



Friedrich Stickler

Deputy Managing Director of the Austrian Lotteries; President of the European Lotteries Association

INTRODUCTION BY PAUL JASON: It would seem like everyone would know that government lotteries operate to generate funding (to the tune of tens of billions of euro, dollars, renminbi, yen, pesos, and like amounts in many other currencies) to support important public service and charitable causes. And that they operate at a level of security and integrity that sets a higher standard for the entire gaming industry, and always in a manner that minimizes social costs to the players and the general public. But the fact is that the shapers of public policy don't necessarily know that until and unless we tell them! Government legislators are making decisions right now that will have a profound impact on the gaming industry and lotteries. Lotteries need to find a way to take their place at the table where these issues are being discussed and policies enacted.

As president of the European Lottery Association, Friedrich Stickler is taking the story of Lotteries to Brussels, where policy that impacts all the lotteries operating within the European Union is being formulated. The stakes couldn't be higher. It would be like the U.S. federal government deliberating over whether state lotteries should all be forced to de-monopolize and open up to multiple commercial operators allowed to sell across borders wherever and however they like. Tax rates would effectively be established by the state that applies the lowest tax rate. Tens of billions of dollars in funding to public service good causes would completely evaporate.

The European Union Commission is expected to soon publish what is referred to as a

"Green Paper" that will attempt to clarify the position of the EU Commission regarding the rights of EU member states to regulate gambling. Do EU member states determine regulatory and tax policy for their own markets, or do they need to conform to a pan-European policy determined by the EU Commission? Can EU member states decide to control the gambling market for the protection of players and financial support of public service Good Causes; or will the EU Commission force member states to throw the markets open to cross-border and free-market competition?

Fortunately, the EU Commission recognizes that gambling is a special industry requiring a different level of regulation than other industries. Along with the importance of player

protection and minimizing social costs, the European lotteries contributed 22.4 billion euro in 2009 alone. "This funding is indispensable to public authorities and thousands of civil society organisations across Europe, especially in these difficult times. We think it is in the best interest of society that EU policy-makers find a solution to guarantee a sustainable future for this public utility model we stand for and which is applied in all EU member states."

Paul Jason, Public Gaming: *There have always been two primary purposes to strict government control over lotteries. One is to channel the outsized profits generated by this business back to benefit the general public in the form of*

Good Causes. The other has been to protect the public from fraud, money laundering, social costs related to problem gambling and criminality. In Europe this last is referred to as the preservation of Public Order. Lotteries have perceived the EU Commission to be unsympathetic to the Good Causes argument for preserving monopoly control, and so have relied on the Public Order line of defense that has been primary in recent years. But you have resurrected the Good Causes justification in a presentation to the EU member council. This is exciting. Why the switch, why do you feel that the EU Commission is now more receptive to the argument that lotteries should be protected because of the huge financial support they give to Good Causes?

Friedrich Stickler: The EU Commission has never actually said that governments do not have the right to control the gaming industry for the benefit of the public and Good Causes. In 1992 when the debate started Member States did argue in the European Court about Good Causes as well as about public and social order. It was decided by the European Court in the Schindler case (1994) that the good causes, although an important feature, was not providing the Member States legally a ground for preserving their monopolies. The allocation of profits to good causes was considered by the Court as an ancillary benefit, but not a legally acceptable justification. The line of thinking was that the underlying purpose of the European Union is to promote free trade and open competition, so restrictions can only be accepted if necessary and proportionate and aim at defending more important objectives as public order and/or the protection of the consumers. But the case law has always recognized that gambling is a special industry and the regulation for gaming should be determined essentially at the member state level. What we are doing now is to simply adding back into the political dialogue the fact that lotteries serve an invaluable role by contributing billions of euro to Good Causes. There is no reason to shift those funds from Good Causes and public service interests over to private and commercial interests. The preservation of Public Order is just as important as ever and remains a cornerstone to the justification for government control of lotteries and gambling. But lotteries do play a critical role in society and we're just adding the financial contribution role of lotteries back into the dialogue. It is so important that the EU Commission recognizes the crucial role that lotteries play in the support of Good Causes.

But why now? Why do you think the EU Commission will be more sensitive now than before to the role that lotteries play as a source of

funds for Good Causes?

