

EGBA NEWS

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The Challenge of eSports for online gambling

Editorial



For this last issue of 2016, we focus our newsletter on the growing popularity of eSports and its relation with gambling. ESports is defined as the playing of computer games which can range from play by two individuals to playing in professional competitions. Very popular in Asia and North America, it is making its mark at rapid pace in Europe attracting both a large audience and commercial interest.

Nick Tofiluk, Executive Director, of the UK Gambling Commission draws conclusions from the consultation the UK regulator conducted last summer on how eSports is affecting regulation in the UK and the questions it raises.

This article is complemented by some research work done by **Ian Smith**, the eSports integrity coalition (ESIC) on the extent of betting related match fixing in eSports and what can be done about it.

Prof. Dr. Dr. Ehlermann, from WilmerHale, analyzed the thirty gambling related judgements from the CJEU and concludes that the continuous development of the jurisprudence leaves less and less room for maneuver to Member States to interpret EU law when they regulate online gambling.

Maarten Haijer,
Secretary General, EGBA

Regulating gambling in Great Britain: The impacts of developing technology on Britain's regulatory framework

Nick Tofiluk, Executive Director, UK Gambling Commission talks to the EGBA about the impacts of technological developments, such as eSports, and the impact on regulation.

The Gambling Commission was set up under the Gambling Act 2005 to regulate commercial gambling in Great Britain. On 1 October 2013 we also took over the responsibilities of the National Lottery Commission to regulate the National Lottery under the National Lottery Act 1993.

The past eleven years has of course seen many changes, with developments in technology transforming both gambling and sport. This transformation brings with it new challenges and opportunities for the betting industry and how it is regulated.

Advancing technology in particular has shone the regulatory spotlight on;

- ESports: although not new, in recent years their popularity has continued to grow strongly. It is difficult to define eSports but for the purposes of our discussion paper, see below, we use the term to describe the playing of computer games which can range



"It is difficult to define eSports but for the purposes of our discussion paper, we use the term to describe the playing of computer games which can range from play by two individuals to playing in professional competitions."

Nick Tofiluk, Executive Director, UK Gambling Commission

from play by two individuals to playing in professional competitions.

- Virtual/ Digital currencies: have been a feature of remote gambling for some time, but only recently have we seen the use of 'in-game' items within video games, which

“ At present licensed betting operators in the British market only offer a limited range, this is increasing with in-play bets and more divisive products being provided. ”



Regulating gambling in Great Britain: The impacts of developing technology on Britain's regulatory framework (Cont from the page 1)

can be won, traded, sold, as virtual currencies and converted into money or money's worth.



- Social gaming: are the spectrum of games that people play over the internet, often via mobile phones, and which are built on social networks. This market continues to grow but we have previously addressed initial concerns with a paper titled 'Social Gaming'¹ in January 2015.

Together, these have presented a number of new issues for regulation and player protection of which there are four main areas we are focussing our attention;

- The blurring of the lines between social gaming and gambling.
- The potential for digital or virtual currencies to offer unregulated facilities for gambling, including betting services made available to minors.
- Concerns related to betting markets offered on eSports.
- Offering facilities for players to bet on themselves.

We recognise the need to explore how existing statutory definitions could apply to other elements of these relatively new innovations and how we can help businesses avoid providing unregulated gambling services. This was our starting point in our *discussion paper, published in the summer of 2016*², which was also intended to promote a debate about other emerging issues related to regulation and player protection.

We raised a number of specific concerns in relation to eSports, most notably the risks to licensed operators offering bets on eSports markets. At present licensed betting operators in the British market only offer a limited range, this is increasing with in-play bets and more divisive products being provided. Although there are some unique risks, due to the digital nature, age of the audience and diversity of the market, in our view, the regulation of betting on eSports is no different from any other event upon which bets can be placed. Operators offering this market are still expected to manage any associated risks as they would normally, such as cheating, match fixing and problem gambling.

The emergence of websites offering facilities for eSports players to play against each other to win money or prizes is also an area of concern. Given our definition of a betting intermediary, a person offering facilities for match ups could be providing

a gambling service and would need to be licensed appropriately. However we do recognise that drawing a clear distinction between arrangements that would in our view amount to acting as a betting intermediary, and those that involve payment to participant in genuine competitive tournaments, is not easy.

