

Effects of the Placanica decision on Germany

„The decision exclusively concerns the legal situation in Italy“ – Deutscher Lotto- und Totoblock, the cartel of the German state operators, tried to interpret the Placanica decision, pronounced by the European Court of Justice (ECJ) on 6 March 2007, in its own way. According to representatives of Deutscher Lotto- und Totoblock, the ECJ had not decided on the German gaming monopoly, so that the Interstate Treaty on Gambling could be implemented as planned.

The state operators thereby misconceive the role of preliminary rulings, in the course of which the ECJ does not judge „Italian cases“, but interprets Community law in a binding way as to ensure the uniformity of Community law. The requirements for the justification of the infringement of the freedom to provide services and the freedom of establishment regarding the cross-border provision of sporting bets as laid down by the ECJ are, of course, directly applicable also in Germany and are therefore to be observed by all German authorities and courts. Insofar the decision has its impact on the German gaming monopoly as well, event though the admissibility of such monopolies was not the subject matter of the case (in this regard there are two cases pending before the EFTA Court).

With the Placanica decision it has become clear that the internal market cross-border provision of sporting bets from one EU Member State to another must not entail criminal punishment in the receiving state. According to the clear specification of the ECJ, criminal law must not infringe the basic freedoms granted by Community law. Thus agents transferring sporting bets from Germany to state licensed bookmakers in other EU Member States must not be criminally prosecuted in Germany anymore. Also the German authorities

must not prohibit the cross-border provision any more. Thus the German sports betting market has effectively opened for operators from other EU- and EEA Member States.

In view of this situation, it is probably does not make much sense to maintain the betting monopoly in Germany. Due to their unattractive services, as compared to those of private operators, the state operators offering sports betting under the trade mark „ODDSET“ are not competitive and will certainly continue to rapidly loose market shares. The political discussion is only about to start in Germany, as the planned Interstate Treaty on Gambling obviously is not feasible anymore. On 6 March 2007, the Christian Democratic Party (CDU) of Schleswig-Holstein already introduced an alternative draft for an Interstate Treaty which allows private operators to apply for a license.