

FAIR, HONEST AND SAFE:

Cross border remote gambling within the European Union



The Association of Remote Gambling Operators Limited
Regency House
1-4 Warwick Street
London W1B 5LT
United Kingdom

Tel: (+44) (0) 207 479 4040
Email: postmaster@argo.org.uk
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association of remote gambling operators

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EXECUTIVE SUMMARY

- Remote gambling is the newest and fastest growing part of the world gambling industry. For the first time it has made gambling a truly international product which brings with it new challenges for regulators and governments.
- Within the European Union this has been reflected by the number of legal cases related to cross border gambling that have arisen in national courts and the European Court of Justice. It has also led to complaints being made to the European Commission and for it in turn to open infringement proceedings against certain Member States.
- Under European law there are public interest grounds that can be relied upon to justify the imposition of restrictions on gambling within the borders of a Member State and on the cross border trade of gambling operators based in other Member States.
- However, those restrictions must be necessary, non-discriminatory, and proportionate.
- This report shows that in some, if not all, cases the restrictions are being enforced primarily to protect domestic gambling providers and/or tax revenue and not, as claimed, for acceptable public interest reasons.
- It also shows that, even where the restrictions are put in place with the best of intentions, they are unnecessary if the gambling provider is properly licensed and regulated in another Member State.
- Gambling is a legal legitimate service in the sense of the Treaty. As such Articles 43 and 49 of the EC Treaty apply to gambling.
- Free movement of services and freedom of establishment in the European Union are basic premises of the EU. Gambling services should be subject to the fair application of these principles.
- By reference to the regulatory regime in the UK this report demonstrates that remote gambling can be controlled in a way that meets all reasonable public policy, security and health concerns.

- Prohibition is not a realistic option. It is only by regulating operators rather than prohibiting them that the gambling public across Europe can be properly protected.
- The demand for gambling in Europe is there for all to see and new technologies mean that it will become increasingly available by remote means. If they are not available from providers in the EU then consumers will be forced towards operators in jurisdictions outside the EU that might not have the same safeguards or standards.
- This would amount to an unwarranted restriction on trade within the EU and a failure to protect the European consumer.
- Opinion formers across the EU have a responsibility to EU based providers and consumers to consider all of the arguments and issues objectively and independently.
- It is the confirmed belief of ARGO that only one conclusion can be reached: reputable, well regulated cross border gambling operations pose no threats that cannot be fully addressed and they offer fair, honest and safe products for consumers.
- As such they should be treated no differently to any other legitimate cross border service.

FAIR, HONEST AND SAFE: THE CASE FOR CROSS BORDER GAMBLING IN THE EU

1. Introduction

- 1.1 The Association of Remote Gambling Operators (ARGO) was established in 2004 to promote the interests of remote gambling companies who are licensed and operating within the European Economic Area (EEA). Its members all run online gaming businesses from various jurisdictions and all but one of them also run betting operations from the UK and Ireland. A full list of the current membership is at Annex A and its objectives are at Annex B.
- 1.2 The purpose of this report is to assess the issues surrounding cross border gambling in the European Union and to explain why properly regulated EU-based operators should have full access to European markets.
- 1.3 The report hopes to demonstrate that the current situation is unsatisfactory and, in the longer term, unsustainable. It is designed to inform future debates on this subject and it should be of particular interest to European Commissioners, Members of the European Parliament, officials and regulators from Member States, and everyone else that is willing to adopt an objective approach to the issue of the free movement of remote gambling services.
- 1.4 In a closely integrated single European market, where people routinely cross borders, work and live in different Member States, it is illogical to fragment that market artificially and illegally into 25 separate national gambling markets. This is especially true when the position adopted in many Member States is illegal under EU law. The actions of these Member States are denying people the opportunity of gambling safely with properly regulated operators who provide a full range of consumer protection measures. They are preventing an increase in tax revenues for Member States. They are standing in the way of what could be a thriving, reputable gambling industry across the EU.
- 1.5 At the same time there exists a world market for remote gambling that respects few national borders and there are no shortage of jurisdictions that are willing to play host to companies that offer a vast range of gambling products.

2. How can change be achieved?

- 2.1 The legal basis to provide cross border gambling services exists already within the Treaty and as interpreted recently by ECJ case law.
- 2.2 However, because case law is by nature piece-meal and complaint driven, the enforcement of EU law relies on the Member States' willingness to comply with it.
- 2.3 There is certainly no indication that Member States are willing to review their gambling legislation in order to comply with EU law and many have been dismissive of ECJ rulings.
- 2.4 Despite the clarity of EU law on this point, the unwillingness of certain Member States to accept it could mean that the only sure way ahead is to codify the relevant existing ECJ case law into a Directive such as the Directive proposal on Services or via specific harmonisation measures. This would oblige Member States to transpose the EU provisions into their national laws.

