Market Barriers

A European Online Gambling Study 2012

An impartial and comprehensive evaluation of the current legal, regulatory and market landscape for online gambling in Europe
Dear friends,

On behalf of GamblingCompliance we would like to thank you for purchasing ‘Market Barriers: A European Online Gambling Study 2012’.

Europe continues to be the most dynamic region for online gambling regulation and provides important lessons on the regulation of online gambling. Since GamblingCompliance’s ‘Market Barriers: A European Online Gambling Study 2009’ was published, the region’s online gambling map has continued to be redrawn. Given these significant changes and policy moves since 2009 we considered it timely to update and expand this study.

At national level:

- A raft of newly-regulated countries has emerged.
- Evidence is emerging from the countries which were the first to open their online gambling markets to point of consumption regulation.
- This evidence is throwing light on operational issues, such as taxation, restrictive measures, server location and liquidity.

Moreover at European level:

- Action is emerging from the European Commission, with a Communication expected in September 2012.
- Case law continues to grow from the Court of Justice of the European Union for the sector. This report includes a note on all cases to deal with gambling since the 1990s and previews the issues at play in pending cases.
- In the absence of harmonisation, regulatory authorities, the industry and other stakeholders are discussing how best to further their cooperation.

This study also reveals trends emerging across Europe including local licensing using restrictive tools such as blocking and marketing restrictions.

We at GamblingCompliance look forward to continuing to deliver high-quality information services to our clients, whether through our subscription service, customised research or reports such as this. Should you have any feedback, suggestions or requests regarding our services please do not hesitate to contact us.

Best regards,

Laurie Korpi      Pauline de Zeeuw
Legal and Research Director, International   Legal and Research Manager, Europe
About GamblingCompliance

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### About This Report and Authors

*About GamblingCompliance, Regulated Markets Data Report*
Executive Summary

European countries have been at the forefront of the regulation of online gambling. As a result, the region is now home to the largest legal online gambling markets in the world. While the industry is awaiting the European Commission’s Communication on online gambling to be released this autumn, ‘Market Barriers: A European Online Gambling Study 2012’ charts the pace of change across Europe, particularly at the country level and the pressure points affecting policymakers, regulators, operators and stakeholders.

Having surveyed the 27 European Union member states, all European Economic Area member states, Switzerland and a number of countries on the EU’s doorstep, the level of disparity across jurisdictions is clear. Countries with complex and maturing regulatory frameworks are fine-tuning their regulations to encompass issues such as international liquidity. Meanwhile, many countries are at more embryonic stages and some are yet to even attempt regulation, leaving them most exposed to black market offers. Despite a patchwork of online gambling regulations, certain trends have clearly emerged.

Debates are shifting at the European level. The Court of Justice of the European Union has been the predominant forum for debates on the legality of online gambling policies for the past two decades. However, these debates have shifted from Luxembourg to Brussels under the auspices of Internal Market Commissioner Michel Barnier. Since 2010, Europe’s executive, the European Commission, has become increasingly involved in online gambling debates, having launched an EU-wide consultation on the topic.

A consensus has emerged that the European Union has a role to play. An important finding of the consultation has been that action at the European level is needed to facilitate the political and legislative management of online gambling regulation. This was clearly enunciated in the European Parliament’s submission to the consultation. The so-called ‘Creutzmann Report’ underscored the complicated and cross-border nature of online gambling, calling for EU-level action, including a common set of rules for consumer protection and formalised cooperation between gambling regulators. However, views remain fragmented as to the extent of the European Union’s level of intervention into this sector.

Europe’s online gambling map continues to evolve. Parallel to the debates which are occurring at EU-level, is the continuing regulation of online gambling at national level. During 2012 alone, 15 European countries have adopted changes to their online gambling frameworks: from the opening of markets in Denmark and Spain to the refinement of regulations in Estonia to improve the functioning of that market. In addition, eight more European countries have debated at policy and parliament level the regulation of online gambling: from Ireland introducing interim measures affecting the online betting industry to Lithuanian politicians debating more fundamental issues of regulation.

