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The *Placanica* Decision: The EU Court of Justice Again Censures Italy's Restrictions on the Gambling Market

ALESSANDRO DEL NINNO

OVER THE YEARS, the European Court of Justice has issued several decisions[1] ruling that Italy can no longer use criminal law to stop gaming companies licensed in other European Union nations from providing gambling services in the country.

On one hand, several foreign providers claim that Italy should infringe the fundamental freedoms of establishment and to provide services (in breach of articles 43 and 49 of the EC Treaty[2]) by excluding certain foreign operators from providing gambling services in Italy or from collecting bets in Italy unless licensed and authorized by the public authorities to do so (with the application, in such cases, of criminal sanctions). On the other hand, Italy keeps defending its position by assuming that Italian betting and gaming legislation (and its related restrictions) is compatible with articles 43 EC and 49 EC, in light of the purpose of channelling betting and gaming activities into systems that are controllable, with the objective of preventing their exploitation for criminal purposes.

Italian legislation essentially provides that participation in the organizing of games of chance, including the collection of bets, is subject to possession of a license and a police authorization. Any infringement of that legislation carries criminal penalties of up to three years' imprisonment.

Starting in 2006, the Italian government commenced a wholesale revision of the country's formerly protectionist gambling laws. On Feb. 13, 2006, the National Agency for Monopolies and Games issued a decree implementing the provisions of the Italian Budget Law for 2006. The decree is aimed at "removing cases of of-

Alessandro del Ninno is a lawyer in the Information & Communication Technology Department of Studio Legale Tonucci & Partners in Rome. He may be reached by e-mail at adelninno@tonucci.it.

[1] *See, e.g.*, Case C-243/01, Tribunale di Ascoli Piceno (Italy) v. Gambelli, 8 GAMING L. REV. 43 (2004) (E.C.J. Nov. 6, 2003).

[2] Treaty Establishing the European Community (Amsterdam consolidated version) arts. 43, 49, 1997 O.J. C340/195.

Article 43 provides:

> 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 48, 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 provides:

> Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.
> The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.

fer by means of a telematic network of games, lotteries, bets, prize contests with awards in money not based on administrative permits or—in any case—in breach of the Italian rules prohibiting casino games or other hazardous games".[3] Even with a huge number of remote licenses now available (according to the law decree of July 4, 2006 no. 223, following which 16,300 points for collecting at a distance sports bets have been authorized), issues still remain concerning the legality of the 2007 Finance Act and new restrictions concerning foreign-based gaming sites

THE LATEST CASE: THE *PLACANICA* DECISION

On Mar. 6, 2007, the European Court of Justice ruled again—by issuing a grand chamber judgment—that Italy can no longer use criminal law to stop gaming companies licensed in other European Union nations from taking bets from bettors in Italy.[4]

The case relates to three men, Massimiliano Placanica, Christian Palazzese and Angelo Sorrichio, who are being prosecuted in Italian courts for operating data transmission centers through which punters were able to place bets with Stanleybet International, which is based in the United Kingdom. The UK provider claimed that its UK license should have been recognized by all EU countries, including Italy.

Stanley operates in Italy through more than 200 agencies, commonly called *data transmission centers* (DTCs). The DTCs supply their services in premises open to the public in which a data transmission link is placed at the disposal of bettors so that they can access the server of Stanley's host computer in the United Kingdom. In that way, bettors are able—electronically—to forward sports bets proposals to Stanley (chosen from lists of events, and the odds on them, supplied by Stanley), to receive notice that their proposals have been accepted, to pay their stakes, and, where appropriate, to receive their winnings.

The DTCs are run by independent operators who have contractual links to Stanley. Massimiliano Placanica, Christian Palazzese, and Angelo Sorricchio, the defendants in the main proceedings, are all DTC operators linked to Stanley.

According to the case-file forwarded by the District Court of Teramo (Italy), Palazzese and Sorricchio applied, before commencing their activities, to Atri Police Headquarters for police authorization in accordance with Article 88 of the Royal Decree. Those applications met with no response.

Accusing Placanica of the offense set out in Article 4(4a) of Law No. 401/89[5] alleging that, as a DTC operator for Stanley, Placanica had pursued the organized activity of collecting bets without the required police authorization, the public prosecutor brought criminal proceedings against him.

Accordingly, the Italian court decided to stay proceedings and to refer the following question to the European Court of Justice for a preliminary ruling:

> Does the Court of Justice consider Article 4(4a) of Law No 401/89 to be compatible with the principles enshrined in Article 43 [EC] et seq. and 49 [EC] concerning the freedom of establishment and the freedom to provide cross-border services, having regard to the difference between the interpretation emerging from the decisions of the Court . . . (in particular the judgement in Gambelli and Others) and the decision of the Italian Supreme Court of Cassation, in Case No 23271/04? In particular, the Court is requested to rule on the applicability in Italy of the rules on penalties referred to in the indictment and relied upon against [Mr] Placanica.[6]

[3] The list of the foreign providers and related Web sites prohibited according to this decree from supplying gambling services in Italy is available at <www.aams.it>.

[4] Case C-338/04, Tribunale di Larino (Italy) v. Placanica (E.C.J. Grand Chamber Mar. 6, 2007).

[5] Article 4(4a) of Law No. 401/89 provides:

> The penalties laid down in this article shall be applicable to any person who, without the concession, authorisation or licence required by Article 88 of [the Royal Decree], carries out activities in Italy for the purposes of accepting or collecting, or, in any case, of assisting the acceptance or in any way whatsoever the collection, including by telephone or by data transfer, of bets of any kind accepted by any person in Italy or abroad.

Case C-338/04, Tribunale di Larino (Italy) v. Placanica, ¶ 14.

The Gesualdi *case*

It must be remembered that in the *Gesualdi* case,[7] the Italian Supreme Court of Cassation (which is the court of last appeal in civil and criminal matters) was called upon to determine whether the Italian betting and gaming legislation is compatible with Articles 43 EC and 49 EC. On completion of its analysis, the Court reached the conclusion that the Italian legislation does not conflict with Articles 43 EC and 49 EC.

