Award in Gaming Law

Lecture Title: Online Gambling in the EU

Diploma in Law (Malta)

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ADVOCATES

Agenda

(1) Online gambling in the EU;

(2) An overview of the status of online gambling across different EU member states;

(3) The freedom of establishment and the freedom to provide services within the sphere of online gambling;

(4) The exceptions to the freedom of establishment and the freedom to provide services and applicable case law;

(5) The question of harmonisation across the EU; and

(6) Recent amendments to the Gaming Act (Cap. 583 of the laws of Malta).

Online Gambling in the EU

Online Gambling in the EU

- No sector-specific EU-wide legislation.
- EU countries are free to create their own regulatory framework, provided that they comply with the fundamental freedoms established under the Treaty on the Functioning of the European Union ("**TFEU**").

An overview of the status of online gambling across different EU member states

Jurisdiction	Regulated Products	System	No. of licensees	Requirements/Restrictions	Mutual Recognition
Malta	Casino, lotteries, betting and skill games (online and landbased)	Dual system: (i) monopoly system (National Lottery); and (ii) licensing system (both B2Cs and B2Bs are subject to licensing). Other authorisations are also applicable.	Uncapped (except for operation of National Lottery games, and to a certain extent landbased casinos)	• Established in the EU/EEA; • Minimum share capital requirements & requirements to maintain positive equity & restore equity position; • Key functions holders; • Fit & proper test; • Financial, operational & statutory requirements; • Post-licensing compliance obligations; • Licences fees & taxes; • Player protection obligations.	Yes (Recognition Notice)
Italy	Casino, lotteries and betting (online and landbased)	Dual system: (i) monopoly system (single concessionaire for Italy's National Lottery); and (ii) licensing system (through concessions following a call for public tender. B2B offerings don't require a licence).	Capped (tender process which are launched with inconsistent timings)	• **Advertising restrictions currently under review (total ban may be partially lifted);** • Provision of guarantee for commitment of gaming activity; • Proof of financial sustainability; • Licence fees and taxes; • Mandatory responsible gambling fund (0.2% of GGR, capped at €1 million annually); • One app per product type and one website per operator.	No
Spain	Casino, lotteries and betting (online and landbased) Skill games are not regulated	Regulation/powers divided between the state and the regions. Dual system: (i) oligopoly system (lottery games, sport and charity pool betting entrusted to 2 incumbent operators); (ii) licensing system (landbased and online. The latter through a public call for online gaming licence applications).	• The number of casinos authorised in a region, and which can be operated by the same operator, are limited; • Gambling arcades can be limited in number (depending on the region); • No limitation on the number of online gaming licences (but subject to public call either *ex officio* or request of interested party).	• Casino operators must be duly incorporated in Spain; • Online gaming companies must have an address in an EEA MS; • Minimum share capital requirements; • Shareholders/directors/top-level management must undergo a suitability analysis; • Deposit of financial guarantees; • Compliance with tax and social security obligations; • Licensee/management must not be involved in crime/bankruptcy/non-compliance with laws and regulations; • **Advertising: key restrictions nullified by Supreme Court – the Government is attempting to reinstate.**	No

