

Criminality and Gambling: Some Thoughts on the Placanica Ruling of the European Court of Justice

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“Putting all the pieces together”

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Aim of today's presentation

- Provide an overview of the regulation of gambling in the Internal Market
- Introduce the case-law of the European Court of Justice (ECJ)
- Discuss the case of *Placanica*
- Introduce the forms of crime associated with gambling
- Analyse the possible consequences of *Placanica* when Member States seek to eliminate illegal gambling by expanding the legal offer/supply:
 - The substitution effect
 - Lessons from combatting illegal casinos in the Netherlands
 - Points for caution when increasing supply
 - Monopolies or competitive markets
- Concluding remarks

Regulation of gambling in the Internal Market

- Prohibition
 - Of a form of gambling, e.g. *casinos in Ireland*
 - Of a particular means of gambling, e.g. *internet gambling in the Netherlands*
- Exclusive rights model
 - State monopolies, e.g. *Holland Casino/Française des Jeux*
 - Licensed monopoly following competition (competition for the market), e.g. *UK National Lottery (Camelot)*
- Licensed operators
 - Subject to numerous clausus
 - Specific quantitative limitation – *9 casinos in Belgium (why 9?)*
 - Criteria provides a de facto limit – *casinos in France are restricted to tourist resorts*
 - Unlimited; granted so long as licencing criteria satisfied, e.g. *UK bookmakers* (Gambling Act 2005 saw the removal of the requirement to show that (the new) supply would satisfy unstimulated/latent demand)

Regulation of gambling in the Internal Market

- Online gambling
 - Only some MS have specific legislation for online gambling
 - If permitted, reflect approach taken in offline market
 - Limit to existing monopoly holders, e.g. *Française des Jeux in France & Svenska Spel in Sweden*
 - Limit to licence holders for bricks & mortar venues, *as currently proposed in Belgium*
 - Unlimited operator
 - Import & export – *UK's Gambling Act 2005*
 - *Establishes a licensing regime for UK based operators*
 - » *to serve the UK market*
 - » *to export remote gambling services to non-prohibited territories*
 - » *allows non-UK (wider than EU) based operators to serve UK residents, with restrictions on who can advertise*
 - Export only – *Maltese Remote Gambling Regulations 2004*
 - *operators must establish a presence in Malta but can only serve markets outside of Malta*

Different models have differing capacities to comply with the Internal Market logic

Case-law of the ECJ; before *Placanica*

- Cases which directly concern the provision of gambling:
 - C-275/92 *Schindler* (24 Mar. '94)
 - C-124/97 *Läärä* (21 Oct. '99)
 - C-67/98 *Zenatti* (21 Oct. '99)
 - C-6/01 *Anomar* (11 Sept. '03)
 - C-243/01 *Gambelli* (6 Nov. '03)
 - C-42/02 *Lindman* (13 Nov. '03)
 - C-338/04 *Placanica* (6 Mar. '07)
- Cases which relate to other aspects of the gambling market:
 - C-338/02 *Fixtures Marketing* (9 Nov. '04) – databases
 - C-260/04 *Comm v. Italy* (13 Sept. '07) – renewal of licences
 - C-432/05 *Unibet* (14 Mar. '07) – judicial protection

Case-law of the ECJ; before *Placanica*

- C-275/92 *Schindler*
 - Gambling activities are services within the meaning of the EC Treaty
 - Lotteries have a ‘peculiar nature’, based on 4 elements
 - 1.Moral, religious & cultural aspects
 - 2.High risks of crime & fraud
 - 3.Damaging individual & social consequences
 - 4.Generate revenues for benevolent or public interest activities
 - Only the last element cannot form a basis for restricting the cross-border provision of gambling services

Case-law of the ECJ; before *Placanica*

- C-124/97 *Läärä*
 - When assessing whether a restriction can be justified attention does not have to be paid “systems of protection” used in other Member States
- C-67/98 *Zenatti*
 - National legislation must be genuinely directed at limiting the harmful affects which are given as reasons to justify restrictions on cross-border services
- C-243/01 *Gambelli*
 - Develops notion of ‘systematic & coherent’ policy
 - Margin of discretion of Member States is reduced
- C-42/02 *Lindman*
 - Evidence must show causal relationship between aim of restrictive measure & actual danger

Case-law of the ECJ; *Placanica*

- C-338/04 *Placanica*
 - Cap on total licences available cannot justify a restriction to the freedom of establishment & free movement of services
 - Must distinguish between reducing the number of gambling opportunities and combating criminality by subjecting operators to a system of control and channelling betting/gambling activities into the controlled environment
 - Restriction on the number of operators must reflect a genuine diminution of gambling activities & limit activities in a consistent and systematic manner – this was not an aim of the Italian regime