There is a clear trend towards point of consumption regulation. With Europe’s online gambling map continuing to be redrawn, a clear trend towards local licensing requirements and attempts to ring-fence markets is evident. Measures such as advertising restrictions, website and payment blocking are becoming commonplace. Italy, the pioneer of ring-fenced models, has clearly been influential. Since the country regulated part of its online gambling market in 2008, France, Denmark, Spain, Bulgaria and Estonia, among others, have installed ring-fenced models. The UK’s announcement of a shift to point of consumption regulation has cemented the position of this approach.

Evidence from regulatory experiences is emerging. Europe’s first ring-fenced markets have been in place for a number of years. Valuable insights into how these markets function and how to restrict market access are emerging.

Website blocking was pioneered by Italy and is now also utilised by Estonia, Belgium and Denmark, among others. While evidence suggests that it can be circumvented through changing a domain name to avoid a blacklist or altering settings on a computer, the Italian experience suggests it can serve as a useful tool to inform consumers as to whether a website is legal or illegal in that jurisdiction.

Payment blocking has also been written into law in a number of European jurisdictions such as Belgium, Estonia, Denmark, Norway and Spain. Norway has said payment restrictions help to differentiate legal and illegal offers. However, Norway’s evaluation suggests that payment blocking can be easily circumvented through the use of e-wallets, pre-paid cards and offshore accounts, among other methods. This has led the country’s monopoly to expand the range of its authorised online games.

Advertising restrictions are employed by most jurisdictions either permitting licensed operators to advertise, preventing unlicensed operators from marketing or regulating the content of ads. The ubiquitous use of this method shows it plays a vital part in regulation.

Attention is turning to the attractiveness of markets. Over the years, debates have focused on how to stop players accessing black market offers. A new area of focus on how best to attract both players and operators to legal offerings has emerged.

Taxation has proved to be an important factor in attracting licensers to regulated markets. The example provided by France’s sports betting tax highlights the dangers of setting a taxation rate so high that it threatens the viability of the market.

Competitive products and how they compare with black market offerings is an issue that regulated markets face. Some countries, such as Italy have expanded their regulated games in order to provide a legal alternative that compares to the black market. The highly restrictive market of Norway has similarly expanded its monopoly’s range of online games. The issue of payout rates has been flagged as one of the indicators of how attractive a product is to consumers.

Increasing regulatory cooperation is re-focusing debate. Since online gambling has been excluded from European harmonisation instruments such as the Services Directive, the wide discretion of countries has given rise to a raft of regulatory regimes. In the absence of European-level legislation on online gambling, cooperation between some jurisdictions is emerging as a future cross-border regulatory tool. Some of Europe’s most prominent jurisdictions have entered into memoranda of understanding to share best regulatory practices and information to assist in enforcement of gambling laws. In time this cooperation will need to expand to encompass operational issues such as shared liquidity and server location for meaningful clarity to emerge. However, to date, these remain the exception rather than the norm.

Industry-led initiatives are emerging. These include a European Committee for Standardization (CEN) agreement on responsible remote gambling measures and efforts to fight against threats to sports integrity via the European Sports Security Association (ESSA). Should efforts to enhance cooperation at the regulator level fail to gather pace, it is likely that industry-led initiatives may remain the leading standard for a time on some issues.
While online gambling in Portugal remains exclusively operated by the state run charity Santa Casa da Misericordia, the country has recently been evaluating the possibility of liberalising its market.

**KEY MARKET DATA**

Population: 10.6m
Internet Penetration At Home 2011: 50 percent
Key Gambling Law/s: Law Decree 422/1989; Law Decree Lei 282/2003
Regulator: Inspectorate General on Gaming
Online Gambling Market: Monopoly
Source: Eurostat; GamblingCompliance
Online gambling is regulated.

Monopoly.

Online gambling licences are not available.

The country’s state-run charity Santa Casa da Misericórdia has a monopoly on online games and currently offers traditional lottery games and sports betting online.

