



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Joined Cases C-316/07, C-358/07, C-359/07,
C-360/07, C-409/07 and C-410/07
Markus Stoß and Others v Wetteraukreis
Kulpa Automatenservice Asperg GmbH and Others v Land
Baden-Württemberg, and in Case C-46/08 Carmen Media Group Ltd v Land
Schleswig Holstein and Others

According to Advocate General Mengozzi, mutual recognition of national licences for games of chance is not viable as European Union law now stands

He takes the view that a Member State may prohibit, under certain conditions, games of chance on the internet and may provide for a state monopoly on sports betting even if those games are actively promoted and if games involving a greater risk of addiction may be offered by private operators

In Germany, powers relating to gaming are shared between the Federal State and the Länder. In most Länder there is a regional monopoly for the organisation of sports betting and lotteries, while the organisation of betting on official horse races and the operation of slot machines and casinos is entrusted to duly authorised private operators. By the State Treaty on Lotteries in Germany (Lotteriestaatsvertrag), which entered into force on 1 July 2004, the Länder created a uniform framework for the organisation of games of chance, excluding casinos. Following a ruling from the Bundesverfassungsgericht (German Federal Constitutional Court), that treaty was replaced by the State Treaty on Games of Chance in Germany (Glücksspielstaatsvertrag), which entered into force on 1 January 2008. That treaty prohibits any organisation or brokering of public games of chance on the internet.

Advocate General Mengozzi today delivers his Opinion in a number of cases, in which a number of German courts have asked the Court of Justice to rule on whether the laws on games of chance in Germany are compatible with Union law. The Verwaltungsgericht (Administrative Court) in Gießen, and the same court in Stuttgart, must rule on disputes between sports betting intermediaries and the German authorities, which prohibited those intermediaries from offering, in the Länder of Hesse and Baden-Württemberg, sports betting organised by the Austrian companies Happybet Sportwetten and web.coin, the Maltese company Tipico and the British companies Digibet and Happy Bet. Those companies hold licences to organise sports betting in their respective countries. The Verwaltungsgericht in Schleswig Holstein (Schleswig Holstein Administrative Court) must, by contrast, decide whether the Land of Schleswig Holstein was entitled to reject Carmen Media Group's application to be allowed to offer sports betting over the internet in Germany, when in Gibraltar, where it is established, it already holds an 'off-shore' licence authorising it to organise gambling outside Gibraltar.

According to the Advocate General, the case-law of the Court openly and unambiguously accepts, albeit subject to certain conditions, monopolies and other restrictions on operators in the gaming sector. Although a prohibition of certain games of chance or a restriction on their operation to a limited number of licensees restricts, in particular, the freedom to provide services, the Court authorises such national restrictions where they do not lead to discrimination based on nationality or country of establishment, where they pursue a public-interest objective, such as reducing gambling opportunities or the fight against fraud and crime, and where they are proportionate and consistent in relation to the objective pursued.

In relation to the criterion of the consistency of a Member State's gaming policy, he considers that the assessment ought not to be carried out as a whole, but individually for each form of gaming.

However, consistency must always be examined from a national viewpoint, with the result that regional differences within a Member State might render the system inconsistent. On the other hand, the mere fact that powers in relation to games of chance are distributed among a number of territorial entities in a Member State, does not, in itself, jeopardise the consistency of its policy.

Furthermore, he explains that that assessment must take account of certain circumstances: first, the fact that monopoly-holders induce people to participate in games of chance is not sufficient to rule that the legislation concerned is inconsistent, if the promotion is moderate and is genuinely intended to prevent crime or to channel the propensity for gaming into a regulated and controlled system, and not to increase the revenue of the public purse. Second, allowing private operators to offer gaming services involving a risk of addiction which is probably equivalent to or greater than that of games subject to a monopoly is likewise not, in itself, inconsistent in relation to public-interest objectives and does not make the decision to bring betting and lotteries under a State monopoly disproportionate, provided that the public authorities guarantee sufficient supervision of the private operators and the forms of gaming on offer which are covered by the monopoly are fewer than those which might exist with a private provider.

It is for the national court to assess those conditions. As regards sports betting, such as, inter alia, 'ODDSET' organised by the German Länder in the context of the Lotteriestaatsvertrag, it would appear from the judgment of the German Federal Constitutional Court that the monopoly in question did not meet the consistency criterion at the time of the material events in the main proceedings. According to that judgment, the advertising used was not sufficiently moderate and was not intended to limit opportunities for gaming and to prevent addiction to gaming, but was intended to obtain tax revenue for the public purse.

In addition, the Advocate General takes the view that European Union law, as it now stands, does not oblige Member States mutually to recognise national gaming licences. Neither the freedom of establishment nor the freedom to provide services confers on the holder of a licence – granted by a Member State for the organisation of sports betting not restricted to its national territory – or third parties appointed by it, the right to offer gambling on the territory of other Member States. That applies, all the more so, in relation to a purely 'off-shore' licence.

As regards the prohibition of the organisation and brokering of public games of chance on the internet, the Advocate General considers that it is consistent with the freedom to provide services, provided that that measure is proportionate and consistent with the public-interest objective pursued, and notwithstanding the fact that there are, on the basis of fairness, well-established temporary exceptions for the benefit of undertakings which were operating hitherto exclusively over the internet.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 Opinions ([C-316/07](#) & [C-46/08](#)) is published on the CURIA website on the day of delivery.

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