Jurisdiction	Regulated Products	System	No. of licensees	Requirements/Restrictions	Mutual Recognition
The Netherlands	Casino and betting (landbased and online) Online lotteries are prohibited	Dual system: (i) oligopoly system (one landbased casino operator, two betting shop operators, and one lottery operator); (ii) licensing system (only B2Cs are subject to licensing).	• Capped (for landbased casinos operators, lottery operator); • Uncapped for online licences.	• Established within the EU/EEA; • Operators are subject to an "active duty of care" to prevent problem gambling; • Licence handling fee of €48,000; • Taxes; • Stringent advertising restrictions (such as a near total ban on untargeted advertising).	No
Cyprus	Casino (landbased) and betting (landbased and online) Online casino websites currently prohibited but under active policy review for potential legislation	Dual system: (i) monopoly system (one landbased casino); (ii) licensing system (for landbased and online betting only).	Uncapped	• Established in Cyprus or abroad **and** has a **branch** in Cyprus; • Minimum share capital of €500,000; • Bank guarantee of €550,000; • Obligations and restrictions for advertising betting.	No
Non-EU Jurisdiction					
The United Kingdom	Casino and betting (landbased and online) Except for the National Lottery, commercial lotteries are prohibited and other lotteries can only be operated for charitable purposes	Dual system: (i) monopoly system (British National Lottery); (ii) licensing system (landbased and online).	Uncapped (except in the case of the British National Lottery)	• LCCP imposes extensive conditions upon licensees in the fields of social responsibility, AML, consumer fairness and transparency, responsible advertising and obligations to comply with various technical standards; • Personal licences for key personnel; • Integrity and probity investigations on applicant; • Extensive disclosure of beneficial ownership; • Financial suitability tests; • Financial risk checks based on customer spending thresholders to detect unaffordable gambling; • Licence fees & taxes; • Marketing & consumer protection restrictions.	No

The freedom of establishment and the freedom to provide services within the sphere of online gambling

Freedom of Establishment

*Within the framework of the provisions set out below, **restrictions on the freedom of establishment** of nationals of a Member State in the territory of another Member State **shall be prohibited**. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.*

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

Article 49, the Treaty on the Functioning of the European Union

Freedom to Provide Services

Within the framework of the provisions set out below, ***restrictions on freedom to provide services*** *within the Union* ***shall be prohibited*** *in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.*

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Union.

Article 56, the Treaty on the Functioning of the European Union

Does online gambling fall within scope of these fundamental freedoms?

- The CJEU ruled for the first time in the **Schindler Case** (C-275/92) that:
  - the organisation of all games of chance or gambling such as lotteries can be considered an economic activity since there is a particular service provided for remuneration and an intention to make a cash profit; and
  - the notion of *"services"* within the meaning of Articles 56 TFEU applies not only to activities allowing users to participate in gambling, but also to the activity of promoting gambling.
- In **Gambelli and Others** (C-243/01) the CJEU further confirmed that services offered by electronic means are also covered by these freedoms.

Exceptions to the freedom of establishment and the freedom to provide services and applicable case law

Exceptions arising out of Article 52

The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for ***special treatment for foreign nationals*** *on* ***grounds of public policy, public security or public health.***

The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the coordination of the abovementioned provisions.

(Article 52, TFEU)

Case Law

Three Part Test

Restrictions must be:

1. in pursuit of a **legitimate public interest** in conformity with goals set out within the framework and functions of the EU;
2. indistinctly applicable and **non-discriminatory**;
3. **proportionate** to the legitimate public interest which the MS seeks to protect.

Schindler Case (C-275/92)

Facts

Agents of a German lottery, who imported lottery tickets and advertised the lottery within territory of the United Kingdom, were accused of breaching UK legislation.

Defence

Defendants argued that they had a right to pursue their activity in virtue of the freedom to provide services established by the TFEU.

Claimant

Claimant argued that the prohibition was justified by the UK Government's concern to limit lotteries for social policy reasons and to prevent fraud.

Schindler (C-275/92)

National legislation which, like the United Kingdom legislation on lotteries, prohibits, subject to specified exceptions, the holding of lotteries in a Member State is an obstacle to the freedom to provide services,

HOWEVER,

the TFEU provisions relating to freedom to provide services do not preclude legislation such as the United Kingdom lotteries legislation, in view of the concerns of social policy and of the prevention of fraud which justify it.

Zenatti (C-67/98)

Facts

Mr Zenatti acted as an intermediary in Italy for a London-based bookmaker.

He ran an information exchange for the Italian customers of the bookmaker in relation to bets on foreign sports events.

A restrictive tendering procedure was formulated restricting the number of licences for taking of such bets with regards to specific sports events.

