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UNITED STATES—THE EAGLE HAS LANDED



The Eagle has landed: Following the events of Black Friday, the Department of Justice (DoJ) is tirelessly decorating more domains with its eagle emblem, the latest round included dolyerroom.com and bookmaker.com. In addition to these seizures, three individuals have been indicted on counts of alleged money laundering and operating illegal gambling business.

Ironically, these painful shutdowns may be the first steps to liberalise the online gambling market in the United States. With unwanted and unlicensed competition out of the way, the “good guys” in the gambling sector: i.e. those who pulled out of the profitable US market before the UIGEA came into force, can now expect to get some brownie points. Or can they? Whatever has been rumoured about the liberalisation of US online gambling, it is most likely that the main beneficiaries will be US land based casino operators, who may be able to exploit the online gambling market before their overseas counterparts.

It is therefore no surprise that some US land based operators are establishing close commercial relationships with reputable EU online gambling operators, not least to acquire the quintessential online expertise and software before their rivals take over. The eagle landings may therefore give rise to profitable joint ventures, mergers and cooperation agreements with US legislation following suit.

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Poland: Beware - Polish Online Gambling Bill is on its way! One would think that gambling operators and the rest of the free world would welcome the newest addition to the liberalised online gambling family with open arms; however, the proposed market opening is far from promising.

The Polish Gambling Bill, which would only legalise online sports betting, has been heavily criticised by the industry for being in contravention of EU law and for creating an untenable market, with high tax rates of up to 12% turnover tax imposed on “mutual” sports betting, and a 2.5% turnover tax on horse and dog racing.

In addition, online gambling operators will be required to have a “significant local presence” - whatever that means... It will be interesting to see whether the EU Commission will have the time to issue its “opined” criticism before online gambling operators bring action at the European Court of Justice.



Germany: Following the ECJ’s ruling on the illegality of the German Interstate Treaty, Germany is undergoing a painful transition, trying to cope with a “forced” liberalisation of its online gambling market. First attempts to pay tribute to EU law manifested itself last April, when the German Laender agreed to open up sports betting to private operators by issuing seven German wide licences for a test period of five years. Licences will not be issued before 2012 and will be subject to a European wide tender process. However, Germany would not be Alemania, if administrative, regulatory and commercial hurdles would not be imposed, and it is therefore no surprise that this partial liberalisation comes hand in hand with an array of restrictions and limitations, including:

- Live betting will only be allowed on final results – where is the fun in that?
- TV advertising during sports broadcasts is prohibited, however, licensed operators will be able to advertise on sports shirts and also on pitch/side boards – such logic... where is the logic in that?
- And let’s not forget the highly “reasonable” 16.66% turnover tax on all wagers!! The question that many industry experts are asking is: how did anyone come up with 16.66%? There is a triple 666 in it, which some religious minded onlookers may regard as a sign of the devil...
- When it comes to other forms of online gambling, the new Interstate Treaty will allow internet casino games, as long as these are genuine “real” table games, such as Roulette or Black Jack – not slots, without wanting to quote the 888 ad on this, but definitely no slots allowed!

While 15 of the 16 German Laender reached an agreement on these proposed changes, the Land of Schleswig Holstein (up north, tiny, should be part of Denmark really!) seems to be going its own way by introducing its own, far more liberal, online gambling regulations. The European Commission decided on 9 May it had no objections to the draft Gambling Bill as proposed by Schleswig Holstein – good news indeed! Many experts believe the verdict could pave the way for Germany’s online gambling market to further open up. However, what weight Schleswig Holstein will have on the rest of Germany is questionable, bearing in mind that the German Laender heavyweights of Lederhosen Bavaria and wine loving Baden Wuerttemberg strongly oppose any further liberalisation.



Spain: Before the ink on the new Spanish Gambling Bill is even dry the autonomous region of Madrid has decided to issue its first regional online gambling licence to Casino Gran Madrid. The Spanish Gambling Bill is currently awaiting the blessing by the European Commission and it is expected that it will come into force by the end of 2011. The Spanish Gambling Bill appears to have reasonable tax structures and an unlimited number of gambling licences. In addition, the Spanish Senate agreed to allow online operators currently active in Spain to continue their activities uninterrupted until the new law is passed, after which all operators are obliged to pay the appropriate taxes, whether or not they have obtained a Spanish gambling licence by then or not.

Macedonia: Macedonia is set to open its online gambling market in 2011 following its profitable experience with legalising land based gambling. The proposed new legislation requires a national gambling licence and licence holders will be taxed at a modest 10% of revenue. There are no requirements for local presence, however, there may be the need to keep corporate accounts in Macedonia.



European Union

Live is never boring when you have Europe's Sports ministers agreeing on something relating to online gambling and, for industry experts, agreement on that level is never a good sign.



