

CJEU: ACCESS TO GAMBLING MARKET CANNOT BE RESTRICTED FOR ECONOMIC REASONS

Brussels, 12 September 2013

The Court of Justice of the European Union (CJEU) today confirmed once again the well-established principle that Member States cannot restrict the national gambling market to protect the commercial interest of incumbents or for other economic reasons. The Court adds that national laws which prohibit cross-border gambling, irrespective of the form in which that activity is undertaken, are in breach of EU law.

Today the CJEU published its preliminary ruling in the joined Italian cases *Biasci et al* (C-660/11ea), concluding that national law that precludes cross border gambling activities or that favours the (economic) interests of incumbents over operators licensed in another Member State is against EU law. The ruling confirms in particular that:

- *“national legislation which in fact precludes all cross-border activity in the betting in gaming sector, irrespective of the form in which that activity is undertaken [...] is contrary to Articles 43 EC and 49 EC”* (paragraph 37)
- Member States must refrain *“from protecting the market positions acquired by the existing operators, by providing, inter alia, that a minimum distance must be observed between the establishments of new licence holders and those of existing operators.”* (paragraph 32)
- The CJEU reminded that, if a national *“[licensing] provision was not drawn up in a clear, precise and unequivocal manner [...], an operator cannot be criticised for deciding not to apply for a license in the absence of legal certainty [...].”* (paragraph 33)
- *“the principle of equal treatment, the obligation of transparency and the principle of legal certainty that the conditions of a tendering procedure [...] must be drawn up in a clear, precise and unequivocal way”* (paragraph 38)
- In addition the CJEU emphasised once again its settled *Placanica* jurisprudence stating that no sanctions may be applied on the basis of provisions which are contrary to EU law (paragraph 28).

The cases at hand are similar to the joined *Costa and Cifone* cases on which the CJEU ruled on 12 February 2012 (C-72/10 and C-77/10). In that ruling the CJEU already confirmed the Member States' obligation to ensure full transparency, legal certainty and equal treatment in licensing procedures. New in today's ruling is the explicit conclusion that a Member State cannot have national legislation that restricts all cross border gambling activities

Maarten Haijer, Secretary General of EGBA, commented; *“We very much welcome the Court's crystal clear conclusion that Member States cannot preclude cross border gambling activities in the EU. It confirms the CJEU's regulatory “red lines” which member states cannot be allowed to cross. The time has come for the Commission to enforce those red lines in Member States' national law – if needed through infringement proceedings.”*