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ECA recommendation on minimum standards of consumer protection measures for online casino games

One of the main reasons why EU Member States impose restrictive conditions on an (online) gambling offer within their territory is **to protect consumers against the high risks (online) games of chance entail**. The Member States aim to prevent gambling addiction, to protect minors and the most vulnerable people in the society and to protect the consumer against crime and fraud. Casino games, in particular entail high risks of fraud (money laundering, etc).

That games of chance indeed entail high risks has been recognised by the ECJ in the *Liga Portuguesa de Futebol Profissional* case and by the WTO Appellate Body in the dispute between the US and Antigua and Barbuda regarding cross border gambling services.

In this WTO dispute, the WTO Appellate Body has stated that the provision of online games may facilitate the laundering of the proceeds of crime because of the volume, speed and international gaming transactions conducted at distance, combined with the extra-territorial location of service providers. In addition, the risk of fraud is increased because on-line games can be set up very rapidly, so that dishonest operators can appear and disappear in a few minutes.¹

In the recent ECJ ruling in the *Liga Portuguesa de Futebol Profissional* case, the ECJ has acknowledged that *games of chance accessible via the internet involve different and more substantial risks of fraud by operators against consumers compared with the traditional markets for such games, because of the lack of direct contact between consumer and operator*.²

In the longstanding case law of the European Court of Justice regarding gambling services, **consumer protection is recognised as an objective of general interest** of a restrictive gambling policy, which can justify the restriction of the free movement if it is also non-discriminatory and proportionate.³

Moreover, it is for each Member State to determine, in accordance with its own scale of values, what is required to ensure that the public interest objectives pursued, such as consumer protection, are achieved. **Member States are free to define in detail the level of protection sought**.⁴

Therefore, Member States have the discretionary power to set the consumer protection standards they believe are necessary and appropriate to attain the desired level of protection of the consumers within their territory.

¹ Report of the WTO Appellate Body, *US – Measures affecting the cross-border supply of gambling and betting services*, WT/DS285/AB/R, 7 April 2005, par 327.

² See ECJ judgment of 8 September 2009, *Liga Portuguesa de Futebol Profissional*, C-42/07, not yet published, par. 70.

³ See *Schindler* case, par. 57-60; *Läärä* case, par. 32 -33; *Zenatti* case, par. 30-31, *Gambelli* case, par. 67, *Placanica* case, par. 46 and *Liga Portuguesa de Futebol Profissional* case, par. 56.

⁴ See i.e. *Placanica* case, par. 47-48 and *Liga Portuguesa de Futebol Profissional* case, par. 57-59.

Furthermore, the ECA strongly emphasises the ECJ's findings as regards the need for every operator to obtain a license from the country where he wants to offer his services, in accordance with its national or regional legislation. This allows the national competent authorities to subject operators to their respective rules, regulations and limitations and to control that their national standards are being respected.

In order for online gambling services to be offered in a responsible, controlled and safe way, a national licensing system will however need to be combined with an effective enforcement of national legislation.

It is of utmost importance that consumers are guaranteed a certain minimum level of protection in every EU (and EEA) Member State, for all online games of chance. Therefore, the **ECA urges the EU institutions to set minimum standards regarding consumer protection in the sector of online gambling, which should be introduced in the licensing requirements for operators at a national level.**

The following consumer protection measures are proposed by the ECA as minimum standards for any online offer of casino games:

- Mandatory player registration with verification system
- Minimum age requirements to participate in online casino games with verification system
- Prohibition for an operator to offer games on credit
- The possibility of self-exclusion and exclusion by the operator, including the recognition of existing national self-exclusion lists
- The possibility for consumers to test themselves on problem gambling
- Link on website of operator to centres that can help the consumers regarding their gambling problems.
- Warning of problem gambling risks on website of operator
- Mandatory training of personnel/software tools to analyse the gambling behaviour of consumers, in particular changes in behaviour indicating a gambling problem
- No excessive and aggressive advertising. It is up to the national competent authorities to determine what excessive and aggressive advertising is and to set the standards, according to their own moral and cultural traditions. Optional system for personal limits on gambling must be foreseen (such as maximum stakes or maximum amount of gambling sessions per day/month, indication of the duration of gaming sessions, etc.).

These can only be **minimum standards, which in any case need to be abided with by every EU (and EEA) Member State and by every operator offering online casino games in the EU and EEA.** In line with their discretionary power in the field of gambling, Member States must however be able to impose additional and more restrictive measures, in accordance with the aforementioned ECJ case law.
