



SROC Response to the European Commission Green Paper On Online Gambling in the Internal Market

The Sports Rights Owners Coalition (SROC) is pleased to offer its contribution to the European Commission’s public consultation on what is a crucial topic for European sports. SROC was created six years ago, bringing together around 40 major international and national sporting organisations. Together its members represent Europe’s most popular sports and competitions. The purpose of SROC is to share ideas and information, and to prepare and present common positions to the EU and International Treaty Organisations. SROC members seek proper recognition of the value of sport and effective protection for their rights in terms of digital piracy, counterfeiting, and the controlled/regulated opening of online sports betting markets.

A number of SROC’s members will be responding individually to this consultation document. This response offers common positions which have been agreed upon by all of our members on principles which we would like to see represented in any future Commission proposals on regulation of Europe’s online gambling market. This response does not offer input on all 51 questions, but will respond to those where Europe’s sporting industry has a commonly held position.

1. Gambling market and sports’ interests

Question 1 – Are you aware of any available data or studies on the EU on-line gambling market that would assist policy-making at EU and national level?

SROC’s members take a neutral position on the nature of the market in each individual Member State, and do not take a position on the respective merits of closed markets, licensed markets or fully open models. Our concern is that whatever system is imposed, that sports integrity and sports financing are both taken into account. We would ideally like to see European guidelines set out by the Commission, Parliament and Council on how this should be achieved.

SROC’s members have held a number of productive discussions with the Commission’s services in recent years on the topic of online gambling. We warmly welcome recognition of the sports sector as a critical stakeholder in this consultation, and the fact that the concerns of the sports world have been enumerated in the Green Paper and in other Commission publications such as the 2011 Communication on a European Dimension on Sport and the 2007 White Paper on Sport.

SROC members request that the European Commission take on board the positive references made by the European Parliament on the issue of sports betting¹, and the necessity of **protecting the events organised by sporting organisations against unauthorised commercial exploitation**. Betting operators must be compelled, in the interests of protecting integrity and ensuring sustainable future financing, to enter into legally binding agreements with sports competition organisers to define the terms and conditions of any betting taken.

The Schaldemose Report on the integrity of online gambling highlights that *“the protection of the integrity of sports events and competitions requires cooperation between sports rights owners, online betting operators and public authorities at national as well as EU and international level.”* The Parliament’s position further confirms that *“sports bets are a form of commercial exploitation of sporting competitions, and recommends that Member States protect sporting competitions from any unauthorised commercial use, notably by recognition of a sport organisers right, and put in place arrangements to ensure fair financial returns for the benefit of all levels of professional and amateur sport.”*

2. Evidence-based Legislation

Question 1 – Are you aware of any available data or studies on the EU on-line gambling market that would assist policy-making at EU and national level? If yes, do the data or study include licensed non-EU operators in the EU market?

Question 27 – Are you aware of studies and/or statistical data relating to fraud and online gambling?

SROC’s members would like to draw the Commission’s attention to a number of studies and statistics on online gambling which consider sports betting issues: the 2008 Salford University Report on Risks to the Integrity of Sport from Betting Corruption; the Europe Economics study on Sports Betting: Legal, Commercial and Integrity Issues; and the figures of ARJEL, the French national regulator and guardian of all statistics on betting in France since the market opening in May 2010.

➤ Salford University

In a 2008 Report from Salford University², commissioned by the UK Central Council for Physical Recreation (CCPR – now the Sport and Recreation Alliance) a detailed examination of the threats to sports from corruption and match-fixing was conducted. The study provides a detailed analysis of risks, evidence on betting corruption cases uncovered in Europe and around the world, and recommendations on how to address the challenges faced. On the point of statistical evidence, the study rightly states: *“Fixing in sport, in common with many other forms of financial crime, cannot readily be measured because it is observed only where it*

¹ EP Report on the integrity of online gambling (2008/2215(INI)) Recitals I and K, Points 8, 9 and 10
EP Report on the White Paper on Sport (2007/2261(INI)) Points 81 and 82

² Forrest, D., McHale I.G. and McAuley, K., (2008). "Risks to the Integrity of Sport from Betting Corruption".

is detected. Thus any assessment of the risks to the integrity of sport from different betting markets is not straightforward.”