3. The current position in Europe

- 3.1 Before looking ahead at the detailed issues and the arguments, it is important to be clear about the current status of cross border gambling in Europe. The following sections therefore outline:
 - (i) the relevant EU law (section 4);
 - (ii) existing case law (section 5);
 - (iii) related initiatives, such as the Services Directive (sections 6 and 7);
 - (iv) the approach of individual Member States (section 8); and,
 - (v) as this is a uniquely international industry, the environment outside of the EU (section 9).

4. European Union Law

- 4.1 In EU law there is a legal framework within which all decisions must be taken. This section sets out what it is.
- 4.2 The key points to note are that:

- (i) The EU Treaty does not distinguish gambling from other services and it requires that all services must be treated in the same way;
- (ii) Article 43 of the Treaty provides that, in the absence of certain allowable justifications, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited;
- (iii) Article 49 of the Treaty prohibits restrictions on freedom to provide services within the Community for nationals of Member States who are established in a Member State other than that of the person for whom the services are intended;
- (iv) Article 50 of the Treaty defines what is meant by a service and the ECJ has indicated that gambling is a service within the meaning of Article 50;
- (v) Article 153 of the Treaty deals with consumer protection, stating that the EU will contribute to protecting the health, safety, and economic interests of consumers and take consumer protection into account when defining and implementing other policies and activities; and
- (vi) Under Article 226 of the Treaty the Commission can take action against Member States whose laws are in breach of the Treaty.

5. ECJ case law

5.1 In the interpretation of EU law, there is now a relatively consistent body of case law on gambling issues within the EU and copies of the judgements can be found at www.curia.eu.int

5.2 The main points of reference are:

Case C – 275/92 Schindler [1994] ECR I – 1039

Case C – 67/98 Zenatti [1999] ECR I – 7289

Case C – 124/97 Laara [1999] ECR I – 6067

Case C – 243/01 Gambelli [2003] judgement of 6 November 2003 as published in the EU Official Journal on 10 January 2004 [C7/7]

Case C – 42/02 Lindman [2003] judgement of 13 November 2003 as published in the EU Official Journal on 10 January 2004 [C7/16]

5.3 In its recent case law, and particular in *Gambelli*, the ECJ, irrespective of the particulars of the case, reached several conclusions about EU law that have a wider significance. They include:

- (i) where there are restrictions these must be exceptional measures (para 60) expressly provided for in Articles 45 or 46 or justified for reasons of overriding public interest;
- (ii) “the diminution or reduction of tax revenue is not one of the grounds listed in Article 46 and does not constitute a matter of overriding general interest” (para 61);
- (iii) the restriction must “reflect a concern to bring about a genuine diminution of gambling opportunities”; therefore public policy concerns for limiting the participation of foreign undertakings in the national gambling market cannot be invoked by Member States if they themselves encourage consumers to participate in gambling, for example, through advertising campaigns (para 69);
- (iv) importantly, the ECJ set out a specific test for the assessment of proportionality of restrictions on the provision of gambling services. The key is that they must limit activities in a “consistent and systematic manner”;
- (v) the financing of social activities through a levy can only be “an incidental beneficial consequence and not the real justification for the restrictive policy adopted”; and
- (vi) “moral, religious, and cultural factors, and the morally and financially harmful consequences for the individual and society associated with gaming and betting” could justify restrictions.

5.4 *Gambelli*, therefore, reinforced previous findings and laid down a clear test in assessing proportionality of restrictions. The case law can be summarised as saying that Member States are entitled to place restrictions on the provision of services, for one or more of the following purposes:

- (i) Consumer protection;

- (ii) Prevention of fraud; or
- (iii) Preservation of public order.

5.5 However, the crucial caveats are that those restrictions must be proportionate to the risks presented by the gambling opportunities being provided, and must “serve to restrict betting activities in a consistent and systematic manner”. This cannot be true of the restrictions imposed by Member States, such as Italy, the Netherlands, Greece, Sweden, Germany, Finland, France and others, where gambling from domestic providers is already, or soon will be, widely available and promoted with the support of the Member State concerned.

6. Related initiatives

6.1 In parallel with the work of the ECJ, there are also a number of initiatives being undertaken by the European institutions, which also impact, or may impact, on the cross border gambling market. These must all be considered in order to get a complete picture of what is happening.

6.2 The **Directive proposal on Services in the Internal Market** is still being discussed. In any case it is unlikely to take effect until 2010. As a point of principle from the EU Treaty and the ECJ decisions it should apply in the same way to gambling as it does to all other services. It is evident elsewhere in this report that EU law and its interpretation by the ECJ provides adequate protections for Member States who, where it is defensible, can already impose restrictions. Gambling should not and must not be excluded from the scope of the Directive.

6.3 The **E-Commerce Directive** already excludes gambling. As remote gambling is one of the few economic e-commerce success stories and is a legitimate and legal industry, ARGO would maintain that gambling should be treated like any other legitimate service and not excluded from the ambit of this directive.

6.4 An attempt was made in 2004 to amend the **Sales Promotion Regulations** to prohibit promotions that ‘*incite recipients to squander on gambling activities*’. It was due to come before the Competitiveness Council in November 2004 but was delayed. This illustrates again a further concerted effort to treat the promotion of gambling activities differently to the promotion of other products. The justification for such an approach is extremely vague. Until the

issues are properly aired and debated there continues to be the risk that those opposed to the provision of cross border gambling services will use related measures, such as the Sales Promotions Regulations, to undermine the industry's development.

