



## **Gambling in Europe – What’s at stake**

### **Introduction**

In recent years, gambling has become the subject of a wider public discussion, the starting point of which is undoubtedly linked with the changes brought to the gambling industry by the revolutionising technology of the internet. Indeed, the internet as a new distribution channel has generated the emergence of a multitude of gambling offers such as sport bets, casino games, online poker, bingo and backgammon to name a few, which are easily accessible for anyone anytime and anywhere.

The ECA has been closely observing these changes and the debate around them. Further, it has to be noted that more and more gambling-related national court cases are referred to the European Court of Justice (ECJ) for preliminary ruling, while recent ECJ judgements relating to the application of EU law to the gambling sector have triggered contradicting interpretations. Meanwhile, an increasing number of infringement procedures have been launched by the European Commission against Member States over their national gambling laws.

All these developments leave us to conclude that the Internet as a new way of distributing gambling services has initiated the debate in the EU about an EU conform regulatory approach.

Besides there are today a number of emerging remote gambling operators who want the EU and the rest of the world to move away from the established principles of separate national legislations towards a more open legal environment based upon the country of origin principles.

The ECA fully acknowledges that the EU authorities have to respond to this quest.

The ECA, which by now represents 950 casinos and approximately 80.000 employees in 23 member countries across Europe and as such is one of the biggest and most important representations of the gambling market at EU level, feels urged to actively engage in the discussion. It is the ECA’s impression, however, that the debate as it stands today tends to be very one-sided. We strongly believe that it is crucial for all stakeholders to start taking a holistic approach and become aware of the whole story around gambling so as to correctly understand the repercussions any regulatory change would have on the gambling sector.

The purpose of this document is therefore to provide an overview of the actual evolution of the gambling world.

## **Why do we need strict national regulation for gambling?**

### ***Historic experience with liberalised and unregulated markets***

It is common knowledge that people like to play games of chance and skill and they want to gamble, whether through land based or remote means, whether the offer is legal or not. With the existence of such strong market demand for gambling on the one hand and the tendency in the Western hemisphere to increasingly refrain from state intervention into the play of the free market forces on the other, one could rightly raise the question: Why do we need State regulation for gambling? Why not deregulate the market like in other industry sectors?

Historic experiences with unregulated and liberalised gambling markets and our solid expertise as long-standing industry in this sector have shown us that gambling is a particular and very sensitive service not comparable with an ordinary economic activity, which due to its special character needs to be regulated, limited and restricted in order to prevent any negative outcomes.

Throughout Europe, there are several examples where countries decided to revert to strict regulation and control after having allowed some liberal movements, which had led to a considerable increase in criminal behaviour and social problems following a sudden rise of gambling offers. Norway is such an example, where due to the detrimental effects on the social order the government some years ago entirely banned the operation of the 15.000 slot machines established throughout the country. And in Hungary, it took the government almost seven years to rehabilitate the market for instant lottery win games after its breakdown following the enactment of liberalising rules in 1991, which had resulted in insolvencies of operators, damage to players and a massive loss of consumer confidence. The authorities came to realise that it was just impossible in practice to control the reliability and creditworthiness of licence holders and to administer the requirements stipulated in the law.

These examples show clearly that we should learn from history and avoid making the same mistakes as in the past. We should accept that gambling is not a service like others that can be offered in an unregulated, unlimited and liberal environment.

### ***The need for strict regulation at national level***

Historic experience has proven that there is a need for an effective national gambling policy which meets the double challenge of channelling gambling desire:

- steer the demand for gambling away from grey or illegal offers and ensure that the demand for gambling is satisfied;
- minimise the undesirable effects of gambling.

Regulation is necessary to protect public and social order by minimising the effects of problem gambling, protecting youth and other vulnerable people, preventing crime etc.

A country's primary objective for allowing gambling under restrictive conditions is therefore not, as many claim, motivated by the fact to generate additional taxes.

Many countries have today succeeded in establishing effective control over their legalised gambling markets, allowing for a market size in their respective countries, which is desirable and acceptable for its population and which takes into consideration the respective national specific needs and traditions.

In fact, this last point is a crucial one, which needs to be taken into consideration in the ongoing liberalisation debate: the fact that culture, ethics and religion as well as economic and legal traditions vary from country to country and that therefore, gambling traditions and public opinion towards gambling are different in each Member State.

