

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Towards a comprehensive European framework for online gambling’

COM(2012) 596 final

(2013/C 271/09)

Rapporteur: **Ms RONDINELLI**

On 19 December 2012, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Towards a comprehensive European framework for online gambling

COM(2012) 596 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 29 April 2013.

At its 490th plenary session, held on 22 and 23 May (meeting of 22 May), the European Economic and Social Committee adopted the following opinion by 122 votes, with 4 abstentions.

1. Conclusions and recommendations

1.1 The Committee confirms and reiterates the points it made previously in its opinion ⁽¹⁾ on the Green Paper on online gambling in the internal market ⁽²⁾ and regrets that the Commission has taken only some of its conclusions on board. In particular, it points out that stamping out illegal gambling, which is the primary threat in terms of consumer protection, is not the priority of the communication.

1.2 Among the priorities that the communication is seeking to address, the Committee calls on the Commission to give consideration to the creation of new jobs and the preservation of existing ones in the sector, their quality and the potential loss of jobs in the land based gambling sector to online gambling.

1.3 The gambling sector boosts Member States’ tax revenue. The funding of good causes, through national lotteries and casinos, supports charitable, social and sporting activities, promotes tourism and safeguards cultural, artistic and archaeological heritage. The Committee believes that all action on gambling at EU level should aspire towards a European social model that enables people to enjoy themselves in a healthy and balanced way.

1.4 The Committee has major concerns regarding the considerable risks to public health posed by gambling. In this respect, it reiterates its request that the Commission conduct a research and monitoring exercise throughout the EU on online gambling-related addiction and illness, and recommends that

Member States use some of the tax revenue generated to finance awareness-raising campaigns, preventive measures and treatments for gambling-related disorders.

1.5 The Committee welcomes the Commission’s decision to improve administrative cooperation and the pooling of information, experience and best practice among Member States and regulators.

1.6 The Committee welcomes the Commission’s objective that each Member State have its own regulatory authority with specific competences, to cooperate closely with their counterparts in other Member States.

1.7 The EESC considers it essential to strike a balance between the highly technological, and consequently cross-border, nature of the sector and the risks it poses in terms of public and social order, legality, transparency and public health by means of initiatives that are more binding than the recommendations proposed by the Commission.

1.8 The Committee notes that EU legislation specific to the online gambling sector is not currently an option. While supporting the initiatives proposed by the Commission for effective cooperation between Member States, the Committee would like to see more effective legislative instruments – preferably directives – being used in certain areas, where there is

⁽¹⁾ OJ C 24, 28.1.2012, p. 85.

⁽²⁾ COM(2011) 128 final.

concurrent competence, to protect consumers and the most vulnerable groups, and to combat illegal operators and money laundering.

This would establish a minimum set of consumer protection standards. Member States must retain the right to choose whether to establish higher standards of consumer protection for their national markets, or continue to apply the more favourable standards that are already in place ⁽³⁾.

The Committee therefore calls on the Commission, the European Parliament and the Council to intervene, with due regard to the principle of subsidiarity, in the following areas:

- consumer protection and public health and safety, in particular regarding minors and vulnerable groups;
- responsible advertising;
- measures to combat sport-related betting fraud;
- guarantees relating to the legality and transparency of online gambling, combined with a commitment by the Member States to introduce adequate sanctions that provide for the blocking, closing, seizure and taking-down of illegal sites in the event of infringement.

1.9 The Committee welcomes the fact that the Commission heeded its request to extend the scope of the money laundering directive to all forms of gambling ⁽⁴⁾.

1.10 The Committee welcomes the Commission's plan to look into the opportunities supplied by the IMI Regulation ⁽⁵⁾ and hopes that it will serve to improve administrative cooperation between national regulators and the exchange of data between the relevant national and European bodies.

1.11 The Committee welcomes the Commission's plan to explore possibilities for the Member States to exchange personal data, as sharing the vast quantity of data recorded by operators will enable cross-referencing, assisting the relevant authorities in their controls.

⁽³⁾ OJ C 24, 28.1.2012, p. 85 (conclusions: points 1.3 and 1.6).

⁽⁴⁾ COM(2013) 45 final.

⁽⁵⁾ The Internal Market Information System.

1.12 The Committee deems it essential that the Member States, working with the regulators, launch awareness-raising and information campaigns for consumers, so as to steer demand towards online gambling that is legal. This action should be complemented by measures to combat illegal operators such as the publication of black and/or white lists drawn up by national regulatory authorities to enable consumers to distinguish more easily between authorised and illegal sites, by displaying the logo of the national regulatory authority on the homepage of betting sites.