In *Gesualdi*, the Italian Supreme Court of Cassation noted that, for several years, Italian laws had been pursuing a policy of expansion in the betting and gaming sector with the manifest aim of increasing tax revenue, and that the Italian legislation could not be justified by reference to the aim of protecting consumers or of limiting their propensity to gamble or of limiting the availability of games of chance. Rather, the Italian Supreme Court of Cassation identified as the true purpose of the Italian legislation a desire to channel betting and gaming activities into systems that are controllable, with the objective of preventing their exploitation for criminal purposes. That is why the Italian legislation provided for the control and supervision of the persons who operate betting and tipster contests, as well as the premises in which they do so. In the view of the Italian Supreme Court of Cassation, that objective is sufficient in itself to justify the restrictions on the freedom of establishment and the freedom to provide services.

As regards the conditions designed to ensure the transparency of the share ownership of license holders (the principal effect of which is to exclude from tender procedures[8] for licenses companies whose individual shareholders are not always identifiable at any given moment), the Italian Supreme Court of Cassation found in the *Gesualdi* case that the Italian legislation did not discriminate against foreign companies at all, even indirectly, since it had the effect of excluding not only the foreign companies whose shareholders cannot be precisely identified, but also all the Italian companies whose shareholders cannot be precisely identified.

The EU Court of Justice ruling in the Placanica *case*

The *Placanica* ruling is important with respect to other similar cases (including the *Gambelli* case) because, for the first time, the EU Court of Justice clarifies the extent to which state monopolies could attempt to shut off their domestic markets to online betting companies from other EU countries.

Summarizing the EU Court of Justice position in the *Placanica* case, the Court stated:

> 1. National legislation which prohibits the pursuit of the activities of collecting, taking, booking and forwarding offers of bets, in particular bets on sporting events, without a licence or a police authorisation issued by the Member State concerned, constitutes a restriction on the freedom of establishment and the freedom to provide services provided for in Articles 43 EC and 49 EC respectively.
>
> 2. It is for the national courts to determine whether, in so far as national legislation limits the number of operators active in the betting and gaming sector, it genuinely contributes to the objective of preventing the exploitation of activities in that sector for criminal or fraudulent purposes.
>
> 3. Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which excludes - and, moreover, continues to exclude - from the betting and gaming sector operators in the form of companies whose shares are quoted on the regulated markets.

[6] *Id.* at ¶ 28.

[7] Cass., 26 Apr. 2004, No. 111/04 (known as the *Gesualdi* case).

[8] Specific public tenders are periodically organized by the Italian National Agency for Monopolies for the release of a certain number of licenses allowing bodies (in compliance with strict requirements) to gather bets.

4. Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a criminal penalty on persons such as the defendants in the main proceedings for pursuing the organised activity of collecting bets without a licence or a police authorisation as required under the national legislation, where those persons were unable to obtain licences or authorisations because that Member State, in breach of Community law, refused to grant licences or authorisations to such persons.[9]

COMMENTARY

The EU Court of Justice ruling in the *Placanica* case (which confirmed the principles already pointed out by the EC Court in the *Gambelli* case) has been welcomed by online market operators as a strongly positive decision. It must be remembered that several providers are currently engaged in national court level cases to have their rights to offer cross-border betting services granted in various European jurisdictions (and not only in Italy). Further, important betting services providers stressed that—again—the EC Court stated that consumers in Europe deserve, and are legally entitled under Article 49 of the Treaty to, a choice in where they place bets, and that the *Placanica* decision clearly demonstrates that betting services are entirely lawful under the European Treaty.

It is worth noting that, in April 2006, the European decided to send official requests for information on national legislation restricting the supply of sport betting services to seven Member States (Denmark, Finland, Germany, Hungary, Italy, the Netherlands and Sweden) over their discriminatory activities in barring private betting operators from their markets. On Mar. 21, 2007, the EU Commission took action to put an end to obstacles to the free movement of sports betting services only toward Denmark, Finland, and Hungary. The Commission has formally requested these Member States to amend their laws following consideration of their replies to letters of formal notice sent in April 2006, in which the Commission sought to verify whether the restrictions in question are compatible with Article 49 of the EC Treaty, which guarantees the free movement of services. The Commission considers that the restrictions in question are not compatible with existing EU law and that the measures taken by Denmark, Finland, and Hungary to restrict the free movement of sports betting services have not been shown to be necessary, proportionate and non-discriminatory. Furthermore, in the Commission's view, existing national operators cannot be regarded as non-profit operations, given that they are subject to strict annual revenue targets and often rely on commercial retail outlets to market their various gambling services. These formal requests take the form of "reasoned opinions", the second stage of the infringement procedure laid down in Article 226 of the EC Treaty. If there is no satisfactory reply within two months, the Commission may refer the matter to the European Court of Justice.

To be objective, it must be said that the *Placanica* decision does contain rulings that could allow the Italian authorities to interpret the actual system as compliant with articles 43 and 49 EC. And in fact, on Mar. 6, 2007 (the same date the *Placanica* decision was issued), the Italian National Agency for Monopolies and Games made its position public by means of a press release in which the agency stated that:

> the Agency welcomes the EC Court verdict in the Placanica case and finds it and the related principles fully satisfactory, in particular where the EC Court clarifies that Member States are allowed to restrict the freedom of establishment and the freedom to provide services in the gaming sector for general public interests aimed at preventing criminal activities and aimed at protecting consumers. Further, the Agency welcomes the position of the EC Court when it states that the Italian licensing system is a valid and efficacious mean to "control those who operate in the hazardous games sector". The Agency deems that the Placanica verdict confirms that the administrative activity carried out by the Italian State in the past few years is wholly correct.[10]

Further, it must be noted that when the EC Courts states that it is for the national courts to determine whether, insofar as national legislation limits the number of operators active in the betting and gaming sector, it genuinely contributes to the objective of preventing the exploitation of activities in that sector for criminal or fraudulent purposes, this principle could be read by the national courts as a "directive"—in future decisions—to comply with the *Gesualdi* decision and to rule in light of the principle therein stated that "the objective to channel betting and gaming activities into systems that are controllable, with the aim of preventing their exploitation for criminal purposes is sufficient in itself to justify the restrictions on the freedom of establishment and the freedom to provide services."[11]

So in conclusion, the Placanica decision—with regard to Italy—must not be seen as a "revolutionary" step toward the full liberalization of the Italian betting markets. It can, however, be interpreted as an important and positive confirmation for the gambling industry willing to operate in Italy. In addition, it must be pointed out that the *Placanica* case went before the EC Court before new Italian rules opened the market to foreign betting providers admitted by tenders who obtained a license. In fact, the law decree of 4 July 2006, no. 223, has introduced important innovations. Specifically, skill games and betting exchanges are now among the authorized games, and the Italian National Agency for Monopolies and Games, after the organization of a new tender for the awarding of 16,300 licenses, recently issued licenses to foreign operators to open new gaming points both for horse- and sports-related games and issued unlimited online licenses for such games. The tender, for the first time, expressly recognized the licenses issued by a foreign country as valid. Many important foreign operators took part in this tender and are now authorized to operate gaming points both for horse- and sports-related games and to lawfully manage related Web sites. Casino games, however, still remain unlawful.

