

# EUROPEAN PARLIAMENT

2004



2009

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*Committee on Petitions*

26.10.2009

## NOTICE TO MEMBERS

**Subject: Petition 1374/2002 by Petros Tselepidis (Greek), on behalf of the Association of Electronic and Mechanical Toy Importers, Manufacturers, Retailers and Dealers of Northern Greece - SIPBE, on a ban on computer games**

### 1. Summary of petition

The petitioners object to the law adopted by the Greek Government banning electronic games of skill, arguing that it infringes the principle of freedom of movement of goods, freedom of establishment and freedom to provide services. The petitioners indicate that the law applies only in Greece and that in other Member States ways have been found of distinguishing between games of skill and games of chance played on computers. The petitioners are seeking the assistance of the European Parliament with a view to bringing to an end the above infringements and having the law amended accordingly.

### 2. Admissibility

Declared admissible on 24 July 2003. Information requested from Commission under Rule 192(4).

### 3. Commission interim reply, received on 13 November 2003.

Regarding the alleged incompatibility of Greek law 3037/2002 with European law raised by the petition, the Commission has been following the issue closely and the following actions have been taken:

On June 7, 2002, before the above mentioned law was enacted, the services of the Commission asked by letter the Greek authorities for information about the Greek legislation on the marketing and use of games machines in places other than casinos and about the then proposed amendments.

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Following the enactment of law 3037/2002 and having received several complaints, the Commission sent, on October 18, 2002, a letter of formal notice to the Greek authorities whereby it was noted that the Greek law introduces measures that may have an effect equivalent to quantitative restrictions to imports of games and related goods from other Member States and that those measures seem to be unjustified and disproportionate.

Following the Greek authorities' reply on December 17, 2002, the services of the Commission also raised the issue in the Athens "package meeting" with the Greek authorities on January 24, 2003.

Taking into account that certain provisions of the Greek law may be contrary also to the freedom to provide services, the freedom of establishment as well as to Dir.98/34 regarding the obligation of Member States to notify measures that introduce technical regulations, the Commission sent on July 11, 2003, an additional letter of formal notice to the Greek authorities raising the above mentioned issues. The Greek authorities are due to reply within two months upon receipt of the additional letter of formal notice.

#### **4. Further Commission reply, received on 21 April 2005.**

Further to the information provided in the previous replies to the petition, there has been the following development:

On February 10, 2005, following its decision of October 13, 2004, the Commission referred Greece to the European Court of Justice over its ban on the installation and operation of electrical, electromechanical and electronic games, including computer games, in all public and private places - including premises providing Internet services (cyber cafés).

The Commission considers that the Greek law in question (of 29 July 2002) is incompatible with the provisions of the EC Treaty on the free movement of goods and services and the freedom of establishment. The fact that the law was not notified at the draft stage also constitutes an infringement of Directive 98/34/EC, which provides for prior notification of national regulations laying down technical rules for on-line goods and services. Despite promising to amend its legislation in response to the Commission's reasoned opinion sent in April 2004, Greece has yet to introduce any change.

The Commission believes that the Greek legislation is disproportionate, insofar as it applies not only to equipment (slot machines) and games of chance which might give rise to social concerns but also games of an entirely different nature which are not, in themselves, a source of particular disquiet with regard to public order or consumer protection.

As noted in the previous replies to the petition the provisions of the EC Treaty and European law the Greek law is considered to be incompatible with are the following:

Firstly, by banning the games themselves, the Greek law has prevented games lawfully produced or marketed in other Member States from being imported and marketed in Greece, in contravention of the principle of the free movement of goods laid down in Article 28 of the EC Treaty.

Secondly, by prohibiting service activities related to electronic games – such as their maintenance - the ban stops businesses which provide such services legitimately in other Member States from providing the same services in Greece. Yet their right to do so is guaranteed under the principle of the freedom to provide services set out in Article 49 of the EC Treaty and under the freedom of establishment (in other words to set up a permanent presence in another Member State) guaranteed by Article 43 of the EC Treaty.

Lastly, to the extent that it lays down rules on electronic and mechanical devices and governs the activities of Internet service providers, the Greek law should have been notified to the Commission in advance pursuant to Directive 98/34/CE, which provides for prior notification of national regulations laying down technical rules for on-line goods and services.

Given that information society services are by definition often provided across borders, this prior notification is intended to help ensure that rules made in one Member State do not damage the interests of businesses and citizens in others.

**5. Further Commission reply**, received on 30th November 2005.

Following the last additional reply to the petition, there have been no further developments regarding the Greek ban on the installation and operation of electrical, electromechanical and electronic games, including computer games, in all public and private places - including premises providing Internet services (cyber cafés). This is because, as noted in the last additional reply, the case has been referred by the Commission to the European Court of Justice since February 10, 2005 and the hearing is currently pending.

The Commission has not changed its position, i.e. that the Greek law in question (law 3037 of 29 July 2002) is incompatible with the provisions of the EC Treaty on the free movement of goods and services and the freedom of establishment and also that its enactment procedure constituted an infringement of Directive 98/34/EC, which provides for prior notification of national regulations laying down technical rules for on-line goods and services.

**6. Further Commission reply**, received on 28th March 2005.

Following the transmission of additional information on 30 November 2005, there have been no further developments regarding the Greek ban on the installation and operation of electrical, electromechanical and electronic games, including computer games, in all public and private places - including premises providing Internet services (cyber cafés).

