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NOTE

from: Presidency
to : Council (Competitiveness)
Subject : Legal framework for gambling and betting in the Member States of the European Union
Presidency Progress Report

In view of the meeting of the Council (Competitiveness) on 3-4 December 2009, agenda item 14 "Any other business", delegations will find in Annex the Progress Report by the Swedish Presidency.

Introduction

1. The Swedish Presidency has taken the initiative to discuss certain topics on betting and gambling in the EU at the level of the Council Working Party on Establishment and Services. The work was carried out following the mandate from the Permanent Representatives Committee from 2 July 2008 to engage in discussions which then had started under French Presidency in the second half of 2008. In particular, the French Presidency Progress Report sent to the Council in December 2008¹ concluded - inter alia - that an exchange of views on different issues concerning the national legal framework for the betting and gambling sector would be useful.

The Presidency also took into account the resolution of the European Parliament adopted on 10 March 2009.²

2. This report follows the structure of the discussions at WP party level under the Swedish Presidency, where the following three topics have received particular attention:
 - The socio-economical problems of gambling
 - Gambling responsibility measures
 - National measures regarding the ban of promotion and abetting of crimes related to gambling and betting.
3. The Presidency does not intend to give a full account of all the contributions and different opinions on these topics which have been expressed during the discussions. This Presidency progress report rather tries to summarise some main points being fully aware of the fact that not all issues mentioned or examples given apply to all Member States in the same way. As it has been stated before, different national models of regulation - developed in compliance with

¹ doc. 16022/08 + COR1

² The resolution followed the SCHALDEMOSE report. See European Parliament resolution of 10 March 2009 on the integrity of online gambling (2008/2215(INI)); P6-2009-0097.

Community law - should be respected according to the principle of subsidiarity.¹ This summary could nevertheless be a valuable input to further discussions about measures and future policies at Member States level with a view to improving consumer protection in general and the protection of the most vulnerable groups in particular, combating fraud and promoting fair competition whilst fully respecting Member States' competencies in this area.

The socio-economical problems related to gambling

4. Gambling exists as a form of entertainment and should be a pleasure, but for some people gambling leads to problems and perhaps even addiction. The Swedish Presidency believes that problem gambling causes a great deal of suffering for the gambler and his or her family and also entails costs for the society.
5. Although problem gambling is linked to many different problem areas, the costs can be categorized as follows:
 - The costs of depression related to problem gambling, including direct and indirect costs, i.e. care, medication and loss of output resulting from time off work, early retirement and suicide. As public health could be directly and indirectly affected by gambling in general and problem gambling in particular, more research is needed on such a possibility and its direct and indirect costs.
 - The costs of loss of output through unemployment.
 - The costs of treatment for problem gambling both for the individual and supporting projects focusing on treatment of problem gambling
 - The costs of crime resulting from problem gambling including the costs for court and police authorities.
 - The costs for state efforts targeted specifically at problem gambling.

¹ French Presidency progress report, 16022/08 + COR 1, point 16.

6. Research has shown that biological, social or psychosocial factors affecting the individual play an important role for the development of problematic gambling behaviour. This notwithstanding, it is possible to identify other *risk factors* which are probably more accessible to prevention measures:
- Accessibility of gambling - Countries with many opportunities to gamble have a higher proportion of compulsive gamblers. In areas with a high concentration of gaming machines people gamble significantly more.
 - The effect of alcohol - There are solid indications that alcohol consumption has a direct effect on gambling and problem gambling. The effect of alcohol is especially marked on people who have already developed a gambling problem.
 - Reaction to losses and to occasional financial gains - Just having experienced a loss, or having been near to losing, is believed to trigger continued gambling with bigger stakes since the gambler is motivated to recover the loss. Near misses are losses where the gambler regards himself as having been close to winning. This has been shown to have the effect of increasing gambling. Many games are designed in such a way that the proportion of near misses is higher than would arise randomly, as an incentive to further gambling. Occasional financial gain is a major factor behind gambling. One factor in the significance of money is how any winnings are received. If a gambler receives his winning rapidly (for example in net poker or at gaming machines) then problem gambling is more prevalent.
 - Tension, excitement and mood - It is reasonable to assume that games with higher stakes provide more tension and therefore increase the risk of problem gambling. Difficult personal circumstances are a key factor in the development of problem gambling. The tension and excitement that gambling provides temporarily relieve anxiety. In some cases gambling is regularly indulged in by people who are suffering from depression and anxiety.

