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Special Edition Commissioner Barnier

Editorial



The EGBA is delighted that Michel Barnier, the European Commissioner for Internal Market and Services, has written an exclusive contribution

for this issue of EGBA news on the development of his policy towards online gambling over the past 5 years.

The Commissioner has successfully moved the debate on online gambling in the EU forward. He initiated the Commission's 2011 Green Paper consultation and the 2012 Communication, which lays the foundations for the first European policy for online gambling. This also paved the way for the European Parliament to publish no less than three dedicated reports, evidence that the sector, inherently cross border in nature, is now firmly subject to European policy.

Commissioner Barnier has reaffirmed the importance of ensuring that EU law is properly adhered to. As part of a policy to ensure proper regulation, the Commission decision to act as the guardian of the treaties and pursue infringement cases where necessary requires perseverance and deserves our full support.

EGBA is thankful to Commissioner Barnier and his team and looks forward to working together with the new European Parliament and Commission to help create an efficient European answer to the challenges facing the sector.

Maarten Haijer, Secretary General

Online Gambling: Results and Challenges for the Future

Michel Barnier, Commissioner responsible for Internal Market and Services

During my first public appearance in February 2010, a few hours after my official investiture as Commissioner, the first question I was asked in the European Parliament was how I would address the issue of online gambling. Since then, the topic has never left my agenda. With the EU online gambling market growing rapidly, it was clear that its expansion required action to ensure that offers of online gambling services within the EU are sound and well-regulated.

Following calls from the European Parliament and the Member States, the Commission launched an extensive consultation on key policy issues, such as the organisation of online gambling services in Member States, the way in which consumers are protected or how money laundering and fraud is prevented. The goal of the consultation was also to gather views on the merits of a coordinated EU action and to encourage a debate based on facts.

With more than 250 stakeholders from a wide variety of origins (Member States, industry, internet service and payment providers,

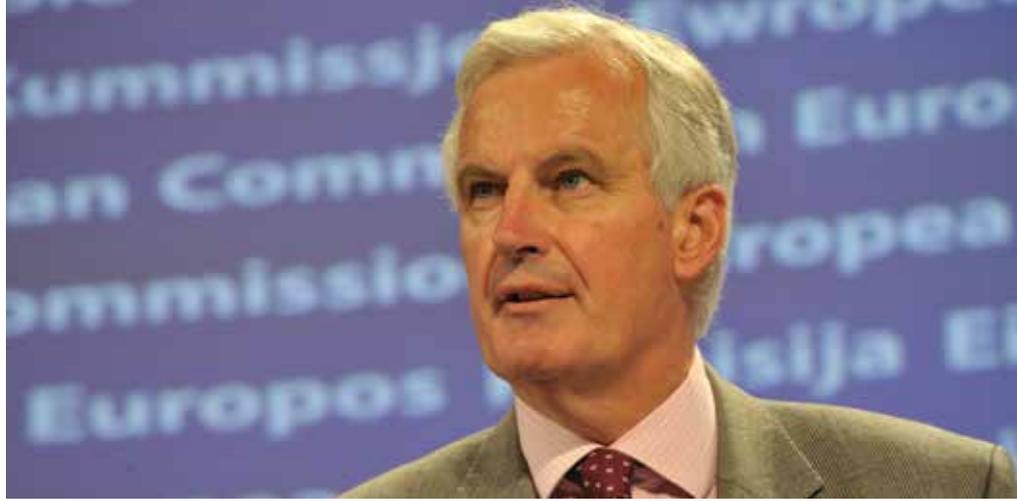


"The Commission initiatives which are being implemented pave the way for continued involvement from the EU to address the challenges facing the sector."

Commissioner Barnier

sports stakeholders) taking part, the consultation was a success. I noticed that responses from consumer bodies were marginal, yet I would like to see them more involved in the debate because, as in other sectors, consumers should be sufficiently informed about the choices they make. In any case, the replies demonstrated a large interest. They also highlighted the diverse nature of related policy

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issues. Although responses differed, there was overall agreement that greater coordinated action at EU level was required in a number of areas, such as consumer protection and fraud prevention.

Strongly encouraged by this outcome and the 2011 own-initiative report of the European Parliament, we adopted the Communication on Online Gambling in the Internal Market in 2012, which was well received and is the political platform for our action in this area.

What have we achieved since 2012?

An important outcome of the Communication was that it contributed to change the nature of the public debate at EU level. This was helped by the many gambling reforms at national level, which have given this debate even more relevance and urgency, and also by a move towards a fact-based approach.

The concrete initiatives set out in the Communication are currently being implemented. I would like to mention in particular the recommendations on consumer protection and commercial communication which are being drawn up in close cooperation with Member States' regulatory experts.

Though every Member State is free to decide how it wants to regulate its market, it is essential that consumers are able to distinguish between regulated and non-regulated gambling websites. I am also convinced that encouraging the development of an attractive range of legal gambling opportunities is the key to effectively channel consumers towards the regulated offer in the EU. In that context, it is important to stress that the development of an attractive, regulated offer and the provision of a high level of consumer protection should be complementary objectives.

I would also like to mention the extension of the scope of the anti-money laundering directive to include all gambling services and the setting up of a new expert group on gambling services. As for the former, the responsibility is now in the hands of the co-legislators. As regards the expert group created in 2012, a number of meetings have been held, with discussions increasingly facilitating the exchange of regulatory experience between Member States.

Furthermore, the Commission has taken stock of national regulatory developments and of whether the Member States' regulation complies with EU law. Indeed, while Member States are in principle free to set the objectives of their policies on online

gambling, ensuring compliance of national law with the Treaty is one of the European Commission's core responsibilities. In addition, stakeholders have stressed the need for more legal certainty. As a result, in

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November 2013, the Commission launched infringement proceedings against online gambling legislation of 6 Member States and issued 2 'reasoned opinions' for failing to comply with EU law.

