

Place your bets: an end to barriers for gaming services?

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Games of chance are an increasingly important part of the service economy in the EU. However, national rules on gambling and lotteries, and varying levels of concern about the economic and social impact of gambling, mean that this sector is regulated in different ways in the EU's 27 member states.

Now, for the first time, the European Commission is preparing to act in order to regulate this highly sensitive market, which is worth around €80bn a year in Europe, following pressure from gaming companies (and players) to put an end to the inconsistent approach to this sector. The move also takes account of the rising number of infringement cases taken against member states, which in some cases have attempted to regulate the growing cross-border online gambling market.

Ensuring free movement in gaming services would be another step towards a long-standing priority for the Commission - the completion of the internal market.

Overview

A controversial debate

Member states have the right to establish their own national provisions on gambling, but they must do so in conformity with the EU treaties. According to jurisprudence established by the European Court of Justice (ECJ), member states can impose restrictions on the provision of betting services, but these constraints must be non-discriminatory, justified by a valid public interest, necessary and proportionate.

Gambling was due to have been part of the Services Directive, but was excluded from the scope of the Directive by the European Parliament and the Council of the EU during the first reading in 2005. They were concerned about the impact of liberalisation on official national lotteries, or about the impact on consumers and society in general.

There were warnings at the time that failing to grasp the legislative nettle would lead to a plethora of court cases.



Indeed, since 2005 the European Commission has refrained from putting in place harmonised rules for gambling at EU level – but has brought a series of infringement proceedings against a significant number of member states (such as Greece, France, Sweden, Germany and Italy) as a result of many complaints from private operators, players and the media. These proceedings challenge national administrations for maintaining unjustified restrictions to the cross-border provision of gambling services, principally through the internet. Some of these member states (like France, Greece and Italy) have consequently amended their legislation in an attempt to comply with the internal market *acquis*.

Barnier raises the stakes

Despite previous reluctance to propose legislation, the Commission's approach to EU gaming policy has now seen a major shift. During a debate in February 2010 at the European Parliament, the Commissioner for Internal Market and Services, Michel Barnier, announced that in addition to the case-by-case analysis of problems arising in each member state, the Commission intended to organise a broad consultation on the complex issues arising from the development of online gambling.

The consultation, which will be launched in March, 2011 in the shape of a Green Paper, will look at a variety of issues, such as fraud prevention, gambling problems and the protection of minors. The need for action at EU level – and its possible shape – will then be assessed following the completion of this consultation.

The other institutions set out their positions

The Commission is however not the only EU institution that is actively engaging in the policy debate on gambling. The European Court of Justice, the European Parliament and the

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Council have also been dealing with different questions related to this subject.

The absence of EU rules in the field of gambling has given the **ECJ**, in particular, a major role to play. There has been, for example, an increase in requests for preliminary rulings related to cross-border services and online gambling. These preliminary rulings have led to landmark decisions such as the *Gambelli* and the *Placanica* cases, which have put pressure on member states to end protectionism in the gambling sector.

Those who defend gambling monopolies have taken heart from the re-confirmation in ECJ case-law that gambling is exclusively a national competence and that restrictions are justified by reasons of public interest. However, those who advocate market liberalisation have usually welcomed the ECJ decisions as a confirmation of the right to provide cross-border services in gambling.

As a result, those in favour of liberalisation have been calling on the European Commission to avoid the emergence of a 'patchwork' of legislation in the EU and have underlined that proper regulation can bring greater consumer protection, greater competition, and benefits for other sectors, such as sports and the media.

Given some of the problems arising from online gambling, and the fact that the sector represents an important source of income for member states, the **Council** has also been discussing the legal framework for gambling and betting, and the various policies of the member states.

So far, the Council has looked into issues such as illegal gambling, socio-economical problems, bans on promotion and advertising, and abetting of crimes related to gambling. As a follow-up, the Belgian Presidency issued a set of 'Council Conclusions on the Framework for Gambling and Betting in the Member States of the EU' in 2010.

These Conclusions represent a landmark in the policy discussion surrounding online gambling: they represent the first unanimous position that member states have reached since they began debating online gambling in the Council in 2008.

The **European Parliament** has been equally active in the debate about online gambling. There has recently been an increase in the number of parliamentary questions to the Commission regarding the steps it plans to take to secure the completion of the internal market in this area, as well as the protection of European consumers.



In 2009, the Parliament adopted a Resolution on the integrity of online gambling. The Resolution received some criticism from the online gaming industry, as it was seen as supportive of state monopolies. The Resolution also emphasised that a pure 'internal market approach' was not appropriate in this highly sensitive area.

Next steps The Commission to show its hand

A Europe-wide debate will be launched very shortly, when the Commission delivers its Green Paper in March, 2011. The Commission will need to tread carefully – gambling is a very sensitive topic, with national laws that differ greatly, in terms of both online and offline gambling services. Gambling also brings significant revenue to member states at a time when governments need all the sources of revenue they can muster.

Some countries with state monopolies such as Denmark and Belgium and are beginning to open their markets – however, this will be a long process before liberalisation can be completed. If the Commission decides to move towards EU harmonisation, a number of priority issues would need to be addressed – not least money laundering, the protection of minors, and problems linked to gambling addiction.

Finally, in a policy document issued in January 2011 looking at a wide range of issues impacting sport in society, the European Commission clearly signalled that the upcoming review of policy options on gambling must take into account the role various forms of gambling can play as funding sources for sport. It also said that the Green Paper on gambling will address the issue of integrity in sport, particularly with respect to online gambling services.

Conclusion Change on the cards – but what type of change?

At the moment all options are still open, and the Commission has not decided which direction to take.

In other sectors that have seen a significant number of infringement cases, the Commission has ended up regulating the market as a way of tackling the problem in a more structured way. It remains to be seen whether member states will continue to protect national monopolies and try to win the battle over private operators – thereby thwarting any Commission plans for liberalisation.

However, the completion of the single market is a key priority of the new European Commission, and it seems unlikely that the status quo will be maintained. The internet has fundamentally and irrevocably altered the nature of the gambling sector, and this development can be expected to push the Commission towards some harmonisation of the EU market.

The fundamental question is how far that harmonisation will go, especially given the political sensitivities – and the resulting impact on the free movement of services, national economic and social traditions, and consumers and society.

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