



Remote gambling

The EU legal framework

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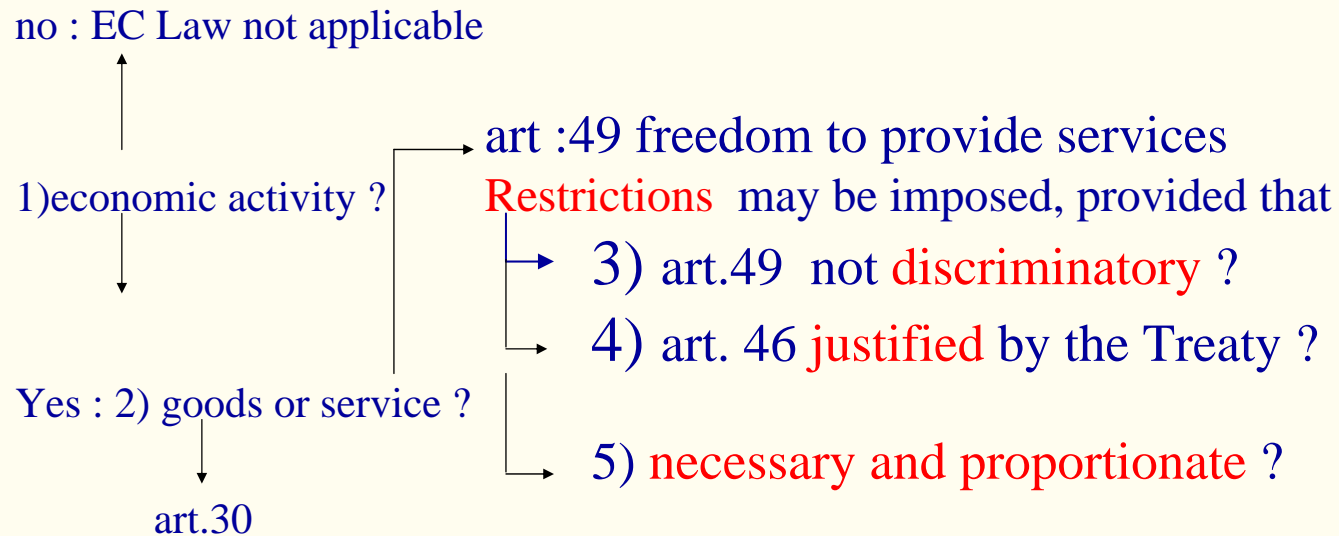
Introduction and Overview

- The European Perspective
- Post-Gambelli jurisprudence

Remote Gaming: the European perspective



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- The **Internal Market Strategy for Services**
- ➔ remove all remaining barriers in the Internal Market
- **Directive 98/48** : e-gaming is an information society service
- ➔ e-gaming regulation must be notified (Belgium, Denmark?)
- **Electronic commerce Directive** : Internal Market clause
- ➔ Member States may not impose additional obligations
- **Proposal for a Directive on Services in the Internal Market**
- ➔ Create a real Internal Market – Home Country control

The Gambelli Case - Background

- ✓ First e-gaming case brought before the EC Court
- ✓ Opinion of Advocate-General Alber (13.03.2003):
The Italian legislation in the field of sports betting imposed a **discriminatory measure** and - in view of the facts of the case - **failed the required justification** on grounds of general interest

The Gambelli Case - Decision

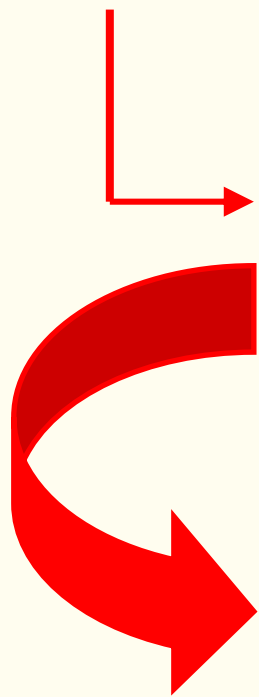
Is it a landmark decision?

- ✓ application by analogy to “remote gambling”
- ✓ Confirmation of the Schindler decision
 - § 59 “Article 4 of Law No 401/89, constitute a **restriction** on the freedom of establishment and on the freedom to provide services.”
 - § 60 & 65: “the restrictions must be **justified** by imperative requirements in the **general interest**, be suitable for achieving the objective which they pursue and not go beyond what is **necessary** in order to attain it. They must in any event be **applied without discrimination**”
 - §66: “It is for the national court to decide whether satisfy those conditions. To that end... “

The Gambelli Case - Decision



§ 66: “... *To that end, it will be for that court to take account of the issues set out in the following paragraphs.*”



Directing the discretionary power of the national court

1. Reasons of justification
2. Discriminatory character
3. Proportionate & necessary

The Gambelli Case - Decision



- ✓ **Justification** by reasons of **public order**
- §67 MS can impose restrictions, “*inasmuch as they must serve to limit betting activities in a **consistent and systematic manner**”.*
- § 69 MS **cannot invoke public order concerns** if the Member State incites and encourages consumers to participate in games



