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INFORMATION NOTE

From: Legal Service
To: Permanent Representatives Committee (Part 1)
Subject: Request for an Opinion of the Court of Justice made under Article 218(11) TFEU by the Republic of Malta (Opinion 1/14)

1. On 16 September 2014, the Registrar of the Court of Justice informed the Council that the Court has received a request for an Opinion from the Republic of Malta pursuant Article 218(11) TFEU which has been entered in the register as case number Opinion 1/14.

2. The question raised by Malta in its request is the following:

Is the Council of Europe Draft Convention against the Manipulation of Sports Competitions insofar as it regulates sports betting and defines "illegal sports betting" in Article 3(5)(a) as "all sports betting activity whose type or operator is not allowed under the applicable law of the jurisdiction where the consumer is located", in conjunction with Articles 9 and 11 thereof which target "illegal sports betting" so defined, compatible with the Treaties, particularly Articles 18, 49 and 56 TFEU?

3. The Republic of Malta develops the following arguments in support of its request:
 - a) The definition of "illegal sports betting" is irrelevant to the purpose and scope of the Convention;
 - b) The definition of "illegal sports betting" is contrary to Internal Market and non-discrimination principles;
 - c) The definition of "illegal sports betting, coupled with Articles 9 and 11, is contrary to the principle of proportionality;
 - d) The definition and related provisions of the Convention concerning betting pre-empt harmonisation at EU level and evade the guarantees and procedural safeguards laid down by the Treaty.
 4. The Commission is currently preparing the proposal for the signature and conclusion by the Union of the above mentioned Convention. Several Member States have already signed the Convention.
 5. The Council Legal Service considers that there is no reason for the Council to intervene in the present proceedings before the Court of Justice given that the validity of the acts adopted by the Council is not challenged and that the questions raised by the Republic of Malta relate to the interpretation of primary EU law.
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