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## **REPORT**

on the integrity of online gambling  
(2008/2215(INI))

Committee on the Internal Market and Consumer Protection

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the integrity of online gambling (2008/2215(INI))

*The European Parliament,*

- having regard to Article 49 of the EC Treaty,
- having regard to the Protocol on the application of the principles of subsidiarity and proportionality annexed to the EC Treaty,
- having regard to the case-law developed by the Court of Justice of the European Communities<sup>1</sup>,
- having regard to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market<sup>2</sup> (Services Directive),
- having regard to Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities<sup>3</sup> (Directive on audiovisual media services),
- 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 Market (Directive on electronic commerce)<sup>4</sup>,
- 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 financing<sup>5</sup>,
- having regard to its resolution of 8 May 2008 on the White Paper on Sport<sup>6</sup>,
- having regard to the Oral Question by the Committee on the Internal Market and Consumer Protection to the Commission of 16 October 2006 on gambling and sports betting in the Internal Market<sup>7</sup> and to the following debate in the Committee on the Internal Market and Consumer Protection on 14 November 2006, and to the answer given

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<sup>1</sup> Schindler 1994 (C-275/92), Läärä 1999 (C-124/97), Zenatti 1999 (C-67/98), Anomar 2003 (C-6/01), Gambelli 2003 (C-243/01), Lindman 2003 (C-42/02), Placanica 2007 (C-338/04), Unibet 2007 (C- 432/05), UNIRE 2007 (C- 260/04).

<sup>2</sup> OJ L 376, 27.12.2006, p. 36.

<sup>3</sup> OJ L 332, 18.12.2007, p. 27.

<sup>4</sup> OJ L 178, 17.7.2000, p. 1.

<sup>5</sup> OJ L 309, 25.11.2005, p. 15.

<sup>6</sup> Texts adopted, P6\_TA(2008)0198.

<sup>7</sup> O-0118/2006.

by the Member of the Commission,

- having regard to the briefing paper on Online gambling, focusing on integrity and a code of conduct for gambling, prepared for the European Parliament by Europe Economics Research Ltd,
  - having regard to the study of Gambling Services in the Internal Market of the European Union dated 14 June 2006, prepared for the Commission by the Swiss Institute of Comparative Law (SICL),
  - having regard to Rule 45 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection (A6-0064/2009),
- A. whereas, at present, online gambling, worth EUR 2 to 3 billion in gross gaming revenues in 2004, accounts for roughly 5% of the total gambling market in the EU, as noted by the above-mentioned study by SICL, and rapid growth seems inevitable,
- B. whereas the revenue generated by government and government-authorised gambling activities is by far the most important source of income for sports organisations in many Member States,
- C. whereas gambling activities, including online gambling, have traditionally been strictly regulated in all Member States on the basis of the principle of subsidiarity, in order to protect consumers against addiction and fraud, to prevent money-laundering and other financial crimes, as well as match-fixing, and to preserve public order; whereas the European Court of Justice accepts restrictions of the freedom of establishment and the freedom to provide services in the light of such general interest objectives, if proportionate and non-discriminatory,
- D. whereas all Member States have differentiated such restrictions according to the type of gambling service concerned, such as casino games, sports betting, lotteries or betting on horse-races; whereas the majority of Member States prohibit the operation - including by local operators - of online casino games, and a significant number prohibit in the same way the operation of online sports betting and online lotteries,
- E. whereas gambling activities were excluded from the scope of Directives 2006/123/EC (Services Directive), 2007/65/EC (Directive on audiovisual media services) and 2000/31/EC (Directive on electronic commerce), and Parliament voiced its concern at a possible deregulation of gambling in its resolution of 8 May 2008 on the White Paper on Sport,
- F. whereas Member States have regulated their traditional gambling markets in order to protect consumers against addiction, fraud, money-laundering and match-fixing; whereas these policy objectives are more difficult to achieve in the online gambling sector,
- G. whereas the Commission has launched infringement proceedings against ten Member States in order to verify whether national measures limiting the cross-border supply of

online gambling services, mainly sports betting, are compatible with Community law; whereas, as the Commission has highlighted, these proceedings do not touch upon the existence of monopolies or national lotteries as such, nor do they have any implication for the liberalisation of gambling markets in general,

