

The EU's online gambling regulatory approach and the crisis of legal modernity

Dr Salvatore Casabona

Associate Professor of Comparative Law, University of Palermo



Some rights reserved: CC BY 4.0 2012 Play Among Friends

ABSTRACT

Online gambling is a fast growing service activity in the world - its economic significance is clearly shown by the high level of innovation by gambling operators all over the world, as well as by the increasing amount of tax revenues generated in those States that allow this activity. Nevertheless, states face many difficulties in controlling and regulating online gambling, given the specific nature of the Internet, and the never-ending quest by gamblers for new gaming websites that offer superior odds, a wider gaming variety, and greater bets combination. In this working paper, Dr Salvatore Casabona examines the legality of online gambling in the context of the European Union (EU), and discusses the Union's regulatory approach to online gambling, the lack of harmonisation and the issue of member state sovereignty at the crossroad of European Law on online gambling, and the potential for a new regulatory paradigm to emerge.

The EU Centre in Singapore is a partnership of



THE EU'S ONLINE GAMBLING REGULATORY APPROACH AND THE CRISIS OF LEGAL MODERNITY

SALVATORE CASABONA^a

1. Introduction

As pointed out by the European Parliament in several passages of the recent Report on Online Gambling in the Internal Market¹, and repeatedly acknowledged by European Court of Justice case law, online gambling differs from other service sectors on account of the societal risks involved, and involved issues ranging from consumer protection, protection of human health to the fight against organized crime and money laundering.

The economic significance of the online gambling service sector is clearly shown by the high level of innovation of gambling operators, as well as by the increasing amount of tax revenues generated in those States that allow this activity².

Nevertheless, states face many difficulties in controlling and regulating online gambling, given the specific nature of the Internet, and the never-ending quest by gamblers for new gaming websites that offer superior odds, a wider gaming variety, and greater bets combination.

Regulatory approaches employed by state administrations currently shared some common points:

^a Associate Professor of Comparative Law and Adjunct Professor of International Trade Law at University of Palermo, University of Palermo, Italy.

¹ European Parliament Resolution, *Report on online gambling in internal market*, A7-0218/2013, 11.6.2013.

² Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions *towards a comprehensive European framework for online gambling*, COM (2012) 596 final, p. 3: "Online gambling is a fast growing service activity in the EU, with annual growth rates of almost 15%. Annual revenues in 2015 are expected to be in the region of € 13 billion, compared to € 9.3 billion in 2011. This would represent a total growth rate of almost 40%".

a. At the national level, attention does appear mainly focused from a public law perspective and issues. This includes criminal law (e.g. dealing with issues of money laundering; financing of international terrorism, fraud and so on) as well as administrative law concerning monopolies of the operation of internet casino games; concessions and license granted to private operators, etc. The gambler's point of view is often neglected, mostly limited (notably in the European context) to the protection of consumer, and in any case almost never focused on the *private contractual relationship* which binds the gambler with the online gambling operators.

b. The specialized literature gives the general impression of a sort of *segregation* among different scientific points of view employed in addressing online gambling. It is true that Internet gambling is studied by scholars with different conceptual grids from different disciplines - legal, sociological, psychological and economical as well. Yet, the richness of these related findings and perspectives are usually not pulled together and compared or contrasted to provide a more comprehensive understanding of the online gambling phenomenon. Hence, the "multidisciplinary" ontology of the field has not been translated into fruitful cross-fertilization and interrelation of different discourses and scientific outcomes.

c. Generally speaking, online gambling is deemed a mere *subset* of traditional gambling: States use to adapt to the remote gambling, with often daring hermeneutic processes, the former rules and categories already employed for gaming on the physical and tangible space (this seems to this author the case of Singapore)³.

³ In fact, considering that neither the Betting Act (1985) nor the Common Gaming House Act (1985) do contain any provisions dealing with online gambling, the question is whether some crucial categories for the application of the cited acts, like that of "betting information centre" or of "common gaming house", could be indifferently applied to online gambling phenomenon, see Hannah Yee Fen, *Online Gaming – The State of Play in Singapore*, 23 SAclJ 74 2011; Lau Kok Keng, *Sports Betting in Singapore*, in P. M. Anderson et al. (eds.), *Sports Betting Law and Policy*, 688 ASSER International Sports Law Series, 688-694;

d. Finally, there is a sort of *statutorification* of the regulatory mainstream that marks any approach to the field, in the sense that the *statute* is considered the main (or better still, the exclusive) source of law to tackle online gambling matters. Other regulatory approaches, like co-regulation and self-regulation, are mostly neglected.

