

# MANIFESTO

FOR  
**A SUSTAINABLE EU POLICY  
FOR ONLINE GAMBLING**



MARCH 2012

**EGBA** | European Gaming &  
Betting Association

# KEY RECOMMENDATIONS

This manifesto sets out the 5 policy recommendations that EGBA believes are the basis for an effective EU framework that can enable responsible and successful development of the online gambling market.

- 1. The European Commission to fulfil its role as Guardian of the Treaty**
- 2. Structured regulatory cooperation among national authorities**
- 3. An EU legal framework for online gambling**
- 4. Problem gambling prevention measures based on evidence**
- 5. EU action to fight sport fraud**

## Introduction

The Communication on Online Gambling from the European Commission marks a key moment for online gambling in the EU. With this manifesto the European Gaming and Betting Association (EGBA) sets out the key priorities of the EU regulated industry for the development of a sustainable EU policy for online gambling.

European demand for online gambling services continues to grow steadily, despite the economic climate. European consumers have been voting with a *'click'* of their mice; as with many other areas of commerce they are choosing to play games online. Online gambling is a competitive market with high pay-out ratios enjoyed by consumers (average of **93%** for private industry operators). Consumers will seek the best opportunities to play. If there is no legal framework in place that allows attractive products to come to market, they may turn to unlicensed and unregulated operators, with all the attendant risks.

Greater coordination between Member States is called for as an immediate priority. The cross-border nature of the market is clear as are the risks of inaction that will drive consumers into the black market without proper European consumer protection and less money for European exchequers.

The fragmentation of the entire European e-commerce sector has a cost and the EU is wasting economic opportunities. The completion and deepening of the digital single market would potentially produce around **4%** GDP growth over the next 10 years and easier cross-border e-commerce alone could bring savings of **€2.5 billion**.<sup>1</sup> In addition, the fragmentation of the market exposes consumers to a wide range of risks and potential abuse. Harmonisation of consumer protection rules and the creation of an attractive legal offer across all Member States is therefore the only practical way forward.

This also holds true for the online gambling market. Europe represents approximately **45%** of the global online gambling market and the EU needs to deliver a proper European policy response.<sup>2</sup> One that fosters a commercially viable framework that will ensure that Europe keeps its leadership in the world. With many now expecting the opening of the US market in the not too distant future, a market that is likely to remain the preserve of US corporations, can we be sure that our own EU champions of today will not soon become bite-sized morsels for US-based behemoths of tomorrow?

The European online gambling sector has significant growth potential if regulated properly and proportionately. As a recognised economic activity, online gambling is capable of generating new revenue streams in addition to those produced by incumbent terrestrial gambling operators. This is because online customers tend to be different from existing land-based gambling customers. As a result, the proper regulation of online gambling not only contributes to the creation of revenue streams for associated services such as advertising and sponsorship, but it also creates new tax revenue for the public purse.

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<sup>1</sup> Neelie Kroes, speaking at Handelsblatt Conference Cologne, 17 May 2011

<sup>2</sup> H2 Gambling Capital, November 2009

No economic sector can survive in a climate of sustained legal uncertainty. National legal frameworks for online gambling are currently evolving in a piecemeal fashion, fragmenting the Internal Market. Certain national rules involve protectionist market restrictions and distortions that are clearly at odds with EU law, “red lines” that Member States should not be allowed to cross. Over the last 10 years, the European Commission has faced a large number of complaints for possible breaches of EU law in relation to the online gambling sector. While it has launched a number of infringement procedures, the last ‘hard’ action taken by the European Commission against non-compliant national gambling legislation dates back to February 2008.

For the sake of European operators but also for the safety of consumers, the European Parliament is now urging the European Commission “to pursue those infringement proceedings that have been pending since 2008”, also stressing the Commission’s duty as “Guardian of the Treaty” to “act swiftly upon receipt of complaints about violations of the freedoms enshrined in the Treaty”.

The Court of Justice of the EU has developed substantial jurisprudence on how the Treaty applies to national gambling laws, further refining the “red lines” and hence the core breaches of EU law against which the European Commission should take action:

1. Restrictions for which no evidence is provided to justify their necessity and suitability in light of public policy objectives
2. Restrictions that are *de jure* or *de facto* designed to protect the economic interests of certain operators to the detriment of others
3. Non-transparent and/or discriminatory licensing procedures
4. Requirements to be established in a Member State, for example to have a registered office, ‘bricks-and-mortar’ activities, or IT infrastructure in-country
5. Unjustified limitations of the product scope that are not evidence- and risk-based and/or are not consistent with those imposed in the land-based market
6. Licensing procedures that do not take any account of licensing requirements which operators already meet in other Member States
7. Licensing procedures that are not drawn up in a clear, precise and unequivocal manner
8. Abuse of a dominant or monopoly offline position in a competitive online market
9. Limitations on the number of licences available – any operator meeting the required standards should be able to obtain a licence
10. Discriminatory or disproportionate restrictions on marketing

