

P7_TA(2011)0492

Online gambling

European Parliament resolution of 15 November 2011 on online gambling in the Internal Market (2011/2084(INI))

The European Parliament,

- having regard to the Commission communication of 24 March 2011 entitled ‘Green Paper on online gambling in the Internal Market’ (COM(2011)0128),
- having regard to Articles 51, 52 and 56 of the Treaty on the Functioning of the European Union,
- having regard to the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty on the Functioning of the European Union,
- having regard to the relevant case law of the Court of Justice of the European Union¹,
- having regard to the Council conclusions of 10 December 2010 and the progress reports of the French, Swedish, Spanish and Hungarian Council Presidencies on the framework for gambling and betting in the EU Member States,
- having regard to its resolution of 10 March 2009 on the integrity of online gambling²,
- having regard to its resolution of 8 May 2008 on the White Paper on Sport³,
- having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services⁴,
- having regard to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC)

¹ In particular the judgments in the following cases: Schindler 1994 (C-275/92), Gebhard 1995 (C-55/94), Läära 1999 (C-124/97), Zenatti 1999 (C-67/98), Anomar 2003 (C-6/01), Gambelli 2003 (C-243/01), Lindman 2003 (C-42/02), Fixtures Marketing Ltd v OPAP 2004 (C-444/02), Fixtures Marketing Ltd v Svenska Spel AB 2004 (C-338/02), Fixtures Marketing Ltd v Oy Veikkaus Ab 2005 (C-46/02), Stauffer 2006 (C-386/04), Unibet 2007 (C-432/05), Placanica and others 2007 (C-338/04, C-359/04 and C-360/04), Kommission v Italien 2007 (C-206/04), Liga Portuguesa de Futebol Profissional 2009 (C-42/07), Ladbrokes 2010 (C-258/08), Sporting Exchange 2010 (C-203/08), Sjöberg and Gerdin 2010 (C-447/08 and C-448/08), Markus Stoß and others 2010 (C-316/07, C-358/07, C-359/07, C-360/07, C-409/07 and C-410/07), Carmen Media 2010 (C-46/08) and Engelmann 2010 (C-64/08).

² OJ C 87 E, 1.4.2010, p.30.

³ OJ C 271 E, 12.11.2009, p.51.

⁴ OJ L 95, 15.4.2010, p. 1.

No 2006/2004 of the European Parliament and of the Council¹,

- having regard to Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts²,
 - having regard to Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing³,
 - having regard to the Commission communication of 6 June 2011 entitled ‘Fighting corruption in the EU’(COM(2011)0308),
 - having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁴,
 - having regard to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector⁵,
 - having regard to the Commission communication of 18 January 2011 entitled ‘Developing the European Dimension in Sport’(COM(2011)0012),
 - having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax⁶,
 - having regard to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market⁷,
 - having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market⁸,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs (A7-0342/2011),
- A. whereas the online gambling sector is growing constantly, to some extent outside the control of the national governments of the citizens to whom such gambling services are provided, and whereas this sector is unlike other markets on account of the risks involved in terms of consumer protection and the fight against organised crime,

¹ OJ L 149, 11.6.2005, p. 22.

² OJ L 144, 4.6.1997, p. 19.

³ OJ L 309, 25.11.2005, p. 15.

⁴ OJ L 281, 23.11.1995, p. 31.

⁵ OJ L 201, 31.7.2002, p. 37.

⁶ OJ L 347, 11.12.2006, p. 1.

⁷ OJ L 376, 27.12.2006, p. 36.

⁸ OJ L 178, 17.7.2000, p. 1.

