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

Final Report

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

EXECUTIVE SUMMARY

This report is the result of more than twelve months of research carried out under the responsibility of the Swiss Institute of Comparative Law (Lausanne, Switzerland) pursuant to a Study Contract concluded with the European Commission. The Swiss Institute of Comparative Law sub-contracted with the Centre for the Study of Gambling at the University of Salford (Manchester, United Kingdom) for the preparation of the economic data and analyses contained herein. The Swiss Institute of Comparative Law is nevertheless responsible for the entire report.

All readers of our Report are asked to bear in mind the following important points:

- This report is intended to reflect the situation that prevailed in the European Union on **31 December 2005** and is primarily based upon information that was supplied or otherwise available to the authors up to that same date. Information subsequently received and developments that occurred early in 2006 are included in the body of this Report only if they have been perceived to be of particular importance and/or could be taken into account without the need to modify large sections of the text;
- With respect to substance, our Report provides a **status quo description of the legislation and jurisprudence** of each of the Member States, but offers **no assessment or interpretation of the appropriateness of the norms contained therein or of their compatibility with European Law**. Any scientific interpretation or comment would counteract the aim of the Study, namely to prepare a completely neutral presentation of existing gambling regulation in the EU;
- With respect to form, all **country reports** concerning either the legal or the economic situation in individual Member States are **structured in an identical manner**, so as to facilitate cross-sectoral reading;
- **Translations** of court decisions and legislative material into English or French have, unless otherwise indicated, been undertaken by the Swiss Institute of Comparative Law and thus should not be considered to be official translations.

1. PURPOSE OF THE STUDY

1.1. General Purpose

The purpose of the study is to *evaluate how the differing laws regulating on-line and off-line gambling services, as well as games in the editorial content of the media and certain types of promotional games, impact upon the smooth functioning of the Internal Market* for these and associated (e.g. media, sports, charity, tourism) services and thus could restrict the economic and employment growth associated with such services.

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The objective of the Study of gambling services is to:

- Describe **all the relevant national rules and laws** pertaining to the commercial communications, establishment and provision of services in the eight market sectors set out below.
- Describe, on the basis of information collected from Member States, stakeholders and market analysts, **the expected cross-border development of each of these market sectors** and their associated markets in the light of the existing market trends taking due account of technological change and international market trends.
- **Determine, in view of these regulatory and market reviews, the existence and nature of Internal Market barriers** in these market sectors and relevant associated sectors.

1.2. Market sectors

Gambling services should, for the purpose of this study, be considered to cover any service, including any information society service, which involves wagering a stake with monetary value in games of chance, including lotteries and betting transactions.

Promotional games should, for the purpose of this study, be considered to cover the offer to participate in a game, in which the winner is designated by any element of chance and the exclusive purpose of which is to encourage the sales of goods or services. Promotional games covered within the scope of this study are all promotional games that offer prizes in excess of €100,000 and all promotional games where participation is exclusively linked to purchase of the promoted good or service.

The study covers the following on-line and off-line market sectors (henceforth referred to as “market sectors”):

- **Betting services** (including horse and dog racing, event betting and pool competitions)
- **Bingo services**
- **Casino services**
- **Gambling services** operated by and **for the benefit of recognised charities** and non-profit making organisations.
- **Services related to gambling machines** that can be placed in locations other than in licensed casino services
- **Lottery services**
- **Media gambling services** (i.e. games in the editorial content of the media).
- **Sales promotion services** consisting of promotional games with a prize exceeding €100,000 or where participation is exclusively linked to purchase.

In this respect, the following definitions are to be found in legislative texts in force in various Member States. It must nevertheless be stated here that the Study did not aim to find a uniform definition for each of the types of gambling listed above. Each country report sets out the legal definitions used in that country in respect of the market sectors studied. The following pages only state major similarities or differences between the legislative provisions of Member States.

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1.2.1. Game of Chance

Even if not all Member States have a legal definition of the concepts of “Games of Chance” and “Gambling”, in most European countries (Austria, Belgium, Czech Republic, Estonia, Finland (under the generic term of lottery), Germany (although controversial), Greece, Hungary, Ireland, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia), a game of chance is defined as a game that offers an opportunity to compete for prizes, where success depends completely or predominantly on coincidence or an unknown future event and cannot be influenced by the player. One of the players at least loses his or her stake.

The first important element characterising a game of chance is that of stake money. The second essential characteristic of a game of chance is the element of chance. Success or loss must depend completely or predominantly on coincidence and not on abilities and knowledge. Success is considered to depend in any case on coincidence, if the relevant aspect is the occurrence of an uncertain event.

In the Czech Republic, the probability of winning (a lottery or a tombola) may not be less than 1 : 200.

In general, the nature of the prize is of no legal importance (this is true in Belgium, Cyprus, the Czech Republic, France, Hungary, Lithuania, Luxembourg, the Netherlands, Slovakia, Slovenia, Spain, Sweden and the United Kingdom). Some legislators nevertheless make a distinction: the prize can take the form of money (in Austria and Finland) or of money or monetary value (in Malta), or of an additional chance to win (in Austria, Finland and Portugal, but not in Belgium or Estonia) or be offered by a third party (in Austria).

In general, the conditions of the game are specified by the operator in advance (Austria, Belgium, the Czech Republic, Estonia, France, Germany (subject to certain particularities as regards machine gaming), Latvia, Lithuania, Luxembourg, the Netherlands, Slovenia and Spain).

Some countries exclude certain games from the scope of their gambling laws, such as sports betting (in Luxembourg), card games outside casinos (in Belgium), games played at fairs that offer low prizes (in Belgium), commercial contests (in Finland, France, Luxembourg and Sweden), or free commercial contests (in Luxembourg and the United Kingdom (Great Britain)). In Estonia, gaming by means of a machine is not deemed to constitute gambling for the purposes of the gambling law, if the only chance of winning is a free game to be played by means of the same machine. The same applies in Latvia; automatic games with non-pecuniary prizes are also excluded from gambling law.

Certain Member States (the Netherlands, Germany, Portugal and the United Kingdom) also exclude from the scope of their gambling laws, as a matter of principle, all life insurances, certain public loan regimes and non-commercial games of chance that are not open to the public.

1.2.2. Lotteries

In most countries, there are a variety of lottery games, often depending on when the draw is made. The precise legal definitions can be found in the national reports.

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Technically, a lottery is defined (in Austria, Belgium, the Czech Republic, Estonia, France, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal and Slovakia) as a prize game in which an organiser accepts bets on the chances which several numbers have of being extracted at random from a defined series of numbers or symbols. The winning numbers are determined by public draw. The prize money is divided into several winning categories and equally apportioned among the winners within each of these categories.

Some countries (Finland, Germany, Latvia) distinguish between cases in which the prize takes the form of money (e.g. Lotto) and those in which it takes the form of goods or services (e.g. a raffle).

Two countries (Cyprus and Sweden) include in this category raffles and games played at fairs or at amusement parks and also bingo and certain card and dice games.

1.2.3. Casino Gaming

Some Member States (Denmark, Finland, Ireland and the United Kingdom) have not directly defined the concept of casino gaming.

In several countries (Belgium, the Czech Republic, France, Luxembourg, Portugal and Slovakia), a casino is defined as a place where games of chance are organised (whether automatic or not) and where other cultural and social activities (theatre, restaurants) take place. In other countries (Austria, Denmark, Estonia, Finland, Germany, Latvia, Malta, the Netherlands and Sweden), it is not necessary that the casino manage other social or cultural activities.

Two Member States (Cyprus and Ireland) entirely prohibit casino gaming.

1.2.4. Machine Gambling Outside Casinos

According to the laws of a number of Member States (Austria, Belgium, the Czech Republic, Denmark, France, Germany, Hungary, Lithuania, Luxembourg, the Netherlands and Sweden), a slot machine is a mechanical, electronic or electric process that can result in the distribution of prize money or anything else of value, including a right or mechanism permitting free play on the machine. Success depends completely or predominantly on the coincidence and cannot be influenced by the player.

In Germany, there is a controversy as to whether machine gambling outside casinos is to be considered as a game of chance. In Austria (with the exception of the *Bundesländer* of Vienna, Styria and Carinthia) the operation outside casinos of gaming machines which offer cash prizes or merchandise is prohibited. All machine gambling is prohibited in Cyprus. In Greece and Portugal, machine gambling outside casinos is totally prohibited.

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1.2.5. Betting

In many Member States (Austria, Belgium, the Czech Republic, Estonia, France, Germany, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia and the United Kingdom (Great Britain)), 'betting' means making or taking a bet on –

- (a) the outcome of a race, competition or other event or process,
- (b) the likelihood of anything occurring or not occurring, or
- (c) whether anything is or is not true".

It is considered (in Belgium, France, Luxembourg and Portugal) to be an aleatory contract by which the parties agree, with respect to a disputable assertion, that the party whose assertion is shown to be wrong shall perform something for the benefit of the other party or (in Latvia) a third person. According to German law, a bet originally aims at settling a controversy.

The amount of the prize can either depend on the total amount of the pre-paid stakes (i.e. the so-called "totalizator systems", *pari mutuel* or "pool betting") or on the stake-winnings ratio that is agreed between the bookmaker and the player (ie. *pari à la cote* or "fixed-odds betting").

In general, "sports bets" are prize contests, whereby participants must predict the results of a sports competition (Austria, Denmark, Estonia, Finland, France, Latvia, the Netherlands, Portugal and Sweden). There is considerable doubt as to whether betting on the outcome of horse races should be classified as sports betting; it clearly cannot be so classified in Finland, whereas in the Netherlands, it is classified as a special form of sports betting.

1.2.6. Bingo

According to the laws of four Member States (Austria, Finland, Latvia and Malta), bingo is a game of chance, in which the player uses a scorecard or an electronic representation thereof bearing numbers and is played by marking or covering numbers identical to numbers drawn by chance, whether manually or electronically, and won by the player who first marks or covers the "line" which is achieved when, during one game, for the first time all five numbers on one horizontal row on one scorecard are drawn; or the "house" or "bingo" is achieved when, during one game, for the first time all the fifteen numbers on one scorecard are drawn. Prizes are generally in kind (Denmark and Finland) and paid immediately (Sweden). In the Netherlands, limited money prizes are nevertheless possible and in the United Kingdom, nothing prevents providers of bingo services from offering purely cash prizes.

In some countries (Austria, the Czech Republic, Cyprus, Denmark, Estonia, Finland, Germany, Ireland and Sweden), bingo is considered to be a specific form of lottery.

As an exception, bingo in Belgium consists in a ball game where the player must lodge the ball in holes on the horizontal side of the machine and thus obtain a number of points that light up on the vertical side of the machine. Bingo can equally be a sort of table game in Belgium, in which event it can only be organised in casino facilities or after authorisation of the local authorities.

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1.2.7. Media Gambling Services

In Belgium, Luxembourg and France, media games are said to serve commercial or advertisement purposes. Not every Member State has enacted a specific definition of media gambling services (i.e. Austria, Cyprus, Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, the Netherlands and the United Kingdom have not).

In general, "broadcasting media game" means any game which is organised by the owner or operator of a radio or television station, where the participation of players therein takes place by or as a result of their presence during the transmission or recording of the programme during which such game is organised or by any intervention on their part by any means of distance communication (Internet, handy) during or after the transmission or recording of the programme during which such game is organised (Malta, Sweden)

In two countries (Spain and Portugal), the possibility of gaining a prize by calling a television program to answer a question and offering non expensive prizes to the public, on a "just for fun" basis is not considered as gaming.

1.2.8. Sales Promotional Gambling

In France, Germany, Latvia, Luxembourg and the Netherlands, sales promotional games are said to serve commercial or advertisement purposes.

In Luxembourg and to some extent in Germany (depending on the type of game operated), sales promotional games are not legally characterised as games of chance. In the Netherlands on the other hand, promotional games of chance (including *free* promotional games, media services and sweep-stake contests) are considered to be games of chance. In Portugal, sales promotional games are defined by public law as a specific category of games of chance and cannot involve money prizes.

In Cyprus, sales promotional prize competitions are expressly declared to be illegal. They are also prohibited by law in Belgium and Portugal, unless participation in the competition is offered free of charge.

1.2.9. Charity Gambling

In general, a "non-profit game", or charity gambling means a game organized by a non-profit organization, the net proceeds of which are intended for a religious, sports, philanthropic, cultural, educational, social or other civic purposes (Belgium, France, Germany, Luxembourg, Malta, the Netherlands and the United Kingdom (Great Britain)). In Cyprus, an activity qualifies as charitable if it is intended to finance the erection of a church, mosque, or public hospital, or is considered by the Minister of Finance to be charitable. In Portugal, charity gambling arrangements, mostly in the form of lotteries, are defined as temporary games.