- H. whereas an increasing number of preliminary questions on gambling-related cases are being referred to the European Court of Justice, which clearly demonstrates a lack of clarity on the interpretation and application of Community law with respect to gambling,
- I. whereas integrity in the context of this resolution on online gambling means a commitment to preventing not only fraud and crime but also problem gambling and under-age gambling by compliance with consumer protection and criminal laws and by protecting sporting competitions from any undue influence associated with sports betting,
- J. whereas online gambling combines several risk factors related to problem gambling, such as, among others, easy access to gambling, the availability of a variety of games and fewer social constraints<sup>1</sup>,
- K. whereas sports betting activities and other online games have developed rapidly and in an uncontrolled manner (particularly cross-border over the internet), and the ever present threat of match-fixing and the phenomenon of “lay bets” on specific events in sports matches makes sports particularly vulnerable to illegal betting behaviour,

***A transparent sector that safeguards the public and consumer interests***

- 1. Highlights that, in accordance with the principle of subsidiarity and the case law of the European Court of Justice, Member States have an interest and right to regulate and control their gambling markets in accordance with their traditions and cultures in order to protect consumers against addiction, fraud, money-laundering and match-fixing in sports, as well as to protect the culturally-built funding structures which finance sports activities and other social causes in the Member States; highlights that all other stakeholders as well have an interest in a well-monitored and regulated gambling market; underlines that online gambling operators must comply with the legislation of the Member State in which they provide their services and the consumer resides;
- 2. Stresses that gambling services are to be considered as an economic activity of a very special nature due to the social and public order and health care aspects linked to it, where competition will not lead to a better allocation of resources, which is the reason why gambling requires a multi-pillar approach; emphasises that a pure Internal Market approach is not appropriate in this highly sensitive area, and requests the Commission to pay particular attention to the views of the European Court of Justice regarding this matter;

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<sup>1</sup> Opinion of Advocate General Bot of 14 October 2008 in Case C-42/07; see also the above-mentioned study by SICL at p. 1450; Professor Gill Valentine, Literature review of children and young people’s gambling (Commissioned by the UK Gambling Commission), September 2008.

3. Endorses the work that has started in the Council under the French Presidency addressing issues in the field of online and traditional gambling and betting; calls on the Council to continue holding formal discussions about a potential political solution as to how to define and tackle problems arising from online gambling, and calls on the Commission to support this process and to carry out studies and make appropriate proposals considered desirable by the Council for the attainment of common objectives in the area of online gambling;
4. Calls on the Member States to cooperate closely in order to solve the social and public order problems arising from cross-border online gambling, such as gambling addiction and misuse of personal data or credit cards; calls on the EU institutions to cooperate closely with the Member States in the fight against all unauthorised or illegal online gambling services offered and to protect consumers and prevent fraud; stresses the need for a common position on how to do this;
5. Stresses that regulators and operators should closely cooperate with other stakeholders operating in the field of online gambling, e.g. gambling operators, regulators, consumer organisations, sports organisations, industry associations and the media, which share a joint responsibility for the integrity of online gambling and for informing consumers of the possible negative consequences of online gambling;

#### ***Tackling fraud and other criminal behaviour***

6. Notes that criminal activities, such as money-laundering, and black economies can be associated with gambling activities and impact on the integrity of sports events; considers that the threat to the integrity of sport and sporting competitions impacts heavily on grassroots participation, a key contributor to public health and social integration; is of the opinion that, if a sport is perceived as the subject of manipulation for the financial gain of players, officials or third parties rather than played according to its values, rules and for the enjoyment of its fans, this could result in a loss of public trust;
7. Is of the opinion that the growth of online gambling provides increased opportunities for corrupt practices such as fraud, match-fixing, illegal betting cartels and money-laundering, as online games can be set up and dismantled very rapidly and as a result of the proliferation of offshore operators; calls on the Commission, Europol and other national and international institutions to closely monitor and report on findings in this area;
8. Considers that the protection of the integrity of sports events and competitions requires cooperation between sports rights owners, online betting operators and public authorities at national as well as EU and international level;
9. Calls on the Member States to ensure that sports competition organisers, betting operators and regulators cooperate on measures to tackle the risks related to illegal betting behaviour and match-fixing in sport and explore the establishment of a workable, equitable and sustainable regulatory framework to protect the integrity of sports;
10. Highlights that sports bets are a form of commercial exploitation of sporting competitions, and recommends that Member States protect sporting competitions from

any unauthorised commercial use, notably by recognition of a sport organisers right, and put in place arrangements to ensure fair financial returns for the benefit of all levels of professional and amateur sport; calls on the Commission to examine whether it is possible to give competition organisers an intellectual property right (some sort of portrait right) over their competitions;

