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What about the consumer?

Editorial



A "mystery shopping exercise" by the European Commission in October 2009 found that 60% of European cross-border

transactions could not be completed by consumers because of delivery or payment obstacles. Barriers to the development of cross-border e-commerce prevent European consumers from accessing more competitive products and services outside their national markets. As the Commission outlined, in half of the European Member States, cross-border offers could lead to 10% savings for consumers. The situation is particularly fragmented in the field of online gaming, given the increasing number of regulatory and technical restrictions being implemented by different national jurisdictions. Such national barriers to the provision of online gaming simply go against the cross-border nature of digital consumption and hold back the full potential of cross-border e-commerce for consumers. The launch of a green paper on gaming announced by Commissioner Barnier is a welcome initiative in this direction, and should help realise the Commission's objectives of consumer protection in a digital single market.

Sigrid Ligné
EGBA Secretary General

Poker players' expectations in the digital age



Anthony Holden is an award-winning author and journalist who has written extensively on poker. In 2009 he was elected as the first president of the **International Federation of Poker**, which represents the interests of poker players.

What are the objectives of the International Federation of Poker?

The International Federation of Poker (IFP) is the umbrella organisation representing the roughly 30,000 individuals who are registered with our 15 national poker federation members. Our goals are to represent and defend the interests of poker players in Europe and around the world.

So what is the climate like for poker players in the EU today?

You have to be really dedicated to play poker in the EU, and players are facing an overly restrictive framework in every Member State. These restrictions mean that poker players often have to physically go and sit in a casino if they want to play, which today makes no sense. Remember that poker is, in itself, no different to other mind games such as bridge or backgammon, both of which are also played for money. I have just returned from Copenhagen where I was honoured to play in the first poker

tournament held legally outside of a casino in Denmark, organised by one of IFP's members, the Danish Poker Federation. Whilst this does show significant progress in the right direction, I was required to make an international bank transfer in advance of the tournament to secure my seat. The bank's transfer fee itself was more than the buy-in to the tournament, so clearly the new legislation needs some further thought. However, the event itself was a momentous occasion and a sign of progress.

What kind of regulatory environment would IFP like to see for poker in the EU?

IFP would like to see clear and transparent legislation concerning the participation in (and provision of) online poker that allows poker to be played outside the sole remit of a land-based casino environment. Currently some countries prohibit online poker while others don't have the legislation in place to respond to the international dimension of this game. But online or offline, Europe is really behind when it comes to players' expectations: poker is an international game that is restricted by artificial boundaries, and even in some cases criminalised. In the summer of last year, poker players in the US had accounts frozen by online providers at the instruction of federal prosecutors in the state of New York.

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By restricting access, some players may be driven into the hands of unregulated and potentially unscrupulous websites.



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This occurred whilst the debate was still ongoing as to whether actually placing a bet online was illegal in that state. I would hate to see the confusion over EU legislation lead to a similar stand-off.

What do you see as the main restrictions or hurdles, and where?

The segmentation by country of online poker is ridiculous because it prevents the organisation of international poker tournaments, which is one of the reasons why players like to play online. By restricting access, some players may be driven into the hands of unregulated and potentially unscrupulous websites. That's exactly what happened in the US with the introduction of the Unlawful Internet Gambling Enforcement Act (UIGEA). We believe poker players deserve the highest possible protection for their online security, their finances and their personal data as

other games – and the fragmented legal regime is jeopardising that.

What is your outlook for the future?

We have been encouraged by some of the progress announced in certain countries (e.g., France, Italy and Denmark) to legislate online poker. Governments are slowly changing their attitude, recognising poker as a legitimate form of entertainment and modernising their legislation accordingly. But most legislation attracts prominent critics, and some legal provisions which look helpful are actually designed to make playing difficult or less attractive, as well as questionable in terms of the financial interests of players. Even so, our vision is that, one day, all EU citizens will be able to openly and legally play poker in their own home (including online) with a wide choice of operators. ■



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EGBA's responsible standards encompass:

- Prevention of underage gaming
- Promoting responsible gaming and betting
- A zero tolerance to fraud and criminal behaviour
- Protection of consumers' privacy
- Prompt and accurate payment to customers
- Assessment of product fairness and randomness
- Ethical marketing
- Commitment to consumer satisfaction
- Provision of a safe, secure and reliable gaming environment

Impact of payback percentage on problem gambling: a determining factor?



Dr Jonathan Parke, senior lecturer from the **University of Salford**, talks about his latest research, and on whether there is a link between payback percentage and problem gambling.

What was the objective of this research?

The objective was to provide the first comprehensive literature review on the impact of payback percentage on gambling behaviour, with a particular focus on the areas of problem gambling and social responsibility.

What is a payback percentage?

Payback percentage is the percentage of stakes given back to players in the form of prizes over the long term on a particular game. At any given stake level, the lower the payback percentage, the higher the price to play the game over a specified period of time, and vice versa. The payback percentage is a key competitive element in the gambling industry that contributes to the price that is paid by a player to place a bet or play a game.