2. METHODOLOGY

2.1. Identification of all relevant norms and economic data

The Swiss Institute of Comparative Law proposed to **identify and specify all national regulations concerning services relating to the defined market sectors** in EU25 by presenting and analysing, country by country, the various regulatory measures applied (or proposed) by public authorities or private organisations.

A full examination of the statutory and regulatory position in each Member State (EU 25) has been carried out by:

- Direct written contact with the relevant Government Department and/or Agency in each Member State with primary powers in the area of gambling services relating to each of the defined market sectors;
- Direct written contact with the relevant national Courts, administrative authorities, enforcement body (e.g. gambling regulator) or self regulatory organisations with powers in the area of gambling services relating to the defined market sectors; and
- Collecting information on national fiscal regimes to determine the regime applicable to each of the market sectors.

In this respect, the Swiss Institute of Comparative Law contacted a total of 1020 potential stakeholders, of which only 20% (about 200) have responded.

At the same time, potential stakeholders were specifically invited to supply to the Centre for the Study of Gambling detailed statistical and economic information concerning:

- the size and structure of their sectors of the relevant national market for gambling services, in terms of the number and type of operators and the revenues generated;
- taxation rates (including both VAT and gambling-specific taxes), license fees and mandatory payments to charity and “good causes”;
- employment in terms of the number of full time equivalent posts dependent upon the supply of gambling services;
- linkages between sectors of the relevant national gambling market and impacts of the gambling industry upon other parts of the economy and on the voluntary and sports sectors;
- gambler profiles, the prevalence of problem gambling and the nature and extent of measures taken to prevent and treat problematic gambling behaviour.

The response rate concerning the economic aspects of this Study was even lower than 20%. Most of the respondents covered several of the identified sectors in their submissions, but they indicated that they had no information available with respect to the Media Gambling, Sales Promotional and Charity Gambling sectors. Almost all of the government entities who responded to the questionnaires indicated that they do not have data about charitable gambling licenses, because these are typically granted on a decentralised and temporary basis. Other relevant stakeholders have been approached, but they have not provided any serious data.

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We must conclude that the EU gambling markets in the areas of charity, media and sales promotional gambling are not properly documented at present. It appears that the vacuum exists for a combination of reasons. The essential thrust of many responses from stakeholders in the media and sales promotional sectors has been to strongly argue that their relevant activities technically do not constitute gambling. Stakeholders in the charitable sector has indicated a fairly strong desire not to be associated with gambling at all. Stakeholders involved in the research and treatment of gambling addiction and other forms of “problem gambling” showed a positive attitude to the Study, but explained that they lack the resources needed to provide us with important parts of the overall information which our Report was supposed to present, because that information has to be based on statistics which have not yet been collected.¹

In any case, the team of economic researchers working on this Report were faced with quite considerable difficulties in trying to fill large gaps in information that was needed but not forthcoming from primary sources. Such information would be necessary in order to provide complete and meaningful economic analysis and to develop comprehensive models of the EU gambling market.

Particularly little information having been received in respect of the Media Gambling, Sales Promotional and Charity Gambling sectors, the researchers discovered that there also exists very little published research or financial data from secondary sources concerning these sectors. In addition, there is much less information available about the bingo sector than about the remaining four sectors (Lotteries, Casino Gaming, Gaming Machines outside of Casinos and Betting Services).

Some charity gambling activity is included in other gambling sectors. For example, information on charitable lotteries is included in the lottery sections, and bookmaker’s charitable subsidies for horseracing are classified in the betting sections of the country reports. Essentially, charities and non-for-profit organisations are just a form of ownership and organisation, but they often are classified under one or another of the four main identified gambling services sectors (Lotteries, Casino Gaming, Gaming Machines outside of Casinos and Betting Services.)

Media gambling and sales promotional gambling are even more difficult to analyse. The responses were so few that it is very difficult to make any meaningful comparisons and analysis of EU-wide market in these sectors. Some of the stakeholders who did respond regarding these sectors provided conflicting information, which is probably due to the absence of systematic information gathering regarding these sectors, as well as other uncertainties that surround these sectors.

2.2. Formal presentation of the results

This report is divided into two main parts, plus an Executive Summary and Appendices. The First Part refers to legal and regulatory aspects of the supply of gambling services. The Second Part contains economic and statistical information about the gambling industry. The Executive Summary presents the main findings of the Study in a simplified form. The Appendices contain detailed supplementary information.

Some specific explanatory comments are warranted, however.

¹ For example the Consumers Protection Centre in Thessaloniki, replied to our questionnaire by saying that it could provide answers if it were paid about €30'000 to carry out the necessary surveys.

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2.2.1. The Executive Summary

The *Executive Summary* at the beginning of the Report **provides a comparative overview of the normative measures** imposed by each of the 25 Member States on each sector of the market for gambling services and **identifies those fields that display the greatest differences**. Those gambling services that are most likely to be subject to barriers to a unified Internal Market, in terms of the EC Treaty's provisions on the freedom of establishment and the freedom to provide services (Article 43 and 49 EC), are made clearly apparent.

Thereafter, the *Executive Summary* **presents in summarised form the findings of the Study in respect of the size and structures of the various sectors of the EU Internal Market for gambling services**. The market for **cross-border remote gambling services** is presented separately from the market for traditional delivery of gambling services, the latter being an aggregate of the national markets of the 25 Member States, while the former may be considered at the pan-European level. The essential outcomes of **three distinct scenarios for the development of the EU Internal Market for gambling services in the next five years**, based on recognised economic models and limited available data, are described.

2.2.2. The Legal Study

The **First Part**, devoted to the *Legal Study*, consists of two chapters.

The **First Chapter** has 25 sections, each dedicated to a different Member State of the European Union. It examines the legal situation in each country with respect to gambling.

Every section is structured in an identical manner, so as to facilitate cross-sectoral reading. **After a short introduction to the legal system of the Member State and a list of its relevant legal definitions, each country report provides a list of relevant national legislation** and recognised codes in force for each market sector, a **list of key national jurisprudence** and key decisions by administrative authorities or self regulatory organisations for each market sector, and a **list of relevant proposed national legislation or codes** for each market sector.

The **Second Chapter** of the Legal Study is a **pan-European survey** for each market sector. It examines the justifications of restrictions in respect to European law. The first section is devoted to an **analysis of the decisions of the European Court of Justice (ECJ) and of the criteria developed by the ECJ**. The second section **compares these criteria to the various national legislative provisions and jurisprudential holdings**. Here again, there is a table concerning each Member State. This is followed by a **comparative overview of taxation of gambling services** by each of the Member States, including tables which indicate the degrees of divergence of the fiscal burden imposed on various market sectors in the various Member States and tables which summarise the relevant provisions of tax law in force in each Member State.

2.2.3. The Economic Study

The **Second Part** of the Study aims to present a set of *reasoned economic scenarios for the development of the EU market and associated markets by 2010*.

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This Part is **divided into twelve Chapters**.

Chapters 1, 2, 3, 4 and 5 present the **relevant considerations of economic science in summary form** and explain the limitations faced by the team of economic researchers who prepared this Part of our Report.

Chapter 6 has 25 subsections, each dedicated to a different Member State of the European Union. It **describes the market for gambling services in each country**.

Every subsection is structured in an identical manner, so as to facilitate cross-sectoral reading. After an introductory passage explaining the nature and structure of important national gambling industries, **each subsection systematically reproduces the available data concerning each sector of the national market** for gambling services. It **ends with a statistical summary** of the essential characteristics of the gambling market of the relevant Member State.

Chapter 7 contains a study of the **economic impact of remote gambling**, including gambling via the Internet, mobile telephones and digital television, on the aggregate EU market for gambling services of all kinds.

To constitute a foundation for prognostics as to possible future changes in the aggregate EU market, **Chapters 8 and 9** examine and **summarise existing scientific knowledge of economic factors** at work in gambling markets and related sectors of the economy and society, while **Chapter 10** provides a manageable **summary of the available economic statistics in terms of EU-wide aggregates**.

Chapter 11 then **develops economic models that provide a basis for examining the possibilities for growth in the EU-wide market for gambling services in the coming five years**, within three distinct scenarios. These scenarios were chosen by the authors of this report and not by the European Commission's services. Their purpose is solely illustrative, demonstrating the foreseeable impact of essentially regulatory changes on the measurable (rather than all) economic variables underlying the supply and consumption of gambling services.

2.2.4. The Appendices

Information which is of relevance to our Study and provides a background to this Report, but could not be included in the body of the Report, is set out in five appendices.

Appendix 1 contains the details of the research literature from which some of the information contained in Part 2 of our Report was obtained.

Appendix 2 lists all the gambling industry stakeholders who were directly requested to provide input to the Study.

Appendix 3 lists all the persons and organisations who did provide input to the Study.

Appendix 4 provides some information about the authors of this Report.

Appendix 5 reproduces some of the formal "observations" made by stakeholders about the draft version of this Report. A draft report was made available to stakeholders in electronic

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form on 24 April 2006. Stakeholders were invited to make oral observations on that draft at a formal Meeting of Stakeholders which took place in Geneva, Switzerland, on 8 May 2006. They were also invited to make written observations by 22 May 2006 at the latest. About 80 stakeholders actually submitted oral and/or written observations. In so far as those observations enabled the correction of inaccuracies in the draft report or provided information which the authors had overlooked or been unable to obtain, they have been integrated into the body of this Report. The remaining observations are contained in the appendix and are accompanied, wherever this is appropriate, by explanations on the part of the authors of this Report as to why the modifications suggested by the stakeholders could or should not be made.

3. LEGAL SYNTHESIS OF BARRIERS

Important Preliminary Remark

This Executive Summary and the European Law Report mention certain Member States over and over again and they may well feel that they are being pointed at as the ones least respectful of European law.

In fact, this is probably not the case. On the contrary, they are likely to be the most respectful Member States.

The other States are not mentioned there for a combination of the following reasons:

- we have not received much information from their governments and other stakeholders. This is particularly true of Greece, Ireland, Luxembourg and the ten New Member States;
- their courts may not have considered the compatibility of their gambling laws with EU law;
- their legislatures have not expressly considered the need to comply with EU law when enacting national measures restricting gambling services.

The result is that the laws of the seldom-mentioned Member States might actually be considered to be presumptively inconsistent with EU law until they show otherwise!

3.1. Panorama of General Principles

3.1.1. General principle of prohibition

A number of Member States proscriptively consider that **gambling is prohibited on their territories, except in so far as exceptions** are provided by law (this is true of Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Luxembourg, the Netherlands and Slovakia). This **restrictive policy** aims to safeguard the interests of consumers and to prevent fraud, illegal gaming and gambling addiction (Austria, Belgium, Denmark, France, Germany, Greece, Luxembourg, the Netherlands and Slovakia). It also aims at ensuring that the profits derived from the gambling market are devoted to the public's general interests (Belgium, Denmark, France, Greece, Germany).

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In certain Member States (the Czech Republic, Denmark, Germany, Hungary, the Netherlands, Slovakia and Sweden), it is unlawful to facilitate participation in **foreign games of chance**. It may similarly be unlawful to deliberately participate in an illegal game of chance offered by a foreign operator not licensed by the competent national authority of the Member State where the participant resides (Austria, Germany, the Netherlands).

Often, **on-line gaming is also prohibited**, at least in so far as no national gaming licenses can be issued for on-line gaming (in Cyprus, Greece, Portugal and at present the Netherlands).

Sometimes, **advertising of casino gaming services and other forms of gambling is severely restricted**, for example in Belgium (where regional legislation and self-regulatory norms limit or condition the advertisement of certain types of games of chance), Estonia, Lithuania, the Netherlands (where strict self-regulatory norms limit and condition the advertisement of certain types of games of chance), Poland and the United Kingdom (Northern Ireland).

3.1.2. Licensing requirements

Most Member States require every operator of any form of gambling on their territories to obtain a **licence** within the jurisdiction (Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain and the United Kingdom). In general, the policy of granting licenses is restrictive and potential licensees have to comply with a series of strict requirements.

Moreover, gaming **licenses can only be issued by national or regional authorities**; whether or not the operator disposes of a foreign gaming licence or complies with foreign gaming regulations is irrelevant (Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, France, Finland, Germany, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovakia, Slovenia, Spain, the Netherlands and Sweden).

In a majority of Member States, there are **specific requirements as to the type of legal entity** entitled to run the gambling activity (this is true in Austria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Lithuania, Malta, Poland, Spain, Slovakia and Sweden). In Finland, licences are only issued to non-profit national companies.

Often, a licence can only be issued to a legal entity with **registered offices on the territory of the State** where the gambling business is operated (Austria, the Czech Republic, Estonia, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia).

Several Member States **restrict the accumulation of licences by individual licensees**. In Belgium, for example, it is not permissible to hold a type E licence (needed for the sale, rental, maintenance etc. of gambling equipment) at the same time as one or more of the other types of licences (A, B, C, D). In Finland, it is not possible for an operator to hold any two or more types of licence at the same time. Dutch gaming licenses for certain types of games of chance (i.e. State Lottery or casino gaming) are issued on a permanent basis. Since only a **single gaming licence** can be issued for these types of games (cf. infra, n° 3.2.2 and 3.2.3), such legislation results in a barrier which completely hinders other providers (foreign or domestic) from accessing the gambling market for these types of games of chance.

