

EGBA NEWS

CONTENTS

- 01 Editorial, from Sigrid Ligné
- 02 Europe's growth challenge: some empirical evidence, by Henrik Jordahl
- 03 Corruption in sport: new data busts the match-fixing myth, by Samantha Gorse
- 04 The legal view, from Professor Dr. Dr. Claus-Dieter Ehlermann

Editorial



In our sector, legislators around Europe have embarked in the last two years on intense policymaking largely driven by perception rather than facts. In several jurisdictions, this has led to regimes that fail to achieve the right outcomes for consumers, governments or operators. The European Commission last year published a Green Paper on online gambling in order to gather strong data to underpin its policy recommendations. The response to this consultation have been published, and the Commission's summing-up is eagerly awaited. Without careful adherence to facts and evidence, there is a risk that policy will be based on shaky foundations and miss its objectives. Corruption in sport continues to attract myths but the study published by the University of Coventry (p.3) will allow decision-makers to rely on quantified data to prevent and combat the main threats. Increasingly, evidence points to the fact that properly regulated online gambling provides new protection and prevention opportunities while offering great growth potential. Studies such as the one conducted by the Research Institute of Industrial Economics confirm the technological advances driven by the sector and, taking Sweden as an example, also provides evidence of the positive spillover effects on innovation and jobs. But the sector's contribution to European growth will very much depend on the EU's ability to overcome existing regulatory barriers (p.1).

Sigrid Ligné
EGBA Secretary General



Back to the facts

Europe's growth challenge: some empirical evidence



Henrik Jordahl,
Associate Professor,
Research Institute of
Industrial Economics,
Stockholm, Sweden

Sweden's online gambling market is dynamic and successful. Yet, it operates in a suboptimal regulatory environment which impacts the growth prospects for this fast-moving industry, and for the Swedish economy in general. This short piece provides some empirical evidence from Sweden about the issues faced by its online gambling industry. Since the problems encountered by the industry in Sweden are far from unique in Europe, one may infer that Europe as a whole is currently depriving itself of growth and international competitiveness, and at a time when it can ill afford to do so.

The Swedish online gambling market has the highest share in the EU of online consumption to total consumption – 26 percent compared to an EU average of ten percent. More than a dozen private online companies have sprung up in Sweden since 1995, some of significant size, counting about 1900 jobs, with annual employment growth at

double-digit rates. Several of the world's most successful online gambling operators use Swedish systems for casino games. Sweden is ranked top in the EU for use of the internet, and for the share of employment in the ICT sector, and is third for the ICT sector's share in total GDP. Still, it is clear that the sector has great growth potential. Online gambling also has positive spillover effects on innovation and jobs in other industries, in Sweden and beyond. A large majority of workers in the commercial part of the gambling industry in Sweden are involved in technological development in a broad sense, including web technology, web design, web architecture, web services and web and mobile applications.

So what is the problem?

Despite the success story so far, the online gambling industry in Sweden is confronted with a number of challenges to its future growth and thus to its contribution to the economy as a whole. The European market for e-commerce is highly fragmented. Partly as a result of this (there are cultural and language reasons too), EU consumers do not shop online as much as could



Europe's share of the added value from this growing market may move offshore to the US or, later, China.



- The Swedish online gambling market has the highest share in the EU of online consumption to total consumption – 26 percent compared to an EU average of ten percent.
- More than a dozen private online companies have sprung up in Sweden since 1995, some of significant size, and they count about 1900 jobs, with annual employment growth at double-digit rates.
- Several of the world's most successful online gambling operators use Swedish systems for casino games. Sweden is ranked top in the EU for use of the internet, top for the share of employment in the ICT sector, and third for the ICT sector's share in total GDP.
- It is clear that the industry still has great growth potential.

otherwise be expected. As a result of the very different national regulatory regimes, online gambling markets in Europe are even more fragmented than other e-commerce markets. Even within Sweden, regulation of online gambling is still a fraught issue, often dominated by arguments relating, on the face of it, to the (entirely justified) need for consumer protection or the fight against fraud but in fact designed to protect vested interests. The approach to policymaking, and policy consultation upstream of policymaking, is anything but evidence-based. There is a fear of losing revenue from offline monopoly activity, although cannibalisation of offline by online business has been shown to be minimal. But above all there has yet to be a serious enquiry into regulation of the Swedish gambling market which starts from first principles rather than questionable assumptions.