1.13 To protect consumers, the Committee calls for minimum EU-wide certification for online gambling software to be carried out by specialised external bodies, applying uniform parameters and standards. It also invites the Commission and the Member States to adopt a minimum European standard for gambling-related computer platforms and calls on the Member States to implement measures to protect players' data and to authorise only those payment methods that offer the best guarantees in terms of the security and traceability of online-gambling-related transactions.

1.14 The Committee warmly welcomes the experiment launched by the Commission in establishing an expert group on online gambling, to exchange experience and good practice on cybercrime. Although still at an embryonic stage, this constitutes a useful tool for initiating effective cooperation between the Member States. The Committee would like to see this group go beyond its current informal format and develop into a body with clearly defined powers and tasks.

1.15 The Committee agrees with the Commission on the need for Member States to promote proper training for the judiciary regarding the issues inherent in fraud and money laundering through gambling.

1.16 The Committee calls on the Commission to update and review the rules it has set out in the areas of action identified in the communication in the light of developments as regards implementation of the rules by the Member States, which measures they have implemented and how, and the results achieved at national level.

1.17 The EESC calls on the Member States to give the Commission a mandate to negotiate and actively support the proposed international convention on protecting and promoting integrity in sport, on which negotiations are due to be launched under the auspices of the Council of Europe.

2. Introduction

2.1 The communication addresses both the need to uphold European legislation on free service provision and the need to protect certain population groups.

2.2 The use of online technology with direct network access has enabled a massive increase in online gambling, which is in rapid expansion. In 2011, total revenues from online gambling in the EU-27 amounted to EUR 9,3 billion, 10,9 % of the overall EU gambling market, and it is estimated that this annual revenue will grow to EUR 13 billion by 2015.

2.3 The internet means effectively that European citizens are exposed to, and can access, from their own country of residence, illegal services provided by one or more licensed operators in another country, whether that country belongs to the EU or not. The extraterritorial and international factors mean that this situation cannot be addressed by individual Member States but requires a joined-up approach and greater cooperation. With a view to protecting citizens and consumers, it is vital to adopt a common definition of illegal gambling. It should be noted that the provision of gambling that is unauthorised in a player's country of residence, or the provision of gambling without the necessary national licence, is illegal, whether the service is provided by an operator based or licensed in an EU country, or by an operator from a third country⁽⁶⁾. Operators that side-step all controls and are unregulated are also operating illegally.

2.4 As regards the distinction between non-authorised and illegal operators, reference should be made to Footnote 15 in the communication.

2.5 The Committee welcomes the fact that the Commission has set up a gambling expert group to enable Member States to pool experience and good practice, conduct research into the problems arising from illicit and illegal gambling, organise specific, up-to-date training for the judiciary, improve information for consumers and increase the availability of legal outlets.

2.6 These measures constitute a useful first step in tackling illegal operators involved in fraud, crime and money laundering.

3. Gist of the Commission document

3.1 The communication highlights the diversity of national laws and sets priorities for national and EU intervention and cooperation and collaboration between Member States, outlining possible measures and making recommendations, not least regarding administrative coordination and cooperation among Member States.

3.2 The primary objective is to ensure that European legislation is upheld and applied under national law, by means of direct actions and recommendations to the Member States. To this end, the Commission will:

- facilitate administrative cooperation and the exchange of information between Member States' gambling regulators;
- look into possible procedures for blocking illegal sites;
- promote the legal gambling market, in part through dialogue with third countries;
- protect consumers, and especially minors and vulnerable groups, not least by checking internet access control mechanisms;
- study the effects of gambling addiction at European level;
- assess the market performance of online gambling services;
- adopt recommendations on good practice in the prevention of and fight against illegal gambling.

3.3 The Commission argues that it is in the Member States' interests to establish an effective anti-fraud and money-laundering policy and to protect the integrity of sport from match-, event- and competition-fixing, in part by pooling experience in the area of cybercrime.

⁽⁶⁾ The conclusions of the Spanish presidency of 11 May 2010 – 9495/10 state that illegal on-gambling is gambling provided without a licence or without abiding by the laws of the country in question and that therefore on-line gambling operators must comply with the laws in force in the countries in which they operate.

4. Comments

4.1 *Bringing national legislation into line with EU law*

4.1.1 The Committee would firstly stress that it is extremely concerned about the accelerating spread of online gambling and the exponential increase in the amount of gambling available, which is seeing the participation of ever wider sections of society with serious consequences for household income. Effective curbs thus need to be placed on the various forms of gambling advertising, especially on television, online and on public transport.