- Characteristics of gambling machines and cost of response - Research has shown that gambling behaviour increases in frequency more rapidly when it takes place on electronic machines which allow a quick and repetitive response pattern. Slower gaming machines and delayed stakes reduce the pleasure of playing. However, the number of turns played apparently diminishes if the gambler is informed automatically on the time spent playing and his losses and wins; compulsory pauses in play also have this effect. It may be assumed that playing increases when a stop button gives an illusory impression that one is able to affect the outcome. If gambling only requires a little effort from the gambler, gambling behaviour tends to develop. Factors such as free transport to gambling halls and the possibility of small stakes reduce the effort for the player and increase the likelihood that problematic gambling behaviour will be initiated.
- Advertising -Some studies suggest that advertising makes gamblers develop their gambling.
- Social reasons and environment - Studies shows that social factors such as interaction with other gamblers are significant for gambling. Growing up with family members who have a gambling problem increases the risk of having a gambling problem oneself. Those who start gambling at an early age are also more likely to become problem gamblers.
- Ideas of luck and control - There is link between ideas about luck and compulsive gambling. Investigations have shown that gamblers who have been near to losing but have survived have a tendency to increase their gambling. They regard themselves as lucky and increase their stakes for the next round. People also have the idea that the likelihood of winning increases if you have lost several times in a row. This is despite the fact that the events are completely independent of one another. To justify earlier investments, or so that they do not see their investments as thrown away, gamblers may stick with dysfunctional strategies. Continuing to stake money so as to win back losses is a central behaviour in compulsive gambling.

Gaming responsibility measures

7. Responsible gambling measures are efforts made by the regulators and the gaming operators themselves with the aim to ensuring responsible gambling, i.e. efforts to prevent gamblers from developing a gambling problem. Responsible gambling measures may be of various types. The measures may either be stipulated in national law so that they are compulsory for regulated gaming operators, or they may be measures which the gaming operators themselves take to prevent problem gambling arising. Responsibility measures may either be compulsory for gamblers or voluntary, in the latter case the gambler may choose whether to make use of the service or not. In recent years gambling has in many member states become increasingly accessible through the development of the gambling market on the Internet. This is why a number of examples of gaming responsibility measures focus on Internet gambling, while others are relevant for both offline and online gambling.
8. On the basis of a questionnaire drawn up by the Swedish Presidency and the contributions received from Member States the discussions at Working Party level dealt with a large number of "gaming responsibility measures".
9. The Swedish Presidency furthermore believes that in this context it would be of great value to engage in the work on this topic all relevant services of the European Commission to address gambling responsibility in all its aspects.
10. To sum up the debate, the Swedish Presidency holds the view that the measures set out below (points 10 a)-l)) merit particular attention and consideration at least as a *list of examples* from which - at Member State level - regulators or gaming operators can draw inspiration.
 - a. The enforcement of *age limits* can be a valid tool of gaming responsibility. Frequently, there are age-limits on retailer products for example, slot machines or Bingo, on Internet games and on casinos. Regulators and the gaming operators themselves consider how enforcement of the limits are checked and what sanctions or penalties apply to those operators found to be in breach. A licence holder providing gaming services in a gaming machine hall should check

the *identity of the persons* entering the gaming machine hall. Each licence holder providing gaming services in bingo machine halls, bookmaking and totalisator points, before sale of bingo, bookmaking or totalisator cards, should check the identity of the possible client. Each licence holder should have the right to check the identity of the persons entering and/or who have entered the gaming premises, intending to acquire bingo, bookmaking or totalisator cards. Licence holders should have the right to require unauthorised persons to leave the premises.

