



Press and Information

Court of Justice of the European Union

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Judgment in Case C-176/11

HIT and HIT LARIX v Bundesminister für Finanzen

## **The advertising of foreign casinos may, under certain conditions, be prohibited**

*A Member State may prohibit the advertising of casinos located in another Member State when the protection for gamblers is not equivalent there*

In Austria, the advertising of casinos located abroad requires prior authorisation. In order to obtain such a permit, the operator of a casino located in another Member State must prove that the legal protection for gamblers that is provided for in that State 'at least corresponds to' the Austrian legal protection. By virtue of the legal protection in Austria, only persons who have attained the age of majority may enter a casino, the casino's management must observe gamblers' conduct in order to determine whether the frequency and intensity of their participation in gaming jeopardise the minimum income required for their subsistence and customers may bring a direct civil action against the management for breach of those obligations<sup>1</sup>.

The Slovenian companies HIT and HIT LARIX operate casinos in Slovenia. They applied to the Bundesminister für Finanzen (Federal Minister for Finance, Austria) for permits to carry out advertising in Austria for their casinos located in Slovenia. The ministry rejected their applications on the ground that they had not proved that the Slovenian legal provisions concerning games of chance ensured a level of protection for gamblers comparable to the level provided for in Austria.

The Verwaltungsgerichtshof (Administrative Court, Austria), before which HIT and HIT LARIX brought an action against those decisions refusing a permit, asked the Court of Justice whether legislation such as the Austrian legislation is compatible with the freedom to provide services that is guaranteed by EU law.

In its judgment delivered today, the Court of Justice notes first of all that legislation on games of chance is one of the areas in which there are significant moral, religious and cultural differences between the Member States. Accordingly, in the absence of harmonisation in the field, the Member States are free to set the objectives of their policy on games of chance and to define in detail the level of protection sought.

Thus, the mere fact that a Member State has opted for a system of protection which differs from that adopted by another Member State cannot affect the assessment of the proportionality of the provisions enacted to that end. Those provisions must be assessed solely by reference to the objectives pursued by the competent authorities of the Member State concerned and the level of protection which they seek to ensure.

In the light of these factors, the Court gives the answer that EU law does not preclude the Austrian legislation provided that it merely requires, in order for authorisation to carry out advertising to be granted, that it be established that in the other Member State the applicable legislation ensures protection against the risks of gaming that is in essence of a level equivalent to that which it guarantees itself.

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<sup>1</sup> According to the Austrian Government, the application of those preventive rules has resulted in a significant reduction in the number of gamblers, as more than 80 000 persons were subject in 2011 to restrictions or bars on entering Austrian casinos. Furthermore, the number of casinos is limited in Austria to a maximum of 15.

Such legislation, which restricts the freedom to provide services, is justified by the objective of protecting the population against the risks connected with games of chance. Given that objective, it does not appear to constitute an excessive burden for the operators of foreign casinos and is accordingly capable of complying with the principle of proportionality.

The position would, however, be different, and the legislation would have to be regarded as disproportionate, if it required the rules in the other Member State to be identical or if it imposed rules not directly related to protection against the risks of gaming.

It is, in any event, for the national court to satisfy itself that the legal provisions at issue are limited to making authorisation to carry out advertising for gaming establishments established in another Member State conditional upon the legislation of the latter providing guarantees that are in essence equivalent to those of the national legislation with regard to the legitimate aim of protecting individuals against the risks connected with games of chance.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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