



Online gambling in the EU

SUMMARY *The online gambling market is growing rapidly with betting being the biggest sector. Gambling is regulated by the Member States (MS). Frameworks vary with some MS having no specific regulation, some employing licensing systems and others imposing complete bans.*

The independence of MS has also been underlined by EU case law. Gambling is considered an economic activity which falls under the free movement of services and establishment, but several restrictions have been considered justified. Moreover, the obligation for MS to mutually recognise authorisations by other MS has been rejected. It is disputed whether more harmonisation is necessary to tackle the problems and opportunities of the market.

Match fixing in sport has been prevalent in recent years and many stakeholders have called for EU-wide criminalisation of such activities.

The problems related to gambling addiction are widely recognised in MS, however, surveillance and information vary significantly. Social gaming brings new risks, in particular for young internet users.

The Commission has decided it is not appropriate at this stage to propose sector-specific EU legislation, however, during the course of consultations stakeholders have called for policy action in certain key areas.



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Background

Online gambling is an issue with significant disagreement between the Commission, MS authorities and established businesses. Furthermore, courts, as well as academics, have also taken very different positions. The market has grown rapidly in recent years and, even for those MS which have adopted specific regulation, is difficult to control due to its cross-border nature, stimulated by growing internet activities and offers.

However, online gambling is also considered as a threat to certain vulnerable groups in society. For this reason it is argued that it cannot simply be treated as just another economic activity requiring full market liberalisation and competition.

Definition of online gambling

The Commission clarifies in its [communication on a comprehensive European framework for online gambling](#) (2012) that the term refers to a **range of different gambling services and distribution channels** (including digital interactive TV, mobile phone technology, telephone and fax). The term **"game of chance"** in relation to online offers includes:

- Betting services (including horse and dog racing, event betting and pool competitions),
- Poker and casino services,

- Bingo services,
- Gambling services operated by and for the benefit of recognised charities and non-profit making organisations,
- Lottery services,
- Media gambling services (i.e. games within the editorial content of media),
- Sales promotion services, consisting of promotional games with a prize or where participation is linked to purchase.

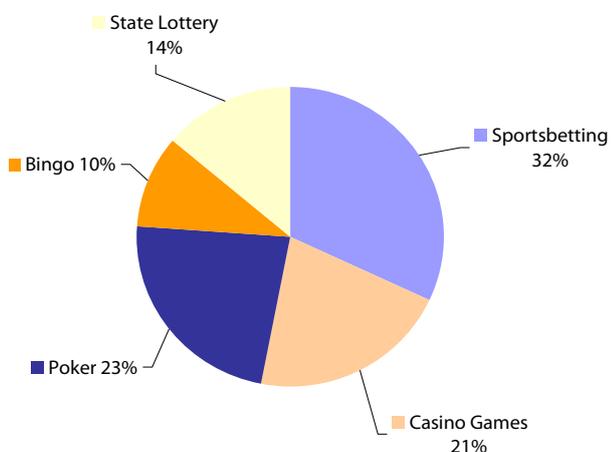
Due to the rapid growth and introduction of new internet services, new types of activities may now be included. In particular social games (e.g. Second Life) have recently come into the spotlight. They are usually run through social networks and use "virtual currencies". It has been [observed](#) that more and more social games are evolving to take on gambling characteristics.

Online gambling in the EU market

Online gambling has a [10.9%](#) share of the overall gambling market, but it is growing at a fast pace with [annual growth rates of almost 15%](#). The economic significance of the sector is also shown by the high level of innovation in the EU industry and the increasing tax revenues generated in MS.

As to the different sectors, betting is the biggest sector in the online market, followed by casino games (blackjack, roulette, poker, etc.).