On the basis of the evidence provided in the study, a number of recommendations are set out, whilst adding an important caveat on why there is a need for good faith by all parties in terms of engaging in the process: *“Policy formulation in the area is difficult because the extent of the corruption problem is not known and it would not be possible to estimate how much fixing had been prevented by any precautionary measures introduced... **Addressing the threat is likely to require action, and the incurring of cost, by all the main stakeholders: regulators, the betting industry and sport itself.***

➤ Europe Economics

On Tuesday 10 November 2010 the Remote Gambling Association (RGA) announced the initial conclusions of a study into the funding of sports by private sector gambling operators. In SROC’s view, the RGA study results clearly show that betting and gambling operators will only contribute to sustainable funding of sports in Europe when mandated to do so by statutory regimes, and that any investment they make of their own volition is for purely commercial reasons; the RGA’s own figures prove that only compulsion will bring sustainable betting operator revenues into sport.

According to the study, from a total of €3.4 billion per annum provided to European sport by public and private sector operators, a massive €3.2 billion comes from statutory levies and lotteries. Commercial and charitable contributions from operators amount to just €234 million per annum, or 7% of the total – an investment of less than €0.50 for every European citizen.

This means that only 7% of the total that is paid by betting and gambling operators to sports organisations from ‘voluntary’ agreements; these operators cannot be counted upon to ensure reliable and sustainable funding for European sports, especially at grassroots level. These revenues are directed to sports on the basis of short-term commercial motivation by the operators, targeting commercially successful events and with no long-term commitment to providing financing beyond the serving of the operators’ own needs.

Closer examination of the figures paints an even more worrying picture for smaller European sports. At present, lottery contributions raise about €1.6 billion per annum, the majority of which is channelled to traditionally less commercially popular sports. Statutory-driven revenues from gambling operators are needed regardless of the respective organisation of the gambling market in order to ensure sustainable financing of non-professional sports.

➤ ARJEL

The French regulator ARJEL has measured carefully the evolution of online betting in France since the market was liberalised in May 2010. **It is worth noting that in 2010 the total payment by online betting operators to sports via the ‘competition organiser’s right’ was €530,000, against which we can extrapolate to estimate an average annual return of around €1 million³.** The majority of French sports organisations, including for example the French

³ <http://www.arjel.fr/IMG/pdf/20110121doc.pdf>

Football Federation (FFF), have signed agreements with betting operators on the basis of a return of 1% of the stake bet by customers.

When noting that €448m in sports bets were taken in France in 2010, it is arguable that the return to sports is of small significance to betting operators, despite their protestations. What these figures show is again open to interpretation, but what we feel needs to be highlighted is that, despite claims from operators that these sums are hugely damaging to their business, this is rather a modest figure relative to their overall turnover. On the other hand, it represents a significant contribution to sports financing and efforts to combat corruption and match-fixing. On balance, the measure would appear to do more good than harm.

3. Commercial Communications and Protection of consumers

Question 3 - What, if any, is your experience of EU-based on-line gambling operators licensed in one or more Member State and providing and promoting their services in other EU Member States? What are your views on their impact on the corresponding markets and their consumers?

Question 11 – How are commercial communications for (online) gambling services regulated for at national level? Are there specific problems with such cross-border commercial communications?

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.

