

Consideration of whether to relax the ban on using an electronic communications network for the operation of gambling

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<http://www.ejpd.admin.ch/ejpd/fr/home/dokumentation/mi/2009/2009-04-220.html>

1. Starting point

By decision of 9 March 2007, the Federal Council has instructed the Federal Department of Justice and Police (FOJ) consider whether to relax the ban on using an electronic communications network, particularly the internet, for the operation of games of chance and regulate this sector, the Federal Council with a report with proposals.

The idea behind this mandate was to have the tools to better uphold the purposes of the current legislation (art. 2 LMJ). Experience has shown that the prohibition of virtual games was not sufficient for this purpose. This prohibition can be easily circumvented, if it avoids open to prosecution in Switzerland. Gambling on the Internet are accessible from anywhere in the world, and therefore also in Switzerland.

1.1 General remarks

1.1.1 Limitation to gambling under the law on gambling houses

Art. 1 al. LMJ 2 excludes from the scope of the Lotteries Act and betting. This report does therefore the opportunity to relax the ban for gambling using the virtual definition of art. LMJ 3. It presents different models of implementation of this relaxation.

On the exclusion of lotteries and betting, we refer to the legal opinion of the Federal Office of Justice (see section 6.2 below).

1.1.2 Concept of telecommunications

The Federal Council's mandate covers all use cases of a network of electronic communications for the operation of games of chance, while putting emphasis specifically on the internet. Other networks such as mobile phone or digital interactive television (iTV) have not yet imposed on the market for gambling. The organization of games of chance through such other means of

telecommunication, which have yet to be defined more precisely in the law and order, must therefore be prohibited as in the past.

1.1.3 Compliance with the goals of the law (art. 2 LMJ)

The LMJ is designed to:

- Ensure the Games safe and transparent;
- Preventing crime and money laundering in the gaming houses, or through them;
- To prevent socially harmful consequences of gambling;
- Generate revenue.

These goals must be met in the same way by providers of online gambling and gaming houses have a physical presence in the territory (land casinos). The liberalization of gaming on the internet, by whatever means, should not affect the pursuit of these goals.

In collaboration with an expert, Professor Alain Thierstein, Professor of Development Area at the University of Munich, the CFMJ analyzed different market scenarios, which are presented below. It is also on these scenarios are based forecasts of tax revenue expected.

1.2 Comparative Law

1.2.1 General

The mandate focuses on whether to relax the prohibition to operate games of chance on the internet and on regulating the sector. Switzerland is venturing into uncharted territory here, but other states, regions or autonomous territories already allow, and sometimes for some time, operating via the internet gambling within the meaning of the LMJ.

1.2.2 World Trade Organization / European Union

In the liberalization of world trade led by the World Trade Organization (WTO), the General Agreement on Trade in Services (GATS) sets the free exchange of services between Member States. The availability of gambling is expressly qualified services in the Central Product Classification established by the United Nations (CPC Section 96492), which is the nomenclature which is based on the GATS. Art. XIV GATS provides, inter alia, as exceptions to free trade in services, which Member States may adopt national measures "necessary to protect public morals or maintain public order" or "necessary to ensure respect of the laws or regulations (national). Obviously, these measures should not be arbitrary or unjustifiable, or constitute disguised restrictions on the freedom of trade.

Under the General Agreement on Trade in Services, Switzerland has made no commitment to the field of games and competitions. With the exception of the

United States, no member of the WTO practice has made commitments in this field. The United States, however, seek to return to their obligations in this regard, they have introduced a procedure for this purpose. Switzerland is therefore free to adopt all necessary measures to ensure that the online activities in connection with these services meet the applicable legal provisions.

In the European Union (EU), given the diversity of national regulations, the voices are increasingly asking for regulations as uniform as possible at EU level. The European Parliament and the Council on services in the domestic market is the European directive that regulates the internal market in services. In February 2006, when he voted on the text of the directive on services, the Parliament has expressly excluded gambling (including lotteries, casinos and betting). In the explanatory memorandum, it quotes the special character of games of chance with regard to public order and protection of consumers. The European Parliament stresses that it is completely impossible in the field of games of chance for a fair cross-border competition. The principle of access to services of general economic interest as it appears in art. 36 of the Charter of Fundamental Rights of the European Union, however, remains as a legal basis.

In its case law - particularly in the case Gambelli - The Court of Justice of European Communities (ECJ) has acknowledged that in the market for games of chance, monopolies were eligible if their aim first to restrict supply, the fight against gambling and protect youth. The State must explain in a credible way that its main concern is the public interest, the protection of players and the fight against fraud, not revenue. This view is also defended that the EFTA Court in its review of the Norwegian legislation, which is also a state monopoly.

At this time, the Council of the European Union carries out a survey of Member States of the European Union to establish what are the commonalities of the different national legislations in the field of operation of gambling (including lottery and betting) on electronic communication networks. This could be a first step towards harmonization of legislation.

1.2.3 Legislation considered

The following remarks relate only to foreign laws regulating the gambling within the meaning of the LMJ. The regulations relating to the exploitation of virtual lotteries and gambling have been included for the neighboring states of Switzerland.
Neighboring

Germany: Since the entry into force of the agreement by all states of Germany, on 1 January 2008, the organization and delivery of games ha-sard public (such as those regulated by LMJ) on internet are no longer allowed. The on-line lotteries and sports betting is in contrast ad-placing.

France: The use of lotteries and sports betting online is allowed for people staying in France. The online exploitation of gambling within the meaning of the LMJ is prohibited.

Italy: The use of online lotteries is allowed for people staying in the country. The online exploitation of gambling within the meaning of the LMJ is prohibited.

Austria: The Austrian Lotteries (Österreichische Lotteriegesellschaft) holds the concession to operate electronic games of chance and offer with Casinos Austria, a broad range of such games. Can not play that persons domiciled in Austria.

Rest of Europe

Åland (Finland), Alderney (Guernsey), Land Hessen (Germany), Isle of Man, Malta, United Kingdom

Asia

Special Economic Zone Cagayan (Philippines)

United States / Canada

File Hills Saskatchewan, Kahnawake, Six Nations Reserve

Caribbean

Costa Rica, Nicaragua, Antigua and Barbuda, Dominica, Saint Kitts and Nevis, Virgin Islands

Australia / Pacific

Northern Territory, Tasmania, Norfolk Island, Vanuatu

Africa

Anjouan

Russia

Republic of Kalmykia

1.2.4 Models of authorization / monitoring and control

The authorization of gambling virtual states may be different depending on the models described below:

Free Market

None of the legal review does absolute free market, all provide some basic conditions. A relatively free market is characterized by the fact that the State exercises a restricted activity in the control and monitoring.

Operations monitoring and control of the state are usually very limited or no complaint triggered on a player. Typically, the State does not control or oversees

hardware and software used.

Example of Saint Kitts and Nevis: a business license can be issued upon presentation of a criminal record, a certificate of good character, a recent photo and a copy of your passport (personal) or an extract from the register and an extract from the register of proceedings and bankruptcy (legal persons).

