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Den store nordiske spillekrig  
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# Slaget om Europa

Overview of the  
Legal and Financial Battles  
for the  
European Gambling Market



# Structure

1. Framework of European Law
2. Summary of Legal Barriers
3. Justifications
4. Current Legal Position
5. Recent Developments
6. Current & Future Economic Importance



# 1. Framework of European Law

- Arts. 43 and 49 EU Treaty
- Freedom of Movement of Services EFTA Treaty
- Justifications for Maintenance of National Barriers
- Acceptability of Justifications



## 2. Summary of Types of Legal Barriers

- Prohibitions of certain types of gambling
- Legal protection of State monopolies
- *Numerus clausus* of licenses = legal protection of oligopolies
- Profits of gambling to public interest causes
- Prohibitions of cross-border supply / consumption
- Prohibitions of cross-border advertising
- Local domicile, ownership-residence or location



## 3. Justifications for Barriers

### 3.1. Justifications Preferred

- Maintenance of the **social order**
- **Protection of consumers**
- **Protection of moral, religious and cultural values**
- **Conviction that gambling should not be a source of private profit**
- **Prevention of fraud and other criminal activities**
- **Limiting the exploitation of the human passion for gambling**
- Authorisation of gambling only with a view to the collection of **funds for charity** or for other benevolent purposes



## 3.2. Acceptability of Justifications

- **Disguised revenue protection**
  - Funding of charitable and public interest activities, to the discharge of the public purse, must be a benefit incidental to other purposes
- **Proportionality**
  - Barriers may not be more restrictive than what is really needed in order to achieve the objectives cited in the justifications
- **Suitability**
  - Circumstances must show that the Member State is really concerned with achieving the objectives cited
  - Evidence must be adduced to prove that restrictions on free movement are really effective in achieving objectives and are imposed and applied in a coherent and systematic manner



## 4. Current Legal Position

- Fiscal policy objectives are not acceptable justifications
- ECJ requires objective and critical assessment of justifications advanced by Member States
- Legitimate to suspect that some Member States are disguising fiscal objectives
- Many national courts are failing to make real assessments of suitability and proportionality
- Relevance of a license issued by another Member State has not yet been authoritatively determined



## 5. Recent Developments

- Germany
- Italy
- Netherlands
- USA
- International



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## 6. Current & Future Economic Importance



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