[9] *Placanica*, at ¶ 72.

[10] Translated by author.

[11] Cass., 26 Apr. 2004, No. 111/04 (*Gesualdi*) (translated by author).

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Court of Justice

Judgment of the Court (Grand Chamber) of 6 March 2007. Criminal proceedings against Massimiliano **Placanica** (C-338/04), Christian Palazzese (C-359/04) and Angelo Sorricchio (C-360/04). References for a preliminary ruling: Tribunale di Larino (C-338/04) and Tribunale di Teramo (C-359/04 and C-360/04) - Italy. Freedom of establishment - Freedom to provide services - Interpretation of Articles 43 EC and 49 EC - Games of chance - Collection of bets on sporting events - Licensing requirement - Exclusion of certain operators by reason of their type of corporate form - Requirement of police authorisation - Criminal penalties. Joined cases C-338/04, C-359/04 and C-360/04.

In Joined Cases C338/04, C359/04 and C360/04,

REFERENCES for a preliminary ruling under Article 234 EC, by the Tribunale di Larino (Italy) (Case C338/04) and the Tribunale di Teramo (Italy) (Cases C359/04 and C360/04), by decisions of 8 July 2004 and 31 July 2004, received at the Court on 6 August 2004 and 18 August 2004 respectively, in the criminal proceedings before those courts against

Massimiliano **Placanica** (Case C338/04),

Christian Palazzese (Case C359/04),

Angelo Sorricchio (Case C360/04),

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and K. Lenaerts (Presidents of Chambers), J.N. Cunha Rodrigues, R. Silva de Lapuerta, K. Schiemann (Rapporteur), G. Arestis, A. Borg Barthet and M. Ilei, Judges,

Advocate General: D. RuizJarabo Colomer,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 7 March 2006,

after considering the observations submitted on behalf of:

- Mr **Placanica** and Mr Palazzese, by D. Agnello, avvocatessa,

- Mr Sorricchio, by R.A. Jacchia, A. Terranova, I. Picciano and F. Ferraro, avvocati,

- the Italian Government, by I.M. Braguglia, acting as Agent, assisted by A. Cingolo and F. Sclafani, Avvocati dello Stato (Cases C338/04, C359/04 and C360/04),

- the Belgian Government, initially by D. Haven and subsequently by M. Wimmer, acting as Agents, assisted by P. Vlaemminck and S. Verhulst, advocaten (Case C338/04),

- the German Government, by C.D. Quassowski and C. SchulzeBahr, acting as Agents (Case C338/04),

- the Spanish Government, by F. Diez Moreno, acting as Agent (Cases C338/04, C359/04 and C360/04),

- the French Government, by G. de Bergues and C. BergeotNunes, acting as Agents (Case C338/04),

- the Austrian Government, by H. Dossi, acting as Agent (Cases C338/04, C359/04 and C360/04),

- the Portuguese Government, by L.I. Fernandes and A.P. Barros, acting as Agents (Cases C338/04, C359/04 and C360/04), assisted by J.L. da Cruz Vilaça, advogado (Case C338/04),

- the Finnish Government, by T. Pynna, acting as Agent (Case C338/04),

- la Commission of the European Communities, by E. Traversa, acting as Agent (Cases C338/04, C359/04 and C360/04),

after hearing the Opinion of the Advocate General at the sitting on 16 May 2006,

gives the following

Judgment

GROUNDS

1. The references for a preliminary ruling concern the interpretation of Articles 43 EC and 49 EC.

2. The references have been made in the course of criminal proceedings against Mr **Placanica,** Mr Palazzese and Mr Sorricchio for failure to comply with the Italian legislation governing the collection of bets. The legal and factual context of these references is similar to the situations that gave rise to the judgments in Case C67/98 Zenatti [1999] ECR I7289 and Case C243/01 Gambelli and Others [2003] ECR I13031.

Legal context

3. Italian legislation essentially provides that participation in the organising of games of chance, including the collection of bets, is subject to possession of a licence and a police authorisation. Any infringement of that legislation carries criminal penalties of up to three years' imprisonment.

Licences

4. Until 2002 the awarding of licences for the organising of bets on sporting events was managed by the Italian National Olympic Committee (Comitato olimpico nazionale italiano (CONI)) and the National Union for the Improvement of Horse Breeds (Unione nazionale per l'incremento delle razze equine (UNIRE)), which had the authority to organise bets relating to sporting events organised or conducted under their supervision. That resulted from Legislative Decree No 496 of 14 April 1948 (GURI No 118 of 14 April 1948), read in conjunction with Article 3(229) of Law No 549 of 28 December 1995 (GURI No 302 of 29 December 1995, Ordinary Supplement) and Article 3(78) of Law No 662 of 23 December 1996 (GURI No 303 of 28 December 1996, Ordinary Supplement).

5. Specific rules for the award of licences were laid down, in the case of CONI, by Decree No 174 of the Ministry of Economic Affairs and Finance of 2 June 1998 (GURI No 129 of 5 June 1998;

Decree No 174/98') and, in the case of UNIRE, by Decree No 169 of the President of the Republic of 8 April 1998 (GURI No 125 of 1 June 1998;

Decree No 169/98').

6. Decree No 174/98 provided that the award of licences by CONI was to be made by means of calls for tender. When awarding the licences, CONI had, in particular, to make sure that the share ownership of the licence holders was transparent and that the outlets for collecting and taking bets were rationally distributed across the national territory.