Figure 1 - Online gambling by sector in 2011



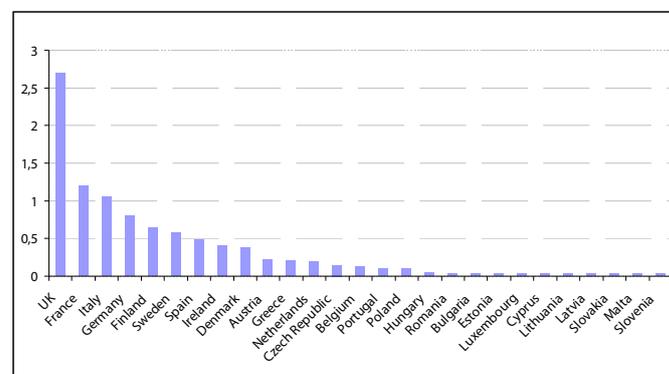
Data source: H2 Gambling Capital, [Commission Staff working document on online gambling, p. 11](#), 2012.

Member State frameworks

Gambling is currently regulated by MS. Different types of regulatory frameworks for online gambling can be distinguished in the MS:

- **Ban:** a few MS (e.g. Germany and the Netherlands) prohibit (entirely or partly) games of chance on the internet.
- **Monopoly:** in some MS, online gambling services are offered by a state controlled public operator or private operator on the basis of an exclusive right (e.g. Finland, Portugal, Sweden).
- **Authorisation/licensing:** a growing number of MS (e.g. Denmark, Estonia, France, Italy, Spain) offer licences to more than one operator to provide services under specific conditions. Only a few MS recognise licences from other MS.
- **No specific regulation:** a few MS (e.g. Ireland, Lithuania) have no specific rules on offering online gambling services.

Figure 2 - Online gambling, by Member State in 2011 (in € billion)



Data source: H2 Gambling Capital, [Commission Staff working document on online gambling, p. 11](#), 2012.

A number of MS have recently [reviewed](#) their gambling legislation to take account of new forms of gambling services. This has led to an increase in the offer of gambling services by operators over the last few years. Cross-border offers which are often not authorised under the national rules of an MS have also increased.

CJEU jurisprudence

Gambling in general

The Court of Justice of the European Union (CJEU) [considers](#) games of chance or gambling to constitute **economic activities**, and therefore subject to **free movement of services and establishment** according to Art. 56-62 and Art. 49-55 TFEU. According to the Court, these provisions also cover [services offered by electronic means](#) and the [promotion](#) of gambling.

The different national rules governing gambling constitute **restrictions** of these freedoms, for example restrictions on promoting gambling organised in other MS, limitations on the number of licences or the conferral of exclusive rights on a single operator.

However, these restrictions can be **justified** if they are related to reasons of general interest, in particular derogations on the basis of public policy, public security or public health, and justified, according to the [case law of the CJEU](#), such as the

- fight against gaming addiction,
- fight against crime and malpractice, and
- the general need to preserve public order.

But not all justifications are accepted by the courts. In particular general-interest objectives based on economic grounds have usually been rejected by the EU courts. The courts also [established](#) that the motive of financing of benevolent or other public interest activities through a levy on the proceeds of authorised games cannot in itself be regarded as an objective justification.

Online gambling

It is highly disputed¹ whether online gambling bears a higher risk of addiction or attracts more criminal activity than traditional gambling. In [Liga Portuguesa/-Bwin v Santa Casa](#) and subsequent cases in relation to **gambling service provision**

over the internet the EU courts have ruled that **specific conditions** apply:

- Authorities of the MS where the operator is established and lawfully offers services encounter difficulties in assessing the professional quality and integrity of operators acting abroad.
- Due to the lack of direct contact between consumer and operator, games of chance accessible via the internet involve different and more substantial risks of fraud by operators against consumers, compared with the traditional markets for such games.
- The anonymity and absence of social control are [likely](#) to promote the development of gambling addiction, and to increase the negative social and moral consequences attaching thereto.

More harmonisation needed?

In contrast to other economic activities in the internal market, however, it is observed² that the EU courts give MS remarkable discretion to regulate (online) gambling services. The Court also established in *Liga Portuguesa/Bwin* and subsequent rulings that, due to the lack of harmonisation and the margin of discretion for MS to determine the requirements and level of protection, there exists **no duty to mutually recognise authorisations** issued by other EU MS in the field of online gambling.

