

Breaking myths about betting services

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The possible exclusion of betting from the Services Directive at the European Parliament and the Commission's hesitations to launch betting related infringement procedures, reveal a certain number of confusions and misunderstandings.

Betting, not a sole competence of Member States

EBA recalls that the European Court of Justice (ECJ) has consistently held, in particular in the *Gambelli* ruling [C-243/01], that betting is subject to the provisions of the EU Treaty related to the freedoms of establishment and to provide services (Articles 43 and 49, respectively). The Commission is therefore competent, as Guardian of the Treaty, to put an end to violations of these provisions by Member States.

An Internal Market for betting services does not mean chaos

EBA believes that it is alarmist nonsense to believe that the deregulation of the market will lead to chaos. One must not confuse change with chaos. This does not mean opening the market to all sorts of unscrupulous and un-regulated operators. On the contrary, it could ensure a greater control and uniform standards of excellence in a framework designed according to the principles of the EU Treaty.

The concern of Member States should not be the onset of healthy competition within the EU, but of the increasing prevalence of off-shore based betting operators. It is surely more important to provide EU citizens with enough choice to ensure that they are not attracted to products that are beyond the legal control of the Member States.

All EBA members are willing to operate in a competitive and fairly regulated EU market. Since licensed in one Member State, they already apply regulations aimed at securing the protection of consumers and the prevention of fraudulent operations. Therefore, on this basis, they are allowed to operate in the EU.

Funding of good causes and sports not jeopardised

State monopolies tend to justify exclusive rights systems so as to secure the funding of charities and sports. However, according to the settled ECJ case law, this cannot in itself be regarded as a justification to restrict Internal Market rules. Besides, opening the market to well-regulated competition between Community licensed operators may provide a more diverse and plentiful range of funding opportunities. Surprisingly, the contribution to charitable causes in certain exclusive rights systems are far much lower than in more competitive and regulated environments where a State-owned or State-controlled lottery coexists with licensed private betting operators.

Urgent need for legal certainty in this field

Since the ECJ issued the *Gambelli* ruling, the number of complaints lodged to the Commission exploded. These have been lodged not only by private operators, but also by other associated services (media, sports, charity and tourism).

It is very unlikely that Member States will adopt, on their own initiative, fair betting regulations in the near future. In this context, EBA encourages the Commission to propose harmonized rules in this field, which would meet the same consumer protection and public order objectives as under exclusive rights systems. Didier Dewyn, Secretary General of EBA, comments that *“in a harmonized context, betting can be conducted in a fair, crime-free and socially responsible way. The EU could adopt high standards, while at the same time securing the funding of good causes and sports”*.

In this context, Didier Dewyn also calls upon the Commission *“to urgently open betting related proceedings”*. He recommends the Commission *“to follow the EFTA Surveillance Authority’s example (ESA), which surprisingly dared going further than the Commission itself”*. Indeed, on 17th November, ESA decided to take the Norwegian Government before the EFTA Court, considering that the granting of a gaming machine monopoly to its State controlled operator would violate European Economic Area (EEA) law.

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The European Betting Association (EBA) is an association of leading European sports betting operators. EBA is a Brussels based non profit making association. It promotes the right under EU law for members based and licensed in one Member State to promote their services in, and accept business from, all other EU Member States.