



Swiss Institute of Comparative Law

Study of Gambling Services in the Internal Market of the European Union

***One Aspect of
Current European Developments***

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Overview

- I. Scope and Content of the Study
- II. European Law Context
- III. Atypical Sectors of the Gambling Market



I. Scope and Content of the Study

- Called for by the Services Unit II of the Directorate General for the Internal Market of the European Commission
- Competitive tender contract awarded to the Swiss Institute of Comparative Law
 - specialised in the legal and regulatory aspects of gambling
- Subcontract with the University of Salford's Centre for the Study of Gambling
 - specialised in the economic and statistical analysis of gambling



I. Scope and Content of the Study

Draft Report for 31 July 2005

- Overview of the size, structure and economic importance of the gambling industry in each of 25 EU Member States
 - Including development over the last 5 years and prognostics for the next five years
- Complete list of all laws, subsidiary norms, jurisprudence and self-regulatory codes governing the provision of gambling services
- Identification of all those provisions constituting barriers to the free movement of gambling services



I. Scope and Content of the Study

Obligation to contact “Stakeholders”

in each
EU Member State

- Ministries
- Gambling Regulatory Authorities
- Crime Prevention Authorities
- Gambling Industry Representatives
- Media Representatives
- Consumer Protection Organisations
- Representatives of Bodies Benefiting from Gambling Revenues



I. Scope and Content of the Study

Obligation to contact “Stakeholders”

European level

- European Gambling Industry Representatives
- European Associations of Media Representatives
- European Associations of Consumer Protection Organisations
- European Associations of Beneficiary Bodies
- International Crime Prevention Authorities



I. Scope and Content of the Study

Obligation to *recontact* certain Stakeholders

- European and National Crime Prevention Authorities
- European and National Consumer Protection Organisations
- European and National Associations of Media Representatives
- European Associations of Beneficiary Bodies

for input as to the extent to which existing
barriers to free movement are actually
advancing public interest objectives



Goal of the Study

To assess whether each of the existing barriers imposed by the laws of the Member States to restrict free movement of gambling services in the Internal Market could be held to be justifiable according to existing principles of European Law



Finalisation of the Study

- ***Early September 2005***
 - circulation of Draft Report among all Stakeholders
- ***Early November 2005***
 - meeting of Stakeholders
- ***30 November 2005***
 - submission of Final Report
- ***Early in 2006***
 - Publication of Final Report by the European Commission



II. European Law Context

- A. Proposal for a Directive of the European Parliament and of the Council on Services in the Internal Market COM (2004) 2 (“the Bolkestein Directive”)

- B. Fundamental Freedoms established by European Law



II. European Law Context

A. The Bolkestein Directive

1. Before 2005 Lisbon Summit of Heads of Government

- unforeseen expansion of online gambling
- complaints lodged with the European Commission
- review of the Electronic Commerce Directive 2000/31/EC
- ten-year-derogation from the country-of-origin-principle in respect of gambling services

2. After 2005 Lisbon Summit of Heads of Government

- country-of-origin-principle challenged
- derogations in respect of socially sensitive sectors
- derogation in respect of gambling services



II. European Law Context

B. Fundamental Freedoms

1. Treaty Establishing the European Communities (1999 revision)

- Art. 43 Freedom of Establishment
- Arts. 49 & 50 Freedom to Provide Services

2. Gambling Market Segmentation

- lotteries
- casino gaming
- machine gambling outside casinos
- betting
- bingo
- media gambling services
- sales promotional gambling
- charity gambling



III. Atypical Sectors of the Gambling Market

A. Media Gambling Services

1. Definition
2. Barriers to Free Movement of Media Gambling Services
3. Examples of Media Gambling Services

B. Sales Promotional Gambling



III. Atypical Sectors of the Gambling Market

A. Media Gambling Services

1. Definition

Any form of gambling
offered by a media publisher
in the editorial content of the media
(meaning: for the sole benefit of the media publisher)

Not specific to any publication technology

- print media
- broadcast media
- electronic media

Not specific to any type of game

- lottery
- casino game
- betting
- bingo



III. Atypical Sectors of the Gambling Market

A. Media Gambling Services

2. Barriers to Free Movement of Media Gambling Services

Do any barriers exist?

- perhaps in Member States which share a national language with others
- perhaps prevent locally resident audience from participating

What public interest goals do those barriers pursue?

- presumably maintenance of media pluralism where national media market is small
- necessary for financial viability of local media

Could those barriers be held justifiable?



III. Atypical Sectors of the Gambling Market

A. Media Gambling Services

1. Examples of Media Gambling Services

- Television channel promotion
- Television promotion of media services and related goods
- Television game shows
 - Payment for participation
 - Payment for a chance to participate
- Crossword puzzle magazines



III. Atypical Sectors of the Gambling Market

B. Sales Promotional Gambling

- No “mise” separate from the price of the product being promoted
- But deemed to constitute a gambling service if:
 - purchase of the product is a prerequisite to participation
 - and / or
 - value of the prize exceeds €100'000



Available for your input, comments
or further clarification requirements:

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