ONLINE SPORT BETTING DEVELOPMENTS AND ATHLETIC ACTIVITY FUNDING

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On the 24th of March 2011 the European Commission issued the so called Green Paper on online gambling in the Internal Market. The European Commission’s purpose is to tackle the problems resulting from the rapid development of on-line gambling in the EU. As long as sport betting services providers were operating at a national level, member states could easily regulate the matter providing also funding of athletic activities. This was done by implementing either a system of licensed operators or a strictly controlled monopoly (state owned or otherwise). These two regulatory models co-existed within the internal market, up until the day when the development of internet and the increased supply of online gambling services have made it more difficult for the different national regulatory models to co-exist. The harmonization at EU level of all national legal provisions on betting as a whole should be considered as an opportunity for the athletic establishment to exploit the fact that there is a broad consensus that sport events, on which gambling relies, should receive a fair return from the sports related gambling activity.
I. Gambling and Betting\(^1\)

Gambling and betting include many different games. They have grown to become a major economic factor in the EU market but on the other hand they also give rise to serious social risks and this is why they are regulated restrictively by all Member States. The growth and expansion of the betting business can be largely attributed to the technological evolution of new means of communication and in particular the internet.

Sport betting includes games where the players wager a stake with valuables or money based on the result of a competition, the occurrence of an event or the existence of something. They appear to be very ancient and common to many societies. Sport betting was very common in ancient Greece and Rome. In the course of history games of chance and gambling have often been condemned on moral and religious grounds, but in the end they were society has accepted them as an inevitable situation.

The best known and oldest form of betting is on horse races. For thousands of years, horse racing flourished as the sport of kings and nobility – always maintaining an air of superiority. It has been said that today football may be the king of sports but horse racing is the sport of kings. However, that is no longer true of modern horse racing as the popularity now spans all classes, primarily due to the sport’s legalized gambling.\(^2\) Consumers are invited to bet on the result of a race in which those taking part, horses and jockeys, are known in advance. Consequently they can place their bets in reliance on luck and also on their knowledge of the characteristics and the performance of the horses and jockeys. Sport betting nowadays is not limited to horse races, but it covers almost all sporting events.

In the era of globalization sport betting has increased significantly. It is usually refered to as “a considerable economic factor”. This is because it generates a large amount of jobs in EU’s Member States and very high turnover for its operators (public or private).

On the other hand this economic activity involves also serious social risks to society in relation to the players and to the operators that organise them. The

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attractiveness of the game is such that sometimes players forget that it should be viewed as a hobby or a recreational activity and never as a job and may end up wagering the family budget. Also there is the risk of addiction that jeopardises not only the player’s financial situation but even their health as it is comparable to addiction caused by drugs or alcohol.

The root of the problem lies to the fact that betting allows by necessity only a very small number of players to win. This is the only way that these businesses can insure viability and profit. In the great majority of cases, therefore, players lose more than they gain. However, the excitement of the game and the prospect of winning, sometimes very large amounts, may lead players to spend on gambling more than the share of their budget available for leisure pursuits.

Another key factor in the risks involved is the fact that the set up of the betting organization from the odds to the actual result of the games is outside the control of the players and therefore the player has no really effective means of verifying the conditions in which betting takes place. In addition to that and because of the considerable stakes involved, the betting game is likely to be manipulated by the organiser.

Finally, in the betting business large sums of money change hands instantly and continuously, these enterprises therefore in the hands of a criminal mind may be a means of ‘laundering’ money obtained illegally and converted into legal profit.

Nowadays sport betting operations are subject to restrictive regulation in most Member States of the European Union. The regulations adopted vary from total prohibition to strict regulation and a proportion of the betting revenue is financing causes of public interest.

II. Modern Technology and Betting³

Until recently sport betting was accessible only in specific places. Prospective players had to make a journey and it could only be done during the operating times of the premises in question. The appearance of electronic means of communication in the 1990s, such as mobile phones and the internet, changed the situation radically. Thanks to these new means of communication, players could now bet without leaving

their home. Smart phones facilitated players even more. The betting operator is proposing wagers to the player 24 hours a day 7 days a week. The transaction is completed in a split second and there are many seconds in a day.