6.5 In a welcome development the **European Commission** has decided to appoint its own consultants to undertake research into European gambling regulations and legislation. The aim of the study is to assess the need for harmonisation. This will serve to bring greater transparency and independence when gambling related issues are considered across the European Union.

6.6 As guardian of the treaties and of EU law the **European Commission** in 2004 launched infringement proceedings against Greece, Denmark and Sweden in relation to their domestic restrictions on sectors of the gambling market. These are actions that would not have been taken lightly and they emphasise the seriousness that the Commission attaches to the enforcement of ECJ case law and the apparent flouting of EU law by certain Member States.

6.7 The following is a summary of the current position:

- There is resistance to the fair application of EU rules as regards remote gambling services. It stems largely from the vested interests of domestic providers or governments seeking to protect revenues and to create further barriers;
- EU law and its interpretation by the ECJ provide adequate protections for Member States who, where it is defensible, can already lawfully impose restrictions on their markets. In that context, Member States could address this issue with EU harmonised rules so as to provide for minimum standards;
- However, until the issues are properly aired and debated there continues to be the risk that those opposed to the provision of cross border remote gambling services will use related measures, such as the Sales Promotions Regulations, to impede seriously the free movement of services provided for by the EU Treaty;
- There must also be a very real threat that some Member States or vested interests, like existing gambling monopolies, will claim that gambling is outside of the European Commission's sphere of competence. This is inappropriate and could set a worrying

precedent. Any proposals of this kind should be resisted strongly.

7. Outstanding legal cases and complaints

7.1 The need for the European Commission to take action is underlined by the sheer number of complaints that have been lodged with it. This matter now requires urgent attention as in some cases local courts are not properly applying the principles set out in the EU Treaty and interpreted by case law.

7.2 In order to appreciate the range of challenges being undertaken, set out below, for illustrative purposes, are some examples of court cases which have been brought .

7.3 At any one time there are numerous **legal cases** around Europe that involve gambling in one form or another. Some of these will reach the ECJ (see 5.2), but the following examples show that there are others that may not:

- (i) In May 2003 Ladbrokes received a writ from Westdeutsche Lotteries (Cologne) for accepting bets over the Internet from Cologne residents. In the same month an injunction was served by Lotteries – Treuhandgesellschaft in Hessen preventing Ladbrokes from taking sports and lottery bets from its citizens (this was complied with immediately) . The Westdeutsche Lotterie case was heard in September 2003 and the court found against Ladbrokes, rejecting the European arguments but accepting that the case might be ruled upon differently elsewhere. Ladbrokes agreed an undertaking not to take any bets from any residents of Germany. This took effect from 27 November 2003 and continues today;
- (ii) In December 2001 Ladbrokes, William Hill and Coral all received summonses, issued from the Court of Rome, from CONI (The Italian National Olympic Committee). In the summonses CONI contended that only it or duly authorised third parties may offer betting and/or bookmaking activities. It also contended that collecting or promoting any type of bet in Italy and abroad is a penal offence. The summonses however related to a civil offence only – to date no criminal prosecution has been started. CONI based its case around a reduction in revenue although the writ was vague as to what damages were actually being claimed and there does

not seem to have been any evidence offered of loss of revenue. No mention was made of any public policy issue; and

- (iii) De Lotto, the Dutch monopoly sports betting and lottery operator, asked Ladbrokes to block Dutch residents from betting with them. Ladbrokes agreed not to advertise or promote its services in the Netherlands, but refused to stop Dutch residents gambling with them. Following that, a writ was issued and the case was heard at the Arnhem court in January 2003. It found in favour of De Lotto and Ladbrokes were prohibited from accepting Internet sports bets from Dutch residents. The subsequent appeal in Arnhem found that restrictions imposed on foreign betting and gaming companies by the Dutch law on games of chance breach Article 49 (free provision of services) of the European Treaty. The Court also gave its preliminary view that restrictions on competition cannot be justified on the grounds of public security or public health because they do not appear to reflect a genuine concern to bring about a diminution in gambling opportunities. The Court has invited responses from both sides before handing down a final judgment (expected in 2005).

- 7.4 Just as there has been no shortage of legal cases, the European Commission has been faced with a growing number of **Complaints** about the restrictive practises of certain Member States. In recent months this has included complaints against Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, and Sweden. As noted above, as of today the European Commission has responded with formal action against Greece, Denmark and Sweden.

8. The position of Member States

- 8.1 Each Member State has different gambling laws and domestic industries that have evolved in particular ways as a result of that. Although no two are exactly the same some do share similarities, especially those where the gambling is organised and run by monopolies that are wholly or in part State-controlled.
- 8.2 It is this latter group that has traditionally opposed the spread of cross border gambling most strongly. The concern of the remote gambling industry is that they do so not for one of the valid purposes listed in paragraph 5.4 above, but for reasons associated with the protection of domestic monopolies or revenues that the

State receives, directly or indirectly, from its consumers of domestic gambling services.