The Criminal Code deemed the unlicensed operation of accepting bets as a criminal offence, for which Zenatti was held liable by the Questore di Verona.

Zenatti (C-67/98)

The TFEU provisions on the freedom to provide services do not preclude national legislation, such as the Italian legislation, which reserves to certain bodies the right to take bets on sporting events if that legislation is in fact justified by social-policy objectives intended to limit the harmful effects of such activities and if the restrictions which it imposes are not disproportionate in relation to those objectives.

Gambelli and Others (C-243/01)

Facts

Gambelli and other defendants belonged to an organisation of Italian agencies linked to an English bookmaker.

They were accused of having collaborated in Italy, with a bookmaker abroad, in the activity of collecting bets – an activity which is normally reserved, by law, to the State.

Gambelli and Others (C-243/01)

The CJEU ruled that national legislation which prohibits, on pain of criminal penalties, the pursuit of the activities of collecting, taking, booking and forwarding offers of bets, in particular on sporting events, without a licence or authorisation from the MS concerned, constitutes a restriction on freedom of establishment and the freedom to provide services.

It is for the national court to determine whether such legislation, taking account of the detailed rules for its application, actually serves the aims which might justify it, and whether the restrictions it imposes are disproportionate in the light of those aims.

Engelmann (C-64/08)

Facts

Austrian legislation allowed the Federal Minister for finance to issue a total of 12 concessions permitting holders to operate gambling establishments, granted upon fulfilment of 2 pre-requisites: that the concessionaire must be a public limited company established in Austria and is subject to supervision by the Ministry.

The 12 concessions were held by a single entity, Casino Austria AG. These were originally granted to the company for a max. period of 15 years but there had been no public call for tenders prior to the grant of these concessions.

Engelmann, a German national, operated gaming establishments in 2 Austrian cities. He didn't hold an authorisation from any other MS, nor an Austrian concession to operate gaming establishments. He was found guilty of unlawfully organising games of chance within the Austrian territory.

Engelmann (C-64/08)

- The Austrian government argued that the underlying reason for the condition imposed was to allow for the effective supervision and for the prevention of illicit activities carried out for criminal and fraudulent purposes.
- The CJEU ruled that the categorical exclusion giving arbitrary privilege to a single commercial entity is disproportionate and exceeds what is necessary in the fight against crime. The CJEU stressed that privileged measures go against the principle of equal treatment and the prohibition of discrimination on the grounds of nationality.

Sebat Ince (C-336/14)

Facts

At the time, the German market had been regulated by an Interstate Treaty on gambling which prohibited private providers from offering public sports bets and games of chance, setting up a general state monopoly.

Ms Sebat Ince, a Turkish woman living in Germany, operated a sports betting terminal in Bavaria brokering sports bets for an Austrian provider without holding the required German authorization.

The unauthorized provision of sports betting services to German players was prohibited by German gambling law and considered a criminal offence and Ms Ince was charged by German public prosecution authorities.

Sebat Ince (C-336/14)

Article 56 TFEU must be interpreted as precluding a MS from penalising the unauthorised intermediation of sporting bets on its territory on behalf of an economic operator holding a licence to organise sporting bets in another Member State:

(i) where the issue of an authorisation to organise sporting bets is subject to the obtaining of a licence by that operator in accordance with a procedure for the award of licences, such as that at issue in the main proceedings, if the referring court finds that that **procedure does not observe the principles of equal treatment and non-discrimination on grounds of nationality and the consequent obligation of transparency**; and

(ii) to the extent that, despite the entry into force of a national provision permitting the grant of licences to private operators, application of the provisions establishing a public monopoly regime with regard to the organisation and intermediation of sporting bets, deemed by the national courts to be contrary to EU law, has persisted in practice.

