

EACA Submission to the Public Consultation on on-line gambling in the Internal Market

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The European Association of Communications Agencies (EACA) welcomes the opportunity to respond to the Public Consultation Document published by DG Internal Market and Services on on-line gambling in the Internal Market.

The EACA brings together advertising, media and sales promotions agencies across Europe, enabling international experience and issues to be shared and dealt with on a pan-European basis. It provides an important link between agencies, advertisers and the advertising media in Europe and around the world and participates closely in the setting of standards in many aspects of the business across Europe. One of the EACA's main tasks is to promote honest, effective advertising with high professional standards.

The EACA was a signatory, in 2004, to the self-regulation Charter of the European Advertising Standards Alliance (EASA) and fully supports the most recent recommendations adopted by EASA on digital marketing communications ("DMC") in October 2008 and online behavioural advertising ("OBA") in April 2011. Both represent important developments for EASA and will prove increasingly influential in protecting consumers from any possible violations of the advertising codes (including advertisements for online gambling).

The EACA supports and promotes the principles and values laid out in the Consolidated ICC (International Chamber of Commerce) Code on Advertising and Marketing Communication Practice ("ICC Code"), not least that all advertising should be legal, decent, honest and truthful.

Several of the issues raised in the Green paper on on-line gambling in the Internal Market ("Green paper") are of significance to the European advertising industry as a whole. This EACA submission is divided into two parts:

1. General comments
2. Responses to questions 8, 11, 25 and 26

1. General comments

EACA fully understands the role and responsibility of the European Union in continuously striving to improve the Single Market and we unequivocally support this vital objective. We would, therefore, like to make two comments before responding to four specific questions raised in the Green Paper Consultation on on-line gambling in the Internal Market:

1. **Support for harmonisation:**

As mentioned in the introduction, the EACA participates closely in the setting of standards in many aspects of the commercial communications business across Europe. Within this context, the EACA wants to express its support for harmonization, in co-operation with a self-regulatory approach (please see below for more detail). Commercial communications no longer happen only at national level. Cross-border campaigns are becoming more common for national and European agencies. The EACA fully supports any action which could facilitate cross-border business for its members, particularly in the European online market. This approach goes hand in hand with our support for self regulation. The EACA believes that there should be a level playing field across the EU and that the role of self-regulation should be appreciated as an important element of the policy response in this area.

2. **Support for self regulation:**

The EACA is concerned about the absence of any reference to self-regulation in this consultation paper. The EACA holds the position that self-regulation, working in harmony with broad framework regulation, is the best way to regulate advertising-related problems and to secure high standards of advertising.

Self-regulation is the recognition by the advertising industry that advertising should be legal, decent, honest and truthful, showing social responsibility to consumers and society as a whole and respect for the rules of fair competition. This is achieved a set of rules and principles of best practice, to which the advertising industry voluntarily agrees to conform. The aim is to keep advertising standards high and ensure consumer trust to the benefit of all. Advertising self-regulatory codes are complementary to national and EU law.

The EACA believes that the existing self-regulatory codes offer a sound basis for national as well as trans-border self-regulation in the European Union. The EACA commits itself to the principle of self-regulation of all advertising, sales promotions, direct marketing and other forms of commercial communications across Europe, regardless of medium.

It is our strong belief that self-regulation should be reflected in future policy discussions within this area.

2. Response to question (8)

Are gambling services offered by the media considered as games of chance at national level? Is there a distinction drawn between promotional games and gambling?

The situations at national level in the European Union vary tremendously from country to country.

To give some examples:

- The law in France on on-line gambling (*law n° 2010-476 of 12 May 2010*) applies to on-line “paying games of chance” which take money and chance into consideration. Providers of services such as betting on horse racing or sport and casino games need a license. Promotional games such as promotional lotteries are not affected by the restrictions of the law.
- In Ireland, even in the absence of a regulatory framework (except for the Gaming & Lotteries Act 1956), the authorities have allowed online gambling operators who have established parts of their operations in Ireland to carry on their business.
- In Greece, there are so far no particular provisions regulating gambling services offered by the media. There is also no legal definition of “promotional games” nor any kind of distinction between these and gambling. In the Greek legislation, “gambling” is not a legally valid term; a legally valid distinction is only made in Decree 29/1971 between “games of chance”, i.e. games the outcome of which depends solely on luck, “technical games”, i.e. games the outcome of which depends mainly on the skills of the player, and “mixed games”, the outcome of which depends partly on luck and partly on skills. However, a new draft law on gambling which has already been submitted to the Greek Parliament for voting, includes a stipulation whereby which games of chance offered by television need to be licensed by the Committee of Surveillance and Control of Gaming (in Greek: “EEEP”).

