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DRAFT REPORT

on the integrity of online gambling
(2008/2215(INI))

Committee on the Internal Market and Consumer Protection

Rapporteur: Christel Schaldemose

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the integrity of online gambling (2008/2215(INI))

The European Parliament,

- having regard to Article 49 of the EC Treaty,
- having regard to the Protocol on the application of the principles of subsidiarity and proportionality annexed to the EC Treaty,
- having regard to the case-law developed by the Court of Justice of the European Communities¹,
- having regard to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market²,
- having regard to Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities³ (Directive on audiovisual media services),
- having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)⁴,
- having regard to Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing⁵,
- having regard to its resolution of 8 May 2008 on the White Paper on Sport⁶,
- having regard to the Oral Question by the Committee on the Internal Market and Consumer Protection to the Commission of 16 October 2006 on gambling and sports betting in the Internal Market⁷ and to the following debate in the Committee on the Internal Market and Consumer Protection on 14 November 2006, and to the answer given

¹ Schindler 1994 (C-275/92), Läärä 1999 (C-124/97), Zenatti 1999 (C-67/98), Anomar 2003 (C-6/01), Gambelli 2003 (C-243/01), Lindman 2003 (C-42/02), Placanica 2007 (C-338/04), Unibet 2007 (C- 432/05), UNIRE 2007 (C- 260/04).

² OJ L 376, 27.12.2006, p. 36.

³ OJ L 332, 18.12.2007, p. 27.

⁴ OJ L 178, 17.7.2000, p. 1.

⁵ OJ L 309, 25.11.2005, p. 15.

⁶ Texts adopted, P6_TA(2008)0198.

⁷ O-0118/2006.

by the Member of the Commission,

- having regard to the briefing paper on Online gambling, focusing on integrity and a code of conduct for gambling, prepared for the European Parliament by Europe Economics Research Ltd¹,
 - having regard to the study of Gambling Services in the Internal Market of the European Union dated 14 June 2006, prepared for the Commission by the Swiss Institute of Comparative Law (SICL),
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A6-0000/2008),
- A. whereas, at present, online gambling, worth EUR 2 to 3 billion in gross gaming revenues in 2004, accounts for roughly 5% of the total gambling market in the EU, as noted by the above-mentioned study by SICL, and rapid growth seems inevitable,
- B. whereas gambling activities have traditionally been strictly regulated in all Member States on the basis of the principle of subsidiarity, in order to protect consumers against addiction, fraud, money-laundering and fixed games,
- C. whereas gambling activities were excluded from the scope of Directives 2006/123/EC (services), 2007/65/EC (audiovisual media services) and 2000/31/EC (electronic commerce),
- D. whereas the Commission has launched infringement procedures against ten Member States in order to verify whether national measures limiting the cross-border supply of online gambling services are compatible with Community law²,
- E. whereas several gambling cases are pending before the Court of Justice, which clearly demonstrates a lack of clarity in the law on online gambling and takes up resources,
- F. whereas integrity means a commitment to preventing not only fraud and crime but also problem gambling and under-age gambling,
- G. whereas online gambling combines several risk factors related to problem gambling, such as, among others, easy access to gambling, the availability of a variety of games and fewer social constraints³,

A transparent market that safeguards the public and consumer interests

¹ Not yet available

² http://ec.europa.eu/internal_market/services/gambling_en.htm

³ Opinion of Advocate General Bot of 14 October 2008 in Case C-42/07; see also the above-mentioned study by SICL at p. 1450.

1. Highlights that, in accordance with the principle of subsidiarity, Member States have a legitimate interest in monitoring and regulating their gambling markets in order to protect consumers against addiction, fraud, money-laundering and fixed games as well as to protect the culturally-built funding structures which finance sports activities and other social causes in the Member States; underlines that online gambling operators should comply with the legislation of the Member State in which they provide their services;
2. Calls on the Commission to clarify the competences of the Member States and the EU in the field of online gambling; is of the opinion that the Court of Justice should not define the European gambling market;
3. Calls on the Member States to cooperate closely in order to solve the problems arising from cross-border online gambling, such as gambling addiction and misuse of personal data or credit cards; stresses the need for a common European position on online gambling with mandatory minimum requirements for protecting consumers and preventing fraud;
4. Stresses that actors who operate in the field of online gambling, e.g. consumer organisations, sports organisations, industry associations and the media, share a joint responsibility for the integrity of online gambling and for informing consumers of the possible negative consequences of online gambling;