2. The lack of harmonization in the sector of online gambling in the EU

In application of the subsidiarity principle⁴ and given social and cultural factors specific to each member state⁵ of the EU, the EU decided that the supply of online gambling services is not subject to a specific regulation at EU level.

In fact, despite two important regulatory initiatives that have fostered a more efficient and effective integration and legal harmonization inside the internal Market, such as the Directive on E-Commerce⁶ and the Directive on Services in the internal market⁷, online gambling was expressly excluded from the scope of their application⁸.

Chen Siyuan, *The Unresolved Legality of Online Gambling* in Singapore, 29 Sing. L. Rev. 53 2011.

⁴ EC Treaty, article 5, Principle of Subsidiarity: “The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty”.

⁵ In particular the European Court of Justice has acknowledged that, in the analysis of gambling sector, it is not possible to disregard the associated moral, religious or cultural factors, see ECJ Case C-347/09, *Dickinger and Omer* (15 September 2011), par. 45.

⁶ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 *on certain legal aspects of information society services*, in particular (Directive on electronic commerce). Although some dispositions of the Directive seem also applicable to gambling related content, see Articles 12 to 15.

⁷ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 *on services in the internal market*.

⁸ Directive 2000/31/EC *on Electronic Commerce* cit, Article 1(5)(d); Directive 2006/123/EC *on services in the internal market*, cit, Article 2(2)(h).

What has resulted is therefore an articulated patchwork of national rules and regulations which differs from one country to another, from the very prohibitive to the more liberal systems. This is not only highly inefficient and costly for the internal market but also risky for the gamblers, who do not have a clear and predictable legal framework of reference⁹.

The regulatory dilemma is always the same, wavering from criminalisation to legalization of gambling, in a continuous bounce back between opposite reasons pertaining to cultural, moral and even religious positions. In the European context, either because of the realisation and acceptance of practical unenforceability of totally prohibitive systems or because of the much attractive revenues from gambling, it is possible to note a constant and progressive process of member states moving away from total ban to regulations of online gambling¹⁰.

It is interesting to note the different regulatory approaches that member states made on the basis of their relevance for cross-border issues¹¹, and considerations as to whether online casinos should be allowed to offer their services in the country without any specific license or if gamblers should be allowed to play irrespective to their residence or nationality.

Some very broad categories of regulatory approaches adopted by EU member states have been identified:

⁹ See also the “manifesto of European Gaming and Betting Association (EGBA) at www.egba.eu.

¹⁰ See A. del Ninno, *Online Gambling in the European Union: A Compared Analysis of the Current Legal Framework in Some EU Member States*, GAMING LAW REVIEW Volume 6, Number 5, 2002, p. 417-423.

¹¹ See Eva Schriever, *Conflict and Coordination between Diverse Regulatory Environments* in Alberto Arnovitz, *Cross-Border Gambling on the Internet – Challenging National and International Law*, Schulthess, Zurich, 2004, p. 101.

a. *totally prohibitive jurisdictions*, in which online gambling as such has been traditionally prohibited. France until the recent legal reforms was a good example¹²;

b. *protectionist prohibitive systems* allow gambling but only if the Internet operator is licensed domestically, thus prohibiting foreign providers to operate in own country. Italy or Germany before the infringement proceedings launched by the EU Commission¹³ belonged to this group;

c. *completely liberal systems*, such as United Kingdom¹⁴, that does not place any hindrances and limitations concerning nationality of players and origin of online operators;

d. *restrictive liberal jurisdictions* that disallow licensed operators to deliver their services to gamblers from countries where gambling is prohibited. Good examples outside the EU are Nevada and Isle of Man¹⁵;

e. *liberal prohibitive systems*, such as Australia¹⁶, that allow online gambling from its territories, although prohibiting it for their residents.

