

European Commission Green paper on on-line gambling in the Internal Market

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Presentation of egta

egta is *the association of television and radio sales houses* (both independent of a channel or in-house) that commercialise the advertising space of both private and public TV channels and radio stations across Europe.

In July 2011, egta counts 120 member sales houses (86 TV members and 34 Radio members) which operate across 29 European and 5 non European countries. Altogether, egta members collect over 70% of the European television advertising investments and 50% of the radio advertising market in countries represented by the egta members.

egta provides a network to its members based on relationships with over 1500 high-level advertising executives. egta fulfils different support functions for its members in areas as diversified as regulatory issues, audience measurement, sales methods, interactivity, cross-media.

egta, the *association of television and radio advertising sales houses*, welcomes the European Commission Green Paper on on-line gambling in the Internal Market and its aim to launch a public consultation on the legality of the regulatory state of play across Europe. The debate launched by the Green Paper reflects the **need for an EU-wide response to the increasing challenges posed by the co-existence of differing regulatory models across European member States.**

egta and its members are supportive of the steps being taken thus far at EU level to ensure that the restrictions imposed at national level on the possibility for gambling operators to advertise gambling services in the internal market are compatible with European law and to address cross-boarder issues. Especially when it comes to online gambling operators, commercial communications are cross-border by nature. The substantial differences that exist between national gambling advertising regulations in place in different member States are often problematic, as demonstrated by the numerous infringement procedures that have been launched by the European Commission (particularly significant in this regard is the ruling of 22 June by the Swedish Appeal Court following a ruling by the European Court of Justice¹).

¹ The Swedish Appeal Court stated that the Swedish gaming law that currently allows operators licensed in other Member States to offer Internet gaming services in Sweden but prohibits the promotion of these services through Swedish media is discriminatory in terms of the sanction applied. It stated that Swedish Media are free to advertise games organised in other EU Member States.

As highlighted in the European Commission Green Paper, the gambling market, especially the online one, is characterised by quickly growing trends (the online market is expected to double in size by 2013). **Advertising investments coming from gambling operators could therefore significantly contribute to the funding of the audiovisual industry** (today affected by major challenges such as media convergence, audience fragmentation and increased competition between advertising platforms) and help secure the broadcasters' capacity to invest in European content, as well as to contribute to the development of the culture and sports sectors. For example, according to Nielsen data, in Italy in 2010 the TV spending from the gambling industry was 38.706 net million Euros, TV counting for 55% of the total media spending in this sector.

In particular, major sports events broadcast on TV and radio are largely financed thanks to broadcasters reinvesting their advertising revenues. Advertising for and sponsorship of these events by gambling providers should be made possible, as clearly stated by the rapporteur (Jurgen Creutzmann, ALDE) of the European Parliament own initiative draft report on online gambling in the Internal Market (2011/2084(INI)), which calls for "pragmatic solutions" with regard to advertising.

In many member States, national legislations set a total prohibition on commercial communications for gambling services or restrict them to a specific gambling sector, to the state monopoly operator or to domestic companies. As also stressed by the own-initiative draft report on online gambling, advertising bans are ineffective. **While impeding the audiovisual sector to benefit from this growing market sector, over-restrictive advertising provisions will favor illegal gambling services offered outside the scope of a local license regime.** Circumventions are also expected when advertising provisions are applied in a discriminatory way, such as in Germany where advertising for gambling services is banned on TV but allowed on other media. Moreover **no positive link between advertising restrictions and the fight against gambling addiction has been demonstrated.**

At the same time, egta members understand that gambling is not an ordinary consumer service, and that its abuse can cause a small proportion of the population to develop gambling addiction. In fact, **legislative measures set safeguards on the content and scheduling of gambling advertising in regard to the protection of consumers against gambling addiction and to protect minors in any country where gambling advertising is permitted on TV and radio**². At European level, in addition to the rules set by the Unfair Commercial Practices Directive to protect consumers from being misled from advertising and marketing practices on all media, commercial communications for any product sectors (including gambling) broadcast by audiovisual media services providers are submitted to extensive qualitative rules on the protection of consumers and, in particular, minors.

Furthermore, in view of the importance of television and radio advertising and its impact on society, egta members are well aware of their responsibilities when it comes to gambling advertising. Sales houses are committed to ensuring that advertising for any product sector is always decent, legal honest and truthful. In particular, in all EU countries where gambling advertising is permitted, **sales houses voluntarily comply with advertising codes of conduct that rule the content of commercial communication for gambling services.** For instance, in France, where only operators that are legally licensed can advertise their activities and scheduling restrictions and warning messages are set by national legislation to protect minors and vulnerable consumers against gambling addiction, TV and radio sales houses voluntarily comply with

² For instance, in the UK, legislation regulates the content of TV and radio advertising for gambling ensuring that "gambling advertisements are socially responsible, with particular regard to the need to protect children (15 and under), young persons (16 or 17) and other vulnerable persons from being harmed or exploited by advertising that features or promotes gambling".

additional codes of conduct set by the national trade body of sales houses that further limit the volume and concentration of commercial communications for gambling operators³. These safeguards are complemented by a set of rules on the content of advertising for gambling services (e.g. not to suggest that gambling can be a way to resolve financial troubles, not to present the game as an activity to earn a living but as entertainment, etc.) established by the French self-regulatory organisation (ARPP).

In some countries, such as in the UK, the gambling industry has collectively devised its own advertising code (in the UK the Gambling Industry Code for Socially Responsible Advertising). At European level, the online gambling industry set Responsible Remote Gambling Measures, which include safeguards on the content of advertising by online operators⁴.

Finally, egta members would like to make some clarifications regarding the legal classification of programmes in which viewers are offered the possibility to directly use premium numbers in order to participate either in a programme or in a game (i.e. services commonly known as "call-TV"). The inclusion of these programmes, as well as any other type of media games, in the definition of gambling services would in fact endanger the revenue stream that these formats represent to the audiovisual industry (e.g. the production and broadcast of these programmes would have to be based on a license system). **Media games should therefore be considered as editorial audiovisual content** and, therefore, be submitted to the relevant media law and excluded from the gambling regulation. This rationale is also at the base of recital 22 of the Audiovisual Media Services Directive, which excludes gambling services from its scope and therefore draws a line between the provision of programmes for entertainment purposes and games of chance involving a stake representing a sum of money.

In conclusion, egta would like to emphasise the following aspects:

1. There is a need for an EU-wide response to the increasing challenges posed by the co-existence of differing regulatory models across European member States;
2. Advertising investments coming from gambling operators could significantly contribute to the funding of the audiovisual industry, in particular major sports events;
3. Over-restrictive advertising provisions will fail in helping the fight against gambling addiction;
4. In countries where gambling advertising is allowed on TV and radio, legislative measures set safeguards on the content and scheduling of gambling advertising as regards to the protection of consumers against gambling addiction and to protect minors;
5. Sales houses voluntarily comply with advertising codes of conduct that rule the content of commercial communication for gambling services;
6. Media games should be excluded from the definition of games of chance.

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³ For the television sector, find more information on the SNPTV code of January 7, 2011 at www.snptv.org

⁴ Art. 7 of the CEN Workshop Agreement on Responsible Remote Gambling Measures