



Decision in the above case on how the European Commission dealt with a complaint that Italian rules governing the gambling sector breach EU law

Decision

Case 964/2022/LM - **Opened on** 05/07/2022 - **Decision on** 05/07/2022 - **Institution concerned** European Commission (No maladministration found) |

Dear Mr X,

In May 2022, you complained to the European Ombudsman about how the European Commission dealt with your infringement complaint [CHAP(2021)01715] against Italy.

In your complaint to the Commission, you argued that the new Italian rules concerning “Amusement with prize” (AWP) gaming machines do not comply with EU Directive 2015/1535 [1]. You contended that, as these rules introduced legal changes regarding prohibitions on marketing gaming machines, they constitute “technical regulations” within the meaning of this Directive. As such, they should have been communicated to the Commission, in accordance with Article 5 of the Directive. As this has not happened, you believe the new Italian rules are not valid. You also contended that the new Italian rules would breach EU competition rules and the fundamental freedom to establish a business and provide services in the EU, as they set a cap on the total number of AWP gaming machines, which are those typically run by smaller businesses. The new rules also set costly requirements for operating and disposing of the machines.

In your complaint to the Ombudsman, you argue that, in assessing your infringement complaint, the Commission is using its discretionary power arbitrarily to avoid enforcing EU law in the area of gambling. In your view, the Commission was wrong to close your complaint on the basis that the issue you raised was not a political priority.

After careful analysis of all the information provided with your complaint, we have decided to close the inquiry with the following conclusion:

There was no maladministration by the European Commission [2].

The Commission has wide discretion in deciding whether and when to launch an infringement procedure [3]. Its policy on infringements of EU law is set out in its Communication “*EU law: Better results through better application*” [4]. The Ombudsman may examine whether the Commission has clearly explained its position and whether it has given



the complainant the opportunity to provide comments before it closes a case. Regarding the substance of an infringement complaint, however, the Ombudsman may only intervene (by asking the Commission to look at the complaint again) in case there is an indication that the Commission was manifestly wrong in its presentation of the facts or of law.

We note that the Commission gave you the opportunity to comment on its position before it closed the case. We also consider that the Commission provided you with clear information about its position. The Commission said that, in the absence of harmonised EU legislation on gambling, Member States may introduce restrictions on fundamental freedoms based on considerations of public interest, provided that certain conditions are met. This is in line with EU case-law, according to which the particular characteristics of gambling allow national authorities considerable room for manoeuvre in determining, based on their own scale of values, what measures are necessary to protect the consumers and society. [5] The Commission also said that its decision to close the case did not prejudice the legal assessments of national courts on the matter.

We consider the Commission's explanations to be reasonable. We find nothing to suggest that the Commission manifestly misinterpreted the facts or the law.

The Commission has also informed you that pursuing infringement procedures in the area of gambling sector policy is not among its political priorities at the moment [6] . The Commission has the discretion to take this view. [7] There is thus no indication of maladministration in its position.

We appreciate this may not be your desired outcome, but we hope you find these explanations helpful.

Yours sincerely,

Tina Nilsson

Head of the Case-handling Unit

Strasbourg, 05/07/2022

[1] Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L1535>



[2] Full information on the procedure and rights pertaining to complaints can be found at

<https://www.ombudsman.europa.eu/en/document/en/70707>

[3] Judgment of the Court of 14 February 1989, *Starfruit v Commission*, 247/87:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61987CJ0247#:~:text=the%20EEC%20Tre>

[4] See

[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119(01)&from=EN)

[5] See, Judgement of 15 September 2011, *Dickinger and Ömer v Commission*, C-347/09, points 44 and 45:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=109604&pageIndex=0&doclang=EN&>

[6] See also https://ec.europa.eu/commission/presscorner/detail/it/IP_17_5109

[7] See section 3 of the Commission Communication, cited above: “ [...] *the Commission use its discretionary power in a strategic way to focus and prioritise its enforcement efforts on the most important breaches of EU law [...]*”.