- b. Where *online gambling is permitted, online registration* could be optimised as a gaming responsibility measure. Detail registration for online gambling should include the notification of personal details such as name, address and birth date. In some Member States this is done with automatic plausibility checks (e.g. checks against the official registration). A banking account to which all profits are transferred and that can only be used once for online-gambling seems adequate. Via these measures circumventions of the registration requirements and of budget limits could be restrained and money flows would stay more transparent (money laundering prevention).
- c. In many Member States *gambling and betting on credit is not permitted*. As an enforcement measure, gaming operators might consider whether to prevent gambling on credit for example by regularly monitoring transactions, in order to further supplement socially responsible measures for particularly vulnerable players. Major variations in sales or other indications could also be checked and followed up, and if the operator finds evidence of gaming on credit, the retailer should consider the most appropriate response, which could include suspending the player's account or providing information about responsible gambling and where to get help on problem gambling.
- d. Gaming operators should aim to promote *healthy gaming environments*, whether that is online or offline. It might be appropriate for restaurants, where gambling is permitted, to maintain a reasonable balance between their slot machines revenue and their total revenue to ensure gaming does not become overly dominant in the restaurant environment. If alcohol is being served in the premises the retailer is responsible to maintain a sober and decorous environment. Regulators and legislators should consider whether to allow gambling only in certain premises. A healthy environment is the one, whereby regulation, control and supervision of the gambling activities may be easily carried out.

- e. Gambling machines are a relatively high-risk form of gambling, like most forms of short-odds gambling. *Special provisions for gambling machines* are therefore widespread. Research indicates a link between the prevalence of addiction and the age at which a player starts playing on gambling machines. As a result, protecting minors is a key priority, as is shown by the following policies implemented by some Member States:
- Gambling machines have been banned from low-threshold establishments (cafeteria's, take-away restaurants, sports clubs, and similar). Site permits for gambling machines are only given for high-threshold establishments (pubs, bars and restaurants), arcade amusement centres and casinos.
 - A system of obligatory age checks has been established for arcade amusement centres. An obligatory identity check has been in place for casinos. Some gambling halls and local authorities use higher age limits on a voluntary basis than those applying for gambling in general.
 - The technical regulation of gambling machines is extensive and for instance contains limits on maximum bet and maximum win per game, maximum average win/loss per hour, and maximum peak win/loss per hour, and measures such as obligatory pauses and warnings.
- f. Gaming operators should generally be expected to provide information to all customers about responsible gambling as well as ways to seek help for problem gambling. This could be achieved in part by displaying any *relevant contact information for support*, such as telephone helpline numbers in all facilities and places where gambling is available and in other areas separate from the main gaming area or at lottery tickets. The support number should be displayed ubiquitously in a language understandable for the player.
- g. Gaming operators should consider *registration cards* that could, for example, be used for slot machines, Internet, or casino games to reinforce the current system of age identification and enable new tools and measures to be applied to monitor gambling activity and identify players most at risk. New tools for gambling responsibility measures from the retailers could be introduced to the customers via the registration card. The licence holder and a person willing to participate in gaming will have to conclude a gaming participation agreement. The licence

holder, before concluding such an agreement, will have to check whether a person meets all the requirements established by the Law and whether he is not prohibited from gaming. The licence holder, after detection that a person is prohibited from gaming, will not be able to conclude the gaming participation agreement. A person who signed the gaming participation agreement will be attributed a code and/or a password by the licence holder. A person will not be able to conclude the gaming participation agreement through his agent. A person who will enter into the gaming participation agreement will bear responsibility for non-using by other persons the code and/or password attributed to him. A person participating in gaming will be able to stake only the wagered sum of a certain value within a month. The licence holder will have to take gaming pauses.

- h. Gaming operators should offer consumers measures/features to enable players to monitor and control their own gambling. For example, operators may wish to consider enabling players to take a '*self-test*'. The purpose of the self-test is that players can see if they are in the risk zone and give themselves a chance to change their behaviour before they have a problem. If designed correctly a test could signal a problem early on and is therefore an effective tool in preventing unhealthy gaming habits from developing.
- i. Individual players might determine how much is appropriate for their purposes. When setting a poker budget, for example, the player can enter the amount of time as well as money he or she wishes to spend. The *selection of time and financial budgets* can be made on a daily, weekly and monthly basis. When players are near to their limit they are informed and when they reach their limits the game is automatically stopped.
 - Reduction of the upper limit of stakes. There should be a general restriction of an overall maximum online stake per player and period
 - The player should have the possibility to fix a lower period budget- limit for online-gambling.
 - The player's budget should be a general budget limit, not confined to certain games.
 - A raise of the chosen budget should only be made after a cool-down-phase
 - The player should have the possibility to fix a daily time-limit for online-gambling.

