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New industry New Parliament New Commission New opportunities

Editorial



MEPs take their seats at a critical juncture in the online gaming industry. Above all else, it is a time for new opportunities.

As more Europeans play online, Member States such as France and Denmark abandon the monopoly model for one where consumers are free to choose with national or EU operators in a safe and secure playing environment. We expect more and more governments to take the opportunity to come in line with EU law and implement regulations adapted to the cross-border nature of internet.

This raises the tantalizing prospect - unthinkable only a few years ago - of EU harmonisation and the opportunity for legislators, not judges (see legal view page 4) to define the EU policy for the sector.

Finally, with studies like Prof. Levi's on money laundering featured on page 3 and publications such as this one, we will have the opportunity together to shape European online gaming and betting policy on the basis of facts, not myths.

Sigrid Ligné
EGBA Secretary General



Co-Chief Executive Officer of online gaming operator bwin and Chairman of the European

Gaming and Betting Association, Norbert Teufelberger, explores the opportunities that new political perspectives can bring to the online gaming industry — and to Europe as a whole.

The machinery of Justice stops for no one; not even Members of the European Parliament. As new MEPs and Commissioners take their seats, the European Court of Justice (ECJ) is considering more than ten cases relating to online gaming in Europe, one of which was decided on 8 September involving bwin (of which I am Co-CEO) and the Portuguese national gaming monopoly. While this ECJ ruling is important, it fails to provide a European precedent, which is why we need regulation.

Online gaming is a market reality and there is an urgent need to develop a regulatory framework that meets the interest of consumers and the state, and creates a level playing field for operators.

The incoming Parliament and Commission have a tremendous opportunity to sweep away ingrained misconceptions and polarised positions on gaming. Gaming is a clear economic

reality. The simple fact is that no matter what governments decide, people will always play — and in the information age, they will play online. So, if governments choose to ignore fair regulation, they will be failing millions of consumers by forcing them to go to unsafe sites outside the EU. This could, in turn, open the floodgates to fraud, money laundering and poor consumer protection.

Let me make it clear, EGBA welcomes and encourages regulation. No responsible operator wants the free for all that an unregulated market brings — if nothing else, it's bad for business.

Encouragingly, member states including the UK, Malta, Italy and now Denmark and France are recognising the benefits of a regulated online gaming market under a multi operator licensing system.

Such reforms must, however, be workable, economically viable and in line with the rules of the EC Treaty. Moves towards harmonisation of member state regulation will hopefully lead to pan-European harmonisation sometime in the next decade. EGBA, through events such as its Responsible Gaming Days held at the European Parliament in 2008 and 2009, aims to be a respected, authoritative and trusted adviser throughout this process.

EGBA members are all licensed in the EU/EEA and subject to a number of EU secondary legislation such as the Third EU Directive for the prevention of money laundering and



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unfair commercial practices directive. In a regulated environment, online gaming transactions are traceable and transparent and have to pass and return via highly regulated financial institutions. This provides for a more robust audit trail than in the traditional land-based environment, where transactions are unrecorded and anonymous. Rigid checks and balances ensure that online gaming is not conducive to fraud.

Some suggest that the wider choice offered by internet gaming acts as a catalyst for problem gamers, but this is simply not true. The fallacy is exploded by recent studies conducted both in regulated (UK) and prohibitive markets (Sweden, Netherlands and Norway), as well as a study from Harvard Medical School's Department on Addictions.

Nevertheless, EGBA members are not complacent and have a responsible approach to gaming — through EGBA's Standards — not only protecting the vulnerable and ensuring that customers do not develop a problem, but also addressing topics such as fraud prevention and data protection. The relative youth of the online gaming sector suggests the need for investment in more research to understand the real concerns.

Many governments are starting to realise the potential economic and fiscal implications of market openings. Europe's online gaming industry is, after all, a world leader, accounting for 40 per cent of the global market in 2008; around €6.7 billion. Tax revenues and contributions from operators to the sports world are a significant and growing part of it.

Indeed, the industry is becoming an increasingly active participant in the sports ecosystem, creating additional interest in sporting events. That's why a growing number of clubs and sports enter into multi annual sponsorship deals with online operators. Relentless global competition means, however, that unless regulation keeps pace with a fast-developing industry, we could squander a huge opportunity.

Whatever decisions are made by courts throughout Europe, online gaming will and should remain high on the political agenda. It is my hope that we can all base the upcoming debates on facts. If we can, then the new Parliament and Commission will better understand this new and promising industry so that, together, we can explore the new opportunities that it will bring. ■

Money-laundering risks and online gaming: time to dispel the myth?



In his latest report, **Prof. Michael Levi**, Professor of Criminology at Cardiff University looks at the extent of money laundering risks in the online gaming industry.



While it's not a realistic policy goal for governments in a free society to eliminate money laundering risks altogether, there are ways to reduce them to a tolerable level. Regulation is one of them, ensuring operators undergo a 'fit and proper person' test before receiving a licence, and preventing people with links to organised crime and terrorist groups from owning what could be vehicles for laundering.

It has also encouraged online gaming companies to develop a set of procedures approved by regulators to reduce integrity risks. This begs the question, how plausible it is that a significant amount of laundering would occur via online gaming in a regulated sector?

This report argues that in a regulated sector, the risks and amounts associated with online gaming are modest in comparison to other sectors. This is due to the high traceability and transparency of online gaming transactions, as well as the customer identification controls that make money laundering unattractive. Online gaming companies licensed and regulated in the EU have chosen to comply with the Third EU Directive for the prevention of money-laundering and, in addition, apply complementary codes of conduct.