Sports ministers expressed concern about the "invasion" of illegal betting sites in Europe and discussed greater controls to stop these illegal activities from harming the sports sector. High profile match fixing scandals in football and cricket have been at the centre of attention. The ministers expressed their concern about the increase of illegal gambling sites and the lack of control member states have in avoiding potential match fixing and betting manipulation.

These concerns are not new however, and most licensed and regulated online gambling operators would agree with these findings. What should not be disregarded however, is what constituted "illegal gambling" in the first place. Interestingly enough, in 2010, the EU Presidency Report agreed on a definition of "illegal gambling" which includes all operators, licensed and regulated or not: once a gambling operator breaches the national monopolies/ restrictions in a member state, he is deemed "illegal". This is worrying news indeed and the recent statement of Europe's Sports ministers appears to go in exactly that direction. It leaves little doubt that they view national gambling licences as a prerequisite in any future European gambling framework, to turn "illegal activities" into legal ones.

And of course...the UK

DCMS launches inquiry into the Gambling Act 2005

While we still await the outcome of the Department of Culture, Media and Sport's consultation into the regulatory future of remote gambling in the UK, it has launched an inquiry into the implementation and operation of the Gambling Act 2005. Submissions are requested, by a deadline of 30 June 2011, on the following wide range of issues:

1. How effective the Act has been in its core licensing objectives (ensuring gambling is crime-free, ensuring gambling is conducted in a fair and open manner, and protecting children and vulnerable people from the adverse effects of gambling) and in the objective of updating the previous legislative framework;
2. The financial impact of the Act on the UK gambling industry;
3. The effectiveness of the Gambling Commission and whether it represents good value for money;
4. The impact of the proliferation of off-shore online gambling operators on the UK gambling sector, and what effect the Act has had on this;
5. Why the Act has not resulted in any new licences for casinos or "super casinos";
6. The effectiveness of the classification and regulation of gaming machines under the Act; and
7. What impact the Act has had on levels of problem gambling.



Question 5 is perhaps not quite accurate, given that two of the new licences have already been awarded in Hull and Newham. Of course, the Hull licence was uncontested and in Newham there remains the threat of a possible judicial review, but the fact that only 2 of the 16 available licences have been awarded in the almost four year period since the Act came into force is a question worthy of discussion.

ASA rules against 'irresponsible' 888.com advert

The Advertising Standards Authority has determined that a Facebook ad for the 888 casino which included the line "Addicted to slots? 888promos.com" should not appear again as it "trivialised gambling addiction, and condoned and encouraged gambling behaviour that could lead to financial, social or emotional harm". The ad was found to breach various CAP rules about social responsibility, including rule 16.3.2 which states that ads must not "exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young persons or other vulnerable persons", despite the fact that it was served only to those in the 29 to 53 age group. This indicates that any reference to addiction in a gambling advert is likely to be found to be exploiting those who suffer from a gambling addiction, who fall within the category of "vulnerable persons". Cassava Enterprises, the company behind 888, said that the ad had been put out by an external agency without first consulting them, that they did not condone it and that in future all adverts were to be approved by them. Although it should be obvious that any reference to addiction in an advert for gambling services would not be socially responsible, the fact that this advert was published highlights the importance of Cassava's future approach that all adverts must be reviewed against the CAP code before publication.

We have given considerable thought to the appropriate picture to accompany this article, however, we believe that most of our choices would have been censored by the ASA.

Harris Hagan is the only City law firm dedicated exclusively to the provision of legal services to all sectors of the gambling and leisure industry in the UK and internationally.

We offer unparalleled legal experience, knowledge and commercial understanding of the industry. We understand not only the law associated with betting, gaming, licensing and the provision of entertainment facilities, but the business behind it. We aim to provide a full service to the gambling and leisure industry, including specialist regulatory, corporate and commercial advice.

We have advised many of the world's largest gambling and leisure operators. We also advise UK companies in all areas of land-based and online gambling. Our clients include governmental organisations, casinos, hotels, bars, restaurants, event venues, bookmakers, online gambling operators, start up ventures and manufacturers of gambling equipment.

China tightens online controls

China has established a mechanism for regulating internet content in a move to manage internet information.

The new body will work under the authority of the Chinese State Council Information Office to ensure that internet usage adheres to Chinese law, a statement from the State Council said. Staff will work for both Government departments, the statement said.

According to Chinese officials, "although China's internet sector has witnessed rapid growth since the mid-1990s, some problems, such as online porn, online gambling and illegal online marketing, have been hampering its development".

The State Council Internet Information Office will supervise the telecom industry that provides access to the internet. The office will be engaged in promoting construction of major news websites and managing Government online publicity work. It will direct the development of online gaming, online video and audio businesses and online publication industries," it said.

Four senior Government officials have been appointed to run the new office, including the Director of the State Council Information Office, Wang Chen, who will also head up the new body.



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"True licensing specialists, with in-depth knowledge and the resources to commit to a job"... the firm is regarded as "absolutely the number-one betting and gaming firm."

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