



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 50/10

Luxembourg, 3 June 2010

Judgments in Case C-203/08 and Case C-258/08
Sporting Exchange v Minister van Justitie, and
Ladbrokes Betting & Gaming, Ladbrokes International v Stichting de
Nationale Sporttotalisator

A Member State can prohibit the operation of games of chance on the internet

This prohibition may, on account of the specific features associated with the provision of games of chance on the internet, be regarded as justified by the objective of combating fraud and crime

Netherlands legislation in relation to games of chance is based on a system of exclusive licences under which the organisation or promotion of games of chance is prohibited unless an administrative licence for that purpose has been issued, and only one licence is granted by the national authorities in respect of each of the games of chance authorised. Furthermore, there is no possibility at all of offering games of chance interactively via the internet in the Netherlands.

De Lotto, a non-profit-making foundation governed by private law, holds the requisite licence for the organisation of sports-related prize competitions, the lottery and numbers games. Its objects, according to its constitution, are the collection of funds by means of the organisation of games of chance and the distribution of those funds among institutions working in the public interest, particularly in the fields of sport, physical education, general welfare, public health and culture.

The Hoge Raad der Nederlanden (Netherlands Supreme Court) and the Raad van State (Netherlands Council of State) are asking the Court of Justice about the compatibility of Netherlands legislation on gaming policy with European Union law.

Case C-258/08 Ladbrokes

The Ladbrokes companies are engaged in the organisation of sports-related prize competitions and are particularly well known for their bookmaking business. They offer a number of mainly sports-related games of chance on their internet site. They do not physically carry on any activity in the Netherlands.

De Lotto alleged that the Ladbrokes companies were, without a licence, offering games of chance on the internet to persons residing in the Netherlands, and made an application to the national court.

According to the Court of Justice, it is common ground that legislation such as the legislation at issue here constitutes a restriction on the freedom to provide services.

However, such a restriction may be justified, in particular, by the objectives of consumer protection and the prevention of both fraud and incitement to squander money on gambling, as well as the need to preserve public order. It is for the national courts to determine whether Member States' legislation actually serves those objectives and whether the restrictions it imposes do not appear disproportionate in the light of those objectives.

In that context, the Hoge Raad has doubts as to the consistent and systematic nature of the national legislation, since the legislation allows De Lotto and others to offer new games and to use advertising messages to make what they are offering on the market attractive.

The Court considers that it is possible that a policy of controlled expansion in the betting and gaming sector may be entirely consistent with the objective of drawing players away from

clandestine betting and gaming – and, as such, activities which are prohibited – to activities which are authorised and regulated.

It is for the referring court to determine whether the national legislation may be regarded as forming part of a policy of controlled expansion, aiming, in fact, to channel the propensity to gamble into activities that are lawful.

If it were established that the Netherlands are pursuing a policy of substantially expanding betting and gaming, by excessively inciting and encouraging consumers to participate in such activities, principally with a view to obtaining funds, it would have to be concluded that such a policy does not limit betting and gaming activities in a consistent and systematic manner.

In the context of that assessment, it is necessary, specifically, to determine whether unlawful gaming activities may constitute a problem in the Netherlands and whether the expansion of authorised and regulated activities would be likely to solve such a problem.

Moreover, the Ladbrokes companies submit that they are holders of a licence issued by the United Kingdom authorities which allows them to offer sports-related prize competitions and other games of chance via the internet and by telephone, and are subject in the United Kingdom to very strict legislation for the prevention of fraud and of addiction to games of chance. In their view, there should be no duplication of controls and safeguards.

In that regard, the Court notes that the internet gaming industry has not been the subject of harmonisation within the European Union. A Member State is therefore entitled to take the view that the mere fact that an operator such as the Ladbrokes companies lawfully offers services in that sector via the internet in another Member State is not a sufficient assurance that national consumers will be protected.

In addition, because of the lack of direct contact between consumer and operator, games of chance accessible via the internet involve different and more substantial risks of fraud by operators against consumers compared with the traditional markets for such games.

Case C-203/08 Sporting Exchange (Betfair)

Sporting Exchange (Betfair) operates within the gaming sector. Its services are provided solely via the internet and by telephone. From the United Kingdom, it provides the recipients of its services with a platform for betting on sporting events and horse races on the basis of British and Maltese licences. Sporting Exchange (Betfair) has no office or sales outlet in the Netherlands.

Sporting Exchange (Betfair) submitted, in essence, that the Netherlands authorities were obliged to recognise the licence which it held in the United Kingdom, and to respect the principle of transparency when granting a licence for the provision of games of chance.

First, following the same reasoning as in Case C-258/08 *Ladbrokes*, the Court observes that, in the light of the specific features associated with the provision of games of chance via the internet, the restriction on the freedom to provide services may be regarded as justified by the objective of combating fraud and crime.

Second, as regards the single-operator licensing scheme, the Court states that the Member States have sufficient discretion to determine the level of protection sought in relation to games of chance. However, if a prior administrative authorisation scheme is to be justified, it must be based on objective, non-discriminatory criteria known in advance, in such a way as to circumscribe the exercise of the authorities' discretion so that it is not used arbitrarily.

In any event, the restrictions on the freedom to provide services which arise specifically from the procedures for the grant of a licence to a single operator or for the renewal thereof may be regarded as being justified if the Member State concerned decides to grant a licence to, or renew the licence of, a public operator whose management is subject to direct State supervision or a private operator whose activities are subject to strict control by the public authorities.

In such situations, the grant to such an operator of exclusive rights to operate games of chance, or the renewal of such rights, without any competitive tendering procedure would not appear to be disproportionate in the light of the objectives pursued by the Netherlands legislation.

It is for the national court to ascertain whether the holders of licences in the Netherlands for the organisation of games of chance satisfy those conditions.

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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