Santa Casa’s operations are tax exempt and the charity’s profits are distributed among several government institutions.

There is no licensing regime applicable for online gambling operations in Portugal. Santa Casa da Misericordia is the only authorised entity to offer online gambling services. The charity’s monopoly is granted to it by Law Decree 282/2003.

There is no licensing regime applicable for online gambling operations in Portugal. Santa Casa da Misericordia is the only authorised entity to offer online gambling services. The charity’s monopoly is granted to it by Law Decree 282/2003.

Advertising: Yes. Advertising of gambling operations in the country is illegal according to the general regulations for advertising. However, this prohibition does not apply to the monopoly of Santa Casa.

Website Blocking: No specific law for website blocking. However, regardless of this, a Lisbon court has ordered an internet service provider to block the websites of BetClic. This was the first time a company was affected by this type of restriction in Portugal.

Payment Blocking: No. To date, there are not payment blockings in place in Portugal.

INTERNATIONAL COOPERATION

Bilateral agreements: No.

Gaming Regulators European Forum: Yes, member.

Decreto Lei 282/2003 authorises Santa Casa da Misericordia to offer its lottery products on electronic channels of distribution.

According to comments made by government officials in March 2012, the regulation of the online gambling market is required and is currently being analysed by different divisions within the government. These divisions are taking into account the studies prepared by the previous government. While no roadmap has been established for the presentation of a formal proposal to regulate the online market, Portugal’s tourism minister Cecilia Moraes remarked in March 2012: “I am cautious and I think that in a moment like this we need to be cautious. I would say that it is possible to think about obtaining online gambling revenues in 2012.”

At the time of publishing this report, the Portuguese media have reported that progress has been made in the preparation of an online gambling regulatory framework, expected to be implemented later in the year. According to the report, the Portuguese government is currently evaluating three different scenarios for the implementation of an online gambling policy in the country.

The first option is to maintain the status quo over Santa Casa’s monopoly and to remain a closed jurisdiction for online gambling. The second option is an open policy which would allow the licensing of all forms of private gambling operations. The third and most likely option is the implementation of a mixed system which would allow Santa Casa to retain its monopoly on sport betting but would authorise it to sub-license its online activities to third-party private operators. Under this model, current land-based casino operators would also be able to expand their operations online.

This information is based on a report that an inter-ministerial working group on gambling reform completed in April 2012. It is currently being reviewed by the Prime Minister and the cabinet, who are expected to introduce a legislative instrument on the issue in parliament. The report concluded that Portugal should reform its gambling policy by following a similar online regime to those adopted in other countries in Europe.

Considering the lack of legislation for the implementation of these measures, the report presented by the inter-ministerial working group also includes eight draft bills, proposing reforms of advertising, banking, gambling and communications laws to accommodate an online gambling regime. The report also recommends controlling the opening of the online market by implementing a ring-fencing procedure on payments, website blocking and advertising restrictions.

Whichever scenario is adopted by the government, the only certainty is that Santa Casa will continue to hold a privileged position within the gambling market in the country. The report states that the proposed reforms can be implemented before the end of 2012. However, details on important issues such as taxation and international cooperation have yet to be released.

In brief: Portugal
The Portuguese gambling market remains one of the most restrictive in Europe. To date, online gambling operations can only be offered by the charity institution Santa Casa da Misericórdia, which holds the state monopoly on lotteries in Portugal.

Currently, the gambling market is divided into two main sectors: lotteries and physical casino games. While casino operations have been transferred to a limited number of private companies through concession contracts, according to the legal framework for gambling and casino law, lotteries and online gambling as part of the lottery market remain under the exclusive jurisdiction of the state monopoly. In 2003, Law Decree 282/2003 authorised Santa Casa to implement additional distribution channels for its products. Under the scope of this regulation, Santa Casa began to commercialise its products over the internet and mobile phones. Santa Casa’s online offerings remain limited to lottery games and sports betting services.

