

Tuesday, August 1, 2006

Q & A: Francesco Portolano

by Rob van der Gaast

Hundreds of gambling-related Web sites are being blocked in Italy, which means plenty of food for lawyers. With that in mind, we recently interviewed Francesco Portolano of Studio Legale Portolano Colella Cavallo. With offices in Rome and Milan the firm employs 13 professionals, including Portolano, who turns 38 this week. Portolano went to law school in Rome when he was 17 (two years younger than the average law student). He attended LUISS (Libera Università Internazionale Guido Carli) and graduated in 1991 at 21. He practiced until 1996, when he went to University of Chicago Law School for a Master of Laws. He worked part-time during his attendance there and stayed in Chicago for two years after receiving his degree.

Career wise, his specialty was corporate law (M&As, shareholder disputes, corporate governance, etc.) and media law. He began mainly with the transactional side of media work, and then ended up working on a lot of other things (regulatory, litigation, lobbying, etc.) as "supervising attorney." He worked for nine years at Baker & McKenzie in Rome, for three years in Chicago and again in Rome. He then left to found his own firm with three associates, Domenico Colella, Manuela Cavallo and also Eugenio Prosperetti.

IGN: How did you get involved in the gambling industry?

Francesco Portolano: More than 10 years ago, a Taiwanese client of my prior firm wanted to open bank accounts in Italy where people wanting to play in the client's casino abroad could deposit money and withdraw wins. This was the time when Internet did not exist (or at least not for the general public), so it was all very "physical." There was an Italian bank account, with an Italian bank, with an Italian person responsible for the bank account, and so on. Our conclusion was that all this could have been deemed illegal and could have even have lead to criminal sanctions (possibly also for the players), seizure of the bank account, etc. Needless to say, the client did not go ahead with the project.

I have increasingly worked over the years on many other aspects of the gaming industry. Another fun project was relating to an English client intending to offer a television pay-per-play platform of skill-and chance-based games. This was already in the internet era (about five years ago) and we had to overcome the complexities of Italian legislation on games.

IGN: Who are some of your clients in the gambling industry?

FP: We do not disclose client names since this is not allowed by Italian professional ethics. More importantly, we do not publicly disclose our clients' names since we do not believe it is professional and, even more importantly, because in many instances they come to us for cutting-edge projects, which they do not want to be publicized. Many lawyers



[More Articles by Rob van der Gaast](#)

See Also

[Insights: Italy's Dueling Verdicts](#)

[Italy's Gambling Blacklist](#)

[Challenging Italy's I-Gaming Policy](#)

[Italian Internet Blockage May Impact SmartCity Project](#)

Lower Your Subscription Costs!

Refer a new subscriber to IGN and receive an extension to your current IGN subscription or a discount when you renew.

[Click here](#) to learn more.

Feedback

How useful did you find the article "Q & A: Francesco Portolano" to be?



very useful



somewhat useful



not useful

Submit

do not care about all this; we do.

I can tell you, however, some of the things our clients do or want to do. A foreign client is working on setting up a call TV channel offering games to callers of a premium telephony number and giving the possibility to win a prize.

We have also worked (and work today) on all sorts of TV and internet play platforms, for skill games and chance-based games. Since Italian legislation on pay-per-play is extremely restrictive, we also work on prize promotions and sweepstakes, which are used in many instances as a substitute to "gaming" platforms. In other words, given recent openings in the legislation and the current positions of the authorities, there are increasing opportunities for companies to offer gaming solutions using the "prize promotion" tool. This is rather delicate and complex, but if properly executed, if all legal documents are properly drafted and in place, if the mechanism is transparent and consumer-friendly, then this should work as a good "surrogate" of pure gaming solutions.

IGN: [What is the latest information on Astrabet and other blocked gambling sites?](#)

FP: Astrabet lost the case in appeals. Frankly, we expected this since the interim measure granted by the court seemed not to rest on very solid ground. The court issued the interim measure in favor of Astrabet, arguing that there was no connection between Astrabet and Italy. It used a foreign bank account, it had a Maltese license, etc. and therefore, according to the court, the blacklist could not apply to Astrabet. The impression is that the court did not really go in depth on the issue of jurisdiction (but this is not surprising, since interim measures are decided on a "summary basis"). The case is now proceeding on the merits, but it is difficult to assess whether it will actually lead anywhere. Most likely it should not.

