

## Opinion of the European Economic and Social Committee on the 'Green Paper on online gambling in the Internal Market'

COM(2011) 128 final

(2012/C 24/20)

Rapporteur: **Mr MALLIA**

On 24 March 2011 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the EU, on the

*Green Paper on online gambling in the Internal Market*

COM(2011) 128 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 3 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 26 October), the European Economic and Social Committee adopted the following opinion by 126 votes to 4, with 4 abstentions.

### 1. Conclusions and recommendations

1.1 Through the Green Paper consultation the Commission is trying to obtain a better understanding of the online gambling sector which is expanding rapidly, is cross-border in nature and is characterised by different national regimes being implemented by Member States.

1.2 The EESC notes that there are a number of objectives which are common to all EU Member States. These can be identified as follows: the fight against illegal gambling activities, the protection of consumers, the preservation of public order and the funding of public interest objectives (good causes).

1.3 Consumer protection is an area where the EU can bring value added to its citizens. The EU should create an EU framework in the form of EU consumer protection legislation binding on all operators licensed in the EU. In this way a minimum (not low) set of consumer protection standards would be created. National governments must however still have the right to set higher standards of consumer protection for their national markets should they wish to do so. In particular, one of the objectives of national laws that originate from Member States should be the prevention and treatment of compulsive gambling.

1.4 The fight against fraud, ID theft, money laundering and other crimes requires stronger cooperation between Member States at EU level. The EESC is calling for a formalised structure of cooperation at EU level between Member State competent authorities. In particular each Member State should make available a list of operators that are licensed in that particular country and the Money Laundering Directive<sup>(1)</sup> should be extended beyond casinos to include other online gambling activities thus affording national authorities greater powers to fight criminal activities.

1.5 Gambling opportunities can lead to gambling addiction. The EESC is calling on the Commission to carry out an EU-wide

study to fully determine the specific profile of addiction in gambling following which the appropriate measures, including preventive ones, should be introduced. To this end, we recommend that part of the tax revenues gathered should be channelled to the prevention and treatment of compulsive gambling disorder.

1.6 The EESC is also calling for the introduction of strict regulation concerning the prohibition of gambling advertising aimed at minors or including minors or persons who appear to be below the national age limit for gambling to ensure that minors and other vulnerable groups are effectively protected.

1.7 The sector is currently characterised by the unauthorised provision of gambling services by both unlicensed operators (defined as black and illegal in the Green Paper) as well as operators licensed in one Member State providing their services to consumers in another Member State without the required authorisation (defined as grey in the Green Paper). For the sector to develop in a coherent manner and be able to reconcile public interest objectives with Internal Market principles more legal certainty is required.

1.8 There are many different types of funding of public interest activities across Member States. The EESC agrees with the principle whereby fixed percentages of revenue or tax on gambling activities go directly to sport in general or other public interest activities.

1.9 The EESC joins the Conclusions on the framework for gambling and betting in the EU Member States adopted by the Competitiveness Council meeting on 10 December 2010.

1.10 The EESC calls on the Commission to identify the impact of cross-border offers on funding of sport, whether such funding is reaching grass root sports and to propose concrete measures to secure such funding to sport.

<sup>(1)</sup> Directive 2005/60/EC, OJ L 309, 25.11.2005, p. 15.

1.11 Member States draw on preventive and punitive measures against illegal online gambling offers. The proliferation of illegal offers points towards the fact that such measures are not efficient enough. The EESC therefore considers that a system of infringements and penalties needs to be designed and introduced to guarantee effective compliance with the rules. This could entail blocking activities, shutting down the media through which information society services enable illegal gambling to be conducted, and even seizing and destroying any element used in conducting such activities.

1.12 The authorities and the Social Partners should establish guarantees to ensure that online gambling activities do not impact on employment in the land-based gambling sector.

## 2. Introduction

2.1 The EESC welcomes the Green Paper on online gambling, as a good initiative for a pragmatic and sound reflection on the future of the sector in Europe. To this end, the EESC calls on the EU to carry out, as a matter of urgency, an in-depth study to assess the possible implications for employment throughout the public and private gambling sector.