7. In order to ensure transparency of share ownership, Article 2(6) of Decree No 174/98 provided that where the licence holder took the form of a company, shares carrying voting rights had to be issued in the name of natural persons, general partnerships or limited partnerships, and could not be transferred by simple endorsement.

8. Similar provision was made with regard to the award of licences by UNIRE.

9. In 2002, following a number of legislative initiatives, the competences of CONI and UNIRE with respect to bets on sporting events were transferred to the independent authority for the administration of State monopolies, acting under the supervision of the Ministry of Economic Affairs and Finance.

10. Pursuant to an amendment introduced at that time by Article 22(11) of Law No 289 of 27 December 2002 (GURI No 305 of 31 December 2002, Ordinary Supplement; the 2003 Finance Law') all companies - without any limitation as to their form - may now take part in tender procedures for the award of licences.

Police authorisation

11. Police authorisation may be granted only to those who hold a licence or authorisation granted by a Ministry or other body to which the law reserves the right to organise or manage betting. Those conditions are laid down in Article 88 of Royal Decree No 773, approving a single text of the laws on public security (Regio Decreto No 773, Testo unico delle leggi di pubblica sicurezza), of 18 June 1931 (GURI No 146 of 26 June 1931), as amended by Article 37(4) of Law No 388 of 23 December 2000 (GURI No 302 of 29 December 2000, Ordinary Supplement; the Royal Decree').

12. Furthermore, by virtue of Article 11 of the Royal Decree, read in conjunction with Article 14 thereof, a police authorisation may not be issued to a person who has had certain penalties imposed on him or who has been convicted of certain offences, in particular offences reflecting a lack of probity or good conduct, and infringements of the betting and gaming legislation.

13. Once authorisation has been granted, the holder must, pursuant to Article 16 of the Royal Decree, permit law enforcement officials access at any time to the premises where the authorised activity is pursued.

Criminal penalties

14. Article 4 of Law No 401 of 13 December 1989 on gaming, clandestine betting and ensuring the proper conduct of sporting contests (GURI No 294 of 18 December 1989) as amended by Article 37(5) of Law No 388 (Law No 401/89') provides as follows in respect of criminal penalties for malpractice in the organising of games of chance:

1. Any person who unlawfully participates in the organising of lotteries, betting or pools reserved by law to the State or to entities operating under licence from the State shall be liable to a term of imprisonment of 6 months to 3 years. Any person who organises betting or pools in respect of sporting events run by CONI, or by organisations under the authority of CONI, or by UNIRE shall be liable to the same penalty. Any person who unlawfully par-

ticipates in the public organising of betting on other contests between people or animals, or on games of skill, shall be liable to a term of imprisonment of 3 months to 1 year and a minimum fine of ITL 1 000 000. . . .

2. Any person who advertises competitions, games or betting organised in the manner described in paragraph 1, albeit without being an accomplice to an offence defined therein, shall be liable to a term of imprisonment of up to 3 months and a fine of between ITL 100 000 and ITL 1 000 000.

3. Any person who participates in competitions, games or betting organised in the manner described in paragraph 1, albeit without being an accomplice to an offence defined therein, shall be liable to a term of imprisonment of up to 3 months or a fine of between ITL 100 000 and ITL 1 000 000.

. . .

4 a. The penalties laid down in this article shall be applicable to any person who, without the concession, authorisation or licence required by Article 88 of [the Royal Decree], carries out activities in Italy for the purposes of accepting or collecting, or, in any case, of assisting the acceptance or in any way whatsoever the collection, including by telephone or by data transfer, of bets of any kind accepted by any person in Italy or abroad.

. . .'

Case-law of the Corte suprema di cassazione

15. In its judgment No 111/04 of 26 April 2004 in Gesualdi, the Corte suprema di cassazione (Supreme Court of Cassation) (Italy) was called upon to determine whether the Italian betting and gaming legislation is compatible with Articles 43 EC and 49 EC. On completion of its analysis, that court reached the conclusion that the Italian legislation does not conflict with Articles 43 EC and 49 EC.

16. In Gesualdi, the Corte suprema di cassazione noted that, for several years, the Italian legislature had been pursuing a policy of expansion in the betting and gaming sector with the manifest aim of increasing tax revenue, and that the Italian legislation could not be justified by reference to the aim of protecting consumers or of limiting their propensity to gamble or of limiting the availability of games of chance. Rather, the Corte suprema di cassazione identified as the true purpose of the Italian legislation a desire to channel betting and gaming activities into systems that are controllable, with the objective of preventing their exploitation for criminal purposes. That is why the Italian legislation provided for the control and supervision of the persons who operate betting and tipster contests, as well as the premises in which they do so. In the view of the Corte suprema di cassazione, that objective is sufficient in itself to justify the restrictions on the freedom of establishment and the freedom to provide services.

17. As regards the conditions designed to ensure the transparency of the share ownership of licence holders - the principal effect of which is to exclude from tender procedures for licences companies whose individual shareholders are not always identifiable at any given moment - the Corte suprema di cassazione found in Gesualdi that the Italian legislation did not discriminate against foreign companies at all, even indirectly, since it had the effect of excluding not only the foreign companies whose shareholders cannot be precisely identified, but also all the Italian companies whose shareholders cannot be precisely identified.

The main proceedings and the questions referred for a preliminary ruling

The award of licences

18. According to the documents before the Court, CONI - acting in accordance with the Italian legislation - launched a call for tenders on 11 December 1998 for the award of 1 000 licences for sports betting operations, that being the number of licences considered on the basis of a specific assessment to be sufficient for the whole of the national territory. At the same time, a call for tenders in respect of 671 new licences for the taking of bets on competitive horse events was organised by the Ministry of Economic Affairs and Finance in agreement with the Ministry of Agricultural and Forestry Policy, and 329 existing licences were automatically renewed.

19. The application of the provisions concerning the transparency of share ownership that were in force at the time of those calls for tender had primarily the effect of excluding the participation of operators in the form of companies whose shares were quoted on the regulated markets, since in their case the precise identification of individual shareholders was not possible on an ongoing basis. Following those calls for tender, a number of licences - valid for six years and renewable for a further six years - were awarded in 1999.