- 8.3 Annex C provides a summary of the positions that have been taken by those Member States that have become actively involved in the debate.

9. The position globally

- 9.1 Cross border gambling is a global issue and not just a European one. The justifiable restrictions which may be used to prevent a provider licensed in one Member State from accepting bets from customers in a different Member State are much harder to enforce when the gambling is being offered from outside of the EU, often from places that have little or no regulatory base or standards of compliance by operators. In many cases, enforcement is impossible.
- 9.2 There is a world market for remote gambling that does not respect national borders and there is no shortage of smaller jurisdictions that are willing to play host to companies that offer a vast range of gambling products. It may not be welcomed by all, but these are already easily accessed through the Internet and telephone. It is a fact of life that newer, cheaper and modern communication technologies will make this sort of activity even easier to supply and access in the future.
- 9.3 This process makes it ever more important to develop a European gambling market that ensures the current gambling regulations are consistently and coherently applied to gambling providers throughout the EU and that such regulations reflect genuine and legitimate public policy concerns.
- 9.4 Restrictions between Member States are ineffective in protecting the consumer and constitute an unjustifiable barrier to trade. Moreover, the situation damages the competitive position of EU gambling service providers when competing with providers based outside of the EU.
- 9.5 Attempting to prohibit the provision or use of these gambling services, for example over the Internet, has failed. The demand is such that ways will always be found to circumvent any restrictions that might be imposed.

9.6 The following information provides a picture of the scale of the industry:

- All research indicates that the world market is worth somewhere between US \$7bn – \$12bn per year and is growing;
- In July 2004, Juniper Research estimated that the mobile gambling market could be worth in excess of US \$18bn by 2008;
- 76 jurisdictions already endorse remote gambling in one form or another;
- There are over 1700 gambling websites;
- One ARGO member, Ladbrokes, alone has customers in over 230 countries;
- According to Poker Pulse, in September 2004, the top 20 online poker rooms had 25,000 players per hour;
- In the UK it is estimated that over one million adults visit an online gambling site every month, despite the fact that there are no online gaming operations based in that country; and
- In 2004 in Belgium its Gambling Commission reported that 25,000 Belgians play at online casinos per month and that in 2003 they spent 27m euros.

9.7 There may be differences of opinion about the exact number of consumers involved or how much they are gambling, but there can be no doubt that the market is substantial. It will continue to exist and thrive even if there are no EU based operators at all, and EU consumers will continue to access it.

10. Justifications for restrictions by Member States

10.1 Leaving aside the situation in the rest of the world, it is right for the purposes of this report to return to the justifications which are used by Member States for imposing restrictions on the supply of cross border gambling services by licensed operators in other Member States. Those justifications all come under one of the following categories:

- (i) public policy (for example, consumer protection);

(ii) public security (for example, combating crime, fraud, money laundering etc); or

(iii) public health (for example, preventing problem gambling and its social consequences).

10.2 The following sections will consider each of these justifications in turn and show that, almost without exception, the restrictions that are now in place are either disproportionate or plainly wrong.

11. Public policy justifications

11.1 Justifications that have been cited under this heading include the need to protect consumers, to safeguard tax revenues, and to ensure income for good causes.

11.2 It is of course right for Governments to protect their citizens and all Member States have some form of consumer protection or fair trading laws. The issue is whether the restrictions that have been imposed, for instance by several Member States to prevent access to their markets by foreign bookmakers, are proportionate or necessary.

11.3 The answer must be that they fail on both counts if the regulation in the Member State where the gambling operator is based is sufficiently robust to provide an adequate level of consumer protection. Additional restrictions cannot be justified where that is the case.

11.4 Furthermore, there is strong evidence that operators in properly regulated jurisdictions offer much better value than gambling operators based in jurisdictions where state monopolies are the norm or where there are so few licences that there is little effective competition.

11.5 It is well established within the European Union that competition between businesses is healthy and produces real benefits for the consumer. Attempting to exclude consumers from having access to competitive services offered by EU-based providers is not in their interests and driving them to other less well-regulated providers is harmful. That is as true in the gambling sector as it is in any other.

11.6 Further information on this is contained in a report by Europe Economics, entitled, *The case for a single European Gambling*

Market (2004). It concluded that the British gambling industry is better at providing products that consumers want, that it offers a better range of products, and that those products offer better value than those being provided from other Member States.

- 11.7 As for revenue protection and raising money for good causes, the ECJ has already found that by themselves they do not justify restricting access to markets (see section 5.3 above).
- 11.8 Viewed against this background any restrictions imposed or sought by Member States do not appear to protect consumers, but rather to protect the domestic providers or income they derive from their domestic gambling markets. Open competition from and with properly-regulated EU-based operators in other Member States would provide better value to their citizens but at the possible cost of reducing the revenue they and their licence holders currently receive.

