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In view of the meeting of the Council (Competitiveness) on 30-31 May 2011, agenda item **18** (b) "Any other business", delegations will find attached in Annex the Presidency report by the Hungarian Presidency.

Regulatory cooperation between Member States in the field of gambling

Report from the Presidency

I. Introduction

Gambling services on the Internet create a challenge for regulatory authorities. Certain issues are highly difficult to tackle on a national basis. Cross-border cooperation between authorities might bring a solution to many of those issues.

Building on the results of the earlier debates in the Council, especially on the conclusions adopted during the Belgian Presidency, the Hungarian Presidency wished to pursue a more detailed discussion on the cooperation of national gambling regulatory authorities.

To that end the Presidency asked Member States to share their experience on the existing cross-border and intra-state partnerships between the competent authorities, as well as to express their views on the future of cooperation focusing mainly on the online market.

This report summarises the answers of the Member States and it outlines some concluding remarks that can be taken into account in policymaking.

II. Current forms of cooperation between regulatory authorities

Member States were asked about their experiences on current forms of multilateral, bilateral and internal regulatory cooperation.

Cooperation at national level

Every Member State has one or more authorities responsible for the regulation of gambling activities. In Spain there is a state level regulatory body while the Autonomous Regions are responsible for their own legislation. In Germany, the Länder cooperate in the admission and supervision of lotteries and sports betting; in some cases one Land acts - with prior consent of the others - for all Länder. To facilitate the cooperation the Länder have created a common office.

Most Member States have specialized authorities controlling gambling (Belgium, Bulgaria, Denmark, France, Greece, Latvia, Lithuania, Malta, the Netherlands, Portugal, Sweden, Slovenia and the UK), in other Member States the supervisory bodies are parts of larger organizations with more complex duties (Austria, the Czech Republic, Estonia, Finland, Hungary, Ireland, Italy, Poland). In some Member States one or more relevant ministries are responsible for the control of the market (Austria, Belgium, Czech Republic, Finland, France, Ireland, the Netherlands, Poland, Portugal), in other Member States the ministerial level is only responsible for the legislation (Hungary, Slovenia).

There are several models of cooperation between different authorities within a Member State.

In Belgium the Gambling Commission is the central authority regarding gambling which is composed of members representing the competent fields of the federal Government (Finance Department, Public Health Department, Interior Department and Department of Justice), thus guaranteeing intra-state cooperation.

In the UK the relevant authorities (Gambling Commission, National Lottery Commission, Financial Services Authority) have statutory obligation to consult each other. The Gambling Commission gives guidance to local licensing authorities on how to undertake their duties.

In Finland the supervisory authorities and authorities dealing with the harmful effects of gambling have regular bilateral and joint meetings, which are however informal. (In Finland Åland has as a provincial autonomy with own lottery and gambling legislation.)

In Spain the Sectorial Conference on Gaming is the body in charge of cooperation regarding the authorities of the Autonomous Regions and the National Authority.

In the Czech Republic the supervision of the market is the task of the regional offices of the Tax and Finance Authority under the political guidance of the Ministry of Finance. The relevant authorities meet regularly.

Cooperation at international level

Basically two multilateral gambling regulatory organizations can be identified in which Member States' regulatory bodies participate: The Gaming Regulators European Forum (GREF) and the International Association of Gambling Regulators (IAGR). IAGR is a world-wide organization with members from the EU (Austria, Belgium, Bulgaria, Denmark, Finland, Hungary, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden, the UK). IAGR has participants also from Africa (South Africa), America (USA, Canada, Antigua and Barbuda, the Bahamas, Jamaica, St. Lucia, US Virgin Islands, Peru), and Asia (Macau, Singapore), Australia and New Zealand. IAGR's eGambling working group has been very successful in sharing experiences and good practice.

The only multilateral organization that concentrates on European countries is GREF.

GREF was founded by Portugal, Denmark, France, the UK, the Netherlands and Spain. Regulators from most Member States are active members of GREF except for Austria, Cyprus, Ireland, Greece, Italy, Luxembourg, Romania and Spain.

GREF's main importance lies in providing a forum for the competent authorities to meet both at formal and informal level, exchange information and views and learn from the different approaches of the participating countries (best practices) regarding not only land-based but also remote gambling.

The members of GREF have annual plenary sessions and more regular meetings in four working groups. On the sessions each country presents a report of its activities held during the preceding year. The working groups are dealing with technical issues, information and statistics, gambling addiction and e-gambling issues. The working groups regularly present evaluations to the members based on their surveys. The work of GREF is supported by a website where the members can quickly share and exchange information.

The majority of Member States have a positive experience regarding the work pursued in GREF. Certain Member States take the view that making GREF a more structured forum would be a possible improvement. Some Member States suggest that more jurisdictions could be represented. Others would prefer to have an EU wide membership by Member States to better represent the Member States interest in GREF's structures and debates.

According to one suggestion a new institutionalised Regulators Forum could be set up where all national regulators can be represented.

