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Defining and Establishing Standards to Regulate Online Gambling

PGRI Introduction:

The objective of the “European Committee for Standardisation” is to “standardise online gambling legislation across Europe”. Led by Peter Naessens, the director of the Belgian Gaming Commission, and engaging the participation of industry bodies and regulators from many EU member states, the project endeavors to create rules for compliance and reporting that will become standard in the industry. Their stated objective is to implement standards on the sort of data the online gambling operators need to send to their respective regulators,

as well as the manner in which they organize it. Technical Committee 456 will be the group responsible for setting these standards. The impetus for creating this committee comes from a request by the European Commission to create a standard for reporting in support of supervision of online gambling services by the gambling regulatory authorities of the Member States. Currently, member states are in charge of supervising the online gambling activities within their own jurisdictions. This is typically done through information reported by the operators and software suppliers to the online gambling regulators.

This project hopes to develop new and improved standards for the reporting of online gambling, and to require compliance from the member states. This standardized reporting project hopes to improve levels of consumer protection, game fairness, transparency of operations, and identifying and stopping match-fixing and other forms of fraud. Feedback and suggestions are being solicited from gambling regulators, operators, consumers associations and gaming suppliers. They can offer their expertise and guidance on how best the group can create these new standards.

Paul Jason: Could you drill down a little to provide a deeper explanation of the purpose and intent of this “standardisation” project?

Piet Van Baeveghem: In October 2012, The European Commission adopted a communication towards a comprehensive European framework for online gambling wherein there was a set of actions proposed to be adopted to align to a certain extent the different national regulatory frameworks. Among the points proposed, there was one about the possibility of an EU standard on gambling equipment including gambling software. The initial planning was to ensure a comparable level of security of online gambling in the EU, to reduce the administrative burden



relating to different national certification procedures and provide for a possibility of inter-operability. The European Commission commissioned a study on the technical requirements for gambling equipment in EEA Member States in 2016 in order to evaluate the different regime in place and to assess whether or not there was a need to take the decision to launch the work for a possible standard. In the mean-time

the European Commission contacted the European standardization body (CEN) to explore the possibility to give them a mandate to manage the standardization project. The European Commission sought the support of the consultative expert group composed of national regulators and accompanying the implementation of the 2012 Commission Action plan. In the course of the summer 2017, the Commission presented a draft mandate wherein the scope of the would-be standard was defined as a European standard(s) for reporting purposes, in support of supervision of online gambling services by the competent gambling regulatory authorities of the Member States, including terminology. In November 2017 the CEN organized a first meeting with the different national

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representative to kick-start the process of drafting a standard for reporting purposes. The process was delayed due to the fact that the Commission hadn't officially adopted the mandate for the CEN to start working. In June of this year the Technical Committee 456 was established to pilot the 36 months project. From the initial project to design a set of standards for the certification of gambling equipment, the scope has been reworked to address the reporting issue from the regulators' point of view.

Do you think that this is a well-conceived project? Is its purpose and intent aligned with the best interests of the member states and the goal of evolving a rational and effective regulatory structure in Europe?

Piet Van Baeveghem: The whole idea of standardization at EU level stems from the

idea that legal operators who are conducting their activities in different jurisdictions complain that they are confronted with different administrative procedures regarding certification and supervision of their activities. The regulators gathered

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in the Expert group have listen to the operator's arguments and have decided to support the idea of a voluntary standard for the online reporting activities. However, the request for a standardization by the European Commission clearly stipulates that the standards should support the

achievement of public policy objectives such as player protection and addiction prevention and this without prejudice to the scope of competence of Member states in the regulation of online gambling. Lotteries should consider this standardization rather as an opportunity because it can contribute to a better law enforcement.

We all know that online gambling is difficult to control in an international context and that regulators are much more dependent on the information they receive from operators than they would like to be. The standardization of this information could strengthen the cooperation between

regulators and make the sector more transparent. Standardization could contribute to prevent fraud, money laundering and illegal gambling activities. Standardization offers opportunities to define certain concepts and terms in a uniform or targeted manner.

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Only a portion of handle is retained by the operators as revenue. On average, operators that offer full sports betting only hold approximately five percent of handle. Those states with lotteries running sports betting operations though have a high hold but assume less risk.