4.1.2 The supply and use of transnational gambling services are economic activities that are covered by the free movement provisions of the internal market (Article 56 TFEU). However, Article 52(1) TFEU allows for restrictions to the free provision of services guaranteed by Article 56 on grounds of public policy, public security or public health.

4.1.3 The Committee points out that the Member States have primary responsibility for organising and regulating gambling in their countries. Gambling is potentially very dangerous for consumers and is equally susceptible to being used for criminal purposes, such as money laundering, if it is not properly regulated or if the rules are not rigorously enforced. Against this background, although gambling falls within the scope of free service provision, under Article 49 EC (⁷), EU legislation on online gambling cannot currently be envisaged given the divergences between national laws. While supporting the initiatives proposed by the Commission, especially as regards effective cooperation between Member States, the Committee would like to see more effective instruments – preferably directives – being used in certain areas (see point 1.8) to protect consumers and the most vulnerable groups, and to combat illegal operators and money laundering.

4.1.4 In line with the abundance of established case-law from the Court of Justice of the EU, restrictions on gambling activities may be justified by overriding requirements in the public interest, such as consumer protection and the prevention of both fraud and incitement to squander money on gambling (⁸). Member States may restrict or limit the crossborder provision of all or certain types of online gambling services by reason of public interest objectives designed to provide protection in relation to gambling (⁹).

(⁷) Judgments of 19 July 2012, Case C-470/11, SIA Garkalns, unpublished, point 24, and of 8 September 2010, Case C-316/07, from C-358/07 to C-360/07, C-409/07 and C-410/07, Stoß and others.

(⁸) Judgments of 19 July 2012, Case C-470/11, Garkalns SIA, point 39, and of 8 September 2010, Case C-46/08 Carmen Media Group, point 55.

(⁹) Cases C-42/07 Liga Portuguesa de Futebol Profissional and others and C-6/01 (the Anomar case).

4.1.5 Gambling services are not subject to uniform rules in the EU and national laws vary significantly for cultural, social and historical reasons specific to each country. Some Member States have outlawed online gambling, whereas others allow only certain games, and yet others have a monopolistic system managed exclusively by a public or private operator. In the absence of up-to-date data on the divergent situations at national level (¹⁰), the Committee calls on the Commission to undertake a mapping exercise with the Member States.

4.1.6 As clarified by CJEU case-law, Member States that opt for controlled liberalisation of the market may legitimately establish a permit scheme – subject to administrative authorisation – based on objective criteria that are non-discriminatory on grounds of nationality (¹¹).

4.1.7 The fact that with online gambling there is no direct link between the consumer and the operator increases the danger of operator fraud at the consumer's expense (¹²). The availability of gambling that is illegal and thus uncontrolled poses a serious threat to consumers. Therefore, the rigorous implementation by Member States of the measures aimed at tackling illegal operators provides the primary guarantees and the best tool for the protection of consumers.

4.1.8 The Member States are free to set the objectives of their gambling policies and to define the level of protection. The restrictions they impose must, however, meet the conditions set out in CJEU case-law and must be proportionate, non-discriminatory and form part of a policy that is applied in a consistent and systematic manner.

4.1.9 Since legislation in individual Member States varies, and given that EU regulation of online gambling is as yet impossible, approximation of national laws is needed and Member States must be helped to enforce existing laws, in order to secure greater legal certainty in the areas of the protection of consumers, minors and vulnerable groups, advertising and the fight against money-laundering. The Member States should be encouraged to exchange best practice on combating illegal operators.

(¹⁰) Study on gambling in the EU internal market by the Swiss Institute of Comparative Law (2006) http://ec.europa.eu/internal_market/services/docs/gambling/study1_en.pdf

(¹¹) Judgment of 24 January 2013, Joined cases C-186/11 and C-209/11 Stanleybet International LTD and others, point 47.

(¹²) Judgment of 8 September 2009, Case C-42/07 Liga Portuguesa de Futebol Profissional and others.

4.1.10 In line with the principle of subsidiarity, the EU should intervene where its action enhances the situation and adds value to the Member States' regulatory systems. In view of the specific features of this sector and the changes involved with internet use, the Committee believes that action by the EU should take the form of sustained cooperation between the Member States and the promotion of best practices in combating illegal operators, which requires transnational action.

4.2 *Administrative cooperation and the effective application of the law*

4.2.1 The EU must bolster controls, administrative cooperation and the actual application of laws on online gambling and the Member States must work together to achieve this outcome.