Finally, we are also looking into whether the playing of eSports games might be considered gambling in itself, if played for a prize. This is relevant as many eSports games contain elements of chance, such as Random Number Generators. Even if the eventual outcome is largely determined by skill, many eSports appear to fall within the definitions of gaming.

“The regulation of betting on eSports is no different from any other event upon which bets can be placed. Operators offering this market are still expected to manage any associated risks as they would normally, such as cheating, match fixing and problem gambling.”

By ensuring that we have a full understanding of the developments in these emerging markets, we can continue to adopt a model of effective and proportionate regulation to manage the associated risks.

The consultation to the discussion paper closed on 30 September, and undoubtedly, how we proceed with the feedback will be of interest for a wide range of stakeholders. We intend to provide a formal position at the beginning of 2017. ■

¹ Social Gaming, UK Gambling Commission, January 2015
² Virtual currencies, eSports and social gaming – discussion paper, UK Gambling Commission, August 2016

Integrity Threats to eSports

Ian Smith, Integrity Commissioner, for the eSports Integrity Coalition, looks at the extent of betting related match fixing in eSports and what can be done about it¹.

Following a number of high profile match fixing cases in Korea in eSports in 2015, a key eSports stakeholder commissioned a threat assessment of eSports.

The report², which I collated, concluded that the four most significant threats to eSports integrity were: Cheating to win using software cheats, online attacks to slow or disable an opponent, match-fixing, and doping (to stay awake and sharp).

While the biggest threat to the integrity of eSports is cheating to win using software, the focus of this paper will be on betting related match fixing and to assess first what the level of the problem is and second what can be done about it.



What is the problem? ESports and match fixing

eSports is worth \$892 million and should exceed \$1 billion by 2017³. The global audience for eSports was estimated at 256 million in 2016 with Asia-Pacific and Europe accounting for 44% and 25% market share. In 2016, brands spent \$325M on direct eSports advertising and sponsoring, 49% more than in 2015⁴. Most countries in Europe have not regulated betting on eSports, with the exception of the United Kingdom, Malta, Spain, Denmark and Italy.



Ian Smith, Integrity Commissioner, eSports Integrity Coalition

Match fixing cases in eSports have included players involved in popular eSports titles such as Counter Strike: Global Offensive in the US and a number of prominent players from StarCraft2 in South Korea were also arrested for fixing at the behest of an organised crime gambling syndicate. Further arrests were made in March 2016, including players from League of Legends in Korea.

Europe has not been immune, with low level cases of match-fixing by a French player in 2014, but given the popularity and greater commercial interest in eSports, the potential risk of further match fixing occurring in Europe should not be underestimated.

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What can be done about it?

This is the purpose of the eSports integrity coalition (ESIC), which was created in 2016 as a result of the above mentioned report and thanks to the support of influential eSports stakeholders, such as some of the world’s largest eSports companies, along with game publishers and bookmakers offering eSports markets.

“The global audience for eSports was estimated at 256 million in 2016 with Asia-Pacific and Europe accounting for 44% and 25% market share.”

ESIC has a programme which consists of an Anti-Corruption Code⁵ setting out the rules that apply to Participants, an independent Disciplinary Procedure to deal with breaches of the Code, a suspicious betting alert service backed by Sportradar and individual bookmakers with whom we have information sharing MOU’s, an investigatory and intelligence analysis service and a Participant education programme.

One of the primary purposes of ESIC is to have a participant education programme. As eSports entertain a young demographic (20% are under 20, and 37% between 21-35) – source Newzoo), education programmes are a front line deterrent to match-fixing and consists of face to face presentations to participants at major live events and an interactive online tutorial for players that we have not been able to reach at live events. So far ESIC has presented to over 200 top professional players and team management with very positive feedback. That programme will continue and expand over the next couple of years with specialist backing and funding that we will be announcing early in 2017.

Over the next year the focus will be to raise awareness of the issues we exist to combat and to recruit more members into the Coalition to increase our effectiveness and ensure the education initiatives continue and grow to everyone’s benefit. ■

¹ ESIC is not related to or endorsed by EGBA

² ESIC, Threats to the Integrity of eSports, April 2016

³ ESports Report 2016, Super Data Research

⁴ 2016 Global ESports Market Report, New Zoo

⁵ www.esportsintegrity.com/the-esic-integrity-programme/anti-corruption-code/



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 gambling debate.