12. Public security justifications

- 12.1 These justifications are normally taken to centre around crime-related issues such as combating fraud, money laundering, and keeping criminal elements out of the business.
- 12.2 These are worthwhile aims and it is a core objective of the legitimate gambling industry that it should remain crime-free. Its future success and credibility are dependent on them.
- 12.3 If Member States are to rely on public security grounds to curtail the activities of EU-based and licensed cross-border gambling providers, then the Member States must show that the providers and their services bring with them risks that can only be counteracted through such draconian measures as threatening them and sometimes their customers with criminal prosecutions.
- 12.4 It cannot be stressed too often that they have failed to do so.
- 12.5 There is no proof of any systematic gambling fraud involving reputable companies in properly-regulated jurisdictions.
- 12.6 There is no proof of any serious money laundering problems involving reputable companies in properly regulated jurisdictions. On the contrary, it is a view held by many specialists that, very much because of the systems in place (notably the banking and card-related systems) and the regulated nature of the activity,

remote gambling provided by the larger operators is one of the least attractive routes for money launderers to consider.

- 12.7 There is no proof of organised crime groups being involved with reputable companies in properly regulated jurisdictions. A regulatory environment that, as a first step, allows only suitable persons and organisations to obtain licences to provide gambling services is a key element of preventing this.

13. Public health justifications

- 13.1 These justifications can best be described as those designed to deal with problem gambling, prevent gambling by children, and address the undesirable social effects of both.
- 13.2 ARGO could not be more supportive of this principle. As providers of gambling services, ARGO's members are better placed than most to understand the complex issues involved. They are committed to operating in a socially responsible manner and have already produced a code of practice which sets out ways in which companies offering remote gambling can empower their customers to deal with any problems that might develop. This includes everything from enabling the customer to exclude themselves for set periods, to limiting how much they might gamble with during a set period, to directing them to sources of help where specially trained counsellors can assist them. It also calls for its members to provide appropriate training about responsible gambling to their staff.
- 13.3 It is a fallacy that more gambling opportunities automatically create more problems. For instance, in the UK there are comparatively low levels of problem gambling despite the ready availability of betting, gaming and lottery products both on premises and remotely via the Internet, telephone, or interactive television. Problem gambling can be combated effectively through education, treatment and the socially responsible behaviour of properly licensed and regulated gambling providers.
- 13.4 ARGO is always willing to working with regulators, academics and problem gambling charities in order to minimise any and all potentially harmful side effects of gambling.
- 13.5 The ARGO code of practice also covers measures to exclude children from being able to gamble, especially over the internet, even though there is no evidence of it being a widespread problem. In particular, ARGO has been working actively with the banking

sector with the intention of finding a way that information can be shared between the banking and remote gambling industries to further improve the verification of the age and identity of customers. This would also serve to add even more safeguards against fraud and money laundering while at the same time providing invaluable data about the ages of potential customers.

- 13.6 Even allowing for the progress that has already been made the remote gambling industry will continue to contribute financial and moral support to pieces of research that are designed to improve the understanding of what contributes to gambling addiction and the most effective ways to treat it.

14. Regulatory case study: British Gambling Bill

- 14.1 It is not for ARGO to suggest that one set of national regulations are inherently better than any other, but it is reasonable to refer to the position of the UK, which has similar concerns to other Member States, and yet has been able to satisfy itself that remote gambling can, and ought, to be regulated rather than prohibited.
- 14.2 Existing gambling regulation in the UK is generally accepted as being of a high standard. It has a very broad range of gambling activities which exist in competition with one another. The industry is crime free and problem gambling is regarded as being very low compared to most other jurisdictions. As the ECJ found in *Gambelli* (para 12) Stanley, the British bookmaker involved with the case, "...is subject to rigorous controls in relation to the legality of its activities".
- 14.3 The existing gambling laws date back to 1963 (betting) and 1968 (gaming) and have served well. However, largely because they are being overtaken by technology the British Government instigated a comprehensive review of its regulatory regime. After a lengthy and thorough consultative process it introduced a large Gambling Bill into Parliament in the Autumn of 2004. It is expected to become law in 2005.
- 14.4 On the specific subject of remote gambling the UK Government took comfort from the fact that remote betting was well established, firstly through telephone betting and more recently through online betting. There was no evidence that it had presented any noticeable problems from a regulatory perspective. It also took into account that online gaming, predominantly online casinos and poker rooms, were growing in accessibility and popularity.