- B. whereas, in application of the principle of subsidiarity, there is no specific European legislative act regulating online gambling,
- C. whereas gambling services are subject to a number of EU acts such as the Audiovisual Media Services Directive, the Unfair Commercial Practices Directive, the Distance Selling Directive, the Anti-Money Laundering Directive, the Data Protection Directive, the Directive on privacy and electronic communication, and the Directive on the common system of value added tax,
- D. whereas the gambling sector is regulated differently in different Member States and this not only makes it difficult for regulated providers to provide lawful gaming services on a cross-border basis, but also for regulators to protect consumers and combat illegal online gambling and potential crime associated with it at EU level,
- E. whereas the value added by a pan-European approach to combating crime and fraud, in particular when it comes to preserving the integrity of sport and protecting gamblers and consumers, is considerable,
- F. whereas Article 56 TFEU guarantees the freedom to provide services but whereas, as a consequence of its particular nature, online gambling was exempted from the E-Commerce, Services and Consumer Rights Directives,
- G. whereas, while the Court of Justice has clarified a number of important legal questions concerning online gambling in the EU, legal uncertainty remains with regard to a number of other questions, which can only be solved at the political level; whereas this legal uncertainty has led to a significant increase in the availability of illegal gambling offers and the high risks associated with them;
- H. whereas online gambling, if not properly regulated, may involve a greater risk of addiction than traditional physical, location-based gambling, owing inter alia to increased ease of access and the absence of social control,
- I. whereas consumers must be educated about the potential harm of online gambling and protected against dangers in this area, especially addiction, fraud, scams and underage gambling,
- J. whereas gambling represents a considerable source of revenue, which most Member States channel to publicly beneficial and charitable purposes such as sport,
- K. whereas it is essential to ensure the integrity of sport by stepping up the fight against corruption and match fixing,
- L. whereas, in order to achieve these objectives, it is essential to introduce mechanisms for scrutinising sports competitions and financial flows, along with common supervisory mechanisms at the EU level,
- M. whereas international-level cooperation among all stakeholders (institutions, sports federations and betting operators) is also crucial with a view to pooling good practices,
 - 1. Welcomes the fact that the Commission has taken the initiative of launching public consultation in connection with its Green Paper on online betting and gambling, which will

- facilitate pragmatic and realistic consideration of the future of this sector in Europe;
2. Welcomes the Commission's clarification of the fact that the political process initiated by means of the Green Paper is in no way aimed at deregulating/liberalising online gambling;
 3. Recalls the growing economic importance of the online gambling industry, the take from which was over EUR 6 billion, or 45% of the world market, in 2008; agrees with the Court of Justice of the European Union that this is an economic activity with specific characteristics; recalls that this growth also entails an increased social cost from compulsive gambling and illegal practices;
 4. Takes the view that efficient regulation of the online gambling sector should in particular:
 - (a) channel the natural gaming instinct of the population,
 - (b) combat the illegal gambling sector,
 - (c) guarantee effective protection for gamblers, with specific attention to vulnerable groups, in particular young people,
 - (d) preclude risks of gambling addiction, and
 - (e) ensure that gambling is proper, fair, responsible and transparent,
 - (f) ensure that specific measures are promoted to guarantee the integrity of sporting competition,
 - (g) ensure that a considerable proportion of government revenue from gambling is used for publicly beneficial and charitable purposes, and
 - (h) ensure that gaming is kept free from crime, fraud and any form of money laundering;
 5. Sees such regulation as having the potential to ensure that sports competitions are attractive to consumers and to the public, that sports results remain credible and that the competitions retain their prestige;
 6. Underscores the standpoint of the European Court of Justice¹ whereby the Internet is simply a channel for offering games of chance with sophisticated technologies that can be used to protect consumers and to maintain public order, although Member States' discretion in determining their own approach to the regulation of online gambling is unaffected thereby and they can still restrict or prohibit the provision of certain services to consumers;

Subsidiarity principle and European added value

7. Emphasises that any regulation of the gambling sector is subject to, and must be underpinned by, the subsidiarity principle, given the different traditions and cultures in the Member States, which must be understood as 'active subsidiarity', entailing cooperation among the national administrations; considers, however, that this principle implies compliance with the rules of the internal market in so far as applicable in accordance with

¹ Carmen Media 2010 (C-46/08).

the ruling by the ECJ concerning gambling;

