

The regulatory future of remote gambling in the UK:

Is the UK joining the continental EU Member States after Liga Portuguesa de Futebol?

By Philippe Vlaeminck



I. Introduction

On 22 March 2010, the UK Department for Culture, Media and Sport launched a consultation on the Regulatory Future of Remote Gambling in Great Britain which sets out the Departments' justifications for changing the current regulatory system, the options it considered, and its proposals for extending the current framework to include overseas operators offering their

services to British consumers.

This consultation follows the request in April 2009 from Minister for Sport, Gerry Sutcliffe, to look at the aspects of the system of remote gambling regulation in Britain, including the existing regulatory controls that apply to operators licensed overseas as well as mechanisms to secure fair contributions from all operators towards research, education and treatment for problem gambling in the UK and the Horserace Betting Levy.

In the light of that study, the Department has started a consultation to examine the feasibility of extending the existing licensing system for remote gambling to overseas-based operators that offer services to or advertise in the UK.

The Department seeks to collect the views from remote gambling operators, based both inside and outside of Great Britain, regulatory bodies and Governments in other jurisdictions that regulate remote gambling, faith and community groups, and sports bodies. The consul-

tation period runs for 12 weeks from 22 March to 18 May/June 2010.

II. Items on the table

The Consultation document highlights the reasons why the Government believes that an amendment to the framework has become necessary, namely in order to ensure that British consumers receive the same level of protection irrespective of where a gambling operator is based. The following items are being discussed in the consultative document:

- The current system in force established by the 2005 Gambling Act (the licensing system and objectives, the creation of the Gambling Commission as a new independent regulator, remote gambling licences, the "white list" of jurisdictions who can advertise remote gambling services in the UK, the framework of Licence Conditions and Codes of Practice (LCCP), etc.).
- The need to reexamine the system of remote gambling regulation due to significant changes over the last years in the international remote gambling landscape and the accompanying issues, in particular the increasing number of gambling operators who are currently regulated offshore, outside the scope of the Act and the Commission's regulation. Currently, operators based in any EEA member state, Gibraltar or white listed state are free to advertise and provide their services in the UK without needing a Commission licence or complying with Commission requirements. As such, the specific provisions of the 2005 Act may not necessarily be enforceable requirements for the majority of the remote operators with whom British consumers gamble.

The government considers it necessary to adapt the current system to the significantly changed landscape of remote gambling by pursuing the consistency of regulatory standards for all licensed operators, fairness (in that all operators active in the British gambling market should be required to adhere to the same standards, requirements and obligations in respect of social responsibility and proper cost recovery).

The government discusses the possible options to move forward and links them to these criteria to see what the best solution would be (In respect of EEA member states and Gibraltar: (i) do nothing, (ii) introduce non-statutory changes to the system, such as Memoranda of Understanding (MOUs) with other regulators, and increased regulatory co-operation, (iii) introduce the need for such operators to obtain a licence to enable them to advertise in the UK and (iv) introduce the need for such operators to obtain a licence to enable them to transact with British consumers and advertise in the UK; Options for non-EEA jurisdictions: (i) improve the white listing system for non-EEA jurisdictions, (ii) develop a more streamlined white listing process as well as introduce licensing for operators in white listed jurisdictions and (iii) abolish the white

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list and introduce a licensing system for operators in all non-EEA jurisdictions). The government asks the views from the participants to the consultation as regards to these models.

The UK government comes to the conclusion that the preferred solution would be to introduce the requirement for operators licensed in EEA member states, Gibraltar and white listed jurisdictions to obtain a Gambling Commission licence to transact with British consumers and advertise in the UK and to develop a more streamlined white listing process for non-EEA jurisdictions.

The government also comes up with a set of proposals for extending the current regulatory system for remote gambling to include operators based overseas but that offer services to British consumers or advertise in the UK and asks the participants to share their views.

III. Preferred solution

As stated above, the UK government considers the preferred solution to be to introduce the need for operators licensed in EEA member states, Gibraltar and white listed jurisdictions to obtain a Gambling Commission licence to transact with British consumers and advertise in the UK and to develop a more streamlined white listing process for non-EEA jurisdictions.

By proposing this solution the UK government follows actually the ruling of the ECJ in *Liga Portuguesa* as outlined in §67. Indeed the Court did consider that the EU Member States were entitled to deny a license granted by another state and request any operator to obtain a license in the so-called country of destination, the country where the consumer has his residence. It is clear that , as other Member States are saying, that the impact of the ECJ ruling in *Liga Portuguesa* goes much further than only Portugal. In different cases following *Liga Portuguesa* this issue was extensively discussed in Court. All Member States present during the most recent hearing, did indeed insist that *Liga Portuguesa* actually provides a generic answer to gambling services. The principle of mutual recognition,

meaning that a EU Member States, needs to accept the license issued by another state, is hereby totally put aside in the gambling sector.

If the ECJ follows now also the opinions of the different Advocate generals also on the abuse of the Internal market rules by operators established in off shore jurisdictions, the end of remote gambling hubs in the EU is coming nearby. The fact that now the UK joins the approach of the continental states leaves Gibraltar and Malta without any alliance.

The discussions taken place in the Council Working Group prove that there is a growing consensus to resolve legal and enforcement problems surrounding gambling services. The fact that there is or the first time consensus in ,the EU on the issue of illegal gambling is an important step forward. In the Spanish Presidency progress report the following conclusion is provided: Illegal gambling may be defined as gambling in which operators do not comply with the national law of the country where services are offered provided those national laws are in compliance with EU Treaty principles.

As a result the Spanish Presidency progress report states that: the Spanish Presidency invites the Competitiveness Council to take into consideration this progress report. It recommends the continuation of the discussions in the preparatory bodies of the Council on the basis of this common understanding on the issue of illegal gambling and encourages the Commission to start consultations with Member States and stakeholders in the context of the awaited Green Paper, and to follow-up with specific proposals, as appropriate.

The fact that all states are now requesting the EU Commission to come up with a Green Paper to initiate a broad stake holder consultation and debate proves that the Member States are finally taking their role in resolving the ongoing legal disputes serious. The fact that the UK is now also on board is a very important step towards proper rules. ♦

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