Police Clearance / right to obtain a concession

The police authority is characterized by the fact that compliance with legal requirements gives a right (which may be subject to legal action) to obtain an operating license. There is no limitation on the maximum number of providers may be authorized.

Providers are subject to monitoring and supervision of the State. The control hardware and software is used in different ways depending on the case: the audit focus is directly on the material in question or on a prototype to be filed with the competent supervisory authority.

Example of Malta, after review of documents required for the application, a provisional license is issued to the applicant. He / she is already operating online gambling during the verification process.

Concessions (Self / related)

In a system of concessions, the applicant can not claim a right to obtain a concession to operate, even if it meets all the requirements. Most often, the law or guidelines limit the maximum number of concessions may be granted.

The hardware and software are subject to verification and control of the State. Very often, different concessions are granted for the operation (concession proper operating license for the hardware and software, concession for natural persons).

The concessions granted under the procedure can be of two types:

Self Concessions: the procedure for granting concessions is open to all interested providers.

Example: Northern Territory (Australia).

Concessions related: the procedure for granting concession is only open to providers who already hold a license (eg land casinos). In this case, the concession is regarded as an extension of the original concession. For this reason, it takes most of the conditions attached to the original concession (hourly operating restrictions, rate of redistribution, etc.)..

Example: Casino Wiesbaden (until 31.12.2007).

Exploitation by the State

In principle, the operation of virtual gambling can also be provided by the State or by a service mandated by the state. The online gambling offered by companies Foreign-state include casino games, as well as lotteries and betting.

1.2.5 Duration of the authorization issued by the State

Regarding the duration of the authorization or concession granted by the state are in practice two types of solution:

Indefinite with the possibility for the state to revoke the authorization at any time (for ex. Saint Kitts and Nevis, Virgin Islands)

Limited duration with the possibility of renewal (eg. Alderney, Malta).

We note that the duration of permits / concessions in time is relatively short (2 to 5 years), the automatic renewal is sometimes (eg. After payment of the fee required), but it may also require a new verification process.

1.2.6 Models of taxation

For the imposition, two bases are in competition:

- A portion of the country has a system of fixed annual fee whose amount (depending on the case between U.S. \$ 10 000 and U.S. \$ 100 000) is independent of the profit or turnover.
- Other countries levy a tax percentage and collected most of the time on the gross gaming (PBJ), sometimes on the profits of the company concerned. The rates vary between 2% and 15%.

Combined systems also exist, in which, in addition to a tax expressed as a percentage of PBJ, the State receives a flat fee based on the amount of PBJ (eg the United Kingdom: 15% off the PBJ plus a flat fee of £ 28 988 for a PBJ less than £ 5 million, £ 34 423 for a PBJ less than £ 100 million and £ 38 047 for a PBJ exceeding £ 100 million).

For license related to the Casino in Wiesbaden, whose online activities are seen as an extension of the existing supply, the tax rate used is the same as for the casino land (80% of PBJ).

However, it should be noted that in practice, the actual financial burden imposed on the operation of virtual gambling can deviate significantly from the figures quoted. National tax law may allow the operator to make certain deductions if it makes investments in the country, it makes tax filings, etc. (example of Malta:

The rate provided by law is 25% the effective tax after taking into account all possible deductions is more than 4.17%). In other states, there is an increase in the indirect costs related to the fact that operators have to bear other costs (eg Kahnawake: the operator must bear the establishment of infrastructure Telecommunications - telephone and satellite network).

1.2.7 Territorial restrictions

Most legal systems do not yet territorial restrictions, ie that participation in the virtual game is open to anyone, it is in the country or abroad. In some states, legislative changes in order to introduce territorial restrictions are currently under discussion.

However, different states apply to territorial restrictions. The Australian, for example, prohibit persons settled in the country to participate in virtual games of chance offered in the country. In other words, the concessions granted by the territories only to offer games of chance for players abroad.

Other legal systems do the opposite as people settled in the country to participate in online gambling (Austria, Casino Wiesbaden).

Territorial restrictions imposed by using measures (for ex. Blocking of foreign sites or the ability to connect to a site from abroad, the prohibition of financial benefits associated with gambling virtual obligation to open an account to play).

2. Respect for the purposes set forth in art. 2 LMJ

2.1 Ensure safe operation of games and transparent

Land for casinos, the secure and transparent gaming is provided in particular by the following measures provided for in the two orders for the LMJ: video surveillance systems, electronic counting and control (SEDC) décomptes automatic slot and table games, recording data, review of slot machines and jackpot systems.

2.1.1 Types of online games

Gambling online fall into one of three categories:

Gambling web-based

The player can access the game directly from the website of the provider. He does not need prior to download and install software on his computer. The games are represented by using plug-ins of the browser (plug-ins) such as Macromedia Flash, Macromedia Shockwave or Java. All images, sounds and animations required are transmitted directly via the Internet. The game software runs on a server of the provider.

Gambling based on an application to download

The player must first download the client software and install it on his computer. Such applications will work without the browser and are generally faster than the internet-based games as images and sounds are integrated into the application and do not need to be downloaded during the game. Here too, the game software running on a server of the provider.

Gambling based on a direct connection with a real casino

In the first two models, a random number generator that decides if a game is won or lost. Things are different for games of chance held in a casino land to which the player participates in direct via his computer. The player sees and hears live dealer and other players who are at the table. It is therefore not a game of chance online in the traditional sense, but rather a simple system for interactive access to the game

2.1.2 Relaxation of the ban

The surveillance techniques casinos land are not applicable as such to gambling online. They must be adapted to specific requirements of different technical approaches of virtual gambling. This will distinguish between:

- Games of chance based on the web or download an application (applications including a random number generator) and
- Games of chance based on a direct connection with a casino on land (applications without random number generator).

The application software used for gaming web-based application or on a tee-léchargée are usually complicated. Specialized companies create applications, games (online casinos) to meet the specific needs of their customers, using health often this additional applications created by other companies. The situation concerning games of chance based on the web or downloading an application can not be compared with the surveillance software on a land casino. Software systems used for online games are so complex that the measures planned for land casinos do not guarantee safe and trans-parent games.

To ensure compliance with the purposes set forth in art. LMJ 2 in the field of online gambling, the following measures are necessary as regards the games on the web and download:

- Verification / certification of software used;
- Surveillance, and occasional on-site supervision by software specialists.

These measures imply that the entire infrastructure of the virtual casinos is in Switzerland. Without this minimum, it is impossible to guarantee a safe operation and transparent games.

As for gambling based on a direct link with the land where the casino game is played, the software applications used do not contain random number generator,

but simply allow the player to participate in the game even if it is not physically in the casino in question. This form of play is by an extension amount of the activity of the gambling house. It therefore suffices to extend the system of surveillance exists. This system does not need to be reviewed fundamentally in principle or be adapted to complex technical requirements. It is therefore easier in this case, to ensure the games safe and transparent.