## **A. Introduction at EU level of a legal obligation for Member States to cooperate in the field of online gambling**

Administrative cooperation between Member States is essential for building mutual trust. The current lack of structured communication between Member States' administrations has resulted in a proliferation of rules applicable to providers and costly duplication of controls and requirements. The lack of communication can also be used by unregulated traders to avoid supervision or to circumvent applicable rules on services.

To ensure that administrative cooperation is carried out effectively, the EU must establish a legal obligation for Member States to give each other mutual assistance in a fast and efficient manner, with three key objectives:

- Providing a high level of consumer protection across the EU
- Simplifying administrative procedures and formalities for businesses
- Ensuring adequate supervision of the market for regulators

These obligations should be comprehensive and encompass the objective to take all possible measures necessary for effective cooperation. National authorities should be able to request information from competent authorities in other Member States and be certain that they will get an appropriate reply within a reasonable timeframe and vice versa. The exchange of information should be based on a transparent set of rules.

The Internal Market Information system (IMI) might provide a framework for the exchange of information, but other examples of regulatory cooperation in the EU, such as the competition authorities' network, should also be considered. But regardless of the framework within which the cooperation will take place, there will need to be a clear and single set of rules on the objectives for regulatory cooperation and type information that will be exchanged.

Any national authority responsible for regulating, approving, inspecting or supervising businesses (companies or individuals) engaged in the online gambling sector should be subject to this obligation to cooperate.

## Recommendation 2

In practice, when one of these authorities receives a request for information concerning an online gambling provider from a competent authority in another Member State, it should have the obligation to assist, even if the information requested is not readily available. It should be up to the authority to decide on the most appropriate way of obtaining the information. They may need to consult their records or databases, to contact other authorities in their Member State or to carry out factual checks, for example, by contacting the provider, by doing on-site inspections at the service providers' premises, or by other means.

### **B. Simplifying administrative procedures and formalities for companies**

The simplification of procedure has a threefold purpose:

- Reducing the burden on companies in terms of the type of evidence and volume of documents requested from them
- Ensuring that documents from other Member States are taken into consideration, if relevant, and that costly duplication is avoided
- Facilitating the activity of European companies who want to supply their services across borders to other Member States without having to set up an establishment there

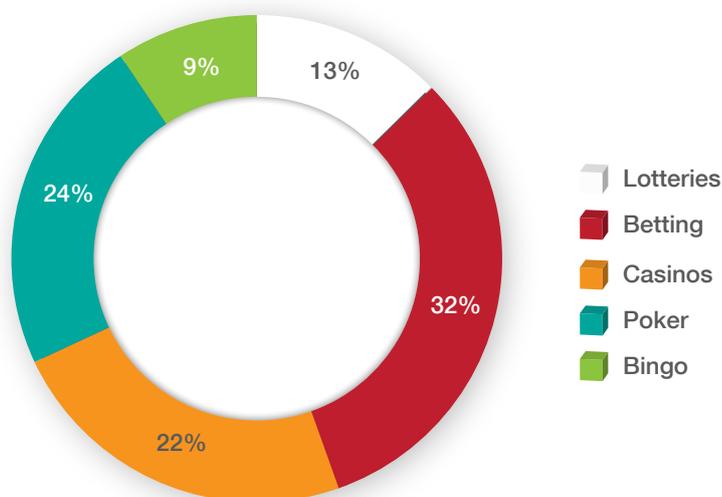
Rules by which a service provider is required to produce an application, for example, should be simplified, if certain information/documents are already in the administration's possession. The same principle applies to requirements concerning the form of a document. Unless justified, certified copies or translations should no longer be required. Also, documents from other Member States should be accepted, if they serve an equivalent purpose or if it is clear from their content that the requirement in question has been met.

In practice, this means that if national authorities are entitled to demand that the online gaming company fulfils national requirements, they should be required to take into account documents issued by another Member State which prove that an equivalent requirement has already been fulfilled in that jurisdiction. Similar processes should apply for accepting equivalent documents: if periodic tests for software are obligatory, national authorities should accept, as evidence, the certificates or attestations containing the results of such tests performed in another Member State. The submission of a certificate of nationality, or of residence, where other official identification documents (for example a passport or an identity card) already prove this information, should not be required.

