



Press and Information

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Advocate General's Opinion in Joined Cases C-447/08 and C-448/08
Otto Sjöberg v Åklagaren and Anders Gerdin v Åklagaren

According to Advocate General Bot, Swedish legislation prohibiting the promotion of gambling over the internet by companies established in other Member States complies with Community law

However, Community law precludes provisions of national law which penalise the promotion of lotteries organised in Sweden without a licence differently from lotteries organised outside Sweden.

While reserving the right to organise gambling to licensed operators carrying on their activities under the strict supervision of the public authorities, in order to protect consumers against the risks of fraud and criminality, Swedish legislation on betting prohibits the promotion of lotteries organised outside Sweden and makes such acts subject to criminal penalties.

Otto Sjöberg and Anders Gerdin were the editors-in-chief and publishers of, respectively, the *Expressen* and *Aftonbladet* newspapers. Between November 2003 and August 2004, they published on the sports pages of their newspapers, aimed at the Swedish public, advertisements for lotteries offered on the internet sites of the companies Expekt, Unibet, Ladbrokes and Centrebet, established in Malta and the United Kingdom. On the basis of those facts, considered to infringe the Swedish law on betting, they were each sentenced to 50 daily fines of SEK 1 000 (approximately €100).

The Svea hovrätt (Stockholm Court of Appeal, Sweden), which must rule on the appeals brought by Mr Sjöberg and Mr Gerdin against their convictions, questions whether the legislation on which the convictions are based and, more specifically, the provisions which fix the penalties applicable to promotion in Sweden of gaming organised outside that Member State, comply with Community law.

In his Opinion delivered today, Advocate General Yves Bot considers, first, in accordance with the case-law of the Court¹, that the prohibition on promoting internet gaming offered by companies established in other Member States can be regarded as justified by the objective of the fight against fraud and criminality. Accordingly, Community law does not preclude Swedish legislation which reserves the right to organise gambling only to licensed operators which carry on their activities under the strict supervision of the public authorities.

Then, the Advocate General recalls that, while a Member State is entitled to restrict activities associated with gambling within its territory, the measures which it adopts for that purpose must not be discriminatory.

In the present case, although Swedish legislation prohibits, without distinction, the promotion of gambling organised abroad and the promotion of gambling organised in Sweden without a licence, the penalties laid down for infringement of that prohibition are different. Thus, whereas penalties of a fine and imprisonment for up to six months are laid down for persons who advertise gaming organised abroad, those who advertise gaming organised in Sweden without a licence do not incur equivalent criminal penalties, but only administrative penalties.

¹ In particular, judgment of 8 September 2009 in Case [C-42/07](#) *Liga Portuguesa de Futebol Profissional and Bwin International* (see [Press Release No 70/09](#)).

Therefore, such legislation involves treating comparable situations differently, to the detriment of companies established in other Member States.

That difference in treatment could not be justified by significant differences between the two categories of offence in terms of the disruption caused by them or the conditions under which they may be found to have been committed. Internet gaming organised by a company established in another Member State does not necessarily pose greater risks of fraud and crime to the detriment of consumers than gaming organised clandestinely by a company established within the national territory.

Accordingly, the Advocate General considers that Community law precludes national legislation under which anyone who promotes participation in internet gaming organised by a company established in another Member State is liable to criminal penalties, whereas anyone who promotes participation in such gaming organised within the national territory without a licence does not incur such penalties.

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 Opinion is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355