Until there is a level playing field of regulatory controls and standards across Europe, SROC members consider that **there should not be any automatic mutual recognition when it comes to licensing practises for online betting operators.** To give one example, the overwhelming majority of operators who are offering bets in the UK are not regulated by the UK Gambling Commission. So-called British operators who retain their brand names associated with their British heritage, now operate outside of the UK regime, having moved specifically to avoid the impositions of the UK fiscal and regulatory regimes. SROC therefore fully supported the proposals put forward by the Department for Culture Media and Sports (DCMS) in March 2010 to introduce new regulatory arrangements to require all overseas gambling operators to obtain a Gambling Commission licence to transact with British consumers and advertise in the UK. SROC believes that betting operators taking bets in Europe must contribute to the costs incurred by licensing authorities, which includes sports integrity arrangements. Licensing processes can introduce vital additional income to the enforcement process and the fight against illegal gambling, which all parties have a stake in. This will also benefit consumers as a natural consequence.

Commercial communications in sport are already subject to a number of public order restrictions, notably in relation to alcohol and tobacco advertising. SROC's members accept and follow the different regulation in their respective Member States.

SROC members fully agree with the ECJ when it states *“In order to achieve that objective of channelling into controlled activities, it is common ground that authorised operators must represent a reliable, but at the same time attractive, alternative to non-regulated activities, which may as such necessitate the offer of an extensive range of games, advertising on a certain scale and the use of new distribution techniques like the Internet.”*⁴

4. Fraud Prevention and the Fight Against Match-Fixing

Question 30 - As regards sports betting and outcome fixing - what national regulations are imposed on on-line gambling operators and persons involved in sport events/games to address these issues, in particular to prevent 'conflicts of interest'? Are you aware of any available data or studies relating to the magnitude of this problem?

➤ Conflicts of Interest

A number of distinct national measures exist to combat match-fixing. ‘Conflicts of interest’ tend to be addressed on a self-regulatory basis by sports bodies, with strict controls imposed on the involvement of players and staff of sports organisations in betting activities. The International Olympic Committee (IOC) has published recommendations for all its member sports to implement, including measures relating to conflict of interest.⁵

According to FIFA regulations, players and match officials are forbidden from taking part, either directly or indirectly, in betting, gambling, lotteries and similar events or transactions connected with football matches. It is forbidden to have stakes, either passively or actively, in companies, concerns, organisations, etc. that promote, broker, arrange or conduct such events or transactions⁶.

In football, one of Europe’s most heavily bet upon sports, the English Football Association provides an excellent and clear example of the kind of regulations imposed on athletes as regards their required conduct in terms of betting, imposing that:

“(a) A Participant shall not, either directly or indirectly, bet, or instruct, permit or enable any person to bet, on the result, progress or conduct of a Match or Competition in which the Participant is participating, or has participated in that season, or in which the Participant has any influence, either direct or indirect.

(b) A Participant shall not use, or provide to any other person any information relating to football which the Participant has by virtue of his or her position within the game and which is not publicly available for, or in relation to, betting”⁷.

⁴ Case C-212/08 Zeturf Ltd paragraph 68, ,Joined Cases C-338/04, C-359/04 and C-360/04 Placanica and Others [2007] ECR I-1891, paragraph 55, and Stoß and Others, paragraph 101

⁵ http://www.olympic.org/Documents/Conferences_Forums_and_Events/2010-06-24_Final_Recommendations_IOC_Seminar_Eng.pdf

⁶ FIFA Code of Ethics (art. 1, par. 2 and art. 13)
<http://www.fifa.com/aboutfifa/officialdocuments/doclists/laws.html>

⁷ The Rules Of The Football Association Limited, Article E8

France also foresees rules on conflicts of interest within its 2010 online gambling law, forbidding any employee of a betting operator or any athlete involved in a sports competition to place bets or to offer confidential information to others concerning the events which bets are offered on⁸.

In Germany, the German Football Association and the Bundesliga have taken respective measures against match-fixing since 2005. The Bundesliga has set up a prevention programme “Transparency and integrity in Football” together with Transparency International Germany in 2010. Additionally it appointed an ombudsman as contact person for players and referees who can investigate allegations on potentially fixed matches.

