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THE COOPERATION ARRANGEMENT ON ONLINE GAMBLING SERVICES – A CONCRETE TOOL

Introduction

On 27 November 2015, gambling regulatory authorities from twenty EEA Member States signed a cooperation arrangement on online gambling services¹, setting out the scope, procedure and practical arrangements for this cooperation between them.

Following the European Commission Expert Group on Gambling Services launch in 2012², this arrangement is a further implementation of the Commission communication “Towards a comprehensive European framework on online gambling”³ which has set out an action plan to address the online gambling challenges in the EU and where enhanced administrative cooperation and efficient enforcement are among the proposed actions.

According to the Commission as well as the European Parliament⁴ and the Council⁵ of the EU, Member States are unable to provide individuals with effective protection due to the nature, the growing and cross-border dimension of online gambling⁶.

This cooperation arrangement should thus address the societal, regulatory and technical concerns of regulators in online gambling especially those around consumer protection but also result in a reduction of unnecessary administrative burdens towards operators authorised to collect online gambling activities in more than one jurisdiction in compliance with applicable laws and regulations within respective jurisdictions.

Therefore, the scope of this arrangement is wide and covers (i) the organisation of gambling, in particular authorisation requirements and calls for tenders, (ii) its supervision and compliance, including the protection

¹ The cooperation arrangement is available at the following link: http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8570.

² See more information on the Register of Commission Expert Groups:

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2868&Lang=EN>.

³ Communication “Towards a comprehensive European framework for online gambling”, COM (2012) 596 final, 23 October 2012. For a comment, please refer to “The Eu Action Plan On Online Gambling – An Update”, Harrie Temmink, Lexandgaming, August 2015.

⁴ “Report on online gambling in the Internal Market”, (2011/2084(INI)), handed by German Rapporteur Jürgen Creutzmann, 14 October 2011.

⁵ “Conclusions on the framework for gambling and betting in the EU member states”, 3057th Competitiveness Council, 10 December 2010.

⁶ “Online gambling is a fast developing activity in Europe, both in terms of supply and demand. In 2012, online gambling services represented more than 12% of the EU’s gambling market with annual revenues of over EUR 10 billion”. (Commission Communication “Towards a comprehensive European framework for online gambling”).

of consumers and players, the prevention of money laundering and fraud, and the integrity of bets, and (iii) education and research.

Interestingly, the arrangement is structured with attached individual 'gateways' filled-in by each participating State member essentially to provide information on the role, remit of each executing national authorities and areas they would like to share information as well as any limitations in their national laws and regulations.

Although it is certainly too early to make an assessment, it looks like this arrangement already represents a concrete tool to work with.

A deeper cooperation

Online gambling⁷ is characterised by the lack of sector-specific EU legislation and mixed regulatory frameworks within the EU countries or the same country having a monopolistic State-owned regime for some gambling activities and others under a multi licensing systems for private operators.

Due to its cross-border dimension, unlicensed operators or operators licensed in another EU country can offer *de facto* gambling services in other countries without the license required in those countries. That is why a growing number of EU countries have engaged in a review of their legislation to tackle this online gambling regulatory challenge having societal impact.

However, there is a consensus of the named European institutions⁸ on the need of more regulatory cooperation between Member States as these challenges cannot be adequately met by countries acting individually.

Since the setting up of the national experts group on gambling services by the European Commission in December 2012⁹, the regulating authorities started knowing and "trusting" each other. The purpose of the group is to provide the Commission with advice and expertise for the preparation of legislation or policy initiatives but it is notably facilitating the exchange of good practice between EU gambling regulators. Formally, the experts group's tasks are to:

"(a) establish cooperation between Member States' authorities and the Commission on matters relating to gambling services;

(b) advise and assist the Commission in the preparation and implementation of policy initiatives relating to gambling services;

(c) monitor the development of policies and emerging issues in the area of gambling services;

(d) bring about an exchange of experience and good practice in the area of gambling services, including its international dimension. "¹⁰

⁷ The cooperation arrangement defines "online gambling service" as: "any service which involves wagering a stake with monetary value in games of chance, including those with an element of skill, such as lotteries, casino games, poker games and betting transactions that are provided by any means at a distance, by electronic means or any other technology for facilitating communication, and at the individual request of a recipient of services".

