



**The European Casino Association (ECA) comments and proposals  
for amendments to the European Parliament's IMCO draft report by MEP  
Ashley Fox on the Communication from the Commission: Towards a  
comprehensive European Framework for online gambling (2012/2322(INI))**

This letter is addressed to:

MEP Ashley Fox  
Shadow Rapporteurs of the IMCO Committee  
Other interested MEPs

Brussels, March 25, 2013

Dear Sir or Madam,

The European Casino Association<sup>1</sup> (ECA) welcomes the work of the IMCO's committee on the draft report as regards its first point: Recognising the Member States rights to determine how the offer of online gambling services is organised and regulated. Due to the known and recognised risks, our sector requires special attention, adapted regulations to deal with the inherent dangers in gambling in the most appropriate way, taking into account the cultural, social and historical features from each Member State. The specificity of this sector as well as the consequences that derive from it must be taken into account, including on consumer protection and responsible advertising. Should this not be the case, the dangers posed by gambling will not be tackled in a sound and responsible way.

The ECA also supports the proposal to facilitate administrative cooperation and cooperation between gambling regulators and of course the principle of protecting consumers and citizens, minors and vulnerable groups in particular.

As a general remark, it would seem that the European Commission's Communication, as well as the European Parliament's draft report are missing the right priorities to the ongoing online gambling debate: (1) the fact that gambling is not a *normal* economic service due to its special nature; and (2) the need to fight illegal online gambling offers.

Over the years, Court judgments, the European Commission and the European Parliament have established that gambling is of special nature and should therefore not be considered as a normal internal market economic service. Gambling is a sensitive sector not only because of the very different national cultural, moral, ethical, religious and societal priorities of the different Member States, but also because of the health- and fraud-related issues that are specific to gambling services. In line with the

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<sup>1</sup> The European Casino Association (ECA) Founded in the early 1990s as the European Casino Forum, the ECA has grown steadily over the years and today includes members from nearly all EU Member States, as well as Switzerland and Serbia. The ECA members have decades of experience represents national associations and individual operators of licensed land-based casinos in Europe. To date, the ECA represents the interests of almost 800 casinos and around 55,000 employees in 23 countries across Europe and expertise in the casino industry. Based on the principles of integrity and professional business management, the casino industry in Europe has moved forward in a gradual and responsible manner to, over the years, adjust to economic, regulatory and technological changes in society. The means of distribution of our services have changed over time: from a single land-based source the distribution method has in some countries expanded to the internet as well as other multiple technology-based channels.

Subsidiarity principle, it is well-known that the Member States are best placed to protect their consumers by channelling the demand towards responsible, highly regulated operators. Effective and appropriate social order and health objectives are met through the control of the offer by each Member State. Licensed operators can easily be monitored at national level, and, if necessary, interventions can be made to change the scope or quantity of the offer.

ECA would also like to warn against harmonisation trends at European level in this sensitive sector. This could mean leading to the lowest common denominator in terms of consumer protection. Many Member States and responsible actors in the sector risk seeing their expectations thwarted. The elaboration of a common set of principles aimed at protecting consumers, the declared aim of the first Recommendation announced in the European Commission' Communication, is certainly a laudable goal. However, it appears to us that this process might be missing the right priorities.

Illegal gambling is a major issue in Europe in terms of consumer protection and fraud prevention. Illegal operators, being illegal, are not abiding by any of the consumer protection, anti-money laundering, and anti-fraud measures, nor do they pay taxes in their respective jurisdictions. The fight against illegal gambling and implementation of enforcement measures are therefore the key elements to ensure a safe and healthy gambling market in Europe.

ECA looks forward to the European Commission's support for the adoption of measures ensuring a high level of consumer protection by Member States. However, such measures can only apply to legal operators. They will thus obviously have no effect on unlicensed operators, who free themselves from complying with the laws of the Member States where they offer their services by operating out of tax havens. These measures will likewise have no effect on the gambling services they offer, which do not offer any guarantee to the European consumers in terms of protection of assets, the payment of winnings, the integrity of games or guarding against excessive gaming.