Stanley International Betting Ltd

20. Stanley International Betting Ltd (Stanley') is a company incorporated under English law and a member of the group Stanley Leisure plc (Stanley Leisure'), a company incorporated under English law and quoted on the London (United Kingdom) stock exchange. Both companies have their head office in Liverpool (United Kingdom). Stanley Leisure operates in the betting and gaming sector and is the fourth biggest bookmaker and the largest casino operator in the United Kingdom.

21. Stanley is one of Stanley Leisure's operational conduits outside the United Kingdom. It is duly authorised to operate as a bookmaker in the United Kingdom by virtue of a licence issued by the City of Liverpool. It is subject to controls by the British authorities in the interests of public order and safety; to internal controls over the lawfulness of its activities; to controls carried out by a private audit company; and to controls carried out by the Inland Revenue and the United Kingdom customs authorities.

22. In the hope of obtaining licences for at least 100 betting outlets in Italy, Stanley investigated the possibility of taking part in the tendering procedures, but realised that it could not meet the conditions concerning the transparency of share ownership because it formed part of a group quoted on the regulated markets. Accordingly, it did not participate in the tendering procedure and holds no licence for betting operations.

Data transmission centres

23. Stanley operates in Italy through more than 200 agencies, commonly called data transmission centres' (DTCs). The DTCs supply their services in premises open to the public in which a data transmission link is placed at the disposal of bettors so that they can access the server of Stanley's host computer in the United Kingdom. In that way, bettors are able - electronically - to forward sports bets proposals to Stanley (chosen from lists of events, and the odds on them, supplied by Stanley), to receive notice that their proposals have been accepted, to pay their stakes and, where appropriate, to receive their winnings.

24. The DTCs are run by independent operators who have contractual links to Stanley. Mr **Placanica,** Mr Palazzese and Mr Sorricchio, the defendants in the main proceedings, are all DTC operators linked to Stanley.

25. According to the case-file forwarded by the Tribunale (District Court) di Teramo (Italy), Mr Palazzese and Mr Sorricchio applied, before commencing their activities, to Atri Police Headquarters for police authorisation in accordance with Article 88 of the Royal Decree. Those applications met with no response.

The reference for a preliminary ruling from the Tribunale di Larino (Case C338/04)

26. Accusing Mr **Placanica** of the offence set out in Article 4(4a) of Law No 401/89 in that, as a DTC operator for Stanley, Mr **Placanica** had pursued the organised activity of collecting bets without the required police authorisation, the Public Prosecutor brought criminal proceedings against him before the Tribunale di Larino (Italy).

27. That court expresses misgivings as to the

soundness of the conclusion reached by the Corte suprema di cassazione in Gesualdi, with regard to the compatibility of Article 4(4a) of Law No 401/89 with Community law. The Tribunale di Larino is uncertain whether the public order objectives invoked by the Corte suprema di cassazione justify the restrictions at issue.

28. Accordingly, the Tribunale di Larino decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

Does the Court of Justice consider Article 4(4a) of Law No 401/89 to be compatible with the principles enshrined in Article 43 [EC] et seq. and 49 [EC] concerning the freedom of establishment and the freedom to provide cross-border services, having regard to the difference between the interpretation emerging from the decisions of the Court . . . (in particular the judgment in Gambelli and Others) and the decision of the Corte Suprema di Cassazione, Sezione Uniti, in Case No 23271/04? In particular, the Court is requested to rule on the applicability in Italy of the rules on penalties referred to in the indictment and relied upon against [Mr] **Placanica.'**

The references for a preliminary ruling from the Tribunale di Teramo (Cases C359/04 and C360/04)

29. The Atri police authorities charged Mr Palazzese and Mr Sorricchio with pursuing, without a licence or a police authorisation, an organised activity with a view to facilitating the collection of bets, and placed their premises and equipment under preventive seizure on the basis of Article 4(4a) of Law No 401/89. Upon confirmation of the seizure measures by the Public Prosecutor, Mr Palazzese and Mr Sorricchio each brought an action challenging those measures before the Tribunale di Teramo.

30. In the view of that court, the restrictions imposed on companies quoted on the regulated markets, which prevented them in 1999 from taking part in the last tender procedure for the award of licences for the operation of betting activities, are incompatible with the principles of Community law because they discriminate against operators who are not Italian. In consequence - like the Tribunale di Larino - the Tribunale di Teramo has doubts as to whether the judgment in Gesualdi is sound.

31. In those circumstances, the Tribunale di Teramo decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

The District Court [of Teramo] needs to know, in particular, whether [the first paragraph of Article 43 EC and the first paragraph of Article 49 EC] may be interpreted as allowing the Member States to derogate temporarily (for 6 to 12 years) from the freedom of establishment and the freedom to provide services within the European Union, and to legislate as follows, without undermining those Community principles:

- allocating to certain persons licences for the pursuit of cert ain activities involving provision of services, valid for 6 or 12 years, on the basis of a body of rules which excluded from the tender procedure certain kinds of (non-Italian) competitors;

- amending that system, after subsequently noting that it was not compatible with the principles enshrined in Articles 43 [EC] and 49 [EC], so as to allow in future the participation of those persons who had been excluded;

- not revoking the licences granted on the basis of the earlier system which, as stated, infringed the principles of freedom of establishment and of free movement of services or setting up a new tender procedure pursuant to the new rules which now comply with the abovementioned principles;

- continuing, on the other hand, to bring criminal proceedings against anyone carrying on business via a link with operators who, [despite] being entitled to pursue such an activity in the Member State of origin, were nevertheless unable to seek an operating licence precisely because of the restrictions contained in the earlier licensing rules, later repealed?'

32. By order of the President of the Court of 14 October 2004, Cases C359/04 and C360/04 were joined for the purposes of the written and oral procedures and of the judgment. By a second order of the President of the Court of 27 January 2006, Case C338/04 was joined with Joined Cases C359/04 and C360/04 for the purposes of the oral procedure and of the judgment.

Admissibility of the questions referred for a preliminary ruling

33. In Case C338/04, all the Governments which lodged observations - with the exception of the Belgian Government - call in question the admissibility of the question referred. With regard to Cases C359/04 and C360/04, the Italian and Spanish Governments question the admissibility of the question referred. With regard to Case C338/04, the Portuguese and Finnish Governments submit that the reference from the Tribunale di Larino does not contain sufficient information to enable a reply to be given whereas, according to the Italian, German, Spanish and French Governments, the question referred concerns the interpretation of national law, not Community law, and in consequence calls for the Court to rule on the compatibility with Community law of rules of national law. The Italian and Spanish Governments express the same reservation as regards the admissibility of the question referred in Cases C359/04 and C360/04.

