

Green Paper on online gambling in the Internal Market

COM(2011) 128 final/2

FINAL DOCUMENT APPROVED BY THE COMMITTEE

(Doc. XVIII, no. 52)

The Finance Committee of the Chamber of Deputies,

having examined the Green Paper on online gambling in the Internal Market (COM(2011) 128 final/2);

having regard to the report and the draft resolution adopted following examination of the Green Paper by the Internal Market and Consumer Protection Committee of the European Parliament (INI/2011/2084);

having regard to the position established in the rulings of the Court of Justice concerning the compatibility of national laws on gambling with the principles of freedom to provide services and freedom of establishment, most recently in its judgement of 15 September 2011 in Case C-347/09;

emphasising that the Green Paper rightly seeks to launch a consultation on the specific issues concerning the societal and public order risks associated with the growth of online gambling services in the European Union, as well as on the regulatory and technical instruments necessary to ensure consumer protection and preserve public order;

whereas:

the online gambling industry has experienced remarkable growth in the European Union in recent years, reaching annual revenues in 2008 of more than €6.16 billion, which are likely to double by 2013, and Italy is one of the largest markets, with gross revenues amounting to 1.18% of GDP in 2008;

according to the most recent data collected by the Finance Committee during a hearing of the Director General of the Autonomous State Monopolies Administration, in 2010 the online gaming industry generated revenues of about €5 billion;

the regulatory framework for the sector is characterized by considerable fragmentation of national regulations, especially as regards the conditions for market access by operators;

in this context, we have witnessed the development of a very large illegal cross-border online gambling market, with both unauthorised clandestine operators, who run illegal betting services and games of chance without any license or other form of public control, and operators who are duly licensed in one or more Member States but provide gambling services to the citizens of other Member States without having obtained a specific license or concession in those countries;

gambling services are not covered by sector-specific European legislation and, because of their particular features, have been excluded from the scope of Directive 2006/123/EC on services in the Internal Market;

the online gambling industry raises numerous sensitive issues, including: the protection of the rights of consumers in general and of minors in particular; the prevention of fraud; countering forms of problem gambling; the fight against the infiltration of the industry by criminal organisations; countering money laundering; and preventing the evasion of tax on the winnings from games;

these characteristics make it necessary to implement, at the individual Member State level, public regulatory and supervisory mechanisms to safeguard the collective interests noted above: in response to this necessity, many Member States have established, albeit in different forms, authorisation or concession systems or other mechanisms for controlling operators that are involved in the online gambling market;

the Internal Market and Consumer Protection Committee of the European Parliament also recognizes in its report, for the reasons indicated above, the reasonableness and legitimacy of national rules for determining the number of operators, and the type and volume of games;

with regard to the need for protection just cited, the Italian legal framework in this field offers a positive model, in that it provides for: a public entity - the Autonomous State Monopolies Administration – which is responsible for performing administrative and public oversight duties for the entire gambling industry in a unified manner, a concession system that subjects the provision of gambling services to specific subjective and objective conditions as well as stringent requirements for the transparency and financial strength of the holders of gambling concessions; a complete ban on participation in gambling for persons under eighteen years of age; and educational and treatment initiatives designed to counter compulsive gambling and other gaming pathologies;

a crucial issue in this context is represented by the even broader phenomenon of online gambling operators based in an EU Member State or in non-EU country that also offer their services to consumers located in another Member State without having a license issued by the Member State of which the consumers are resident and are not subject to adequate supervision by the latter State;

in response to these situations, many Member States, including Italy, have prohibited the offering of online gambling services in their territory by any operator, even if authorised in other Member States, who does not hold a license granted by their competent national authorities;

these rules have been the subject of extensive litigation in many Member States, with cases even reaching the Court of Justice;

the position that has emerged in a number of judgements of the Court of Justice of the European Union, including, most recently, the decision of 15 September 2011 (Case C-347/09) concerning Austrian gambling legislation, confirms the principle that the Member States may restrict access to the gambling market to operators who have obtained a license from the national regulator, ruling out any requirement for mutual recognition of licenses or concessions granted by different Member States;

