

## RESPONSE OF EUROPEAN SPORT TO THE EUROPEAN COMMISSION FOLLOWING

### STUDY OF GAMBLING SERVICES IN THE INTERNAL MARKET OF THE EUROPEAN UNION

(DRAFT OF FINAL REPORT, 24 APRIL 2006)

#### 1. PURPOSE OF THE STUDY

The **study of gambling services in the internal market of the European Union was ordered by the European Commission (EC)**. It evaluates how the rules and laws regulating gambling services at the national level (in EU Member States) impact the (smooth) **functioning of the Internal Market** for these services and associated services. Many stakeholders, including sports organisations, were consulted by the party assigned to the study (Swiss Institute of Comparative Law). The study is likely to be used as input by the EC when formulating future proposals for EU rules and regulations.

#### 2. FREEDOM VERSUS RESTRICTIONS

**Two fundamental freedoms** from the EU Treaty - freedom of establishment (art. 43) and freedom to provide services (art. 49) - can be considered important starting points and driving forces for this study. The idea behind the Internal Market is that there should be **maximum cross border activities** within the EU. Ideally – from the Internal Market perspective - there should be no restrictions to cross border activities. This will contribute to more certainty for parties involved (service providers and consumers), more economic growth, more employment and more European integration. The importance of all that is of course evident.

In reality, **national restrictions** imposed on cross border provision of gambling services **are** actually **allowed** if they are: non-discriminatory, proportionate and justified on the basis of general interest. The latter refers to maintaining public order, prevention of fraud, illegal gaming and criminality, consumer protection (coming from the risk of addictive gambling), maintaining social order, protecting moral and cultural aspects and so on. **The funding of social activities**, among which there is sport, **is not considered a fundamental justification for national restrictions**.

#### 3. CONTENT OF THE STUDY

After elaborately outlining the national rules and laws related to gambling services (resulting in nationally imposed restrictions) and the size and structure of the gambling market in the Member States and a clear overview of justifications for restrictions both at the EU level (EJC) and at national level (national court), this big study presents three **scenarios based on recognised economic models** and the available data. The study mainly looks at market economics (demand for gambling services related issues, such price fluctuations, regulations, demand for other products/services), but there is also modest attention for macro economics/socio-economics (consumption related issues, such as personal bankruptcy, crime and addiction).

#### 4. SCENARIOS

The study leads up to sketching medium term growth potential under three different scenarios. It projects different degrees of expansion of gambling markets following varying degrees of relaxation of national constraints imposed on provision of gambling services:

- **baseline scenario**: maintaining the present regulated situation, resulting in minor economic growth (in line with GDP) and growth in remote gambling
- **first alternative scenario**: 'free an fair trade', allowing enterprises the opportunity to gain access to EU Member States, without relaxing restrictions and constrains, resulting in more economic growth (than in baseline scenario)

- **second alternative scenario**: opening up gambling services sectors to intra-EU competition, through relaxing of constraints, resulting in major economic growth including considerable penetration of remote gambling offerings

## 5. SOCIAL CONSEQUENCES INCLUDED IN THE STUDY

The study is an economic analysis. It looks at the impact of essential changes in national regulations on **economic variables**<sup>[1]</sup>, underlying the supply and consumption of gambling services. Its focus on economic factors makes sense as the Internal Market is also an economic structure.

The study acknowledges that there are **unintended and undesirable consequences** related to increasing the supply of gambling services, such as social costs associated with increases in problem gambling and increases in crime associated with gambling. According to the study these consequences are quite similar under the baseline scenario and the first alternative scenario. Under the second alternative scenario there may very well be an increase in these negative gambling related effects .