Monopoly, Licence Systems and Dual Systems

- Both the conferral of exclusive rights to operate gambling to a single body and the attribution of licences have been recognised by the CJEU as potentially **proportionate measures** in order to reach the objectives of limiting exploitation of the human passion for gambling and to avoid the risk of crime and fraud related to gambling.
- It is also possible that a MS subjects certain types of games of chance to a public monopoly, while others are subject to a system of authorisations granted to private operators *(**Stanleybet vs Italy**; C-375/17).*

Stanleybet vs Italy (C-375/17)

Facts

Proceedings instituted by online gambling operator, Stanleybet (i.e. Stanley International Betting Ltd, a company registered in the United Kingdom, and Stanleybet Malta ltd., its subsidiary established in Malta).

Stanleybet argued that it had been prevented from participating in the tender for the concession for management of the Lotto, for which it deemed the concession to be in breach of EU law.

The Italian government argued that, the choice for a sole concessionaire model was *"a response to the need to channel the game into a controlled system and to an approach of responsible management by restricting competition within that particular market"*.

Stanleybet vs Italy (C-375/17)

- The sole concessionaire model constitutes an obstacle to the freedoms guaranteed in Articles 49 and 56 TFEU. However, these can be justified by overriding reasons in the general interest.
- Undistorted competition is liable to have detrimental effects, owing to the fact that operators would be led to compete with each other in inventiveness to make what they offer more attractive than what their competitors offer, and thereby to increase consumers' expenditure on gaming and the risks of their addiction.
- The fact that a MS has a sole concessionaire model for the exploitation of lotto games in contrast to the regulation of other games of chance, is not, in itself, capable of affecting the suitability of such a sole concessionaire model for achieving the objective for which it was established, according to the CJEU.

Unibet (C-49/16)

Facts

The Hungarian authorities established that Unibet was providing, on Hungarian-language internet sites, services relating to games of chance even though it did not hold the licence required in Hungary to carry on such an activity.

The authorities ordered that access be temporarily blocked from Hungary to Unibet's internet sites and imposed a fine on that company.

Unibet thereupon brought an action before the Administrative and Labour Court, Budapest, Hungary seeking the annulment of those two decisions on the ground that the Hungarian legislation underlying them was contrary to the principle of the freedom to provide services.

Unibet (C-49/16)

Article 56 TFEU must be interpreted as precluding national legislation which introduces a system of concessions and licences for the organisation of online games of chance if it contains discriminatory rules with regards to operators established in other MS OR if it lays down rules which are not discriminatory but which are applied in a manner which is **not transparent**, or so as to prevent or hinder application from certain tenderers established in other MS.

Mutual Recognition and Passporting

- There is no obligation imposed on MS to unconditionally recognise a licence issued outside their territory, a situation which can be attributed to the lack of harmonisation in the sphere of betting and gaming ***(Betfair judgment: C-203/08)***.
- However, MS licensing regimes need to take into account and conditionally recognise EU-licensed operators who have already fulfilled 'essentially the same' licensing conditions in another Member State.

Conclusions

Conclusions

The provision and use of cross-border gambling services constitutes an economic activity that falls within the scope of the fundamental freedoms of the TFEU.

Restrictions on the freedom of establishment and the freedom to provide services are prohibited.

The CJEU recognises EU MS' rights to restrict the cross-border supply of certain gambling services where necessary to protect public interest objectives.

MS must demonstrate the suitability, proportionality and necessity of the measure in question and that the public interest objectives are being pursued in a consistent and systematic manner.

No obligation of mutual recognition of authorisations or licenses.

The question of harmonisation across the EU

GROUP DISCUSSION: Should online gambling be harmonized at EU level?

