

## Slowly but Surely – Online Gambling Regulation in Europe

The European Commission is not known for speedy action, and its gradually evolving position in relation to online gambling is no exception. In June last year, European Commissioner Michel Barnier promised to re-activate infringement proceedings against any Member States which continued to breach EU law. A number of infringement proceedings remain open, but at this time no action appears to be being taken. The most recent infringement action constituted formal requests by the Commission to the Netherlands and Greece to amend their laws, this was in 2008. The Commission considered that in both jurisdictions the introduction of new addictive games, intensive and increasing advertising and the absence of concrete measures against gambling addiction constituted evidence that these countries did not have the “consistent and systematic policy aimed at genuinely reducing gambling opportunities” which would be necessary to justify their restrictions on commercial gambling operators. Enquiries into the restrictive regimes in a number of other States, including Germany, Sweden and Austria have so far not progressed to formal requests to amend their laws.

Having set out an action plan for online gambling in October 2012 (proposing a set of common principles on player protection), in December that year the Commission set up a group of experts on gambling to advise it in relation to policy objectives and the exchange of information between Member States. Membership of this group is made up of regulators and government departments from Member States. At the most recent meeting of the group, in February 2013, various player protection provisions were discussed and Recommendation documents in relation to responsible gambling advertising and common protection of consumers were presented. It does not appear that any consensus was reached at this meeting as to how the Commission should proceed on these issues, for example some members favoured a more far reaching Recommendation on player protection, whereas others felt it should have a narrower focus.

April 2013 saw the publication of a draft Online Gambling Report by MEP Ashley Fox, who represents Gibraltar and the South West of England. Fox’s report urges the European Commission to take action regarding the regulation of online gambling. He calls on the Commission to tackle those Member States which continue to infringe European law by maintaining monopolies put in place ostensibly to protect the public from the harms of gambling, but without taking measures to limit participation in gambling which would be consistent with that policy objective. The report also calls for more co-operation between Member States, in particular in terms of sharing of information by regulators, protecting players (including establishing a system allowing players to self-exclude across EU regulated sites), and creating common standards for gambling equipment and player identification.

A total of 425 proposals to amend the draft report were received from across Europe. A number of suggested amendments are to emphasize the entitlement that Member States have under European law to regulate gambling in accordance with their own values and policy objectives, as endorsed by recent case law from the Court of Justice of the European Union (“CJEU”). The challenge for the Commission is reconciling this fundamental freedom with the aim of coordinating the system for gambling regulation across Member States. Ultimately, coordinated systems for player protection measures will serve to pursue the policy objectives of Member States, whether their preferred system is a state monopoly, regulating a limited number of operators or a more open market.

While Europe may be slowly moving towards some form of coordinated approach to player protection, pan European regulation of online gambling does not appear to be on the cards, at least in the foreseeable future. In any event, Member States have not been passively waiting for a Europe wide system and one by one are pressing ahead with their own legislation to provide for the regulation of internet gambling.

### **The Netherlands**

The Netherlands are currently preparing to regulate online gambling for the first time. A draft law was published on 22 May 2013 and an eight week public consultation on the draft will now take place, followed by parliamentary debate later this year.

The draft law sets a tax rate for online operators of 20% of gross gaming revenues, whereas land-based operators currently pay 29%. Given the disparity, it seems highly likely that the bill will receive criticism from the land-based sector during the consultation period.

Online gambling is not currently regulated, or legal, in the Netherlands, with limited exceptions for monopoly operators De Lotto (sports betting and lotteries) and Sportech Racing BV (horse race betting). There is also a state lottery and allowance for charitable lotteries. Plans for a more open and transparent regulatory system were originally announced in March 2011, the basis for legislation being that many Dutch residents were currently gambling online despite the restrictions.

The bill provides for the new regulatory system to come into force on 1 January 2015.

### **Italy**

Following approval from the Finance Minister in March, an Italian Decree will come into force on 24 May 2013 which introduces a new regime for regulating online betting exchanges, adding to the existing availability of licences for betting, poker, lottery and online casino games. Betting exchanges will be able to offer bets on the same range of events as existing bookmakers, however a different tax regime will apply. Whilst online bookmakers pay a tax rate of 2-5% on turnover, betting exchanges will pay tax at 20% of gross profits. Operators will be permitted to take a 10% commission on bets placed.

## Spain

In April, the Spanish regulator announced that it intended to begin regulating online betting exchanges and slot machines. Although regulation of these products is permitted under the existing law, a process of public consultation, consideration by the Ministry of Finance and final approval by secondary legislation must be completed before any new licences can be issued.

## UK

The UK is preparing to make a significant change to the basis on which gambling operators are licensed, moving from a point of supply to a point of consumption basis. This change will bring the UK's licensing basis in line with that of many other European Member States.

The amendment to the law will be effected by the [Gambling \(Licensing and Advertising\) Bill](#), which received its first reading in the House of Commons on 9 May 2013. In practical terms, the proposed change to the law will mean that all operators selling or advertising remote gambling products into the British market, whether from the UK or any other jurisdiction, will be required to hold a licence from the UK Gambling Commission.

A pre-legislative scrutiny Committee received written evidence from 33 different organisations and held two oral evidence sessions in January and February. Unsurprisingly, the Committee supported the principle that gambling should be regulated on a point of consumption basis. The Committee acknowledged the concerns raised about taxation and recommended that, in setting a tax rate for remote gambling, the Treasury should bear in mind that too high a rate would be liable to drive customers and companies into the unregulated market.

Considering the Bill's compatibility with EU law, the Committee stated that "although we cannot rule out the possibility that a disgruntled remote gambling operator or association might try to bring a case against the UK in the European Court of Justice, we are satisfied that the Government has considered the compatibility of the proposed legislation with EU Law and we note its confidence that any challenge to the legislation would be unlikely to succeed." The European Commission received a formal complaint regarding the Bill from Malta, but ultimately raised no criticism of it.

The recently revised wording of the Bill provides that a Gambling Commission licence will be required if gambling facilities are used in Great Britain (even if no equipment is located in Great Britain) and the operator knows, or should know, that the facilities are being used or are likely to be used in Great Britain. A previous draft of the legislation made the basis for licensing whether facilities were "capable of being used", but this wording has now been removed.

It will also become unlawful to advertise online gambling facilities in the UK, unless a Gambling Commission licence for these facilities is held. For an offence to be committed,

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the information or communications must be intended to come to the attention of one or more persons in Great Britain, and data must be made available with a view to its being accessed by persons in Great Britain or where it is likely to be accessed in Great Britain.

For the largest UK operators, presently based in jurisdictions such as Alderney, Gibraltar, the Isle of Man and Malta, the principal effect of the changes to the law will be increased costs, primarily in the form of tax. Remote gambling duty is currently levied against UK licensed operators at 15%. The Government announced some time ago that taxation would be introduced by December 2014 on all UK based online revenue.

The Government has said that there will be a period of transition which will enable operators already licensed in EEA jurisdictions and in the current white listed jurisdictions to be awarded an automatic provisional licence, pending approval. So those in jurisdictions where regulators can provide the necessary compliance regulation will face less scrutiny than those whose regulators cannot provide such information. These operators will need to pay the compliance costs associated with being subject to the same requirements as other Gambling Commission licensees.

Following a second evidence session on 12 February, the Department for Culture, Media and Sport provided supplementary written evidence which states that, subject to other demands on parliamentary time, the Department anticipates "being able to commence the new arrangements at the earliest by the common commencement date of April 2014 or, more likely, October 2014". This is slightly earlier than the previously indicated date of December 2014.

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