

The European Commission takes first step in an infringement procedure against Germany and six other Member States

After the German Federal Constitutional Court (Bundesverfassungsgericht) held the state monopoly for sports betting in its current form not to be compatible with the German Constitution last week, the legal situation is now going to be reviewed under Community law. The European Commission has sent letters of formal notice to Germany and six other Member States (Denmark, Finland, Hungary, Italy, the Netherlands and Sweden), requesting information on national legislation restricting the supply of sports betting services. The Commission will use the information to review the compatibility with the free movement of services, guaranteed in Article 40 of the EC Treaty. The Commission will check in particular whether the restrictions on the free movement of services are justified by the protection of the general interest and whether the measures are proportionate and non-discriminatory.

The Commission has started preexaminations already some time ago, based on complaints of several bookmakers, which were effectively barred to enter the market. The complaints concern in particular the prohibition of advertising sports betting services (in Germany a criminal offence according to Art. 284 par. 3 German Criminal Code) and the prohibition of placing bets with a bookmaker, licensed in an other Member State (in Germany, customers are committing a crime according to Art. 285 German Criminal Code). Internal Market Commissioner Charlie McCreevy argued that the Commission felt obliged to respond, having received a number of complaints from operators in the area of sports betting. The Commission had the

obligation to check that member States' legislation is compatible with EU law.

The letters of formal notice are the first step in an infringement procedure under Article 226 of the EC Treaty. The Member States in question now have two months in which to respond.

In its announcement, the Commission referred to the recent case law by the European Court of Justice, according to which any restrictions of the free movement of services had to be justified by general interest objectives and must be consistent and systematic in how they seek to limit betting activities. According to the Gambelli decision a Member States cannot invoke the need to restrict betting services to customers if at the same time it incites and encourages them to participate in state lotteries, games of chance or betting.

Comment:

As „Guardian of the Treaties“ the Commission now felt obliged to inquire about the free movement of services regarding sports betting, which has evolved into a billion Euros business. In view of the criminal proceedings against bookmakers licensed and regulated in an other Member State, this decision was overdue.

The restrictions of the free movement of services with regard to sports betting in Germany will now be formally reviewed. The situation for Germany is not really enjoyable as the Federal Constitutional Court held, in its review under German constitutional law, that the regulation was not coherent and that sports betting was marketed as a „generally harmless leisure activity“, mainly motivated by (irrelevant) fiscal reasons. The legislation in Germany is therefore not justified under Community law, as the state operators did not care about fighting gaming addiction. If the matter is not resolved, the Commission might ask the European Court of Justice to review

the legal situation.

For further questions regarding sports betting services and Community law attorney-at-law Martin Arendts is at your disposition (Tel. +49 / 0700 / WETTRECHT).