One reason there is no best “one-size-fits-all” regulatory model is that existing markets and regulatory standards vary from state to state. It will be important for legislators to think carefully about how to effectively integrate a sports betting regulatory framework into an existing games-of-chance marketplace. What works in a mature market-place like Rhode Island may not be the best for an emerging marketplace like Mississippi. Other important issues include geofencing, payment process, and data feeds, consumer protections and responsible gaming measures.

The Road Ahead

Currently, almost every state in the union has had at least one representative or entity express that they are interested in moving forward with sports betting as an additional form of wagering. The states that do not have lotteries are typically the ones that are not discussing sports betting. Most states will require some sort of legislative action, as opposed to just regulatory changes, to allow for sports betting to occur. A handful of states, like Colorado and California will likely take the issue to the people through a vote that, in most cases, will probably occur in the 2020 election.

For sports betting to occur in some states, the lottery will be the chief vehicle to launch sports betting. The Kansas Lottery is the vehicle that allows the state's four existing casino operators the ability to conduct casino gaming in the state. Numerous other states have had lottery directors' express interest in looking at a model similar to what Delaware has offered for several years in parlay betting, but they may also look at how Delaware expanded currently with single game wagering. These options play a more prominent role in those states that do not offer brick-and-mortar commercial or tribal casino operations.

With eight states having operations running, two states with legislation for full sports betting in the works, and two states grandfathered in prior to the passage of PASPA in 1992, it is likely that at least

a dozen or more states will legalize sports betting over the next legislative cycle. By 2021, there is a strong likelihood that a plurality of states will have legalized sports betting either live or in motion. Prior to launching sports betting, states must first select the best qualified operators and craft regulations for a strict regulatory environment to combat the black market that has existed for years. In order for that to occur, stakeholders must be educated on sports betting and realize how tax rates, modalities, and regulation enable a market to succeed or fail. Lottery directors across the country will want to understand sports betting and the feasibility for a dynamic market in their state if they are interested in participating in this potential expansion in wagering. ■

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For example, one could make a distinction between legal turnover based on a license in a specific country and illegal turnover without having a license in that country and license-holders could be obliged to report on that and even in a detailed manner. If operators have to systematically report on their turnover taking into account the place from which the player has played, this can be an important tool in the fight against illegal activities. The very recent ‘Stanleybet’ judgment of the EU Court of Justice of 19 December 2018 is important in this context. The Court of Justice has acknowledged that a concessionaire may lose his concession if he violates the rules for the prevention of illegal gaming, either by himself or through affiliated companies, regardless of where they are located. It is therefore important, for example, that the standards are formulated in such a way that regulators can easily determine whether the conditions for a concession or a license remain at all times respected and can exchange information among each other in a simple manner.

Should we be concerned that any kind of pan-European Regulatory Committee might disrupt the stability of the regulatory frameworks established by the individual member states? After all, who determines where to draw the line between those aspects of regulatory policy that belong to the member states

to determine and those that should be ceded to a pan-European agent like the “European Committee for Standardisation”?

Piet Van Baeveghem: CEN is not an EU regulatory body, it is the emanation of the different national standardization bodies. Standards are a very complex topic. In our case, which is a little bit weird, it is the European Commission that requested the CEN to act and to start working on a standard to the benefit of the regulators. Normally speaking, standards are either imposed by Law or are an industry led initiative. We found ourselves in none of these cases. From the beginning it has been said that the future standard that can result from this exercise is not a compulsory rule that can be imposed upon the different gambling actors. Member states are still in the driving seat regarding the shaping up of the national gambling regulatory framework. If the standardization of certain concepts and information flows can contribute to better and more efficient law enforcement, then it should certainly be avoided that this standardization would lead to a form of mutual recognition that would undermine the authority of national governments to regulate their own games of chance market. But there seem to be sufficient guarantees for maintaining those national competences.

Are there aspects of the mission of this standardisation project that you would recommend be changed or clarified to make it more effective and successful?

Piet Van Baeveghem: The whole process of defining these new standards is very complex and it will take three years before the process is completed. It is important that lotteries actively participate in the process through their national standardization bodies and make their voices heard. The private online gambling sector seems already very active to hijack this standardization process with a view to obtaining further deregulation. The lotteries must therefore be very vigilant that the standards also meet the need to effectively protect players and prevent fraud and especially to achieve more efficient law enforcement and above all to create more transparency around a sector that does not like that transparency. If these standards were also used for the taxation of illegal cash flows in those countries where revenues are realized, this could become an important game changer. ■