

EUROPEAN PARLIAMENT

2004



2009

Committee on Petitions

25 April 2005

NOTICE TO MEMBERS

Petition 1374/2002, by Petros Tselepidis, (Greek), on behalf of the Association of Electronic and Mechanical Toy Importers, Manufacturers, Retailers and Dealers of Northern Greece - SIPBE, concerning a ban on computer games

1. Summary of petition

The petitioners object to the law adopted by the Greek Government banning electronic games of skill, arguing that it infringes the principle of freedom of movement of goods, freedom of establishment and freedom to provide services. The petitioners indicate that the law applies only in Greece and that in other Member States ways have been found of distinguishing between games of skill and games of chance played on computers. The petitioners are seeking the assistance of the European Parliament with a view to bringing to an end the above infringements and having the law amended accordingly.

2. Admissibility

Declared admissible on 24 July 2003. Information requested from Commission under Rule 192(4).

3. Commission reply, received on 13 November 2003

Regarding the alleged incompatibility of Greek law 3037/2002 with European law raised by the petition, the Commission has been following the issue closely and the following actions have been taken:

On June 7, 2002, before the above mentioned law was enacted, the services of the Commission asked by letter the Greek authorities for information about the Greek legislation on the marketing and use of games machines in places other than casinos and about the then proposed amendments.

Following the enactment of law 3037/2002 and having received several complaints, the Commission sent, on October 18, 2002, a letter of formal notice to the Greek authorities

whereby it was noted that the Greek law introduces measures that may have an effect equivalent to quantitative restrictions to imports of games and related goods from other Member States and that those measures seem to be unjustified and disproportionate.

Following the Greek authorities' reply on December 17, 2002, the services of the Commission also raised the issue in the Athens "package meeting" with the Greek authorities on January 24, 2003.

Taking into account that certain provisions of the Greek law may be contrary also to the freedom to provide services, the freedom of establishment as well as to Dir.98/34 regarding the obligation of Member States to notify measures that introduce technical regulations, the Commission sent on July 11, 2003, an additional letter of formal notice to the Greek authorities raising the above mentioned issues. The Greek authorities are due to reply within two months upon receipt of the additional letter of formal notice.

4. Further Commission reply, received on 21 April 2005

Further to the information provided in the previous replies to the petition, there has been the following development:

On February 10, 2005, following its decision of October 13, 2004, the Commission referred Greece to the European Court of Justice over its ban on the installation and operation of electrical, electromechanical and electronic games, including computer games, in all public and private places - including premises providing Internet services (cyber cafés).

The Commission considers that the Greek law in question (of 29 July 2002) is incompatible with the provisions of the EC Treaty on the free movement of goods and services and the freedom of establishment. The fact that the law was not notified at the draft stage also constitutes an infringement of Directive 98/34/EC, which provides for prior notification of national regulations laying down technical rules for on-line goods and services. Despite promising to amend its legislation in response to the Commission's reasoned opinion sent in April 2004, Greece has yet to introduce any change.

The Commission believes that the Greek legislation is disproportionate, insofar as it applies not only to equipment (slot machines) and games of chance which might give rise to social concerns but also games of an entirely different nature which are not, in themselves, a source of particular disquiet with regard to public order or consumer protection.

As noted in the previous replies to the petition the provisions of the EC Treaty and European law the Greek law is considered to be incompatible with are the following:

Firstly, by banning the games themselves, the Greek law has prevented games lawfully produced or marketed in other Member States from being imported and marketed in Greece, in contravention of the principle of the free movement of goods laid down in Article 28 of the EC Treaty.

Secondly, by prohibiting service activities related to electronic games – such as their maintenance - the ban stops businesses which provide such services legitimately in other Member States from providing the same services in Greece. Yet their right to do so is

guaranteed under the principle of the freedom to provide services set out in Article 49 of the EC Treaty and under the freedom of establishment (in other words to set up a permanent presence in another Member State) guaranteed by Article 43 of the EC Treaty.

Lastly, to the extent that it lays down rules on electronic and mechanical devices and governs the activities of Internet service providers, the Greek law should have been notified to the Commission in advance pursuant to Directive 98/34/CE, which provides for prior notification of national regulations laying down technical rules for on-line goods and services.

Given that information society services are by definition often provided across borders, this prior notification is intended to help ensure that rules made in one Member State do not damage the interests of businesses and citizens in others.