¹² The Loi n. 2010-476 *relative à l'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne* has introduced a national licensing system that allows for the cross border provision of sports betting on a non-discriminatory basis while providing strict controls on gaming.

¹³ Felice Antignani, Michele Colucci and Felix Majani, *Betting in Sports Events. Gambling in Italy*, in P. M. Anderson et al. (eds.), *Sports Betting Law and Policy*, The Hague, The Netherlands, 2012, p. 495; Christian Marfels, *The Monopoly Issue in the Gaming Industry Revisited: The Case of German Casino Gaming*, *Gaming Law Review and Economics*, 2011, Vol. 15, n. 4, p. 175.

¹⁴ Mark Griffiths, *Great Britain*, in G. Meyer et al. (eds.), *Problem Gambling in Europe Challenges, Prevention, and Interventions* Springer, 2009, p. 103.

¹⁵ Claire Milne, *E-Gaming in the Isle of Man: A Primer*, *Gaming Law Review and Economics*, 2010, Vol. 14, n. 5, p. 371.

¹⁶ Jamie Nettleton and Michael Camilleri, *Calling a Bluff? Developments in Internet Gaming Law in Australia*. *Gaming Law Review and Economics*, 2011, Vol. 15, n. 11, p. 717.

3. European State's sovereignty at the crossroad of European law

The full right of EU Member States to determine how the offer of online gambling services is organised and regulated does not mean that there is not a precise duty to observe related Union law by the national regulators.

In fact, online gambling as a service industry is subject to a number of EU secondary legislative acts such as the data protection directive¹⁷, the directive on privacy and electronic communication¹⁸, the unfair commercial practices¹⁹ and unfair contract term²⁰ directives, the distance selling directive²¹ as well as the directive on consumers rights²². It is also subject to the rules and provisions to guard against money laundering²³. As a service industry, online gambling is subject to the rules governing the freedom of movement of services within the Community²⁴ that

¹⁷ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 *on the protection of individuals with regard to the processing of personal data and on the free movement of such data*.

¹⁸ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 *concerning the processing of personal data and the protection of privacy in the electronic communications sector*.

¹⁹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 *concerning unfair business-to-consumer commercial practices in the internal market* and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

²⁰ Directive 93/13/EEC of Council *on unfair terms in consumer contracts*.

²¹ Directive 97/7/EC of the European Parliament and of the Council *on the protection of consumers in respect of distance contracts*.

²² Directive 2011/83/EU of the European Parliament and of the Council *on consumer rights*.

²³ Directive 2005/60/EC of the European Parliament and of the Council *on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing*.

²⁴ Whereas online gambling has deemed as "service", according to article 50 of EC Treaty, by European Court of Justice. See the landmark ECJ Case C-243/2001 *Piergiorgio Gambelli and Others* (2003); ECJ Case C-338/04, *Tribunale di Larino (Italy) v. Placanica* (E.C.J. Grand Chamber Mar. 6, 2007); see also ECJ Case C-275/92 *Her Majesty's Customs and Excise v. Gerhart Schindler and Jorg Schindler* (1994) ECR I-01039; ECJ Case C-124/97 *Markku Juhani Laara v. Finnish State* (1999) ECR I-06067 that however dealt with cross border gaming services but not online gambling.

prohibit any restrictions in respect of nationals of Member States who are established in a State of the Community²⁵.

In fact, as stated in the *Zeturf* case, “any restriction concerning the supply of games of chance over the internet is more of an obstacle to operators established outside the Member State concerned, in which the recipients benefit from the services; those operators, as compared with operators established in that Member State, would thus be denied a means of marketing that is particularly effective for directly accessing that market”²⁶.

Nevertheless, in the last fifteen years the European Commission has brought a series of infringement cases before the European Court of Justice (ECJ) under Article 258 TFEU (Treaty for the Functioning of the EU), challenging various EU member States to demonstrate why their protective and restrictive domestic regimes were justifiable in light of European law.

