

EU Court rejects Hungarian online gambling regime and prohibits offline activities requirement

Brussels, 28 February 2018

The European Court of Justice (CJEU) has today ruled that the Hungarian requirement to have an offline casino in order to be allowed to offer online casino games is in clear violation of EU law. The ruling, in a case brought by EU-licensed online gaming operator *Sporting Odds*, also prohibits enforcement by the Hungarian authorities based on its current gambling legislation which is not in line with the EU freedom to provide services. The European Gaming & Betting Association (EGBA) welcomes the ruling which reinforces the CJEU's previous judgment against Hungarian licensing regulations and is a significant step in providing further legal clarity to online gambling regulation in Europe.

In today's judgement¹, the CJEU ruled that Hungarian legislation on granting licenses to operate online casino games, which required licensees to hold a license for a land-based casino in the territory of Hungary, is not compatible with the principle of freedom to provide services, guaranteed under Article 56 of the EU Treaty. The CJEU furthermore leaves it for the Hungarian court to determine whether the current Hungarian system, whereby some online gambling products are subject to a monopoly while others are, in principle, subject to a licensing system, attains public policy objectives in a consistent and systematic manner.

The ruling also confirms the CJEU's previous preliminary ruling² where the Court reiterated that Member States cannot bring any enforcement action, including any form of administrative sanctions such as fines and blocking measures, against EU-licensed online gaming operators if the national legislation is in breach of EU law.

Today's CJEU ruling confirms that:

- *"[it] is clear that such a [licensing] restriction, which amounts to reserving access to the market for online games of chance to casino operators situated on national territory, goes beyond what may be considered necessary as proportional, since less restrictive measures exist which enable the objectives relied on by the Hungarian Government to be attained"* (para 43).
- *"it is for the competent authorities of a Member State [...] to produce evidence establishing the existence of objectives capable of justifying a restriction on a fundamental freedom [...] and its proportionality. On the other hand, should such justifications not be provided through*

¹ Case [C-3/17](#), European Court of Justice, 28 February 2018.

² Case [C-49/16](#), European Court of Justice, 22 June 2017.

absence or passivity of those authorities, the national courts must be able to draw all inferences which result from such failure” (para 59).

- *“Article 56 TFEU must be interpreted as precluding a penalty [...] imposed for the infringement of national rules introducing a system of concessions and licences for the organisation of games of chance, if such national legislation proves to be contrary to that article” (para 67).*

Maarten Haijer, Secretary General of EGBA, said: *“Today’s judgement by the Court of Justice is very clear: no Member State can require an offline activity as a pre-requisite to provide online gambling services as this is in conflict with EU law. We are pleased that the CJEU has concluded this once and for all. Restrictive requirements like these, that discriminate against operators, who are entitled to provide their services in a Member State, have no place in the EU. It is clear that, even if Member States are to an extent free to regulate gambling according to their policy objectives, the overall framework is set by EU law.”*

Background

The Budapest-Capital Administrative and Labour Court had asked the CJEU whether Hungary had violated the freedom to provide services (under Article 56 of the EU Treaty) by imposing administrative fines and temporary ISP blocking measures against an EU-licensed and regulated operator, Sporting Odds. Whilst the Hungarian regulation did not enable the operator to submit a license application for the purposes of offering online casino games without operating a physical casino in Hungary and prevented the operator from offering online sports betting products in Hungary by establishing a national monopoly.

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About the EGBA:

The [EGBA](#) is an association of leading European gaming and betting operators [Bet-at-home](#), [BetClic](#), [GVC Holdings PLC](#), [Expekt](#), [Kindred Plc](#), [ZEAL Network](#), [Betsson Group](#) and [bet365](#). The Gibraltar Betting and Gaming Association ([GBGA](#)) and Branschföreningen för Onlinespel ([BOS](#)) are affiliate members of EGBA. As a Brussels-based non-profit association, EGBA promotes the rights of more than 20 million adult European citizens to participate in online gambling of their choice in an informed, regulated, safe and secure environment. While online gambling remains a smaller part of the total gambling market (15%), based upon innovation, technology and digital consumer demand, online gambling transformed itself into an industry champion of the European digital economy with material spin-off effects towards other digital economies and strong synergies with sports. EGBA members have invested more than €600M into digital security and contributed to sports with more than €800M, mainly via sponsorship deals and purchasing innovative sports streaming rights. www.egba.eu