Conclusion

Respect for the purposes set forth in art. 2 LMJ for gambling virtual web-based or downloading a software application is only possible with the staff resources very important. A secure and transparent gaming requires a permanent online monitoring by specialists from the networks and local software packages. The CFMJ believes that to control an online casino, between one and two posts of specialists are needed to ensure the technical supervision. Regarding online gambling based on a direct connection with a land casino, ensure compliance with the goals of the LMJ require significantly fewer resources, since the game itself takes place in an institution which in any case the subject of surveillance.

2.2 To prevent crime and money laundering in the gambling houses or through

2.2.1 Crime and Prosecution

Status Quo

Under Art. LMJ 5, the use of an electronic communications network such as Internet for the operation of gambling is prohibited. The penal provisions of the GCA does not explicitly mention the operation of virtual gambling, but these are implicitly included in the formulation of these provisions, since the term "home game" applies both to an establishment with a physical presence in the real world to a virtual casino. Art. 55, devoted to crime, said that "he who shall be liable (...) will be opened or operated a home game without the benefit of concessions and authorizations necessary or will be provided or procured local facilities to this end" (al. 1, let. a). Art. LMJ 7 defines a common gaming house as "an enterprise that provides, on a professional basis, to engage in games of chance." Under Art. LMJ 56 (tickets), "shall be liable (...) who has organized or operated business gambling on the outside of a gaming house" (para. 1, let. A).

Only in the context of criminal proceedings concrete, not general, it is possible to describe the activities to be considered as fulfilling the elements of the offenses referred to in art. LMJ 55 and 56. According to the practice of CFMJ corresponds to the legal elements of offenses under the LMJ online activities that, in general, enable, support or encourage an offer gambling online. Mere participation in a game of chance offered online is not punishable.

As the criminal provisions of the LMJ establish formal offenses, only au-teurs committing the crime on the territory of Switzerland are punishable.

The acts that make possible an offer of online gambling can be performed in a multitude of countries. It is therefore possible that for offerings of online games, only some partial acts can be prosecuted in Switzerland, other acts escape prosecution for lack of a link with Switzerland. Typical elements allowing the in Switzerland is the seat of the administration of the proposed game online, home of the operator or the location of the server that hosts the service.

In the vast majority of cases treated so far by the CFMJ, investigations have shown that online games were offered by a company whose headquarters are located abroad. Similarly, the server hosting is the most time abroad. It is rare to find evidence that some of the acts punishable criminally has de-rolled in Switzerland, so that the elements that would allow a criminal prosecution in Switzerland are generally lacking.

In the early years following the entry into force of the LMJ, the CFMJ opened a small number of cases of cases of exploitation or financing of casinos with a virtual link with Switzerland. But in most cases, CFMJ has been and is still faced with unlawful marketing of online games. These cases seek leads in general to criminal proceedings against the Swiss, who put on their website or hyperlinks that lead directly to proposals for gambling on-line and, thus, organize games of chance online. Since the entry into force of the LMJ in the year 2000, some 40 criminal proceedings were initiated in cases involving the Internet in 2007, these procedures were seven in 2008, only one procedure of criminal law administrative been opened.

New offenses for liberalization

According to the form of the LMJ in the event of liberalization, the existing penal provisions should be adapted in your (new statements of fact taking into account the technical issues of a concession granted to a gambling house operating in line).

Compared to land casinos, casinos virtuels have increased needs of marketing and advertising, so why should LMJ include regulation explicitly lists this area for online games. For tenders online games illegal, a criminal law explicitly prohibiting any marketing or advertising must be introduced. Such a ban will focus offers online games allowed, with a concession, and protect them against foreign competition. The penal provisions will be strengthened. Whoever performs an act of marketing or advertising the fact to offer an online gaming unauthorized or not qualifying for a concession will be punished, if there is a link with Switzerland. This prohibition applies to both print ads and commercials than any form of online advertising. The penal provision in question must be formulated as a ticket, because the degree of wrongfulness of an act of marketing is less than that of crimes under Art. 55 LMJ.

Conclusion

The penal provisions of the GCA must be adjusted, on the one hand because the liberalization opens up new opportunities for crime and, secondly, to protect the offers online games concessionnées (prohibition of advertising).

2.2.2 Money laundering

Art. 34 LMJ submits homes Thursday, as financial intermediaries, with the provisions of the law on money laundering (LBA, RS 955.0). The order of the CFMJ of 12 June 2007 concerning the obligations of care homes Thursday in the fight against money laundering (of the order CFMJ on money laundering, OBA CFMJ, RS 955021) specifies the obligations of gambling houses in this area.

The obligations of care provided in order to ensure that gambling houses take appropriate measures in terms of organization and infrastructure as at a practical level, to prevent money laundering to the three possible levels (players, gambling houses with financial services, gambling houses as front companies). The implementation of these measures is monitored regularly by the CFMJ in its monitoring activities.

If relaxation of the ban on virtual gambling, the potential providers of such services must indicate how they intend to implement for an online offer, the duties of care attached to houses They game will show how they intend to use technology for this purpose.

In 2003, the Financial Action Task Force on Money Laundering (FATF) has issued recommendations for the gambling houses and land line.

The measures of care in these recommendations provide a house online game the player must identify and verify their identity through documents, data and information from reliable and independent source. In addition, it must exercise constant vigilance in respect of the business relationship and ensure careful consideration of transactions during the entire duration of this business relationship to ensure that transactions made are consistent with the knowledge that the institution of his client, its business, its risk profile and, where necessary, source of funds. The extent of these measures of diligence on the client must be a function of an evaluation of the level of risk associated with the type of customer, business relationship or transaction. The home of online game must show greater vigilance in-to the customers for whom the risk is considered higher. When risks are low, the measures required may be reduced or simplified.

In its recommendations, the FATF requires that gambling houses online must verify the identity of their customers before, during, or - in special cases - immediately after the establishment of a relationship, specifically a relationship When Thursday's home game in line is not able to fulfill its obligations of care, it can not open an account for the player in question, or let. If the game has already begun, the home of online gaming has to stop, but must also consider whether to prepare a report on the client or on its transactions it considers suspicious.

With regard to politically exposed persons, recommendation No. 6 provides that the home of online gaming, in addition to the normal due diligence measures, may implement additional measures. Online casinos should therefore have risk management systems in place to determine if a customer is a politically exposed person.

According to recommendation No. 8, the gambling houses online must include procedures and measures to eliminate the risks of money laundering linked to the game players anonymous.

In its Recommendation No. 10, the FATF requires that virtual casinos should retain for at least five years all necessary records on transactions conducted at national or international level. These parts must be capable of individual transactions (including, where appropriate, amounts and types of currency involved).

