

Message 103

Communication from the Commission - TRIS/(2020) 01134
 Directive (EU) 2015/1535
 Notification: 2019/0657/GR

Forwarding of the observations of a Member State (Malta) (article 5, paragraph 2, of Directive (EU) 2015/1535). These observations do not have the effect of extending the standstill period.

Observaciones - připomínky - Bemærkninger - Bemerkungen - Märkused - Παρατηρήσεις - Comments - Observations - Osservazioni - Piezīmes - Komentarai - Megjegyzések - Komentti - Opmerkingen - Uwagi - Observacoes - Komentáre-Pripombe - Huomautuksia - Synpunkter - Коментари - Comentarii.

Sin plazo de statu quo - Doba pozastavení prací se neaplikuje - Ingen status quo frist - Keine Stillhaltefrist - Ooteaeg ei ole kohaldatav - Δεν υπάρχει statu quo - Standstill period does not apply - Pas de délai de statu quo - Termine di status quo non previsto - Bezdarbības periods netiek piemērots - Atidējimo periodas netaikomas - A halasztási időszak nem alkalmazandó - Il-perijodu ta' waqfien ma japplikax - Geen status quo-periode - Okres odroczenia nie ma zastosowania - Prazo do statu quo não previsto - Períoda pozastavenia neplatí - Obdobje mirovanja ne velja - Ei status quon määräaika - Ingen tidfrist för status quo - Не се прилага период на прекъсване - Perioada de stagnare nu se aplică.

(MSG: 202001134.EN)

1. MSG 103 IND 2019 0657 GR EN 01-04-2020 31-03-2020 COM 5.2 01-04-2020

2. Malta

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4. 2019/0657/GR - H10

5. article 5, paragraph 2, of Directive (EU) 2015/1535

6. Malta's Comments on the draft 'Ministerial Decision on the enactment of the Gaming Regulations and the Gaming Regulations Technical Specifications for the organisation and running of online games of chance' with reference number 2019/657/GR notified by the Greece on the 31st of December 2019

1. Background

Within the framework of the notification procedure instituted by Directive 2015/1535, Greece has notified the draft 'Ministerial Decision on the enactment of the Gaming Regulations and the Gaming Regulations Technical Specifications for the organisation and running of online games of chance' (the 'draft law'). This draft law follows up on another draft law notified via Directive 2015/1535 on the 1st of July 2019, entitled 'Online Gaming Market Reforms – Amendment of Law 4002/2011', with reference number 2019/149/GR. This previous notified law was subject to a Detailed Opinion issued by Malta due to concerns relating to unjustified restrictions to the freedoms guaranteed by the Treaty on the Functioning of the European Union, specifically Articles 49 and 56 thereof. Malta notes the replies to its Detailed Opinion, and is grateful to the Greek authorities for taking into consideration Malta's concerns, however, the new 'draft law' still has elements which might be in conflict with EU law, and thus, Malta is issuing these comments, respectfully requesting the Greek authorities to re-consider provisions which could make the draft law incompatible with EU law.

2. Comments

The gambling sector constitutes an economic activity which is subject to the freedoms entrenched within the TFEU, specifically Article 56 dealing with the freedom to provide services, as well as Article 49, dealing with the freedom of establishment. This has been confirmed by the Court of Justice of the European Union (CJEU) on multiple occasions.

The CJEU has consistently ruled that in view of the specific character of gambling, restrictions to the freedoms may imposed, as long as they are justified and compliant with a number of principles, including consistency, proportionality and justified by imperative objectives in the general interest such as consumer protection and the prevention of fraud and the incitement to squander (C-243/01, Gambelli and Others, para. 54). Furthermore, the reasons invoked must be accompanied by an analysis of the appropriateness and proportionality of the restrictive measures (C-42/02, Lindman, para. 25; C-8/02, Leichtle, para. 45).

The introduction of a national authorisation regime in Greece, whereby service providers established in other Member States would require a separate authorisation from the Greek authorities, notwithstanding any other licence issued by a competent authority from another Member State constitutes a restriction to the freedom to provide services, and in accordance with the CJEU, this restriction needs to be justified in accordance with the parameters that the CJEU has consistently advocated. Malta has reiterated this point in its Detailed Opinion to notifications 2019/149/GR, as well as the notification of the original law, 2011/166/GR.

With regards to the 'draft law', Malta's present concerns are specifically addressed towards Article 7.6, dealing with commercial communications. According to 7.6, operators organising games classified as 'other online games' played using an RNG are prohibited from performing any advertising. Whilst it is understandable that the Greek authorities deem it desirable to limit and control the advertising of gambling services on the grounds of public interest, this measure seems to lack the principle of consistency required by the CJEU to justify a restriction, and no such similar restriction seems to apply to any other form of gambling, including the same services offered via a land-based interface. No justification on the grounds of public interest has been provided in relation to the discriminatory treatment between other online games, and any category of online and land-based games, including betting, or justification as to the restriction on the freedom to provide services.

Furthermore, gambling operators offering the aforementioned services already established and operational in Greece have already built a name and a reputation, there is no way for new market entrants, especially when located in other Member States, to realistically access the market after acquiring a licence.

The same argument can be made in relation to Article 12.2 of the 'draft law', which limits the maximum stake of other online games using an RNG to €2, and a maximum prize of €5. These restrictions do not seem to exist in other forms of gambling available in Greece, and thus could be considered discriminatory and lacking proportionality.

Lastly, Malta would like to point out that Article 33(7) of the 'draft law' refers to the requirement of a 'safe server' being located within a data centre within the territory of Greece. Malta mentioned this in the Detailed Opinion relating to the previous notified law, in respect to how such a requirement may be in breach of Articles 49 and 56 of the TFEU (C-546/07, Commission v Germany, para. 39, (C-452/04, Fidium Finanz AG, para. 46), however the Greek authorities did not specifically address this point in their reply, and therefore there are no justifiable reasons why this restriction to the freedoms is indeed necessary, also in view of the previous decisions of the CJEU with respect to such restrictions.

3. Concluding Remarks

Malta reiterates that the regulation of the gambling market in Greece is a very positive step. Malta is also grateful to see changes to the original proposals which made the proposed framework more compliant with EU law. Nonetheless the aforementioned elements within the 'draft law' remain as potential unjustified restrictions to Articles 49 and 56 of the TFEU, and thus, Malta is kindly requesting the Greek authorities to take the above matters into account within the 'draft law', to ensure its compliance with EU law.

European Commission

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