***Prevention of consumer detriment***

11. Considers that the potential omnipresent opportunity provided by the internet to gamble online in privacy, with immediate results and with the possibility of gambling for large sums of money, creates new potential for gambling addiction; notes, however, that the full impact on consumers of the specific forms of gambling services offered online is not yet known and should be researched in a more detail;
12. Draws attention to the growing concern about young people's ability to access online gambling opportunities, both legally and illegally, and stresses the need to have more effective age checks and to prevent underage gamblers from playing free demos on websites;
13. Points out that young people in particular may have trouble differentiating between the concepts of luck, fate, chance and probability; urges Member States to address the key risk factors which may increase the likelihood of a (young) person developing a gambling problem, and to find the tools to target those factors;
14. Is concerned by the increasing cross-over between interactive television, mobile phones and internet sites in offering remote or online gambling games, particularly those aimed at minors; considers that this development will pose new regulatory and social protection challenges;
15. Is of the opinion that online gambling is likely to give rise to risks to consumers and that Member States may therefore legitimately restrict the freedom to provide online gambling services in order to protect consumers;
16. Stresses that parents have a responsibility to prevent under-age gambling and gambling addiction by minors;
17. At the same time, calls on Member States to allocate adequate funding for research into, and the prevention and treatment of, problems relating to online gambling;
18. Considers that profits from gambling should be used for the benefit of society, including rolling funding for education, health, professional and amateur sport and culture;
19. Supports the development of standards for online gambling regarding age limits, a ban on credit and bonus schemes to protect vulnerable gamblers, information about the possible consequences of gambling, information about where to obtain help in case of addiction, the potential addictiveness of certain games, and so on;
20. Calls on all stakeholders to address the risk of social isolation caused by online gambling addiction;

21. Considers that self-regulation regarding the advertising, promotion and provision of online games is not sufficiently effective and therefore emphasises the need for both regulation and cooperation between the industry and the authorities;
22. Urges Member States to cooperate at EU level to take measures against any aggressive advertising or marketing by any public or private operator of online gambling, including free demonstration games, to protect in particular gamblers and vulnerable consumers such as children and young people;
23. Suggests examining the possibility of introducing a maximum amount that a person can use for gambling activities per month, or of obliging online gambling operators to make use of prepaid cards for online gambling to be sold in shops;

### ***Code of Conduct***

24. Notes that a Code of Conduct may still be a useful supplementary tool for achieving some public (and private) objectives and to take account of technological developments, changes in consumer preferences or developments in market structures;
25. Stresses that a Code of Conduct ultimately remains an industry-driven, self-regulatory approach and can therefore only serve as an addition to, not a replacement of, legislation;
26. Also stresses that the effectiveness of a Code of Conduct will heavily depend on its recognition by national regulators and consumers, as well as on its enforcement;

### ***Monitoring and research***

27. Calls on the Member States to document the extent and growth of their online gambling markets, as well as the challenges which arise from online gambling;
28. Calls on the Commission to initiate research on online gambling and the risk of developing a gambling addiction, for example how advertising influences gambling addiction, whether it is possible to create a common European categorisation of games according to addictive potential, and possible preventive and curative measures;
29. Calls on the Commission to examine in particular the role of advertising and marketing (including free online demonstration games) in encouraging, directly or implicitly, under-age young people to gamble;
30. Calls on the Commission, Europol and the national authorities to collect and share information about the extent of fraud and other criminal behaviour in the online gambling sector, e.g. amongst actors involved in the sector;
31. Calls on the Commission to study, in close cooperation with national governments, the economic and non-economic effects of the provision of cross-border gambling services in relation to integrity, social responsibility, consumer protection and matters relating to taxation;



32. Stresses the importance for the Member State of the residence of the consumer to be able to effectively control, limit and supervise gambling services provided on its territory;
33. Calls on the Commission and the Member States to clarify the place of taxation of online gambling activities;

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34. Instructs its President to forward this resolution to the Council and Commission.

## EXPLANATORY STATEMENT

### I. Introduction

Gambling activities involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.

