



By Philippe Vlaemminck

Managing Partner, PharumLegal
PharumLegal.eu

PROTECTING THE FUTURE OF LOTTERIES

The debate about liberalizing the lottery and gambling markets in Europe began in the 1990's. Since then, Lottery operators have faced any number of disruptive threats and problems. Initial judgments by the European Court of Justice in *Schindler* and *Läärä* upheld

gambling activities. That was when the internet became the catalyst for heightened conflict and litigation over regulatory policy. The build-out of the online gambling industry continued unabated in Europe. As the momentum of commercial operators moving into the online gambling

Member states' gambling policies was questioned. The Court rendered decisions that were largely favorable to lottery operators thanks to the continuous involvement of a few lottery operators who could convince their governments to continue the fight. The Court not only recognized the discretionary competence of the states to regulate gambling as long as their policy was consistent, but also explained that failures in the policy did not oblige a state to liberalize its market, only to correct the wrong aspects of it. Monopoly, concession, and licensing regimes could co-exist as long

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the rights of Lottery operators. The legal weight of these rulings continues even today. Indeed, in the *Schindler* decision the Court recognized the special nature of the activity of gambling and lottery, its intimate connection with moral and societal values, and the need to protect society against crime and addictive forms of gambling. The Court did also find that in an area as sensitive as gambling, free-market competition between multiple operators is not the best regulatory model. The Court agreed that when it comes to gambling, the public policy objective is not to minimize costs and maximize consumption. In *Läärä*, the Court confirmed the benefits of the monopoly model as applies to Lottery, and the allocation of profits to the state exchequer.

The internet was still in its infancy in the 90's. But once the dust settled after the dot.com crash of 2000/2001, internet growth exploded in all industries and we began to see widespread deployment of online

space gained more and more traction, the discussion about liberalization got fiercer and more difficult to combat. The aggressive lobbyists of the online industry initiated endless and expensive campaigns to convince politicians at the EU level to open up markets and to start “infringement” cases against Member states. They argued that the internet should be considered cross-border trade, and that gambling is like any other service or commodity, and should thus be regulated at the transnational level. Up to now they failed.

But the number of Court cases increased exponentially. Almost every aspect of the

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as the objective was to protect consumers against illegal and/or excessive gambling. In sport-betting the *Macolin* convention came as an important relief not only because it clarified what illegal betting was, but also emphasized the importance of integrity and the need to fight manipulation of sporting events, an issue which has always been very high on the agenda of lottery operators. In the US, the deployment of illegal online gambling was also stopped, although the saga of the DOJ involvement seems to continue to affect lottery operators as well. The ruling in *PASPA* added another layer onto the debate and created new challenges.

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Today the threat of liberalization in Europe is no longer immediately visible, but it does not mean it has faded away. Who knows what the new German State Treaty (recently notified to the EC) will give us after 2021? And what about the growing interest of the secondary lottery operators and online operators for the African mobile market and the institutional loopholes?

It is time for the community of Lottery operators to reflect and prepare for the next battle, which could be even more challenging than past battles. The work done by various working groups of lotteries in the various associations on legal and public affairs questions, as well as on social responsibility and security, has been important and helpful, but probably an even stronger and more multi-disciplinary approach may be required to win the future battles.

Today's and tomorrow's fight is no longer only against straightforward liberalization, although the threat is still there, but first and mainly against new formats of gambling that are both illegal and excessive (including secondary lotteries, lootboxes, virtual betting, uncontrolled online gambling, fake offers, , etc.). The future of lottery operators and their societal role is again at risk.

The second issue, a threat and at the same time an opportunity, at least to the extent that lottery operators embrace it, are the new challenges put forward by the digital developments. AI, Blockchain, VR, Data management etc... require new ethical answers and an even more in-depth approach to the moral issues and the approach of integrity. The important question of the digital taxation and the role of Google, Apple, Facebook, Amazon (dubbed "GAFA") as well as Ali Baba, have to be equally on our agenda.