Our opinion is that it is impossible to provide a general response to the question as there is no common standard for comparison. Indeed, this merely underlines our position that harmonisation at EU level is urgently needed. The lack of such harmonization creates uncertainty, inefficiency and unnecessary cost for those wishing to develop commercial communications programmes across EU borders.

2. Response to question (11)

With focus on the categories mentioned above [TV advertising, printed press advertising, on-line commercial communications, sales promotions, direct marketing and sponsorship agreements], how are commercial communications for (on-line) gambling services regulated for at national level? Are there specific problems with such cross-border commercial communications?

Again, the EACA's observations lead to very inconsistent legislative regulations at national level.

To maintain consistency, we use the same country examples: France, Ireland and Greece:

- According to French law, all commercial communications for on-line gambling services must contain a warning message against excessive gaming and an information message about help & support systems. Additionally, a French paper (*decree n° 2010-624 of 8 June 2010*) regulates the presentation of the warning message according to each category of media (TV, radio, cinema, Internet...).
- In Ireland, the Gaming & Lotteries Act 1956 regulates gambling at national level. However, there is no specific Irish legislation directed at the regulation of remote gambling – such as internet, mobile phone or interactive TV. The Irish Minister for Justice and Law Reform published a paper on “options for regulating gambling” in January 2011.
- The Greek legislation on advertising includes the Consumer Protection Law (2251/1994) and the Presidential Decree 100/2000 adapting Directive 89/552/EEC as amended by Directive 97/36/EC, which particularly regulates advertising on TV, as well as the Greek Code of Advertising and Communications Practice as a means of self-regulation. These include a series of general rules and principles applying to all kinds of commercial communications. These legal and self-regulatory documents also include specific sections or stipulations particularly regulating, among others, on-line commercial communications, sales promotions, direct marketing and sponsorship agreements. However, no particular stipulations exist with regard to commercial communications for (on-line) gambling services.

The new draft law on gambling aims to comprehensively regulate all forms of gaming (including the ones via internet) and includes specific rules with regard to commercial communications for gaming services applying, among others, also to all kinds of on-line gambling services.

These limited examples serve to demonstrate the total lack of legislative consistency across the EU. In addition to these widely differing advertising rules, however, high level advertising standards covering all media channels have been developed by the European Advertising Standard Alliance (EASA, www.easa-alliance.org) and its members. An efficient and effective self-regulatory system with national offices has been established to manage those standards professionally across the vast majority of EU Member States (excluding Latvia, Estonia and Denmark).

The advertising standards are based on the consolidated ICC Code on Advertising and Marketing Communications – but there are still some differences between the Member States with regard to specific rules on gambling.

Self-regulatory advertising codes are regularly reviewed with regard to legal, technological and societal norms and can respond to most issues with regard to advertising ethics. Furthermore, a fair adjudication process is ensured through the concept of independent juries. Where a code is deemed insufficient for any reason whatsoever, the codes may be rapidly revised to ensure that self-regulation remains the optimal method for safeguarding moral values in advertising.

Furthermore, the self-regulatory system has established a comprehensive system to take care of cross-border commercial communications complaints, which is especially useful in this field given the cross-border nature of the internet and of online gambling.

2. Response to question (25)

How are commercial communications for gambling services regulated to protect minors at national or EU level? (e.g. limits on promotional games that are designed as on-line casino games, sports sponsorship, merchandising (e.g. replica jerseys, computer games etc) and use of social on-line networks or video sharing for marketing purposes.

The EACA strongly believes that all advertising - whether to children or not - must be legal, decent, honest and truthful. However, the EACA is aware of the fact that gambling and on-line gambling are clearly subject to certain rules designed to protect minors at national and EU level and recognises the protection of minors as one of its most important responsibilities.

Within this context, the EACA and its members acknowledge:

- The special sensitivities involved in communicating to children
- The various stages of development the child undergoes in its social environment
- The lack of experience the child has and its limited capacity to assess the credibility of messages it receives from the media
- The importance for caution when appealing to the imaginative capabilities of younger children
- The decisive roles of parents and their responsibility in the upbringing of their children
- The reality that advertising plays a natural and integral part of any child's intellectual growth and the need to ensure that children understand the reality of the world in which they live.

