



Brussels, 30 October 2006

## **Gambling Services require a Special Framework**

### *The European Casino Association's Viewpoints on Rules on Gambling*

The issue of gambling in Europe has been addressed by various EU policy makers in 2006. Both representatives of the European Commission and the European Parliament have recently made statements with regards to the structure and shape of gambling markets in the European Union.<sup>1</sup>

The ECA and its members believe that, with due respect for subsidiarity, it is necessary to approach certain aspects of gambling services from different political and legal perspectives.

As a matter of fact, the issue of gambling is complicate and requires a multi pillar approach:

- There are internal market concerns (DG MARKET)
- There are taxation problems, especially resulting from unfair and illegal off-shore activities requiring both an internal (DG TAXUD) and external approach (OECD)
- There are consumer and health issues (DG SANCO)
- There are serious trade issues (WTO, GATS & DG TRADE)
- There is a need for a stronger cooperation amongst Member States to address the growing concern of infiltration of the sector by organised crime (DG JAI; EU cooperation under the third pillar of the EU)
- There are aspects of foreign and security policy, interaction with the US in the framework of the Unlawful Internet Gambling ACT (DG RELEX, EU cooperation under the second pillar of the EU)

In the light of the related discussions, the European Casino Association (ECA) would like to provide this document as a reference for information on key aspects of gambling.

The ECA would be happy to provide additional information on the gambling sector upon request.

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<sup>1</sup> E.g. ORAL QUESTION O-1/06, by MEP Arlene McCarthy, Subject: Gambling and sports betting in the Internal Market; WRITTEN QUESTION P-2373/06, by MEP Jacques Toubon (PPE-DE) to the Commission, Subject: Gambling activities; IP/06/436, 4 April 2006, Free movement of services: Commission inquires into restrictions on sports betting services in Denmark, Finland, Germany, Hungary, Italy, the Netherlands and Sweden; IP/06/1362, 12 October 2006, Free movement of services: Commission inquires into restrictions on the provision of certain gambling services in Austria, France and Italy.

## General considerations on gambling services

Gambling services cannot be seen as normal services or normal trading of goods. It is paramount to understand that, unlike in other service sectors, an increase in supply of gambling services does not necessarily lead to an increase in consumer benefit.

Besides economical considerations, other aspects are to be respected, such as:

- Health care (gambling can carry a risk factor which amongst a small percentage of players can lead to problem gambling);
- Social order (if not regulated, gambling activities may be seen as a potential attractor of crime, especially organised crime, including for the purpose of money laundering);
- The possibility to limit the total national offer of gambling services to allow the national governments to decide and control the total market offer;
- Strong law enforcement and control bodies to guarantee the compliance with the stipulated requirements.

Each EU member state has its own concerns in these areas.

The ECA therefore acknowledges a particular need for each national or regional jurisdiction to have in place an individual legal framework, that guarantees control of the total gambling offer in the respective jurisdiction.

This is and has always been recognised by national authorities, EU authorities and the European Court of Justice.

## Legal framework

In light of the above considerations the challenge for the legislator is to have in place a legal framework which enables a sufficient and efficient supply of gambling, whilst making sure that the offer is limitable, ensuring adequate consumer protection, responsible gambling programs<sup>2</sup>, and prevention of crime.

As for the ECA, the only way to balance supply and demand, is by putting in place both a clear legal framework and the means to enforce this framework.

One crucial consideration in this particular case is that the market can only be kept in balance through application of the country of reception principle. Any operator offering their services in a target country has to do so in line with the target country's legal framework. Otherwise the framework, as well as the objectives behind the framework, becomes obsolete which would be to the detriment of consumers, legal operators, and society.

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<sup>2</sup> Responsible gambling programs in most EU countries include measures • to ensure all customers need an ID and to register in order to enter the casino facilities (including name, address, date of birth, and date and time of the visit(s)); • to limit access to people above the age of consent; • to enable representatives of the justice and finance ministries to access and check the casino and its services at all times; • to have all machines and procedures accredited; etc.

The summary below provides an insight in key principles legislators in Europe applied when defining legal frameworks for gambling. The ECA believes that the principles are both important and valid and any discussion on a legal framework should be based on the extensive experience and knowledge national authorities and licensed operators have built up.