2014 European elections : Key dates

- **22-25 May** : EU elections
- **2-26 June** : Constituent meetings of European Parliament groups
- **26-27 June**: European Council – Proposition of European Commission President
- **14-17 July**: European Parliament session – Election of European Commission President
- **September**: Hearings of proposed European Commissioners
- **October**: Investiture of European Commission for 2014-2019

Where do we go from there?

With just a few months left before the end of my term, I look back at the political and policy developments in the sector with satisfaction. The public debate has changed considerably as a result of the Commission's initiatives. There is now widespread understanding that cross-border cooperation is required in this sector, in particular to help provide a high level of consumer protection in the EU.

The Commission initiatives which are being implemented pave the way for continued involvement from the EU to address the challenges facing the sector. In particular, the Commission should continue to act to ensure that EU law is properly adhered to, so as to ensure legal certainty.

The fight against match-fixing will also, undoubtedly remain a priority. With 2014 set to be a year dominated by global sporting events, this will require a concerted effort. I have been



impressed by the many initiatives undertaken at a grass root level to educate professional athletes. The EU Athletes education programme pioneered in 2010 by EGBA and ESSA is a fantastic example, and as a result the Commission has decided to co-fund it in the future.

Athletes are the first line of defence against match-fixing and it is therefore a priority that they are educated about the basic rules to protect themselves and their sport. In this respect, several concrete initiatives have been announced in the 2012 Communication.

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On a final note, the gambling sector is characterised by a high level of stakeholder involvement. EGBA has made constructive contributions to the debate on gambling, such as the 2011 CEN Workshop Agreement on Responsible Remote Gambling Measures. In particular, EGBA has been involved in moving forward the discussions on how to create a safe and reliable offer for European consumers. I look forward to the continuation of this fruitful cooperation.



PROtect your sport don't gamble with it

THE GUIDING PRINCIPLES

- ▶ Know the rules
- ▶ It is safest to never bet on your sport
- ▶ Be careful about handling sensitive information
- ▶ Fixing any part of an event is an absolute No-No
- ▶ Report any approaches



This project is financed
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in partnership with
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In each issue of EGBA News, Professor Dr. Dr. h.c. Claus-Dieter Ehlermann provides his opinion on legal questions at the heart of the online gaming debate.



The legal view

Commission moves to enforce EU Law



Professor Dr. Dr. Ehlermann, Senior Counsel at WilmerHale and a former Director-General of the Legal Service of the European Commission.

The European Commission has taken a first but important step in fulfilling its role as guardian of the Treaties by opening six new infringement cases and issuing two reasoned opinions against the gambling legislation of 7 Member States on 20 November 2013. For a cross border activity that is marked by a combination of a rapid introduction of national legislation and legal insecurity, the importance of ensuring the proper application of EU law cannot be overstated.

Between the last gambling infringement action of April 2008 and the recent EC decision to open new cases, the CJEU has developed a substantial body of jurisprudence clarifying the way in which EU law applies to specific aspects of gambling legislation. It is clear that the Commission is taking this new jurisprudence, concerning inter alia establishment requirements, licensing regimes and the consistency of gambling policies, into account. For instance, whereas the 2008 cases only looked at sports betting regulation, the new cases cover the whole range of gambling offerings. However, the most important and most demanding CJEU requirement, the requirement to have a consistent gambling policy across

the board is fully applied to only one Member State.

Licensing procedures and conditions for the (restricted) provision of online gambling are under scrutiny in the letters of formal notice that have been sent to Belgium, Cyprus, the Czech Republic, Lithuania, Poland and Romania. The main concerns relate to unlawful requirements of "establishing a physical presence in the recipient Member State, prescribing a specific legal form on the basis of national law, requesting prior consent of the authorities in relation to any changes in the shareholder structure or banning foreign capital with EU law"¹. Further, specific enquiries are directed at Belgium in relation to the issue of transparency, at Romania with regard to coherence issues and at Cyprus as far as authorizations for different operators are concerned, with a special focus on equal treatment of gambling operators.

It is only regarding Sweden that the consistency of a gambling policy is being called into question and CJEU jurisprudence is taken fully into account. The EC finds that "Swedish rules for the establishment of an exclusive right for the offering of gambling services do not comply with EU internal market rules"². Two separate infringement proceedings have been opened to enforce compliance with EU law of the

monopoly on online betting services and online poker services. The main contentious point in both cases is the lack of consistency of the restrictive policy pursued by Sweden by means of a monopoly regime in terms of the applicable legislation as well as the unsystematic manner of the application of the said system along with advertising and sponsorship issues.

The EC simultaneously also decided to close the pending infringement case against the Finnish gambling monopoly as, according to the Commission, the legislation is in compliance with EU law. Given the consistency requirement and other stricter requirements that monopolies need to fulfill due to their severe restriction of the Internal Market freedoms, it is desirable that the Commission provides a more detailed examination on how the Finnish monopoly fulfills the CJEU requirements.

Overall, the renewed interest in enforcing rules on gambling is a good first step. Still, as its intended effect is to create legal certainty and compliance with EU law, the Commission must also be ready to refer Member States to the CJEU. Based on the CJEU jurisprudence, there are several more new procedures that can be reasonably expected to be launched and the Commission can only be commended to ensure a swift follow up.

"Still, as its intended effect is to create legal certainty and compliance with EU law, the Commission must also be ready to refer Member States to the CJEU."

1] http://europa.eu/rapid/press-release_IP-13-1101_en.htm 2] iBid