The rapid evolution of Internet and website activity and the ease with which children can access such terminals is a matter of grave concern for parents and legislators; this concern is shared by the EACA. As a result, EACA members take special care in implementing the [EACA Ethical Guidelines for advertising and children](#) when preparing and operating such sites.

Furthermore, the European CEN Workshop Agreement on „Responsible Remote Gambling Measures” focuses in its “responsible marketing” section on the protection of children:

- 7.05 Advertisements should not entice underage individuals to gamble, and should not be displayed in media that is clearly targeted at underage individuals;
- 7.06 Direct advertisements and promotional communication should carry an age restriction warning where practical.

There is common acceptance of the need to protect minors at national level as well. Based on the same country examples France, Ireland and Greece, the necessity to protect minors is paramount:

In France, there is the obligation that commercial communications are not aimed at minors. In particular, commercial communications are prohibited in publications, in TV programmes or TV channels, on web sites or web pages, or during broadcasting of movies intended for minors.

The Irish self-regulatory code for children specifically states that an advertisement should not exploit the loyalty, credulity, vulnerability or lack of experience of children and that an advertisement should not feature products that are unsuitable for children.

In Greece, several provisions in the general legal and self-regulatory documents on advertising, e.g. the Greek Code of Advertising and Communications Practice as well as the Presidential Decree 100/2000 and Consumer Protection Law (2251/1994), applying generally to the advertising of all kinds of products or services, provide for a strict regulation of commercial practices within the scope of protection of minors. However, specific restrictions with regard to the protection of minors from commercial communications for gambling services in particular do not exist, either in the aforementioned general legislation on advertising or in the existing specific legislation on gambling.

In contrast, the new draft law on gambling includes specific stipulations restricting commercial communications for gambling services for the purpose of protection of minors, including, among others, the obligation to mention in every commercial communication for gambling services those persons who are not allowed to participate in such games as well as the obligatory labeling of all stores providing gambling services with respective information. A more detailed regulation is expected to be included in the Code of Conduct for gaming activities.

As a member of EASA, the EACA and its national members take particular care to ensure that inappropriate advertising is not targeted towards minors. The protection of minors has been taken up in the revised ICC Code, which now refers to minors within a context of digital marketing communications and online behavioural advertising. All self-regulatory codes are based heavily on passages taken from the ICC Code. Advertising self-regulatory codes are applicable across all media, whether it be printed, online or broadcast. As a common rule, age-restricted products and services must not be shown across any media specifically targeting children.

2. Response to question (26)

Which national regulatory provisions on licence conditions and commercial communications for on-line gambling services account for these risks and seek to protect vulnerable consumers? How do you assess them?

The national self-regulatory systems in the advertising and communications sector are well established and highly accepted by the industry. This effective tool, together with the European CEN Workshop Agreement on “Responsible Remote Gambling Measures”, protect vulnerable consumers, including minors.

Again, the legal situation differs greatly at national level:

- In France, the following national regulations are important:
 - Law n° 2010-476 of 12 May 2010
 - Decree n° 2010-624 of 8 June 2010 (commercial communications regulation)
 - Decree n° 2010-623 of 8 June 2010 (warning and informative messages on web sites of gambling services providers)
 - Decree n° 2010-482 of 12 May 2010 (licence conditions)
 - Decision of the French audiovisual regulation authority (CSA) n° 2011-09 of 27 April 2011 (broadcasting conditions of commercial communications).
- Since the Irish Gaming & Lotteries Act is from the year 1956, on-line gambling is not specifically covered. This will change with the new regulation which is not yet in place but already under discussion.
- Specific protection of vulnerable consumers in the Greek legislation on on-line gambling does not exist, as it is not necessary due to the existing absolute prohibition of any gaming action which is “electronically conducted”. As far as betting is concerned, which is regulated by a particular legal framework, the respective legislation establishing a monopoly for such services does not really include any specific rules aiming to protect vulnerable consumers other than the prohibition of betting for minors and the setting of a maximum limit of € 6.000 for each bet. The new draft law includes several stipulations seeking to protect vulnerable consumers. Among others, it is not only minors, but also people under the age of 21 who are not allowed to participate in any gaming actions.

Our assessment is that, despite the lack of legislative consistency between EU Member States, the issue of protection of minor is well understood and perceived as important. Between the disparate legislative provisions and more consistent self-regulatory system, the level of protection is adequate. Harmonisation of legislation can only help to strengthen the level of protection in an area which all agree presents a risk to vulnerable consumers.