## C. Ensuring adequate supervision of the online gambling market

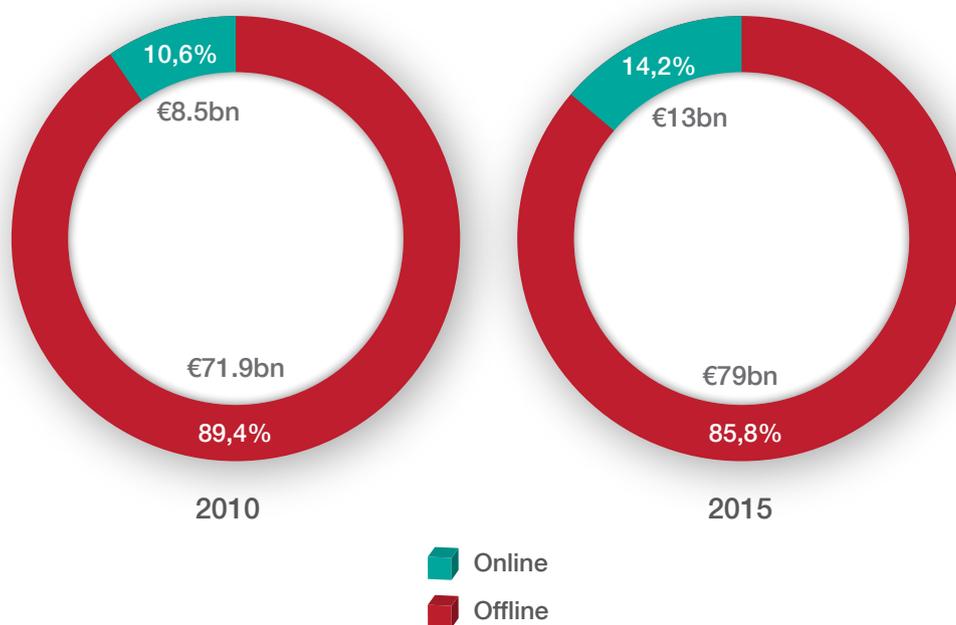
Administrative cooperation allows competent authorities to get accurate information by communicating directly with their counterparts in other Member States. In the absence of cooperation among administrations it can prove difficult for competent authorities to obtain first-hand information that is essential to ensure proper supervision, for example to confirm whether:

- A service provider is lawfully established in another Member State (e.g. whether a company is lawfully incorporated there)
- A service provider is entitled or authorised to exercise a given activity (e.g. whether a provider has a valid authorisation or a registration in its Member State of establishment)
- A document was indeed issued by a competent authority from another Member State (such as a certification for the use of software or IT infrastructure)
- A submitted document is still valid



While enabling more effective supervision by the competent national authorities, such exchange helps to ensure that supervision does not lead to a duplication of controls or to additional, unjustified obstacles for service providers. In the long run, day-to-day cooperation will help to enhance trust in other Member States’ legal and administrative systems.

**GGR in Billion €**  
*GGR: Stakes minus winnings*



Even though gambling is a sector that already falls under the scope of a number of EU-harmonised rules (data protection privacy, unfair commercial practices etc.), there is currently no sectoral EU legal framework for online gambling as such.

Online gambling is a cross-border service; hence it goes without saying that the EU is the appropriate level to legislate for the sector via **either a sector-specific regulation or directive**. The objective of EU-harmonised legislation should ultimately be to provide consumers with a high level of protection throughout the EU and to ensure market access on the basis of a single licence. Immediate EU legislative efforts should seek as a priority to define:

- Targeted harmonisation of licensing requirements, where necessary to be supplemented by recognition of equivalent licensing and auditing requirements
- Common technical standards, in particular in the field of IT, e-verification and identification
- Common reporting standards and tools
- Common consumer protection standards based on the workshop agreement published in February 2011 by the European committee for standardization (CEN) [CWA 16259:2011] that lists a set of 134 Responsible Remote Gambling Measures, which cover:
  1. Protection of vulnerable customers
  2. Prevention of underage gambling
  3. Combating fraudulent and criminal behaviour
  4. Protection of customer privacy and safeguarding information
  5. Prompt and accurate customer payments
  6. Fair gaming
  7. Responsible marketing
  8. Commitment to customer satisfaction and support
  9. Secure, safe and reliable operating environment

Evidence-based policymaking in this area is essential to develop effective and efficient measures to prevent problem gambling. Current research shows that the internet traceability and transparency allows better understanding of customer behaviour. Such research<sup>3</sup> has revealed that: **99 %** of online customers exhibit moderate gaming behaviour. Only **1 %** are considered highly involved bettors, of whom a certain percentage may exhibit problematic gaming behaviour.