34. Concerning the information that must be provided to the Court in the context of a reference for a preliminary ruling, it should be noted that that information does not serve only to enable the Court to provide answers which will be of use to the national court; it must also enable the Governments of the Member States, and other interested parties, to submit observations in accordance with Article 23 of the Statute of the Court of Justice. For those purposes, according to settled case-law, it is firstly necessary that the national court should define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based. Secondly, the referring court must set out the precise reasons why it was unsure as to the interpretation of Community law and why it considered it necessary to refer questions to the Court for a preliminary ruling. In consequence, it is essential that the referring court provide at the very least some explanation of the reasons for the choice of the Community provisions which it requires to be interpreted and of the link it establishes between those provisions and the national legislation applicable to the dispute in the main proceedings (see to that effect, inter alia, Joined Cases C320/90 to C322/90 Telemarsicabruzzo and Others [1993] ECR I393, paragraph 6;

Joined Cases C453/03, C11/04, C12/04 and C194/04 ABNA and Others [2005] ECR I10423, paragraphs 45 to 47; and Case C506/04 Wilson [2006] ECR I0000, paragraphs 38 and 39).

35. The reference from the Tribunale di Larino (Case C338/04) meets those requirements. In so far as the national legal context, and the arguments relied upon by the parties are in essence identical to those in Gambelli and Others, a reference to that judgment was sufficient to enable the Court, as well as the Governments of Member States and the other interested parties, to identify the subject-matter of the dispute.

36. Admittedly, as regards the division of responsibilities under the cooperative arrangements established by Article 234 EC, the interpretation of provisions of national law is a matter for the national courts, not for the Court of Justice, and the Court has no jurisdiction, in proceedings brought on the basis of that article, to rule on the compatibility of national rules with Community law. On the other hand, the Court does have jurisdiction to provide the national court with all the guidance as to the interpretation of Community law necessary to enable that court to rule on the compatibility of those national rules with Community law (see, in particular, Case C55/94 Gebhard [1995] ECR I4165, paragraph 19, and Wilson, paragraphs 34 and 35).

37. In that regard, the Advocate General pointed out, quite correctly, at point 70 of his Opinion that, on a literal reading of the question referred for a preliminary ruling by the Tribunale di Larino (Case C338/04), the Court is being asked to rule on the compatibility with Community law of a provision of national law. Nevertheless, although the Court cannot answer that question in the terms in which it is framed, there is nothing to prevent it from giving an answer of use to the national court by providing the latter with the guidance as to the interpretation of Community law necessary to enable that court to rule on the compatibility of those national rules with Community law.

38. As for the question referred for a preliminary ruling by the Tribunale di Teramo (Cases C359/04 and C360/04), this identifies with precision the effects of a number of national legislative developments and asks the Court whether those effects are compatible with the EC Treaty. It follows that, by that question, the Court is not being called upon to rule on the interpretation of national law or on the compatibility of national law with Community law.

39. The questions referred must therefore be declared admissible.

The questions referred for a preliminary ruling

40. It is clear from the case-files forwarded to the Court that an operator wishing to pursue, in Italy, an activity in the betting and gaming sector must comply with national legislation characterised by the following elements:

- the obligation to obtain a licence;

- a method of awarding those licences, by means of a tender procedure excluding certain types of operator and, in particular, companies whose individual shareholders are not always identifiable at any given moment;

- the obligation to obtain a police authorisation; and

- criminal penalties for failure to comply with the legislation at issue.

41. By the questions referred, which it is appropriate to consider together, the national courts essentially ask whether Articles 43 EC and 49 EC preclude national legislation on betting and gaming, such as that at issue in the main proceedings, in so far as it contains such elements.

42. The Court has already ruled that, in so far as the national legislation at issue in the main proceedings prohibits - on pain of criminal penalties - the pursuit of activities in the betting and gaming sector without a licence or police authorisation issued by the State, it constitutes a restriction on the freedom of establishment and the freedom to provide services (see Gambelli and Others, paragraph 59 and the operative part).

43. In the first place, the restrictions imposed on intermediaries such as the defendants in the main proceedings constitute obstacles to the freedom of establishment of companies established in another Member State, such as Stanley, which pursue the activity of collecting bets in other Member States through an organisation of agencies such as the DTCs operated by the defendants in the main proceedings (see Gambelli and Others, paragraph 46).

44. Secondly, the prohibition imposed on intermediaries such as the defendants in the main proceedings, under which they are forbidden to facilitate the provision of betting services in relation to sporting events organised by a supplier, such as Stanley, established in a Member State other than that in which the intermediaries pursue their activity, constitutes a restriction on the right of that supplier freely to provide services, even if the intermediaries are established in the same Member State as the recipients of the services (see Gambelli and Others, paragraph 58).

45. In those circumstances, it is necessary to consider whether the restrictions at issue in the main proceedings may be recognised as exceptional measures, as expressly provided for in Articles 45 EC and 46 EC, or justified, in accordance with the case-law of the Court, for reasons of overriding general interest (see Gambelli and Others, paragraph 60).

46. On that point, a certain number of reasons of overriding general interest have been recognised by the case-law, such as the objectives of consumer protection and the prevention of both fraud and incitement to squander on gaming, as well as the general need to preserve public order (see, to that effect, Case C275/92 Schindler [1994] ECR I1039, paragraphs 57 to 60;

Case C124/97 Laara and Others [1999] ECR I6067, paragraphs 32 and 33;

Zenatti, paragraphs 30 and 31; and Gambelli and Others, paragraph 67).

47. In that context, moral, religious or cultural factors, as well as the morally and financially harmful consequences for the individual and for society associated with betting and gaming, may serve to justify a margin of discretion for the national authorities, sufficient to enable them to determine what is required in order to ensure consumer protection and the preservation of public order (Gambelli and Others, paragraph 63).

48. However, although the Member States are free to set the objectives of their policy on betting and gaming and, where appropriate, to define in detail the level of protection sought, the restrictive measures that they impose must nevertheless satisfy the conditions laid down in the case-law of the Court as regards their proportionality.