4.2.2 It is important that the personal data registered by operators be made available and exchanged, so as to assist with controls, all the while ensuring data is protected. Administrative cooperation between Member States, with the exchange of general information and the use of best practice should be encouraged, so as to boost the sharing of know-how and experience and generate a sense of mutual trust and interest.

4.2.3 The certification at national level of remote internet gambling platforms would serve to secure oversight of the gambling market. It is important to establish better cooperation between the Member States and to set up a regulatory authority for online gambling in every Member State, with precise competences, to ensure close coordination at EU level.

4.2.4 There is a need to assess the degree to which national policies are coherent with EU legislation and case-law and ensure that their licensing systems are transparent and non-discriminatory. Cases of non-compliance should be subject to infringement procedures.

4.2.5 The Committee believes that the preventive and repressive measures adopted so far by the Member States to combat online gambling services provided by operators without a licence, i.e. illegal operators, are not sufficient to tackle the problem. It would therefore recommend that national regulatory frameworks of principles be designed that would guarantee the legality and transparency of sites, and would provide for: the identification and blacklisting of illegal sites; the identification and whitelisting of sites that are authorised under the domestic law of a Member State; the blocking,

closing, seizure and taking-down of illegal sites⁽¹³⁾; the blocking of financial flows to and from such sites; and the banning of commercial communications and advertising regarding illegal gambling.

4.3 *Consumers*

4.3.1 The Committee regrets that its request to the Commission and the Member States for incisive measures to effectively combat illegal operators, which are the greatest threat to consumers, was not addressed in the Commission communication. It thus repeats its call for effective measures to be adopted as soon as possible in order to establish best practices in preventing and countering illegal gambling.

4.3.2 The Commission plans to adopt a recommendation on consumer protection and the responsible advertising of gambling in 2013 and pinpoints four areas of intervention: drawing consumers away from unregulated and potentially harmful services, preventing minors from accessing gambling facilities, safeguarding other vulnerable groups, and preventing the development of gambling-related disorders. As regard this recommendation, the Committee calls on the Commission to include best practices in combating and preventing illegal gambling, after carrying out an assessment in each Member State of the most harmful forms of gambling for consumers.

4.3.3 The Committee appreciates the attention given by the communication to consumer protection and to vulnerable groups, not least in connection with advertising and gambling addiction. It stresses the need to adopt measures here that ensure a high level of protection; it points out that the instruments envisaged are too feeble and thus suggests that more binding ones be adopted. Indeed, the provision of illegal gambling, which is inherently uncontrollable and dangerous, constitutes the greatest threat to consumers. Hence the need for robust measures to be pinpointed in each Member State to stamp out illegal operators that are in breach of national legislation, which is the primary and best guarantee for the protection of consumers.

4.3.4 The fundamental objectives of the Commission's action should be to ensure that the Member States exercise their full powers and responsibilities and to establish an EU-wide legislative framework for all operators authorised to provide this kind of service, so as to avoid problematic forms of gambling, introduce minimum age requirements for all games and outlaw gambling on credit – for the most dangerous forms of gambling and betting (online casinos, spread betting, betting exchanges) – and advertising geared towards minors and the most vulnerable groups.

⁽¹³⁾ COM(2010) 673 final of 22 November 2010 – *Communication from the Commission to the European Parliament and the Council – The EU internal security strategy in action: Five steps towards a more secure Europe.*

4.3.5 The Committee calls on the Commission and the Member States to take effective and robust action within their respective remits to counter illegal gambling. It calls for the Member States to adopt measures such as blacklisting and blocking illegal sites, establishing secure and traceable payment methods, blocking financial transactions and placing an absolute ban on illegal advertising. It should be pointed out here that the effectiveness of these measures is largely dependent on their being part of a joint approach, which will strengthen their impact on illegal operators.

4.3.6 Ideally, a regulatory authority should be established in every Member State with specific responsibility for monitoring the situation and ensuring that European and national laws on consumer protection and combating illegal gambling are implemented. The existence of national regulators is a pre-requisite to implementing effective coordination and administrative cooperation. The Member States should see to it that their regulatory systems, designed in the light of their national specificities and legal framework, are capable of implementing this. The Committee would like to see each Member State task its regulator with establishing the criteria for the awarding of licences in its own market.

4.3.7 European consumers in every Member State should be enabled to distinguish between legal and illegal sites, not least so that they can make complaints. In this regard, the Committee recommends that the Member States require all operators authorised to provide online gambling services to display prominently and permanently on its website its authorisation number and a label from the national regulatory authority indicating that it is licensed in that Member State.