- 14.5 The UK Government was left with two options: to regulate this new sector or to seek to prohibit it.
- 14.6 For two main reasons it chose regulation. Firstly, as all other sectors of the British gambling industry were regulated it was logical to do the same with this new sector. Secondly, and especially in the face of evidence which indicated that prohibition merely drove operators and their customers towards perhaps less well regulated jurisdictions, it made sense to offer British and other customers the chance to gamble remotely with fully regulated British-based operators.
- 14.7 The Gambling Bill therefore contains provision for a whole new licence category: the remote gambling operator's licence. The Bill is drafted with the aim of making it "future proof" so that there is capacity for the new regulator, the Gambling Commission, to react quickly and effectively to any new technologies that might evolve.
- 14.8 The Bill does not seek to criminalise consumers who gamble with offshore operators, nor to criminalise those operators for making their services available. It recognises that gambling and other e-commerce products are not capable of complete regulation within national boundaries. Instead it has adopted a pragmatic response which is to enable operators to offer safe products that are fully regulated and give that choice to consumers irrespective of where they are located.
- 14.9 The Bill sets out the licensing objectives in its very first clause. They are:
- (i) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
 - (ii) ensuring that gambling is conducted in a fair and open way; and
 - (iii) protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 14.10 There is an unavoidable connection between these criteria and those identified under European Law as being reasons that justify imposing restrictions. If the UK Government, with its long experience of regulating gambling and after considering all of the issues over a period of several years, believes that all of these objectives can be met through regulation and that such controls are

sufficient to meet its regulatory objectives then other Member States will have to explain their reasons for disagreeing. This is both compliant with EU law and puts the burden on other Member States to explain why they disagree and on what basis. More than that they need to prove that controls in the UK are insufficient while their own are proportionate and necessary.

- 14.11 The situation internationally has been confused by debate about where the gambling takes place. The biggest query has been whether it takes place where the operator is based, where the consumer is based, or at both places simultaneously. However, this issue is much less important within the EU because the Treaty already provides for the free movement of services between Member States.

15. Policy considerations

- 15.1 For cultural and historical reasons the approach to gambling prohibition or regulation varies from one Member State to another. This is understandable, but in itself this is not a justification for restricting cross-border gambling opportunities for companies licensed in other Member States.
- 15.2 EU law as interpreted by the ECJ is now clear about the grounds on which restrictions on movements of services may be imposed by Member States. These grounds do not include defence of preferential licensing regimes which are only available to companies from the host Member State and income from State-sponsored gambling operations.
- 15.3 An objective analysis will demonstrate that effective regulation of remote gambling, both within and across borders, is completely possible.
- 15.4 Where it can be shown that remote gambling can be conducted in a fair, crime-free, socially responsible way then it must be treated as a service like any other that should benefit from the principles of the single European market, as recalled recently by the ECJ.
- 15.5 The restrictions which are still being imposed by numerous Member States must, under EU law, be proportionate, non-discriminatory and justifiable. In the light of all the evidence it is hard to see how that can be the case when operators in certain Member States, already have in place extensive safeguards which are designed to address the very concerns cited by other Member States and the

ECJ. Not only that, but the legitimate remote gambling industry is constantly striving to improve its processes.

- 15.6 Unless and until there is clear freedom of movement across the EU in a manner that accommodates the full spectrum of remote gambling, the European Commission and the ECJ will continue to receive numerous complaints and cases.
- 15.7 Their actions may eventually lead to unwarranted barriers being removed. That could be a very expensive, protracted process. It would be much fairer and efficient for providers and EU consumers if a directive, such as the Directive proposal on Services in the Internal Market, could be used to build on the current legal position and overcome misplaced resistance to freedom of movement.
- 15.8 Without it, gamblers across Europe will increasingly take their business to gambling operators in non-Member States. The associated revenues will continue to flow out of the European Union to jurisdictions where the gambling may not be fair, where the checks on criminal infiltration are not thorough, and where there is little or no regard for the age of the customers or their wellbeing.
- 15.9 In contrast it must be better to offer gamblers well-regulated alternatives from within Europe. Denying operators in Member States their right to offer gambling services across borders cannot achieve the objectives that all Member States claim to want to achieve.
- 15.10 State lotteries are perceived by some as being particularly susceptible to competition from lower margin gambling products like fixed odds betting or online casino games. However, it remains to be seen whether competition has an adverse effect. In the UK, which has one of the most competitive gambling markets in the world, the National Lottery has responded to competition and continues to be successful. Competition pressures have encouraged Camelot, the operators of the National Lottery, to become a more efficient organisation and to offer their customers a better, wider range of lottery products. They have managed to do that and still raise huge amounts for good causes.
- 15.11 Protectionist policies are doomed to failure. They fail to take into account the global nature of the remote gambling industry, continuing advances in new technology, and the repeated failure of attempts by individual countries, not just in Europe, to make prohibition work.

- 15.12 Proper regulation rather than the prohibition of remote gambling is the only long-term viable solution to the potential downsides that can be associated with the industry.
- 15.13 Proper regulation does not include the restrictions currently being imposed by numerous Member States. These are in breach of EU law, discriminatory, beyond what is necessary and proportionate and, as they appear to be primarily based on economic objectives, they are not in the general interest.
- 15.14 As a result of this, fully licensed remote gambling operators in some Member States are suffering immediate and ongoing harm. This will continue until finality is brought to the subject through ECJ or, preferably, European Commission enforcement of the freedom of movement provisions in the EU Treaty.
- 15.15 Regulated remote gambling operators in Member States are not seeking preferential treatment, nor are they asking for Member States to lose their right to impose restrictions where they are justified.
- 15.16 What they do want, and what they are entitled to under European Law, is fair access to markets and an acceptance that most of them already have in place adequate measures to satisfy any objective tests of legitimate restrictions based on public policy, public security or public health grounds.
- 15.17 Member States should not be allowed to hide behind these justifications in order to pursue protectionist policies that are designed to prevent the free movement of gambling services.