This situation has increased the number of players and the amounts played. It has also instantly abolished all previously existing barriers thus rendering obsolete tax authorities and internal market regulations. This made possible to operators established in other Member States or even non-member countries to reach consumers that could not be reached before.

**III. The Green Paper on Online Gambling**

The above mentioned situation has resulted in the development of a huge unauthorised cross-border market in the EU. This market contains firstly a black market with unlicensed clandestine betting and secondly a so-called "grey" market. This grey market consists of operators duly licensed in one or more Member States providing gambling services to citizens in other Member States without having obtained a specific authorisation in those countries. This unauthorised cross-border market remains accessible to consumers, due either to de facto tolerance or lack of effective enforcement and operates in addition to the legal national offers that are available to consumers.⁴

Under EU law, betting services fall under Article 56 TFEU. These services are covered by the general rules on the provision of services according to which in principle, operators authorised in one Member State are allowed to provide their services to consumers in other Member States. However Member States may impose restrictions justified by overriding reasons in the public interest, such as consumer protection or the general need to preserve public order provided that their overall policy concerning the matter is proportionate and applied in a consistent and systematic manner.⁵

In 2006 following a unanimous demand of the Council and the European Parliament, the Commission excluded gambling services altogether from the scope of the Services directive. They have also been excluded from the scope of the E-commerce directive. Failing to adopt secondary law in this sector, the focus turned to

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⁴ See Green Paper On on-line gambling in the Internal Market, Chapter 1. Art.1.1.
⁵ See Green Paper On on-line gambling in the Internal Market, Chapter 1. Art.1.1.
the application of primary law.\textsuperscript{6} As the CJEU has now ruled on many betting cases and developed a number of guiding principles, a significant proportion of the Member States against which the Commission opened infringement cases have since adopted national legislative measures regulating betting services.\textsuperscript{7}

IV. The Financing of Benevolent and Public Interest Activities

The restrictive legislative measures adopted by Member States on betting services are justified by policy reasons such as consumer protection and financing of benevolent or public interest activities. The CJEU has time and time again ruled that the funding of such social activities does not constitute the substantive justification for the restrictive policy but only an ancillary beneficial consequence. The most common public interest activities that currently benefit from the above mentioned direct funding are mainly sports but also the arts and culture sector.\textsuperscript{8}

Sport events are used by on-line betting operators in order to present an attractive selection of gambling services to their potential customers. It is often argued that sport events benefit from such gambling activities in that they create additional public interest and possibly also increase the event's media exposure. According to the Green Paper on Online Gambling “There is a broad consensus that sport events, on which gambling relies, should receive a fair return from the associated gambling activity.”\textsuperscript{9}. Also according to the Commission’s Communication document “Calls to ensure sustainable funding for sport from private and public sources and financial stability of the sport sector should be taken into account when further addressing the provision of gambling services in the Internal Market.”\textsuperscript{10}

When one examines sport betting, horse racing comes into play more than any other sport. This is because the horse racing’s primary attraction is for gamblers. Therefore more than to any other sport, its viability will depend on sufficient proportions of gambling revenues being reinvested into the activity. In the difficult


\textsuperscript{7} See Green Paper On on-line gambling in the Internal Market, Chapter 1. Art.1.2.

\textsuperscript{8} See Green Paper On on-line gambling in the Internal Market, Chapter 2. Art.2.3.3.

\textsuperscript{9} See Green Paper On on-line gambling in the Internal Market, Chapter 2. Art.2.3.3.

times of a global financial crisis all sports may come to depend more and more on the betting revenue.