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3.1.3. Numerus Clausus

In most Member States, the **number of operators entitled to run a gambling business is limited**.

There is thus a ***numerus clausus* of casinos and gambling halls** in the following Member States: Austria (where there is also a *numerus clausus* in respect of lottery service providers) Belgium, Germany, Portugal (where there is also a *numerus clausus* for bingo halls), Spain and Slovenia. The Netherlands, Sweden and the United Kingdom (Great Britain) maintain a *numerus clausus* for casinos, but not for gambling halls.

Sometimes, only a **single operator** is licensed, in particular for casinos (Austria, the Netherlands and Sweden), horse racing (Cyprus, Greece and the Netherlands), and sports betting (France, Greece and the Netherlands), creating in certain cases a monopolistic position from the legal standpoint. Similarly, a draft law containing temporary provisions on games of chance offered via the Internet is intended to exclusively licence the current Dutch casino gaming licensee (Holland Casino) to provide on-line gaming in the Netherlands.

3.1.4. Monopoly

Some European jurisdictions have set up a **State monopoly for games of chance** (Austria, Denmark, Finland, Germany (within the scope of the Länder legislation; some of the *Länder* have imposed express monopolies, while others attribute *de facto* monopoly rights to State-held entities), Estonia, Greece, Hungary, Slovakia and Sweden). In others, individual operators enjoy a **monopolistic position**, as is the case in particular of national lottery operators (Belgium, Cyprus, France, Ireland, Luxembourg, Malta, Portugal and the United Kingdom).

It must also be noted that in respect of particular sectors (e.g. horse race betting off the tracks), certain States have set up a single national operator, which appears to have a monopolistic position. This single operator is in fact a type of consortium that coordinates the betting business of a very important number of local operators on the tracks. In this type of closed market, the real effect of the so-called “legal monopoly” is to exclude commercial betting operators, in particular those based in other Member States.

3.2. Panorama of Barriers in each Market Sector

3.2.1. General principle of prohibition

Refer above, to point 3.1.1.

3.2.2. Lotteries

Prohibitions and restrictions

Specific prohibitions and restrictions with respect to lotteries include:

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- **Prohibition to establish a branch abroad** or acquire a qualified participation in a foreign company if such an acquisition would result in a reduction in revenue from the licence fee (Austria)
- **Prohibition against sale of tickets in foreign lotteries** (Cyprus, Czech Republic, Finland, Portugal, Spain, Sweden, Slovakia and the United Kingdom). In the Netherlands, (foreign) operators cannot offer foreign lottery products, unless validly licensed by the Dutch authorities, which currently however, refuse to do so. The same is valid for Austria and Denmark.
- **Limit on the amount of stakes** (in Sweden, the value of the prizes in the lottery must correspond to at least 35% and at the most 55% of the value of the stakes).

Licenses

Most Member States **licensing requirements for lottery operators** (Austria, the Czech Republic, Denmark, Estonia, Finland, Germany, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Slovakia, Sweden and the United Kingdom) and thus **limit the number of operators** (Luxembourg, the Netherlands and Slovenia). Some countries only issue a **single licence** (Austria -*Österreichische Lotterien Gesellschaft mbH*, Denmark -*Dansk Tipstjeneste A/S*, Ireland -*An Post*, Malta -*National Lottery-Intralot*, United Kingdom -*Camelot Group* and Italy). Others clearly have created a **legal monopoly**: Belgium (*Loterie Nationale*), Cyprus (*Cyprus Government Lottery*), France (*La Française des Jeux*), Greece (*Direction des loteries étatiques*), Ireland (*An Post National Lottery Company*), Latvia (*Latvijas Loto*), Portugal (*Santa Casa da Misericórdia de Lisboa*), Spain and Hungary (*Szerencsejáték Rt.- The National Lottery of Hungary*). Some of the German *Länder* have created express monopolies, others maintain *de facto* monopolies.

Often, the **license is also limited in time**: Austria (15 years), Denmark (5-10 years), Finland (5 years) and the Netherlands (licences to run the bank-giro lottery, the postcode lottery, the lotto, the instant lottery and the sponsor lottery are issued for a 5 year period, while the licence issued to the state lottery is indefinite).

Specific requirements

Some Member States maintain specific legal requirements as to the **type of legal entity** entitled to run a lottery (Denmark, Estonia, Finland (must be a non-profit Finnish legal entity), Germany, Lithuania, Slovakia and Sweden (must be a non-profit Swedish legal entity), or **nationality requirements** for the operators (Finland and Sweden).

Often, the law imposes **residence or domicile requirements** on the operators (Austria, the Czech Republic, Denmark, Estonia, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Spain and the United Kingdom).

Some countries also impose specific requirements with respect to the players. Thus, France requires that the **players be resident in the country**, whereas in the Netherlands, De Lotto's Rules and Regulations require that each player have a **Dutch bank account**.

In some countries, **lotteries can only be organized for charitable purposes** (Denmark, Estonia, Finland, Luxembourg, the Netherlands (except for the State Lottery, which donates a part of its proceeds to the State Treasury) and Sweden).

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Advertising

Sometimes the **advertising of lottery products is limited** (Estonia, Finland, the Netherlands (where advertisements for gambling services must comply with a self-regulatory code), Lithuania, Spain and the United Kingdom (Northern Ireland)). Austria, the Czech Republic, Denmark, Finland, Germany, Portugal and the United Kingdom **prohibit advertising for foreign lotteries**.

3.2.3. Casino Gaming

Prohibitions and restrictions

In Cyprus, Ireland and the United Kingdom (Northern Ireland), **the establishment of casinos is entirely prohibited**. Austria does not allow its exclusive domestic operator to establish a branch abroad or acquire a qualified participation in a foreign company if such an acquisition would result in a reduction in revenue from the licence fee.

Legislation often specifies a limited list of games allowed to be played in casinos (Belgium, Denmark, Finland, France, Germany, Luxembourg, the Netherlands, Portugal, Spain, Sweden, (the license issued to the casino gaming operator must contain a list of games allowed to be played in its casinos) and the United Kingdom (Great Britain)).

Licenses

Most Member States maintain **licensing requirements for casino operators** (Austria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary (in the Concession Contract), Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom (Great Britain)), and this license is often **limited in time** (Austria (15 years), Belgium (5 years), Denmark (10 years), Estonia (5-10 years), Finland (5 years), France (15-18 years), Germany (usually 10 years), Luxembourg (the Luxembourg authorities must stipulate the period for which the licence remains valid) and the Netherlands (the Dutch authorities must stipulate the period for which the licence remains valid)).

Sometimes only a **single operator** is allowed (Finland -*Raha-automaattiyhdistys*, the Netherlands -*Holland Casino* and Sweden -*Svenska Spel*). This operator may be **controlled by the State** (which is the case in Finland and Sweden). In particular, in the Netherlands, only the licensee of the casino games can be granted a license to operate slot machines inside its casinos.

Many countries also maintain a **numerus clausus** system. For example: Austria (12 casinos), Belgium (9 casinos), Italy (4 casinos), The Netherlands (14 casinos), Portugal (8 casinos, 2 more expected in 2006), Slovenia (15 gaming houses), Sweden (6 casinos, though only 4 are operating at the moment), United Kingdom (Great Britain) (under the Gambling Act 2005, 17 new casinos will be permitted to open, in addition to the 137 small casinos currently licensed). In Germany, the numbers vary according to the *Land*, between 1 and 10.

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Specific requirements

Some Member States maintain specific legal requirements as to the **type of legal entity** entitled to run a casino (the Czech Republic, Finland, France, Germany, Lithuania, Poland, Portugal, Slovakia, Spain and Sweden). Often, national laws also impose **residence or domicile requirements** on the operators (Austria, the Czech Republic, Finland, Lithuania, Malta, Poland, Slovakia and Spain).

In France, Germany, Luxembourg, Poland and Portugal, casinos can only be operated in **specific types of towns or gaming zones**. The establishment of new casinos in Belgium, The Netherlands and the United Kingdom (Great Britain) is subject to the prior approval of the local authorities and subject to conditions, thus limiting the operation of casinos *de facto* to specific “zones” or areas.

In a majority of Member States, the minimum **age limit** for entering a casino is 18 years (Austria, the Czech Republic, Denmark, Finland, France, Hungary, Latvia, Lithuania, the Netherlands, Poland, Portugal, Slovakia, Slovenia and the United Kingdom (Great Britain)). In Belgium and Estonia however, the minimum age limit to enter a casino is 21 years and in Sweden it is 20. In Germany, the minimum age varies between 18 and 21, depending on the *Land*. In Austria, the minimum age for interactive games is 16 and a bank account in Austria is required. In Malta, the minimum age for entry is generally 18 years, however citizens of Malta must be at least 25 years old.

Advertising

Some Member States (Estonia, Lithuania, the Netherlands (where advertisements for gambling must comply with a self-regulatory code), Spain, Sweden (Casino Cosmopol is not allowed to implement an aggressive marketing policy) and the United Kingdom (Northern Ireland)) restrict the **advertising of casino gambling services**. Advertisement of casino gambling services is entirely prohibited in Portugal.

3.2.4. Machine Gambling Outside Casinos

Prohibitions and restrictions

Certain Member States entirely **prohibit machine gambling outside casinos** (Cyprus, France, Greece, Luxembourg and Portugal and Latvia will do so as from 1.1.2007).

A few Member States prohibit the location of gambling machines in particular types of premises (Lithuania, Latvia and the Netherlands (gaming machines cannot be operated in so-called “low barrier locations”, referred to in the Dutch language as “laagdrempelige inrichtingen” and including cafeterias, snack bars and community centres).

In **Finland**, slot machines and casino games must, according to the Finnish Lotteries Act, be sited in a **supervised space**. They may not be sited in a space where their use could endanger safety or cause a public disturbance.

Others **limit the number of gambling machines per location**. (Belgium, Austria -between three and eight per location, Denmark -three per restaurant with permit to serve alcohol, Germany -three in restaurants, 12 in gaming arcades, the Netherlands -a maximum of two

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gaming machines can be operated in a “high barrier location” referred to in the Dutch language as “hoogdrempelige inrichtingen”) and including bars and restaurants, but more are permitted in amusement arcades, and the United Kingdom (Great Britain)).

Various Member States **prohibit the use of certain types of machines** (Belgium, Austria - cash-prize gambling machines in six *Länder*, France -second-hand machines, Portugal - machines awarding cash prizes, and the United Kingdom (Northern Ireland) -high turnover machines). In the Netherlands and the United Kingdom, only approved types of gambling machines may be operated, imported or sold, while in Germany, machines must be approved by the National Metrology Institute to be permitted for operation.

Licenses

About half of the Member States maintain **licensing requirements for machine gambling operators** (Austria, Belgium, Denmark, Finland, Germany, Ireland, Italy, Malta, the Netherlands (where the operation of slot machines is subject to a triple licensing scheme), Sweden and the United Kingdom), and this license is often **limited in time** (Austria (2-10 years), Belgium (5-9 years), Denmark (5 years), Finland (5 years)).

Certain Member States also maintain a ***numerus clausus*** system (Belgium (180 gambling halls), Slovenia (40 game rooms) and Spain (6057 machines on the Balears)).

Specific requirements

Some Member States maintain specific legal requirements as to the **type of legal entity** entitled to run a machine gambling business (Finland, Spain (Aragon) and Sweden). The laws of certain Member States also impose **residence or domicile requirements** on the operators (Austria (depending on the *Land*), Denmark, Finland and Malta). In 1979, an Order issued by the Spanish Ministry of Interior created a **monopoly for importing and manufacturing gaming machines**. Although formally still in force, it seems that this Order has been tacitly abrogated.

