties;
(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay."

Now, from a close inspection of this particular article, it is clear that such reference can only be made in the only two instances above mentioned under para (a) and (b). These two instances make clear reference to treaties and not particular laws or acts. Under the first limb para (a) the interpretation must relate to a Treaty and what this Court has at hand is

an act of the Maltese Parliament in relation to an EU regulation and not a Treaty. What is more, it cannot be left unnoted, that the first limb (para a), unlike the second limb (para b), refrains from mentioning acts and in this regards there shouldn't be any doubt as to the nature of article 56A, referred to as the newly introduced provision by the applicant.

However, *dato ma non concesso* given but not accepted that article 267 is applicable, it is to be noted, that the first question set by the applicant regarding the meaning of the principle of public policy, is a question that can be determined by this Court without the need of seeking guidance from the ECJ. This a matter of pure economic policy, and for the purposes of article 267 it is a matter that falls exclusively within the domain of the Member State in the same manner that the Austrian Courts consider their' s and justly so.

As regards the second question, with the obtainment of a declaration of incompatibility or otherwise from the local Courts, the answer lies in Chapter 460 of Malta. Therefore guidance by the ECJ on this matter is superfluous since an answer to this question in the local laws already exist (Vide **Decision in the names of Marion Pace Axiaq -vs- Prim Minsitru dated the 17th of October 2019 Constitutional Court**).

As to the question the Court refers to that part of article 267 which lays down that "*Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court."* In other words, if there is a judicial remedy under domestic law, the remedy under article 267 is not available. The Court has already hinted to what Chapter 460 of the Laws of Malta laid down on this matter. However there also exists an action at law by seeking to strike down any law by other means available under Maltese Law, means that cannot be stated by this Court otherwise it would be acting as counsel to one of the parties.

As to question 4, again article 267 does not make available the right to obtain a declaration as regards conflicting positions but only a matter of interpretation. It's true that the ECJ decides, but only on matters of interpretation and not necessarily on all matters of substance such as is the question of conflict between a domestic law of a member State and the European Legal regime. In certain circumstances, amongst which economic matters, which may be tantamount to a question of public policy, these are yet to be determined by this Court. That is why article 45 of the regulation stipulates that a judgement may be refused if the matter to which it refers, is manifestly to a matter of public policy. Again, reference is made to Chapter 460 of the Laws of Malta.

As to the second limb (para b) of article 267, this clearly states that "*the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union"* and hence the emphasis. This limb solely

addresses the validity and interpretation not of the domestic law vis-a-vis the European Legal Regime in general, but strictly to acts emanating from the list of entities under this part of the article pertaining to the Union, without any reference to any acts or laws of a member State. Under which circumstances this part of the article can be envisaged to apply, this Court cannot tell, but only one thing is certain, that the complaints of the defendant under this limb cannot succeed in the circumstances of this case.

Lastly the Court reminds that it is in the absolute discretion of the Court of the Member State to decide whether to refer the matter to the ECJ under article 267. Furthermore, there are a number of points yet to be decided by this Court that may eventually neutralise the need to make a preliminary reference to the ECJ, if ever such reference is applicable in the circumstances.

In view of the above, the Court declines the request of the applicant.

Expenses reserved until final judgment.

Hon. Judge Toni Abela LL.D.

Today the 11th of January 2024