the Court of Justice will soon be called on to rule on Italian gambling regulations, following a reference for a preliminary ruling submitted by Italy's Court of Cassation concerning the joined Costa and Cifone cases (C-72/10 and C-77/10), regarding which the Advocate General of the Court issued his conclusions on 27 October 2011;

it is important avoid, in the name of a mistaken interpretation of the principles enshrined in the European treaties, any weakening of the safeguards established by the Member States in the exercise of their discretionary policy choices, thereby safeguarding the public interests delineated above;

it is necessary for this final document, along with the text of the opinion expressed by the Committee for European Union Policies, to be transmitted to the European Commission within the scope of the informal political dialogue and to the European Parliament and the Council;

CALLS ON THE GOVERNMENT

to take action in the appropriate decision-making fora of the European Union to:

- a)* reinforce, at the national and transnational level, all available instruments to ensure more rigorous action against all forms of illegal or unlicensed gambling in order to meet the priority needs of protecting the rights of consumers, and minors in particular, preserving public order and safeguarding tax systems;
- b)* take realistic account of the fact that the specific market and technological characteristics of the online gambling industry, as well as the need to ensure comprehensive, careful monitoring at the national level to safeguard public interests, make it very challenging, and perhaps not entirely desirable, to achieve full European-level harmonization of the different regulatory systems governing this field in the various Member States, especially as regards the conditions for market access;
- c)* reaffirm the validity and compatibility of the concession system adopted in Italy with the principles of the European Union, especially in order to ensure that the unrestricted entry into the Italian market of online gaming operators based in other Member States does not weaken the regulatory mechanisms established to protect consumers or result in unfair competition with national operators, who are subject to much stricter requirements and obligations;
- d)* in this context, definitively recognize the right of each Member State to subject operators holding a license or concession granted by another Member State to provide Internet gambling services in that Member State to requirements and obligations designed to safeguard the public interest, such as: controlling the professional qualifications and integrity of such operators; protecting consumers against fraud; combating the infiltration of organized crime; and countering the various forms of gambling pathology;
- e)* take steps to enshrine at the European level the principle under which, in the case of the use of national and international sporting events by online gambling operators located in a State other than that in which the event was organized, the sporting events on which the gambling is based are entitled to a return on such activity in order to avoid “free-riding” and market distortions in the distribution of the proceeds of gambling;
- f)* adopt a broad notion of "online gambling" such as to comprise sports betting in the horse-racing sector, casino games, spread betting, multimedia or promotional games, gambling services run by and for the benefit of charities and non-profit organizations or lotteries;
- g)* promote common measures at the European level for prosecuting fraud related to sports betting and to prevent and remove conflicts of interest among operators in the betting industry and sports clubs, teams and athletes;
- h)* assess the advisability of extending to the European level the ban that already exists in some Member States, including Italy, on the participation of minors in online gambling;
- i)* draw up common rules governing the advertising of games of chance – whether on television or in the press, including online commercial communication and promotions and direct marketing campaigns – that are sufficiently rigorous to protect minors and vulnerable consumers;
- l)* strengthen mechanisms for the identification of game account holders, since the establishment of a comprehensive and effective system of identification is crucial to countering money laundering and implementing automated tools that enable the identification of minors attempting to gamble and prevent individual players from investing excessive amounts in gambling activities;
- m)* resolve the issues involved in the application of Directive 2005/60/EC (the so-called Third Money Laundering Directive) to online gambling services, which, albeit in general terms, includes online casinos within its scope of application, issues that are associated with the multiplicity of services normally offered by online gambling websites as well as the fact that an operator may be licensed to operate in more than one jurisdiction;

n) expand the mechanisms for cooperation, assistance and exchange of information between the different national administrations responsible for overseeing the online gambling industry, especially in order to combat fraud, money laundering and tax evasion, including shared mechanisms to block unauthorised gambling sites.