Advertising

Advertising of machine gambling services is legally restricted in Estonia and the Netherlands, where advertisements for all types of games of chance must comply with self-regulatory norms)

3.2.5. Betting

Prohibitions and restrictions

Specific prohibitions and restrictions with respect to betting include:

- **General prohibition of betting on non-sports events** (Belgium, France, Luxembourg and Portugal)
- **Prohibition of bets lodged with bookmakers** (Cyprus, France, Luxembourg and the Netherlands)

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- **Prohibition of on-line betting** or by means of communication technology (Cyprus and the Netherlands (although it is permitted in the Netherlands to use the Internet as a distribution network for bets that are offered in certain shops, ie. those operated by De Lotto, and betting offices, including those operated by Scientific Games Racing. This is considered to constitute e-commerce, not e-gaming)).
- **Foreign operators are prohibited from accepting bets by residents of the Member State imposing the prohibition** (Czech Republic, Denmark, Finland (in that the Finish Lotteries Act prohibits the sale or supply of tickets for a lottery run without a licence and that a licence can only be granted to a legal entity whose registered office is located in Finland), France (subject to agreements between the PMU and certain foreign operators), Germany (where the unlicensed operation and transmission of bets to unlicensed operators is prohibited, but the subject of much jurisprudential controversy), the Netherlands (unless validly licensed by the Dutch authorities, which however, currently no operator is), Portugal and Spain).
- **Restrictions affecting off track betting** (Spain (Madrid))

Licenses

Almost all Member States maintain **licensing requirements for betting operators** (e.g. Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Ireland, Luxembourg, Germany, Hungary, Latvia, Lithuania, Malta, the Netherlands, Poland, Slovakia, Sweden and the United Kingdom) and may thus **limit the number of operators** (Luxembourg, the Netherlands and Slovenia). In Spain (Cataluña) there is a **numerus clausus** of horse racing tracks. Some countries only issue a **single licence** to operate sports betting games (Denmark -*Dansk Tipstjeneste A/S*, Finland -*Veikkaus Oy*, Italy - AAMS, the Netherlands -*National Sports Totalizator Foundation*, and Sweden -*Svenska Spel AB*) or horse race betting (Cyprus -*Nicosia Racing Club* for horserace pool betting, Finland -*Fintoto Oy*, The Netherlands -*Scientific Games*, Spain (Madrid) -*Zarzueta*, and Sweden -*ATG*), which **license may also be limited in time** (Denmark (5 years), Estonia (5-10 years), Finland (5 years) and the Netherlands (the Dutch Minister must stipulate the period for which the licence remains valid)). It is foreseen that the current exclusive license to offer pool betting services in respect of horse racing in Great Britain (United Kingdom) will be extended for a further seven years once the Gambling Act 2005 is brought into force.

Other Member States clearly have created a **legal monopoly** for operating **betting on horse racing, either generally or off the racing tracks** (Cyprus -*Nicosia Race Club* in respect of pool betting, Greece -*ODIE* in respect of pool betting, and Portugal), even if some of these operations do not constitute a monopoly in the economic sense (refer above, point 3.1.4.) In Greece, *OPAP* has been allocated the legal monopoly right to offer **fixed-odds betting services on all kinds of sporting events**.

In the United Kingdom (Great Britain), the operators of licensed greyhound racing tracks will effectively retain monopoly rights in respect of **pool betting on greyhound racing** until the end of 2012.

Specific requirements

Some countries have specific legal requirements as to the **type of legal entity** entitled to offer betting services (Cyprus, Denmark, Finland and France), or **nationality requirements** for the operators (Finland and France).

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Sometimes, the law imposes **residence or domicile requirements** on the operators or their agents (the Czech Republic, Luxembourg, Lithuania, Latvia, Poland, Slovakia, Slovenia, and the United Kingdom (Northern Ireland)). Austria (Lower Austria) and Malta require the operator to run the business from a location in the territory where the betting takes place.

In some cases, the profits must go to charitable and non-profit purposes, rather than into the public purse. This applies in Denmark, Finland and the Netherlands and to the profits of pool betting on horse racing in the United Kingdom (Great Britain).

Advertising

Sometimes, the advertising of betting services is limited (Estonia, Greece, Germany (where advertisements for unlicensed operators are prohibited) and the Netherlands (where advertisements for all types of gambling must comply with self-regulatory norms)).

3.2.6. Bingo

Prohibitions and restrictions

For Austria and Germany, refer to point 3.2.2. above, as Bingo is covered by the licence for lottery games. In Cyprus also, bingo is considered to be a kind of lottery.

Licenses

Most countries impose **licensing requirements upon bingo operators** (Austria, Cyprus, Denmark, Finland, Italy, Latvia, Malta, Portugal, Spain, Sweden and the United Kingdom). Some countries only issue a **single licence** (Austria – *Österreichische Lotterien Gesellschaft mbH* and Italy – AAMS). Spain (Canarias and Catalonia) maintains a **numerus clausus system**. Cyprus allows bingo services to be offered by the public sector broadcaster and by charitable organisations.

Specific requirements

Some jurisdictions maintain specific legal requirements as to the **type of legal entity** entitled to offer bingo services (Cyprus, Denmark (only organisations and committees), Finland, the Netherlands, Spain (Valencia and Navarra), Portugal and Sweden), or **nationality requirements** for the operators, so that only domestic companies can organise bingos (Spain and Sweden). In the Netherlands, only domestic associations or foundations, previously existing for over three years, can organise bingo sessions.

Often, the law imposes **residence or domicile requirements** on the operators or their agents (the Czech Republic, Denmark, Lithuania, Latvia, Malta, Poland, Slovakia, Slovenia, Spain and the United Kingdom (Northern Ireland)).

Portugal **prohibits the provision of bingo services in certain locations.**

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Advertising

We have not found any restrictions on the advertisement of bingo services specifically.

3.2.7. Media Gambling Services

Prohibitions and restrictions

In some Member States, only free games are allowed (Finland, France and Luxembourg)

Licenses

Some Member States maintain **licensing requirements for media gambling operators** (Cyprus, Malta and Sweden). In Cyprus, a license may be issued only to the public sector broadcaster.

Specific requirements

Belgium has introduced specific rules on **gambling via SMS, MMS or value-added telephone numbers**. Providers of media gambling services in the Netherlands are currently required to comply with the rules governing the operation of sales promotional games.²

Advertising

We have not found any restrictions on the advertisement of media gambling services.

3.2.8. Sales Promotional Gambling

Prohibitions and restrictions

In Austria and Germany, it is unlawful to require purchase of the goods or services being promoted as a condition of participation in the promotional competition. In Belgium, Finland and France, only free games are allowed. In Cyprus and the United Kingdom (Northern Ireland), sales promotional competitions are permitted only if they depend to a substantial degree on the exercise of skill, rather than completely upon chance. In the Netherlands, promotional games of chance can only be organised to promote certain goods or services and they can not constitute an independent game of chance.

Some Member States set limits to the amount of prizes (Denmark, the Netherlands and Spain). In Latvia, the prize of a goods and services lottery may not be alcohol (including beer), tobacco or medicine.

² Refer below, point 3.2.8.

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Licenses

A number of Member States maintain **licensing requirements for operators** of sales promotional games (Latvia, Malta, Portugal and the United Kingdom (Great Britain)). In the Netherlands, operating promotional games of chance is subject to the requirements of the Code of conduct for promotional games of chance, a self-regulation elaborated by the Netherlands Justice Department and a series of stakeholders, which anticipates a revision of the Dutch Act on games of chance. Operating promotional games of chance is not subject to a licence requirement, in so far as the provider complies with the provisions of the code of conduct. In Germany the license requirement depends on the type of game operated for promotional purposes.

Specific requirements

Producers who wish to offer promotional competitions in the United Kingdom (Great Britain), on condition that participants pay for entry but do not need any particular knowledge or skill in order to win, may lawfully do so only if they obtain lottery licenses. However, lottery licenses cannot be issued to commercial producers of goods or services.

Advertising

Two member States **limit advertising** of sales promotions (Portugal and the Netherlands, where there are self-regulatory norms for the advertisement for games of chance in general and promotional games of chance in particular). Additionally, advertising for sales promotional gambling must not lead the consumer to think he/she is sure to have won something (Belgium and Luxembourg).

3.2.9. Charity Gambling

Prohibitions and restrictions

We have not been able to identify any specific prohibitions against the provision of charity gambling services.

Licenses

About half of the Member States maintain **licensing requirements for charity gambling operators** (Belgium, Cyprus, the Czech Republic, Estonia, Germany, Ireland, Lithuania, Luxembourg, Malta, Slovakia, Slovenia, and the Netherlands). In Portugal, charitable lotteries are authorized, on case per case basis, by the Ministry of Internal Affairs, which also has the power to stop the organization of an authorized charity lottery if it becomes addictive or causes other social damage.

Charitable gambling services may be reserved to a **monopoly** (Spain -*National Association of the Blind*).

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Specific requirements

The laws of Member States often impose residence or domicile requirements on the operators or their agents (Czech Republic, Estonia, France, Lithuania, Malta, Slovenia and the United Kingdom (Great Britain)).

Advertising

We have not identified any specific restrictions on the advertisement of charity gambling services.

3.2.10. Taxation of Gambling Services

In addition to examining the barriers which directly hinder free movement of gambling services between Member States, we have also examined the fiscal treatment of gambling services within each Member State, given that substantial differences at this level may also have the effect of hindering the realisation of a single internal market in gambling services.

The **result of our examination**, in the broadest terms, is that **the differences between the Member States in their fiscal treatment of gambling services is presently enormous**. National tax systems employ completely distinct and often incompatible structures, concepts and methods of imposition, which make it extremely difficult to even compare, in rational terms, the burdens which they impose on each sector of the gambling market. By adopting systematic simplifications and assumptions based on actual market conditions, we have nevertheless been able to prepare **tables ranking the Member States by their comparative-equivalent national tax rates in each of the sectors for which sufficient information is available, namely lotteries, casino gaming, machine gambling outside casinos, betting and bingo**. The table concerning **lottery** services shows that the proportion of Member States which reserve the full proceeds to public or charitable purposes is so large, that there is no sense in making a comparison of tax burdens. In respect of the **remaining sectors** mentioned, the tables show that the **divergences in tax burdens are very large**, which might in turn indicate that there is a **high risk of market distortion** due to national differences in the fiscal treatment of gambling services.

3.3. Panorama of Justifications with respect to European Law

3.3.1. Criteria found in European Court Cases

3.3.1.1. Criteria for Justification set up in gaming cases:

Accepted criteria by the ECJ include:

- Maintenance of the **public order**, whose notion may vary from one country to another prevention of fraud and other criminal activities
- Limitation of the exploitation of the human passion for gambling, prevention of the damaging individual and social consequences of incitement to expenses and more generally **consumer protection**
- Maintenance of the **social order**, protection of moral and cultural aspects
- Prevention of gambling from being a source of private profit

Only additionally permitted criterion:

- The **financing of social activities**, which must be an incidental beneficial consequence and not the fundamental justification³

Expressly excluded criterion:

- The avoidance of a **diminution or reduction of tax revenue** is no valid justification⁴

As the ECJ expressly stated, however, the above-mentioned justifications must not simply be alleged, they must be based on a real and recognizable reason:

- The restrictions must **reflect a desire to bring about a genuine diminution of gambling opportunities**.⁵ It is necessary to determine whether the national legislation actually **serves the aims which might justify it**.⁶ In so far as the State operators **incite and encourage** consumers to participate in games of chance **to the financial benefit of the public purse, public order concerns** relating to the need to reduce opportunities for gaming **cannot be invoked by the national authorities**.⁷
- The reasoning must enclose **statistical or other evidence** which lead to the conclusion that the justification ground is really existent.⁸

³ See C- 67/98, *Zenatti*, para. 36.

⁴ See C 243/01 *Gambelli* , para. 61 and 62.

⁵ See C-243/01 *Gambelli*, para. 67.

⁶ See C-243/01 *Gambelli*, para. 67.

⁷ See C-243/01 *Gambelli*, para. 69, 72

⁸ See *Lindman*, C-42/02, para. 26.

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3.3.1.2. Proportionality

The ECJ equally made clear how the notion of proportionality should be understood with regard to national measures restricting gambling activities:

- National restrictions must **in any event** be applied **without discrimination**⁹
- The justifications invoked by a Member State must be accompanied **by an analysis of the appropriateness and proportionality** of the restrictive measure adopted by that State.
- In principle, the level of protection a Member state wishes to provide does **in itself** not affect the proportionality of national provisions. On the contrary the Member States can decide for themselves upon the **system of protection** which **can differ from that adopted by another Member State**.¹⁰
- The restrictions imposed by national legislation, including the penalty which may be imposed in case of breach, must however, **be proportionate in the light of the concrete aims in the particular case. It has to be assessed whether there are less restrictive alternative means** which are equally effective.¹¹ (E.g. even if the objective of the authorities of a Member State is to avoid the risk of gaming licensees being involved in criminal or fraudulent activities, it has to be carefully examined if there are no other means of checking the accounts and activities of gaming operators)
- The proportionality of the imposition of restrictions has to be examined even more strictly where the supplier of the service **is subject in his Member State of establishment to a strict regulation and control system**.¹²

3.3.2. Justifications found in National Law and Jurisprudence

3.3.2.1. General Remarks

As a general remark it has to be underlined that **the authorities of several Member States have never dealt and their courts have never been confronted with the problem of EC law compatibility of their national gambling rules**. In those countries where the authorities had to face the problem, the **analysis of EC law compatibility effectuated by them so far is often not exhaustive and at times even rather poor**.

a) Justifications for barriers

In some countries, **no official justifications** have been given *expressis verbis* by the legislature or the jurisprudence; this is especially true of the **new EU Member States**. Evidently the fact that no such reference has been made to the justification for or proportionality of a restrictive national regulatory measure **does not** by itself mean that the measure is or not justified and indeed begs the question of **which justification** might be involved. In most of the relevant cases, it would appear however, that the restrictive national legislative measures are at least implicitly based on **some kind of concern for public order**.

