

## **Free movement of services: Commission inquires into restrictions on the provision of certain gambling services in Austria, France and Italy**

*The European Commission has decided to send official requests for information on national legislation restricting the supply of certain gambling services to Austria, France and Italy. In April 2006 the Commission sent similar requests for information to Denmark, Finland, Germany, Hungary, Italy, the Netherlands and Sweden ([IP/06/436](#)). In these latest cases the Commission again wishes to verify whether the measures in question are compatible with Article 49 of the EC Treaty, which guarantees the free movement of services. The Commission's decision relates only to the compatibility of the national measures in question with existing EU law. It does not touch upon the existence of monopolies as such, or on national lotteries. Nor does it have any implications for the liberalisation of the market for gambling services generally, or for the entitlement of Member States to seek to protect the general interest, so long as this is done in a manner consistent with EU law i.e. that any measures are necessary, proportionate and non-discriminatory. The letters of formal notice are the first step in an infringement procedure under Article 226 of the EC Treaty. The Member States in question have two months in which to respond. The Commission hopes that the answers it receives will lead to an early and satisfactory resolution of the matter. The Commission is also publishing the results of a large-scale study carried out on its behalf by the Swiss Institute of Comparative Law. This study for the first time provides an overview of the legal regime covering gambling and games of chance in the EU Member States. The study also attempts to give indications on the economic development of the sector.*

The European Court of Justice has previously stated that any restrictions which seek to protect general interest objectives, such as the protection of consumers, must be "consistent and systematic" in how they seek to limit activities. A Member State cannot invoke the need to restrict its citizens' access to these services if at the same time it incites and encourages them to participate in state games of chance or betting offered by national operators or a monopoly.

The Commission decision to inquire into the compatibility of the measures in question is based on complaints made by a number of service providers and on information gathered by Commission staff.

Internal Market and Services Commissioner Charlie McCreevy said: *“As I said in April the Commission has an obligation under the Treaty to ensure that Member States’ legislation is fully compatible with EU law. This is an important responsibility which it takes seriously. It has received a large number of complaints from operators and I have made no secret of the fact that I intend to pursue these inquiries. It has, therefore, decided to seek information on the matter from the Member States concerned.*

*I have already said that I don’t underestimate the sensitivities that exist in many Member States on the question of gambling and I know that my services have made this clear to the seven Member States with whom they have already had discussions. But I also have concerns about the legal uncertainty suffered by EU sport betting operators and related stakeholders. I repeat that in sending these latest letters, we are not seeking to liberalise the market in any way. Rather, we are seeking reassurance that whatever measures Member States have in place are fully compatible with existing EU law, or have been brought fully into line.”*

### **Austria**

The Commission has asked questions of the Austrian authorities in relation to national legislation which prohibits the promotion or advertising of casinos licensed and established in other Member States. The Commission also has concerns that the legislation in question provides that casinos must act diligently so as to protect Austrian players from excessive losses, but makes no such provision for foreign players. Such a provision is therefore liable to be discriminatory as regards the protection of players as recipients of services.

### **France**

In the case of France the Commission has asked a number of questions in relation to a range of restrictions imposed on remote sports betting operators licensed and established in other Member States. The Commission has concerns about the proportionality of the French measures where operators licensed and regulated in other Member States are denied access to the French sport and horse race betting market for reasons such as the protection of consumers from gambling addiction, yet it seems that the French sport betting market continues to expand and offer more choice and opportunity for consumers to bet.

### **Italy**

This latest inquiry into Italian national restrictions, like in France, focuses on the provision of remote sports gaming services by operators licensed and regulated in other Member States. In particular the Commission has concerns that recent Italian legislation, which has blocked access to the websites of legitimate European operators, is a disproportionate restriction. The Commission has asked the Italian authorities to explain the proportionality of these measures, particularly in the light of the expanding sports betting market which appears reserved to domestic operators.

## **Study on gambling**

To obtain a detailed overview of the legal and economic aspects of gambling and games of chance, the Commission asked the Swiss Institute of Comparative Law to carry out a study into the sector. The study is the result of close to two years work and provides an analysis of the legal regimes governing gambling and games of chance in the European Union. The study confirms that in all Member States the sector is subject to rules and regulations aimed at safeguarding public interest objectives. While pursuing broadly similar aims the national laws and regulations vary considerably and often lead to barriers to the freedom to provide services and the freedom of establishment that are incompatible with Community law.

The study is available at:

[http://ec.europa.eu/internal\\_market/services/gambling\\_en.htm](http://ec.europa.eu/internal_market/services/gambling_en.htm)

The latest information on infringement proceedings concerning all Member States can be found at:

[http://ec.europa.eu/community\\_law/eulaw/index\\_en.htm](http://ec.europa.eu/community_law/eulaw/index_en.htm)