For instance, unlike many other countries, gambling has a long tradition in the UK, which has naturally lead to a different evolution of the market, a situation that imperatively has to be taken into account when looking at other markets<sup>1</sup>.

The differences are reflected by the national gambling market size, the types of games, laws, regulations, restrictions and controls, all of which are very heterogeneous across Europe. For instance, whereas the betting market is important in the UK (32% of the total gambling market), it is rather small in the Netherlands (not even 9%). Similarly, the bingo market is significant in Spain (nearly 17%), while this gambling service does not exist in Belgium. The differences in gambling traditions also become apparent when analysing the figures of annual spending on betting: In the UK it is about 26 times higher than in Germany and 4 times higher than in France. Similarly, the size of the market (per capita) differs significantly from country to country. UK citizens spend 1,5 times more on gambling than the average European citizen.

With a regulatory framework tailored to the specific needs and requirements of each country, national governments are in a position to effectively control their markets, for instance to avert oversupply, which would risk leading to an increase in gambling addiction and disturbances of the public and social order. The question whether a new gambling offer or new product should be introduced and to what extent, is subject to intense internal political discussions with a view to establish appropriate rules and controls prior to any market appearance<sup>2</sup>.

Furthermore, advertising is an important element for the success of the countries' gambling policy as it allows steering the demand for gambling away from grey or illegal offers. As outlined above, local politics determine the size of the market, so it is appropriate to satisfy the demand while allowing effective control. An advertising policy, which is in line with this political reasoning, is not only a required marketing tool but also absolutely sound and legal in terms of European law and the subsidiarity principle. Therefore, the argumentation

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<sup>1</sup> In this context it should be noted that the position of the ECA's UK member, the British Casino Association (BCA), diverges from the viewpoint of the majority of the ECA members: While the BCA supports the ECA's approach regarding the need for strict regulation and control of the gambling markets, due to a different market evolution it distances itself from the ECA's approach with respect to the issue of market liberalisation and competition in the gambling markets.

<sup>2</sup> Similar to the situation in Europe, the United States is a good example of yet another country having taken the decision to leave the regulatory competence over gambling up to the States instead of implementing a common federal regulatory framework.

according to which the sole purpose of Member States' advertising practices is to increase turnover lacks any basis.

In light of the above, the ECA strongly believes that is imperative for every country to be in a position to decide on and have the control over the question of an extension, a limitation or a reduction of the gambling market. State regulation is necessary, because as operators we want to offer our services in a safe, fair and legal environment.

### ***The current EU framework for gambling***

In the early nineties during the Edinburgh Council, Member States concluded with reference to the principle of subsidiarity that, considering the particularities of the gambling sector, there was no need for European legislation and/or harmonisation for this sector.

National governments were and still are responsible to secure a safe regulatory environment for national gambling services to prevent crime and to defend the consumers against the risks of excessive gambling.

National restrictive policies defined along those lines have been upheld by the European Court of Justice, stating that it is up to the Member States to regulate and to choose the appropriate gambling policy in their respective countries, as long as these restrictions are proportionate to the aims pursued and applied in a non-discriminatory manner.

Given the particularities of the gambling sector, both in the E-Commerce Directive and the Services Directive gambling has been excluded as normal Internal Market rules do and cannot work.

The situation has not fundamentally changed, although a certain evolution has been noticed in the Court's jurisprudence. While in the Gambelli case, the ECJ still considered that restrictions had to aim at a genuine diminution of gambling opportunities, in the more recent Placanica case (and the even more recent EFTA ruling in the Norwegian Ladbrokes case) the Court did accept that a controlled expansion policy is perfectly in line with the ECJ's case law in the gambling sector.

In the context of the Amsterdam Treaty protocol 7<sup>3</sup> on subsidiarity, the discussion has been raised whether it is necessary to look to the on-line gambling market from a different perspective. The essential transnational character requires exploring whether certain measures are necessary to be taken within one of the three EU pillars.

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<sup>3</sup> The following guidelines are used in examining whether a community action is in line with the subsidiarity principle: (1) the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States; (2) actions by Member States alone or Community action would conflict with the requirements of the Treaty; (3) action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.

