



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Joined Cases C-203/08 and C-258/08
The Sporting Exchange Ltd v Minister van Justitie and Ladbrokes Betting &
Gaming, Ladbrokes International Ltd v Stichting de Nationale Sporttotalisator

According to Advocate General Bot, holders of exclusive rights to operate gaming may be authorised, in certain circumstances, to make their offer attractive by introducing new games and by using advertising

Furthermore, he takes the view that, when they grant to a private operator the exclusive right to operate a form of gambling under a licensing procedure or as part of the renewal of that license, the competent authorities must put out an adequate call for tenders

The aim of the Netherlands Law on games of chance is to protect consumers against addiction to gambling and to combat crime. It provides, first, that it is prohibited to organise or promote gambling without having obtained a licence for that purpose and, second, that only one provider for each category of game may receive a licence.

The licence for the organisation of sports bets, the lottery and number games was granted to the foundation Stichting de Nationale Sporttotalisator ('De Lotto'). The licence for the organisation of a totalisator on horse races was granted to Scientific Games Racing B.V. ('SGR').

The company The Sporting Exchange Ltd., trading under the name Betfair, established in the United Kingdom, facilitates the reciprocal negotiation and placing, directly or via the internet, of bets on sports events, in particular horse races. Case C-203/08 originates in a dispute between Betfair and the Netherlands Minister of Justice concerning the rejection of the company's applications for a licence for the organisation of gambling in the Netherlands and its actions against the decisions to extend the licences of De Lotto and SGR.

The companies Ladbrokes Betting & Gaming Ltd and Ladbrokes International Ltd., established in the United Kingdom, organise betting on sports events, in particular fixed-odds betting. Case C-258/08 has arisen from actions brought against those companies by De Lotto, seeking to prohibit them from offering on their internet site to persons residing in the Netherlands forms of gambling for which they hold no licence.

The Hoge Raad der Nederlanden (Netherlands Court of Cassation) and the Raad von State (Netherlands Council of State), the courts of last instance in respect of these proceedings, have asked the Court of Justice for a preliminary ruling on whether Netherlands legislation governing gaming policy is compatible with Community law.

First of all, the Advocate General states that it is indeed by the yardstick of the provisions governing the freedom to provide services that the conformity of the Netherlands legislation must be examined. In that context, it is common ground that that legislation is a restriction of that freedom of movement.

The Advocate General recalls that the Court has consistently held that the Member States may restrict the organisation and exploitation of gaming in their territory in order to protect consumers from excessive expenditure on gaming and to preserve public order by reason of the risk of fraud created by the considerable amounts yielded by gaming. The Court has also held that a Member State may legitimately grant a single operator the right to operate betting and gaming.

In that context, the Advocate General takes the view, **first**, that the fact that the holders of exclusive rights to operate gaming in the Netherlands are authorised to make their offers attractive by creating new games and advertising is not, as such, inconsistent with the aims of the Netherlands legislation taken as a whole because that standpoint contributes perfectly to the prevention of fraud.

However, in so far as the Netherlands legislation also aims to protect consumers against an addiction to gaming, the creation of new games and advertising must be strictly controlled by the Member State and limited so that they are also compatible with the pursuit of that aim. Accordingly the reconciliation of the two aims pursued by the Netherlands legislation requires the services offered by the holders of exclusive rights and advertising for authorised games to be sufficient to induce consumers to remain within the legal system without constituting an inducement to excessive gaming, which would lead consumers, or at least, the weaker among them, to spend more than the portion of their income available for leisure pursuits.

It is for the national court to assess whether that legislation, in the light of its content and how it is applied, actually contributes to the attainment of those two objectives.

Second, the Advocate General is of the opinion that the national court, after finding that the legislation is compatible with Community law, is not required to determine, on every occasion on which that legislation is applied, whether a measure intended to ensure compliance with that legislation, such as an injunction to an economic operator to make its internet site offering gaming inaccessible to persons residing in national territory, is suitable for attaining the aims of that legislation and is proportionate, provided that that enforcement measure is strictly limited to securing compliance with that legislation.

Third, as regards the question whether the Kingdom of the Netherlands, by virtue of the principle of mutual recognition set out in the case-law of the Court, ought to have recognised the licences issued to Betfair by other Member States, the Advocate General recalls that by virtue of the *Liga Portuguesa*¹ case, the principle of mutual recognition does not apply to a licence to offer games on the internet.

Fourth, the Advocate General proposes that, in a licensing system which is limited to a single operator in the gambling sector, the principle of equal treatment and the obligation of transparency preclude the extension of a licence without competitive tendering unless the omission of a call for tenders is validly justified. In this context, it is for the national court to determine whether such an extension without competitive tendering addresses an essential interest, such as reasons of public order, or an overriding requirement relating to the general interest as laid down in the case law, such as the protection of consumers from the risks of excessive expenditure on gaming and addiction to it and the prevention of fraud, and whether it conforms to the principle of proportionality.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ Judgment of 8 September 2009 in Case [C-42/07](#), (see Press Release No [70/09](#).)