16. Conclusion

- 16.1 It is to be hoped that this Report will help inform the ongoing debates about cross-border gambling and serve to counter some of the arguments put forward by those who are opposed to this regulated activity being accepted as a legitimate source of cross-border commerce within the European Union.
- 16.2 Well-regulated cross-border service provision in non-gambling sectors of the EU market, operated by regulated providers, is fair, honest and safe, and is accepted by all as being so. It is the view of ARGO and this Report that, on an objective consideration of all the issues, it must be concluded that cross-border gambling services offered by properly licensed EU-based providers are equally fair, honest, and safe and deserve the same acceptance.

ARGO MEMBERSHIP

Members:

bet365 provide the Internet and telephone betting division of the bet365 Group Limited. The bet365 Group Limited owns the bet365 chain of licensed betting offices in the UK and is affiliated to the Backhouse bet365 chain of licensed betting offices.

Bet Direct the online betting face of Littlewoods Gaming wholly owned by Sportech plc.

Blue Square was launched in 1999 and has fixed odds betting services on the Internet, Interactive TV, WAP and telephone. Blue Square was a wholly owned subsidiary of the Intercapital Group Ltd until January 2003 when it was acquired by Rank, one of the UK's leading leisure and entertainment companies.

Coral was established in 1926, while Eurobet was the first Company to accept bets via the internet in 1996. In 1999 Eurobet joined forces with Coral, to form Coral Eurobet. They are now one of the leading betting and gaming operators in the World.

Ladbrokes is the betting and gaming division of Hilton Group plc, the world's premier international hotel brand. They are the UK and Ireland's largest off-track bookmaker with around 2000 high street licensed betting shops. Ladbrokes was the first major betting and gaming brand to develop multi-player poker and now operate Europe's No.1 online poker site.

Paddy Power was founded in 1988 on the merger of three existing Irish high street bookmakers. It is now the largest operator of licensed bookmaking offices in Ireland with a network of 161 shops in Ireland and the UK.

PartyGaming (previously iGlobalMedia) has grown to become the largest e-gaming company in the world since first being established in 1997, with famous online poker, casino and bingo brands, such as PartyPoker.com, StarluckCasino.com and PartyBingo.com.

Skybet was formed from the established bookmaker Surrey Sports and is part of BSKyB, one of the world's leading broadcasters and producer of the Sky Sports channels.

Stan James has been one of the major players in the UK betting industry since being established in 1973. It continues to be one of the most respected names within the betting industry.

Stanleybet is Stanley Racing's Internet betting service. Stanley Racing Limited is a subsidiary of Stanley Leisure plc which is quoted on the London Stock Exchange and is one of the leading bookmaking chains in the UK and Ireland.

Totesport was introduced to make it easy for customers to place fixed odds bets on a wide variety of sports in addition to Tote pool products for horse racing. The Tote has more than 4000 employees and provides a major presence at each of the 59 British racecourses. As a Non- Departmental Public Body (NDPB) it is responsible to the British Government's Department for Culture, Media, and Sport.

Victor Chandler was founded in 1946 and led the move to offshore betting and gaming in the 1990s. The Group includes online and telephone betting both in UK and from Gibraltar as well as online gaming and has customers in over 70 countries.

William Hill has been established since 1934 and currently operates over 1,600 licensed betting offices in the UK. They have 184,000 active telephone customers and operate an online sportsbook and casino.

32Red is the registered business name of Trafalgar Betting & Gaming Limited, a British company incorporated and based in Gibraltar. 32Red continue to be one of the most respected online casino operators having received a number of awards for the quality of service they provide.

ASSOCIATION OF REMOTE GAMBLING OPERATORS (ARGO):

OBJECTIVES

1. To provide an organisation for the benefit and service of British & European remote gambling operators within the betting and gaming industry and to represent the interests of remote gambling operators in both the United Kingdom and those countries in the European Economic Area (EEA).
2. To undertake collective negotiations on behalf of members with appropriate trades' organisations, employers' organisations, government bodies, media interests, and other relevant entities.
3. To pursue any method of litigation and where appropriate assist any of its members in litigation against any organisation providing services to or in any other way connected with the UK and European betting and gaming industry and to support any of its members involved in litigation over the right to provide services in EEA member states.
4. To represent, express and give effect to the views and opinions of remote gambling operators and their employees on commercial and mercantile matters of all kinds to Parliament, parliamentary bodies, other EEA national governments, public bodies, regulatory authorities, the Horserace Betting Levy Board (or its successor), suppliers of services to the betting and gaming industry, the media, the public and any other organisations with the ability to effect or influence the remote gambling market.
5. To encourage high standards of probity and integrity within the betting and gaming industry, both for the benefit of its members and the public generally.
6. To encourage social responsibility within the betting and gaming industry, effected through various means including support for charities and initiatives to help those who have gambling problems.
7. To print, publish and circulate any newspapers, magazines, periodicals, books and pamphlets that may further the objects of the Association.