⁹ See (as many others) C-243/01 *Gambelli*, para. 65.

¹⁰ See e.g. C-275/92, *Schindler*, para. 61 and C-124/97 *Läära*, para. 35.

¹¹ See *Läära*, para. 32; *Zenatti*, para. 36 and 38; *Gambelli*, para. 67.

¹² See *Gambelli*, para. 73.

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In those countries where justifications are given, the legislatures or jurisprudence generally list **several justifications**, often **without drawing any precise distinctions** between them.

In those countries where justifications are given, the legislatures or jurisprudence generally list **several justifications**, often **without drawing any precise distinctions** between them.

b) Proportionality

Even if justifications are given, however, national legislatures and jurisprudence often **do not refer to precise criteria** for the evaluation of the proportionality of the measures taken. In cases in which national measures are found to be justified, there is a tendency to refer to the notion of “proportionality” **in very broad terms**, stating for example that “[the measure] is “proportionate“ or “is in accordance with the criteria set out in the Gambelli judgement”.

Parliamentary reports and resolutions in some countries do contain **more detailed reasoning and in judgements questioning the justifiability** of national barriers, the national courts tend to argue more precisely as regards proportionality, considering whether other measures would have been equally effective, but less restrictive.

3.3.2.2. *Summary of justifications and proportionality criteria advanced by national legislators or jurisprudence*

a) **Justifications found in national legislative materials and court decisions:**

There follows a list of examples of justifications actually advanced by the organs of Member States. Most of them **list several of these justifications, often without drawing any precise distinctions between them:**

“To attain public order and socio-politically related objectives, particularly player protection” – “Complete prohibition will encourage illegal gaming, so it has to be allowed, but clearly regulated and controlled by the State” – “Fiscal policy objectives: to achieve the best tax income” (Austria)

“To protect social order, to combat gambling addiction and money laundering and to prevent crime and fraud” (Belgium)

“-To ensure the integrity, the security and the reliability of gambling transactions and to watch over the transparency of the management of gambling activities;
- to channel the demand for gambling services into a state monitored circuit in order to prevent fraudulent or criminal management of gambling activities and to fight money laundering;
- to control consumption of gambling services in order to prevent gambling addiction;
- to ensure that minors under the age of 16 will not be encouraged to gamble” (France)

“Avoidance of an increase in the human passion for gambling and its exploitation for private or commercial profit” – “Guarantee of orderly gaming activity” – “Avoidance of the risk of crime and fraud” - “Control of the human passion for gambling” – “Avoidance of excessiveness and of profit-driven abuses” – “Guarantee of compliance with legal provisions and use of proceeds for public interests” (Germany)

”To prevent the evil of tempting poor people to part with their limited resources in the remote expectation of gaining substantial rewards” (Ireland)

“Protection of public order and of the health of the citizens that may be endangered by uncontrolled and unregulated games and bets, as well as the combating of illegal and

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clandestine phenomena”; “the moral implications involved in the public action in the gaming sector need also to be taken into account: an attitude of open support of game, that may turn the public action in a open promotion of conducts socially sanctioned by current morals, is full of risks” (Italy)

“To channel, satisfy, limit and control the human passion for gambling” (Luxembourg)

“Prevention of money laundering and exigencies of public interest” (Malta)

“To satisfy the human passion for gambling and to prevent illegal gaming” - “To prevent gaming addiction, to counter illegal gambling and to protect consumers’ interests” - “To safeguard the public interest by preventing fraud and illegal gambling and by protecting the interests of consumers and minors” (the Netherlands).

“The restrictions on gaming are not a matter of economic efficiency, but a social policy issue with most evident implications for cultural, moral, criminal and health fields. Gaming addiction is similar to alcohol and drugs and it has completely destructive effects on families and individuals. A minimum supply of money-prize games should be maintained in order to hinder the spread of illegal gaming. Only the Member States that are closest to their citizens have the capacity to regulate that supply” (Portugal)

“The main aims of Swedish gaming legislation are to protect the individual and society and to dedicate the benefits to the public interest.” (Sweden)

b) Justifications categorised by objective¹³

We have grouped the justifications advanced by national authorities into four categories as identified when examining the ECJ case law.

aa. Public order, prevention of money laundering and crime

Most of the Member States including Austria, Belgium, Denmark, Finland, France, Germany, Italy, Luxembourg, Malta, the Netherlands, Portugal, Spain, Sweden and the United Kingdom refer to public order as a sort of “basic justification”, mostly combined with a reference to the prevention of crime and the need to combat gambling addiction.

bb. Consumer Protection

This is referred to by several Member States, including Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

cc. Social Order Moral and Cultural Considerations

This is referred to by several Member States, including Austria, Finland, France, Germany, Italy, Portugal, Spain, Sweden and the United Kingdom

dd. Other Grounds (Examples)

– Economic and tourist development

This is explicitly referred to by Portugal and the United Kingdom.

¹³ If expressly referred to by organs of the Member States.

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- **Charity and promotion of public interest activities (such as sport)**
This is expressly referred to in a number of Member States, including Belgium, Denmark, Finland, France, Germany, Greece, Italy, Spain, Sweden and the United Kingdom.
- **Media Pluralism**
Only Austria advanced this justification, in a case however concerning a prize game.
- **Transitional industry-specific protection**
The United Kingdom, for example, refers to the need to protect the revenues of the horse and greyhound racing industries during a transitional period.
- **Fiscal policy considerations**
Austria, Greece and Italy include this as one of several justifications given. Spain and Portugal rather advance it as a primary objective.

c) Proportionality analysis of national legislatures or jurisprudence

It has to be noted that the proportionality test has been applied mainly in national jurisprudence. The attention devoted by courts to this analysis seems to have been increasing since the *Gambelli* judgment. However, it remains rather superficial in certain Member States. A more detailed proportionality test seems to be demanded by the reasoning of the ECJ in the *Gambelli* case.

aa. Global reference to the principle of proportionality

In several Member States, including Denmark, Finland, Germany, Greece, Italy, the Netherlands, Portugal and Sweden a number of courts examining the EU-compatibility of national measures have gone no further than making global references to the “principle of proportionality”.

bb. Concrete criteria referred to by legislatures or courts when analysing proportionality

Authorities of some Member States, in particular Austria, Belgium, Germany, Italy, Luxembourg and the Netherlands, have however, examined proportionality in detail.

Proportionality as between inhabitants and operators

This criterion has been referred to by Belgian courts.

Examination of less restrictive alternative measures (in particular recognition of foreign licenses, country of origin principle)

In particular in Austria and Germany it was considered important to examine alternative national measures which may be equally effective but less restrictive.

3.3.3. Compatibility of national measures with EU-Law and the case law of the ECJ

The following survey is based upon a review of the national sources collected in this report. It provides an overview of the arguments given by national courts which have either affirmed or called into question the compatibility of national measures with EC-law and ECJ jurisprudence.

*3.3.3.1. Main arguments of national authorities **confirming** the EC law compatibility of national measures*

a) Valid justifications in light of EC law

National justifications correspond to those given on the EC level

All authorities allege in their considerations relating to the EC law compatibility of national measures the existence of one or more justifications as set out by the ECJ jurisprudence (public and social order, consumer protection etc. see above B.1.b.).

Increase of the offer does not contradict the justification of the national structure

Dutch and, recently, French courts, for example, have held that the provision of new or additional games of chance by a public sector operator does not contradict a restrictive gambling policy. To legalise certain games of chance and thereby channel consumers of gambling services into the legal gambling market, serves as a valid countermeasure against illegal gambling.

b) Proportionate measures in light of EC law

State discretion

Some courts in Germany, Sweden, Italy, Denmark and Spain, for example, have noted that EC case law allows individual Member States to subject gaming to their own rules, which can be stricter than those of other Member States and may even forbid gaming entirely. The state has the discretionary power to define the level of protection needed in its territory. It would therefore be perfectly legitimate under EU law to opt for a State monopoly or to adopt an intermediate position and impose a restrictive license requirement.

Non-applicability of the principle of country of origin

Some German courts, for example, considered that a foreign license or a foreign control system to which an operator is subject did not need to be taken into account, because the principle of country of origin is not applicable to gambling services, given that a directive based on Arts. 55 and 47 EC Treaty has not yet been enacted in that field.

Proportion between number of inhabitants and operators

The proportionality of a limitation on the number of casinos was confirmed by reference to the number of inhabitants and profitability aspects (Belgium).

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3.3.3.2. *Main arguments of national courts **doubting** the EC Law compatibility of national measures*

a) **Non-consistency with the alleged justification**

Extensive marketing strategies and fiscal policy considerations

Several courts in some Member States including Germany, Italy, Luxembourg, the Netherlands and Sweden have raised the question of whether justifications for national restrictive measures such as the maintenance of public order, prevention of crime, consumer protection and prevention of gambling addiction can be considered valid when public sector gaming operators extensively advertise their services or regularly introduce new games.

It has also been doubted, for example by Italian courts, whether justifications referring to public and social order do not actually camouflage the real aim of protecting public revenues, especially if no verification system has been established to determine the impact on public order and security. In Germany it has been expressly stated that fiscal policy considerations do not constitute a valid justification.

b) **Non-proportionality of the national measures**

Strict control system instead of State monopoly

In Germany and, to some extent, Italy, one option actually discussed as less restrictive but equally effective alternative national measures to control gambling, is the admission of private operators to the gaming market on the basis of a strict licensing and control system, combined with an obligation to use the proceeds for public interest purposes.

Practice of non-recognition of a foreign license

Austrian and German courts, for example, have considered it appropriate to ask whether a particular operator holds a licence issued by another EU-Member State or a foreign licence and to examine whether this fact would not be sufficient to minimize the risks associated with gambling activities within the territory of a Member State.

Non-consideration of the supervision and disciplinary system of the operator's state of origin

It was considered necessary to assess, e.g. in Germany, whether a national measure is proportionate when applied to a provider of another (EU-Member) State who is subject to a sufficient control and licensing system in his jurisdiction of origin.

Insufficiently substantiated choice of a particular national measure

In addition the suggestion was made that the national legislators should set forth in detail their reasons for choosing to impose a particular restrictive measure.

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3.3.4. Conclusions

3.3.4.1. Justifications

- a. The ECJ jurisprudence requires an objective analysis of whether the restrictions imposed by a Member State **can be supported by an admissible justification**, these being **maintenance of the public order, prevention of fraud and other criminal activities, limitation of the exploitation of the human passion for gambling, prevention of the damaging individual and social consequences of incitement to expenses and more generally consumer protection, maintenance of the social order, protection of moral and cultural aspects, prevention of gambling from being a source of private profit.**

All authorities allege in their considerations relating to the EC law compatibility of national measures the existence of one or more justifications as set out by the ECJ jurisprudence.

- b. The **financing of social activities** cannot be the fundamental justification but must constitute only an **incidental** beneficial consequence. **Fiscal policy considerations** (avoidance of a diminution or reduction of tax revenue) is **as such no valid justification** for national legislative measures.

Member States stress, though to a varying degree, the importance to finance social activities in general as **one among several reasons** for their national measures. In light of the legislations examined fiscal policy considerations are also **one of the reasons** on which national measures are based. Some legislators openly **admit** the importance of this. Some national courts, mainly lower courts, advance that it cannot be excluded that the reference to justifications recognised by the ECJ jurisprudence in reality **camouflages** the real aim of protecting public revenues. Others expressly state that fiscal policy considerations are no valid justification.

- c. The ECJ jurisprudence requires an especially **critical assessment** of the laws of Member States that cite justifications recognised on the EC level, such as consumer protection and the protection of the social order, but permit lawfully constituted operators to engage in **aggressive advertising** or frequently **introduce new forms of games.**

Several courts in some Member States, including Germany, Italy, Sweden and the Netherlands, have stated that **justifications** such as the maintenance of public order and prevention of crime and gambling addiction **cannot be considered valid** when public sector gaming operators extensively advertise their services or regularly introduce new games.

On the other hand Dutch and recently French courts, for example, stated that the increase of the offer of games by a public sector operator **is not inconsistent** with a restrictive gambling policy, as it still serves the aim to channel consumers of gambling services into the legal gambling market and thus constitutes a **countermeasure** against illegal gambling.

- d. The ECJ recently indicated that the reasoning on which a justification is based must enclose **statistical or other evidence** which lead to the conclusion that the justification ground is really existent.

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Also on the national level courts of some Member States start arguing that the national legislators should **be obliged to set forth in detail** their reasons for choosing to impose a particular restrictive measure.