Tackling fraud and other criminal behaviour

5. Is of the opinion that the growth of online gambling provides increased opportunities for corrupt practices such as fraud, fixing games, illegal betting cartels and money-laundering as online games can be set up and dismantled very rapidly and due to the proliferation of offshore operators;
6. Considers that the protection of the integrity of sports events and competitions requires cooperation between sports rights owners, online betting operators and public authorities at national as well as EU and international level;

Prevention of consumer detriment

7. Considers that online gambling creates an increased potential for gambling addiction due to the easy accessibility of games with immediate results and the possibility of gambling for large sums of money;
8. Is alarmed by the increasing cross-over between interactive television, mobile phones and internet sites in offering remote or online games and making it easy and socially acceptable to participate in those games, especially for younger people;
9. Is of the opinion that online gambling is likely to give rise to risks to consumers and that Member States may therefore legitimately restrict the freedom to provide online gambling services in order to protect consumers;
10. At the same time, calls on Member States to allocate adequate funding for research into, and the prevention and treatment of, problems relating to online gambling;

11. Supports the development of common standards for online gambling regarding age, bonus schemes directed at vulnerable gamblers, a maximum amount to be played per week, information about the possible consequences of gambling, information about where to obtain help in case of addiction, the potential addictiveness of certain games, and so on;
12. Considers that self-regulation regarding the advertising and promotion of online games is not sufficiently effective and therefore emphasises the need for co-regulation between the industry and the authorities;
13. Urges Member States, together with the industry, to cooperate at EU level in order to regulate the aggressive advertising directed at problem gamblers and vulnerable consumers such as children and young people;

Code of conduct

14. Notes that a Code of Conduct may be a useful tool for achieving some public (and private) objectives while adjusting to technological developments, changes in consumer preferences or developments in market structures;
15. Stresses, however, that a Code of Conduct ultimately remains an industry-driven, self-regulatory approach and can therefore only serve as an addition to primary or secondary legislation;
16. Also stresses that the effectiveness of a Code of Conduct will heavily depend on its recognition by regulators and consumers, as well as on its enforcement;

Monitoring and research

17. Calls on the Member States to document the extent and growth of their online gambling markets, as well as the challenges which arise from online gambling;
18. Calls on the Commission to initiate research on online gambling and the risk of developing a gambling addiction, for example how advertising influences gambling addiction, whether it is possible to create a common European categorisation of games according to addictive potential, and possible preventive and curative measures;
19. Calls on the Commission to collect information about the extent of fraud in the online gambling sector, e.g. amongst actors involved in the sector;
20. Calls on the Commission to undertake an impact assessment of the effects of national regulation of the provision of cross-border gambling services in relation to integrity, social responsibility, consumer protection and matters relating to taxation;

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21. Instructs its President to forward this resolution to the Council and Commission.

EXPLANATORY STATEMENT

I. Introduction

Gambling activities involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.

Online gambling has existed since 1996, where the first game was made available in Finland. Since then the market for online gambling has grown considerably. In 2003, it was estimated that the commercial online gambling market in EU 25 generated Gross Gaming Revenues (operator winnings less payments of prizes) of € 51.5 billion in 2003. At present, online gambling via Internet, mobile phones or interactive TV accounts for roughly 5 % of the total gambling market in the EU, worth € 2 to 3 billion in annual Gross Gaming Revenues in 2004. The European online gambling market is expected to grow at a minimum rate of 8.4 per cent per annum (in Austria and Hungary) to a maximum of 17.6 per cent (in Italy).¹

Member States are therefore forced to adapt and develop regulation in order to keep pace with consumer preferences and suppliers' services. The specific nature of online gambling causes certain difficulties for policy-makers in the Member States. First of all, online gambling entails a cross-border element, which makes it possible for online gambling operators to provide their services to consumers in other Member States than the one they are based in. Consumers may therefore not know in which country their service provider is based. Secondly, online gambling creates an increased risk of online gambling providers not being able to verify the identity of the consumer since the person using a credit card may not be its rightful owner. Thirdly, online gambling sites can be set up quickly and dishonest operators can therefore appear and disappear within a short period of time. Fourthly, it is difficult for online gambling operators to supervise their customers as opposed to conventional gambling where it is possible to see whether the customer is under age, is drunk or in other ways intoxicated or behaving suspiciously. Also since access to online gambling services is easy and can be done in isolation, social checks and constraints that can be exercised by the presence of others are lacking.

II. Regulation

The European online gambling markets are regulated nationally in accordance with the principle of subsidiarity. Therefore the regulatory frameworks for the (conventional and online) gambling market in the EU are very much heterogeneous. In twenty EU Member States online gambling is allowed, whereas seven Member States have prohibited online gambling. Thirteen Member States have a liberalised market, while six have state-owned monopolies and one Member State has licensed a private monopoly.²

¹ PricewaterhouseCoopers' *Global Entertainment and Media Outlook: 2008-2012*, p. 623. Growth is measured as the compound increase in annual gambling revenue.

