



THE  
EUROPEAN  
LOTTERIES

## **THE EUROPEAN LOTTERIES BARCELONA RESOLUTION**

ON THE EL COMMON REGULATORY  
PRINCIPLES TO GUARANTEE A SUSTAINABLE  
FUTURE FOR LOTTERIES IN THE EU



## PREAMBLE

Having regard to the EL Resolution adopted during the EL General Assembly in Istanbul on 11 June 2009, which identifies the common fundamental values of EL members and endorses a sustainable gaming model founded on the principles of subsidiarity, integrity, precaution and solidarity,

Having regard to the ECJ judgment in the Schindler case in which it was recognised that the general interest objectives of consumer protection and protection of public order can be invoked to justify a restrictive gambling policy,

Having regard to the ECJ judgments in the Liga Portuguesa de Futebol Profissional case (C-42/07), and in the Sporting Exchange (C-203/08) and Ladbrokes cases (C-258/08),

Having regard to the Opinions of the Advocate General in the cases Betfair (C-203/08), Ladbrokes (C-258/08), Markus Stoss and others (C-316/07 e.a.), Carmen Media (C-46/08), Sjöberg and Gerdin (C-447/08 and C-448/08), Engelman (C-64/08) and Winner Wetten (C-409/06),

Having regard to the Progress report of the Swedish Presidency on the ' Legal framework for gambling and betting in the EU Member States', with a focus on the socio-economic costs of gambling, responsible gaming measures and bans on the promotion and abetting of illegal games, and to the Conclusions of the Competitiveness Council of 3-4 December 2009,

Whereas the Court recognized that the detrimental nature of competition in the market, that is to say, between several operators authorised to operate the same game of chance, arises from the fact that those operators would be led to compete with each other in inventiveness in making what they offer more attractive and, in that way, increasing consumers' expenditure on gaming and the risks of their addiction.

Whereas the European Court of Justice has recognized that, in the absence of harmonisation, a monopoly on online gambling can be in accordance with the EU free movement principles and that the principle of mutual recognition cannot be applied in the gambling sector,

Whereas the European Court of Justice has acknowledged that the fact of whether or not an operator who offers games of chance via the Internet does not pursue an active sales policy in the Member State concerned, is not relevant in that regard,

Whereas, according to Advocate General Mengozzi, any possibility of mutual recognition in a jurisdiction where a gambling monopoly is maintained has to be ruled out,

Whereas the ECJ case law has recognized that each of the EU Member States has the discretionary power to opt for the restrictive model which it believes is the most appropriate according to its moral, social



and cultural traditions and in the light of the overriding reasons of general interest it pursues, as long as such restrictive model is proportionate and non-discriminatory

Whereas each EU Member State is free to decide on the type and volume of games of chance allowed on its territory, as well as on the type and number of operators allowed to provide gambling services on its market,

Whereas the Member State in which the consumer is resident is entitled to prohibit or restrict access of foreign operators to its territory,

Whereas the ECJ has acknowledged that, in order to be able to channel the desire for gambling towards regulated and controlled gambling services, authorised operators must be able to offer an attractive alternative to the illegal market, which may necessitate a wide range of games, advertising on a certain scale and the use of new distribution techniques,

Whereas the Court has ruled that a policy of controlled expansion is also possible with a view to protecting consumers against gambling addiction, and is not inconsistent if the scale of unlawful activity is significant,

Whereas Advocate General Mengozzi has recognized that the choice of a Member State to maintain a monopoly for certain games of chance and to allow private operators to provide other games of chance does not in itself lead to the conclusion that the overall restrictive gambling policy would be inconsistent with EU law,

Whereas all EU institutions consider gambling through the internet to be a more dangerous form of gambling than traditional games, both with respect to the prevention of fraud and crime and with respect to consumer protection and gambling addiction,

Whereas the granting to or renewal of the licence of a public operator whose management is subject to direct state supervision or a private operator whose activities are subject to strict control by the public authorities, without an open tendering procedure, can be considered to be in conformity with the free movement principles,

Whereas it has been advocated by Advocate General Mengozzi that the practice of off-shore licences constitutes an abuse of the internal market rules,

Whereas Advocate General Bot has confirmed the application of the precautionary principle to the gambling sector,



Considering that the General Assembly meeting in Istanbul instructed the Executive Committee to actively promote a sustainable gaming model at EU level and to take all necessary steps for the implementation of the adopted fundamental strategic approach,

Considering that the Spanish Presidency has continued the debate on gambling services between the EU Member States in the Establishment and Services Working Group in the Council, with a focus on a common definition on illegal gambling and the measures that the Member States can take against illegal gambling,

Considering that the upcoming Belgian Presidency will proceed with the activities of the Council Working Group as from 1 July 2010,

Considering the intention of Internal Market Commissioner Barnier to launch a Green Paper on gambling services in the EU, including a stakeholders consultation, as announced in the European Parliament on 11 February 2010,

Considering that while such approach is to be welcomed, there are still infringement proceedings pending against 9 EU Member States, the outcome of which are not entirely clear,

Considering the recent legal and regulatory developments in certain EU Member States,

Considering that all EU Member States are confronted with a growing number of national court cases due to the ongoing market pressure caused by – unauthorised – foreign commercial operators,

Considering that most of the unresolved problems emerge from the growing internet gambling activities developed by off-shore operators, which also affect some of the land-based activities,

Considering that this causes a growing legal uncertainty and that in some Member States new lottery activities are being questioned and/or put on hold due to the risk that a court would consider the gambling policy concerned to be incoherent with respect to the public interest aims pursued,