3.3.4.2. Proportionality:

- a. As regards **proportionality** it must be examined whether the national **restrictions imposed go beyond what is necessary and whether they are not disproportionate** in the light of the ECJ case-law. The justifications invoked by a Member State must be accompanied **by an analysis** of the appropriateness and proportionality of the restrictive measure adopted by that State.

National courts, however, mostly **refer rather globally to the principle of proportionality**, simply stating that a measure is “proportionate” or “proportionate in the light of EC law” or of “the *Gambelli* criteria”, without engaging in any detailed analysis and verification of whether other measures would not have been equally effective, but less restrictive. Others examine the proportionality of national measures in some detail, especially where an **inconsistency** between the national regulatory restrictions and the actual gambling policy can be noted.

- b. The ECJ has stated that, in principle, the level of protection a Member State wishes to provide does **in itself not affect** the proportionality of national provisions, and as a result that the system of protection **can differ from that adopted by another Member State**. It remains however necessary to determine whether the imposition of restrictions goes beyond what is necessary and appropriate **in the particular case** especially where the supplier of the service **is subject to a control system in his Member State of establishment**.

Many national authorities argue that their national measures are proportionate as it is in the discretion of the Member States and not per se contrary to EC case law to opt for strict national measures including a State monopoly. It has to be noted that this consideration is in many cases regarded **as sufficient** with respect to the proportionality test and as a result is not completed by a more detailed proportionality analysis in the particular case as to whether less restrictive alternative measures would be feasible on the national level. On the other hand some national courts questioned whether a distinction should not be made between the case in which an operator **holds a foreign license, notably a license issued by another EU-Member State**, and the case in which he holds none at all, whether the **control systems of another Member State** should not be considered sufficient to minimize the risks associated with gambling services provided outside the territory of that other Member State and **whether justifications such as the maintenance of public order and the prevention of crime and addiction are valid in cases where public sector gaming operators aggressively advertise their own services**.

4. ECONOMIC CONSIDERATIONS

4.1. Gambling Industries of EU Member States

The veritable backbone of the economic side of this Report consists of 25 separate presentations of the gambling industries of individual EU Member States.¹⁴ Those presentations systematically integrate all of the useful and prima facie factual data received from stakeholders and (where necessary and very much subject to availability) country-specific data to be found in economic publications and other secondary sources.

Those presentations offer an enormous potential for analytical research into various aspects of gambling in Europe, which potential has by no means been exhausted by our Study. Within the constraints of available time and resources that were put at our disposal, the economics research team has focussed its attention on those points which are essential to the current report, namely the size and structure of the EU's gambling industry and the ways in which its underlying economic parameters are likely to react to different possible stimulations. Much more research needs to be done in order to underpin future policy making and future researchers will certainly find the country-specific presentations in this report to be an invaluable resource.

Indeed, if future policy in the EU is going to be based on accurate data and factual information, and advised by evidence based research, then there is going to have to be a greater commitment by Member States and EU institutions to addressing these information and research shortcomings. The fact that gambling services in the EU are already characterized by revenues in excess of €50,000 million, as well as substantial contributions to tax revenues and good causes, suggests that this should be a fairly high priority. It implies a commitment to develop official statistics to cover the gambling services industries of the individual Member States and of the EU as a whole. It also requires much more attention to be paid to individual sectors of the market for gambling services, especially the media gambling, sales promotional and charity gambling sectors on which so little information is currently available that they are the subject of hardly any analysis in this Report. That is probably the most important conclusion of the research team that has compiled this Report.

4.2. The Aggregate EU Gambling Industry

For the purposes of this Report, the economics research team has extracted a number of important aggregate statistics¹⁵ from the 25 country-specific presentations.

Gross Gaming Revenues (normally referred to in this Report as "GGRs") generated in each EU Member State during at least the years 2000 to 2004 inclusive, in so far as the relevant data is available, are individually presented¹⁶ for each of the following sectors of the gambling industry: lotteries, casino gaming, machine gambling outside casinos, betting and bingo. Those figures have in turn been consolidated into EU-wide aggregates,¹⁷ which reveal the following highly pertinent proportions of the total GGRs that are attributable to each sector:

¹⁴ 2nd Part, Chapter 6, "National Reports"

¹⁵ To be found in Chapter 10, "European Statistical Overview", of the 2nd Part of this Report.

¹⁶ 2nd Part, Chapter 10, point II

¹⁷ 2nd Part, Chapter 10, point I

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Lotteries	44.6%
Casino Gaming	14.6%
Machine Gambling outside casinos	18.8%
Betting	17.2%
Bingo	4.8%

Although these figures are almost certainly not exact, they do indicate the relative importance of the various sectors of the industry. That is a consideration which should be borne in mind when looking at any part of the current Report.

For further clarification, each of the abovementioned market sectors is subsequently statistically analysed by comparing Member States and distilling EU-wide aggregates.

The Report contains¹⁸ a number of other analytically important statistics, including spending per capita in each market sector and the EU-wide propensity to gamble in each sector. As concerns the ratio of Gross Gaming Revenues to GDP for the 25 Member States for the year 2003, it is noteworthy that the ratio remains under one percent for all Member States except for Cyprus; Malta, where the betting services sector is characterised by a much higher than average proportion of services supplied remotely; and Slovenia, which has a casino industry that attracts a significant portion of its GGRs from cross-border custom or international tourism.¹⁹

Based upon the statistical data so compiled, the following general observations and conclusions have been drawn by the economics research team about the legal gambling services markets in the European Union.

First, as a result of the Study, the team was able to determine that the five largest sectors of the EU gambling market generated Gross Gaming Revenues (operator winnings, less payment of prizes) of approximately €51,500 million in 2003.

Secondly, the market frameworks for gambling in the EU are very much heterogeneous. Commercial and government owned gaming industries of Member States are organized under a wide variety of ownership regimes and market structures. Ownership and market structures are affected by numerous factors, including Member State laws and regulations; restrictions on product types, characteristics, points of sale, availability, and marketing effort; economies of scale; network effects; and impacts of new technologies. Generally speaking, most EU commercial gaming industries are significantly constrained by law and regulation, as well as by ownership structures and statutory objectives. As a result, they operate in ways that – in comparison to what unrestricted free markets in gambling services with reasonable allocations of property rights and provision of legal protections would bring about – adversely affect the quality, quantity, price, and availability of gambling services. It is accordingly necessary to pay close attention to the particular economic characteristics of each market sector in each Member State, as these can have important welfare implications. The Report takes specific account of the following characteristics:

¹⁸ 2nd Part, Chapter 10, point III

¹⁹ Refer in particular to Figure 1 at the end of Chapter 2 of the 2nd Part of this Report.

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- monopoly franchises²⁰
- other restrictions on competition²¹
- network effects²²
- economies of scale²³
- geographic constraints²⁴
- regulatory constraints²⁵
- consumer protection²⁶
- extraordinary tax structures²⁷

Thirdly, certain comparisons with overseas gambling markets are illuminative. As against the EU figure of approximately €51,500 million in 2003, the legal American gaming industries in 2003 generated²⁸ Gross Gaming Revenues (GGRs) of US\$72,800 million (€60,700 million²⁹). Though aggregate GGRs were similar between the US and EU as of 2003, their composition differed considerably between the European Union Member States as a group and the United States. For example, in the United States, commercial and tribal casinos generated about US\$42,100 million of the total US GGRs in 2003 (58% of the US total), whereas in the EU, casinos comprised only about €7,500 million of GGRs (15% of the EU total.) In the United States, gaming machines (also referred to as slots, Electronic Gaming Devices, or Video Lottery Terminals) outside of casinos are still relatively uncommon; in 2003, such devices generated GGRs of US\$3,900 million (5% of the US total) whereas in the European Union, gaming machines generated GGRs of €9,700 million (19% of the EU total.) Lotteries in the United States generated GGRs of \$17,400 million (excluding Video Lottery Terminals), 24% of US GGRs, whereas in the EU, lottery GGRs were €23,000 million, 45% of the EU total. Betting services, including on-track and off-track betting on horses and sports, amounted to only US\$3,900 million, or 5% of US GGRs, whereas in the EU, the comparable statistic was €8,900 million, 17% of the EU total. Finally, bingo services and charitable gambling generated about US\$4,000 million, or 5% of US GGRs, and in the EU, bingo services were also a relatively small component in the EU, at €2,400 million, or 5% of the EU total.

Finally, EU gambling markets are dominated for the most part by relatively “mature industries,” whose revenue growth is more or less paralleling growth in aggregate personal income in the 25 Member States. This has clear implications for future perspectives. It can in particular be expected that many of the gambling services sectors at the country level will experience single-digit growth in the years ahead, unless there are substantial changes in either the legal or the regulatory environments that determine the types of games, the quality and availability of games that can be offered; or in the technological aspects of games and wagering opportunities that might affect their over-all attractiveness to consumers or to potential customers.

²⁰ 2nd Part, Chapter 3, point a.

²¹ 2nd Part, Chapter 3, point b.

²² 2nd Part, Chapter 3, point d.

²³ 2nd Part, Chapter 3, point e.

²⁴ 2nd Part, Chapter 3, point f.

²⁵ 2nd Part, Chapter 3, point g.

²⁶ 2nd Part, Chapter 3, third to last paragraph

²⁷ 2nd Part, Chapter 3, last two paragraphs

²⁸ According to Christiansen Capital Advisors, “Gross Annual Wager of the United States 2003,” extracted from www.cca-i.com

²⁹ Computed at an exchange rate of €1.00 = US\$1.20.

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Comparisons with overseas markets suggest³⁰ that aggregate consumer demand for gambling services – as measured by the ratio of country Gross Gaming Revenues (GGRs) to country GDP – may be quite elastic with respect to various supply factors, such as the availability, variety, accessibility, attractiveness and pricing of gambling offerings.

Therefore, if new legislation substantially changes the legal and regulatory environment for a particular gambling services sector, it may have dramatic effects on that sector, and – depending on the strength of cross-elasticities of demand – may affect other sectors as well. In a similar vein, if European Court of Justice or European Commission rulings change the fundamentals of competition or rules of engagement, then significant shifts in spending patterns and sectoral profitability may also follow.

Thus, we can expect gambling services sectors to act like mature industries as long as the external legal and competitive environments are stable. Exceptions to this “mature industry” hypothesis can occur when supply conditions are changed. This can be illustrated by a number of recent examples. The rapid expansion of Fixed Odds Betting Terminals (FOBTs) in the United Kingdom in the early 2000s has led to a substantial increase in handle (turnover) and GGRs in betting shops in the UK. In a similar manner, the introduction and launch of the National Lottery in the UK in November 1994 created a new gambling services sector in that country that generated total annual lottery sales of about £5 billion (€7.5 billion) each year thereafter. This did not seem to have significant adverse impacts on the other gambling services sectors in the UK market, but rather served to increase the total proportion of personal income spent on gambling services in the UK.

One could expect that the recent passage of the Gaming Act 2005 in the UK will have significant supply side impacts that will affect the various gambling services sectors in a variety of ways, but also increase the aggregate spend by British citizens on gaming services in that country. In general, for all EU member states, if legislative changes or conditions brought about significant casino resorts of the size and style found in Las Vegas, in Australia, or South Africa, then the casino sector would likely grow dramatically in the countries affected. In late 2005, the American firm Harrah’s Entertainment announced strategic initiatives in Slovenia and Spain that could ultimately lead to destination resort casinos with capital investments of between €500 million and €1 billion. If indeed these come to pass and depending on what catalytic effect they would have on other countries, these kinds of development could change the relative importance of the casino sector in the EU and lead to a more significant role of gaming in the aggregate (as measured by the ratio of GGRs to GDP) throughout the EU.

4.3. The Remote Gambling Industry in the EU

As part of the Study leading up to this Report, a survey instrument was developed and disseminated to all known remote gaming operators in the EU, as well as the regulatory authorities in Gibraltar and in Malta. As of mid-February 2006, a total of 19 companies from Malta, Gibraltar, Finland and the United Kingdom had responded. Because we did not have any information on the size (as measured in GGRs) of the respondents relative to the size of non-respondents, we were unable to use the survey results to estimate the aggregate size of the remote gaming sector in the EU. However, we could draw other conclusions from the

³⁰ Refer to the end of Chapter 2 (“Dimensions of the legal gaming services industries in the European Union), of the 2nd Part of this Report, under the heading, “Discussion”.

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survey data³¹ based upon the assumption that the companies that did respond are representative of the sector as a whole.

In the estimation of the 19 respondents, they were generating GGRs in 2004 of approximately €1.2 billion, having expanded from only about €115 million in 2001. They forecast that their GGRs would grow to in excess of €6 billion by 2009. This would suggest an average annual rate of compound growth from 2004 to 2009 of about 40%, considerably greater than the GBGC global forecast (discussed below.)

Based on an unweighted average of the 19 respondents on this question, betting services generate over half of the GGRs for remote gaming service companies, casino games about another third and virtual slot machines much of the balance, with the remainder picked up by bingo, internet poker, and lottery products.