Lotteries have always played an important societal role. Although recognized by the EU Council in 2010, this role is not yet sufficiently elaborated and recognized by the international institutions and the states. The emergence of severe advertising bans reflects a misunderstanding of the societal role of Lotteries , and the difference between Lottery gaming and certain more aggressive gambling services which are far more addictive and harmful to players. Against the aggressive lobbyists of the illegal and excessive gambling offers, the lottery operators and their associations need

to be the Ambassadors of societal values. Lottery operators need to find ways to become valued partners to the EU Institutions which could be allies to avoid new disruptive actions against state policies.

Different models, monopoly (state or private concession) and multi-licensed-operator competitive market models are all recognized as legal concepts, permissible under EU laws. The reality is that where there is a so-called monopoly , this monopoly is not adequately protected because the underlying role of such monopoly is not advocated strong enough (the active channeling towards less dangerous games and away from illegal and excessive gambling). Monopolistic lotteries do suffer from competition from other gambling markets (who take more and more parts away = aggressive on line gambling, loot boxes, secondary lotteries, etc...). The case law is clear when it comes to the fight against illegals but insufficient to protect lotteries in a market with excessive and aggressive gambling.

Lotteries have always been the standard-bearers of Responsible Gaming and Corporate Social Responsibility. Social responsibility was invented by lottery operators , but became in the meantime a commodity, embraced even by the illegal operators, and is no longer a feature distinguishing lottery operators. This creates confusion.

Lottery operators and their associations need to forge a multi-disciplinary task force including lawyers, public affairs experts, communications, and CSR/RG managers, to conduct the research that substantiates our arguments in support of Lottery's role of service to society and protection of the players. Lottery operators can take the lead in the next evolution of Corporate Social Responsibility which is "Shared Values". Shared Values takes the mission of CSR and applies it to the relationship we build with our customers, the players, and the larger community of stakeholders including policy makers . Lotteries can align with international institutions and governments to emphasize how much they can contribute to the development of a modern, forward looking and responsible society in all its aspects through culture and cultural heritage, sport, education, research, and future-oriented challenges as the digital economy in all its aspects, work-place diversity, climate change and efficient use of resources. In their governance, operation, and work-place culture, lottery operators

can themselves be the shining example of the values they stand for. Shared Values is a market-driven approach to CSR but in the most positive sense of aligning our actions, our mission, our purpose and values with those of society and the players.

This is not such a daunting task. Government lotteries have always upheld the highest standards of CSR and are in the best position to take the next step forward and put even more distance between them and aggressive gambling operators

In my presentation at the 2019 EL/WLA Marketing seminar in London, I highlighted a number of examples of excellence by Lottery operators which prove what the community of lottery operators is capable of, and demonstrate that we have all the capabilities and imagination to win this battle. EU Lottery operators must always be aligned with the actual European Project. But what exactly is the purpose of the EU? Clearly, it served initially a vital role in establishing a pan-European system of common rules governing trade and commerce to enhance peace amongst nations . But the true heart and soul of the EU Project is elevating society and its citizens to achieve a higher quality of life – not just economically but culturally, morally, and intellectually. Government Lottery needs to be protected to fulfill that broader vision and role of service to society. We need the strict and transparent regulation against illegal and excessive gambling along with the freedom to actively channel the gaming desire into a fair, low-risk and attractive offers that are properly advertised and which benefit society.

These same principals apply all across the globe. The recent legal and fiscal seminar of ALA (African Lottery Association)/WLA in Abidjan reflected the powerful sense of optimism that comes with cooperation and collaboration between lotteries and institutions with shared values.

The concept of EU Public Order can and should be the foundation for this kind of approach. It has always been a part of the dialogue but has not been given the status that it deserves. Public Order is the legally and politically sound basis for according government Lottery the singular role that it deserves in the games-of-chance sector. It is up to us, and the time is now, to reinforce this connection between lotteries and the constitutional values which drive public and regulatory policy. ■