2.2 The Green Paper consultation launched by the Commission aims to achieve extensive dialogue on online gambling in order to get a better understanding of the specific issues arising from development of both the legal and unauthorised (black and 'grey' market) provision of online gambling services directed at consumers who have their residence in EU Member States. Due to the nature of these services, their provision is often not within the control of the national governments to whose citizens these games are offered.

2.3 This Green Paper also responds to the European Parliament Resolution on Integrity in online gambling<sup>(2)</sup> of 10 March 2009 and has been called for by the Council in its Conclusions on the framework for gambling and betting in the EU Member States<sup>(3)</sup> of 10 December 2010.

2.4 The regulation of gambling in the EU is diverse, and is also in the process of being reviewed in many EU Member States to account for the expansion of the online segment of this market across borders.

2.5 The Commission's primary aim in launching this consultation is to obtain a facts-based picture of the existing situation in the EU online gambling sector. The consultation attempts to obtain a clear picture of the societal and public order challenges that arise from the online provision of gambling services in the EU, as well as the regulatory and technical challenges.

2.6 The EESC calls on the EU institutions, in particular the Commission, to urgently address the crucial challenge arising

from the distortions of competition due to unauthorised undertakings not established in the country of the residence of the consumers for whom they provide online gambling services, which benefit in their country of establishment from low tax and social contribution rates.

In tandem with this, the EESC also calls on the Commission and the Member States to engage in an aggressive fight against the illegal operators (black market) who are responsible for most instances of fraud, money-laundering and other criminal acts.

## 3. Public interest objectives

3.1 The EESC considers it of vital importance to ensure the protection of public interest objectives mentioned in the Green Paper, in particular the protection of consumers against, fraud, problem gambling and addiction and its harmful effects on health and over-indebtedness. Gambling must be developed on the basis of national authorisations granted by the Member States, in order to guarantee that public order is upheld, fraud combated, addictive behaviour prevented, the rights of minors protected and the rights of players safeguarded.

3.2 In this respect the EESC notes that there are a number of objectives which are common to all EU Member States, namely: the fight against illegal gambling activities, the protection of consumers (players, minors and the vulnerable, fight against addictions), the preservation of public order (prevention of fraud, money laundering and other crimes), the financing of public interest activities (good causes) and the protection of employees in the sector of online gambling and gambling in all its current forms.

3.3 Given the particular nature of online gambling due to the social, public order and health care aspects linked to it, the EESC, in line with the Court's case-law, points to the fact that, in the absence of Community harmonisation, Member States have a 'margin of appreciation'<sup>(4)</sup> to regulate and control their gambling markets in accordance with their traditions and cultures. However, the restrictive measures that they impose must satisfy the conditions laid down in the case-law of the Court as regards their proportionality<sup>(5)</sup>.

3.4 Having said that, there are some objectives which cannot be sufficiently achieved by Member States individually and where action at EU level could bring clear added value.

3.5 The EESC recommends that as these objectives are common to all Member States, the exchange of best practices between such Member States should be fostered. In this context, the EESC also takes note of a number of self-regulatory initiatives taken by public and commercial gambling operators. The EESC stresses, however, industry self-regulation can only complement and not replace statutory legislation. In view of this, the EESC believes that the EU institutions should in

<sup>(2)</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A6-2009-0064&format=XML&language=EN>.

<sup>(3)</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/intm/118398.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/118398.pdf).

<sup>(4)</sup> C-212/08 *Zeturf* preliminary ruling, judgment of 30 June 2011, paragraph 39.

<sup>(5)</sup> *Placanica and Others*, paragraph 48; *Liga Portuguesa and Others*, paragraph 59.

parallel, focus their efforts on bringing a European dimension to these common objectives in full respect of the principle of subsidiarity.

3.6 Consumer protection is an area where in particular the EU can indeed bring added value. The EESC believes that the EU institutions should create an initial EU framework in the form of EU consumer protection legislation which is binding on operators licensed in the EU. In this way a minimum (not low) set of consumer protection standards would be created. This minimum level of protection should include the need to prevent problem gambling, the setting of age limits for access to any games of chance or gambling activities, a ban on the use of credit, and the prohibition of any form of advertising aimed at minors or including minors or persons who appear to be under the age limits. National governments will however still have the right to set higher standards of consumer protection for their national markets if they so wish.