4.3.8 The Committee calls for the broadest possible legislative guarantees to protect minors, providing for appropriate tools for age checks and ensuring operators apply effective controls in this regard. Parents should be made aware of the risks of internet use and of how to set up filters at home. Appropriate guarantees should be adopted to protect vulnerable people who spend a lot of time at home: pensioners, housewives and the unemployed.

4.3.9 The current crisis is pushing ever more people to gamble online, unrealistically hoping to solve their financial problems with easy winnings. This carries major risks, however, in terms of psychological well-being as it leads to addiction and obsessive-compulsive behaviour. In order to address these disorders, the Committee recommends that part of the tax earnings from gambling be directed towards awareness raising campaigns and treatment to prevent and provide care for gambling addiction.

4.3.10 The Committee welcomes the Commission's plan to issue a recommendation – although it would prefer a more effective and binding instrument – on the responsible advertising of gambling to complement the Unfair Commercial Practices Directive, in order to ensure that consumers are provided with accurate information. The Committee stresses that action in this area should include measures to counter illegal operators such as banning advertising by operators that are providing services without a license from the national regulatory authority of the country where the consumer resides.

4.3.11 It is necessary to strike a balance between the requirement for controlled growth of authorised gambling, to make gambling services available through legal channels attractive to the public, and the need to minimise gambling addiction.

4.3.12 Advertising needs to be more responsible and better regulated, in particular to protect minors. This is not only because of the high risk to health, especially mental health, but also because of the distorted and misleading view of reality it encourages, leading the public to believe that online gambling is 'normal' and thus endorsing unhealthy social behaviour.

4.3.13 Despite the Alice Rap⁽¹⁴⁾ project, the Committee notes that there are still no reliable data available on the extent and variety of gambling-related disorders. The Committee would highlight the need for on-going, constant monitoring of addiction and the related disorders in order to acquire satisfactory data that will enable national and EU legislators to adopt effective, targeted measures to combat and prevent this problem.

4.4 Preventing fraud and money laundering

4.4.1 The problems associated with identifying individuals active in remote gambling who are either strongly winning or losing heavily and who could thus be masking money laundering activities should be addressed through the prior identification of individuals and the opening of specific gambling accounts for individual players.

4.4.2 Identity theft is a widespread problem, linked not only to online gambling but also to the entire data processing and exchange system associated with the internet and online technologies.

⁽¹⁴⁾ Addiction and Lifestyles in Contemporary Europe - Reframing Addictions Project.

4.4.3 Random Number Generators must be heavily certified to ensure that they respond to the non-predictability principle while also offering certainty that the event being checked is the only one possible, and that interference is impossible. This would protect players and uphold the standards set by Member States in terms of winnings.

4.4.4 In order to make the software used for online gambling more secure, the Committee proposes that EU-wide minimum certification be carried out by specialised external bodies, adopting the same parameters and standards, not least to identify and prevent illegal off-shore gambling.

4.4.5 One way to protect access to gambling could be to identify Internet Protocol Addresses. In fact, it is technically possible for individuals accessing gambling systems using IP systems from other countries to be blocked from playing.

4.4.6 As online gambling is vulnerable to the problems of money laundering and fraud, the enormous volume of data and information registered by operators ought to be made available to public law enforcement authorities so that they can cross-reference it with other data, facilitating checks.

4.5 *Sport and competition fixing*

4.5.1 Betting on fixed matches, events and competitions is a specific form of fraud that runs counter to the interests of sports clubs, fans, consumers and legal gambling operators.

4.5.2 The Commission agrees with the suggestion made by the Committee, which has highlighted the need to define a

framework to coordinate the efforts of all interested parties in order to address the problem comprehensively and avoid overlaps in resources. It highlights the need for greater cooperation between betting operators, sports bodies and the competent authorities, including national and international gambling regulators.

4.5.3 The Committee would reiterate its suggestion that a system be established not just to collect statements that report suspicions regarding a given sporting event, but also to take preventive and educational measures and impose sanctions that can effectively tackle the problem.

4.5.4 The Committee welcomes the Commission's plan to adopt by 2014 a recommendation on good practice in the prevention of and fight against betting on fixed matches, although it considers the chosen legislative instrument to be insufficient. Competition fixing violates the principle of fair sporting competition and constitutes a criminal offence in all the Member States. Nevertheless, there has been an increase in illegal or suspected illegal activities in this area. More incisive action is therefore needed to combat competition fixing, with the help of the instruments, skills and resources of the Member States, pooled together and used in synergy together with the EU.

4.5.5 The Committee calls on Member States that have not already done so to consider sport-related corruption, competition fixing and the manipulation of sports results as offences, and as such punishable, and asks the Commission to agree on a common definition of these criminal offences with the Member States.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE
