

Brussels, 16 July 2010

Online gaming and betting: Polish draft legislation fails EU screening test

The European Commission issued yesterday a detailed opinion against the Polish draft legislation regulating online gaming and betting (see [here](#)). The Polish draft legislation also raised concerns among a number of Member States such as the United Kingdom and Malta.

Sigrid Ligné, Secretary General of EGBA said: *“We support the Polish government’s intention to join the growing number of countries regulating the online gaming and betting market in the EU. However, the current draft foresees a wide range of obstacles and obligations which will make it highly difficult for EU licensed and regulated operators to apply for a license in Poland. We urge Poland to revise its draft and align it with the requirements of the EU Treaty.”*

According to the EGBA, a number of key provisions in the draft are highly doubtful under EU law. This includes:

- the requirement for licensees to be established in Poland either in the form of a joint stock company or in the form of a limited company with a very high share capital
- the possibility to exclude companies whose shares are quoted on the stock exchanges
- the requirement for online betting companies to install and store their servers in Poland ;
- the obligation for all transactions related to the betting services to be carried out through a Polish bank or in a branch of a foreign bank established in Poland
- the unjustified exclusion of certain games such as online poker
- the huge differences (in terms of financial guarantees and license fees) required for online and offline operators

“Some of these provisions seem to stem from a legitimate wish to regulate and enforce the rules for the online gaming market—but they duplicate requirements already fulfilled in other jurisdictions. EU licensed and regulated companies can fulfill all necessary requirements on fraud prevention and consumer protection without being necessarily established in Poland. This draft law would leave Polish consumers without a fair, secure and competitive online gaming market” added Sigrid Ligné.

In addition, some of the provisions such as the licensing requirements and advertising restrictions also beg the question as to whether the law will be economically attractive for EU licensed operators.

The Polish draft law was notified to the European Commission and Member States on 14 April 2010. Today’s detailed opinion extends the standstill period until 16 August, during which time Poland cannot adopt its draft legislation. Poland is required to reply to the Commission’s views. If Poland fails to take into account the Commission’s objections, the Commission can immediately launch infringement proceedings.

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The EGBA is an association of leading European gaming and betting operators Bet-at-home.com, BetClic, bwin, Digibet, Expekt, Interwetten, PartyGaming and Unibet. EGBA is a Brussels-based non-profit association. It promotes the right of private gaming and betting operators that are regulated and licensed in one Member State to a fair market access throughout the European Union. Online gaming and betting is a fast growing market, but will remain for the next decades a limited part of the overall European gaming market in which the traditional land based offer is expected to grow from € 70.5 Billion GGR in 2009 to € 76.5 Billion GGR in 2012, thus keeping the lion's share with 86.2% of the market. *Source: H2 Gambling Capital, January 2010.*

www.egba.eu

The Notification Procedure

Under Directive 98/34/EC, Member States must notify to the European Commission and other Member States draft regulations regarding products and Information Society services such as online gaming and betting, before adopting them. This procedure is aimed at preventing Member States from creating new barriers to the internal market freedoms by giving the opportunity to the Commission and Member States to evaluate the content of a draft law before it is adopted.

The notification of a text to the Commission opens a three month standstill period during which the draft text must not be adopted. This period allows the Commission and Member States to ascertain whether the draft text presents any unjustified barriers to the internal market. The Commission and/or Member States may then issue:

- **a detailed opinion**, if they consider that the draft text would, if implemented, create barriers to trade, services or establishment within the EU;
- **comments**, if they consider that the text raises issues of interpretation or requires further details; *or*
- **no response**, if they consider that the text is compatible with EU law.

A **detailed opinion** attempts to prevent Members States from adopting a text, which contains barriers to the internal market, or to urge them to remove the restrictive provisions, thereby avoiding unnecessary legislative work and future EU infringement proceedings.

Once a detailed opinion had been issued, the standstill period, during which the draft text must not be adopted, is extended by one month. If, after this time, the draft text is adopted without modification, the Commission can immediately commence an infringement procedure against the Member State's newly adopted legislation. On 31 January 2008, the Commission launched an infringement procedure against Germany after it failed to respect the detailed opinion issued against it in March 2007:

[Link to Commission press release.](#)

To access the TRIS database and search for other draft laws see:
<http://ec.europa.eu/enterprise/tris/pisa/app/search/index.cfm?lang=EN>