Online gambling has existed since 1996, where the first game was made available in Finland. Since then the market for online gambling has grown considerably. In 2003, it was estimated that the commercial online gambling market in EU 25 generated Gross Gaming Revenues (operator winnings less payments of prizes) of € 51.5 billion in 2003. At present, online gambling via Internet, mobile phones or interactive TV accounts for roughly 5 % of the total gambling market in the EU, worth € 2 to 3 billion in annual Gross Gaming Revenues in 2004. The European online gambling market is expected to grow at a minimum rate of 8.4 per cent per annum (in Austria and Hungary) to a maximum of 17.6 per cent (in Italy).<sup>1</sup>

Member States are therefore forced to adapt and develop regulation in order to keep pace with consumer preferences and suppliers' services. The specific nature of online gambling causes certain difficulties for policy-makers in the Member States. First of all, online gambling entails a cross-border element, which makes it possible for online gambling operators to provide their services to consumers in other Member States than the one they are based in. Consumers may therefore not know in which country their service provider is based. Secondly, online gambling creates an increased risk of online gambling providers not being able to verify the identity of the consumer since the person using a credit card may not be its rightful owner. Thirdly, online gambling sites can be set up quickly and dishonest operators can therefore appear and disappear within a short period of time. Fourthly, it is difficult for online gambling operators to supervise their customers as opposed to conventional gambling where it is possible to see whether the customer is under age, is drunk or in other ways intoxicated or behaving suspiciously. Also since access to online gambling services is easy and can be done in isolation, social checks and constraints that can be exercised by the presence of others are lacking.

### II. Regulation

The European online gambling markets are regulated nationally in accordance with the principle of subsidiarity. Therefore the regulatory frameworks for the (conventional and online) gambling market in the EU are very much heterogeneous. In twenty EU Member States online gambling is allowed, whereas seven Member States have prohibited online gambling. Thirteen Member States have a liberalised market, while six have state-owned monopolies and one Member State has licensed a private monopoly.<sup>2</sup>

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<sup>1</sup> PricewaterhouseCoopers' *Global Entertainment and Media Outlook: 2008-2012*, p. 623. Growth is measured as the compound increase in annual gambling revenue.

<sup>2</sup> Online Gambling, a briefing paper for the European Parliament, Europe Economics, XX October 2008

The Member States who have banned online gambling altogether or allow it only under monopoly conditions argue that these limitations are justified on grounds of social and public order. However, there have been great disputes regarding the so-called national gambling monopolies. Numerous complaints have been filed with the European Commission by gambling companies, private persons and media organisations claiming that certain Member States are unlawfully protecting their gambling markets and the revenues arising from their monopolies. As a result the Commission has started infringement procedures against ten Member States, in order to verify whether national measures limiting the cross-border supply of online gambling are compatible with Community law.<sup>1</sup>

The issue of regulating EU gambling markets, whether conventional or online, is very sensitive. But there is a clear need for clarification about the regulatory environment concerning online gambling. At present, several cases pending at the European Court of Justice right now are related to gambling. This situation is dissatisfactory for the Court as well as Member States, consumers and online gambling providers.

A number of cases regarding gambling have been referred to the European Court of Justice, some of which have already been settled (case law below) and many of which are still pending. The case law by the European Court of Justice consists of the following cases: Schindler 1994 (C-275/92), 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), Placanica 2007 (C-338/04), Unibet 2007 (C – 432/05) and UNIRE 2007 (C – 260/04).

In these cases The European Court of Justice has stated that freedom of movement (Article 49 of the EU Treaty) applies to gambling services. However the court has also stated that gambling may entail certain moral, religious and cultural aspects, involve a high risk of crime or fraud and may have damaging individual and social consequences.<sup>2</sup>

Restrictions may therefore be justified if they are necessary for consumer protection, for maintenance of the public order (prevention of fraud and crime), for maintaining of the social order (culture or morale) and for preventing gambling from being a source of private profit.<sup>3</sup> However, restrictions must serve to limit betting activities in a consistent and systematic manner, they must be applied in a non-discriminatory manner and they must not go beyond what is necessary to attain the end in view.<sup>4</sup>

It should also be noted that on 14 November 2006, Commissioner McCreevy responded to the Oral Question on Gambling posed by Arlene McCarthy, Chair of the Committee on Internal Market and Consumer Protection, during the European Parliament's plenary session in Strasbourg. Here, the commissioner stated that EU-wide harmonisation of legislation regulating gambling at present was not likely.