Based on overall GGR estimates for the remote gaming sector, the 19 companies that responded to this survey reflect about half of the remote gaming services industry for the year 2004. Though we cannot assign much accuracy to this, we can use it as a rule of thumb to roughly estimate certain parameters for the entire industry, such as levels of employment. If indeed this cohort of respondents reflects about half the remote gaming industry in the EU, then the employment growth for the sector went from less than 500 in 2000 to around 5,000 in 2004. Forecasts for future employment growth would push total employment (within and outside the EU) to about 10,000, of whom about 6,000 would be employed within the EU. Thus, even though the remote gaming sector may become an increasingly important part of the gambling services sector in the EU, it is likely to remain a relatively small employer.

The remote gaming companies were also asked to provide information on the demographics of their registered players. All respondents reported a growing number of registered players within both their primary EU country of operations and other EU Member States. They reported an aggregate of 63% of all registered players to be within the 18-35 age group, 32% to be within the 36-55 age group, and 5% to be of age 56 and over.

Respondents were also asked to differentiate between the percentage of their EU gaming revenues that were generated within the Member State where they are primarily based versus cross-border GGRs within the EU. (For the purposes of this analysis, responses from Gibraltar were treated as if they were primarily based in the United Kingdom.) The respondents indicated that between 15% and 30% of their revenues came from other Member States between 2000 and 2003, increasing to about 45% in 2004 (probably due to the expansion of licenses in Malta.) The forecast through 2009 had the percentage of EU cross-border spending in the 20% to 30% range.

It is interesting to compare these primary figures with published estimates,³² each of which assume only clearly predictable changes in the policy context. For example, Gaming and Betting Global Consultants have issued (in their leading publication which is presented at the very beginning of this Part and which is normally referred to in this Report as the "GBGC analysis") figures for GGR from interactive gaming in Europe showing a rise from an initial low level in 1999, that took off sharply in 2001 and carried on increasing substantially through 2002 and 2003, but at a decreasing rate. It would appear that the market is still in an early phase of growth, but perhaps showing signs of heading towards maturity. The rates of

³¹ Refer to point 10, "Survey Data for Remote Gaming Companies in the EU", of Chapter 7 of the 2nd Part of this Report.

³² Refer to point 5, "Estimating the Economic Impact of Remote Gambling in Europe", and point 11, "The Future of Remote Gambling in the EU", of Chapter 7 of the 2nd Part of this Report.

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increase per year are as follows; 2000 162.5%, 2001 233.3%, 2002 55.7% and 2003 31.1%. If the future annual percentage rates of increase remain at two-thirds of the previous year [i.e. in 2004 the increase is 20.5%, in 2005 13.5% and so on] then by 2012 remote gambling GGRs in Europe would be roughly €2,700 million. Since the EU accounts for 90.5% of Europe's total gambling spend, we may estimate that the EU would generate an interactive GGR of about €2,400 million in 2012. This would be about 85% greater than it was in 2003.

Figures published by the River City Group and by the Association of Remote Gambling Operators indicate that the global interactive gambling market currently provides a GGR of about €5,700 million (US\$7,000 million) per annum as of 2003, with the EU share being about €1,630 million (US\$1,980 million). The global remote and internet gaming industry is forecast to grow from about US\$9,000 million in 2004 to US\$25,000 million in 2010.³³

Based upon a review of these studies of remote and internet gaming – as well as survey data collected as a portion of our own Study – the economic research team's best estimate of the size of the European Union remote and internet gaming sector (that sector which offers gambling services via the internet, through mobile phone services, and through interactive television wagering) represented between €2,000 million and €3,000 million in GGRs from EU consumer expenditures in 2004, and growing rapidly.

If the above estimates hold true, then the economic importance of remote gambling is likely to continue to rise, but not beyond 5% of the total EU gambling market by 2012. This estimate takes account of both factors favoring growth and factors that could restrict it. In those EU Member States which have poorly developed land-based gaming sectors, the importance of remote gambling as a proportion of the total market for gambling services could rise well beyond 5%. It is possible that some EU Member States will try to effectively prohibit remote gambling with overseas operators or foreign operators generally, but consumers would likely still find a way to indulge their passion – as the USA has found.

Firms that offer land-based as well as remote gambling services will pursue the remote business to extend their sales in total, even though some of it will undoubtedly substitute for their land-based sales. Relative taxation levels will be an important factor in determining the relative extent of remote versus land-based gambling. If remote gambling, due to its situational mobility, were able to induce governments to offer it lower tax rates on income than is paid by land-based businesses, that might be particularly conducive to growth. Low tax rates on remote gambling could, however, be counterweighted by the lower profit margins that may emerge if indeed it turns out to be more competitive than land-based gambling, due to easier entry into the market and depending on the ultimate resolution of legal challenges with respect to the right to offer remote gambling services in various Member States.

Although the above estimates probably reflect a set of reasonable speculations that would be forthcoming from remote gambling industry professionals and analysts, it is appropriate to include some words of caution.

First, although our economic research team agrees that remote gambling is unlikely to replace land-based gambling, it thinks that the two forms of gambling are increasingly likely to merge, for example in branding and marketing, and in the context of retail outlets such as internet sports cafes where it is possible to gamble on remote sites.

³³ Extracted from www.cca-i.com and Deutsche Bank, "Online Gaming: Real or Surreal Returns?" 19 July 2005.

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Secondly, new forms of gambling are likely to emerge which particularly suit delivery by remote means and which secure a very large share of the market very quickly. This has already occurred with poker – a game of skill where consumers endeavour to play with others of approximately the same skill levels and similar tolerance for losses; the internet makes organizing such games easier than in traditional physical settings. Lottery and bingo games may prove to be especially suitable for provision by remote means, for different reasons such as the easy access of the billing system. It also seems plausible that people will find ways of betting on the games they currently play on play stations and this might further extend the remote market. In general then, much of what will happen with remote gambling over the next decade may not be able to be anticipated today.

4.4. Scientific Studies and Published Literature on Gambling and its Consequences

In order to provide a firm foundation for developing reasonable scenario models that could provide a basis for planning the future of the gambling services sectors of the Member States of the European Union, our economics research team examined a substantial amount of English-language peer-reviewed economic research that deals with gambling industries and their economic characteristics.³⁴ The team also looked at economic literature that examined the relationships between gambling and crime, cost-benefits studies and gambling, and problem gambling. The objective of this review was to allow the generation of reasonable sets of assumptions in development of scenarios that project, in both qualitative and quantitative terms, economic and distribution implications of possible alternative “states of nature” that might prevail with regard to EU gaming industries in the next decade. For reasonable scenario analysis, empirical measures of some of the economic and income distribution effects are critical. In order to gauge such relationships, it is necessary to borrow from the findings of prior research that may have explored such estimates among gambling services sectors and with respect to consumer responses to changes in important economic variables. In the review of the peer-reviewed literature, due to the difficulties in locating and translating articles in journals not written in English, it was determined that the most efficient allocation of our available resources was to review articles written in English or already translated into English.

After this review of the published academic literature, quantitative economic studies concerning gambling demand (handle or sales) and revenue were identified in the following four major gambling areas: pari-mutuel wagering, bookmaker wagering, lottery wagering and casino wagering. The team was unable to locate any published articles with quantitative analysis in the following areas of interest: internet betting, bingo, charity gaming, media games or sales promotions.

From the point of view of market economics, our Report therefore reviews and summarises³⁵ the existing scientific literature concerning three of the principal gambling market sectors:

- Lotteries
- Casino gaming
- Betting (broken down into fixed-odds or bookmaker betting and totalisator or pari-mutuel betting).

³⁴ 2nd Part, Chapter 8 of this Report

³⁵ Under point 1, “The Economics of Gambling”, of Chapter 8 of the 2nd Part.

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For each of these market sectors, the review focuses on four economically important relationships:

- between changes in the price of the particular gambling service and changes in the demand for the particular gambling service (so-called own-price elasticity of demand);
- between changes in the price of other gambling services and changes in the demand for the particular gambling service (so-called substitution effects);
- between changes in the level of governmental regulatory restriction and changes in the demand for the particular gambling service (or more realistically in the demand which could be lawfully satisfied);
- between changes in the level of consumption of the particular gambling service and changes in the demand for other goods and services (so-called displacement effects);

From the point of view of macroeconomics or “socio-economics”, our Report reviews and summarises the existing scientific literature concerning three economically significant relationships that are also of considerable importance for gambling policy and the politics of gambling:

- between changes in the level of consumption of gambling services and changes in the prevalence of personal bankruptcies³⁶;
- between changes in the level of consumption of gambling services and changes in the prevalence of crime³⁷;
- between changes in the level of consumption of gambling services and changes in the prevalence of excessive and/or compulsive “problem gambling”.³⁸

In respect of the last mentioned relationship, our Report takes special account³⁹ of statistical data provided by stakeholders concerning the prevalence of pathological gambling behaviour in Austria, Estonia, Finland and the United Kingdom. The results of these investigations are not based on uniform methodology and have not been subject to peer review, so they cannot in any case serve as a basis for estimates of the prevalence of pathological gambling in the EU as a whole, even if the social and cultural peculiarities of individual Member States were to be left out of account.

It is of the foremost importance to note that – as is the case in other parts of the world – EU Member States have only relatively recently recognized problem and pathological gambling as a significant public health issue. So far, they have put comparatively light regulations in place to deal specifically with this issue, and have yet only allocated limited resources to research into, treatment of, public education about and prevention of problem and pathological gambling within their societies, cultures, and social environments.

Although all EU jurisdictions have been concerned in principle to minimize the negative social impacts of commercial gambling, various EU Member States differ with respect to the nature and structure of the gambling industries they have authorized, as well as with respect to their taxation policies dealing with gambling industries. There has, consequently, been no uniformity in the way the governments of EU Member States have addressed the issue of negative social impacts, including problem gambling.

³⁶ Refer to point 2, “Gambling: Bankruptcies and Crime”, of Chapter 8 of the 2nd Part of this Report.

³⁷ Refer to point 2, “Gambling: Bankruptcies and Crime”, of Chapter 8 of the 2nd Part of this Report.

³⁸ Refer to Chapter 9 of the 2nd Part of this Report.

³⁹ Under point 9, “Submissions on Problem Gambling in Response to Information requests”, of Chapter 9 of the 2nd Part of this Report.

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Most EU countries have a single national lottery at least in part because of a belief that this provides a degree of control so that problem gambling and player protection issues can be effectively addressed. For the same reason, some countries – such as Holland, Finland, Sweden and Austria – have kept casino gambling under government ownership and control. Increasingly, those countries which have allowed a proliferation of gambling machines in convenience locations outside of casinos are seeking ways to address the perception – and perhaps the reality – that such machines are especially likely to elicit problem gambling behaviors. EU Member States are also agreed in principle that it would be desirable to be able to regulate gambling on the internet, but they have not yet agreed on how this can and should be done.

4.5. Scenarios of Future Growth in the EU Gambling Industry

As part of the terms of reference of this Report, alternative scenarios for the future of the various sectors of the market for gambling services in the Member States of the EU are put forward.⁴⁰ Based on the information gathered with respect to the various sectors, as well as the review of published peer reviewed economics literature discussed above, our economics research team has constructed three distinct scenarios based upon distinct assumptions as to the underlying economic conditions and particularly as to the regulatory environment.

In order to gain a relative sense of how the different scenarios would affect the level of GGRs among countries and among gambling services sectors – as well as each sector’s capabilities to contribute to tax revenues, contributions to designated beneficiaries (i.e. “good causes”), and earnings for shareholders – the team made reasonable estimates as to the level of profit margins by gambling services sector. These are then modified explicitly for the various sectors under each of the three scenarios.

Our “baseline scenario” assumes that not much will change in the near future regarding the legal status, ownership structure and general competitive nature of the gambling services sectors in the Member States of the EU. The one main exception within the Baseline Scenario is a relatively rapid growth of remote gambling offerings, which would likely occur primarily in the betting services sector, but would also be manifested to some extent in the lottery sector (sales of lottery products on-line) and in the casino sector (with internet offerings of table games, simulated gaming devices, and internet poker.) For simplicity, we assume in the Baseline Scenario that all extraordinary growth in remote gambling offerings would show up in the betting services sector.

The Baseline Scenario is intended to provide a basis for comparison of the economic and social impacts when varying degrees of relaxation of economic, ownership, and competitive constraints are imposed on the gambling services sectors of the EU. The nature of such impacts on the level of gaming and wagering activity and on GGRs, as well as the expected approximate magnitude of those impacts, are derived in our Report from a detailed review of the relevant scientific economic literature.⁴¹ Generally speaking, relaxation of such constraints has the effect of reducing Economic Rents while, at the same time, enhancing value that accrues to consumers in general, so-called *Consumer Surplus*.⁴² Based on experience

⁴⁰ 2nd Part, Chapter 11.