So why address payback percentage in the context of problem gambling?

In the context of gambling reforms, some Member States are introducing a restriction on the payback percentage with the expectation that it will reduce problem gambling. It is therefore important to consider the appropriateness of such a restriction and whether it should be prioritised. This was the exact purpose of this review: namely, to examine the existing research on a potential relationship between payback percentage and problem gambling.

So what are the main findings?

The review concluded that there is no credible evidence to claim that the payback percentage has an impact on problem gambling. As a result, there is currently no evidence to suggest that placing a maximum limit on payback percentage would be an effective means to prevent or reduce levels of problem gambling. This conclusion was in part due to the fact that the research on this subject so far has focused on gambling behaviour more generally and not directly on the impact of payback percentage on problem gambling specifically.

That's why the review also had to consider studies examining the opinions of specialists and experts in the gambling field. These specialists consistently rated payback

percentage as one of the least important factors affecting problem gambling. Also, specialists did not discriminate between a higher or lower payback percentage as being more likely to impact problem gambling. For example, in one study (White et al, 2006) the 'researcher' group of specialists ranked both a higher payback percentage and a lower payback percentage as the joint least important factors contributing to problem gambling out of 27 possible parameters.

What is your conclusion?

Based on this current review, I conclude that there is no scientific evidence at the moment to formulate any definitive regulatory policy regarding the appropriate controls of payback percentage to prevent and minimise gambling-related harm. ■

Payback percentage: What does it actually mean?

It is the average amount of money that is paid back to players for a placed bet over a specific period of time.

Odds for Manchester United v Hull City in English football Premier League on 23/01/10

	Manchester to win	Manchester to draw	Manchester to lose	Payback percentage
Svenska Spel	1,12	3,30	18,00	80 %
Francaise des Jeux	1,15	5,35	8,35	85 %
Unibet	1,17	6,25	17,00	93 %

For instance, for Svenska Spel, the payback percentage is calculated as follows: **Svenska Spel: $1/(1/1.12+1/3.30+1/18) = 80\%$**

Using this formula, you can calculate the payback percentage of the other operators.



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

The definition of consumer interest in the EU is often narrowed down to the set of consumer protection directives that are part of the *acquis communautaire*. These directives, which serve to ensure that consumers are protected from risks and threats they cannot deal with as individuals, are of significant importance to the consumer¹. However, they are only part of the benefits the EU legal system bestows on consumers. The internal market also provides benefits resulting from the four fundamental freedoms enshrined in the Treaty on the Functioning of the European Union (TFEU); the consumer has greater access to goods and services at lower costs which could not be achieved without the benefits of open borders.

While the consumer obviously benefits from better protection and more access, these two interests can sometimes collide and therefore need to be balanced. The legal framework of the EU, both in terms of legislative acts as well as the continuously developing jurisprudence, reflects this constant balancing act. The TFEU is clear in that the primary objective is to create an internal market, but in adopting the



The legal view

The consumer's interest in the internal market

necessary measures Parliament and Council are to seek to achieve a high level of consumer protection (Article 114(3) TFEU).

Likewise, Article 169 TFEU states that the EU shall contribute to a high level of consumer protection, but this can only be done in the context of the completion of the internal market (Art 169(3) TFEU). In other words, the EU legislator cannot propose harmonising measures with the sole objective of protecting the consumer; harmonisation can only take place in the context of improving the cross-border nature of the internal market. Indeed, in 2000 the Court of Justice of the European Union (CJEU) concluded that the Tobacco Ban Directive should be annulled because its provisions did not contribute to the free movement of goods, as required when having Article 114 TFEU as legal basis².



Similarly, the CJEU has clarified that European consumers do not just economically benefit from the freedom to provide services of Article 56 TFEU. In a series of cases, the CJEU has confirmed that the right of recipients to receive services is the necessary corollary to the right to provide services³. As a result, consumers have the right to move to other member states to receive services there without being obstructed by restrictions.

In the field of gambling, due to the lack of harmonisation, the CJEU has done most of the balancing act so far on the basis of the Treaty, although jurisprudence is developing on gambling in relation to secondary legislation⁴. Obviously, if and when legal initiatives are undertaken at the EU level to address the cross-border nature of gambling, it will be the EU legislator's task to ensure in the framework of a well-functioning internal market a high level of consumer protection. ■

¹ Gambling is covered inter alia by the Distance Selling, the Unfair Commercial Practices and the Data Protection Directives.

² See CJEU, judgment of 5 October 2000 in Case C-376/98 *Germany v Parliament and Council*.

³ See inter alia CJEU, judgment of 31 January 1984 in Joined Cases 286/82 and 26/83 *Luisi and Carbone v Ministero del Tesoro* and judgment of 2 February 1989 in Case 186/87 *Cowan v Trésor Public*.

⁴ See for instance CJEU, judgment of 14 January 2010 in Case C-304/08 *Zentrale zur Bekämpfung unlauteren Wettbewerbs v Plus*.