



The Hungarian legislation on the grant of concessions for operating traditional casinos and that relating to the organisation of online casino games are not compatible with EU law

That legislation prevents, in a discriminatory manner, operators of games of chance established in another Member State from having access to the Hungarian market for those games

Sporting Odds is a British company which holds a licence for the organisation of online games of chance, including casino games, in the UK.

In 2016, the Hungarian Tax Authority established that Sporting Odds offered online games of chance in Hungary without, however, having the concession or a licence required for that purpose by Hungarian law. For that offence, the tax authority imposed a fine on Sporting Odds of 3 500 000 Hungarian florins (approximately €11 260).

Taking the view that the Hungarian legislation on the organisation of online games of chance and, in particular, the rules on online casino games were contrary to EU law, Sporting Odds brought an action before the Fővárosi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest, Hungary) seeking the annulment of the decision of the tax authority.

The Hungarian court asks the Court of Justice, *inter alia*, whether the national legislation on the organisation of traditional and online casino games is compatible with the freedom to provide services.

By today's judgment, the Court states, first of all, that the fact that in Hungary certain types of games of chance (in particular sports and horse race betting) are subject to a public monopoly, while others (in particular traditional and online games of chance) may be organised by private operators who have the appropriate licence, does not call into question the compatibility of that monopoly with the principle of the freedom to provide services. Such a dual system does not, in itself, affect the ability of that monopoly to achieve its objective, consisting in particular in preventing citizens becoming addicted to gambling.

Similarly, the fact that that dual system appears to aim not only to achieve the legitimate objectives pursued, but also to generate additional budgetary revenue and to facilitate the controlled expansion of games of chance does not, in itself, call into question the lawfulness of the Hungarian legislation, provided that it is actually intended to achieve those objectives.

Therefore, subject to verification by the Hungarian court with regard to those objectives, the Court of Justice rules that **the dual system of organisation of the market for games of chance in Hungary is compatible with EU law.**

Next, the Court states that **the Hungarian legislation reserves the possibility to obtain a licence to organise online casino games exclusively to operators managing a casino under a concession on national territory, which constitutes a discriminatory restriction.** In that connection, the Court considers that such a **radical restriction** of the principle of freedom to provide services **cannot be justified** by the objectives of public order and public health relied on

by the Hungarian Government because those objectives may be attained by less restrictive measures.

As regards the question whether Hungary ensures, in a non-discriminatory manner, that the precondition for obtaining a licence to organise online casino games (that is to have a concession to operate a traditional casino) may be fulfilled by those operators, the Court refers to its judgment in Unibet¹ in which it has already ruled, in another context, that the Hungarian legislation relating to the access to concession agreements for the organisation of online games of chance is unlawful.

Thus, the Court states, first, that although the possibility to organise calls for tender for the conclusion of concession agreements is provided for by Hungarian law, such calls for tender have not yet been organised in Hungary. Second, the condition that a 'trustworthy' operator (with which, under Hungarian law, the State may conclude concession agreements even without a call for tender) must have organised games of chance in Hungary for 10 years constitutes a difference in treatment. Such a requirement places operators of games of chance established in other Member States at a disadvantage as compared with national operators which can fulfil that condition more easily.

In those circumstances, the Court rules that **neither the Hungarian legislation on granting concession to operate traditional casinos nor that relating to the organisation of online casino games are compatible with the principle of freedom to provide services.**

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 EU 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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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106

¹ Case: [C-49/16](#) Unibet International, see also Press Release [68/17](#).