F. Stickler: I frankly think that we should always have emphasized the importance of lottery funding to Good Causes. This is a political issue, not a legal debate. The political issue is about who should enjoy the financial benefits of this industry. We need a framework that allows member nations to choose not to decimate the billions of dollars that go to support Good Causes. That is a political question to be answered by the EU Institutions all together (Commission, Parliament and Council), not a legal issue to be decided by the European Court of Justice. Michel Barnier is the new Commissioner of Internal Markets for the EU Commission. He has indicated a desire to work in concert with the member states to develop a mutually agreeable solution to these questions. That is in contrast to the previous Commissioner who felt that the EU Commission had no responsibility to listen to the opinions of the member states. Commissioner Barnier has also expressed a strong desire to work towards a more rational framework that does not result in ongoing disputes over how to regulate the gambling industry. He has accepted that the principle of subsidiarity may apply to gambling, which means that member states have more rights to exercise authority over how the industry should be regulated within their borders. And he has also recognized the important role that lotteries perform in service to Good Causes. He will publish what is referred to as a "Green Paper" which will set a course for addressing these issues, for moving towards a rational and effective regulatory framework for the member states to follow. The publication of the Commissioner's "Green Paper" is a highly anticipated event that should take place within the next months.

But let's not forget that, in a more global environment and due to the expansion of Internet gambling, the preservation of Public Order is actually a more pressing concern than ever. Money laundering, organised crime and fraud are a bigger threat than ever and we need to have effective regulatory laws and enforcement mechanisms to combat them. By combining these two fundamental concepts, Public Order and Good Causes, we are hopeful that the EU Institutions will appreciate the importance of preserving the basic lottery model.

It's so great that the European Lotteries are able to speak in one voice to the European Union Commission. Doesn't your membership have different opinions on at least some of these issues and how do you create consensus?

F. Stickler: Of course there are differences of opinions. We just identify the most important issues and work hard to clarify what we can agree on and then speak in one voice to the EU Commission and the general media on those issues. We feel that it is so important to have a unified and consistent message on the important issues. We all agree that our national governments should have the authority to determine the regulatory structure of the lotteries. And we all agree that preserving the monopoly model for the benefit of Good Causes, as well as Public Order, is a perfectly legitimate agenda for a national government to have. Those are two core values that all of our members agree on. So that is the message that I have been charged with delivering to Brussels.

It sure would be good to have a framework that enabled the industry to evolve without so much litigation over regulatory laws. I can't imagine that the European Court of Justice wants to stay in the position of arbitrating all these disputes.

F. Stickler: It will take time to get there. It's difficult because these really are political issues rather than legal issues. The Court can render a judgment that a jurisdiction is not in compliance, but there needs to be more clarity from legislators, from the shapers of public policy, about what exactly is allowed and who exactly has the authority to make these determinations. The ECJ judgments go back to the national courts for them to assess their options and try to chart a course. It gets very complicated with no one quite understanding what is expected of them. That's why this "Green Paper" is so important. It will hopefully provide guidance from the political leaders as to whether gaming and gambling can be regulated differently from other industries based on the issues of Public Order and Good Causes. One thing that is certain, though. And that is that all member states will be expected to implement the laws consistently even within their own borders. Whatever else is included or not in the framework set forth by the "Green Paper," we can expect that it will strive to support a consistent application of the laws, taxes, and regulatory constraints within each jurisdiction.

Fundamental to our position is that gaming, gambling, and lotteries are special industries and the EU should not insist that all member states regulate in the same way. There has to be an allowance for different gaming cultures and different political and social objectives. The alternative, to try to impose a rigid set of rules that require member states to open up the markets to multiple operators and open

borders, would result in the entire European Union adopting a model in which all markets are forced to migrate to the lowest tax rates and highest payout percentages. The revenue driver would be the same as it is for all other industries. The customers would all go to the best value proposition. That would cause the payout percentage to increase to the highest one that exists. The biggest cost item is taxes and so the revenue would go to the operators that had the lowest taxes and could offer the

highest payout percentage. This may be what some commercial operators want; and it may be what two or three EU member states which host those commercial operators want. But it is emphatically not what the vast majority of EU member states want. And since the countries that don't want it are where 99% of the EU population resides, it is also not good for 99% of Europeans. And it is certainly not what the beneficiaries of the billions of euro generated by lotteries want. And that is why

we need to include these other financial considerations along with Public Order as being sound and legitimate justification for preserving the lottery model. And that is why we have hope that Commissioner Barnier's "Green Paper" will move us all towards a framework that gives the national governments the authority to opt for a traditional lottery model if that is what the people want. ♦