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

To date, the Court has rendered thirty judgments concerning the application of the Union's fundamental freedoms to gambling, eleven of which have been delivered since the last comprehensive overview of gambling-related case law in a previous edition of the *EGBA News*¹. The Court has since reaffirmed its jurisprudence and refined the application of three substantive principles.

Firstly, the most firmly established principle relating to gambling is the overarching consistency requirement, which the Court has deduced from the general principle of proportionality. In the *Berlington Hungary* judgment², the Court recalled that the definition of the overarching consistency requirement is that a Member State has to regulate all types of games in its territory in a consistent and systematic manner. In this context, and as reaffirmed by subsequent case law, the Member State bears the evidentiary burden³. A controlled expansion of gambling is permissible only if it is demonstrated by strong evidence that a specific criminal and addiction problem actually exists in the Member State concerned, and on the further condition that this expansion is suitable to solve the problem by channeling gambling into a controlled space.

The Court's overarching consistency requirement is channel-neutral, i.e. it takes into account both traditional land-based and online gambling, unless in the particular case at hand the online

channel is associated with higher risks with regard to the invoked objectives than the traditional channel. According to older case law⁴, games of chance accessible via the internet had been considered as involving more substantial risks of fraud compared with the traditional markets for such games. However, in the *Zeturf* judgement⁵, the Court provides a deliberate reversal of those initial findings by clearly stating that the online channel does not necessarily involve a higher level of risk.

Furthermore, in the *Admiral Casinos* judgement⁶, the Court made clear that the application of the overarching consistency test by the referring court must be dynamic rather than static in the sense that the test applies not only to the point in time when the restriction is introduced but to the entire time period for which the restriction is in force.

The Court interprets the consistency assessment as a very comprehensive "hypocrisy test". It is clear from the latest judgements⁷ that the central and decisive criterion underlying the overarching consistency test that the Court applies is the genuineness of the Member State's submission with regard to the objectives that its legislation pursues.

Secondly, based on the overarching consistency requirement, the Court has formulated specific rules for multi-licensed systems. The requirement that the award of a license must ensure transparency and equality has been fully endorsed by successive judgements. With regard to the application of the Court's jurisprudence on Article 56 TFEU to the gambling sector, the Court clarified in the recent *Biasci* case⁸ that while the principle of mutual recognition of licenses among Member

States does not apply, the prohibition of the duplication of identical substantive requirements in the licensing procedure is necessary. Furthermore, the Court held in the *Berlington Hungary* judgment that the fundamental principles of legal certainty and the protection of legitimate expectations requires the existence of transitional periods for substantial changes in licenses⁹.

Thirdly, the Court has also been consistently applying a number of requirements specific to gambling monopoly systems established on the basis of the overarching consistency requirement. The Court reiterated its previous case law by making clear that gambling monopolies are admissible and compatible with EU law only if they meet very strict conditions¹⁰.

The main conclusion that can be drawn from the continuous development of jurisprudence is that the Court leaves less and less room for maneuver to Member States when they adopt legislation to regulate online gambling. ■

¹ *EGBA news*, Issue 9: Online safety and ethics.

² Cases *Berlington Hungary* (C-98/14) §64 but also *Ince* (C-336/14) §55, *Digibet and Albers* (C-153/13) §24, *Pfleger* (C-390/12) §45, *Stanleybet & Others* (C-186/11 and C-209/11) §30 and *HIT and HIT LARIX* (C-176/11) §31.

³ Case *Berlington Hungary* (C-98/14) §65.

⁴ Cases *Liga Portuguesa* (C-42/07) §70, and *Carmen Media* (C-46/08) §102.

⁵ Case *Zeturf* (C-212/08) §75-77.

⁶ Case *Admiral Casinos* (C-464/15) §36.

⁷ Cases *Laezza* (C-375/14) §36, *Biasci* (C-660/11 and C-8/12) §25, *Garkalns* (C-470/11) §37, *HIT and HIT LARIX* (C-176/11) §31-36, and *Pfleger* (C-390/12) §54-55.

⁸ Case *Biasci* (C-660/11 and C-8/12).

⁹ Case *Berlington Hungary* (C-98/14), §77-87.

¹⁰ See for example Case *Winner Wetten* (C-409/06), §69.