In accordance with recommendation 11, the home of online gaming should pay special attention to all complex of an abnormally high amount and unusual patterns of transactions, which have no apparent economic or lawful purpose. Finally according to recommendation 24, the online casinos should be subject to comprehensive regulation and supervision to ensure that they have actually taken steps to fight against money laundering and terrorist financing. This is at least submit the online casinos to prior authorization and able to adopt measures to prevent criminals or their accomplices to take control of a casino, to become the beneficial owners, to acquire a significant shareholding or control, or hold a managerial position or operator. In addition, authorities should ensure that compliance by casinos of their obligations in the fight against money laundering and terrorist financing is subject to effective supervision.

Practical implementation possible

To facilitate the identification of customers, it could for example be provided that the financial flows between the client and the provider of online services exclusively through a financial intermediary, which is in turn bound by the provisions the legislation on money laundering.

Conclusion

Land for its casino, Switzerland has adopted the relevant recommendations of the FATF in the order of the CFMJ on money laundering. The implementation of these re-commendations should also be required from providers of virtual gambling. It will belong to them to take the necessary measures to this end, to solve satisfactorily the problems that could arise from this implementation and to provide supporting evidence.

2.3 Preventing socially harmful consequences of the game

The objective of social protection is formulated in the LMJ and in order to report. The granting of a concession for exploitation is only possible on the basis of the

presentation of a program of social, in which he sets out the measures it intends to take to prevent socially harmful consequences of Thursday or remedy (Art. 14 al. LMJ 2). The CFMJ must be informed of changes that are adopted to bring this program. In the order, the articles 37 to 45 dealing with this issue. Ss. 27 and 28 OLMJ contained in the section on security, also play a role. There are other specifications in mind and circulars from the CFMJ or its secretariat and specify acts of concession. The supervision exercised by the CFMJ encouraged gambling houses in the year 2007, to establish, for their social programs, a management system with quality control measures and improvement.

2.3.1 Applicability of the gambling online

The transposition of the social protection measures to the supply of virtual gambling poses problems primarily on early detection (cf. art. 38 para. 2 OLMJ and art. 39 OLMJ), compliance with the ban and exclusion of games (cf. art. 21 ff LMJ), examining the situation of the player in connection with a lifting of the exclusion of games (cf. art. 22 LMJ and art. 42 OLMJ) and the formulation and enforcement of rules in the field of advertising (cf. art. 33 LMJ and message on the bill).

Other requirements for social protection can be transposed to the field of virtual game, sometimes with minor adaptations. This is the case in the training and development (cf. art. 39 OLMJ), cooperation with external institutions nes, (see art. 37 and 39 OLMJ al. 2 OLMJ) rules on means of payment (cf. art. 27 and 45 s. LMJ OLMJ) and the provision of information (cf. art. 38 para. 1 OLMJ), as well as annual reports (cf. art. 40 OLMJ) and rules on data access (see art. 43 OLMJ).

Early Detection

Regarding the early detection, it is possible to develop new measures and equivalent, but a detailed evaluation of the effectiveness they might have would exceed the scope of this report. Personal contact and observation by staff subjective casino land should be replaced by a detailed inspection of the behavior of online players (up, time to play). Such control would, however, of interest only if a data exchange could be established between the supplier of gambling in the physical world or virtual. This would require creating a legal basis for processing data on the players.

Other problems

The legal bases underlying the prohibitions, exclusions and waivers of exclusions should be reviewed to determine whether they can apply to online gambling.

Advertising

It would be desirable to adopt more specific regulations regarding the advertising content and the form it may take. If the volume of advertising is limited, a

balance must be struck between the competitiveness of the casinos (as compared to foreign service providers) and limiting the consequences of socially harmful Thursday

2.3.2 Implications for the monitoring activity

In the area of monitoring, further efforts should be made dependent to a large extent on the type and extent of new offers that may be authorized. Factors to consider are, first, the number of providers and, secondly, the increasing complexity of new technologies (eg. Additional resources in the IT field).

Practical implementation possible

The profile of a player online is much more transparent than a customer who plays in a land casino. All bets and winnings, the duration of a game and the behavior involved may be identified and exploited through the mail. It is imagined that a reasonable electronic phase "Cool-off" is inserted when a player has suffered a certain loss. In addition, in the case of the usual players should consider whether it would agree not to activate electronic barriers specific to customers in line with income thereof, in case the limits of predefined set will be exceeded.

Conclusion

Today, access to offers of foreign, particularly via the internet is not so limited. Establish a supply at national level could lead to an improvement of social protection. The measures provided for by law at present should be adapted for the prevention of socially harmful consequences of the game is also effective for games of chance operating on the internet.

2.4 Volume of the market and potential market

The market focuses on the key factor of the gross gaming. The central elements of a cost-benefit analysis, such as income taxes or the tax can be deducted directly from this indicator.

The status of available data on the virtual gambling is very problematic that the data on this still young market is almost nonexistent. The indications that are found in the literature can differ greatly. Some studies even forgo trying to assess the volume of the market, as the authors suggest that there is insufficient reliable information on this subject. The (few) data and pre-existing views, which often emanate from research institutes of private market (eg. Global Betting and Gaming Consultants, GBGC), are often cited, but it is impossible to verify their reliability. The description of the market that follows is based on a comparison of cross-accessible and relevant literature on this subject, which at least generate ranges for key indicators.

Information relating to the Swiss market to remote gambling are very sketchy and there is no official data. The company Goldmedia (Goldmedia: Online Betting & Gambling 2010. Marktpotentiale für Online-Glücksspiele in Deutschland, Österreich und der Schweiz) estimated the volume of the market until 2005 and assessed the outlook for 2010, based mainly on statements of experts and entrepreneurs. The study stressed that the vagueness of these indications.

Goldmedia estimated turnover of the game online (and mobile TV interactive excluded) in Switzerland in 2005 to 415 million francs. On this basis, Goldmedia believes that for the year 2005, gross gaming in Switzerland in the field of virtual gaming has been around 70 million francs.

In collaboration with Alain Thierstein, Professor of Spatial Planning at the University of Munich, the CFMJ has done its own estimates of market trends, based on estimates and forecasts Goldmedia, as well as international indicators. Taking into account the opacity of the market and the lack of available data, CFMJ - from a gross games of 70 million francs for 2005 as estimated by Goldmedia - provides for the years 2006 and 2007 a range of possible market changes. This range is obtained by using two rates of annual growth different: an optimistic rate of 35%, which is the one which relied on the study of Goldmedia, pessimistic and a rate of 15%. Applying these two rates, one arrives for the year 2007 a turnover of the market for online games which should be between 550 and 750 million francs. Using the method of calculation used by Goldmedia for the year 2005, yields a gross games for the whole of Thursday at a distance, between 86 and 118 million francs.

Based on figures for the entire market, we calculated the turnover and the gross gaming within the meaning of the LMJ. It is difficult to segment the overall turnover in different types of gaming systems based on expert opinion, dia-Goldme believes that the Swiss market of online gaming is dominated by sports betting. They would reach for 2005 market share of 64%, the share of casino games being 29% and Lottery 7%. It should be noted that the various components of the market is not exactly the same as you consider the turnover or gross games because offerings of private betting and casino games have a payout ratios significantly higher than the lotteries. The CFMJ estimated that the share of online casino gross gaming is 30%. Based on this information, the gross proceeds generated by games casino has been an estimate used as an indicator for the year 2007. From a gross expected games for the entire market in 2007 to between 86 and 118 million francs and a market share estimated at 30% for the offers of casino games, there is gross games for 2007 ranging from 25.8 to 35.4 million francs. This is the average value of gross games of 31 million francs that we have chosen as an indicator of market volume for 2007.