So what can be done?

The Swedish gambling market needs an overhaul if it is to achieve the required 'sweet spot' whereby consumers are protected, fraud is curbed, governments gain the revenue they need, and operators can pursue their business in a fair and open environment, which is conducive to domestic investment in technology and skills. Sweden is not doing this at the moment. There are regulatory models elsewhere in the EU from which Sweden might draw empirical data. Examples include the UK, which re-regulated its market in 2007 and gave

the country a modern and cohesive legislative framework for gambling, including online gambling. Italy has done likewise. And Denmark is the latest EU country to adopt a balanced regulatory package which sets the right incentives for all parties while being designed to achieve a fair and stable tax take for government.

And the challenge for Europe?

The global market for online gambling is estimated to amount to 21 billion US dollars. Europe is currently the largest market with 43 percent of the world market. Europe has a choice. The EU purports to promote the continent-wide growth strategy Europe 2020, including the so-called flagship initiatives Digital Agenda for Europe and the Innovation Union. It purports to champion a new and more business-friendly regulatory environment, especially for young and innovative start-ups. But unless the EU's constituent member states live up to these headline goals and convert them into policy on the ground, Europe's share of the added value from this growing market may move offshore to the US or, later, China. The policy stakes are simply too high to ignore the evidence.

This article is based on the study entitled *Sweden's digital growth industry: New perspectives on the need for a reregulated gaming market*, available at https://circabc.europa.eu/d/d/workspace/SpacesStore/02611dcb-37a5-4e55-bfa6-3f9cde2f0287/Individual_Henrik%20Jordahl_part3.pdf



“
Corruption in sport is not new. The popularity of sport makes it a target of people wanting to corrupt sport and fix sporting contests.
”

Corruption in sport: new data busts the match-fixing myth



Samantha Gorse, from the Centre for the International Business of Sport at the University of Coventry, reports on the outcome of a recent piece of research looking at the extent of corruption in sport.

Corruption in sport is not a new phenomenon. As sport has become more popular with a truly global audience in recent years, it appears to have also become much more of a target for individuals and groups of people wanting to corrupt sport and fix sporting contests.

There are many types of corruption that affect the sport industry, such as bribery, vote rigging, financial management, doping, match-fixing and the misuse of inside information for betting purposes. In this context, the University of Coventry was asked to evaluate, on behalf of EGBA and RGA, the two leading trade associations representing European licensed online gambling operators, the prevalence of these different forms in corruption in international sport.

This research analysed a database of 2,089 cases over a period of ten years (2000 – 2010) of **proven corruption** cases focusing on:

- Match-fixing (betting related) – individuals actively trying to influence the results of sporting contests for material gain through betting operators
- Match-fixing (non-betting related) –

those cases where results are fixed to ensure a match or league victory over a rival or influencing the actions of officials to ensure victory for one party

- ‘Inside information’ – betting by athletes or officials misusing ‘inside information’ to make substantial profits from betting operators and their consumers
- Doping – the use of performance-enhancing substances

This report has been confined to a statistical analysis of the number of known and proven cases rather than individual sporting events or contests corrupted. It identified key trends in the data collated regarding the frequency of such cases on an annual basis and by geographical location, with a primary focus on Europe.

The data collected allowed us to draw the following conclusions:

- Of the 2,089 cases collated, **95.64%** were doping cases, with 76.58% of those cases occurring in Europe and North America
- Of the 1,998 doping cases analysed, more than 80% of these cases occurred in athletics, cycling and American sports
- **2.73%** of cases collated were examples of match-fixing (betting and non-betting related)
- **1.63%** of cases were examples of the misuse of inside information for betting purposes
- Of the 57 match-fixing cases analysed (betting and non-betting related), 85.96% took place in

Europe (52.63%) and Asia (33.33%) – the majority of these cases were football related

- 57.89% of match-fixing cases in sport are examples of matches fixed to defraud betting operators (this includes both licensed and unlicensed operators); non-betting related match-fixing occurred in 42.11% of cases

The relatively low figures for match fixing cases (betting and non betting related) may have come as a surprise to some given the publicity and numerous media reports about match-fixing in international sport. This is in no small part due to the fact that licensed betting operators have sophisticated integrity mechanisms designed to detect irregular betting patterns linked to betting-related match-fixing and to advise sports and regulatory bodies accordingly so that action can be taken.

