

European gambling policy

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Obstruction of enforcement in Malta

BILL NO. 55



Legal proceedings & background

12% of Malta's GDP = gaming sector

Civil actions in Germany and Austria against gambling operators

Consumers or third party acting for private or commercial purposes
(Consumer Claims Purchasing)

The subject matters are the recoveries of gambling losses suffered

The claims

Unjust enrichment, § 812 (1) first sentence BGB

To obtain something as a result of the performance of another person

without legal grounds

- Invalidity of gambling contracts due to violation of § 4 (4) GlüStV 2011
- The new § 4 (4)GlüStV 2021 is not applicable to gambling prior to 2021
- Prohibition does not violate Art. 57 AEUV
- Claim is unaffected by toleration of online-gambling on the part of the authorities
- No exclusion under § 814 BGB or § 817 BGB
- No plea of loss of enrichment under § 818 (3) BGB

The claims

Compensation for damages due to violation of a protective law, § 823 (2) BGB

To commit a breach of a statute that is intended to protect another person

- § 4 (4) GlüStV as a violated protection law
- § 284 (1) StGB as a violated protection law
- No contributory negligence pursuant to § 254 (1) BGB
- No defence of good faith according to § 242 BGB
- The limitation period ends in 2024

Article 56A
Gaming Act
(„Bill No 55“)

"Notwithstanding any provision of the Code of Organization and Civil Procedure or of any other law, as a principle of public policy:

(a) no action shall lie against a licence holder [...] if such action:

(i) conflicts with or undermines the legality of the provision of gaming services in or from Malta by virtue of a licence issued by the Authority, or the legality of any legal or natural obligation resulting from the provision of such gaming services; and

(ii) relates to an authorised activity which is lawful in terms of the Act and other applicable regulatory instruments; and

(b) The Court shall refuse recognition and, or enforcement in Malta of any foreign judgment and, or decision given upon an action of the type mentioned in sub-article (a)."

Article 3 (1) Remote Gaming Regulations

"The gaming sector in Malta shall be governed and supervised by means of proper regulation of relevant activities and practices in line with the regulatory objectives and governing principles established by this Act."

Article 13 Gaming Act

"Where this Act or any other regulatory instrument prescribe that an activity, of whatsoever nature, requires an authorisation in order to be performed, it shall be an offence against this Act to perform such activity, or to promote, aid, abet or otherwise facilitate such activity unless it is duly authorised."

Principles of European Union law

01 

Primary law and regulations
are binding to member states

02 

European law enjoys
precedence of application

03 

Conflicting national laws are
unapplicable

Article 36 (1)
Brussels I
Recast
Regulation

"A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required."

Article 39
Brussels I
Recast
Regulation

"A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required."

Enforcement under the Brussels I Recast Regulation

Judgments shall be recognized and enforceable in another Member State *ipso iure*

Grounds of refusal (art. 45) checked on application

No examination of the enforcement of a foreign judgement under national law

National law applies only with regard to the enforcement procedure and legal remedies

Violation of the Brussels I Recast Regulation

- Art. 36 (1), 39: No recognition and enforcement of a foreign judgement against gambling operators
- No (legal) regulation of the enforcement procedure
- Art. 45 No. 1 a): No legal regulation of the public policy
 - Art. 18 Maltese Constitution?
 - No economic reasoning possible
 - No fundamental legal principles or value standards protected
 - No exceptional nature of the provision

Violation of the Brussels I Recast Regulation

Exception clause

Narrow interpretation in the european context

Not every deviation to national law violates the public policy

- Recognition and enforcement nationally illegal, but no break of the public policy

But: Bill 55 is applied by the Maltese courts; now Court of Appeal might ask ECJ?

Thank you
for your
attention!

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