The estimate of market developments in Switzerland for the period 2007 to 2012 is even more uncertain. To reduce this uncertainty, we have worked with a fork. The calculations are based on gross casino games estimated at 31 million francs

for the year 2007. The lower limit of the range will be determined using the growth rate of 5% which Goldmedia table. Being more optimistic, we can expect an annual growth rate of 15%. With these two values, we get to 2010, probably of a possible opening of the market, gross of games generated by the online casinos is between 36 and 47 million francs. Between 2010 and 2012, revenues expected to rise to 40 million francs with our conservative estimation and 62 million were in the most optimistic variant.

Note that these forecasts for the market in Switzerland up to 2012 by the assumption that the current prohibition of gambling virtual is maintained. The range of 40 to 62 million francs therefore gross gaming generated abroad by customers in Switzerland.

For predictions of developments in the market in Switzerland until 2012 when the ban on virtual gambling would be relaxed, different models of market opening were used to take into account the direct effects that these models of re-regulation may have on the evolution of demand.

Models of market opening were considered are:

1. License / permit police
2. Concessions alone (between 5 and 10)
3. Related concessions (concessions are granted to land casinos already in Switzerland)

For each of these models, the following alternatives were considered:

- No restriction on the market
- Prohibition for Swiss play abroad
- Prohibition for foreigners to play in Switzerland
- Prohibition for Swiss play abroad and foreigners to play in Switzerland

These different models and variants, which should be very different on the evolution of demand, have a direct impact on the forecast for gross proceeds of the games in 2012. Under the terms of a legal relaxation of the ban on virtual gambling, particularly taking into account possible market restrictions (prohibition of play), we arrive, for gross proceeds of the games in 2012, the following figures:

- Unrestricted market 115 - 139 million ** CHF
- With a ban for Swiss abroad play 138 - CHF 174 million **
- With a ban for foreigners to play in Switzerland 42 - 66 million CHF
- With a ban on the Swiss to play abroad and foreigners to play in Switzerland 65 - CHF 101 million

** The market share of foreign players is very difficult to estimate with precision. The estimates, by design, are conservative.

The gross amount of games, which varies depending on the scenario, naturally has a direct effect on tax revenues expected.

Tax rates would be possible based on the following criteria:

- For a system of licensing / authorization of police, CFMJ choose a tax rate of 3%, comparable to rates in other countries (Europe).
- For an independent system of concessions, with a limited number of additional benefits (between 5 and 10), CFMJ choose a slightly higher rate of around 10%.
- For a related system of concessions, the CFMJ choose an average rate of 15%.

Conclusion

The amount of tax revenues that could be generated if liberalization is difficult to quantify. Depending on your point of view adopted optimistic or pessimistic, the amounts would be located in the range of one million francs at least 26 million francs at most (see table attached).

The market analysis conducted for the different models considered shows that the optimization of the revenue depends not so much the choice of model than any restrictions of the market on the demand side. Expected income would be lower in the case of liberalization through a license with a police ban to play for foreigners (between 1 and 2 million francs). The revenue generated would be higher in a related system of concessions granted to existing gaming houses, with a ban for customers in Switzerland to take advantage of the offer of a foreign supplier (between 20 and 26 million francs) . This ban should be imposed to play through measures (technical blocking websites foreigners prohibition of financial transactions in the field of online gambling involving providers abroad, etc.). . These accompanying measures nevertheless generate significant additional needs in the field of monitoring and control.

3. Possible models

3.1 Models of liberalization

3.1.1 Free market

The free market is distinguished by the fact that the operation of legal gambling virtual does not need to obtain permission from the authorities. The operation of gambling virtual being virtually unregulated by law, there is no limit to the number of providers on the market. Such a system would require large control efforts to enforce effectively the purposes set forth in art. LMJ 2. Liberalization is also radical-related risk the excellent international reputation in the market for gambling in Switzerland, and its mechanisms of control and surveillance. In a free market, the supervision and control exercised by the state are minimal and do that on a complaint from one player feels aggrieved. The number of providers

depends on the level of tax rates over this rate is low by international comparison, Switzerland is becoming more attractive to new providers, with monitoring costs that increase in proportion.

The risk of this model of liberalization is that the necessary resources to monitor and control exceed the tax revenues that can be expected.

3.1.2 Authorization Policy / right to a concession

The licensing police is characterized by the fact that any service, provided it meets the conditions laid down by law, has the right (may be subject to legal action) to be granted an operating license. Such a system does in principle not require requirements for the maximum number of providers re-admitted.

With the number of non-capped, the risk is having to make a big effort in the control and supervision to enforce the purposes set forth in art. LMJ 2. According to other legal requirements laid down, it could only generate limited revenue to meet the additional requirements for control and surveillance.

3.1.3 Self Concessions

The complainant can not claim any right to obtain a concession for the operation of online gambling, even if it meets all the conditions laid down by law and yet to be defined. As for casinos land, it belongs to the Federal Council to determine whether an applicant can obtain a license and how many licenses can be issued. You can limit the number of providers. Such a system allows for pro-surrender to extensive due diligence of candidates to obtain a concession and to exercise effective oversight of the operation of games when the concessions were awarded. Controls and checks are not only the identity of the supplier, but also on hardware and software used. The provisions of current law on gambling houses on money laundering and social protection can be implemented effectively. The market for virtual gambling is open to all potential service providers which do not create a legal privilege (for existing homes games for example). Expected tax revenues are higher than in the first two models, since the relative limitation of competition at national level would set a higher taxation. Expected tax revenues should be higher than the cost of control and surveillance.

3.1.4 Concessions related

The procedure for granting concessions is only open to providers already receiving a license (gambling houses land). In this case, the concession is regarded as an extension of the existing concession and thus takes the same conditions as those attached to the original concession (access restrictions, rate of redistribution, etc.). The need for control and monitoring at the same level as in a linked system of concessions and can be regarded as reasonable. Tax revenues would be expected, however slightly higher than in a system of concessions related, as the protection of exclusivity justifies a higher tax rate. This model,

however, favors the gambling houses that are already in possession of a concession.

3.1.5 Exploitation by the State

In principle, it is also possible that the State or an institution authorized by it, operates virtual gambling. Art. LMJ 11 expressly provides that a concession may be granted to a public legal entity and is not excluded, however, that the government acquire stakes in other providers.

While reviewing the law on gambling houses by Parliament, the possibility of holding the games by the State was not mentioned. Art. LMJ 11 was adopted without debate by Parliament.