The study pleads, however, for additional research is needs to look into the important social impact questions

## 6. SOCIAL CONSEQUENCES EXCLUDED FROM THE STUDY

The different scenarios also affect the availability of national gambling revenues for nationally appointed 'good causes' or public interest activities. Among them is sport. The study pays **no attention to the social impact of partial or complete loss of gambling revenues for sport at other nationally determined beneficiaries.**

Sport is the biggest citizen movement within the European Community. The organization of sport within the EU is primarily based on structures run by volunteers. **The revenues from gambling within the EU** amount to more than 50 billion Euro, **2 billion Euro** of which **goes to sport. This is a substantial contribution, this is an essential contribution.** These revenues **safeguard the European sports model**, and the European sports model – in its turn – contributes to social integration, health (and) education, youth work and so on. Losing these guaranteed revenues, partially or completely, will have social consequences.

The study also does not distinguish sufficiently between commercial suppliers of gambling services, mainly interested in maximising profits, and non-profit suppliers of gambling services set up to transfer as much revenues as possible to 'good causes'. Not making a clear distinction means not acknowledging the different roles from of commercial suppliers and non-profit suppliers from a national perspective.

## 7. WHAT DOES EUROPEAN SPORT EXPECT FROM THE EUROPEAN COMMISSION?

The study ordered by the EC is an economic analysis. However, **gambling services can not be considered ordinary economic services and thus should not be treated as if they were** (i.e. for example applying freedom of services and non discrimination). On the contrary: gambling services require national regulations to fight negative consequences. Gambling services have been arranged by the principle of subsidiarity<sup>[2]</sup>, which allows regulations at national level. **Sport states that it should stay that way, as is proposed by the baseline scenario**

The first alternative scenario is heading for **a single market for gambling services**, and the second alternative scenario is even getting there<sup>[3]</sup>, where it will no longer be possible to maintain a controlled national gambling policy aimed at maintaining public order and consumer protection but also **it will no longer be possible to have guaranteed contributions from gambling revenues to public interests activities**, such as social works, culture and **sport**. The latter is not a fundamental justification for national restrictions but when looking at gambling services in the Internal Market, including consequences of various scenarios, **these social aspect should not be overlooked.**

**The social function of sport has been recognised by the EU** multiple times, such as by the European Council in the Declaration of Amsterdam and the one of Nice, such as by the EC in the Helsinki Report and such in the article on sport, which was an integral part of the draft European Constitution. Apparently the EU attaches great

importance to the maintenance of its functions of social integration, education and contributing to public health and to the general interest function performed by the sports federations.

**Sport losing its guaranteed revenues, partially or completely, will have social consequences.** These social consequences should be made clear before making choices for the way ahead. European sport expects **that relaxing restrictions, if any, should be preceded by additional research<sup>[4]</sup> on the social consequences of such changes to their full extent**, i.e. including the effects society if public interest related beneficiaries partially or completely lose out on income out of gambling.

**European sport, urging maintenance of the present situation as described in the baseline scenario, feels supported by the EU based on the embedded recognition of the social function of sport, which is in the general interest. European sports asks the Commission to live up to that support when taking next steps related to the study of gambling services in the Internal Market of the EU.**

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<sup>[1]</sup> Such as economic rent (partially used for good causes!) , consumers surplus, aggregate amount of spendings on gambling services, efficiency of market of gambling services.

<sup>[2]</sup> Subsidiarity in this field is not acceptable for commercial suppliers of gambling services. Basing themselves on the EU Treaty they have tried to force open gambling markets through legal procedures, without overall success. However, jurisprudence (at EU and national level) has put more and more condition to maintaining these regulations.

<sup>[3]</sup> When (moving towards) liberalisation of the gambling market, it is a likely that a few large multinational consortia take over the market. They will operate from there were the tax regime is most favourite, offering higher prices and at lower costs (due to increasing supply offered online). This will jeopardize survival of the European gambling services providers with national licenses that provide income for public interest sectors such as sport (which is the 2 billion Euro annually)

<sup>[4]</sup> The study also stated that additional research is necessary to provide a complete and meaningful economic analysis and to develop comprehensive models. In the study it is also stated that some parts of the gambling market are not properly documented.