² Online Gambling, a briefing paper for the European Parliament, Europe Economics, XX October 2008

The Member States who have banned online gambling altogether or allow it only under monopoly conditions argue that these limitations are justified on grounds of social and public order. However, there have been great disputes regarding the so-called national gambling monopolies. Numerous complaints have been filed with the European Commission by gambling companies, private persons and media organisations claiming that certain Member States are unlawfully protecting their gambling markets and the revenues arising from their monopolies. As a result the Commission has started infringement procedures against ten Member States, in order to verify whether national measures limiting the cross-border supply of online gambling are compatible with Community law.¹

The issue of regulating EU gambling markets, whether conventional or online, is very sensitive. But there is a clear need for clarification about the regulatory environment concerning online gambling. At present, almost 50 % of the cases pending at the European Court of Justice right now are related to gambling. This situation is dissatisfactory for the Court as well as Member States, consumers and online gambling providers.

A number of cases regarding gambling have been referred to the European Court of Justice, some of which have already been settled (case law below) and many of which are still pending. The case law by the European Court of Justice consists of the following cases: Schindler 1994 (C-275/92), Läära 1999 (C-124/97), Zenatti 1999 (C-67/98), Anomar 2003 (C-6/01), Gambelli 2003 (C-243/01), Lindman 2003 (C-42/02), Placanica 2007 (C-338/04), Unibet 2007 (C – 432/05) and UNIRE 2007 (C – 260/04).

In these cases The European Court of Justice has stated that freedom of movement (Article 49 of the EU Treaty) applies to gambling services. However the court has also stated that gambling may entail certain moral, religious and cultural aspects, involve a high risk of crime or fraud and may have damaging individual and social consequences.²

Restrictions may therefore be justified if they are necessary for consumer protection, for maintenance of the public order (prevention of fraud and crime), for maintaining of the social order (culture or morale) and for preventing gambling from being a source of private profit.³ However, restrictions must serve to limit betting activities in a consistent and systematic manner, they must be applied in a non-discriminatory manner and they must not go beyond what is necessary to attain the end in view.⁴

It should also be noted that on 14 November 2006, Commissioner McCreevy responded to the Oral Question on Gambling posed by Arlene McCarthy, Chair of the Committee on Internal Market and Consumer Protection, during the European Parliament's plenary session in Strasbourg. Here, the commissioner stated that EU-wide harmonisation of legislation regulating gambling at present was not likely.

III. Integrity

¹ http://ec.europa.eu/internal_market/services/gambling_en.htm

² EJC in the Schindler judgment, C-275/92

³ SICL (2006), p. xxvi

⁴ Gambelli judgement C-243/01

The object of this report is to focus on the integrity of online gambling. Integrity is first seen as a set of values which aim at preventing fraud: by online gambling operators against consumers or by consumers against online gambling operators or consumers against other consumers. Integrity in this sense also includes all means to avoid criminal activities such as money-laundering. In this report integrity is also looked at as the behaviour of online gambling operators. Therefore, this report covers addictive and under-age gambling as well.

Most consumers are able to gamble without risking a psychological addiction, however a small but significant number of individuals risk becoming problem gamblers. WHO defines problem gambling as any excessive gambling that leads to financial, social and/or psychological disorders.¹ The risk of an addiction to gambling is generally aggravated by the permanent availability of the opportunity to play, the frequency of wins, the enticing or attractive nature of games, the possibility of staking large sums, the availability of credit in order to play, the location of games at places where people can play on an impulse, and the fact that there is no information campaign regarding the risks of gaming.²

Online gambling combines several of such risk factors related to problem gambling. For instance, online operators are able to offer a wide variety of games (betting, roulette, poker, slot machines, etc) and to introduce new games regularly, using new marketing and targeting techniques, involving the latest data research technology on the customers' (spending) behaviour, keeping the consumer 'glued' to the screen. A worrying aspect is the increasing cross-over between multimedia services, such as television, phone- and SMS-services and internet sites, in offering remote or online games, making it easy and socially acceptable to participate in those games, especially for younger people.

¹ WHO (1992) *The ICD-10 Classification of mental and behavioural disorders*, Geneva. Other commonly used terms include pathological, compulsive, disordered, excessive and addictive gambling.

² Opinion of Advocate General Bot to the ECJ, 14 October 2008, Case C-42/07; see also SICL (2006), p. 1450