Different and several restrictive measures were brought to the attention of ECJ: obligation on gambling provider to reside in the national territory²⁷ or to adopt the legal form of a public

See in literature Sue Schneider, *The Ongoing Evolution of European Thinking About Online Gambling*, *Gaming Law Review and Economics*, 2010, vol. 14, n. 10, p. 735; Andrea Borroni, *An International Paradigm for Online Gambling*, *Gaming Law Review and Economics*, 2010, vol. 14, n. 3, p. 187; Anastasios Kaburakis, *European Union Law, Gambling and Sport Betting, European Court of Justice Jurisprudence, Member States Case Law and Policy*, in M. Anderson et al. (eds.), *Sports Betting: Law and Policy*, The Hague, The Netherlands, 2012, p. 27

²⁵ EC Treaty, article 43: “Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 48, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the chapter relating to capital”.

²⁶ ECJ Case C-212/08, *Zeturf* (30 June 2011), par. 74.

²⁷ ECJ Case C-64/08, *Engelmann* (9 September 2010), par. 32.

limited company²⁸; prohibition to promote gambling organized legally in a other member state²⁹ as well as to collect bets through the intermediary established in another member state³⁰; limitation on the number of licenses and operators³¹ and monopolies to organise and promote games of chance³².

In return, EU member states, invoking those European norms that recognize the legitimacy of some restrictions for reasons of *public policy, public security or public health*³³, have justified their employed protective measures with objectives to protect the recipients of the service, to maintain order in society, to prevent crime, and to protect public morality³⁴.

The ECJ, although recognising that EU member States have a certain margin of discretion to

²⁸ ECJ Case C-64/08, *Engelmann* (9 September 2010), par. 28.

²⁹ ECJ Case C-447/08 and C-448/08, *Sjöberg and Gerdin* (08 July 2010), par. 33 and 34; ECJ Case C-176/11 *HIT* (12 July 2012), par. 17.

³⁰ ECJ Case C-243/2001, *Piorgiorgio Gambelli and Others* (2003), par. 45-46 and 58; ECJ Case C-46/08, *Carmen Media Group* (8 September 2010), par. 41

³¹ ECJ Case C-338/04, *Placanica* (E.C.J. Grand Chamber Mar. 6, 2007), par. 42,51.

³² ECJ Case C-347/09, *Dickinger and Ömer* (15 September 2011), par. 41; ECJ Case C-203/08, *Sporting Exchange* (3 June 2010), par. 24; ECJ Case C-42/07 *Liga Portuguesa* (9 September 2009), par. 52-53; ECJ Case C-258/08 *Ladbrokes Betting & Gaming and Ladbrokes International* (3 June 2010), par. 16.

³³ EC Treaty, Article 46: “The provisions of this chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health”; see also EC Treaty, Article 54: “As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of the first paragraph of Article 49”.

³⁴ According to the so called Transparency Directives the Member States have to notify their rules on information society services in draft form in order to allow other Member States and the Commission to raise concerns about potential barriers to trade. See Directive 98/34/EC of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations, as amended by Directive 98/48/EC of the European Parliament and of the Council amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations.

regulate the online gambling sector, held that this degree of latitude has to be exercised behind a “red line” marked by some mandatory principles.

First of all, national regulation must be *not discriminatory*, in the sense that Member States shall not adopt any regulatory measure that would disadvantage operators licensed in another EU member state. Of course, discrimination on the grounds of nationality can take different shapes: from those legislations that exclude those operators from gambling national market because their shares are quoted in the stock market³⁵ to the different tax treatment for foreign lotteries in respect to the national ones³⁶. Similarly, it was held that the requirement for a license holder – provided by the Austrian legislation - to have its registered office in the national territory is a *discriminatory restriction* which can therefore be justified only on the grounds of public policy, public security or public health³⁷.

Whether such legislation is considered discriminatory or not, the ECJ still requires a *proportionality* analysis. In the Opinion of the Advocate General on Gambelli case³⁸ it is affirmed that legislation must “be justified by imperative requirements in the general interest; they must be suitable for securing attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it”. Following this reasoning, the Italian statutory provision – which prohibited the collecting and forwarding of sporting bets without license and authorization on pain of criminal penalties – was held to be *not proportionate* with the objective of consumer protection, which it pursued. This was because it held that “(...) criminal penalties ought to constitute a last resort for a Member State in cases where other measures and instruments are not able to provide adequate protection of the interests concerned. Under the Italian legislation,

bettors in Italy are not only deprived of the possibility of using bookmakers established in another Member State, even though the intermediary of operators established in Italy, but are also subject to criminal penalties”³⁹.

