

Advocate General challenges OPAP's monopoly position in Greece

The Advocate General of the Court of Justice of the EU delivered today his opinion in the Stanleybet, William Hill & Sportingbet case (Joined Cases C-186/11, C-209/11), which was referred by the Greek Council of State in the context of legal challenges initiated by the three operators against the Greek Government. The Advocate General found that the gambling legislation in Greece which granted certain exclusive gambling rights to OPAP and allowed for an expansion of its offerings was „manifestly inconsistent“, was not necessary to attain the objectives stated, and therefore was not compliant with EU law.

The Greek legislation provided that the public authorities could grant a single operator, in the form of a public limited company, the right to organise and operate games of chance. It also allowed the public entity to advertise freely and expand its services, including into other countries. The legislation was supposedly designed to combat criminality by exercising control over the single operator.

In today's opinion, the Advocate General refutes the justifications given by the Greek government and finds that OPAP's expansion and the public promotion of its products went far beyond what is necessary in order to channel consumers towards the controlled provision of gambling services. The Advocate General further states that OPAP is not subject to strict control of the public authorities and hence the Greek monopoly does not satisfy the requirements of CJEU case law.

Furthermore, the referring court was asking whether, in the case where the gambling legislation under scrutiny would be

deemed incompatible with EU law, the national authorities could benefit from a transitory period necessary to enact new laws which would make the system compliant with EU law. The Advocate General reaffirmed the fundamental obligation for Member States to comply with EU law and held that Member States must do so without delay and that there was no room for concluding that the Greek legislation at issue may remain applicable during a transitory period in so far as the referring court considers it to be contrary to EU law, as suggested by the Advocate General.

Clive Hawkswood, Chief Executive of the RGA, said: "Although it is referring to the old legislation, we welcome the opinion of the Advocate General as it demonstrates once again that this regime was blatantly in breach of EU law.

We hope that the CJEU will accept the Advocate General's opinion and give the Greek Council of State an unequivocal answer to the questions it has asked. When that happens the Greek Council of State would seem to have little option other than to follow the lead set by Advocate General Mazak.

In any event this opinion sends a clear signal not just to Greece, but to other Member States, that they have an obligation to ensure that their gambling laws are compliant. It is not something they should have to be forced to do, however, if necessary we would expect the CJEU and the European Commission to compel them to fall into line. Commissioner Barnier's statement earlier this year about enforcement was a public commitment to take action and we trust him to be as good as his word.'