Apart from this specific case, gambling services are offered on all organised sport competition. It is obvious that without the use of their events the gambling services would not be viable. One wonders whether the organisers (sport organisations, teams etc.) should be receiving some profit through such exploitation of their images or events by gambling service providers. Already most Member State legislation obliges sport betting operators to channel revenues back into sports.11 12

V. Sports Funding and State Aid

State aid control is an essential part of the EU’s competition policy. Its objective is to ensure that government interventions do not distort competition and trade in the Internal Market. In the sports sector, state aid mainly finances infrastructure or activities of individual sport clubs.13 In principle State Aid is incompatible with EU law, unless one of the derogations in Article 107 TFEU is applicable. Although State aid to sport is not covered as such by the General Block Exemption Regulation, it might fall under certain provisions of this Regulation, in which case it can be considered compatible without any need for prior notification to the Commission. Otherwise, a new aid needs to be notified in advance to the Commission pursuant to Article 108(3) TFEU and can only be awarded after the Commission has issued a favorable decision.14 There have been few decisions so far where the Commission has applied EU state aid provisions to the sports sector. Most sports infrastructure is local in nature with minimal effect on trade between EU Member States. Therefore State aid in sports usually does not have state aid relevance. Amateur sports clubs are generally not considered as undertakings within the meaning of the Treaty, so that subsidies granted to these entities are generally not covered by the state aid rules. On the other hand, professional sports clubs engage in economic activities, and these are covered by State Aid rules to ensure that subsidies do not disrupt fair competition.15 Therefore amounts deriving from betting revenues and channeled to professional

11 The Commission has launched an EU study on the funding of grassroots sports.
12 See Green Paper On on-line gambling in the Internal Market, Chapter 2. Art.2.3.3.
15 See http://ec.europa.eu/sport/what-we-do/state-aid-control_en.htm
sports could be considered as State Aids when imposed by national legislation and fall under the scope of Article 107(1) TFEU, apart from very small amounts of aid falling under the de minimis Regulation.16 17

VI. Conclusion

It has been argued that betting on sports events is "as great a risk to the integrity of sport as doping".18 This is not only due to fraud risks and match fixing. Sport betting brings sports to a new era with new sports ethics. In the old days spectators were only sports fans. Nowadays most spectators and sports fans are sports gamblers. Sports fans enjoy the bond, the connection, the relation to the team and its players, the life lasting loyalty. Sports gamblers do not care about the team nor its players, they do not enjoy the feeling of loyalty. They will remain fans of the team they gamble for, for as long as the match lasts. Being a sports fan is a social activity that promotes integration and participation of the individual in a social community. Being a sports gambler fan is an antisocial activity. The gamblers are loners with no sentimental attachments to the team nor sports whatsoever. Given the opportunity they easily change their interest from sports to politics. This volatility is not merely a theoretical problem or one of morals. Its consequences affect even the value of the sports show product as a whole. The high value of the sports product is based on the fans loyalty.19

As much harmful as sport betting can be for sports it can also be very beneficial. Not every sport is like professional football. Amateur sports struggle to survive in difficult financial times. Betting on sports events that are not widely known can assist a whole market to stand on its feet. Betting operators promote events attracting spectators and prospective players. During the embryonic phase of a certain sport the support coming from the betting operator’s promotion is of vital importance and overshadows most gambling risks. Also during this phase the relationship between the sport and betting operators is mutually beneficial. However when a sport is already

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18 See http://www.independent.co.uk/sport/general/others/exclusive-gambling-is-bigger-threat-to-sport-than-doping-1638487.html
established there seems to be only profit for the betting operators and no profits for the sport. When the sport is emancipated and able to stand on its feet, the gambling risks appear like a childhood disease that should be either strictly regulated or eradicated.

The present system according to which the State regulates the sport betting market awarding licenses to private operators and imposing on them the obligation to subsidize sports entities thus risking a breach of State Aid rules is absurd. Instead, by making use of the principle of subsidiarity, Member States could assign this regulating competence to sports authorities directly. Established professional sports with a good governance policy have the means and resources to best organize sport betting services. They also have the know-how to best operate them. Finally they are the stakeholder having the most to gain by applying strict responsible gambling policies to control and regulate sport betting services.