The list of blocked Web sites was updated on May 23. The list includes now just fewer than 600 Web sites--a slight increase from the first list (published in the beginning of February), which had over 500.

There have not been any significant developments in the last month or so. There are several court cases and proceedings pending. In addition to Astrabet, there is a case pending before the Administrative Court of Lazio as well as a warning from the EU commission enquiring about the possible (and very likely) breach of EU law by the blacklist.

In addition, there is increasing turmoil on the side of the Internet service providers, since they are the ones who are asked to enforce the blacklist. In addition to "philosophical" complaints, ISPs have also very practical concerns.

On the one hand, ISPs naturally tend to challenge any provision which imposes on them some form of "content monitoring" obligation. This is not really the case for the blacklist, since ISPs are not required to scout the internet for gaming websites, rather they must block access only to

those blacklisted. Nevertheless, the blacklist does seem to go slightly in this direction, in that it imposes a censorship based on content (which is very seldom found in Italy).

On the other hand, ISPs are also concerned about the practical aspects of this: Gaming Web sites tend to proliferate, and theoretically, the list could be updated very frequently, which would impose an additional burden on ISPs.

IGN: Is it correct that Stanley International Betting was taken off the Italian blacklist? How could this happen? And if it is correct, then shouldn't the other blocked Web sites be treated on equal terms?

FP: This does not seem to be the case. The last version of the list includes www.stanleybet.com, www.stanleycasinos.com and www.stanleyinstants.com.

Having said that, it may be that the Italian monopolies authority is willing to negotiate with blacklisted Web sites which intend to obtain an Italian license.

IGN: On, May 16, 2006, Mr. Damaso Ruiz-Jarabo Colomer, Advocate General at the European Court of Justice, delivered his opinion on the *Placanica* case. In the *Piergiorgio Gambelli and Others* case, the then Advocate General was also positive, but the judges decided in a different way. When and what do you expect of that verdict?

FP: The ECJ judges did not decide in a different way. They did state that the Italian law restrictions seemed to breach EU law in that they did not seem grounded on the need to reduce gambling and gaming (rather, the court argued, it seemed that the Italian state was actually pushing gaming for tax revenue purposes). They seemed to be disproportionate, etc.

It has been the Italian Corte di Cassazione which has argued that the Italian gaming restrictions are grounded on the need to control interference by organized crime and similar arguments. Lower courts have largely disagreed with this. (And in Italy they can: Higher courts decisions do not have any binding authority.)

In *Placanica* now the same should happen. The conclusions of the Advocate General have reiterated the principles found in *Gambelli*, and actually the Advocate General seems to suggest that a second "twin" case is necessary since the Italian Corte di Cassazione did not heed the *Gambelli* decision.

In the longer term, unless EU law changes, it is quite obvious that the Italian government should change its approach to this. In other words, it is rather clear, given the present EU legal framework, that any restrictions imposed by Italian law on EU gaming operators are doomed to be found in breach of EU law.

IGN: The famous Italian *Gambelli* case (C-243/01) created only more

chaos and lack of clarity. But it means good times for lawyers, yes?

FP: The best scenario for lawyers would be a thriving gaming industry, open to competition. Lawyers would have a lot of work in ensuring compliance with gaming regulations, working on transactions and so on. Take England for example: There is there a significant number of gaming lawyers there as a reflection of the existence of a relatively open gaming market. In Italy, there are only a handful of lawyers who focus on this.

IGN: What is the most important gambling verdict for Italy?

FP: I would say that the lower courts cases finding in line with *Gambelli* are extremely interesting. First of all, they openly disagree with the Italian Corte di Cassazione, and they expressly say so, which is not very common. It is very interesting to read these decisions, since they are well motivated and it does show from the reasoning that these lower court judges are aware of the importance of their role. In addition, the fact that most lower courts (almost all of them) are actually acquitting individuals, contrary to the indications of the Corte di Cassazione, shows that there is a cultural shift towards a more positive approach towards gaming. Traditionally, as can be expected, the Corte di Cassazione is slower in adapting to the changed cultural climate.

IGN: And what else is still in the legal pipeline?