8. Is of the opinion that an attractive, well regulated provision of gambling services, both on the Internet and via traditional physical gambling channels, is necessary to ensure that consumers do not use operators which do not fulfil national licensing requirements;
9. Rejects, accordingly, any European legislative act uniformly regulating the entire gambling sector, but nonetheless takes the view that, in some areas there would be clear added value from a coordinated European approach, in addition to national regulation, given the cross-border nature of online gambling services;
10. Recognises the Member States' discretion in determining how gambling is organised, while observing the basic EU Treaty principles of non-discrimination and proportionality; respects in this context the decision by a number of Member States to ban all or certain types of online gambling or to maintain government monopolies on that sector, in accordance with the jurisprudence of the Court of Justice, as long as they adopt a coherent approach;
11. Points out that the European Court of Justice has accepted in a number of rulings that granting exclusive rights to a single operator subject to tight public-authority control may be a means of improving protection of consumers against fraud and combating crime in the online gambling sector more effectively;
12. Points out that online gambling is a special kind of economic activity, to which internal market rules, namely freedom of establishment and freedom to provide services, cannot fully apply; recognises, however, the consistent jurisprudence of the Court of Justice of the European Union which emphasises that national controls should be enacted and applied in a consistent, proportionate and non-discriminatory manner;
13. Stresses, on the one hand, that providers of online gambling should in all cases respect the national laws of the countries in which those games operate and, on the other hand, that Member States should retain the right to impose measures to address illegal online gambling in order to implement national legislation and exclude illegal providers from market access;
14. Is of the opinion that the principle of mutual recognition of licences in the gambling sector does not apply, but nevertheless, in keeping with internal market principles, insists, that Member States which open up the online gambling sector to competition for all or certain types of online gambling must ensure transparency and make non-discriminatory competition possible; suggests, in this instance, that Member States introduce a licensing model which makes it possible for European gambling providers meeting the conditions imposed by the host Member State to apply for a licence; licence application procedures, which reduce administrative burdens by avoiding the unnecessary duplication of requirements and controls carried out in other Member States, could be set up in those Member States that have implemented a licensing system, while ensuring the pre-eminent role of the regulator in the Member State in which the application has been submitted; takes the view, therefore, that mutual confidence among national regulators needs to be enhanced through closer administrative cooperation; respects, furthermore, the decision of some Member States to determine the number of operators, types and quantities of games on offer, in order to protect consumers and prevent crime, on condition that those restrictions are proportionate and reflect a concern to limit activities in that sector in a consistent and systematic manner;

15. Calls on the Commission to explore – in keeping with the principle of ‘active subsidiarity’ – all possible tools or measures at the EU level designed to protect vulnerable consumers, prevent addiction and combat illegal operators in the field of gambling, including formalised cooperation between national regulators, common standards for operators or a framework directive; is of the opinion that a pan-European code of conduct for online gambling agreed between regulators and operators could be a first step;
16. Takes the view that a pan-European code of conduct for online gambling should address the rights and obligations of both the service provider and the consumer; considers that this code of conduct should help to ensure responsible gaming, a high level of protection for players, particularly in the case of minors and other vulnerable persons, support mechanisms both at EU and national level that fight cyber crime, fraud and misleading advertisement and ultimately provide a framework of principles and rules which ensures that consumers are protected evenly across the EU;
17. Stresses that more action should be taken by Member States to prevent illegal gambling providers from offering their services online, for example by blacklisting illegal gambling providers; calls on the Commission to examine the possibility of proposing a legally binding instruments obliging banks, credit card issuers and other payment system participants in the EU to block, on the basis of national black lists, transactions between their clients and gambling providers that are not licensed in their jurisdiction, without hindering legitimate transactions;
18. Respects the right of the Member States to draw on a wide variety of repressive measures against illegal online gambling offers; supports, in order to increase the efficiency of the fight against illegal online gambling offers, the introduction of a regulatory principle whereby a gambling company can only operate (or bid for the required national licence) in one Member State if it does not operate in contravention of the law in any other EU Member State;
19. Calls on the Commission, as guardian of the Treaties, and the Member States to continue to carry out effective checks on compliance with EU law;
20. Notes the fact that more progress could have been made on pending infringement cases since 2008 and that no Member State has ever been referred to the European Court of Justice; urges the Commission to continue its investigation of the possible inconsistencies of Member States gambling legislation (offline and online) with the TFEU and – if necessary – to pursue those infringement proceedings that have been pending since 2008 in order to ensure such consistency; reminds the Commission, as ‘guardian of the Treaties’, of its duty to act swiftly upon receipt of complaints about violations of the freedoms enshrined in the Treaties;