Furthermore, those national restrictions to provide online gambling - which do not contribute to limiting betting activities in a *consistent and systematic manner* - have been held incompatible with the freedom of establishment and with the freedom to provide service. For example, in the Winner Wetten GmbH case, the public monopoly on bets on sporting competitions in force in the Land Nordrhein-Westfalen was held contrary to the freedom to provide services guaranteed by Article 49 EC. In fact, a restrictive measure, such as the said monopoly, cannot “be justified by reference to the alleged objective of preventing the encouragement of excessive spending on gambling and combating addiction to the latter, since it is undisputed that participation in bets in sporting competitions is encouraged by the national bodies authorised to organise such bets and that, therefore, the said measure does not contribute to limiting betting activities in a *consistent and systematic manner*”⁴⁰.

Finally, either the “open” licenses systems (in which every operator - fulfilling the requirements provided by the relevant national law - has the right to have access to the national gambling market) or the “closed” licenses system (in which only one of few licenses are provided) have to be ruled by the principle of *transparency*. This does mean that any potential tenderer has the right to know in advance (and in a clear, precise and unequivocal manner) relevant information regarding all conditions and procedural rules. Consequently, the ECJ held illegitimate the decision of Italian Government to renew the existing licenses without inviting competing bids on the basis that it is not granted “for the benefit of any potential tenderer, a degree of advertising

³⁵ ECJ Case C-338/04, *Placanica* (E.C.J. Grand Chamber Mar. 6, 2007), par. 61.

³⁶ ECJ Case C-42/02, *Lindman* (13 November 2003) par. 21

³⁷ ECJ Case C-347/09, *Dickinger and Ömer* (15 September 2011), par. 79.

³⁸ Opinion of Mr. Advocate General on *Gambelli*, 2003 E.C.R. I-13031, T 91.

³⁹ ECJ Case C-243/01, *Criminal proceedings against Piergiorgio Gambelli and Others*, 6 November 2003, par. 29.

⁴⁰ See ECJ, Case C-409/06, *Winner Wetten GmbH v Burdermeisterin der Stadt Bergheim*, 8 September 2010, par. 20.

sufficient to enable the service concession to be opened up to competition and the impartiality of procurement procedures to be reviewed”⁴¹.

4. What is going on in the EU regulatory approach to e-gambling?

According to the most recent Communication of the European Commission *towards a comprehensive European framework for online gambling*⁴², “the type of challenges posed by the development of online gambling and their implications for each Member State, it is not possible for Member States to effectively address these challenges alone and to provide individually a properly regulated and sufficiently safe offer of online gambling services”⁴³. Hence, the Communication underlines the importance of administrative cooperation between Member States (as well as between EU and third countries) for sharing general information, best practices, and exchanging personal data in compliance with national and EU rules on data protection⁴⁴.

As noted, “it remains to be seen whether this form of cooperation should be extended to the creation of EU-wide exclusion and/or blacklists (potentially of both punters and operators), establishment of international liquidity pools, or harmonization of minimum standards of consumer protection”⁴⁵. Yet, the Commission does recommend the setting up of gambling regulatory authorities with clear and specialized competences, able to implement an effective system of enforcement: either with *preventive measures* (aimed at reducing the initial

⁴¹ ECJ, Case C-260/04, *Commission of the European Communities v Italian Republic*, 13 September 2007, par. 24; see also ECJ, Case C-203/08, *Sporting Exchange Ltd, trading as “Betfair” v Minister van Justitie*

⁴² Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions *towards a comprehensive European framework for online gambling*, COM(2012) 596 final.

⁴³ Communication *towards a comprehensive European framework for online gambling*, cit. p. 5.

⁴⁴ Communication *towards a comprehensive European framework for online gambling*, cit. p. 8.

⁴⁵ Martin Lycka, *European Union Commission’s Communication on the Online Gambling Regulatory Framework: First Step on a Long Journey*, *Gaming Law Review and Economics*, 2013, Vol. 17, n. 5, p. 340.

contact of citizens with the offer of cross-border online gambling services), or with *responsive measures* (blocking payments and limiting access to unauthorised gambling websites).