## The implications of online gambling offering

Exploring further the issue of online gambling, this industry is a highly profitable business and has today overtaken other industry players to become the market leader in the e-commerce business. Indeed, today players at home can access more than 2.600 online gambling websites. This rapid evolution of the online business compared to bricks and mortar operations can be explained by the fact that investment costs are comparably low.

However, behind many of these websites are operations based in overseas countries, many of which operate illegally as they do not have the necessary licence required by the country where the services are provided.

At the time when these private operations first started finding their way into the online world, it proved very difficult to put an immediate stop to them. They literally flooded the Internet with e-mail invitations and online advertisements, as effective measures to trace them down did not yet exist. While back then the Internet was not quite as popular as it is today, nowadays regular gambling operators are left powerless as these new forms of gambling increase constantly with the popularity of the virtual world.

Being an important source of fraud and money laundering, it became clear that sooner or later such illegal gambling offers had to be banned and forbidden and its operators called to account. People realise that it is not acceptable that gambling services can be offered across the borders without having any regulatory requirements to protect customers. We as ECA believe that it is absolutely mandatory to forbid and ban all illegal offers.

Even if some operators do not like to admit it, it is today technically possible to virtually almost cut off market access through the Internet by operators that do not have the required licence. Given that gambling involves financial transactions, it is feasible to track down owners of bank accounts, the institutions handling the financial transactions, the address and owners of gambling operations<sup>4</sup>.

Online gambling may have a great future, but for this to happen, online operators need to accept the well balanced and properly regulated markets of each Member State, operating under similar rules and terms and requirements as everyone else.

Meanwhile, some operators have sought to force a legalisation of their offer by playing on the interpretation of what is a game of chance, a notion interpreted differently amongst EU countries. However, bearing in mind the economic relevance of online gambling, one might understand better the efforts deployed by some profit-driven companies to create artificial definitions for certain games with a view to prevent them falling under the rules applicable for games of chance. As a result, in a few countries poker and certain forms of betting are considered as games of skill rather than games of chance and hence the national gambling regulation, control mechanisms and taxation provisions do not apply.

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<sup>4</sup> Such banning of market access online is of course subject to compatibility with EU banking regulation.

Other operators are trying to capitalise on the EU Commissioner's current push to harmonise the sports betting markets in Europe, by enticing European countries like Malta and Gibraltar to seize the lucrative opportunity and provide European licenses for betting operations, hoping that the Commission's pressure would one day result in a European-wide market opening. On this basis, operators started some years ago to propose betting services throughout Europe.

Both the absence of common definitions of gambling services and the establishment off-shore of remote gambling operations in order to avoid paying taxes create a very unsatisfactory situation.

Currently, many national courts are required to deal with the question, whether such operation is in accordance with EU law, in particular Article 43 and 49 EC Treaty and have, due to growing uncertainty, referred the question to the ECJ for preliminary rulings.

### **Effects of liberalised markets<sup>5</sup>**

Leaving this question to lawyers, at this stage we would like to draw the scenario, which would materialise in case Member States would be forced to open their betting markets and accept the principle of country of origin, the effects of which would clearly be noticeable in the remote as well as the land-based sectors.

First of all, it is important to note that a market opening would have very divergent repercussions in the different Member States, which – as explained previously – is due to the historic and socio-cultural variations in the different market structures and typologies. To give an example: Whereas the opening of the sports betting market would hardly be noticed in the UK and other Anglo-Saxon countries where sports betting services are already quite deregulated, i.e. available, such a move would have dramatic repercussions in a country like Portugal, where sports betting does not have a longstanding tradition and such services would be made available for the first time<sup>6</sup>.

Second, and most importantly, a liberalisation of the betting markets, which would entail the application of the principle of the country of origin, would force countries to accept the standards applied in the country from which the service provider emanates. As it cannot be ruled out that foreign countries lower their standards to extreme terms with a view to attract operators, Europe would be faced with an unacceptable race to the bottom. If an EU operator would be allowed to offer its games on the entire EU territory, this would destroy the discretionary power of the national authorities while the European Court of Justice has consistently recognised the discretionary power of the Member States to decide about the number and type of operators, as well as the right to decide

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<sup>5</sup> For the BCA's stance on liberalisation and competition, please refer to footnote 1.

