



9.2.2024

NOTICE TO MEMBERS

Subject: Petition No 0747/2023 by J. T. (Hungarian) on national restrictions on online gambling in Hungary

1. Summary of petition

According to the petitioner, betting and winnings payment on the online interface of Lottoland.eu is prohibited in Hungary by Act XXXIV of 1991 on the organisation of gambling. The petitioner states that under the provisions of the Act, which is applicable as of 1 July 2023, not only will websites offering organised online gambling without the authorisation of the Hungarian Supervisory Authority for Regulated Activities (hereinafter: SZTFH) be blocked, but also the payment accounts of those payment accounts used to deposit bets or pay winnings in connection with the organisation of illegal gambling, such an account being referred to as a prohibited payment account. The petitioner claims that this provision contradicts the content of the Communication "Towards a comprehensive European framework for online gambling" (COM/2012/0596 final) and restricts the possibility of free online betting on the lottoland.eu interface. The petitioner requests that the decision of the SZTFH, which clearly created the possibility for Garancsi's online gambling business to operate without competition, be overturned, thereby restoring the possibility of free choice in online gambling. The petitioner requests that his petition be dealt with in the context of the rule of law proceedings against Hungary in order to reduce the scope for state-organised corruption.

2. Admissibility

Declared admissible on 15 November 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 9 February 2024

In December 2017, the Commission decided to reduce its activities with regard to the application of Article 49 and 56 TFEU (Treaty on the Functioning of the European Union) in

the area of gambling. CJEU (Court of Justice of the European Union) case law clarified the scope for national regulation of gambling services, confirming that gambling is a sector in which Member States, due to public interest considerations such as consumer protection, have a wide margin for justified restrictions of the provision of gambling services, provided that such restrictions are coherent, proportionate and consistent with the underlying public interest objectives. Member States are therefore free to regulate gambling activities in their national jurisdiction as long as they are in line with internal market rules as established by the Treaty and as interpreted by the Court of Justice of the EU. Gambling regulations, including gambling advertising, on consumer protection and enforcement thereof thus vary significantly between EU Member States. The 2012 Communication on online gambling in the Internal Market (COM(2012)0596) does not interfere with Member States right to regulate gambling services.

It should be noted that there is no sector-specific EU legislation on gambling and games of chance. As regards horizontal rules at EU level, the legislation regulating the provision of information society services in general are not applicable to gambling services in view of the explicit exclusion of gambling services laid down in Article 1(5) of the E-Commerce Directive 2000/31/EC, including the country of origin principle established therein. Gambling services are not considered payment services within the meaning of Directive (EU) 2015/2366 on payment services in the internal market¹ and are therefore not covered by this Directive.

Under the horizontal Directive (EU) 2015/849² on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, providers of gambling services are obliged entities, subject to the anti-money laundering obligations resulting from this directive, notably on performing customer due diligence upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to EUR 2 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked. They must also report suspicious transactions to national competent authorities. The directive also requires Member States to ensure that providers of gambling services are regulated and that enhanced supervisory powers are granted to the competent authorities in charge of the sector. Supervisors should, in particular, ensure that the persons who effectively manage the business of gambling service providers and the beneficial owners of such entities act with honesty and integrity, and possess knowledge and expertise necessary to carry out their functions.

However, with the exception of casinos, and following an appropriate risk assessment, Member States may decide to exempt, in full or in part, providers of certain gambling services from national provisions transposing this Directive, on the basis of the proven low risk posed by the nature and, where appropriate, the scale of operations of such services³. Any decision taken by a Member State to exempt a provider of gambling services shall be notified to the Commission, together with a justification based on the specific risk assessment. The Commission shall communicate that decision to the other Member States⁴. In that regard, it should be noted that

¹ OJ L 337, 23.12.2015, p. 35–127

² Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141 5.6.2015, p. 73)

³ Among the factors considered in their risk assessments, Member States shall assess the degree of vulnerability of the applicable transactions, including with respect to the payment methods used.

⁴ This is done through the publication of a regularly updated list of Member States who have decided to exempt providers of certain gambling services from national provisions transposing Directive (EU) 2015/849, link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020XC0731%2801%29>

Hungary notified a national exemption for drawing games, as defined and regulated under Articles 15-24 of the Law 34 of 1991 on Gambling Operations⁵.

Member States (including Hungary) had to transpose the Directive 2015/849 as modified by directive 2018/843⁶ by 10 January 2020. The Commission has assessed the complete and conform transposition of said directives. In this context, no violation with regard to the obligations on gambling service providers stemming from the directives has been identified.

Conclusion

The Court of Justice of the European Union case law has clarified the scope of national regulation of gambling services, confirming that gambling is a sector in which Member States, due to public interest considerations such as consumer protection, have a wide margin for justified restrictions on the provision of gambling services. In this context, it is primarily the responsibility of national competent enforcement authorities and courts of the Member States to assess, on the merits of each case, whether there is a breach of the relevant legislation. The Commission therefore advises the petitioner to contact directly the relevant national authorities for those matters falling within their competence.

⁵ According to Hungarian notification, “Drawing games include drawing lot games, tombola, scratch cards and the so-called other drawing games, like offline bingo”.

⁶ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43–74)