49. The restrictive measures imposed by the national legislation should therefore be examined in turn in order to determine in each case in particular whether the measure is suitable for achieving the objective or objectives invoked by the Member State concerned and whether it does not go beyond what is necessary in order to achieve those objectives. In any case, those restrictions must be applied without discrimination (see to that effect Gebhard, paragraph 37, as well as Gambelli and Others, paragraphs 64 and 65, and Case C42/02 Lindman [2003] ECR I13519, paragraph 25).

The licensing requirement

50. Before an operator can be active in the betting and gaming sector in Italy, it must obtain a licence. Under the licensing system in use, the number of operators is limited. So far as concerns the taking of bets, the number of licences for the management of sports bets on competitive events not involving horses is limited to 1 000, as is the number of licences for the acceptance of bets on competitive horse events.

51. It should be made clear from the outset that the fact that that number of licences for each of those two categories was, according to the documents before the Court, considered on the basis of a specific assessment to be sufficient' for the whole of the national territory could not of itself justify the obstacles to the freedom of establishment and the freedom to provide services brought about by that limitation.

52. As regards the objectives capable of justifying those obstacles, a distinction must be drawn in this context between, on the one hand, the objective of reducing gambling opportunities and, on the other hand - in so far as games of chance are permitted - the objective of combating criminality by making the operators active in the sector subject to control and channelling the activities of betting and gaming into the systems thus controlled.

53. With regard to the first type of objective, it is clear from the case-law that although restrictions on the number of operators are in principle capable of being justified, those restrictions must in any event reflect a concern to bring about a genuine diminution of gambling opportunities and to limit activities in that sector in a consistent and systematic manner (see, to that effect, Zenatti, paragraphs 35 and 36, and Gambelli and Others, paragraphs 62 and 67).

54. It is, however, common ground in the present case, according to the case-law of the Corte suprema di cassazione, that the Italian legislature is pursuing a policy of expanding activity in the betting and gaming sector, with the aim of increasing tax revenue, and that no justification for the Italian legislation is to be found in the objectives of limiting the propensity of consumers to gamble or of curtailing the availability of gambling.

55. Indeed it is the second type of objective, namely that of preventing the use of betting and gaming activities for criminal or fraudulent purposes by channelling them into controllable systems, that is identified, both by the Corte suprema di cassazione and by the Italian Government in its observations before the Court, as the true goal of the Italian legislation at issue in the main proceedings. Viewed from that perspective, it is possible that a policy of controlled expansion in the betting and gaming sector may be entirely consistent with the objective of drawing players away from clandestine betting and gaming - and, as such, activities which are prohibited - to activities which are authorised and regulated. As the Belgian and French Governments, in particular, have pointed out, in order to achieve that objective, authorised operators must represent a reliable, but at the same time attractive, alternative to a prohibited activity. This may as such necessitate the offer of an extensive range of games, advertising on a certain scale and the use of new distribution techniques.

56. The Italian Government also referred to a number of factual elements, including, notably, an investigation into the betting and gaming sector, carried out by the Sixth Permanent Committee (Finance and the Treasury) of the Italian Senate. That investigation led to the conclusion that the activities of clandestine betting and gaming, prohibited as such, are a considerable problem in Italy, which it may be possible to solve through the expansion of authorised and regulated activities. Thus, according to that investigation, half the total turnover figure for the betting and gaming sector in Italy is generated by illegal activities. It was also thought that, by extending the betting and gaming activities permitted by law, it might be possible to recover from those illegal activities a proportion of that turnover figure at least equivalent in value to the amount generated by the activities permitted by law.

57. A licensing system may, in those circumstances, constitute an efficient mechanism enabling operators active in the betting and gaming sector to be controlled with a view to preventing the exploitation of those activities for criminal or fraudulent purposes. However, as regards the limitation of the total number of such licences, the Court does not have sufficient facts before it to be able to assess that limitation, as such, in the light of the requirements flowing from Community law.

58. It will be for the referring courts to determine whether, in limiting the number of operators active in the betting and gaming sector, the national legislation genuinely contributes to the objective invoked by the Italian Government, namely, that of preventing the exploitation of activities in that sector for criminal or fraudulent purposes. By the same token, it will be for the referring courts to ascertain whether those restrictions satisfy the conditions laid down by the case-law of the Court as regards their proportionality.

The tender procedures

59. The Tribunale di Teramo (Cases C359/04 and C360/04) expressly refers to the exclusion of companies whose individual shareholders are not always identifiable at any given moment, and thus of all companies quoted on the regulated markets, from tender procedures for the award of licences. The Commission of the European Communities has pointed out that the effect of that restriction is to exclude from those tender procedures the leading Community operators in the betting and gaming sector - operators in the form of companies whose shares are quoted on the regulated markets.

60. By way of a preliminary point, it should be noted that the question of the lawfulness of the conditions imposed in the context of the 1999 tender procedures is far from having been made redundant by the legislative amendments introduced in 2002 and allowing from then on all companies - with no limitation as to their form - to participate in tender procedures for the award of licences. Indeed, as the Tribunale di Teramo pointed out, since the licences awarded in 1999 were valid for six years and renewable for an additional period of six years, and meanwhile no new tender procedure has been planned, the exclusion from the betting and gaming sector of companies quoted on the regulated markets, and of intermediaries such as the defendants in the main proceedings who might act on behalf on such companies, is liable to produce effects until the year 2011.

61. The Court has already ruled that, even if the exclusion from tender procedures is applied without distinction to all companies quoted on the regulated markets which could be interested in those licences - regardless of whether they are established in Italy or in another Member State - in so far as the lack of foreign operators among the licensees is attributable to the fact that the Italian rules governing invitations to tender make it impossible in practice for companies quoted on the regulated markets of other Member States to obtain licences, those rules constitute prima facie a restriction on the freedom of establishment (see Gambelli and Others, paragraph 48).

62. Independently of the question whether the exclusion of companies quoted on the regulated markets applies, in fact, in the same way to operators established in Italy and to those from other Member States, that blanket exclusion goes beyond what is necessary in order to achieve the objective of preventing operators active in the betting and gaming sector from being involved in criminal or fraudulent activities. Indeed, as the Advocate General pointed out in point 125 of his Opinion, there are other ways of monitoring the accounts and activities of operators in the betting and gaming sector which impinge to a lesser extent on the freedom of establishment and the freedom to provide services, one such possibility being the gathering of information on their representatives or their main shareholders. Support for that observation is to be found in the fact that the Italian legislature believed it possible to repeal the exclusion completely by the 2003 Finance Law without, however, adopting other restrictive measures in its place.

