



30.7.2014

NOTICE TO MEMBERS

Subject: Petition No 1170/2013 by D.G. (Spanish), on behalf of the '*Organizacion impulsora de discapacitados*', a body assisting the disabled, concerning an alleged lottery monopoly in Spain

1. Summary of petition

The petitioner indicates that in Spain lotteries can be organised only by a public body and an association representing the blind or partially sighted. He argues that this is encouraging a monopoly situation and infringing the right of establishment and the right to provide services, as laid down in the Treaties.

He accordingly asks the European Parliament to bring pressure to bear on the Spanish authorities to revoke legislation preventing other natural or legal persons from organising lotteries.

2. Admissibility

Declared admissible on 13 March 2014. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 30 July 2014

The right to organise lotteries

The right to organise lotteries in Spain is - as the petitioner claims - restricted pursuant to Law 13/2011 of 27 May on the regulation of games. Additional provisions of the Law reserve the organisation of lotteries to the Sociedad Estatal Loterías y Apuestas del Estado and the Organización Nacional de Ciegos Españoles (ONCE) (Disposición adicional primera. Uno.),

without the need to obtain licences provided for in Title III of the Law (Disposición adicional primera. Cuatro. Second paragraph) and without the need to fulfil the Law's requirements concerning the opening of sales points for those activities which are subject to the reserve (Disposición adicional primera. Cinco.)

Moreover, provisions are made for strict public control of the activities of ONCE in the area of games of chance (Disposición adicional segunda. Dos. and Tres.) and to prohibit the outsourcing of the activities reserved to ONCE to a third party (Disposición adicional segunda. Dos. Second paragraph.)

It is perhaps worth noting that the Ministry of Economy has the right to authorise exceptionally the occasional organisation of lotteries by not-for-profit entities with beneficial aims (Disposición adicional primera. Tres.)

The provision of gambling services is not subject to sector-specific EU legislation and it is explicitly excluded from Directive 2006/123/EC on services in the internal market. However, the EU Treaty applies to these services and there exists considerable body of case-law of the Court of Justice in this area. According to this case-law, Member States enjoy a wide discretion in setting out the objectives of their gambling policy and may restrict the provision of gambling services, including by granting the right to offer them to a single entity, as part of consistent pursuit of this policy, as long as the restrictions are non-discriminatory and proportionate.

As regards lotteries specifically, the Court stated in its judgment in the case C-275/92 *Schindler*:

First of all, it is not possible to disregard the moral, religious or cultural aspects of lotteries, like other types of gambling, in all the Member States. The general tendency of the Member States is to restrict, or even prohibit, the practice of gambling and to prevent it from being a source of private profit. Secondly, lotteries involve a high risk of crime and fraud, given the size of the amounts which can be staked and of the winnings which they can hold out to the players, particularly when they are operated on a large scale. Thirdly, they are an incitement to spend which may have damaging individual and social consequences. A final ground which is not without relevance, is that lotteries may make a significant contribution to the financing of benevolent or public interest activities such as social works, charitable works, sport or culture.

Those particular factors justify national authorities having sufficient degree of latitude to determine what is required to protect the players and, more generally, in the light of the specific social and cultural features of each Member State, to maintain order in society, as regards the manner in which lotteries are operated, the size of the stakes, and the allocation of the profits they yield. In those circumstances, it is for them to assess not only whether it is necessary to restrict the activities of lotteries but also whether they should be prohibited, provided that those restrictions are not discriminatory. (Paragraphs 60-61)

Thus, a monopoly for the organisation of lotteries in Spain can be considered compatible with EU law, as long as this restriction is justified by overriding reasons in the public interest.

The objectives of the policy on gambling pursued by the Spanish government, as set out in

Article 1 of Law 13/2011, are the protection of the public order, fight against fraud, prevention of addiction, as well as the protection of the rights of minors and of the participants in games of chance.

These objectives have been recognised by the Court of Justice as capable of justifying restrictions, including the reserve of the right to offer gambling services to a publicly supervised monopoly (see to that effect, e.g. C-347/09 *Dickinger and Ömer*, paragraphs 44 and 48).

The Court has also dealt with the question of the award of an exclusive right to operate games of chance to a particular entity. In its judgment in the case C-203/08 *Sporting Exchange*, it found that in order to comply with the principle of non-discrimination and that of transparency which flows from it, the intention to award a single licence for the operation of games of chance or to renew such licence had to be adequately publicised so as to inform operators in other Member States which may be interested, without necessarily organising a tender procedure. However, the Court clearly contrasted the award of single licence to a private entity which is entirely independent from the state with a situation where the monopoly is not based on a licensing regime but on a subjective right granted to an entity which is either owned by the state or is a private operator subject to strict control by the public authorities (which is the case of ONCE, according to the provisions of the Spanish law quoted in paragraph 5):

the principle of equal treatment and the consequent obligation of transparency are applicable to procedures for the grant of a licence to a single operator or for the renewal thereof in the field of games of chance, in so far as the operator in question is not 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 (paragraph 62).

Exemption from fiscal obligations

Pursuant to the first alinea of Article 48.2 of Law 13/2011, state lotteries are exempted from gambling taxes. However, the second alinea states that taxes are applicable when the operators of state lotteries organise any games other than a state lottery.

In the light of these provisions, there appears to be no discrimination between operators who organise the same types of games.

Conclusions

On examination of the facts provided by the petitioner, and in particular noting the absence of evidence that the restrictions on the offer of lotteries in Spain are disproportionate or discriminatory within the meaning of EU law, it would not appear to the Commission that the Spanish national legislation is in breach of EU law as interpreted in the jurisprudence of the Court of Justice set out above.