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Judgment in Case E-1/06 *EFTA Surveillance Authority v The Kingdom of Norway*

Monopoly on the operation of gaming machines can be justified on grounds of fighting gambling addiction

In a judgment delivered today, the EFTA Court dismissed an application by the EFTA Surveillance Authority ("ESA") for a declaration that Norway has violated the rules of the EEA Agreement on freedom of establishment and freedom to provide services by giving the State-owned company Norsk Tipping the exclusive right to operate gaming machines. This was the subject of a reform of Norwegian gaming law in 2003. It has not yet entered into force since the Norwegian government decided to await the judgment of the Court.

The Court held that the exclusion of private operators, which have so far been able to operate gaming machines on behalf of charitable organisations, restricts both the freedom of establishment and freedom to provide services in the EEA Agreement. As regards justification of such restrictions, the Court held that, although the Contracting Parties are free to set the objectives of their policy on gaming and to define the level of protection sought, the restrictive measures that they impose must nevertheless serve legitimate aims and satisfy the conditions of the proportionality principle.

In carrying out that assessment, the Court came to the conclusion that the Norwegian legislation on gaming machines did satisfy the requirements under EEA law, and dismissed the application.

As regards the legitimacy of the restriction, the Court held that a limitation in the authorisation of gaming is acceptable only if it reflects a concern to bring about a genuine diminution in gambling opportunities, and if the financing of social activities constitutes only an incidental beneficial consequence and not the real justification for the restrictive policy adopted. ESA had taken the view that the legislation at stake in reality pursues the illegitimate economic aim of financing humanitarian and socially beneficial causes, thus alleviating the State budget from such expenses. The Court, however, found that the main objective of the legislation is the legitimate aim of fighting gambling addiction. According to the Court, the aim of securing revenue for humanitarian and socially beneficial causes is only ancillary to this main objective.

With regard to the principle of consistency under EEA law, the Court held that where an EEA State has chosen to fight gambling addiction through the reduction of gambling opportunities by subjecting the operation of gaming machines to a State-owned monopoly, it may not at the same time endorse or tolerate measures, such as extensive

marketing, which could lead to an increase of gambling opportunities. However, despite Norsk Tipping being one of the biggest marketers in Norway, there is and will not be any marketing of gaming machines taking place in Norway. In the view of the Court, the marketing of other games is not relevant in the context of consistency, since the use of gaming machines, as the most addictive form of gambling, constitutes a special problem. The Court added that in any event, a consistent and systematic approach to fighting gambling addiction must also encompass an effective control of the exclusive right holder's activities once the contested legislation has entered into force.

Concerning the argument that a monopoly on the operation of gaming machines goes beyond what is necessary to combat problems connected to gaming machines and therefore does not satisfy the requirement of proportionality, the Court held that the Kingdom of Norway has failed to demonstrate that less far-reaching measures will not be equally effective in preventing crime related to gambling such as money-laundering and embezzlement. As regards the aim of fighting gambling addiction, however, the Court found it reasonable to assume that a monopoly operator in the field of gaming machines subject to effective control by the competent public authorities will tend to accommodate that concern better than commercial operators. The effectiveness of public control and enforcement of a genuinely restrictive approach to machine gaming was considered the focal point. As the reform of the gaming machine regulation in Norway had not yet taken effect, the Court would not base itself on the general assumption that public control and policy enforcement will not satisfy these requirements.

The full text of the judgment may be found on the Internet at: www.eftacourt.lu.

This press release is not an official document. Please note that the Court may not comment on the case.