

Highest EU court denies Unibet instant market access in Sweden

13 March 2007 – The European Court of Justice (ECJ) today rejected the claim of private internet gambling operator Unibet for instant access to a Member State's market, Sweden. Unibet, as a result, must wait for a decision in the main procedure pending with Swedish courts.

Dr Winfried Wortmann, President of the European State Lotteries and Toto Association (European Lotteries, EL), welcomed the ruling: "Today's ruling confirms yet again that private gambling operators must comply with EU Member States' national laws restricting the offer of sports betting and other gambling services. National authorities are quite within their rights to uphold these laws."

Dr Wortmann recalled last week's ECJ decision in the Placanica case : "Last week the Court made clear that Member States do not have to recognise foreign gambling licenses. Moreover – ,whatever the claims of the private sector in the pages of the press – , the Court's ruling last week implicitly recognised gambling monopolies. European Lotteries welcomes the clarity the Court's latest rulings have brought to the issue. There is no doubt that Member States are free to define their own gambling policy objectives and to determine, in detail, how best to safeguard their citizens from being subjected to rampant competition in this highly sensitive sector Public interest is at stake here since Member States governments, quite rightly, are concerned about the potentially undesirable nature of unfettered gambling. Off- shore companies, in particular, are trying to break into EU markets -some without necessarily subjecting themselves to EU laws. This is clearly not right."

The Placanica judgment of the Court of 6 March 2007 (paragraphs 45 et seq.) explicitly confirmed existing jurisprudence (established since the 1994 Schindler case) which gives Member States the right to maintain a restrictive gaming environment and/or a monopoly and maintain the right to penalise illegal cross-border offerings in gambling services. The Court recognised that consumer protection, the prevention of both fraud and incitement to squander on gaming, as well as the general need to preserve public order were reasons of overriding general interest which justify restrictions on the right to provide cross-border services and the right of a company to set up shop in another Member State (Articles 43 and 49 EC-Treaty).

Notes to editors

Legal background

ECJ Case C-432/05 ('the Unibet case') – Principle of judicial protection – National legislation not providing for a self-standing action to challenge the compatibility of a national provision with Community law- Procedural autonomy- Principles of equivalence and effectiveness- Interim protection

Sweden's gambling policy prevents Unibet from advertising its games in Sweden. The company took legal action before Swedish courts, arguing that this would constitute a violation of European law and demanding that the Swedish law should not be applied until the question of its compatibility with EU law has been finally settled (in an action for damages procedure). Today's ruling of the European Court of Justice has resounded to the Swedish Supreme Court's request for a preliminary ruling, stating that Swedish courts are not obliged to clarify the question of compatibility with EU law outside the pending main procedure.

Unibet does not possess a Swedish license and has declared that it has no intention to apply for one. As other internet gambling operators, Unibet takes the view that a license from Gibraltar or Malta entitles them to offer their games also in

other Member States. However, no EU jurisprudence has ever acknowledged such a right.

European Lotteries is the association of the European state lotteries and toto companies and represents 74 organisations across Europe.

The judgments of the European Court of Justice of 13 March (Unibet) and 6 March (Placanica) can be found at:

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en> or at www.european-lotteries.org.

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