A review of recent literature shows that online gaming does not significantly feature directly in the recent published

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threat assessments of Europol and other European policing organisations, or in their policing priorities. To date, generalised and understandable expressions of concerns by Europol and by the Financial Action Task Force about money laundering risks posed by the Internet have not been accompanied by evidence of significant laundering via online gaming.

As can be seen in the 'risks and response' panel on the right, potential areas of risk are mitigated by the deployment of a suite of tools by regulated online gaming companies. These tools may vary over time in order to combat any risks in a proportionate manner.

There is no doubt that there is scope for improvement in controls over fraud and laundering. Regulators need to be vigilant: (i) about the levels of private sector resourcing of anti-fraud/anti money laundering (AML) efforts, without which risks would rise; and (ii) achieve consistency between themselves in terms of AML requirements.

Read Prof. Levi's report at www.egba.eu ■

RISKS

1. Online gaming firms can credit winnings or unused funds back to an account other than the one on which the original bet was made: an issue which gaming firms share with other business areas.
2. The use of 'front people' through whom to run gaming transactions.
3. Peer to peer games, where value transfers can occur between both electronic and human players as a result of deliberate losses, at a relatively low cost to the players.
4. Payment in (and out) via other financial intermediaries which are regulated for AML purposes, but where Know Your Customer tools are of modest or variable quality.



RESPONSE

1. Know Your Customer Checks (KYC) — Proving that the information provided in an application or transaction is correct, namely that a person actually exists and resides where they say they do.
2. Location mismatches — rules looking at a customer's physical location (and from where they are logging in) and their telephone number to identify any anomalies.
3. Hotlists — Referencing information (devices, IP addresses, credit cards, debit cards, etc) to both internal and external databases of stolen cards or compromised data (though the latter depends on the depth of coverage of those databases); and checking against EU and other Politically Exposed Person and nominated terrorist lists.
4. Transaction Limits — Use of limits to minimise the attractiveness of a business to fraudsters, thus reducing the value they can derive from one unique set of compromised information.
5. Unusual data and betting patterns — Looking for unusual changes of personal information on accounts or betting patterns.
6. Associations — Looking for links between cards, bank accounts, IP addresses, devices and personal data.



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

Santa Casa ruling: missed opportunity



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

Was the Santa Casa ruling a landmark ruling for the online gaming sector?

It is of course a noteworthy ruling because it is the first ruling of the ECJ concerning exclusively online gaming and it is for the first time that the ECJ explicitly states that Member States are not obliged to mutually recognise gaming licenses. As it is a preliminary ruling, it is now up to the Portuguese court to draw the appropriate conclusions on the legality of the Santa Casa monopoly. But contrary to expectations the ruling was very specific to the Portuguese situation. *It has not become a judgment of principle.* Thus, the Judgment cannot be generalised so as to serve as an important precedent for future ECJ judgments on gambling, including on the legality of monopolies and prohibitions of other Member States.

Why is the ruling so specific to the Portuguese situation?

Because it is decisively based on two Portugal-specific circumstances. Firstly, the Court identifies the main objective of the Santa Casa monopoly to be the protection of consumers against fraud on the part of the operators. The Court then bases its

entire legal assessment in the Judgment exclusively on this single objective, without assessing whether the monopoly's policies are consistent – both with regard to the various types of gambling offered by the monopoly itself and with regard to those types of gambling that are not offered by the monopoly – and whether it is the least restrictive measure to attain this objective. Secondly, the Court clearly attaches great importance to the century-old institution Santa Casa, its legal form, lack of profit interest, benevolent tasks, complete state supervision, and the fact that Santa Casa has had a monopoly for certain games in Portugal for centuries. *These two crucial elements in the Judgment's reasoning are unlikely to be present in any future gambling cases before the ECJ.*

Does the Santa Casa ruling affect the previous jurisprudence on gaming?

No. The Court acknowledges that a monopoly is a restriction to Article 49 of the Treaty, the freedom to provide services. The Court also refers to the leading ECJ precedents to introduce the assessment of whether the restriction is justified. The Court reiterates that according to existing jurisprudence, the measure must be proportionate, suitable, must not go beyond what is necessary, applied in a non-discriminatory manner and try to attain the objective in a consistent and systematic manner. But surprisingly the Court then falls short of assessing the monopoly's

compliance with EC law on the basis of each of these criteria. No matter what the ECJ's exact motivation for avoiding any assessment of consistency may have been, the fact remains that the Judgment does not address the consistency issue, so that *it leaves the previous jurisprudence surrounding this issue unaffected.*

Has bwin now lost the case in Portugal in favour of Santa Casa?

No. It is particularly interesting that the ECJ does not decide on the legality of Santa Casa's monopoly at all, neither with regard to online gaming nor with regard to terrestrial gaming. The Court only concluded that Article 49 EC does not preclude legislation prohibiting operators lawfully providing services in one Member State from offering their services via the internet in another Member State. Therefore, it would normally be up to the Portuguese judge to determine if the monopoly on the internet is legal or not. But under the Notification Directive 98/34, Portugal had to notify to the Commission the extension of Santa Casa's monopoly to internet gambling. Given that Portugal did not make such a notification, this law is not applicable, independently of its compatibility with Article 49 EC. *Therefore, the fines imposed on bwin in Portugal will likely have to be declared void irrespective of the ECJ's Santa Casa ruling.* ■