63. As regards the consequences flowing from the unlawful nature of the exclusion of a certain number of operators from tender procedures for the award of existing licences, it is for the national legal order to lay down detailed procedural rules to ensure the protection of the rights which those operators derive by direct effect of Community law, provided, however, that those detailed rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by Community law (principle of effectiveness) (see Case C453/99 Courage and Crehan [2001] ECR I6297, paragraph 29, and Joined Cases C392/04 and C422/04 i21 Germany and Arcor [2006] ECR I0000, paragraph 57). In that connection, appropriate courses of action could be the revocation and redistribution of the old licences or the award by public tender of an adequate number of new licences. In any case, it should nevertheless be noted that, in the absence of a procedure for the award of licences which is open to operators who have been unlawfully barred from any possibility of obtaining a licence under the last tender procedure, the lack of a licence cannot be a ground for the application of sanctions to such operators.

64. Articles 43 EC and 49 EC must therefore be interpreted as precluding national legislation such as that at issue in the main proceedings, which excludes - and, moreover, continues to exclude - from the betting and gaming sector operators in the form of companies whose shares are quoted on the regulated markets.

The police authorisation requirement

65. The requirement that operators active in the betting and gaming sector, as well as their premises, be subject to ex ante controls as well as to ongoing supervision clearly contributes to the objective of preventing the involvement of those operators in criminal or fraudulent ac-

tivities and appears to be a measure that is entirely commensurate with that objective.

66. However, it is clear from the documents before the Court that the defendants in the main proceedings were ready to obtain police authorisations and to submit to such controls and to such supervision. Nevertheless, since a police authorisation is issued only to licence holders, it would have been impossible for the defendants in the main proceedings to obtain it. On that point, it is also clear from the case-files that, before commencing their activities, Mr Palazzese and Mr Sorricchio had applied for police authorisation in accordance with Article 88 of the Royal Decree, but that their applications met with no response.

67. As the Advocate General pointed out at point 123 of his Opinion, the procedure for granting police authorisations is, in consequence, vitiated by the defects identified above, which taint the award of the licences. Accordingly, the lack of a police authorisation cannot, in any case, be a valid ground for complaint in respect of persons such as the defendants in the main proceedings, who were unable to obtain authorisations because the grant of an authorisation presupposed the award of a licence - a licence which, contrary to Community law, those persons were unable to obtain.

The criminal penalties

68. Although in principle criminal legislation is a matter for which the Member States are responsible, the Court has consistently held that Community law sets certain limits to their power, and such legislation may not restrict the fundamental freedoms guaranteed by Community law (see Case C348/96 Calfa [1999] ECR I11, paragraph 17).

69. The case-law has also made it quite clear that a Member State may not apply a criminal penalty for failure to complete an administrative formality where such completion has been refused or rendered impossible by the Member State concerned, in infringement of Community law (see, to that effect, Case 5/83 Rienks [1983] ECR 4233, paragraphs 10 and 11).

70. It appears that persons such as the defendants in the main proceedings, in their capacity as DTC operators linked to a company organising bets which is quoted on the regulated markets and which is established in another Member State, had no way of being able to obtain the licences or police authorisation required under Italian legislation because, contrary to Community law, Italy makes the grant of police authorisations subject to possession of a licence and, at the time of the last tender procedure in the case which is the subject of the main proceedings, had refused to award licences to companies quoted on the regulated markets. In consequence, Italy cannot apply criminal penalties to persons such as the defendants in the main proceedings for pursuing the organised activity of collecting bets without a licence or a police authorisation.

71. Articles 43 EC and 49 EC must therefore be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a criminal penalty on persons such as the defendants in the main proceedings for pursuing the organised activity of collecting bets without a licence or a police authorisation as required under the national legislation where those persons were unable to obtain licences or authorisations because that Member State, in breach of Community law, refused to grant licences or authorisations to such persons.

72. In the light of the foregoing, it is appropriate to state in answer to the questions referred for a preliminary ruling that:

1. National legislation which prohibits the pursuit of the activities of collecting, taking, booking and forwarding offers of bets, in particular bets on sporting events, without a licence or a police authorisation issued by the Member State concerned, constitutes a restriction on the freedom of establishment and the freedom to provide services provided for in Articles 43 EC and 49 EC respectively.

2. It is for the national courts to determine whether, in so far as national legislation limits the number of operators active in the betting and gaming sector, it genuinely contributes to the objective of preventing the exploitation of activities in that sector for criminal or fraudulent purposes.

3. Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which excludes - and, moreover, continues to exclude - from the betting and gaming sector operators in the form of companies whose shares are quoted on the regulated markets.

4. Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a criminal penalty on persons such as the defendants in the main proceedings for pursuing the organised activity of collecting bets without a licence or a police authorisation as required under the national legislation, where those persons were unable to obtain licences or authorisations because that Member State, in breach of Community law, refused to grant licences or authorisations to such persons.

Costs

73. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national courts, the decision on costs is a matter for those courts. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

RULING

On those grounds, the Court (Grand Chamber) hereby rules:

1. National legislation which prohibits the pursuit of the activities of collecting, taking, booking and forwarding offers of bets, in particular bets on sporting events, without a licence or a police authorisation issued by the Member State concerned, constitutes a restriction on the freedom of establishment and the freedom to provide services, provided for in Articles 43 EC and 49 EC respectively.

2. It is for the national courts to determine whether, in so far as national legislation limits the number of operators active in the betting and gaming sector, it genuinely contributes to the objective of preventing the exploitation of activities in that sector for criminal or fraudulent purposes.

3. Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which excludes - and, moreover, continues to exclude - from the betting and gaming sector operators in the form of companies whose shares are quoted on the regulated markets.

4. Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a criminal penalty on persons such as the defendants in the main proceedings for pursuing the organised activity of collecting bets without a licence or a police authorisation as required under the national legislation, where those persons were unable to obtain licences or authorisations because that Member State, in violation of Community law, refused to grant licences or authorisations to such persons.

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