3.6.1 Consumers throughout the EU market should be able to distinguish between illegal sites and sites authorised by an EU Member State. In this regard the EESC is recommending that each EU Member State obliges each operator working with a licence of that particular EU Member State to carry in a prominent fixed position on the front end of its website an interactive label showing that the operator is a licensed one. The label is to be used by all Member States and should contain common features in its design such as to make it easily recognisable across all EU Member States. It must however also clearly show the country of origin from where the licence is being granted. The European Commission should be responsible for the enforcement of this measure.

3.7 The EESC envisages the creation of an independent body in each Member State which will be responsible for monitoring and ensuring the effective implementation of the consumer legislation mentioned in 3.6 above. The introduction of the EU consumer protection legislation should be accompanied by an information campaign, to be carried out in each Member State. The national authorities in each Member State should require gambling operators to display the authorisation number granted them by the State in a visible location in order that they may be identified, and to resolve consumer complaints in accordance with national consumer law and with the courts with jurisdiction in the place where the operator is domiciled.

3.8 Responsible gambling policies mean that gambling should be tackled through a comprehensive policy of corporate social responsibility. This should consider gambling as a complex phenomenon requiring a combination of preventive, awareness-raising, intervention and monitoring measures, as well as measures to remedy any detrimental effects. This means:

- paying due attention to high-risk groups;
- providing the public with the information necessary for it to make an informed choice in its gambling activities, promoting moderate, non-addictive, responsible gambling;

- highlighting, in line with the nature and methods of each game, the ban on gambling by minors or persons having explicitly requested not to be allowed to take part.

3.9 The EESC notes that while a number of Member States have gathered solid data with respect to gambling addiction, others have not. A number of national empirical studies have been carried out and various, sometimes conflicting conclusions have been reached. What is however clear is that gambling opportunities can lead to gambling addiction which in turn creates societal problems. This is an aspect which must always be taken account of whenever consumer protection policy for the sector is developed.

3.10 Aspects such as the new opportunities which have been created by the online medium to gamble should also be borne in mind as new technologies have opened up more avenues for gambling for people who spend more time at home such as pensioners, house wives and unemployed. Guarantees must be put in place to ensure that minors, people deemed unfit to gamble and others who are prohibited from doing so, either as the result of their own decision or of a court ruling, are unable to access Internet-based, interactive gambling.

3.11 The EESC calls for a comprehensive EU-wide study to be carried out to fully determine the specific profile of addiction in both the online and offline sector of gambling in order for the EU legislator to be able to take effective and targeted action to combat and prevent this problem.

3.12 The EESC believes that an effective way of reducing money laundering activities would be for Member States to cooperate at EU level to fight the rampant illegal online gambling activity in the EU. The Committee therefore calls on the EU Member States to put in place effective mechanisms to achieve these aims, which will undoubtedly have a positive impact on increasing tax revenues.

3.13 In addition, the EESC strongly believes that the Money Laundering Directive should be extended beyond casinos to include other online gambling activities which would afford national authorities greater powers to fight these criminal activities.

3.14 Furthermore with respect to match-fixing, the EESC believes that the integrity of sport should be preserved at all costs. The EESC takes note of the contributions of public and some private betting operators to sport betting integrity, education programmes for athletes and sport officials and early detection and warning systems of suspicious betting behaviour, and their varying degree of quality and dimension. The EESC believes that a framework for coordinating efforts of all stakeholders involved is necessary to tackle this issue holistically and avoid duplication of resources. In particular a system should be put in place which is not limited to simple detection but which also includes preventive, educational and enforcement measures.

3.15 Finally, the Green Paper also refers to the financing of benevolent and public interest activities, as well as events on which online sports betting relies. The EESC is in favour of a system whereby such activities and events receive part of the revenue collected from gambling activities. The EESC calls on the Commission to propose concrete measures to preserve such national funding mechanisms as recognised by the Conclusions on the framework for gambling and betting in the EU Member States adopted by the Competitiveness Council meeting on 10 December 2010. In addition the EESC believes care should be taken to avoid that such 'activities' are used to counter the negative social connotations of gambling and encourage further gambling on the basis that such activity benefits a good cause. The EESC moreover calls the Member States for part of the tax revenues gathered to be channelled to funding the prevention and treatment of compulsive gambling and the occupational and ongoing training of employees in the sector.