Recent amendments to the Gaming Act

Article 56A – Actions falling within scope

"Notwithstanding any provision of the Code of Organization and Civil Procedure or of any other law, as a principle of public policy:

a) no action shall lie against a licence holder and, or current and, or former officers and, or key persons of a licence holder for matters relating to the provision of a gaming service, or against a player for the receipt of such gaming service, if such action:

(i) conflicts with or undermines the legality of the provision of gaming services in or from Malta by virtue of a licence issued by the Authority, or the legality of any legal or natural obligation resulting from the provision of such gaming services; and

(ii) relates to an authorised activity which is lawful in terms of the Act and other applicable regulatory instruments; and…"

Article 56A – Enforcement and recognition of judgements

"Notwithstanding any provision of the Code of Organization and Civil Procedure or of any other law, as a principle of public policy:

…

b) The Court shall refuse recognition and, or enforcement in Malta of any foreign judgment and, or decision given upon an action of the type mentioned in sub-article (a)."

Is Article 56A compatible with EU law?

Challenge at EU level – Initial Questions

On 30th May 2023, Sabine Verheyen (MEP) submitted the following questions to the European Commission in relation to the amendments to the Gaming Act (which at the time were still in draft stage):

1. *Is the Commission aware of the Maltese Government's intention to protect the gambling industry based in Malta by means of its draft law No 55/2023 pursuant to which relevant judgments from other Member States of the European Union will not be recognised and enforced in Malta and, if so, what action does the Commission intend to take to oppose this?*

2. *Does the Commission know whether the Maltese Government or individual members of that Government have maintained links with the Maltese gambling industry in the past or whether they do so at present and, if so, does it know the nature of these links, and have there been any instances of corruption in the past?*

3. *Does the Commission consider sanctions conceivable in the event that Malta has failed to comply with EU law and, in this connection, what is the Commission's position regarding an infringement procedure under Article 258 TFEU?*

Challenge at EU level – EC Response

- On 17th July 2023, the European Commission responded as follows:
  - *The Commission is aware of the draft Maltese Bill No 55/2023 amending the 'Gaming Act, Cap. 583'. The Commission is in the process of assessing the compatibility of the draft Bill with EU law and requested the Maltese authorities to provide further information. The Commission will decide on the appropriate follow up steps after having received and analysed this information.*
  - *The Commission does not have any information about possible links of individual members of the Maltese Government with the Maltese gambling industry.*

Challenge at EU level – Letter of Formal Notice

- The European Commission issued a Letter of Formal Notice to Malta on 18 June 2025, concerning Article 56A of the Gaming Act (Chapter 583).
- The Commission initiated the infringement procedure over concerns that the provision violates EU law, specifically the rules on the mutual recognition and enforcement of civil and commercial judgments (Brussels I Recast Regulation).

Maltese MEP calls for European Commission action to safeguard gaming industry in Malta

- In September 2025, MEP Alex Agius Saliba called on the Commissioner responsible for the internal market to take action against Austrian civil courts, primarily regarding how they are breaching EU law in relation to several gaming companies registered in Malta.
- Judgments in favour of Austrian players are being enforced against assets located in Malta, held by companies licensed by the MGA and by third-party entities acting on their behalf. This practice bypasses the enforcement procedures established under EU law and undermines the principle of territoriality in international law.
- Another case involves a ruling by the Austrian Supreme Court that declared the District Court of Salzburg as the competent authority to enforce a judgment requiring a Malta-licensed gaming company to reimburse gambling losses incurred by an Austrian player.
- These decisions by Austrian judicial authorities on an entity regulated in Malta have raised serious questions about jurisdictional sovereignty.
- Additionally, they denied the Maltese entities the right to respond and be heard, completely excluding them from the judicial process.

Maltese courts refuse the recognition and enforcement, in Malta, of Austrian judgments ordering refund of gambling losses to players:

TSG Interactive Gaming Europe Limited vs Gerhard Posch et

European Lotto and Betting Ltd vs. Philipp Wahl

Maltese Court's Considerations

- Austrian law creates an unlawful monopoly in violation of EU law and more specifically, the freedom to provide services on the basis that said law is disproportionate since the restrictions imposed under Austrian law were not applied systematically and selectively targeted foreign operators.
- The recognition and enforcement of the Austrian judgments in Malta would contravene Malta's public order as it would require recognition of foreign laws which conflict with Maltese law.

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