<sup>6</sup> Therefore, the conclusions of some recent studies that have been conducted to research the effects of liberalisation on gambling markets, have to be considered very cautiously: The conclusions presented ('liberalisation has no negative effects on the markets') are not entirely representative given that they refer to all European markets, while the research was conducted only with regards to one market only.

about the type and volume of games, independently from what other jurisdictions do.

Countries would have to accept offerings of services that previously had never been offered before and that for good reasons. National governments would be deprived of their possibility to control and limit gambling offers and market sizes. Local and State authorities would see the number of betting offices operating on the basis of for instance a Maltese licence explode in their area and would not have the means to do anything about it. Such case actually occurred in Germany, where foreign operators capitalised on a regulatory loophole which had arisen due to the uncertainty of how to apply EU law.

An additional problem occurs due to the absence of clear definitions. With the new technologies available today and a bit of imagination one can create games that allow people to bet on almost everything. As such, one would be able to bet on the outcome of a casino game or a lottery game. Consequently, the borders between the different types of games, whether short odds or long odds, become blurred. What used to be long odds becomes a short odd and with new games appearing every day it will be virtually impossible to make a clear distinction. However, one has to bear in mind that the addictive potential and dangers for consumers inherent in each type of game is different and that gambling regulation takes these differences into account by establishing rules for each game appropriate to alleviate the respective dangers. One can easily imagine that this whole well-balanced regulatory system becomes obsolete if one were to liberalise even only one game.

These effects can already be seen today. Are people aware for instance that already today one can bet simultaneously on thousands of events, the outcomes of which appear immediately as rapid cycles one after the other? In some countries betting shops have installed automatic Roulette games, on the outcome of which people can place bets. The logical consequence of this development is that betting offices will soon evolve to become small casino shops, offering all sorts of gambling offers in an agreeable social atmosphere, perhaps even with entertainment, food and beverage – bypassing any regulation and control mechanisms. Do we really want to have such shops at every corner of the street, escaping any possibility for Member States to regulate and control?

The ECA is convinced that a decision to liberalise unconditionally one single gambling product would lead to a destabilisation of the entire regulatory control mechanisms set up in the different countries, ultimately resulting in a breakdown of the controlled gambling markets in Europe. Therefore, we believe that in order to meet public order and market control objectives, all types of gambling offers, whether online or not, need to fall under the same restrictions that apply to all licensed operators today.

### **What is the best way going forward?**

As online gambling is a business to grow rapidly over the coming years, we believe that in light of the above statements it is time to act and to find a well-balanced and politically acceptable solution that puts an end to the undesired evolution of gambling as we have seen it in the last years, an evolution that is unwanted by EU politicians and detrimental for Europe.

We believe that a solution, which is merely based on economic and legal 'Internal Market' considerations is not the appropriate way out of the deadlock situation in which we find ourselves now. Rather, such a solution requires political support from all Member States and the support from the public. At this stage, we do not see such a support for the idea to liberalise the gambling markets.

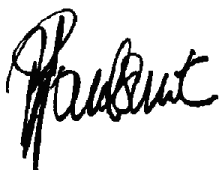
The ECA believes that an appropriate and well-balanced solution for gambling requires a holistic approach. We should learn from history and favour a system of control and responsibility rather than risking a breakdown of the markets through liberalising the sector.

In light of very diverse national legislation on gambling across EU Member States the ECA furthermore considers it appropriate in the long-term to create a consistent framework for gambling at the EU level creating a level playing field taking into account all of the important elements enshrined into national gambling legislation such as responsible gambling provisions, crime prevention, consumer protection, taxation etc.

In the absence of such an EU framework, the ECA and its members call on the Member States to enforce initially the national regulatory rules in the country where the consumer of such services has his residence. In other words, the application of such principle (accepted for VAT purposes for on-line services) to all gambling operators and to all means of distribution for gambling services (both terrestrial and remote) has to be guaranteed.

This approach would give enough time to reflect on the establishment of a solid EU framework, providing for agreeable solutions to problematic questions such as taxation, control mechanisms, effective enforcement, etc. Given the delicacy of the issue, we strongly advise against any approach taken under pressure and on the fly.

For further information, please consult the ECA's website at [www.europecasinoassociation.org](http://www.europecasinoassociation.org).



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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.*