- j. Gaming operators should be expected to offer to all players an option to ***self-exclude from gambling***. Players who play on Internet, Slot-machines or Casinos can close their gaming account whenever they wish, and can either choose to no longer take part in games or conduct transactions to or from their ‘registration card’ or to limit their number of visits. The gaming operator should offer self-exclusion or limited visits to all their players.
- k. ***Certain practices*** could possibly be prohibited:
- applying fixed discounts for owners of coupons distributed in mass media or in other ways;
 - providing gaming services free of charge or by deferring payments.
 - granting a right to the player immediately or within certain period of time after the gaming to get award or premium to gaming services;
 - proposing gaming services to persons by indicating a supposed decrease in price of gaming services and/or an allegedly large prize, also by other means or measures inconsistent with good morality and public order;
 - providing gaming services as prizes of lotteries, contests, sport games, games or for participation in other events, or in addition to them;
 - organising games or contests, lotteries and other events in non-gaming places which would encourage to use gaming services;
 - giving (gratuitously) or to sell for a symbolic price alcoholic beverages or other products, with an exception of representative items of licence holders with gaming activity permits, to players.
- l. ***Guidelines for marketing and socially responsible advertising*** could be developed such as:
- Advertising for gaming operators should comply with legislation, and shall be developed in such a way that it is not perceived as offensive or aggressive.
 - Advertising should not take advantage of consumer confidence in the gaming industry and its participants, or mislead consumers, for example regarding the chances of winning.
 - Advertising should not claim that the results of a game of chance are influenced by anything other than chance.
 - Advertising should not be selectively targeted towards vulnerable or particularly marginalized groups in society.

- Advertising should not be used in a context that primarily attracts minors or be designed to target this group.
- Persons under 18 should not play a central role in advertising other than as recipients of the gaming operator's contributions, or when games are not directly marketed. The underage gaming prohibition should be advertised.
- Advertising should not encourage consumers to engage in excessive gaming and shall promote a responsible gaming behaviour.
- Advertising should not claim there are no risks associated with excessive gaming.

Different National Legislations

11. On the basis of a questionnaire drawn up by the Swedish Presidency concerning the "ban of promotion and abetting of crimes related to gambling and betting", the written contributions received by Member States and the discussion at Working Party level have revealed an interesting picture of several features common to many Member States. Instead of presenting a catalogue of measures in this field of Member State competency, the Swedish Presidency considers the following messages as essential:

12. As stated in the rulings of the European Court of Justice, the legislation on games of chance is one of the areas in which there are significant moral, religious and cultural differences between the Member States. In the absence of Community harmonisation in the field, the Presidency believes that it is for each Member State to determine in those areas, in accordance with its own scale of values, what is required in order to ensure that the interests in questions are protected.

13. The Member States are therefore free to set the objectives of their policy on betting and gambling and, where appropriate, to define in detail the level of protection sought. However, the restrictive measures that they impose must satisfy the conditions laid down in the Treaty and in the case-law of the European Court of Justice.

14. In a recent ruling¹ the European Court of Justice has also stated that a Member State "*is entitled to take the view that the mere fact that an operator (...) lawfully offers services in that gambling sector via the Internet in another Member State, in which it is established and where it is principle already subject to statutory conditions and controls on the part of the competent authorities in that State, cannot be regarded as amounting to a sufficient assurance that national consumers will be protected against the risk of fraud and crime, in the light of the difficulties liable to be encountered in such a context by the authorities of the Member State of establishment in assessing the professional qualities and integrity of operators.*"
- In this context the Presidency believes that the Member States have an interest and right to regulate and control their gambling markets in accordance with their traditions and cultures in order to protect consumers against e.g. addiction, fraud, money-laundering and match fixing in sports. Criminal sanctions, bans of promotion or for example IP-blockings will continue to work according to Member States' own provisions and legal priorities.

Conclusion

15. The Swedish Presidency encourages all relevant parties, including the preparatory bodies of the Council, to continue work and the exchanges of experience on the "Legal framework for Betting and Gambling". In doing so, a deeper understanding of common features and differences at Member State level could be developed and a higher effectiveness of policy tools and approaches be aimed at.

¹ C-42/07 (Liga Portuguesa de Futebol Profissional, Bwin International Ltd, v. Departamento de Jogos da Santa Casa da Misericórdia de Lisboa), point 69.