➤ Match fixing as a criminal offense

In recognition of the growing problems associated with match-fixing, some EU Member States have introduced a specific criminal offence dealing with the manipulation of the result of a sporting competition. At present, Italy, Poland, Portugal, Spain and the UK have adopted such provisions, whilst France seems inclined to do so as well.

As sports fraud is not uniformly recognised as a distinct criminal offence, there are differences in national legislation and criminal procedures. Thus, **insufficient law enforcement measures in the majority of EU Member States contribute to the persistence of sports fraud, the cross-border nature of which further complicates the situation.** In light of the international dimension of the problem, there is a need for a strengthened cooperation between national public authorities and sport bodies in terms of information exchange and analysis.

Question 31 - In your view what issues should be addressed as a priority?

As betting markets increase in size, so does the risk of corruption and match-fixing, with subsequently higher costs for policing and enforcement by the sports’ governing bodies. European sports feel strongly that the betting industry should make a financial contribution to these costs – which are generated as a direct result of their lucrative commercial activities.

Stories of match-fixing, implicating players and officials are sadly increasingly common, and we see that the prevalence is higher in sports and in countries which do not generate such significant revenues as in more commercially successful competitions. It should not only be the wealthier sports and countries that can afford proper education, monitoring and enforcement programmes, and a harmonized approach is needed.

A “competition organiser’s right”, as exists in France, establishes a mechanism for ensuring that betting companies work in partnership with the sports they take bets on. This measure has the triple advantage of:

- protecting the European consumer against betting on corrupt events;
- preserving the integrity of sporting competitions;
- and limiting the losses of betting operators from manipulated events.

⁸ Loi n° 2010-476 du 12 mai 2010 relative à l'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne, Article 32

In effect, this statutory relationship requires betting companies to enter into integrity and funding arrangements with competition organisers. These arrangements include education for players at all levels, training of officials and investment in research and intelligence systems.

Without wanting to under-emphasise the importance of addressing all forms of fraud and manipulation, we would strongly urge the Commission to address sports integrity measures as a priority issue. The betting industry has a higher stake in addressing the other challenges of its own volition on an internal or self-regulatory manner, whereas their compulsion to address sports betting fraud is less clear-cut. Although betting operators of course have a stake in the 'cleanness' of sports competitions which they take bets on, their credibility can easily be protected by distancing themselves from any corrupt events and offering bets on 'cleaner' events – whereas the sports are undeniably and more lastingly tarnished by such breaches.

5. Revenue Distribution and Financing of Grassroots and Professional Sports

SROC is delighted to see the Commission recognising in its Green Paper that, **“There is a broad consensus that sport events, on which gambling relies, should receive a fair return from the associated gambling activity.”**

Betting operators across Europe have long-established commercial relationships with sport through sponsorship agreements, but these partnerships are to both parties' economic benefit.

As for the other commercial exploitation of our events which they engage in, namely taking bets, the benefits flow in only one direction, with the operators giving nothing back to the sports in an act of economic free-riding. **The suggestion that betting activity contributes to making events more interesting to potential viewers strikes us as highly speculative and unfounded. The French model addresses this and puts in place a fair financial return to sport.**

Moreover, betting and gambling operators consider that through sponsorship and advertising deals they are making a 'contribution to sport'. **The truth is that there is no altruistic investment in sport, even though it is the foundation of their flourishing business.** 'Voluntary contributions' only come through commercially-driven deals, meaning sponsorship, advertising and commercial partnerships.

As betting and gambling operators are able to choose to invest in sport when it is in their own commercial interests, there is an unbalanced contribution to European sports as, given a free rein, they will seek to invest heavily in commercially attractive 'products' to the detriment of less popular sports, competitions, clubs and sportsmen and women. Very often these commercial deals benefit already-wealthy clubs rather than leagues or federations who redistribute the income among their members. **This underlines the need for a new model which would guarantee that all sports, small and large, are funded in a way that is proportionate to the revenue they generate for betting operators.**

Question 41 - What are the proportions of on-line gambling revenues from sports betting that are redirected back into sports at national level?