#### 4. Establishment and Licensing

4.1 The online gambling sector is currently characterised by fragmentation due to different national regimes that are applied by EU Member States.

4.2 One of the major issues being faced by the sector is the fact that operators licensed in one or more Member State may be providing their services to consumers in another Member State without having the authorisation, where required of that particular Member State. Such offers are considered to be 'unauthorised' <sup>(6)</sup>.

4.3 On the other hand, between April 2006 and February 2008 the Commission issued 12 letters of Formal Notice to 10 Member States and moved to the stage of Reasoned Opinions with seven of them. On 5 May 2010, the Commission closed the procedures against Italy and on the 24 November 2010 the Commission closed infringement proceedings against France. The Commission has opened infringement procedures against cross-border restrictions to gambling services as a result of numerous complaints lodged with the Commission for alleged violations of the Treaty in order to verify the proportionality of these restrictions. The EESC calls on the Commission to decide in a decisive manner as to how it will proceed with the pending cases.

4.4 With respect to the nature and legal status of online gambling, a series of principles have emerged from the case law to date. Firstly, gambling services fall under Article 56 TFEU and as such are covered by the rules on the freedom to provide services.

4.5 Since gambling services are to date not subject to Union-wide uniform rules, Member States retain a 'margin of appreciation' <sup>(7)</sup> to regulate these services, which includes restricting the number of operators, types of games on offer and volumes of it.

4.6 According to the Court's established case-law, operators authorised in one Member State may provide their services to consumers in other Member States, unless the latter impose restrictions which are justified by overriding reasons in the public interest, such as consumer protection or the general need to preserve public order.

4.7 Such restrictions must be proportionate, non-discriminatory and form part of a policy that is applied in a consistent and systematic manner.

4.8 The EESC notes that the principle of mutual recognition does not apply in the gambling sector and that a Member State can consider that the mere fact that an operator lawfully provides its games in another Member State is not a sufficient assurance that consumers within the territory of the concerned Member State will be protected against the risks of fraud and crime, in the light of the difficulties liable to be encountered in such a context by the authorities of the Member State of establishment in assessing the professional qualities and integrity of operators.

4.9 Whilst referring to paragraph 4.8, it is still clear that the sector requires greater legal certainty if it is to develop in a coherent manner respecting public order objectives as well as Internal Market Principles. The Green Paper consultation should provide an important impetus in this direction.

4.10 In addition the EESC believes that the advertising of gambling needs to be strictly regulated to ensure that vulnerable groups such as minors are protected. It is particularly important to set boundaries for such advertising, especially to prevent access for minors and people deemed unfit to gamble, to prevent the use of images, messages or objects that could, directly or indirectly, offend people's dignity or fundamental rights and freedoms and to prevent any possible form of racial or sexual discrimination or incitement to commit violence or any criminal act.

#### 5. Sports

5.1 The Commission wishes to focus on two sport related issues, (1) whether sport events, on which gambling activities are carried out, should receive a fair economic return from the associated gambling activity and (2) whether there exists the risk of so-called 'free-riding'.

5.2 The EESC notes that there are many different types of funding of public interest activities across Member States. In some Member States national legislation imposes on for example national lotteries to channel a fixed percentage of their revenue directly to sport and/or other identified public interest activities. In other Member States the State Treasury channels a percentage of the tax revenue it generates from gambling activities into various public interest activities of choice.

5.3 The EESC is in agreement with the principle whereby fixed percentages of revenues or tax on gambling activities go directly to sport or other identified public interest activities.

<sup>(6)</sup> Green Paper SEC(2011) 321 final, page 6.

<sup>(7)</sup> C-212/08 Zeturf preliminary ruling, judgment of 30 June 2011, paragraph 39.