Case-law of the ECJ; *Placanica*

- Aim of Italian legislation – preventing betting and gaming from being used activities for criminal & fraudulent purposes
- A policy of controlled expansion of the sector is consistent with the objective of drawing players away from illegal offers to those which are authorised & regulated
- Channelling gambling into a controlled environment to combat crime & fraud can constitute an objective justification for a restrictive measure
- Authorised operators must offer a reliable, attractive alternative the illegal offers. This may necessitate:
 - An extensive range of games
 - Advertising (on a certain scale)
 - Use of new distribution techniques

Placanica & crime in the supply of gambling

- What forms of crime are associated with gambling?
 1. Organised crime groups offering illegal gambling
 2. Criminal involvement in the supply of legal gambling
 3. Illegal practices by legal operators (depends upon effectiveness of control)
 4. Organised crime groups using legal operations for criminal purposes, e.g. money-laundering & match-fixing
 5. Criminal activities being used as a source of income by those with an addiction to gambling

ECJ touches upon points 1, 2 & 3

Placanica & crime in the supply of gambling

- ECJ's decision rests upon the substitution effect:
 - Consumers will substitute the illegal offers for (the more attractive and widely available) legal offers
 - Demand for illegal offers will then fall
 - Illegal operations will no longer be economically viable
 - Illegal operators will exit the market
 - Only legal, authorised, regulated and taxed operators will remain

Placanica & crime in the supply of gambling

- Is this realistic?
 - Illegal operators do not abide by regulations which burden legal operators, thus;
 - They may offer gambling services at a lower price
 - They may offer gambling services which legal operators are prohibited from offering
 - which consumers may find more attractive...
 - If demand is not met by regulated/legal suppliers then unregulated/illegal suppliers will meet demand
- Expanding supply alone will not suffice to totally eradicate the illegal market

The Dutch illegal casino market

- Characteristics of visitors to illegal casinos:
 - 40% were forbidden entry to the legal casinos (Holland Casino venues)
 - 20% belonged to the criminal underworld
 - 40% preferred the illegal casinos
 - Preference for the atmosphere of the illegal casinos as opposed to that of the legal offer
 - Reduced travelling time/distance
- Expanding the legal offer in the Netherlands (unlikely) could only encourage the 40% who preferred illegal casinos to switch

The Dutch illegal casino market

- Increasing the legal offer alone will not suffice
- The Dutch experience in eliminating illegal casinos did not rest upon competition between the legal and illegal casinos alone
- Experience has shown that:
 - The illegal nature of the non-legal offer must be certain
 - Enforcement must be given priority & not only with regards to criminal law
 - Use of administrative and civil law important
 - Refusal to renew premise licences which illegal casinos obtained prevented closed casinos from simply re-opening

Increasing supply

- How to increase supply?
 - More operators?
 - More venues? Larger venues?
 - Effective regulation of online gambling – expertise
 - Need for caution:
 - If new licences become available the regulator has to be able to ensure that new market entrants are not criminal organisations (likely to be problematic were expertise is lacking)
 - Need to ensure that legal operators abide by regulatory requirements
 - Regulatory bodies need sufficient resources to maintain effective supervision & enforcement
- Otherwise the legal offer of gambling will become tainted by illegal practices, undermining the legislative objectives*

Increasing supply

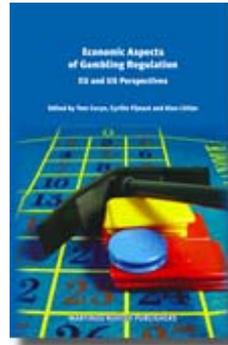
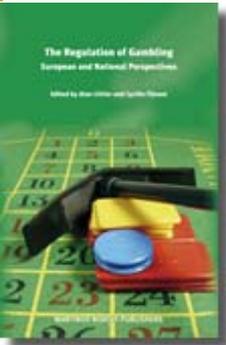
- Monopoly v. Competitive Markets
 - Basic economic theory considers that monopoly firms are less efficient than operators in competitive markets
 - Consumers are subject to higher prices and less choice

If a Member State entrusts the supply of gambling in one sector to a monopolist would the monopolist be a less effective means of diverting supply from illegal operators than a number of licenced, regulated but competitive suppliers?
- Can Member States expand supply indefinitely; should they aim to eliminate all crime? Should the existence of one illegal operator justify restrictions on the free movement principles?

Concluding remarks

- Only expanding the legal offer/market is likely to be insufficient?
- Member States also ensure that they engage in effective enforcement strategies – how should this feed into the case-law?
- Danger that simply expanding the offer without enforcement allows Member States to retain restrictions and increase supply – detrimental to the Internal Market where the increase is fed through a single monopolist
- Can restrictions on the free movement principles be upheld on the basis of eliminating all criminal involvement even when the Member State is lax on enforcement?

Literature



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