Amongst academics, it is disputed whether more harmonisation is needed.³ It is argued that gambling is an area where harmonisation typically makes sense for a number of social and economic reasons, in particular the growing virtualisation of activities beyond physical borders.⁴

Gambling is considered an example which illustrates that there is ambivalence about market-building which tries to reconcile possible efficiency gains and enhanced competition with an aversion to promoting risk.⁵ It is also underlined that a large majority of consumers consider gambling as an enjoyable leisure activity⁶ and that

policy-makers should focus on creating a safe environment in which gambling services can be supplied.⁷

Taxation of internet gaming and gambling

Varying national approaches to gambling also raise taxation problems, in particular, how to levy VAT and betting and/or gambling taxes on gambling services offered over the internet or in another MS⁸.

Article 135(1)(i) of the [EU VAT Directive](#) foresees an exemption for *betting, lotteries and other forms of gambling, subject to the conditions and limitations laid down by each Member State*. Games that are not included in this definition, such as pinball machines and internet games are subject to **VAT** which is payable by EU providers in their Member State of establishment.

Besides VAT, a **betting and gambling tax** applies in many MS. For online betting and gambling, certain MS, like the Netherlands have legislated on taxation. The Netherlands also taxes the prize winners of online games.

Match fixing

Not only the EU institutions but also the Council of Europe and the [International Olympic Committee](#) have launched different initiatives to tackle problems related to match fixing.

There is no common **definition** of the term. The Council of Europe [defines](#) the manipulation of sports results as *the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition*.

A 2012 [study](#) on provisions covering match fixing in national criminal law concludes that regimes differ widely amongst MS, but that the streamlining of criminal competences in

the Lisbon Treaty offers new avenues for the EU to overcome loopholes in existing legislation, to improve and encourage cooperation amongst bodies and stakeholders involved and to stimulate further research on key issues.

In response to the Commission's 2011 public [consultation](#) on online gambling in the internal market, a number of stakeholders, mostly sports bodies and operators as well as some MS [called](#) for the EU-wide adoption of **match fixing as a criminal offence** and for stronger involvement of international enforcement agencies to fight it.

Problem gambling and addiction

It is widely agreed that gambling brings with it inherent risks of personal and social harm to vulnerable and susceptible individuals. A lot of terms are used to refer to individuals facing difficulties related to their gambling. **Problem gambling** is generally used to indicate all the patterns of disruptive or damaging gambling behaviour. *Griffiths, Hayer and Meyer* [identify](#) that the greatest problems are associated with non-casino electronic gaming machines such as "slot machines", which are also the fastest growing sector of the gaming economy in general. They also observe that more and more women are facing addiction problems which in the past were mostly confined to men.

It is also observed that there are differences amongst MS, both in approach and in the information available on the problem. While some have monitored gambling for a long time, others are just beginning. This is also in line with the response to the [Commission's 2011 Green Paper](#) for which MS had provided data from reports, surveys and studies to determine percentages of potential problem gamblers. The main estimates were around [1%-3%](#), however, the data is not truly comparable because the definitions and sample groups were not uniform.

Social gaming and gambling

In recent years, online social games have evolved to take on more and more gambling characteristics, such as playing games of chance to win prizes in a virtual currency (e.g. Zynga poker, where players play with virtual chips and can use them to send or receive virtual gifts). Social media provide the platform or play an important role in the promotion of such games.

This phenomenon was recently [observed](#) by the head of the UK Gambling Commission. He highlighted the risk that young people or other vulnerable people would develop problem gambling characteristics and that consumers would be ripped off as two concerns which needed addressing by gambling regulators.

EU framework

The Commission launched a [consultation](#) in 2011 based on a Green Paper, and concluded that it would not be appropriate at this stage to propose sector-specific EU legislation.