The national authority: §19-23

- “cannot find in those restrictions any public policy concern”
- “cannot ignore the extent of the apparent discrepancy between”

The Gambelli Case - Decision



Discriminatory character:

- restrictions must be applicable without distinction
UK established operators = Italian operator
- Discrimination: if imposed conditions are **in practice** to be met more easily by Italian operators than by foreign operators



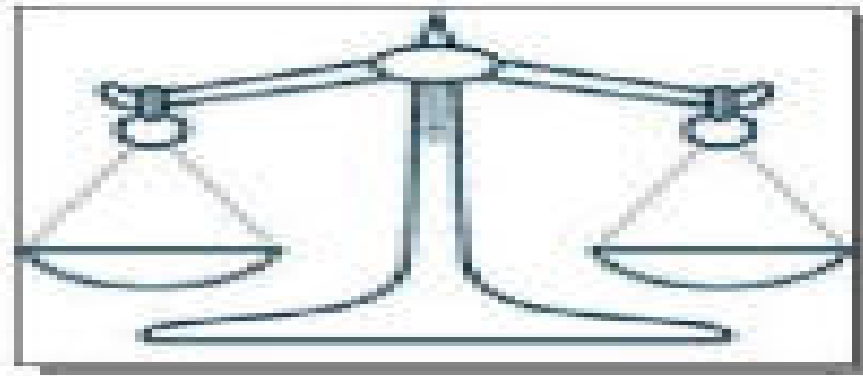
Freedom of establishment: §48-49

*“the Italian rules governing invitations to tender **make it impossible in practice** for capital companies quoted on the regulated markets of other Member States to obtain licences “*

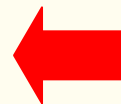
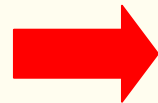
The Gambelli Case - Decision



Proportionate & necessary?



1. Restrictions
2. Criminal penalties



1. Necessary to combat fraud
2. Intermediaries lawfully constituted & authorized
3. Gaming provider already subject to rigorous controls in the UK

Internal Market clause



§ 21: “The national court questions whether the principle of proportionality is being observed, ...”

Gambelli Case: final considerations



- ✓ The Court does not formally conclude that the Italian legislation is infringing one of the ground principles of European Community law

Consistent gaming policy?

- ✓ However, by directing the national court, its conclusion should be similar to the opinion of A.G. Alber

- ✓ Internal Gaming Market?
 - Too soon to cheer?

➔ Post-Gambelli jurisprudence?



ECJ: Post-Gambelli case-law



- ❖ Post-Gambelli case-law is very diverging, sometimes conflicting

Decisions of Supreme and Constitutional courts in Finland, the Netherlands, Sweden, Belgium, Germany and Italy

- ❖ Netherlands: Summary proceedings vs main proceedings
- ❖ Germany:
 - ❑ *BGH: 1 April 2004: questions the legality of German gaming policy in light of Gambelli*
 - ❑ *BVerG: 26 August 2004 – 15 December 2004: Gambelli did change something*
 - ❑ *Constitutional Court: art. 12 case: July 2005?*
- ❖ Norway: EFTA case
- ❖ Italy: -“Bruno Corsi” case → Placanica case
 - Consiglio di Stato 22 February 2005
 - EC competition law: Sisal & Lottomatica
- ❖ Need for EU clarification?!:
 - ❑ New jurisprudence of the European Court of Justice: Placanica and....
 - ❑ European Commission

Initiative of the EU Commission?

1. Electronic Commerce Directive

- ✓ Free provision of information society services and the internal market clause
- ✓ Article 1.5: excludes gaming activities from the coordinated field
- ✓ Review every two years : 2003 – 2005?

EU Commission - e-commerce Directive



First report e-commerce (21 November 2003)

“Online gambling, which is currently outside the scope of the Directive, is a **new area in which action may be required because of significant Internal Market problems** - see for example Case C-243/01s of the European Court of Justice (ECJ press release CJE/03/98), concerning criminal proceedings in Italy against persons collecting Internet bets on behalf of a bookmaker legally licensed in the UK. **The Commission will examine the need for and scope of a possible new EU initiative**. In addition, the Commission is examining a number of complaints it has received concerning cross-border gambling activities. “

- ❑ Scope of the exclusion: forum shopping & distortions
- ❑ Regulation in new Member States (Malta)
- ❑ Complaints: Denmark, Sweden, the Netherlands, Belgium, Germany, Greece, Finland, France, ?

Initiative of the EU Commission



2. Proposal for a Directive on Services in the Internal Market

- ✓ Create a real Internal Market for services, including gambling services
- ✓ 2.1 Provision of Services
 - Application of the country of origin principle (**Internal Market Clause**)
- ✓ Exception for “**sensitive areas**”, including gambling services
 - Development of specific rules by 2010 ?
 - President Barroso March 2005 statements on carve out for health and services of public interest



I thank you
for your attention !

Q & A

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