In light of these preliminary remarks, the ECA would like to comment on the following proposals of the Draft Report:

EP Rapporteur's proposal	suggestion
Point 2. Welcomes the Commission's <b>priority</b> to make substantial progress on the infringement cases and complaints against a number of Member States, some of which have been dormant since the beginning of 2007;	Deleted

**Justification**

The word "priority": The "priority" in online gambling policies should be elsewhere: If the goal of the European Commission is to enhance consumer protection and the fight against fraud, the priority should not be to conduct infringement proceedings, but rather enhance the fight against illegal gambling operators, which do not abide by any consumer protection rules, any anti-money laundering rules, any fraud prevention measures, nor any taxation obligations; The illegal operators do not offer any guarantee to the European consumers in terms of protection of assets, the payment of winnings, the integrity of games or guarding against excessive gaming; and, their cross-border provision within the EU and from third countries is facilitated by technological advancement. Any consumer protection measure or anti-fraud measure will have no effect on illegal gambling services. The Commission and its services do not seem to show that the fight against illegal gambling offers is a priority by addressing it. The widespread availability of illegal gambling, unlike the regulation of licensed operators that falls within the sole jurisdiction of the Member State(s), is a cross-border problem, requiring therefore a strong and joint response at the level of the European Union.

EP Rapporteur's proposal	suggestion
9. Believes that national regulators should be able to agree on <b>equivalence clauses</b> that would facilitate the application of national licenses including agreement on technical standards and gaming equipment;	Deleted

**Justification**

The ECA does not support the proposal for “**equivalence clauses**”: This would be equivalent to applying the principle of mutual recognition while this principle does not apply to the gambling sector. The CJEU has repeatedly recalled its non-application in the gambling sector. Just to mention one of the very many examples hereof: “Member States are free to set their own policy objectives on betting and gambling and define in detail the level of protection they deem appropriate for their citizens (so-called Liga Portuguesa case: C-42/07; § 59). Member States have the right to restrict the number of operators, types of games on offer and volumes of it, thereby obliging the Member States to establish non-discriminatory and transparent procedures only if purely commercial operators, not subject to strict state control, receive an access to such market. This is standing jurisprudence of the CJEU.<sup>2</sup>

EP Rapporteur's proposal	suggestion
Points 13 and 16: relating to EU-Self exclusion, EU registration or identification systems.	Deleted

**Justification**

While the ECA encourages all possible measure to protect consumers, it does not share the view that pan-European registration, identification, and self-exclusion systems are the best way to enhance consumer protection. These systems would lead the way towards the first steps of EU harmonization which is of course precisely what is not appropriate for such a sensitive sector. Due to the different national cultural and societal priorities, Member States remain best placed to protect their consumers. Harmonization at European level could mean leading to the **lowest common denominator** in terms of consumer protection. Many Member States and responsible actors in the sector risk seeing their expectations thwarted. The elaboration of a common set of principles aimed at protecting consumers, the declared aim of the first Recommendation announced in the European Commission, is certainly a laudable goal. However, it appears to us that this process might be missing the right priorities. Please also see explanations re. “Priorities” under the justification box of point 2.

<sup>2</sup> CJEU judgment of 8 September 2010, C-46/08, Carmen Media, ECR 2010, not yet published,, para. 103-104, CJEU judgment of 3 June 2010, C-258/08, Ladbrokes, ECR 2010, para. 43-44 and CJEU judgment of 8 September 2010, C-316/07, C-358/07, C-359/07, C-360/07, C-409/07 and C-410/07, Markus Stoss and others, ECR 2010, not yet published, para. 86, - CJEU judgment of 8 July 2010, C-447/08 and C-448/08, Sjöberg and Gerdin, ECR 2010, not yet published, para. 29-46.

EP Rapporteur's proposal	suggestion
<p>Point 17: Stresses the fact that online gambling is a non-cash based environment and given the dependency on third party financial service providers additional safeguards against money laundering can be found in the regulatory framework of EU established and licensed financial service providers;</p>	<p>Suggestion to re-phrase so as to emphasise the fact that anti-money laundering rules must be applied by all the gambling operators, including online operators.</p>

### **Justification**

Regarding the European Anti-Money Laundering (AML) directive: ECA supports the extension of the scope of the AML Directive to cover all gambling activities.

- Rationale: Up to now, only land-based casinos and their online subsidiaries fell under the scope of the directive. As a result of the implementation of these AML rules, within the European casino industry, money laundering risks barely no longer exists nowadays. Therefore, ECA supports the view that these standards should be extended to all forms of gambling, specifically to the sectors where it has been proven that the risks of money laundering are higher.