⁸ See footnotes 2, 3 and 4.

⁹ More information on the Expert Group are available at the following link:

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2868>

¹⁰ See footnote 8.

At now, following the recalled Commission Communication¹¹ purpose to enhance administrative cooperation, gambling regulatory authorities of twenty-six EEA Member States executed this cooperation arrangement¹².

In the absence of a harmonized framework across the EU on online gambling this non –binding cooperation arrangement represents undoubtedly a further will of the regulating authorities for a deeper cooperation. According to the EU Commission: *“notwithstanding divergent national regulatory frameworks, Member States share common public policy objectives. Enhanced administrative cooperation amongst the gambling regulatory authorities of the Member States will contribute to address matters of common interest”*¹³.

Under the terms of this arrangement, the areas in which the authorities undertake to cooperate mainly refers to:

- i. *“The organisation of gambling, such as tender procedures, verification of information provided by other authorities, exchange of technical expertise.*
- ii. *The supervision of compliance with national laws, including the protection of consumers, prevention of money laundering and fraud, and betting related to match-fixing.*
- iii. *Practical cooperation to assist the authorities in their day-to-day supervisory function.*
- iv. *Sharing of best practices.”*

In addition, the regulatory authorities undertake to share information with each other on matters of mutual interest such as market data, new games, results of studies and surveys, and international issues.

Information sharing is carried out either on request or on a voluntary basis, having respect of the protection of personal data legislation and the principle of confidentiality recalled in the general part of the arrangement and according to the national 'gateways' filled-in by each participating State member and attached to it.

These gateways represent the essence of the country cooperation commitment and state the powers and limits of their respective regulatory authorities¹⁴ according to national legislation pointing out the other national authorities involved with gambling-related rules and regulation.

These gateways detail for each State member the information sharing assumptions and the processing of information, describing any security policy requirements and controls applicable as well as any specific processes or requirements regarding consent of data subject or any other documentation that may be required regarding a request of information.

As a general principle, all national gateways refer to the will to cooperate and exchange information with the other gambling regulatory authorities of EU and EEA Member States to succeed in having a legal and crime-free online gambling market, to prevent gambling addiction and protect consumers (such as players, minors and other groups of vulnerable people).

Interestingly, almost all Member States have extended the administrative cooperation under this arrangement to land-based gambling¹⁵.

¹¹ See footnote 2.

¹² Presently, the signatories of Iceland, Liechtenstein, Romania, Hungary and Luxemburg are missing.

¹³ See footnote 1.

¹⁴ For a comment, *“Le rôle comparé des autorités de régulation en matière de contrôle et de sanction des activités des opérateurs”*, Nathalie Rubio, Les jeux en ligne – vers un cadre juridique européen, sous la direction de Mme Peraldi-Leneuf, ed. Larcier, Octobre 2015.

¹⁵ Please refer to bullet point no. 4 of the gateways.

A State member should not ask for information that are already publically available or included within the Communication and Information Resource Centre for Administrations, Businesses and Citizens “CIRCABC” , the web-based library created by the Commission to avoid unnecessary request for information.

However, the European Commission encourages¹⁶ Member States to establish national gambling regulators for the effective and independent supervision of online gambling business.

In addition to this arrangement and to other information exchange platforms such as the Gambling Regulator European Forum - GREF¹⁷, the International Association of Gambling Regulators - IAGR¹⁸ and the Eastern European Gambling Summit - EGG¹⁹, some deeper enhanced administrative cooperation initiatives are continuing²⁰.

