

Part II

Analysis of the EU Gambling Case Law

The presentation of the legal framework (Part I) provided the basis for a detailed analysis of the gambling case law of the Court of Justice in Part II. This analysis will follow the structure of a classic judicial test: *scope of application*, *justification grounds* and *proportionality* of measures restricting fundamental freedoms. The legal analysis is, however, strongly informed by a perspective of *empirical evidence on gambling addiction*. As both Internal Market Courts apply the same law in substance, the approach chosen by the Court of Justice is contrasted with that of the EFTA Court throughout Part II.

Chapter 6 inquires several dimensions of the *scope of application* of EU law in relation to gambling. Chapter 7 examines the *justification grounds* accepted by the Court of Justice. *Public morality* is a particularly interesting and often argued justification ground. This chapter discusses the relationship of the state towards gambling. Is public morality a *suitable perspective* to protect consumers from gambling-related harm?

Chapters 8 and 9 are strongly related. In the presentation of the general law on fundamental freedoms, it was shown that the European High Courts may, in certain situations, grant *discretion* to national authorities. This *a priori* applied judicial self-restraint is nevertheless combined with a *review of the proportionality* of the measures. Accordingly, Chap. 8 examines the *principles and criteria* that typically steer the use of the margin of appreciation and whether the gambling jurisprudence followed these criteria. Chapter 9 subsequently inquires to which extent discretion was combined with a proportionality review. In this context, the Court of Justice has often expressed its *views on games of chance and gambling addiction*. Following an introduction to the *state of research* on gambling addiction, it is analysed to which extent the views of the Court are supported by empirical evidence, and how these perceptions have ultimately affected the Court's practice of the proportionality review.

Chapters 10 and 11 represent two excursions providing a legal assessment of the potential roles of the *precautionary principle* and *EU fundamental rights* for the gambling case law.