

**The advertising blanket ban for gambling
doesn't work!**

Italy as case study among Europe

ITALIAN ADVERTISING BAN FOR GAMBLING

December 1989

Ban for illegal gambling offer and advertising

December 2016: stricter rules on gambling advertising

Radio and TV commercial communications on gambling forbidden every day from the “generalist programs” between 7AM to 10PM.

Compulsory rules in advertising such as “*gambling shall not address minors*” or “*shall not encourage excessive and uncontrolled gambling*”.

July 2018 : total ban for gambling advertising commercial communications and sponsoring

No overlay of tradenames, trademarks, logos

Scratch-cards shall contain dedicated gambling addiction warnings “THIS GAME DAMAGES HEALTH”

Exemption only for the national deferred prize-drawing lottery, offered once a year

The income deriving from the sanctions for violating the ban are to be devolved to a **dedicated fund** for the contrast to gambling addiction

Government to propose an **overall gambling reorganization** “in order to tackle gambling addiction risks” in 6 months

ITALIAN ADVERTISING BAN & THE DOMINO EFFECTS

Italian gambling advertising ban context:

Without any scientific preliminary assessment/research in regard proving the connection between advertising /sponsorship and pathological gambling on the other. No distinction on the games' offer.

Within a tender procedure for new remote gambling licenses granting specifically allowing advertising resulting in loss of participants/a competitive disadvantage to gambling licensees in Italy

No enforcement against illegal gambling operators' advertising is carried out resulting in preventing a clear distinction among legal and illegal gambling offer

2018-2022: Stricter rules and advertising ban notified among the EU States

To quote a few: Germany, Bulgaria, Lithuania, Malta, Spain, Holland and lastly Belgium royal decree to ban gambling ads except those of the National Lottery

Norsk Tipping to self-limit its marketing and to renounce to betting ads on TV. Approach to **moderate advertising** limited to what is necessary for channeling consumers towards monitored gaming networks.

ITALIAN ADVERTISING BAN IN THE EU LEGAL FRAMEWORK

- ❑ **European Commission recommendation no. 478/2014 on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online**

*“A wide range of media contributing to exposure to commercial communications relating to gambling exists, for example print media, direct mail, audio-visual media and outdoor advertising, as well as sponsorship. This may result in vulnerable groups such as minors being attracted to gambling. At the same time, **commercial communication of online gambling services can play an important role in directing consumers to an offer which has been allowed and is supervised**, for example by showing the identity of the operator and by carrying correct information about gambling including the risks of problem gambling, as well as appropriate warning messages”.*

- ❑ **European Court of Justice rulings:** from Dickinger & Omer (C-347/09) ; Stoss (C-316/07); Ladbrokes Betting & Gaming E Ladbrokes International (C-258/08) to Sporting Odds (C-3/17) and FLUCTUS (C-920/19)

“It is true that the regulation of games of chance is an area in which there are significant moral, religious and cultural differences between the Member States, which means that, **in the absence of Community harmonisation, it is for each Member State to assess, in accordance with its own system of values, what is necessary to protect the interests in question.** However, **this freedom obviously does not go so far as to allow the Member States to act in a discriminatory manner in this regard”.**

PROPORTIONALITY ASSESSMENT OF THE ADVERTISING BAN FOR GAMBLING

For the Court of Justice:

“A restriction on the freedom to provide services in accordance with Article 56 TFEU is compatible with EU law only where there is a justifying circumstance standardised in the Treaties or a justifying circumstance developed in the case-law of the Court of Justice (overriding requirement in the public interest). **The main overriding requirements in the public interest for restricting gambling are consumer protection, combating fraud and preventing the incitement to squander money on gambling. However, asserting such objectives does not of itself suffice to justify any type of statutory rule. Where there is a recognised objective for restricting the fundamental freedom concerned, it is necessary to assess whether the principle of proportionality was observed.**”

The proportionality assessment includes:

If the national measure is suitable for ensuring the attainment of the objective pursued ;

it does not go beyond what is necessary in order to achieve that objective;

it reflects a concern to attain it in a consistent and systematic manner.

“In the event that the **suitability is confirmed, the Court secondly assesses the necessity and, where appropriate, thirdly, the appropriateness of the restriction.** According to the case-law of the Court, national legislation is contrary to EU law if that legislation does not actually pursue the objective of protecting gamblers or fighting crime and does not genuinely meet the concern to reduce opportunities for gambling or to fight gambling-related crime in a **consistent and systematic manner**”.

PROPORTIONALITY ASSESSMENT: CONSISTENCY, NECESSITY, APPROPRIATENESS

For the ECJ:

“A system, which derogates from the freedom to provide services guaranteed by Article 49 EC, is capable of satisfying the requirements of that latter provision only if it is **based on criteria which are objective, non-discriminatory and known in advance, in such a way as to circumscribe the exercise of the national authorities’ discretion so that it is not used arbitrarily.** Furthermore, any person affected by a restrictive measure based on such a derogation must have an effective judicial remedy available to them.”

In connection with advertising, the assessment of compliance with EU law must not focus solely on the content of the legal rule, **but must also consider the actual effects of that provision:**

“Article 56 TFEU is to be interpreted as meaning that, **in a review of the proportionality of restrictive national legislation in the area of games of chance, the approach taken must be dynamic rather than static,** in the sense that it must be based not only on the objective of that legislation at the time of its adoption, but also on the effects of the legislation, assessed after its adoption.”

WHERE FROM HERE?

- **Italy: a blanket ban for advertising is not the right solution**

No national assessment before and after the legislation on the achievement consumer protection & gambling addiction objectives.

Visibility advantage for illegal operators (advertising/sponsorship)

Blanket ban violations: only 2 cases against illegal operators advertising (through Google Ads/ Youtube) but 1 repealed by the National Court.

- **Moderate advertising and consistency among EU States**

Social responsible initiatives communications

Spain and Sweden ruled the opposite about forbidding or not promotional activities designed to acquire new customers

Focus on the 4 Ps of Marketing PRODUCT, PRICE, PROMOTION, AND PLACE as key factors involved in introducing a product or service to the public.

The role of the regulators is to regulate and not to give up regulation!

Thank you for your attention!

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