In the case of exploitation of virtual gambling by the state, this would not only with tax revenue falling into the coffers of the State but also all of the profits. State monopolies are difficult to reconcile with economic freedom. In this regard, we must also closely monitor developments in the European Union and keep in mind that the operation of games of chance is not among the main tasks of the State. The dual function of the State, which both offer virtual games of chance and would be responsible for supervision and monitoring compliance with the goals of the GCA, could also pose problems.

3.2 Maintenance of the status quo

The current situation, where the virtual games of chance are forbidden, is not satisfactory. This ban was only partially observed. The fact that games of chance are exploited and made available in the virtual world creates gray areas not covered by the law, or only partially. The issue of social protection, in particular, comes to mind.

The market that we have conducted shows that, depending on the model chosen liberalization, and according to the legal framework adopted, the tax revenue that can be expected of a permit gambling on the internet could be relatively modest. The revenue will be increasingly offset by the costs that the State will be responsible for monitoring and control. Depending on the model, these costs may be higher if liberalization than if retention of the ban and could be higher than the expected additional tax revenue (although the estimated amount of expected tax revenue is based on many assumptions and forecasts impossible to verify scientifically).

At the international level, attitudes towards the liberalization of virtual gaming are very diverse. Many countries for time and try to adopt measures to better enforce the prohibitions in force (blocking techniques that foreign providers of gambling online ban on financial transactions related to gambling line, prohibiting the advertising of bids online gambling abroad).

4. Accompanying measures

The adoption of accompanying measures to better enforce the ban on virtual gambling. In the event of a liberalization of this sector, these measures also strengthen the market position of the new operators of online gambling who have received an operating license.

The following pages have different accompanying measures envisaged.

4.1 Engineering measures

4.1.1 General remarks

Access to owners' gambling illegal online can be blocked. It is also possible to prevent, by means of technical devices, consultation of content in particular. Problems arise, however, concerning the implementation and control of these blocking mechanisms. The determining factor is whether the games of chance are hosted on servers in the country or abroad.

If the games are on servers located in Switzerland, the interventions of technical information can be imposed by coercion.

If the server is located outside the borders of Switzerland and that the provider refuses to cooperate with the Swiss authorities, the only option is to try to prevent access to relevant web pages using a technical device lock installed by the Swiss suppliers of internet access.

4.1.2 blocking technology

Blocking IP addresses

It is possible to prevent access from Switzerland, to offers of gambling offered online through servers abroad by blocking the IP address of the provider (IP address, the Internet Protocol address English address consisting of the number of network and digital-ro of the host computer that uniquely identifies a computer connected to the inter-net). Example: The provider of online gambling has www.casinolasvegas.com six IP addresses 88.81.155.243, 88.81.155.244, 88.81.155.245, 88.81.155.246, 88.81.155.247 and 88.81.155.248. The blockage of one of these addresses prevents access to all the tenders hosted on the server. It may well happen that access to other offerings that are not associated with gambling is also illegal virtual impossible.

Blocking URLs (Uniform Resource Locator)

Another measure is to block the URLs, ie the address used to locate resources available on internet. This will block both the address (eg. www.casinolasvegas.com) that sub-directories and files of a site (eg. www.casinolasvegas.com/blackjack).

Using proxies

The proxy (proxy server) protect the data accessed by a user. It is then possible to check these data and, in case of illegal content would be detected, preventing the user to access again.

Installing filters (detection response filter)

This type of device monitors the data exchange on the Internet using predefined selection criteria, ie criteria in relation to the virtual games of chance. The criteria used for this purpose consist of a limited number of terms so sociable essential for the operation of online gambling (roulette, black jack, bet, gain, etc.). When the filter detects, based on predefined criteria, a content that is one of the keywords, it refuses access to the site. These detection programs have the major drawback to block access to all content which is one of the selection set. It becomes impossible to access the website of the CFMJ.

Creating lists of content to block

Technical measures presented above require the establishment, as auxiliary means of summarizing lists specific IP addresses, URLs, domain names and keywords that must be blocked. To be useful, these lists must be updated permanently, requiring regular updating and involves a heavy workload and costs. Where appropriate, we must also decide to what extent the choice of the measure to be implemented to prevent access to illegal content should be left to the discretion of stakeholders (providers of gambling web-based, provided - Internet service providers).

4.1.3 Blocking already implemented

In the field of online gambling, various locking devices are already employed. Italy: Italian authorities regularly prepare a list of foreign providers offering games of chance and gold-gives Internet service providers to block addresses its subjects, under pain of sanctions if they do not comply.

Australia: Although the Northern Territory and Tasmania grant concessions to virtual casinos, Australian users can not participate in gambling online. This prohibition is enforced by blocking IP addresses in Australia.

Austria: Only the Austrian nationals residing in Austria have the right to take part in gambling web-based pro-posed by national providers. Casino Wiesbaden: Until 31 December 2007, participation in online gambling was allowed only to persons who had their homes in Hesse and who were actually present on the territory of the Land at the time of entry. When did located outside the territory of Hesse, the people who were residents could still play on a few other states, which expressly authorize participation in gambling virtual by foreign providers. In this case also, the ban was enforced by blocking the IP

addresses involved.

Different states: Some states such as Turkey, Israel, Singapore and China ordered Internet service providers to take measures to prevent domestic customers to access sites offer sant gambling online. It is up to suppliers to re-forth to determine the appropriate action.

Liechtenstein: Following intervention by the Federal Office of Police, who was competent at the time for such cases, the company Interlotto "was established in 1995, blocking devices to prevent access, from Switzerland, the lottery that offered via the Internet.

4.1.4 Methods of implementation of measures outlined

The technical measures provided to prevent access to certain content can not be implemented effectively if the parties have a concrete infor-mation and have the obligation to take action (eg. through a decision that could require, in some cases, sanctions if the party fails to implement the measure ordered). According to the desired orientation, the obligation to take appropriate measures concerning nera Internet service providers, which will, above all to prevent access to online gambling offered by foreign providers. But it could also be aimed at (future) Swiss providers of gambling web-based, so that priority users that foreigners participating in the games available from Switzerland.

It should also be determined in advance, precisely, what are the contents of which consultation must be prevented. Careful monitoring will provide a list of IP addresses, URLs, and keywords to block. This list must be communicated to the parties concerned with the order - and, where appropriate, subject to penalties if they do not - or to block IP addresses and URLs listed or change the settings their proxies, or to install filters specific.

Checks should be made at regular intervals to ensure that the orders are actually implemented.

4.1.5 Opportunities to defeat the locking

By using different technologies and countermeasures against a skilled user (both the providers and players) has the means to circumvent any blocking mentioned above. Here are some examples:

- The software encryption and anonymous bypass filters-specific detection;
- Blocking the URL can only be circumvented by entering the IP address;
- The provider may use IP addresses, URLs and domain names disputes rents for the same product (it is sufficient to send an email to its customers to in-form changes);
- It is possible to use an internet service provider for foreign contour give the extent of blocking implementation in the country;
- Just change the browser settings to bypass internet servers authorized;

- In addition to the usual protocols that are used to view web pages, it is also possible to spread information using other technologies for the exchange, which are virtually out of control (peer-to-peer services).