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<sup>1</sup> [http://ec.europa.eu/internal\\_market/services/gambling\\_en.htm](http://ec.europa.eu/internal_market/services/gambling_en.htm)

<sup>2</sup> EJC in the Schindler judgment, C-275/92

<sup>3</sup> SICL (2006), p. xxvi

<sup>4</sup> Gambelli judgement C-243/01

### III. Integrity

The object of this report is to focus on the integrity of online gambling. Integrity is first seen as a set of values which aim at preventing fraud: by online gambling operators against consumers or by consumers against online gambling operators or consumers against other consumers. Integrity in this sense also includes all means to avoid criminal activities such as money-laundering. In this report integrity is also looked at as the behaviour of online gambling operators. Therefore, this report covers addictive and under-age gambling as well.

Most consumers are able to gamble without risking a psychological addiction, however a small but significant number of individuals risk becoming problem gamblers. WHO defines problem gambling as any excessive gambling that leads to financial, social and/or psychological disorders.<sup>1</sup> The risk of an addiction to gambling is generally aggravated by the permanent availability of the opportunity to play, the frequency of wins, the enticing or attractive nature of games, the possibility of staking large sums, the availability of credit in order to play, the location of games at places where people can play on an impulse, and the fact that there is no information campaign regarding the risks of gaming.<sup>2</sup>

Online gambling combines several of such risk factors related to problem gambling. For instance, online operators are able to offer a wide variety of games (betting, roulette, poker, slot machines, etc) and to introduce new games regularly, using new marketing and targeting techniques, involving the latest data research technology on the customers' (spending) behaviour, keeping the consumer 'glued' to the screen. A worrying aspect is the increasing cross-over between multimedia services, such as television, phone- and SMS-services and internet sites, in offering remote or online games, making it easy and socially acceptable to participate in those games, especially for younger people.

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<sup>1</sup> WHO (1992) *The ICD-10 Classification of mental and behavioural disorders*, Geneva. Other commonly used terms include pathological, compulsive, disordered, excessive and addictive gambling.

<sup>2</sup> Opinion of Advocate General Bot to the ECJ, 14 October 2008, Case C-42/07; see also SICL (2006), p. 1450

## **MINORITY OPINION**

pursuant to Rule 48(3) of the Rules of Procedure

Malcolm Harbour, Colm Burke, Charlotte Cederschiöld, Giles Chichester, Bill Newton Dunn, Małgorzata Handzlik, Christopher Heaton-Harris, Zita Pleštinská, Salvador Domingo Sanz Palacio, Andreas Schwab, Marian Zlotea.

We are concerned that the content of the report goes beyond the remit of the initiative which intended to focus on the transparency of the online gaming market, the integrity of online gambling operators and the possible consumer detriment caused by the online gaming industry.

We consider that the report undermines some of the principles of the Single Market, that key aspects of the online gambling market may be misunderstood and that the report does not adequately reflect the situation in all Member States. Well functioning and well regulated markets already exist in certain Member States that allow consumers to play in a safe and secure online environment.

We accept that the advent of the Internet poses consumer protection challenges in the long term but these can be effectively regulated, without prohibition; notes the work already done by responsible European operators to improve standards and ensure consumer safety.

We would like to emphasise the advances already made by some jurisdictions in developing regulatory regimes and the potential benefits of more open yet effectively regulated markets; notes also the practical and legal limitations of proposed methods to block online service provision.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	11.2.2009
<b>Result of final vote</b>	+: 32 -: 10 0: 0
<b>Members present for the final vote</b>	Mogens Camre, Charlotte Cederschiöld, Gabriela Crețu, Janelly Fourtou, Evelyne Gebhardt, Martí Grau i Segú, Małgorzata Handzlik, Malcolm Harbour, Anna Hedh, Edit Herczog, Pierre Jonckheer, Kurt Lechner, Lasse Lehtinen, Toine Manders, Catuscia Marini, Arlene McCarthy, Nickolay Mladenov, Catherine Neris, Bill Newton Dunn, Zita Pleštinská, Karin Riis-Jørgensen, Zuzana Roithová, Heide Rühle, Leopold Józef Rutowicz, Salvador Domingo Sanz Palacio, Christel Schaldemose, Eva-Britt Svensson, Jacques Toubon, Bernadette Vergnaud, Barbara Weiler
<b>Substitute(s) present for the final vote</b>	Emmanouil Angelakas, André Brie, Colm Burke, Giles Chichester, Joel Hasse Ferreira, Filip Kaczmarek, Andrea Losco, Manuel Medina Ortega, José Ribeiro e Castro
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Daniel Hannan, Alexandru Nazare, Giovanni Rivera