Forerunner was the cooperation bilateral agreement between French (*Autorité de Régulation des jeux en ligne* - ARJEL) and Italian (*Agenzia delle Dogane e dei Monopoli*, ADM formerly AAMS) gaming authorities of 28 June 2011, whereby ARJEL and ADM agreed to implement a cooperation and information sharing process to foster contrast of illegal gambling, sports frauds and improve operators' control when licensed in both countries²¹.

Another valuable bilateral memorandum of understanding was the following ARJEL and the UK Gambling Commission signed on 1 July 2012²² defining the modalities of acquisition, exchange, management, protection and use of the information exchanged.

Besides bilateral gambling regulatory authorities' agreements, gambling authorities regular meetings of Italy (ADM), UK (Gambling Commission), France (ARJEL), Germany (supreme gambling authorities and the *Glücksspielkollegium*), Spain (DGOJ), Austria (Federal Ministry of Finance) and Portugal (*Santa Casa da Misericórdia de Lisboa*) started to take place with the aim of promoting operational cooperation on online gambling and enhancing exchanges of information on:

- (i) protection of consumers and preventing gambling addiction;
- (ii) fighting illegal gambling;
- (iii) preventing fraud and criminal activities; and
- (iv) ensuring integrity of the games.

Right before the cooperation arrangement was signed, on 26 November 2015, the UK Gambling Commission, the Danish Gambling Authority, the Gambling Control Commission in Alderney and the Isle of Man Gambling Supervision Commission announced a pilot scheme to streamline the procedure for testing online games: the multi-jurisdictional testing framework.

¹⁶ Within its recommendation on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online of 14 July 2014, the EU Commission invites Member States: “to designate competent gambling regulatory authorities (...) to ensure and monitor in an independent manner effective compliance with national measures taken in support of the principles set out in this Recommendation.”

¹⁷ Please refer to: <http://www.gref.net/>.

¹⁸ Please refer to : <http://iagr.org/>.

¹⁹ Please refer to: <http://www.eegamingsummit.com/>.

²⁰ The cooperation arrangement states: “1.3. This Arrangement does not amend or supersede any law or regulation within the jurisdiction of the Authorities, nor does it affect other existing or future administrative cooperation arrangements between the Authorities.”

²¹ For a comment, please refer to “EU: ARJEL & AAMS: first step towards EU harmonisation?” Richard e Gautier, World online gambling law report, July 2011.

²² Please refer to the press release on ARJEL website: <http://www.arjel.fr/IMG/pdf/20120709CP.pdf>

A concrete tool

First, exchange of information and best practices within the organisation of online gambling are certainly a benefit for national gambling authorities to tackle in a coordinated and rapid manner their regulatory challenges.

With particular reference to national tender procedures, this cooperation arrangement could help applying the “**unfair operator principle**”, according to which a gambling operator that is illegal in one EU country should not be allowed to offer gambling services elsewhere in the EU.

In both its 2011²³ and 2013²⁴ Resolutions on Online Gambling, the European Parliament has called Member States to implement such a principle.

Forerunner is, in practice, the UK Gambling Commission that is already implementing this principle whereby a gambling operator may not bid for a national licence in the United Kingdom if it does operate illegally in another Member State more than three percent of its gambling business²⁵.

Interestingly, this brings gambling operators willing to bid for a UK gambling license to bid/regularize its provision of gambling also in the other Member State.

However, this cooperation arrangement could also represent a tool to minimize, where possible, any unnecessary administrative burden within the license application process to the benefit of both the national gambling authorities and the applicant operator involved.

At now, operators suffer from the multiplication of licensing procedures in each Member State in which they offer their services leading to time-consuming and costly applications to negotiate the different licence requirements applicable. As such, since its action plan, the European Commission has underlined the importance of reducing administrative burdens.

According to this arrangement, in any new licence process in one Member State, an applicant could - at least in part - refer to the documents relevant to the process that it has already submitted in another Member State where it is licensed. The sharing of data and information of the applicant may avoid the duplication of some documentation that was already verified by another gambling regulatory authority.