At a legislative level, includes a very significant step forward has been taken by the Italian government very recently. As part of a package of urgent measures, the government has issued a Law Decree at the end of June providing for a broad scope of deregulation and liberalization measures. As part of this, article 38 of the Law Decree contains very interesting provisions for EU and EFTA and event third party States operators. Paragraphs 2 and 4 of Article 38 (respectively for non-horse and horse betting) mandate the Italian Monopolies Authority to issue regulation to set forth the modalities of distribution of betting within certain criteria, including among other things, the possibility for EU and EFTA and third party states operators to collect bets subject to meeting the reliability requirements set forth by the Italian Monopolies Authority.

There are many things to say about this: First of all, the incumbent government has made a 180-degree shift in attitude towards foreign operators: foreign operators are going to be no longer automatically "illegal," but they will have to comply in some way with Italian law. The government may have taken the approach that, rather than fighting a rearguard battle (and a losing one) against foreign operators, it is better to master the phenomenon and maybe make some money out of it too!

There remain uncertainties as to the scope of the future regulation. Will it apply to land-based betting and gaming or to on-line betting and gaming, or to both? This is not clear from the Law Decree and theoretically both terrestrial and on-line gaming could be included.

Although not much is known presently about how this will work, this, again, is definitely something that should be seen as a major legal

development. This is not to say that the legislation coming out of this will be perfect; there will certainly be areas for substantial improvement and areas where restrictions (maybe disguised) for foreign operators will remain. Nevertheless, any change will be positive, even if the scope of this innovation will not be a 100 percent liberalization. It is certainly a first crack in the wall of impenetrable restrictions for foreign operators.

One final word of caution: The Law Decree has been approved by one branch of Parliament (the Senate) only on July 25. Now the second branch of Parliament, the Chamber of Representatives, will need to approve it, possibly changing some aspects of Article 38, although this is rather unlikely.

IGN: what was your most important gambling case?

FP: As I said, I am much more a transactional lawyer. I do not really enjoy court work. I let others in the firm handle the dirty jobs!

IGN: Is there any chance that a free market for sports betting will come into existence in Italy?

FP: Again, *Gambelli* in itself is a gigantic step forward. Domestic legislation has changed in Europe over the last forty years also through pressure from the Commission and ECJ (as for example in the case of competition laws). There is no doubt that the same will happen in the field of gaming and gambling, and is actually in my opinion already happening: as said, case law in Italy is already saying that restrictions to foreign operators are illegal.

IGN: What do you think of the role of the Commission? With daily gambling-related court cases, it is a te mass of cases in Europe, and the Commissioner announces just some infringements, which will lead after many years just to nothing? How do you see that?

FP: The Commission plays a very important (and positive) role. One cannot expect states to fall in line immediately. The harmonization of legislation is a long process, where habits which have lasted for centuries need to change. So for gaming, it has always been deemed reserved to the state, and now one cannot expect that in one year things change. The Commission and the European Court of Justice are working relatively well, in my opinion, in this framework. Of course, the Commission is a political subject too, so there is politics involved as well, but this cannot be avoided, and maybe it is not even a negative role. I am an optimist. I see the bottle half full. Ten or 15 years ago, the internal Italian debate that ensued after *Gambelli* would have been impossible.

After all, most likely the latest developments by the Italian government (the possibility for foreign operators to collect bets in Italy, as introduced by the Law Decree discussed earlier) are a result also of pressure at EU level.

IGN: So we will see legal positive developments in Europe?

FP: *Gambelli, Placanica*, infringement notice to various states . . . What more would you want?

IGN: What is your biggest passion?

FP: Fortunately I have an incredible passion for what I do: practicing law, which takes a large portion of my time. Now that I have two little kids (two and six months) I work less on weekends (and more during their sleeping hours). I also like contemporary history (in particular history of World War II).

FROM THE EDITOR: [Tell us what you want to read about in IGN.](#)

About the Author

Rob van der Gaast has a background in sports journalism. He worked for over seven years as the head of sports for Dutch National Radio and has developed new concepts for the TV and the gambling industry. Now he operates from Istanbul as an independent gambling research analyst. He specializes in European gambling matters and in privatizations of gambling operators. Rob has contributed to IGN since Jul 09, 2001.