4.1.6 Advantages and disadvantages of technical measures

Through the implementation of various technical measures, which require a considerable investment in time and money, it is possible to prevent the average user to access virtual gambling, now banned. However, given the technologies currently available, it is expected that these blocking devices could, if necessary, be circumvented.

An effective technological measure blocking involves regular surveillance, monitoring that requires considerable time and generates significant costs. A research in Google with the words "online casino" gives 21 500 000 hits, all of which must be checked to see if the sites in question offer gambling online. The lists contain the IP addresses and URLs to block, as well as keywords to filter detection, should be updated continuously. Checks must be made to ensure that the blocking orders are indeed implemented.

One can also wonder if, when it ordered the establishment of such devices, the CFMJ also has the power to block access to content which does not fall directly in the scope of the LMJ Different providers of gambling via the Internet offer on their site for sports betting, lotteries and other offerings that do not pose a problem under the LMJ.

4.2 Blocking of financial flows

Another accompanying measure is to prevent possible financial flows between providers of online gambling and players. This option was chosen by the United States (Unlawful Internet Gambling Enforcement Act, UIGEA). This law says to the international banks and financial institutions to accept, manage, to deposit or permit the transfer of funds used for online gambling illegal or from them.

The Netherlands and Norway have taken this system in their proposed legislation. The laws are not yet in force or under consideration in parliament. Financial transactions between the providers of games and players rely mainly on the two following methods:

Payments by credit card

The bets and winnings are paid using traditional credit cards. The player and the card issuer - the organization of credit cards (eg. VISA / Mastercard) or company licensed (eg. A bank or large company) - are bound by a contract.

The issuer is an intermediary between the client (the player) and the provider (operator of gambling via the internet). Specifically, the player pays to put through his credit card on which he is also credited its gains or cutting its losses.

Payments in electronic money

Financial intermediaries on the Internet offering portfolio services electronically (e-wallet) credit, on behalf of their customers, are on media readable data electronically (smart special card). To transfer money, the customer inserts the media concerned the modem in the computer provided. Depending on the type of transaction in question, the customer transfers to the account of his creditor the amount he owes, or he is credited as assets on its chip.

4.2.1 Methods of implementation steps to block financial flows

It would require issuers of credit card organizations (credit card companies or licensed) and intermediaries providing portfolio electronics to block financial transactions between players and game providers based on the web, on pain of sanctions for non-compliance. Specifically, these companies have approved the prohibition of, manage and take on deposit of funds from participating in online gambling or for this activity. To this end, it should convey to financial institutions mentioned a list of providers of online gambling involved.

Advantages:

- It is located in Switzerland to a limited number of credit card issuers (organizations credit card companies and licensed) and intermediaries providing e-portfolio.
- The experiences of the United States show that the blocking of financial flows has proved very effective, at least during the initial phase, to respect the prohibition of gambling on the internet. Specialists in the field believe that this measure has prevented participation in online gambling illegal in 95% of cases.

Disadvantages:

- A block of financial flows associated with games of chance might be a disproportionate interference with the economic freedom.
- The authorities may order that banks and financial institutions in Switzerland (or subsidiaries of Swiss banks and financial institutions, foreign) to prevent the flow of financial service providers with online gambling. We can not exclude the possibility that Swiss citizens have commercial relations with financial institutions abroad and then re-run services for them to carry out the transactions in relation to gambling offered on the Internet.
- You must list the providers of gambling web-based question and update it continuously, which requires work of super-intensive.
- The CFMJ is empowered to take measures with regard to gambling in the areas covered by the LMJ. However, many providers games of chance via the internet offer on their site for sports betting, lotteries and other games that fall outside the scope of the law. In practical terms, it should hardly be possible to block in the range of games available, that financial flows involving gambling within the meaning of the LMJ.

- The control of the blocking of financial flows is difficult to implement and can be ensured only through sporadic inspections on the spot.
- The measure will prove itself if no intermediary is involved in the conduct of financial transactions. There must be a direct link between the client and the provider of virtual gambling. Problems can on the other hand arise if the supplier has transferred the management of its assets and debts in a neutral, such as a trust company responsible for the collection.
- Where appropriate, the CFMJ can not show what other companies are also involved in operations. If, moreover, a provider of online gambling has its headquarters abroad, the procedure would become more difficult even if one uses the path of mutual assistance to obtain a perquisi - tion.
- Often the third party concerned also manages the accounts of other customers who would also be affected by the extent of blocking flows. The obligation to prevent any financial transaction in relation to the collection office in question would lead to consequences for a multitude of parties which are not directly affected by this problem.

4.3 Prohibition of advertising

By prohibiting gambling houses (land and virtual) that do not have concession to advertise their activities, it is possible to make it more difficult market access for non-permitted while strengthening the position of Swiss casinos allowed.

This prohibition may not apply to advertisements that have a direct link with Switzerland (eg. Written and audiovisual suisses). For reasons of territoriality, such a ban in Switzerland can not be extended to carriers that have an indirect link with Switzerland (eg. Magazines, radio and foreign television 's have no "window of Switzerland"), because it is not possible to apply such measures.

Where appropriate, the prohibition of advertising should be included explicitly in the LMJ. Its implementation will require regular monitoring of media print and broadcast advertising. The prosecution could be instituted on the basis of information supplied by the public.

5. Personal and financial

If relaxation of the ban on operation of games of chance by means of a telecommunications network, the costs of CFMJ for control and monitoring of the activities of online casinos will be covered by Fees for monitoring, so that it does not create additional financial burdens for the Con-federation (as is land for casinos). The additional costs resulting from the prosecution of illegal gambling because of the measures taken will be borne by the Confederation. These costs can be quantified will be known only when concrete measures are taken. Part of the costs of criminal pro-cedures will be covered by fees, fines and compensation claims. In addition, the Confederation may levy a tax on online casinos (cf. thereon figure 2.4 above).

6. Background

6.1 Conference of Cantonal Directors of the market for lotteries and the law on lotteries (CDCM)

The CDCM has developed on its own initiative, a working group to study gambling on the Internet and submit to the Federal Council a report on whether to relax the current prohibition on the use of a network of electronic communication to operate games of chance. The CDCM also made its report at the end of February 2009.

Several meetings were held between representatives of the CFMJ and the CDCM. On this occasion it was decided that even if the two bodies make their own report, they would work to ensure consistency by communicating their respective positions. Also CDCM CFMJ and they have exchanged their draft report to discuss it.

In essence, the two meet in their general direction: in Switzerland, the current situation regarding offers gambling and regulations are not satisfactory, because access to gambling Online (offered by foreign suppliers) considered illegal under Swiss law can not be prevented on a limited basis. Liberalization of gambling on the internet must be accompanied by rules and strict controls (concerning, inter alia, gambling, money laundering-ment of silver and transparent operation of the games). Where appropriate, both the CDCM CFMJ that favors the model of the autonomous concession in which only a small number of concessions - subject to conditions and strict expense - would be granted. If these requirements can not be fulfilled, maintaining the status quo should be considered. It is possible to adopt measures to better enforce the current ban. Should the use of an electronic communications network would be authorized to operate games of chance, CFMJ and CDCM are in favor of territorial restrictions limiting the validity of the concession to the territory of the Switzerland.

