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Judgment of the Court in Case C-440/23 | European Lotto and Betting and Deutsche Lotto- und Sportwetten

Online games of chance: EU law does not preclude a Member State from prohibiting certain services provided online and authorised in other Member States, and from attaching civil-law consequences to that prohibition

A consumer may bring a claim for restitution of lost stakes against operators established in another Member State where the games of chance at issue were prohibited in the consumer's Member State of residence

Two companies established in Malta, holding licences issued by the Maltese Gaming Authority, offer online virtual slot machine games and betting on the results of lottery draws. Their services were, inter alia, accessible in Germany. Between June 2019 and July 2021, a player residing in Germany made use of those services and lost a number of stakes.

At the material time, German law prohibited online games of chance generally. Only certain limited activities were permitted, such as sports betting and horse-race betting as well as certain lotteries. Virtual slot machines and betting on the results of lottery draws, however, were covered by the prohibition. The player brought an action for restitution of the sums lost. His claims were subsequently assigned to a company which pursued that action before a Maltese court.

That court asks the Court of Justice whether the freedom to provide services precludes national legislation of that kind where the operator holds a licence in another Member State. It also asks about the effects of a subsequent reform of German law, which replaced the general prohibition with a system of prior approval, and about the possibility of recognising the nullity of the contract and ordering restitution of the stakes lost.

In its judgment, the Court holds that **EU law does not preclude national legislation prohibiting the organisation of online casino games, slot machine games and certain forms of betting**, such as betting on the results of lottery draws, with the aim of steering gambling activities into supervised channels and combating parallel markets. It also holds that **EU law does not preclude recognition of the legal consequences of such a prohibition despite the subsequent introduction of a system of approval, nor the nullity of contracts concluded in breach of that prohibition, nor a civil action for restitution of the stakes lost**.

Online games of chance constitute services for the purposes of the EU Treaties, the freedom to provide which may be restricted for overriding reasons in the public interest, in particular consumer protection and the protection of social order. In the absence of harmonisation and given the moral, cultural and social differences between Member States, the latter enjoy discretion in determining the level of protection sought.

Legislation aimed at channelling the gambling instinct into controlled circuits and combating parallel markets pursues legitimate objectives. In that regard, online gambling entails specific risks which are greater than those associated with gambling in physical establishments, particularly due to the permanence of access, the isolation and anonymity of the player, the absence of social control, the potentially unlimited frequency, and its attractiveness to young and vulnerable persons.

In that context, a Member State may prohibit online casino games, including slot machines, and certain forms of online

betting, while permitting other forms of gambling, including in physical establishments, or subjecting certain online gambling activities to distinct regimes. Neither the considerable demand from players for online slot machines nor the fact that the operator is lawfully established and supervised in another Member State pursuing similar objectives is sufficient to demonstrate that such a prohibition is inconsistent or inappropriate, since each Member State remains free to determine its own level of protection.

The subsequent replacement in Germany, from 1 July 2021, of a general prohibition by a system of prior approval does not, in itself, affect the consistency or validity of the earlier regime, since such a development may form part of a policy of controlled expansion aimed at steering players towards an authorised gambling offer. Similarly, the introduction of a transitional period does not preclude drawing, in respect of the earlier period, the legal consequences of the prohibition then in force.

EU law does not therefore, in principle, preclude a finding that a contract concluded between a consumer and an operator established in another Member State, relating to services prohibited in the consumer's Member State, is void.

Lastly, an action for restitution of the stakes lost is not precluded by EU law. The nullity of the contract and its effects come within the scope of the applicable national law, in the present case German law. In so far as the legislation is compatible with EU rules on the freedom to provide services, that nullity is the consequence of the contract's illegality. The consumer's participation in those games of chance, despite the existence of a licence in another Member State, is not sufficient to establish the existence of an abuse of rights within the meaning of EU law, since any finding of bad faith in that regard is a matter of national law.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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