Considering that as a result of this situation, proper channelling of the desire for gambling towards regulated and controlled games of chance has become very difficult and precarious,

Considering the essential cross-border dimension of internet gambling and that the current problems with which many EU and EEA Member States are faced demonstrate that a binding and coordinated approach is needed between the Member States and the EU institutions to be able to effectively regulate and control online gambling services,



Considering that law enforcement is proven to be a major problem in many EU and EEA Member States, as national law enforcement measures are currently not fully effective,

Considering that there is a growing involvement of organised crime in gambling including problems of money laundering, match fixing and other forms of corruption and criminal manipulation,

Considering that the integrity of gambling services is a major issue which requires serious regulatory answers at various levels,

Considering that a blind application of The European Treaty could undermine the EU model of solidarity as promoted by The European Lotteries, affecting the development of amateur sport, culture, research, development aid and other public objectives of the European society, including the economic and/or financial aspects of such objectives.

Considering that common regulatory principles are useful and even necessary in order to clarify the legal situation in the EU and to consolidate the position of the EU, the EU and EEA Member States and their Lotteries,

#### **THE EUROPEAN LOTTERIES GENERAL ASSEMBLY MEETING IN BARCELONA ON 4 JUNE 2010 HAS ADOPTED THE FOLLOWING RESOLUTION**

Reiterating the shared fundamental values and the commitment expressed during the General Assembly of Istanbul and the principles put forward and agreed there,

Recalling that the following common regulatory principles are in line with the strategic approach as agreed in the Istanbul resolution and are an implementation of the basic principles of subsidiarity, integrity, precaution and solidarity,

Recalling that these common regulatory principles are in line with the recent judicial developments at EU level, but still require regulatory consolidation

**The European Lotteries General Assembly endorses a sustainable gaming model founded on subsidiarity, integrity, precaution and solidarity which is based on the following common regulatory principles:**



## SUBSIDIARITY

Affirms that the only basis of a sustainable EU gaming policy is a national authorisation system, according to which no gambling services can be provided within the territory of residence of the consumer without prior authorisation by the competent authorities in that Member State.

Recalls that it is not relevant that the operator concerned may have obtained a licence in its country of origin, and therefore may be considered to be a legal operator in its country of origin.

Affirms that, within the boundaries set by the ECJ jurisprudence, a Member State may opt for a state monopoly, legal monopoly, sole or multiple licensing system (concession system) or another type of exclusive right, no matter whether or not another Member State has opted for a less restrictive regime.

Concurs that, taking into account the discretionary power of the Member States regarding the model of national authorisation, any gambling service which is provided by an operator, remotely or land-based, to a consumer in his or her country of residence, should be considered to be illegal, if:

- it is provided without the operator having obtained a licence in the country of residence of the consumer, to the extent that such a licence is required and available in its jurisdiction, or
- it is provided in a jurisdiction where a monopoly or closed licensing system is set up for such gambling services, or
- it is provided in a jurisdiction where such gambling services are prohibited, or
- it is provided in a jurisdiction where such gambling services are only permitted under certain conditions which have not been respected

Recalls that the internal coherence of a national or regional restrictive gambling policy is to be defined at national or regional level.

Recalls that different regulatory models can co-exist for different types of games of chance within one jurisdiction.

Advocates that a coordinated approach between the EU Member States and the EU institutions is necessary in order to tackle illegal gambling and to render national law enforcement measures effective.

Concurs that Member States should remain legally entitled by the EU to take all necessary measures to preserve the integrity of games of chance and to guarantee the policy choices they have made, such as administrative measures (payment and ISP blocking) and criminal penalties.



Reiterates that such implementing measures are an indispensable element of the protection in respect of games of chance and therefore cannot be regarded as an additional restriction which should be assessed separately in the light of the proportionality test.

Confirms that such an approach is fully in line with the principle of active subsidiarity, which requires the EU institutions and the Member States to reconsider their respective competencies in order to respond to changing and evolving problems and to find adequate and effective solutions at the appropriate decision-making level.

## **INTEGRITY**

Affirms that the practice of off-shore licences is abusive and cannot be supported.

Commits to the following basic conditions to protect the integrity of games of chance in Europe:

- licensing (if applicable) according to international standards
- regulatory independence or strong governmental control
- transparent control mechanisms
- a broad CSR policy, including addiction prevention and treatment programmes
- clear rules on permitted games and regulatory limitations
- compulsory inspections and national enforcement rules
- effective anti-money laundering policy

## **PRECAUTION**

Affirms that the precautionary principle plays a specific role regarding gambling services, given the specific risks of a very special nature with respect to these services, amongst others with regard to public health.

Advocates that this principle allows an EU Member State to take a very cautious approach regarding all changes they intend to make to their national/regional market.

Concurs that the implementation of a transitional period can be justified on the grounds of this principle, taking into consideration existing regulatory and contractual obligations.



## **SOLIDARITY**

Reiterates that EL needs to clearly demonstrate and endorse the role of Lotteries in the public interest, including the economic and/or financial aspects of the public interest.

Notes that all EU and EEA Member States have a state lottery, or a lottery licensed and regulated by the state, which contributes to society.

Notes that in some Member States, those mandatory contributions go to the state and are often allocated to good causes, while in other Member States the contributions are made directly.

Affirms that the specific role of lotteries in society should be safeguarded in every regulatory debate at national, regional and EU level.

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Instructs its Executive Committee to implement this Resolution and to take all necessary steps to promote the common regulatory principles and views expressed above to all EU institutions and EU and EEA Member States.

The Preamble forms an integral part of the Resolution.

Done in Barcelona on 4 June 2010.