



RESPONSE OF ENGSO TO THE EUROPEAN COMMISSION (22 MAY 2006)

CONCERNING:

STUDY OF GAMBLING SERVICES IN THE INTERNAL MARKET OF THE EUROPEAN UNION (DRAFT REPORT, 24 APRIL 2006)

1. INTRODUCTION

ENGSO (European Non-Governmental Sports Organisations) is the European umbrella organisation for sports development. ENGSO has 40 members, which are national sports organisations representing sport in its broadest sense.

On behalf of its members, and with their support, ENGSO responds to the *Study of Gambling Services in the Internal Market of the European Union*, ordered by the European Commission. The study is (to be) delivered by the Swiss Institute of Comparative Law, following their consultation of many stakeholders, including numerous sports organisations. Aim of the study is to evaluate how the rules and laws regulating gambling services at the national level impact the (smooth) functioning of the Internal Market for these services and associated services.

Whether the Swiss Institute succeeded in its assigned evaluation still remains to be seen. ENGSO wants to **highlight** in any case **what was left out of this study and what needs to be taken into account** before next steps in the field of gambling services in the Internal market can be taken.

2. THE NEED FOR RESTRICTIONS

Two fundamental freedoms derived from the Treaty – the freedom of establishment (art. 43) and the freedom to provide services (art. 49) - can be considered important starting points for as well as driving forces behind this study. An Internal Market in which such freedoms are fully respected is supposed to deliver more certainty for parties involved, on the supply side (service providers) and on the demand side (consumers), more economic growth, more employment and more European integration. The importance of all those outcomes is of course evident.

However, **national regulations** restricting (cross border) provision of gambling services **are allowed if the restrictions imposed by national authorities are non-discriminatory, proportionate and justified on the basis of general interest**. Restrictive legislation originated way back and was usually based on the (religious) conviction that gambling is improper and can only be permitted if revenues contribute to good causes.

Today the aim of national regulations for the provision of gambling services is to regulate and control gambling activities in order to maintain public order, prevent fraud, illegal gaming and criminality, protect consumers, and then especially prevent problem gambling, maintain social order and protect moral and cultural aspects. The aim of national regulations is not to collect financial means for good causes, including sport. European jurisprudence has also indicated that funding good causes is not considered a fundamental justification for national restrictions being applied to the provision of games of chance.

However, **with the growth of gambling activities, the importance of the contributions of license holders to sport and to other good causes has grown**. The reliance on these contributions of these good causes dates from way back, as mentioned above, and it has increased considerably. For sport and other good causes it is therefore vital that the mandatory contribution of licensees to good causes is maintained.

3. FROM OVERVIEW TO SCENARIOS

After elaborately outlining the national rules and laws related to gambling services and the size and structure of the gambling market in each Member States and an overview of justifications for restrictions both at the EU level (European Court of Justice) and at national level (national courts), the study presents three **scenarios based on recognised economic models** and the available data. The response to the Swiss Institute's request for input was relatively low, but apparently sufficient to base the different scenarios on.

The study mainly looks at market economics, which concerns issues affecting the demand for gambling services, such as price fluctuations, regulations and the demand for other products/services. The study also pays attention to macro economics/socio-economics, which are more consumption related issues, such as crime, addiction and personal bankruptcy, but these are included only in a very moderate way.

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

- **The baseline scenario:** maintaining the present regulated situation, resulting in minor economic growth, but in line with growth of the GDP, and there is also growth in remote gambling;
- **The first alternative scenario:** introducing 'fair' trade besides free trade, allowing enterprises the opportunity to gain access to EU Member States, (surprisingly) without relaxing restrictions and constraints, resulting in more economic growth (than in baseline scenario);
- **The 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.

4. SOCIAL CONSEQUENCES

The study is an economic analysis. It looks at **the impact** of (essential) changes in national regulations **on economic variables**¹, underlying the supply and consumption of gambling services. Its focus on economic factors makes sense as the Internal Market is also an economic structure, but is too narrow.

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. This can be called remarkable. In the second alternative scenario the study expects an increase in these negative gambling related effects. The study pleads for additional research to look into these important social impact questions.

The study does not **distinguish** sufficiently **between commercial suppliers of gambling services and non-profit suppliers of gambling services**. The first are mainly interested in maximising profits and increasing their market, the latter are usually active within a Member State and are set up to transfer as much revenues as possible to good causes supported by organisations within that particular Member State. Not making a clear distinction means not acknowledging the very different roles and ambitions, and related social consequences, of these actors.

The different scenarios also affect the availability of national gambling revenues for nationally appointed good causes or general interest activities. Sport and other good causes have become increasingly dependent on these financial means. The study pays **no attention to the social impact of partial or complete loss of gambling revenues for sport** and other nationally determined beneficiaries **following less or more imposed relaxation of restrictive regulations**.

¹ Such as economic rent (partially used for good causes), consumers surplus, aggregate amount of spending on gambling services, efficiency of market of gambling services.



Sport is the biggest citizens' 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 and sport benefits from these revenues. Members of European Lotteries already contribute 2 billion Euro to sport. **The contribution from gambling revenues to sport is not only substantial, it is also essential.** 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 definitely have social consequences.

5. WHAT DOES ENGSO EXPECT FROM THE EUROPEAN COMMISSION?

The social function of sport has been clearly recognised by the EU many times. To name a few: the European Council's Declaration of Amsterdam and the European Council's Declaration of Nice, the Helsinki Report of the European Commission, the European Year of Education through Sport (EYES) and the 'article on sport' (III-282) of the draft European Constitution. Obviously the EU attaches great importance to maintenance of sports' contributions to social integration, education and public health and to the general interest function performed by the sports organisations at different levels.

The study, ordered by the European Commission, is an economic analysis. ENGSO believes that **gambling services can not be considered ordinary economic services and thus should not be treated as if they were.** On the contrary: gambling services require national regulations to fight negative consequences. Gambling services have been also arranged by the principle of subsidiarity, which allows regulations at national level. ENGSO 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 really getting there. When (moving towards) liberalising the gambling market, it is a likely that **a few large consortia take over** this economically interesting but socially seen sensitive market. These consortia will operate from there were the tax regime is most favourite, offering higher prices and at lower costs, also due to more and more gambling services offered online.

In such a single market for games of chance it will no longer be possible to maintain a controlled national gambling policy aimed at maintaining public order and consumer protection. But **it will no longer be possible to have guaranteed contributions from gambling revenues to general interests' activities**, such as social works, culture and **sport within a particular member state** either. Although the latter is not considered a fundamental justification for national restrictions, the European Commission cannot afford not taking into account these social aspects when looking at gambling services and various future scenarios and their consequences in the Internal Market.

Sport losing its guaranteed revenues from games of chance, be it partially or completely, will no doubt have social consequences. These social consequences should be made completely clear before taking any decisions for the way ahead. ENGSO expects that **requiring relaxation of restrictions, if any, is preceded by additional research² on the social consequences of such changes and then to their full extent**, i.e. including the effects on society if general interests' related beneficiaries partially or completely lose out on income out of gambling.

ENGSO feels supported by the EU, based on **the recognition of the social value and function of sport**, which is considered to be in the general interest. ENGSO asks the European Commission to live up to that support when taking next steps following *the Study of Gambling Services in the Internal Market of the EU*. ENGSO therefore urges the European Commission to **maintain the present situation, as described in the baseline scenario** in the *Study of Gambling Services*, and to call for **more and thorough research that fully includes the social dimension.**

² The study also stated that even additional research is necessary to provide a complete and meaningful economic analysis and to develop comprehensive models.