This being said, in point 17, it is mentioned that due to the non-cash-based environment, only third party financial service providers should be addressed by EU regulations (and not the online gambling operators themselves). ECA thinks that this statement undermines the fact that AML rules and standards should be applied to all the gambling sector.

- Rationale: Money Laundering can be conducted either by the operator (owner, management, or employees), or by the consumer abusing the operator's gambling offers.
  - In the first case, when operators launder money: this is certainly one of the major risks, i.e. that people with criminal backgrounds run gambling operations or have shares in such businesses. This opens the way towards different possible money laundering scenarios, such as when the operators, the management and/or the ultimate beneficiaries are criminals or use their operations for crime. These "criminals" could simply add proceeds from crime to the results of the games. Paired with very low taxation, as we can find in some European countries, this is the ideal vehicle for money laundering. Moreover, operators or their employees can manipulate the outcome of the games, steal, misuse, sell, or change the data, identities, credit card data, and other information. Strong and close (national) supervision of the management, employees and owner of gambling operations is therefore a *sine qua non* condition to avoid money manipulations and abuses by all operators, including online operators,
  - There are also many ways to launder money through online gambling operations by customers or by a combination of customers and the operators/management or their employees. In this second scenario, consumers abuse the system and can launder large amounts of money by transferring their money to any bank account in the world. Therefore, precisely because there is no cash-based environment, AML regulation is required as it guarantees that every player is clearly identified, has only one player's account etc. Third parties are not in a position to recognize if money transfers occur from gambling or not.
  - Therefore, relying on the third parties misses the point.

***What is clearly missing in the draft report?***

- First priority: the need to fight illegal gambling, which goes hand in hand with effective enforcement.
- Second priority: gambling is not a normal economic service and should therefore not be treated as such.
  - Compliance with the Treaty: the way it is written in the draft report should be different so that it does not give the impression that we think that online gambling is a normal economic service, while it is not.
- Gambling operations need close supervision and control.
- Subsidiarity principle: should be underlined, as well as references to the different cultural, ethical, moral, religious and societal particularities of the Member States, and the fact that the Member States should have the right to determine the way gambling is regulated.
- A neutral tone: it is regrettable that the draft report has so clearly been influenced by the online gambling lobby; and it is alarming to see how certain Members of the European Parliament show so much support for illegal companies, who do not pay any taxes, and more importantly, who do not abide by any laws protecting consumers or preventing fraud.

We remain at your disposal should you have any questions or comments.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Goudsmit', with a stylized, cursive script.

Ron Goudsmit

Chairman ECA

***Additional general remarks:***

- Commercial online gambling companies target consumers across all EU Member States without being in possession of the required national licence, i.e. in clear violation of EU law.
- It is a common misconception that such illegal cross-border provision of online gambling services originates mainly from non-EU countries. The problem mainly originates from within the EU, hence the need for EU action to help solve the problem.
- Three examples:
  - In France, which has partially opened its online gambling market in 2010 and got the European Commission's approval for it, the regulator sent many hundreds of official warnings to online gambling operators, which are not licensed in France but still offer games of chance to French citizens. 80 per cent of these operators are based in the EU, i.e. Malta and Gibraltar.
  - The largest commercial online gambling operator in Europe makes 25 per cent of its revenue in Germany, a country in which online gambling is completely prohibited, except in one out of 16 states, in full compliance with the jurisprudence of the CJEU and Germany's highest administrative court.
  - Same situation in Greece where online gambling is also completely prohibited, to all, including state operators: Sportingbet (a member of the Remote Gambling Association, RGA) and bwin.party each account for around 20 percent of the online gambling market total.
- Member States have not been able to contain these illegal operations on their own. National authorities do not have the effective control over online gambling operations as they have over land-based gambling operations.
- The European Parliament must insist on this point in its upcoming resolution.
- For reasons of consumer protection and public order but also to secure the public interest objectives, it is absolutely crucial that the holders of a national license - who abide by the law and pay taxes - are protected from illegal competition. Here, coordination at the EU level is clearly needed.
- Enforcement measures should be accompanied by the introduction of a regulatory principle whereby a gambling company can only operate (or bid for the required national licence) in one Member State if it does not operate in contravention of the law in any other EU Member State.