A sharper observation of this Communication revealed that the EU Commission decided to not opt for any of the main regulatory options regarding e-gambling in European context: mutual recognition or harmonization.

With the first one, a gaming operator, once in compliance with its own country regulations, will be free to provide services to all Member States, as a system of mutual recognition of national authorizations and licenses would be settled at EU level; differently, harmonization strategy would imply a common set of European Union rules that would replace all the different national regulatory solutions. It is arguable that the Commission has preferred to adopt a *bottom-up* approach, reaching the better option through the fostering of a stronger administrative cooperation and the enhancing of mutual trust and confidence building between Member States.

5. Towards new regulatory paradigms

In observing the whole phenomenon of *remote gambling* from a top down perspective, it is clear that the descending problematic aspects go very far beyond the traditional regulatory approaches of *prohibit* or *authorise*.

The European panorama reveals lingering tensions between Member States and the EU Community, between national prerogatives descending from the principle of subsidiarity and the Union law stemming from the principle of freedom to provide service and ECJ case law regarding the limits to the discretion of States.

However, the compression of State sovereignty because of rules of a macro-regional dimension (as the EU is) does not reflect the entire picture of complexity of this field.

At the very beginning, it goes to say that every set of rules regarding this field (irrespective of their content) has been scrutinized in the light of the technical reality and peculiarity of the Internet that could support or, by contrast, undermine any formal legal solution.

In fact, it is even too easy to give evidence that any nimble-minded and technically competent teenager will be able to override national normative restrictions to e-gambling simply by using his Internet “tricks” that technically allow him to search on the global market for those online websites offering bigger gaming bonus, better odds and so forth.

Having said that, the point here seems to be not only the normative choice towards online gambling of each country, but more significantly, if the traditional States supremacy in ruling the “tangible” world is still adequate and able to rule what is intangible and globally cross-border, as the Internet is. It would appear that the Internet challenges the national regulatory sovereignty with its own *lex*, a sort of *lex electronica*, in the sense of all technical rules and technological expedients that concretely govern itself, and this also irrespectively to whatsoever legislation.

Furthermore, considerations stemming from the international trade law and dynamics seem to make more complex the regulatory arena of online gambling.

Similar to other multinational enterprises, online gambling operators would continuously look at which territory or location would offer them the best set of national rules (primarily looking at the tax and licences regimes) to register and set up their operations. As with the well-known business model of setting up a holding company with

various subsidiaries, the entity that provides and manages the online platform hosting the online gambling activities may not necessarily be the same legal entity which deals directly with the players in terms of payments for the bets placed and payoffs for the winnings. The online platform could also be easily established and authorised in a different jurisdiction in which the gambling operator has its legal residence and registered office.

Yet, at the same time, the online gambling contracts reproduce the same logics and dynamics of *global standardized contracts*: when examining the various gambling contracts, usually the same template with similar contractual terms and conditions at global level with very few differences linked more to the specific strategy of a certain multinational economic operator than to the peculiarity of a certain legal system.

The combination between the aforementioned *lex electronica*, the *forum shopping* phenomenon (the cross-border search for a better legal regime by gaming operators), company delocalization, and contractual standardization seem to reveal a not so concealed trend to keep distance from any jurisdictions and specific legal tradition, and thus from the legal sovereignty of States.

Having considered this, an enhanced dialogue between public authorities and the stakeholders is therefore highly desirable: the entire gambling industry (not only operators but also IT providers and consumer associations) could play a crucial role in designing a more responsive and cross-border regulatory strategies and more effective instruments of enforcement.



Established in 2008, the EU Centre in Singapore is a joint project of the European Union, the National University of Singapore (NUS), Nanyang Technological University (NTU) and the Singapore Institute of International Affairs (SIIA), and is part of a worldwide network of EU centres and EU institutes. We aim to promote knowledge and understanding of the EU and its impact on Singapore and the region, through activities revolving around outreach, education and research.

As part of our public outreach activities, the Centre organises an ongoing series of talks, lectures and seminars. The Centre contributes to education and research on the EU through organising academic conferences and by publishing background briefs, working papers, and policy and research briefs.

Copyright © 2014 EU Centre in Singapore



www.eucentre.sg