Going forward, there is clearly a need for the licensed betting industry, gambling regulators and law enforcement agencies to work alongside sporting bodies to stop those who try to unfairly influence the outcome of sporting contests, whilst limiting the amount of access illegal betting syndicates have to athletes, officials and teams. However, it is also apparent that European-based sport needs to be particularly vigilant given the global success, coverage and focus on sporting events organised in Europe.

The final report is available at:
<http://www.egba.eu/pdf/Report-FINAL.pdf>



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.



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

The Court of Justice of the European Union (the "Court") rendered its second ruling on the Austrian gambling legislation in just over a year on 15 September 2011. But whereas the earlier Engelmann ruling¹ was on the licensing procedures in a traditional offline market, the latest Dickinger and Ömer Judgment² deals with the Austrian regulation of the online gambling market.

Interestingly, the Judgment applies to the Austrian online gambling monopoly all the legal arguments and concepts that have been developed by the Court in its jurisprudence regarding terrestrial gambling monopolies. The Judgment does so without even discussing whether these arguments and concepts would have to be in some way adapted in order to also fit for online gambling monopolies.

It can thus be concluded that the Judgment is a further confirmation – following the Zeturf Judgment³ – that the Court has in the meantime acknowledged that online gambling is not generally associated with any special risks and that the internet should be



The legal view

The internet is just another gambling distribution channel

treated as just another distribution channel for games of chance.

Another important issue raised in the Judgment is whether the Court's jurisprudence that a Member State's national licensing system is required to take into account the evidence and guarantees that operators have already provided in other Member States (the so-called Webb jurisprudence⁴), also applies to the gambling sector.

In paras. 96-98 of the Judgment, the Court analyzes with regard to the gambling sector the individual requirements following from Webb. In para. 99 of the Judgment, the Court states that the Webb case law 'does not apply [...] in a field such as that of games of chance, which is not harmonised at European Union level, and in which the Member States have a wide discretion in relation to the objectives they wish to pursue and the level of protection they seek.'

It is self-contradictory on the one hand to state that the Webb case law does not apply and on the other hand to analyze its requirements, i.e. to apply it. Thus, para. 99 of the Judgment can only make sense if it refers to a hypothetical constellation where all substantive requirements for a licence in a Member State are similar to requirements that were already fulfilled in the Member State of establishment. In such a

situation, Webb would oblige a Member State to automatically grant a national licence, without being allowed to impose any further requirements. In other words, Webb would effectively lead, from a substantive point of view, to automatic mutual recognition of licences among Member States.

In that regard, the Court points out that because of the differences between the policy choices that are taken in different Member States, the said hypothetical constellation will (virtually) never exist in which all substantive requirements for a licence in a Member State are equal to the substantive requirements that are already fulfilled in the Member State of establishment, so that Webb will (virtually) never lead to automatic mutual recognition.

Thus, the Court's conclusions in the Judgment regarding Webb are merely a confirmation that the Court's previous finding⁵ that the principle of automatic mutual recognition does not apply to the gambling sector holds true also and even against the Webb case law.

¹ Court, judgment of 9 September 2010 in Case C-64/08 *Ernst Engelmann*, not yet reported.

² Court, judgment of 15 September 2011 in Case C-347/09 *Dickinger and Ömer*, not yet reported.

³ Court, judgment of 30 June 2011 in Case C-212/08 *Zeturf v Premier Ministre*, not yet reported.

⁴ Court, judgment of 17 December 1981 in Case 279/80 *Webb* ECR 3305.

⁵ Court, judgment of 8 September 2009 in Case C-42/07 *Liga Portuguesa de Futebol Profissional and Bwin International Ltd v Departamento de Jogos de Santa Casa da Misericórdia de Lisboa* ECR I-7633, para 69.