Despite the establishment of such a system, the lack of restrictive measures for non-Portuguese licensed online gambling operators has allowed foreign operators to target the market and even advertise their services in Portugal. Santa Casa has strongly opposed unlicensed operators. This opposition resulted in several court cases, among them a case involving Bwin, which was referred to the CJEU in 2007. It was argued before the CJEU that the establishment of an online gambling monopoly by Portugal was contrary to the freedom to provide services. The CJEU ruled that there is no harmonisation regarding gambling across the EU and that Portugal had the right to maintain its monopoly based on public interest objectives.

To date, this decision remains the strongest support for the state monopoly over online gambling operations in Portugal. Despite this landmark decision by the CJEU, online gambling companies continued to advertise and promote their services in the country. Following the decision, Gibraltar-based operator Bwin even managed to sign a sponsorship deal with the Portuguese football league, by which a national football championship changed its name to Bwin Cup. In addition, online gambling operator BetClic was sponsoring most of the teams participating in this tournament. This situation pushed Santa Casa to bring new legal challenges against Bwin and BetClic.

In both cases, local courts found that the operation and advertising practices carried out by both companies were contrary to Portuguese legislation and asked the two companies to refrain from any advertising and operations in the country. Particularly in the case against BetClic, the court went a step further and ordered an internet service provider (ISP) in March 2012 to block websites operated by the company. This was the first time a company was affected by this type of restrictive measure in the country. The court decision ordering the ISP to block BetClic’s sites in the country was based on Santa Casa’s claims in its initial lawsuit and specific to the BetClic case. Therefore, it should be noted that Portuguese legislation does not contain this type of measure to prevent access to online gambling services. Neither Santa Casa or any administrative authority is authorised by law to impose ISP blocking measures against online gambling operators.

However, with more recent CJEU jurisprudence, particularly CJEU decisions on German cases in 2010 on the consistency of gambling policy, Norbert Teufelberger (now co-CEO of Bwin, Party) argued in October 2010 that Bwin was legally entitled to advertise in Portugal.

“The ‘Santa Casa’ case was a very particular case and what it really said was that [an operator is] not allowed to operate under one European licence in another member state...It never really ruled on the coherence of the Portuguese operator [Santa Casa]. We are quite confident that after the last [German] rulings you need to be coherent. Is it really coherent that the Portuguese operator advertises very aggressively?”

Portugal has been severely affected by the European economic crisis and the country’s response to this may hold clues to the future of its online gambling regulatory framework.

The dire economic situation in the country forced it to implement several economic reforms, budget cuts and to seek new sources of revenue. This situation created political pressure which resulted in the resignation of the socialist Prime Minister José Sócrates in March 2011 with general elections held in June that year. These elections resulted in the formation of a new government led by the Social Democratic Party.

Despite all the economic measures implemented, the country suffered several downgrades of its debt rating, which forced a faster decline in the economy and finally drew the country to seek economic support from the EU and the International Monetary Fund (IMF) under similar circumstances to those of Greece and Ireland.

Although the EU and the IMF provided Portugal with a €78bn bailout, the country was required to implement new economic measures and to seek new sources of revenue to meet the bailout conditions. The implementation of these new economic policies was then a task for the new government elected in June 2011.

Among the options evaluated by the previous and current government, the reform of parts of the gambling industry was considered a possible new source of revenue for the government. In fact, the former Portuguese government commissioned two separate reports in 2010 and early 2011, which were aimed at evaluating the possible regulation of online gambling operations in the country and betting on horse-racing, a practice not considered legal in the country.

While the conclusions drawn from these two reports outlined positive aspects of implementing additional regulation for the gambling market — especially for the online sector — a result of the lack of political stability at the time of the preparation of these reports, there were no official proposals which emerged for regulation at the time.

According to comments made by government officials in March 2012, the regulation of the online gambling market is required and is currently being analysed by different divisions within the government. These divisions are taking into account the studies prepared by the previous government.