Furthermore, the expert workshop organised by the European Commission on the “*detection and prevention of problem gambling*”<sup>4</sup> on 25 May 2011 concluded *inter alia* that:

- “*The regulatory system in place in a Member State, be it a licensing system or a monopoly, does not seem to have a significant impact on the degree of problem gambling or gambling addiction*”
- “*The access to online gambling products does not appear to have given rise to problem development or addiction at a higher rate than in the offline environment*”
- “*Online gambling provides good opportunities for close monitoring of individual gambling behaviour and early detection of problem development*”
- “*Information such as the time spent on the site, the option of self-exclusion and signposting to appropriate helpline and treatment centres are to be amongst information readily and constantly available to players on gambling websites*”

Finally all Member States should be required to assess and monitor the prevalence of problem gambling and evaluate the acceptance and effectiveness of problem gambling prevention practices within their jurisdictions. This will create the foundations for a fruitful exchange of information between jurisdictions to build knowledge and improve best practices.

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<sup>3</sup> [www.divisiononaddictions.org/html/library.htm](http://www.divisiononaddictions.org/html/library.htm)

<sup>4</sup> Conclusions of EC workshop of 25 May 2011 on “Detection and prevention of problem gambling and gambling addiction”

Corruption in sport is a broad phenomenon, one that spans many areas and knows many motives.<sup>5</sup> Therefore any measure to combat corruption needs to be well defined, targeted and evidence-based. Research has shown that:

- Doping is by far the biggest threat accounting for nearly **96%** of corruption cases<sup>6</sup>
- The second threat is match-fixing, which constitutes **3%** of corruption cases. Half of the match-fixing cases is not related to betting, meaning that about **1.5%** of all corruption cases is betting related
- Sport betting is not a threat in principle; risks emanate from new technologies facilitating consumers' access to unregulated online gambling offers mainly coming from the Asian markets<sup>7</sup>
- **55%** of the players who are approached for match-fixing had reportedly not had their salaries paid on time<sup>8</sup>

Consequently the fight against sport fraud requires the assistance of all stakeholders in the sport chain to ensure that the fight against corruption is effective. In order to do so the following priority issues need to be addressed:

## A. Common sanctions and definitions

The absence of a common definition of what constitutes sport fraud and the types of sanctions applicable is one of the main obstacles to fighting the problem. As called for by the European Parliament in its report on online gambling dated November 2011 *“a common definition of sport fraud and cheating should be developed and that betting fraud should be penalised as a criminal offence throughout Europe”*

<sup>5</sup> “Examination of threats to the integrity of sports”, Oxford Research, April 2010

<sup>6</sup> “The prevalence of corruption in international sport: A statistical analysis”, Samantha Gorse and Simon Chadwick, Coventry University, November 2011

<sup>7</sup> Conclusions of 10 May 2011 EC workshop on “Online gambling and sports integrity”

<sup>8</sup> Fifpro Blackbook Eastern Europe: The problems professional footballers encounter: research, page 6, February 2012

## B. Education

Athletes and sport staff are the first in line and main gatekeepers of sports integrity. As a matter of priority, they need to be fully informed of the applicable rules and aware of the risks of agreeing to corrupt a match or competition. This view was also confirmed by the European Parliament calling *“on the Member States and sports federations to adequately inform and educate sports people and consumers starting from a young age and at all levels (both amateur and professional)”*

## C. Strengthened cooperation

Cooperation as currently in place between regulated betting operators and sports federations via the early warning system of the European Sports Security Association (ESSA) need to be strengthened and extended to regulators as well as new regions. The fight against corruption is a global problem which requires cooperation at European and international level.

### Avoid conflicts of interest and distortions:

- Keeping the discussion on sports integrity separate from the broader discussion on the funding of sports
- The decision on which types of bets can be placed on sport events should be left to public authorities and not to sports bodies

## About EGBA

The EGBA is an association of leading European gaming and betting operators Bet-at-home.com, BetClic, bwinparty, Digibet, Expekt, Interwetten, and Unibet. EGBA is a Brussels-based non-profit association. It promotes the right of private gaming and betting operators that are regulated and licensed in one Member State to a fair market access throughout the European Union. Online gaming and betting is a fast growing market, but will remain for the next decades a limited part of the overall European gaming market in which the traditional land-based offer is expected to grow from € 71.9 Billion GGR in 2010 to € 79 Billion GGR in 2015, thus keeping the lion's share with 86% of the market. Source: H2 Gambling Capital, September 2011 – [www.egba.eu](http://www.egba.eu)

For more information:

EGBA  
+32 2 554 0890  
[egba@egba.eu](mailto:egba@egba.eu)

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