

# A Maltese Court of Appeal challenges the monopoly of the PMU ✖

*A report from Thibault Verbiest, founder of ULYS, Brüssel/Paris*

The Maltese Court of Appeal has refused to enforce the French Court of Appeal decision prohibiting a Maltese established bookmaker to offer its sports betting services in France. Zeturf, a bookmaker duly registered and incorporated in Malta provided French internet users the possibility to bet on horse races, whereas this type of gambling services falls under the exclusive right of the PMU.

In its decision of 8 July 2005, the Court of Paris followed the PMU's requests and argumentation. It pointed out that "the management of organization has been entrusted to the PMU by the companies authorized to be active in the field of pool betting outside the hippodromes, as it was provided by article 27decree no 97-456 of 5 May 1997 modified by the decree no 02-1346 of 12 November 2002".

Consequently "by taking online bets without proper authorisation Zeturf inflicts an obviously illicit perturbation to the PMU.

The Court then ordered "Zeturf Ltd to put an end to the activity of taking online bets on horse races organised in France, this on a penalty of € 15 000 per day."

The French Court of Appeal upheld this judgment by a January 2006 decision.

PMU went to the Maltese Court in order to have the French judgment recognized and enforced in Malta, under EC Regulation

44/2001 on the jurisdiction and the recognition and enforcement of judgment in civil and commercial matters.

Contrary to the PMU's request, the Maltese Court of Appeal concluded that the matter was not in the scope of the Regulation since it was of an administrative nature.

Article 1 of EC regulation 44/2001 provides:

*"This regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs, or administrative matter."*

The judges first determined the nature of the matter:

- Was it a civil and commercial matter or an administrative matter?
- If the matter was of an administrative nature, should the regulation be applied and could the French case be recognized by the Maltese judges?

The Maltese judges based its decision on the case-law of European Court of Justice which considers that:

*"Although certain judgments in actions between a public authority and a person governed by private law may come within the scope of the Brussels Convention, it is otherwise where the public authority is acting in the exercise of its public powers" (ECJ : 14 November, 2002, Gemeente Steenberg v. Luc Baten ; C-271/00 n° 30)*

Secondly, the Maltese Court referred directly to the French Court of Appeal decision:

*"Whereas concerning the first point, the French provisions which do not have an economic objective (the PMU is controlled by the state and is a non-profit making*

*organization as is specified in article 3 of the articles of association) are intended to protect French public policy” (Paris Court of Appeal 4 January 2006)*

The judges considered that the primary scope of the PMU is to protect and oversee French public policy with respect to horse betting. They concluded that PMU is an entity of an administrative nature because its aim is to protect French public policy.

The Court is of the opinion that although the PMU is registered as a commercial company, the law under which it is established and its scope of application grant the company rights and obligations which are far more extensive than the rights and obligations applicable between private individuals.

Moreover, according to the Maltese Court the PMU did not act within the sphere of private law which regulates business, whether civil or commercial, between private persons, but rather in the sphere of public law.

The subject matter of the judgment of the Paris Court of Appeal decision, though apparently of a civil or commercial nature, fell therefore within the realm of public law.

Consequently, the Maltese court refused to enforce the decision condemning Zeturf.

This case and the reasoning of the judges come as a surprise.

It may jeopardize other Member States' attempt at protecting their monopoly and defending their interests before a civil court.

It remains to be seen whether other Member States will follow the same reasoning as the Maltese judges in online gaming matters.

It is not unlikely that Great Britain, as a country of Common

Law, will do so.

As a reminder, France is facing an infringement procedure by the European Commission based on its restrictive gaming legislation.

To be continued...