As noted above, the French regulator ARJEL has measured carefully the evolution of online betting in France since the market was liberalized in May 2010. In 2010 the total payment by online betting operators to sports via the 'competition organiser's right' was €530.000 against which we can project an annual return of around €1 million. The majority of French sports organisations, including for example the French Football Federation (FFF), have signed agreements with betting operators on the basis of a return of 1% of the stake bet by customers. As noted, the total sum received by operators from sports bets in France was €448m in 2010⁹.

On top of this sport organisers' right, French Law imposes a 1.8% tax rate on bets to finance the CNDS (*Centre National pour le Développement du Sport* – National Fund for the Development of Sport) which helps less commercially developed sports.

In Spain, SROC members are pleased to see a provision that 22% of turnover from state-owned gaming companies is to be channelled, via the state, to sports funding.

In Germany there is no sport organiser's right. How revenues of the state-owned lottery and betting operator are channelled into sport differs from one federal state to another. Overall an estimated €460 million are redistributed into the structures of German sport and grassroots-development.

Question 43 - Do online gambling exploitation rights that are exclusively dedicated to ensuring integrity exist?

SROC is not aware of any such right existing. On the other hand, most SROC members have implemented measures / systems to protect their competitions, some of which are very costly.

Question 44 - Is there evidence to suggest that the cross-border "free-riding" risk for on-line gambling services is reducing revenues to national public interest activities that depend on channelling of gambling revenues?

European sports indeed see that effective national provisions, although beneficial, cannot fully address the cross-border European online gambling market. In France for example, only 15% of bets are taken on events organised by French sports organisations, and it is only these bets which are subject to the 'competition organiser's right'. **85% of sports bets taken in France grant no fair return to the event organisers, for example the major European football competitions, international sport showpieces such as the Olympics, or any variety of other minor and major sporting events. There is a need to externalise the 'competition organiser's right'** – either by providing for returns to event organisers outside a national market in national laws, or by providing for a Europe-wide legislative tool whereby any bets taken would be subject to remuneration of the event organiser.

⁹ <http://www.arjel.fr/IMG/pdf/20110121doc.pdf>

Question 49 - Are you aware of enhanced cooperation, educational programmes or early warning systems that are aimed at strengthening integrity in sport and/or increase awareness among other stakeholders?

Most of Europe's major sports and players federations have education systems in place whereby players and staff are made aware of regulations and their responsibilities as regards betting on competitions, either directly or by proxy. However, the costs of maintaining levels of communication and awareness are increasing and the risks are too, as the number of betting options available increase and the number of attempts to corrupt players increase.

From the perspective of football at an international level, FIFA's cooperation agreement signed recently with INTERPOL aims at tackling corruption in football especially corruption linked to match-fixing and irregular and illegal betting through the development of anti-corruption training, education and prevention programs.¹⁰

The major challenge of course is for Europe's smaller sports which have less commercial revenues to channel to integrity costs. These sports are at a greater risk as they cannot dedicate as much time and energy to the fight to protect their integrity. In this regard, although we welcome the joint initiatives of the EGBA, RGA and EU Athletes it is with regret that we see the focus of their proposed education programme targeting only seven major sports in the four largest EU Member States. This is commendable but is not where the greatest risk lies. If betting operators truly want to cooperate and contribute to protecting European sports then they should broaden these efforts to encompass more vulnerable countries and competitions, where a real added-value can be provided, rather than a superficial compliment to existing measures.

Through regulations at EU-level and the statutory provisions in the respective national laws of the member states an obligatory duty for sports betting operators to cooperate with sport organizations and their monitoring entities should be set out in order to reach the sports betting market.

29 July 2011.

¹⁰ <http://www.fifa.com/aboutfifa/organisation/footballgovernance/earlywarningsystem.html>