

Italy Responds to the EC *Gambelli* Case

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INTRODUCTION

RECENTLY WE SAID THAT THE ITALIAN WORLD OF BETTING—and the related legal framework—could have been soon affected by a deep change, according to a revolutionary ruling by the European Court of Justice with regard to the factual monopoly situation in Italy concerning betting activities.¹ The EU ruling enacted on November 6, 2003 (the so-called “*Gambelli* ruling”) criticized Italian Law No. 401/1989, which actually restricts the number of providers of betting services only to those legally authorized by the State, according to a specific concession.

We concluded our article by saying that the future scenarios created in Italy by the EU Court of Justice’s ruling should have been subject to how the Italian Courts received this sentence.

In May 2004, the United Sections of the Italian Court of Cassation (the most important judiciary body competent in interpreting ordinary laws) enacted a ruling in light of the EU Court of Justice decision, confirming that the monopoly of the State is legal.

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ANALYSIS OF THE UNITED SECTIONS OF THE ITALIAN COURT OF CASSATION RULING NO. 23272

With Ruling no. 23272 of May 18, 2004, the United Sections of the Italian Court of Cassation stated that the above mentioned limits provided by the current Italian legal framework (Law No. 401/1989) with regard to the right of providers of betting services—different from those legally authorized by the State according to a specific concession—to organize and provide such services, are legal, even in light of the EU Treaties’ rules regarding the fundamental freedom of circulation of those services in the EU market. The Italian judges confirmed the lawfulness of the Italian rules because the provisions of Law No. 401/1989 are aimed at guaranteeing the public control by the State of the betting activities and bet gathering services for public order purposes. So, as such, these rules can justify the restrictions provided by Law No. 401/1989 with respect to the EU principles of the freedoms of free establishment and free circulation of services in the EU market.

The Italian judges have not complied with the EU Court of Justice’s ruling (a detailed analysis is contained in a previous article by the same author published in *Gaming Law Review*, Volume 8, Number 2, April 2004) about the

¹ See Alessandro del Ninno, *Recent Developments in the Italian Gaming Law Framework*, 8(2) GAMING LAW REVIEW 97 (April 2004).

need to “open” the Italian market of betting games to Italian and foreign providers different from those specifically authorized by the State (the EU judges said that this need is urgent especially considering that Italy is a country where the public authorities encourage consumers to participate in lotteries, games of chance, etc., with the aim of getting financial benefits for the State).

The reasoning of the Court of Cassation has been that the Italian legal framework on betting games aims both at prior and successive checks of the management of lotteries, betting games, games of chance, etc., and the purpose is not that of curbing the demand or the offer of such services, but that of “canalizing” the demand into more checkable systems with the aim of preventing a possible criminal degeneration. So the need of a “public concession” and of a “police authorization” for entering the related Italian market of betting games are—in the opinion of the Italian judges—wholly compliant with the EU Treaties’ rules applicable.

Further, the Court of Cassation also confirms that the ordinary judges have not the power to contest or evaluate the application of criminal sanctions provided by the Italian rules for cases of infringement. Should the ordinary judge evaluate disproportionately the application of criminal sanctions (as done by the Italian judge in the *Gambelli* case, who successively submitted the case to the EU Court of Justice), he would violate his institutional powers and role. In fact, only the Italian Legislator has the constitutional power to do such evaluations.

Finally, following the recent Court of Cassation ruling, the consequences are that for now nothing changes (as, on the other hand, expected after the EU ruling on the *Gambelli* case) in the factual monopoly situation in Italy related to betting activities, and only a future intervention of the Italian Parliament (not actually scheduled) shall eventually be able to introduce different legislative rules in the perspective of a major competition and commercial opening in the sector.