Cooperation among regulatory bodies

21. Calls for cooperation among national regulatory bodies to be considerably expanded, giving them a sufficient remit, with the Commission as coordinator, to develop common standards and take joint action against online gambling operators which operate without the required national licence; states that, in particular as a means of identifying blacklisted gamblers and combating money laundering, betting fraud and other organised crime, national standalone

solutions are not successful; in this context; considers the establishment of a regulator with suitable powers in each Member State to be a necessary step towards more effective regulatory cooperation; states that the Internal Market Information System could serve as the basis for more effective cooperation among national regulatory bodies; takes note of initiatives by national regulators to work together more closely, such as the Gaming Regulators European Forum (GREF) network and the European Regulatory Platform; calls for closer cooperation and better coordination among EU Member States, Europol and Eurojust in the fight against illegal gambling, fraud, money laundering and other financial crimes in the area of online gambling;

22. Takes the view that the various forms of online gambling – such as rapid interactive games of chance which have to be played at a frequency of seconds, betting, and lotteries involving a weekly draw – differ from one another and require different solutions insofar as some forms of gambling afford greater opportunities for abuse than others; notes in particular that the opportunity for money laundering depends on the strength of identification, the type of game and the methods of payment used, which makes it necessary, in respect of some forms of game, to monitor play in real time and exercise stricter control than is the case with other forms of game;
23. Emphasises the need to address the protection of customer accounts opened in connection with online gambling in the event of the service provider becoming insolvent; suggests, therefore, that any future legislation aim to protect deposits in the event that fines are imposed on the websites in question, or legal proceedings brought against them;
24. Asks the Commission to support consumers if they have been affected by illegal practices and to offer them legal support;
25. Recommends the introduction of pan-European uniform minimum standards of electronic identification; considers that registration should be performed in such a way that the player's identity is established and at the same time it is ensured that the player has at his disposal a maximum of one gambling account per gambling company; emphasises that robust registration and verification systems are key tools in preventing any misuse of online gambling, such as money laundering;
26. Is of the opinion that in order to effectively protect consumers, especially vulnerable and young players, from the negative aspects of gambling online, the EU needs to adopt common standards for consumer protection; emphasises, in this context, that control and protection processes need to be in place before any gaming activity begins and could include, inter alia, age verification, restrictions for electronic payment and transfers of funds between gambling accounts and a requirement for operators to place notices about legal age, high-risk behaviour, compulsive gambling and national contact points on online gambling sites;
27. Calls for effective methods to be used to tackle problem gambling, inter alia by means of gambling bans and compulsory limits on expenditure over a particular period, albeit set by the customer himself; stresses that, in addition, if an expenditure limit can be raised, a time lag should apply before this takes effect;
28. Stresses that compulsive gambling is in fact a behavioural disorder which may affect up to 2% of the population in some countries; calls, therefore, for a survey of the extent of the problem in each EU Member State as a basis for an integrated strategy designed to protect

consumers from this form of addiction; takes the view that as soon as a gambling account is created, comprehensive and accurate information must be made available with regard to gambling games, responsible gambling and opportunities for treatment of dependence on gambling;