Of course, the applicant would have previously agreed to consent to the disclosure of information to the gambling regulator with whom it has an existing relationship. On the other side, the receiving authority would be obliged to respect the confidentiality of the information shared and to use it only for the purpose for which it was shared according to data protection measures²⁶.

In this case, forerunner was the Italian gambling regulator ADM that, since the last tender process in 2011 for online gambling it agreed to use – at least in part – the gaming platform certifications testing for some components previously certified by the same Accredited Testing Facility before another Member State application process²⁷.

Concretely, this could lead to a “passporting” between Member States, in the sense that where one platform/game component is used in multiple jurisdictions, operators could have the same tested to

²³ See footnote 3.

²⁴ European Parliament resolution of 10 September 2013 on online gambling in the internal market (2012/2322(INI)).

²⁵ Please refer to the Gambling Act 2005.

²⁶ Directive 95/46/EC with regard to processing of personal data as well as the national implementing measures apply to the processing of personal data in the framework of this Arrangement.

²⁷ Please refer to “*Governance of games of skill and games of chance with fixed odds and non-tournament card games with remote participation*” ADM certification guidelines version 1.1.

common standards agreed between different gambling authorities and use the one test to satisfy the testing requirements of all of them.

The mentioned Commission action plan noted that certification and standardisation of online gambling equipment could play an important role in the reduction of administrative burdens.

Turning to supervision of compliance with national laws, this arrangement may permit to identify the best practices currently in place in another Member State in term of player protection, technological tools of control, responsible gambling gaming measures or even taxation solutions. As for example, the current political debate in UK to tax online gambling bonus and free bets²⁸ could take advantage to learn how these are currently taxed in Italy.

While on players protection and gambling advertising, the European Commission has already issued its guidelines to the Member States²⁹, there is still expectation of a greater cooperation at national gambling authorities level on law enforcement common standards - such as anti-money laundering investigations, fraud and collusion control- and on fairness and integrity of games offered.

Finally, this arrangement may be of concrete help for the number of EU countries that have engaged in a drafting of their legislation to face online gambling challenges.

Conclusion

This arrangement is definitely a concrete tool to better address a cross-border level activity such as online gambling. It is fostering proactivity of the Member State regulatory authorities in sharing their good practices and exchanging data and information.

Besides, it still recalls the principle of subsidiarity, which applies to the choice of Member States to organise their national gambling policy in accordance with the level of protection they desire, while respecting, when restrictive measures are foreseen, primary and secondary EU law, and the jurisprudence of the Court of Justice of the European Union.

Therefore, the more successful this cooperation arrangement will be³⁰, the more the Member States will remain in the driver's seats to deal with online gambling legislation and policy.

²⁸ Please refer to the information at the following link: <http://www.dailymail.co.uk/news/article-3494714/George-Osborne-warn-storm-clouds-gathering-economy-today-s-Budget-generation-money-schools-infrastructure.html>.

²⁹ See footnote 12. For a comment, please refer to: « *Commentaire de la recommandation n° 2014/478/UE de la Commission européenne du 14 juillet 2014 relative à des principes pour la protection des consommateurs et des joueurs dans le cadre des services de jeux d'argent et de hasard en ligne et pour la prévention des jeux d'argent et de hasard en ligne chez les mineurs* », Valérie Peano, Les jeux en ligne – vers un cadre juridique européen, sous la direction de Mme Peraldi-Leneuf, ed. Larcier, October 2015.

³⁰ Despite the different levels of regulatory and market development observed in each of the countries, enhanced cooperation between EU Member States and, in particular, their gaming authorities, still appears to be the right way forward. For a comment: “*La cooperazione rafforzata tra Stati membri dell’Unione europea e il gioco on-line*”, Valérie Peano, Lexgiochi April 2012.