Differences between the reports and the CFMJ CDCM

- Electronic communication networks: the CFMJ focused in his study of games of chance offered via internet, but has also incorporated his thoughts in other means of telecommunication such as mobile phone or interactive digital television. CDCM for the use of these networks to operate gambling poses additional problems, which must be a separate and require separate solutions. The CFMJ also proposes that, where appropriate, liberalization refers only games available via the Internet, the use of other means of telecommunication for the operation of games of chance remain forbidden.

- Comparative Law: countries that CFMJ was selected for comparison all have specific legislation on gambling virtual (as defined in the LMJ). If CDCM also selected countries that have legislation specific (Scandinavian countries, France, Italy, etc.), it should be noted that in these countries, the concept of gaming also includes lotteries.

- Estimated market potential: estimates initial PBJ generated by gambling virtual

(as defined in the LMJ) in 2007 are comparable. The critical contrast CDCM projected volume market made by CFMJ 2012, as it believes they are only partially relevant and realistic. She asked that the scenarios inappropriate and extreme estimates are eliminated. It nevertheless shared the view expressed by the CFMJ in his remarks about the difficulty of estimating future developments.

6.2 Notice of Law of the Federal Office of Justice (FOJ)

In mid-October 2008, the CFMJ the FOJ instructed to prepare a legal opinion to determine whether the prohibition of using an electronic communications network to operate games of chance (art. 5 LMJ) s also applies to the field of lotteries, since for gambling, the law on lotteries should be considered a special law (lex specialis) in relation to the law on gaming houses (lex generalis). If this ban would also apply to the lottery, he was asked the FOJ to evaluate how an exemption could be introduced for large lotteries.

In his expertise of 5 January 2009, the FOJ said that the LMJ is a lex-General "for all aspects that are not explicitly addressed in the law on lotteries as a" lex specialis ". He concluded that the prohibition on the operation of games of chance by means of a telecommunications network in accordance with art. LMJ 5 is also applicable to lotteries and betting. This follows from a grammatical, systematic and historical art. LMJ 5. During parliamentary debate of the law on gambling houses, the legislators spoke in that the ban on operation of games of chance by means of a telecommunications network is of general application, to say also applies to betting and lotteries.

A lifting of the ban on the operation of lotteries and betting through a network of tele-communication should result in first line of a revision of the law on lotteries. In its position paper on the report of the CFMJ the Comlot said it disagrees with the result of the expertise of the FOJ. Art. LMJ 5 could not be applied to the field of lotteries and betting. Although LMJ contained a prohibition of use of lotteries and betting through a telecommunications network, this first line should be lifted by a revision of the LMJ.

7. Subsequent procedure

For the implementation of decisions of the Federal Council, it is planned to establish a working group of lottery companies, the Swiss casinos and CDCM, under the direction of the CFMJ.

8. Proposals

The current ban on using an electronic communications network to operate games of chance as provided for in art. LMJ 5, can not be imposed without accompanying measures. It follows that the goals of the legislation (art. 2 LMJ) can not be completely achieved. In particular, the Confederation is denied the kind of tax revenue. A market analysis also shows that there is a potential, in

Switzerland, for gambling on the internet.

The law on gambling houses should be amended to create the basis for granting a concession to a small number of candidates. Prospective dealers should satisfy the same conditions as holders of licenses for casinos land (art. 12 LMJ).

The CFMJ believes that the offer of virtual gambling should be limited to Switzerland. The future concessionaire will take the necessary measures to ensure that only persons who are actually in Switzerland may participate in the Games.

Furthermore, the CFMJ is convinced that autonomous concession should be provided for the internet, the electronic communications network the most widespread of. The operation of games of chance using other networks (telephone, mobile telephony, digital interactive television) should be prohibited (at least for now).

For CFMJ, it is crucial to take appropriate accompanying measures to better enforce the ban on virtual gambling (blockages technical barriers to financial flows). Legal bases should also be adopted to this effect. The CFMJ believes that these measures should be adopted even if the Federal Council does not want a liberalization as proposed.

Given these considerations, the Federal Gaming calls for the Federal Council submitted the following proposals:

1. DFJP the mandate to prepare an amendment to the legislation to
 - 1.a. relax the prohibition of using a communication network to allow the operation of gambling on the internet (and only on the network) in order to issue a concession to a small number of suitable candidates;
 - 1.b. create a legal basis, through technical measures to prevent or restrict the operation of illegal gambling through a telecommunications network.
2. Item 1.b of the mandate should be given even if the item 1.a. is rejected.

9. Appendix

Overview of costs and effects of profitability (2012) (see following page)

	Interdiction	Concessions à des prestataires suisses (entre 5 et 10)			
Restriction du marché	-	aucune	Interdiction pour les Suisses de jouer à l'étranger	Interdiction pour les étrangers de jouer en Suisse	Interdiction pour les Suisses de jouer à l'étranger et pour les étrangers de jouer en Suisse
PBJ en Suisse	-	115-139	138-174	42-66	65-101
Taux d'imposition (en % du PBJ)	-	10%	10%	10%	10%
Impôt sur les maisons de jeu	0	11-14	13-17	4-7	6-10
Coûts de réglementation	0	+	+++	+	+++
Coûts sociaux	=	+	+	+	+

	Interdiction	Concessions aux casinos terrestres existant en Suisse			
Restriction du marché	-	aucune	Interdiction pour les Suisses de jouer à l'étranger	Interdiction pour les étrangers de jouer en Suisse	Interdiction pour les Suisses de jouer à l'étranger et pour les étrangers de jouer en Suisse
PBJ en Suisse	-	115-139	138-174	42-66	65-101
Taux d'imposition (en % du PBJ)	-	15%	15%	15%	15%
Impôt sur les maisons de jeu	0	17-21	20-26	6-10	9-15
Coûts de réglementation	0	+	+++	+	+++
Coûts sociaux	=	+	+	+	+

	Interdiction	Licences, sans limitation du nombre de prestataires			
Restriction du marché	-	aucune	Interdiction pour les Suisses de jouer à l'étranger	Interdiction pour les étrangers de jouer en Suisse	Interdiction pour les Suisses de jouer à l'étranger et pour les étrangers de jouer en Suisse
PBJ en Suisse	-	115-139	138-174	42-66	65-101
Taux d'imposition (en % du PBJ)	-	3%	3%	3%	3%
Impôt sur les maisons de jeu	0	3-4	4-5	1-2	2-3
Coûts de réglementation	0	++	++++	++	++++
Coûts sociaux	=	+	+	+	+

+ Augmentation des coûts par rapport au maintien de l'interdiction