⁴¹ Refer above, point 4.4, and to Chapter 8 of the 2nd Part of this Report.

⁴² *Consumer Surplus* is defined as the difference between what a consumer is willing and able to pay for a commodity and what he has to pay, aggregated over all consumers. Thus, a price

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in other parts of the world, such relaxations will also expand the aggregate amount of spending on gambling services and increase the ratio of GGRs to GDP in the affected countries.

Two alternative scenarios to the Baseline Scenario have been developed by our economics research team. It has constructed these scenarios to try to provide some flavour of how contingencies that might emerge in the EU would affect the size, market shares, profitability, and Economic Rent generating capabilities of Member States. The findings of the team concerning the theoretical economic consequences that would *a priori* be expected to result from such changes are explained in detail.⁴³ The Report then uses the scenarios to indicate possible variations in a number of economic measures, tied to the underlying assumptions used.

The First Alternative Scenario is considered the more moderate of the two, involving changes that would emphasize the principles of “free and fair trade” and “proportionality” in allowing enterprises the opportunity to gain access to EU Member State gambling services sectors, but without relaxing restrictions and constraints on those sectors that are presently in place. The Second Alternative Scenario is more extreme and assumes that a combination of legal, technological, competitive, and policy decisions will substantially open up the gambling services sectors to intra-EU competition.

The authors of this Report believe that the assumptions underlying the three scenarios are generally reasonable illustrations of situations that might emerge in reality. Stakeholders and other readers of this Report may or may not agree that they are reasonable. Nonetheless, the real purpose of our presentation of alternative scenarios is not to make concrete forecasts of the future, but much more to demonstrate the probable interactions among the various sectors of the European gambling market resulting from alternative possible developments.

4.5.1. Baseline Scenario

Our baseline scenario reflects the view that the five main gambling services sectors – lottery, casinos, gaming machines, betting services, and bingo – will grow, but only in proportion to gross domestic product (GDP) within each of the 25 Member States. Exceptions to this occur with respect to remote gambling offerings and with respect to all types of gambling services in the UK, which will be affected by the implementation of the Gaming Act 2005 and the growth of so-called Fixed-Odds Betting Terminals (“FOBTs”).

The baseline assumptions regarding market sector growth generate a forecast for gambling services revenues of €63,900 million for 2010. This is a 24% increase over GGRs generated in 2003.

Our baseline model suggests the betting services sector will increase its market share from 17.2% to 20.8% of all EU GGRs between 2003 and 2010. The relative growth in the betting services sector is due to the assumptions made regarding the expansion of remote gaming services throughout the European Union, though some of these revenues would actually be accruing to national lotteries that had the authorization within their respective jurisdictions to

reduction (or improvement in the quality or availability of the product) has the effect of increasing Consumer Surplus.

⁴³ In Chapter 11 of the 2nd Part of our Report, following the heading, “Economic Considerations in Establishing Quantitative Models for Alternative Scenarios”.

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offer remote gambling services to their customers, as well as to internet casinos and internet poker services.

If we use the same set of assumptions for profit margins in the Baseline Scenario and apply them to estimated 2003 GGRs, the total amount of *Economic Rents*⁴⁴ available for taxes, distributions to designated beneficiaries, or as above-normal profits for gaming operations, will be something like €37,600 million, about 73% of GGRs. In light of the high tax rates imposed on many privatized forms of gambling within the EU, as well as the major contributions that are made to either government general fund revenues or earmarked “good causes,” as discussed in the various country reports, these seem to be reasonable estimates in the absence of a detailed accounting of the specific breakdown of Economic Rents among stakeholders.

Applying the same margins to the forecasts for the year 2010 implies an aggregate of Economic Rents available for taxation, distribution to designated entities (so-called “good causes”) and for distribution to shareholders and retained earnings, of around €45,300 million on GGRs of €63,900 million, or about 71% of GGRs. Our report sets out⁴⁵ individual estimates of Economic Rents available by country and by sector for the forecast to 2010.

Under the Baseline Scenario, it would not be expected that EU employment in gambling services would change any more than the rate of growth of GGRs, and perhaps less due to continuing efforts at operational efficiency. Exceptions to this would occur within the casino industry in the UK and in the remote gambling segment of the various gambling services sectors. With regard to remote gaming services, our Report shows⁴⁶ that this is not a very labor intensive segment of the market. Even with the forecast growth in GGRs for this segment, total employment within the entire EU would likely only grow from about 5,000 in 2004 to between 10,000 and 15,000 individuals by 2010.

4.5.2. First Alternative Scenario

The first of our alternative scenarios is intended to reflect a hypothetical situation where courts or legislative bodies are generally sympathetic to the argument that state monopolies and other constraints on free and fair trade in the gambling services sector cannot be justified because of the principles of free and fair trade and proportionality. Furthermore, remote gaming services providers would be able to enter into presently protected gambling markets of Member States in the offering of their services, though they would have to abide by the constraints dictated by the gambling laws of national governments. Nonetheless, we assume that there would be no significant relaxation of the constraints on how games or wagering opportunities can be offered (except with regard to access provided to remote gambling services).

⁴⁴ *Economic Rents* are defined as earnings for an enterprise over and above a normal return on invested capital, caused by the scarcity of supply of the resources used to generate revenues for the enterprise. In these examples, Economic Rents accrue because of constraints on supply of gambling services. In competitive markets without supply constraints, Economic Rents would get bid away via competition typically by lower prices.

⁴⁵ In Chapter 11 of the 2nd Part, just before the heading, “Alternative Scenarios”.

⁴⁶ Under point 10, “Survey data for Remote Gaming Companies in the EU”, of Chapter 7 of the 2nd Part.

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The major effects of this First Alternative Scenario would be to shift the composition of Economic Rents from government (i.e. because of the loss of monopoly status for some gambling services providers, especially in the casino gaming, gambling machines and betting services sectors) to new service providers (i.e. those who were successful in the tendering process.) Furthermore, the greater access of remote gambling service providers to markets within the EU would increase competition in the betting services sector and perhaps in the casino and gambling machine markets as well. This would likely result in price competition in these areas. Because of substitution effects, we could expect relative reduction in sales for land-based casino and gambling machine products. Furthermore, we could expect substitution away from bingo because it is a relatively less convenient product in comparison to the remote gambling offerings. However, besides remote gambling, there would only be limited effects on the extent of competition among and within the other gambling services sectors.

For the First Alternative Scenario, we assume that the growth rate of the remote gambling services sector is 20 % per annum through 2010. The growth rates of casino gaming and gaming machines are reduced (in comparison to the Baseline Scenario) by 0.5% per annum from 2006 onward, reflecting the substitution effect from remote gambling services. Bingo's growth rate is reduced by 1.0% from 2006 onward in comparison to the Baseline Scenario, and lottery GGR growth remains the same as under the Baseline Scenario.

The increased level of competition underlying our First Alternative Scenario will certainly affect the presumed profit margins of operators in the various sectors. Economic Rents will obviously decline as a result, but not dramatically. A reduction in Economic Rents occurs because of the presumed lower profit margins in various sectors, and is in the magnitude of 6% in comparison to the Baseline Alternative. Detailed results are set out in our Report⁴⁷ on a sector by sector and country by country basis.

4.5.3. Second Alternative Scenario

The second of our alternative scenarios is intended to reflect a hypothetical situation where events within the EU, whether driven by court decisions, legislative changes, or new technologies (or some combination of the three), lead to a considerably more open marketplace for gambling services sectors in the EU. This can be considered an "extreme case" of opening gambling services markets in a manner that would allow for extensive cross-border competition, emergence of destination resort-style casinos, relatively unconstrained remote gambling offerings and competition among lotteries regardless of their Member State affiliations. In this alternative, we build upon the assumptions from the First Alternative, and further assume that there would be significant relaxations in the present constraints on how games or wagering opportunities can be offered, increased competition among sectors manifesting itself in reduced prices of gambling services to consumers, subsequent greater penetration by remote gambling offerings, and a break-down in implicit agreements not to compete among the existing national lotteries in the EU.

In general, if this were to transpire, it would lead to a substantial reduction in Economic Rents, an even more substantial increase in Consumer Surplus⁴⁸ and a notable increase in

⁴⁷ 2nd Part, Chapter 11, immediately before the heading, "Second Alternative Scenario : Opening the Markets".

⁴⁸ It should be noted that the primary source of Economic Rent is Consumer Surplus, ie. because of constraints on supply, suppliers are able to charge higher prices than market conditions would dictate. As prices are lowered and markets become more competitive, consumers gain

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aggregate spending on gambling services in the Member States of the EU. Based on the experience in other countries, such as the United States, Canada, New Zealand, and Australia, the ratio of GGR/GDP could be expected to increase dramatically, perhaps ultimately to double.

Based upon our assumptions, the Second Alternative Scenario produces an estimated 53% increase in total GGRs in 2010 over GGRs in 2003. This is much greater than growth rates of 24% and 25% relative to GGRs in 2003 under the Baseline and First Alternative Scenarios, respectively. Total handle actually grows considerably more than this, but is negated to a large extent by the significant price reductions which we had assumed. Certainly more significant is what our hypothetical model suggests with respect to particular gambling services sectors. Comparing GGRs under the Second Alternative Scenario to GGRs under the Baseline Scenario, there is a considerable redistribution of GGRs among the five main gambling services sectors, with the greatest growth occurring in the casino, gambling machine, and betting service sectors, more moderate growth in the lottery sector, and a moderate decline in the Bingo sector.⁴⁹ Detailed estimates of market shares of GGRs, broken down by gambling services sector for the Second Alternative Scenario, are set out in our Report.⁵⁰

The extent of Economic Rent change under the Second Alternative will depend on how much they have been eroded by deregulation and increased competition. Our report lists⁵¹ the presumed profit margins and resulting Economic Rents for the various sectors of the gambling services market under this scenario. The model suggests that overall Economic Rents would fall from about €45,000 million to about €38,500 million, a decline against the Baseline Alternative of about 17%. How the Economic Rents would be divided among tax revenues, contributions to designated beneficiaries, and returns to operators and owners would depend upon tax policies and contractual obligations.

4.5.4. Socio-Economic Consequences

In distilling the formal effects of each scenario, for the sake of clarity, our Report at first intentionally avoids paying attention to unintended and undesirable effects that may be produced by different degrees of expansion of gambling markets. However, such effects, to the extent that they are actually manifested, are certainly of economic, as well as social and political importance and are therefore given separate consideration in our Report.⁵²

One could make a fairly strong case that the extent of unintended adverse consequences, such as social costs associated with increases in problem and pathological gambling, increases in crime associated with gambling, changes in bankruptcies, suicides, etc, would be quite similar under the Baseline Scenario and the First Alternative Scenario. This would be the case if the alternative institutional relationships between governments and service providers still delivered the same level and efficiency of consumer protections and other safeguards. Since the prices of gambling services and the level of constraints placed on the

from reduced Economic Rent and there are further gains due to reduction in “deadweight losses,” being inefficiencies associated with supply-constrained situations.

⁴⁹ The changes in the casino and machine gambling sectors are consistent with recent experience in the United States and in other countries that have more extensive casinos and/or gambling machine sectors than are presently found in the EU.

⁵⁰ In Chapter 11 of the 2nd Part, before the heading, “Unintended Adverse Consequences”.

⁵¹ In Chapter 11 of the 2nd Part, just before the heading, “Unintended Adverse Consequences”.

⁵² In Chapter 11 of the 2nd Part, under the heading, “Unintended Adverse Consequences”.

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gambling services sectors remain more or less the same under these alternatives, there should not be much difference between them in terms of unintended adverse consequences.

However, under the Second Alternative Scenario, there may very well be an increase in various unintended adverse consequences associated with gambling. As our review of the scientific literature reveals,⁵³ there are several studies which show no statistically significant linkage between expanded gambling offerings and bankruptcies while several others show a statistically significant but relatively small linkage between expanded gambling offerings and bankruptcies. Results of the peer reviewed research on the relationship of expanded gambling to crime have produced mixed results, with instances of increases, no change, and decreases relative to the availability of casino gaming. As a result, the scientific evidence on direction and magnitude of expanded gambling offerings and crime is not conclusive one way or the other. There is no clear scientific research that links increases in the availability of gambling services to increases in the rates of problem and pathological gambling, even though there is considerable evidence that suggests this might be the case. Nonetheless, under this Scenario, there very well may be increased attention paid to these possibilities, and a subsequent political backlash because of the perception (if not the reality) of the consequences of such expansion.

Among other findings, it is clear from the results of this analysis that Member States of the European Union need to sponsor or encourage additional scientific research to address many of these important social impact questions. In the interim, policy will have to be made based upon the limited research that is available, much of which was generated in other countries, with perhaps important social, political and cultural differences.

⁵³ Refer above, point 4.4, and to Chapter 8 of the 2nd Part of this Report.

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