5.4 The EESC notes the important contribution made by state/national lotteries and other legal gambling activities to the financing of sport, especially grassroots sport. The EESC also notes that the provision of cross-border online gambling and betting services by operators established in a particular jurisdiction could impact negatively on the funding of sport and other public interest objectives in another jurisdiction where it provides services.

5.5 Accordingly, the EESC calls upon the Commission to identify the impact of cross-border offers on such funding, whether such funding is reaching grassroots sport and to propose concrete measures to secure such funding to sport.

5.6 The EESC has reservations about the possible creation of the 'Sports Right' or right of fair return. The EESC considers that further clarification is necessary to understand what is being envisaged in a right of fair return and whether this will lead to the creation at European level of a new IPR for sporting events.

5.7 The EESC therefore calls upon the Commission to clarify the nature, scope and impact of the right of fair return as well as the legal basis applicable thereto.

5.8 The issue of 'free-riding' is a tax issue and as such the EESC feels that this should be left to the national competence. The EESC does however feel that a fair approach providing a return for all parties involved must be discussed and agreed upon between the EU Member States. It is a difficult subject for debate at EU level but a deeper discussion at some stage is absolutely necessary to avoid important disruptions of the sector.

5.9 The EESC invites the Commission to clarify whether indeed there is a link between the sport issues raised in the Green Paper and sport integrity or whether they are separate issues to be tackled individually. In addition, the Commission could clarify whether it believes the creation of a right of fair return or sports right would actually constitute an effective means to ensure the integrity of sports.

## 6. Enforcement

6.1 Another major issue that needs to be tackled with urgency is the provision of illegal gambling services throughout the EU<sup>(8)</sup> to the detriment of the protection of consumers, public order as well as the funding of public interest objectives.

6.2 Cooperation between Member States is crucial for protecting consumers in the EU against illegal operators. In this respect the EESC believes a formalised structure of regulatory cooperation at EU level would facilitate this cooperation<sup>(9)</sup>. In particular each Member State should make available a list of operators that are licensed in that particular country. Each of these lists should be made available to the Commission, Member States, national regulators and consumers. Cooperation between Member States should also include the exchange of best practices.

6.3 The EESC also notes that the industry lacks data. This does not allow for a proper analysis of the industry and its particular dynamics. In view of this the EESC proposes that there should be common data collection requirements established at EU level and imposed on all regulators who would in turn oblige all licence holders to submit the data required. This can then be aggregated at an EU level. Data in terms of efforts being made to crack down on illegal websites would also be welcome in order to establish the efficacy of national efforts to fight the black market.

6.4 The fight against illegal operators calls for effective enforcement measures. The EESC feels that this is an area of weakness which requires more action by Member States to prevent illegal gambling providers from offering their services online which could include a system of infringement penalties. Accordingly, it calls on the Commission to examine the possibility to propose a legally binding instrument obliging banks, credit card issuers and other payment system participants in the EU to block transactions between illegal gambling providers and their clients without hindering legitimate transactions. This could also involve blocking activities, shutting down the media through which information society services enable illegal gambling to be conducted, and even seizing and destroying any element used in conducting such activities.

Brussels, 26 October 2011.

*The President*  
*of the European Economic and Social Committee*  
Staffan NILSSON

<sup>(8)</sup> See last paragraph on page 3 of the Green Paper.

<sup>(9)</sup> Some Member States participate on a voluntary basis in the Gaming Regulators European Forum commonly known as 'GREF', <http://www.gref.net/>.

## APPENDIX

**to the opinion of the European Economic and Social Committee**

The following point of the section opinion was deleted to reflect the amendment adopted by the Assembly although more than one quarter of the votes cast were in favour of its retention (Rule 54(4) of the Rules of Procedure):

**a) Point 4.11**

*4.11 The EESC invites the Commission to carry out an evaluation of the requirements and conditions that are currently being set in national licenses and controls carried out in different Member States with the aim of developing a common framework of conditions which would then need not be replicated each time a license holder in one EU country applies for a license in another country while at the same time ensuring the protection of public interest objectives as detailed in section 2 above.*

**Outcome of the vote on the amendment:**

Votes in favour:	73
Votes against:	46
Abstentions:	18

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