29. Calls on the Commission and the Member States to take note of studies already conducted in this field, to focus on research examining the incidence, formation and treatment of gambling addiction and to collect and publish statistics on all channels (online and offline) of gambling sectors and gambling addiction in order to produce comprehensive data on the entire gambling sector of the EU; underlines the need for statistics from independent sources, particularly concerning gambling addiction;
30. Calls on the Commission to prompt the formation of a network of national organisations taking care of gambling addicts, so that experience and best practices can be exchanged;
31. Observes that, according to a recently published study¹, the gambling sector was identified as the sector where the lack of an alternative dispute resolution system most frequently makes itself felt; suggests, therefore, that national regulatory agencies could establish alternative dispute resolution systems for the online gambling sector;

Gambling and sport: the need to ensure integrity

32. Notes that the risk of fraud in sports competitions – although present since the outset – has been exacerbated since the emergence of the online sports betting sector and represents a risk to the integrity of sport; is therefore of the opinion that a common definition of sport fraud and cheating should be developed and that betting fraud should be penalised as a criminal offence throughout Europe;
33. Calls for instruments to increase cross-border police and judicial cooperation, involving all Member States' competent authorities for the prevention, detection and investigation of match-fixing in connection with sport betting; in this respect, invites Member States to consider dedicated prosecution services with primary responsibility for investigating match-fixing cases; calls for a framework for cooperation with organisers of sports competitions to be considered with a view to facilitating the exchange of information between sports disciplinary bodies and state investigation and prosecution agencies, by setting up, for example, dedicated national networks and contact points to deal with cases of match-fixing; this should happen, where appropriate, in cooperation with the gambling operators;
34. Considers, therefore, that a uniform definition of sports fraud should be set at European level and included in the criminal law of all Member States;
35. Expresses its concerns over the links between criminal organisations and the development of match-fixing in relation to online betting, the profits from which feed other criminal activities;
36. Notes that several European countries have already adopted strict legislation against money

¹ Study on "Cross-Border Alternative Dispute Resolution in the European Union", 2011, <http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=41671>

laundering through sport betting, sport fraud (classifying it as a specific and criminal offence) and conflicts of interests between betting operators and sport clubs, teams or active athletes;

37. Notes that online operators licensed in the EU already play a role in identifying potential instances of corruption in sport;
38. Stresses the importance of education for protecting the integrity of sport; calls, therefore, on the Member States and sports federations to adequately inform and educate sportspeople and consumers starting from a young age and at all levels (both amateur and professional);
39. Is aware of the particular importance of the contribution from gambling revenue towards the funding of all levels of professional and amateur sport in the Member States, including measures to safeguard the integrity of sporting competitions from betting manipulations; calls on the Commission to look at alternative financing arrangements, while respecting practices in the Member States, in which revenues from sports betting might be routinely used to safeguard the integrity of sporting competitions from betting manipulations, while considering that no funding mechanism should lead to a situation from which only very few professional, widely televised sports would benefit while other sports, especially grassroots sport, would see the funding generated by sport betting diminished;
40. Reaffirms its position that sports bets are a form of commercial use of sporting competitions; recommends that sporting competitions should be protected from any unauthorised commercial use, notably by recognising the property rights of sports event organisers, not only in order to secure a fair financial return for the benefit of all levels of professional and amateur sport, but also as a means of strengthening the fight against sports fraud, particularly match-fixing;
41. Stresses that the conclusion of legally binding agreements between organisers of sports competitions and online gambling operators would ensure a more balanced relationship between them.
42. Notes the importance of transparency in the online gambling sector; envisages, in this connection, annual reporting obligations, which should demonstrate, inter alia, what activities of general interest and/or sports events are financed and/or sponsored by means of the proceeds from gambling; calls on the Commission to investigate the possibility of compulsory annual reporting.
43. Points to the need to provide a reliable alternative to illegal gambling services; emphasises the need for pragmatic solutions with regard to advertising for, and sponsoring of, sports events by online gambling operators; is of the opinion that common advertising standards should be adopted which provide sufficient protection for vulnerable consumers, but at the same time make sponsorship of international events possible;
44. Calls on the Commission and Member States to work with all sports stakeholders with a view to identifying the appropriate mechanisms necessary to preserve the integrity of sport and the funding of grassroots sport;

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45. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.