However, the Commission outlined in its 2012 [Communication](#) on online gambling that there was an almost unanimous call for policy action at EU level. An [expert group](#) has been set up, consisting of representatives from Member State authorities and chaired by a Commission [representative](#).

Five key areas of work have been identified:

- compliance of national regulatory frameworks with EU law,
- enhancing administrative cooperation and efficient enforcement,
- protecting consumers and citizens, minors (including children) and

vulnerable groups,

- preventing fraud and money laundering
- safeguarding the integrity of sports and preventing match-fixing.

European Parliament

The European Parliament has followed developments closely. The Internal Market Committee is currently working on an [own initiative report](#) (rapporteur Ashley Fox, ECR, UK) on the Commission's Communication. A number of workshops and discussions have been held on this subject. Parliament had previously adopted a [resolution](#) in November 2011 on the issue, and the Policy Department for Economic and Scientific Policy commissioned a [study](#) on options for regulating online gambling, delivered in 2008.

According to the Communication, the Commission intends to draft three recommendations. Two, on consumer protection and advertising of online games are planned for late 2013 and one on the integrity of sport and the prevention of match fixing is planned for 2014.

With regard to match fixing, the Commission will launch test projects aimed at promoting international cooperation in the fight against match fixing under the [2012 Preparatory Action for European Partnerships in](#)

[Sport](#).

Relevant EU secondary legislation

Much EU secondary legislation does not apply to the gambling sector, for example the [Consumer Rights Directive](#) (which incorporates the provisions of the Distance Selling Directive) no longer applies to gambling contracts (Art. 3(3)(c)), while the [Audiovisual Media Services Directive](#) (AVMSD) excludes gambling offers where the audiovisual content is merely incidental to the service.

However, the recently [proposed Anti-Money Laundering Directive](#) has been [extended in its scope](#), to include providers of gambling services in addition to casinos, and to require customer due diligence for single transactions above €2 000. Gambling advertising can also be caught by the [Unfair Commercial Practices Directive](#) if it is contrary to the requirements of professional diligence and if it disturbs the economic behaviour of average customers or an identifiable group with an underlying

vulnerability. In addition, the [Unfair Contract Terms Directive](#) can be applied.



<http://www.library.ep.ec>
<http://libraryeuroparl.wordpress.com>

Further reading

[In the Shadow of Luxembourg - EU and National Developments in the Regulation of Gambling](#) / Littler, Hoekx, Fijnaut and Verbeke, 2011.

[Problem Gambling in Europe, Challenges, Prevention and Interventions](#) / Meyer, Hayer, Griffiths, 2009.

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Endnotes

- ¹ [Les jeux sont faits? Mutual Recognition and the Specificities of Online Gambling](#) / Anagnostaras, European Law Review, 191-203, 2012.
- ² [Money for nothing: The case law of the EU Court of Justice on the regulation of gambling](#) / Van den Bogaert, Cuyvers, Common Market Law Review, 1175-1213, 2011.
- ³ [In a Bet there is a Fool and a State Monopoly: are the Odds Stacked against Cross-border Gambling?](#) / Doukas, EUCE papers 2011; [Rien ne va plus ? Mutual recognition and free movement of services after Santa Casa](#) / Dawes, Struckmann, European Law Review, 191-203, 2010.
- ⁴ Gambling Regulation in Europe: Moving beyond Ambiguity and Hypocrisy / Verbeke, [In the Shadow of Luxembourg-EU and National Developments in the Regulation of Gambling](#), 251-258, 2011.
- ⁵ [Stakes and states: gambling and the single market](#) / Della Sala, Journal of European Public Policy 17, 1024-1038, 2010.
- ⁶ [The social benefits of gambling](#) / Basham, Luik, Institute of Economic Affairs, Blackwell Publishing, 2011.
- ⁷ [Between the Hammer and the Hard Place: European Gambling Regulation in the Post-Santa Casa Era](#) / Yancev, European Business Law Review, 213-251, 2012.
- ⁸ [Taxation of internet gaming and gambling in the European Union](#) / van der Paardt, ERA Forum 10, 525-531, 2009.