### *Licensing*

A principle across all EU Member States, in fact a principle of almost universal application, is that one needs to have a license to offer gambling services in a particular jurisdiction. Key criteria to acquire a license are traditionally defined in an accreditation process which hands out a limited number of licences. Taking into account the particular nature of the gambling market as described above, the criteria traditionally include:

- Due diligence/screening of each applicant (& on-going screening of licensees)
  - Integrity of owners and management
  - Technical know-how
  - Ethical know-how (ability to address responsible gambling & crime prevention)
- Due diligence/screening of the sources and origins of funding
- Deposit or security down-payment for each licensee to become active
- Homologation (accreditation) procedures for all the gaming material the applicant intends to use (tables, slots, cylinders, software, ...)

One accreditation or licensing authority should be charged with overseeing the licensing process for all gambling services.

### *Rules of establishment*

Importantly and less well known, is the fact that legislators also regulate rules of establishment. Based on the type of game the licensee wants to provide, these rules traditionally take account of the following criteria:

- Geography
- Demography
- GDP and economic strength of country and individual areas
- Managerial competence including skills and knowledge to manage a gambling facility
- Legal compliance
- Social responsibility

### *Means of distribution*

Traditional means of distribution include land based casinos and gambling facilities. Technological developments in recent years have made the digitalisation of gambling possible. This digitalisation of gambling together with improved distribution channels for digital information provides new means of distribution for gambling services, such as the Internet and mobile phones.

New technologies have also made a broad scope of new games possible, all using some sort of random process to determine the outcome of the game. A considerable share of these new games, it appears, is being used to circumvent legislation avoiding taxation and regulation within Europe.

To this end, and further to the two above sections on licensing and on rules of establishment, the ECA believes that independently of the chosen means:

1. The country of reception principle has to apply on gambling services;
2. Every operator has to work under the rules of the jurisdiction they want to offer their services in, if public order and market control objectives are to be met.

Further to the above, the ECA believes that if public order and market control objectives are to be met, those games have to fall under the same restrictions that apply to licensed operators and licensed games.

## **Enforcement of rules**

Within this context it is important to note that the concept of a legal framework is inherently linked to the concept of enforcement of this framework. The best framework and its standards are worth very little if they are not enforced across its jurisdiction.

In order to ensure that framework rules and standards are followed and the integrity of the gaming business is being preserved, the ECA believes a controlling entity needs to be charged with enforcing the rules in its jurisdiction. Such a controlling entity can either be part of a ministry or can be a defined gaming board.

## **Jurisdictions**

Taking into account the particular nature of gambling services, EU Member States decided at the 1992 Edinburgh Council that the principle of subsidiarity should apply to the sector.<sup>3</sup>

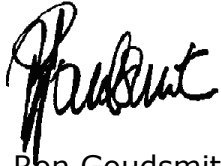
The European Court of Justice has supported this decision. In the cases of Schindler and Läärä, the Court confirmed that it is up to Member States' governments to decide what restrictions to impose on the freedom to provide gambling services for the purposes of maintaining the social order and consumer protection, objectives which are deemed to be overriding reasons relating to the public interest.<sup>4</sup>

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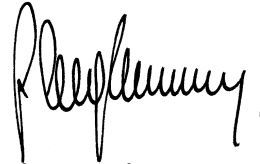
<sup>3</sup> See "European Council in Edinburgh – 11 and 12 December 1992 – Conclusions of the Presidency", DOC/92/8.

<sup>4</sup> See Case C-124/97, Markku Juhani Läärä, Cotswold Microsystems Ltd, Oy Transatlantic Software Ltd. v Kihlakunnansyyttäjä, Suomen Valtio, 1999 ECR I-6067, Case C-243/01, Procuratore della Repubblica v Piergiorgio Gambelli, 2003 ECR I-13031.

Acknowledging this legal framework the ECA, in this document, looks at the general framework for rules on gambling. Members of the ECA believe that such a framework, independently of the jurisdiction they are applied on, are a prerequisite to the functioning of a market in gambling services.



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*The European Casino Association (ECA) represents the interests of 950 casinos and 80.000 employees across Europe. Founded in the early 90's as the European Casino Forum, the ECA has gradually grown over the years and today includes 23 members from the majority of the EU's Member States and from Switzerland and Serbia.*