



MEMORANDUM 09/27

TO : IFHA/FIAH
FROM : Maurits Bruggink
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REF. **European Court Ruling in favour of state monopolies**

In a long awaited ruling, the European Court of Justice (ECJ) reconfirmed that imposing restrictions on online gambling operators in order to fight fraud and crime is compatible with European Union principles of the freedom to provide services.

The case

In Portugal, the law gives the exclusive right to organise and operate lotteries, lotto games and sporting bets via the internet to a non-for profit organisation. Austrian online operator Bwin, operating under a Gibraltar license, actively marketed its gambling services to Portuguese citizen through a partnership agreement with the domestic football league ("La Liga"). Bwin and the league were fined for illegally offering bets and went to court to challenge the state. They claimed that they could offer these services on the basis of EU law, which creates an internal market. The question went to the European Court of Justice, who ruled that Bwin's position is incorrect.

ECJ's main rulings

- Restrictions to providing gambling services are conform EU law, conditionally.

Quote from the ECJ: *"The Court points out, however, that restrictions on the freedom to provide services may be justified by overriding reasons relating to the public interest. In the absence of Community harmonisation in the area of games of chance, Member States are free to set the objectives of their policy in that area and, where appropriate, to define in detail the level of protection sought. However, the Court notes that the restrictive measures that Member States may impose must satisfy certain conditions: they must be suitable for achieving the objective or objectives invoked by the Member State concerned, and they must not go beyond what is necessary in order to achieve those objectives. Lastly, in any event, those restrictions must be applied without discrimination."*

- Fight against crime is justified reason for restricting the market
- Giving exclusive rights to operate gambling is conform EU law, conditionally
- An operating license from one EU member state does not have to be accepted by another EU member state

Quote from the ECJ: *"...a Member State is entitled to take the view that the mere fact that a private operator such as Bwin lawfully offers services in that sector via the internet in another Member State, in which it is established and where it is in principle already subject to statutory conditions and controls, cannot be regarded as amounting to a sufficient assurance that national consumers will be protected against the risks of fraud and crime."*



- Online betting create greater risks for fraud to sports organisers

Interestingly, the ECJ highlights the increased risk of fraud with bookmaking; ECJ quote: *“The Court also considers it possible that an operator which sponsors some of the sporting competitions on which it accepts bets and some of the teams taking part in those competitions may be in a position to influence the outcome directly or indirectly and thus increase its profits.”*

- ☞ There are still a number of court cases pending, but this ruling is so clearly supportive of state monopolies that it seems unlikely that any future ruling will make a surprising impact. State monopolies will continue to be subject to rules of proportionality and non-discrimination, but these will not challenge their existence.