The case was referred by the Commission to the European Court of Justice on 10 February 2005 and the hearing is currently still pending. By Order of 25 May 2005, the President of the Court of Justice granted leave to the French Republic to intervene in Case C-65/05 in support of the form of order sought by Greece.

The Commission would like to reemphasise that it has not changed its position, i.e.

- that the Greek law in question (law 3037 of 29 July 2002) is incompatible with the provisions of the EC Treaty on the free movement of goods and services and the freedom of establishment
- and also that its enactment procedure constituted an infringement of Directive 98/34/EC,

which requires the prior notification of national regulations laying down technical rules for on-line goods and services.

**7. Further Commission reply**, received on 25 January 2007.

As the Commission informed the Committee on Petitions on 23 February 2006, complaint 2002/4769, which is concerned with the same Greek law as this petition, was referred to the Court on 10 February 2005 (case C-65/05). The Court gave its ruling on this case on 26 October 2006 declaring that the prohibition under Articles 2(1) and 3 of Law No 3037/2002, subject to the criminal and administrative penalties set out in Articles 4 and 5 of the same law, on the installation and operation of all electrical, electromechanical and electronic games, including all computer games, in all public or private places except casinos, is in breach of Articles 28 EC, 43 EC, 49 EC and Article 8 of Directive 98/34/EC. The Court held that the argument invoked by the Hellenic Republic that the findings of the Court in Cases C-275/92 *Schindler* and C-124/97 *Läärä* should be also applied to this case, cannot be accepted. The present case, the Court noted, is concerned with electrical, electromechanical and electronic games which do not have any characteristics comparable to those of the games at issue in the above cases. As a matter of fact, the games which are the subject of the prohibition laid down by Articles 2(1) of Law No 3037/2002 are not by nature games of chance because they are not played for the prospect of winning money.

Even if the Court's case law may not be applied in the present case, the Hellenic Republic put forward a number of overriding public interests reasons, alleging that they may justify the barrier to the free movement of goods. However, the Court held that it is also necessary for the national legislation at issue to be proportionate to the objectives pursued. It held that the Hellenic Republic has not established that it implemented all the technical and organisational measures likely to have achieved the objective pursued using measures which were less restrictive of intra-Community trade.

The Commission will now monitor the situation to make sure that the Member State amends the particular law appropriately in order to comply with the Court's ruling.

**8. Further Commission reply**, received on 19 December 2007.

As a follow-up to the Commission communication from November 2006 and the meeting of the Committee on Petitions on 2 May 2007, the Commission would like to provide an update on the latest developments. Complaint 2002/4769, concerning the same Greek law as this petition, was referred to the Court on 10 February 2005 (case C-65/05). The Court gave its ruling on this case on 26 October 2006, declaring that the prohibition under Articles 2(1) and 3 of Law No 3037/2002, subject to the criminal and administrative penalties set out in Articles 4 and 5 of the same law, on the installation and operation of all electrical, electromechanical and electronic games, including all computer games, in all public or private places except casinos, is in breach of Articles 28 EC, 43 EC, 49 EC and Article 8 of Directive 98/34/EC.

On 11 December 2006, the Greek authorities were informed of the above judgment and were asked about the follow-up action taken. On 12 February 2007, the Greek authorities sent a letter to the Commission arguing that the matter was serious and complicated, and that the

relevant ministries were collaborating to set up a system which is socially acceptable, proportional and in accordance with Community law. However, the Greek authorities had not sent to the Commission any amendments to the law. As a result, the Commission sent a Letter of Formal Notice on 23 March 2007, under Article 228 EC. As the Greek authorities failed to reply, a Reasoned Opinion was sent on 29 June 2007. The Greek authorities have not replied to the Reasoned Opinion either and thus the Commission decided on 17 October 2007 to refer the case for a second time to the Court of Justice under Article 228 EC asking the Court to also impose financial penalties on Greece for failing to comply with its judgment.

**9. Further Commission reply**, received on 10 June 2008.

As a follow-up to the Commission communication from November 2007 and the meeting of the Committee on Petitions in February 2008, the Commission would like to provide an update on the latest developments. As already mentioned, the Commission decided on 17 October 2007 to refer the case for a second time to the Court of Justice under Article 228 EC asking the Court to also impose financial penalties on Greece for failing to comply with its judgment. The referral was sent to the Court of Justice on 10 March 2008. Thus, this case is now with the European Court of Justice.

**10. Further Commission reply**, received on 26 October 2009.

On 4 June 2009, the European Court of Justice delivered its judgment in Case C-109/08 which is the case relevant to this petition. In this case, the Court ordered the Hellenic Republic to pay to the Commission, into the 'European Community own resources' account, a penalty of EUR 31,536 per day from the delivery of this judgment (4 June 2009) until the Greek authorities comply with the judgment in Case C-65/05, Commission v. Greece. Furthermore, the Court ordered the Hellenic Republic to pay to the Commission a lump sum of EUR 3 million.

As a result, the Commission sent a letter to the Greek authorities on 7 July 2009, asking them to pay into the 'European Community own resources' account the amount of EUR 3,000,000. On 18 August 2009, the Commission sent another letter instructing the Greek authorities to pay into the 'European Community own resources' account the amount of 1,797.552 EUR. The Commission will, at regular intervals, continue to claim the payment of the daily penalty of 31,536 EUR until the Greek authorities comply with the judgment of the Court in Case C-65/05.

The Commission would like to clarify that the above judgments relate to purely amusement game machines (ie. where no gambling is involved). The infringement case against Greece related to gambling machines was closed by Commission decision on 25 June 2009.