8. To promote, present, obtain, support or oppose any petition to, provisional order of, or Bill in Parliament or similar legislation in any EEA member state, and do, or procure to be done, any proceedings, enterprises, movements or any other form of activity which may tend to promote in any lawful manner the objects of the Association or any of them.
9. To ensure that the UK Government is fully aware of the impact on operators of proposed legislation and regulation of the remote gambling industry.
10. To engage actively with the proposed new Gambling Commission to ensure that the regulation of the remote gambling industry strikes the right balance between the commercial interest of the operator and protection of the young and vulnerable.
11. To promote the right under European law for members located in one EEA member state to freely promote their services in, and accept business from, all other EEA member states.
12. To make representation in the European Commission and European Parliament , as appropriate, through whatever means, to press the case for the free movement of gambling services across Europe.

EU STATES: SUMMARY OF POSITIONS

- Austria** - “combating money laundering and terrorism” are justifiable reasons for restricting gambling opportunities and there are concerns that if the “gambling activity is legal but unlicensed in a Member State then effectively it becomes unlicensed everywhere”. Public order objectives can only be adequately safeguarded if left to national control (source: comments on the Directive Proposal on Services).
- Belgium** - a single gaming market will only incite consumers to squander more and thereby damage society (source: submission re *Gambelli case*).
- Denmark** - the main purpose of the restrictive legislation is the “need to uphold legitimate interests with regard to public policy and order as well as to limit damaging social consequences such as problem gambling and fraud. A second ground, which is not without relevance, is that betting and lotteries may make a significant contribution to the financing of benevolent or public interest activities such as social and charitable undertakings, sport or culture” (source: written evidence given jointly by Denmark, Finland, Sweden, Norway & Iceland to the Pre-legislative Scrutiny Committee for the Draft Gambling Bill in Britain).
- Finland** - it is for each state to determine if the action it is taking is proportionate in the light of the public policy objectives of each state (source: submission re *Gambelli case*). In a fairly recent development the Aland Islands, an

autonomous part of Finland, now licence remote betting and gaming operations.

- France** - restrictions are justifiable if they prevent fraud and protect consumers (source: submission re *Gambelli case*). France is not against Internet betting *per se* and in 2003 its monopoly pool betting provider, Pari-Mutuel-Urbain, launched its own online site.
- Germany** - the German approach is complicated because each *Länd* is responsible for its own gambling policies, but there have been recent local court rulings in favour of cross border gambling.
- Greece** - games of chance and betting should remain under state control via a monopoly. Private operations lead to disturbance of the social order, incitement to commit offences, and the exploitation of consumers (source: submission re *Gambelli case*).
- Hungary** - bets taken by foreign bookmakers are deemed to be in breach of Hungarian law which provides for a state monopoly. Action has been initiated against Sportingbet, a British licensed company, because it has a Hungarian language website offering betting.
- Ireland** - already permits cross border telephone and Internet betting.
- Italy** - protecting state monopolies is justified, on grounds of preventing criminal infiltration and securing revenues for the State. It is also illegal for the consumer to gamble over the Internet and pay by credit card with a bookmaker in another Member State (source: submission re *Gambelli case*).
- Latvia** - the new regulatory regime introduced in 2003 includes licences for remote gambling.

- Luxembourg** - restrictions are justifiable if they control the desire to engage in gaming and are proportionate (source: submission re *Gambelli* case).
- Malta** - From 2004 cross border remote gambling operations have been licensed and welcomed.
- Netherlands** - in the case brought by the state-owned De Lotto against Ladbrokes an interlocutory decision has been given by the Court of Arnhem that Dutch gambling laws are insufficiently consistent to enable them to prohibit operators in other Member States from offering their products, but a final judgement is still awaited.
- Portugal** - there is a need to protect state monopolies and national revenues. It is contrary to “social order if money goes to states ‘where the amount of winnings is more attractive.’” (source: submission re *Gambelli* case). It has since been announced that Portugal is considering the possibility of licensing online gaming, but it is unclear whether this would extend to cross border gambling.
- Spain** - the grant of exclusive rights and exclusion of foreign operators is compatible with the objective of limiting supply (source: submission re *Gambelli* case).
- Sweden** - restrictions imposed for tax reasons are not necessarily contrary to Community law, as long as they are proportionate and do not discriminate between operators (source: submission re *Gambelli* case.)
- United Kingdom** - Remote betting (by telephone and more recently over the internet) is the oldest form of legalised betting and there are no restrictions on the jurisdictions from which bets are taken. The Gambling Bill 2004 includes provisions to

allow remote gaming to be fully based in the country for the first time and there will be no restrictions on where business may be accepted from. There will also be nothing to prevent non-British operators from applying for licences alongside their British counterparts, nor will it be an offence for British gamblers to gamble with offshore operators. EEA-based operators will be able to advertise their services in Britain on the same terms as those licensed there.