Although a roadmap has not been established for the presentation of a formal proposal to regulate the online market, Portugal’s tourism minister Cecília Moineiro observed in March 2012 “I am cautious and I think that in a moment like this we need to be cautious. I would say that it is possible to think about obtaining online gambling revenues in 2012.”

Should Portugal issue regulations for online gambling, the regulation of the market will likely implement some restrictive measures, as other countries in Europe have, be they monopoly or local, multiple licensing frameworks. Advertising restrictions, ISP blocking and back-dated taxes, among others, are likely to be considered by Portugal.

With unofficial Ministry of Finance estimates that a legalised Portuguese online gambling market could be worth up to €250m, the collection of taxes will be one of the more sensitive issues when addressing the regulation of online gambling operations in the country. This is especially true given the case that online gambling operators based in offshore jurisdictions have been open in offering their services and advertising to Portuguese players in the past.

Please refer to the additional comments information box for the most recent developments which occurred at the time of publishing this report.
Market Barriers: A European Online Gambling Study 2012 has been prepared with reference to GamblingCompliance’s database of jurisdictional reports and analysis, available on the website www.gamblingcompliance.com. This includes study of primary sources, such as legislation and jurisdictional experts. All quotes contained in this report are available on www.gamblingcompliance.com. If you have any queries regarding the information contained in this report please do not hesitate to contact GamblingCompliance.

This report is current as of July 30, 2012.

Should you wish to make further inquiries into certain topics and issues raised in this report please contact: info@gamblingcompliance.com.

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About This Report and Authors
Founded in 2007, GamblingCompliance has quickly established itself as the leading publisher in the global gambling industry – specialising in legal, regulatory, political and market information. Our independent and impartial analysis, delivered daily to a worldwide client base of over 900 top gaming executives and regulatory bodies via a cutting-edge technology platform, has ensured we remain an essential information service for the industry.

We help clients and their advisors reduce exposure to regulatory and market risk by providing timely information on an advanced web-based platform, allowing clients to monitor, track and receive updates on regulation, compliance, competitors and market developments around the world.

The GamblingCompliance service gives you immediate access to in-depth country, state and provincial regulatory profiles from around the world, as well as extensive analysis across all gaming sectors. GamblingCompliance has over 30 full-time staff based in Europe, Asia and the United States, plus an established network of analysts and professionals representing all sectors of the industry, to ensure that our coverage is truly global. The 2010 opening of our US office in Washington, D.C., the heart of the nation’s hub for regulatory, legislative and policy developments, keeps our writers close to the action – resulting in unrivalled analysis of critical state and federal developments affecting the global gaming sector.

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Regulated Online Markets Data Report, Summer 2012
UK – Italy – France – Denmark

• New report includes UK data report showing market to be worth £1.71bn.
• Also includes detailed updates on Italian and French markets.
• Plus initial analysis of Danish market debut.

The new Regulated Online Markets Summer 2012 Data Report is the most comprehensive report yet on the state of fully-regulated markets across Europe.

Bringing you all the stats and data on some of the most important markets in the world of online gaming, the new ‘Regulated Markets’ data report tells you who’s winning the battles in the UK, Italy, France and Denmark.

Debut UK data findings

Released to coincide with the UK Treasury consultation on the introduction of the point of consumption (POC) tax, the new report finds that the UK online gambling market is now worth at least £1.71bn.

It also estimates that the UK government could stand to benefit by up to £242m in revenues from UK-derived net gaming revenues.

Good news from Italy – if you’re Lottomatica

The new report also analyses just how much the introduction of cash and casino card games has boosted the Italian gaming market, and tells readers why the market should beware the continued rise and rise of the Italian behemoth.

Bad news in France – unless you’re PMU

Meanwhile, the report also delves into the disappointments in France and looks at possible silver linings in a market where the tax debate is yet to swing in favour of the operators.

Danish data

Lastly, the report also brings subscribers the first data from the freshly-minted Danish online gambling market which opened up to competition in January this year.

For more information on how to receive a copy email: info@gamblingdata.com