Apart from GREF most national authorities do not have formal relations with authorities from other Member States regarding gambling. Information is usually exchanged informally via telephone, e-mail or even during personal visits. Some Member States consider the informal contact more efficient than GREF, as it is based on good will, common interests and mutual trust/respect.

However, there are good examples for regional partnerships. The Nordic countries (Sweden, Finland, Norway, Denmark and Iceland) have established a close regulatory cooperation with several different level meetings annually to exchange information and share best practices. The Baltic countries (Latvia, Lithuania and Estonia) have good cooperation with each other likewise. The Italian and French authorities are going to sign a formal agreement, focused on betting and sports integrity, blocking of unauthorized web sites, institutional communication, and customer protection. In Portugal the two authorities (one for the games of chance and one for social games) have formalized structures for cooperation between Member States.

Some Member States think that having formal agreements in place with other regulators can further foster and concretize the existing cooperation.

III. Possible elements of enhanced regulatory cooperation

Member States were asked to express their views of the possible forms and content of an enhanced cooperation. The Presidency raised the question of sharing information and sharing best practices. The issues of common or coordinated regulatory actions and the minimising of unnecessary administrative burdens were discussed.

Information sharing

In general Member States are in favour of sharing information, which is an effective form of cross-border cooperation between national authorities. According to most Member States information sharing can be relevant for the implementation of national gambling policies concerning online operators, and also for legal certainty across Europe. Some Member States believe that information sharing should be used to ensure that internal market principles are put into effect. Many Member States are of the opinion that information sharing can help the better understanding of other Member States jurisdiction and develop mutual respect.

The information to be shared can be used for protecting public order. Authorities could exchange their experience on gambling operator practices which are harmful for minors or other vulnerable groups or which could cause addiction. Authorities can provide each other with general information on regulatory or criminal sanctions.

Some Member States take the view that information sharing can serve as a tool for simplification of the national authorisation process, to avoid unnecessary administrative work.

In some Member States there is a mechanism already in place to collect and disseminate information on licence applicants. For that the consent of the applicant is needed.

However, information sharing can only be pursued on a voluntary basis respecting reciprocity between the relevant national regulatory authorities. Based on the proportionality principle it should be limited to what is necessary and must be in compliance with national legislation, including EU data protection rules. Some opinions reflect that information which is not held by the competent national gambling authority might bring difficulties in information sharing.

Taking into account the above the Presidency considers that further to a more in-depth analysis and discussion the following pieces of information can be shared in accordance with national legislation:

Information on operators applying for authorisation:

- information on the mere fact that a particular operator is registered or authorized in a Member State;
- information on the shareholders of a particular operator;
- information on pending investigations and criminal records;
- information on the fiscal security (financial security) of an operator;
- information on technical equipment and certificates of approval.

Information on national rules on offering online gambling services:

- information on measures used by Member States to ensure that operators comply with the law (enforcement);
- information on player protection rules;
- general information on regulatory or criminal sanctions.
- information on the impact of European Court of Justice rulings on national legislation.

Information on features of the online gambling sector:

- types of games offered in a Member State;
- detailed data on the economic figures, to better understand the market trends;
- experience on known practices of money laundering, collusion between players or between players and operators.

It should be noted that information sharing on national legislation on online gambling is obligatory according to Directive 98/34/EC¹. One of the purposes of the Directive is to inform the Commission and other Member States of draft national legislation concerning any information society service as defined in the Directive.

¹ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, laying down a procedure for the provision of information in the field of technical standards and regulations and on rules on information society services.

Exchange of best practices

A special form of cooperation is the exchange of best practices of administrative procedures. It can enable administrative bodies to improve their performance in implementation. In case of legislative reforms national legislators can take into account the experience of other Member States. The exchange of practices does not require any formalised cooperation; it is only a voluntary action of the participants, similar to GREF.

In general Member States are in favour of exchange of best practices. The proposed areas where authorities can share experience on practices are the following:

- how to process applications for licence and how to conduct due diligence;
- how to carry out controls in respect of player protection (including protection of minors and vulnerable persons) or money laundering;
- how to certify and approve gambling equipment and games;
- how to identify players and how to deal with player complaints;
- how to process self-limitation and self-exclusion of players, and limitation of bets and time spent on gambling;

The tools for exchange practices can be:

- exchange programmes for regulatory officials;
- working group of Member States' regulatory authorities (GREF is an example);
- Internet forum on the latest technological and gaming developments to equip the regulators with necessary knowledge, and disseminating list of examples of practices or actions to be taken against fraudulent operators.

Common or coordinated actions to enhance player protection

More formalised efforts for cooperation are necessary when authorities take coordinated or even common actions for protecting players. Some Member States support the idea of certain coordinated action for that purpose. There is a majority support for coordinating information campaigns for calling the attention of citizens to problem gambling.

In order to achieve best results, Member States, within the framework of their cooperation, could agree on certain sets of common goals and standards for consumer protection on a voluntary basis. According to some Member States without such cooperation common information campaigns can only have limited scope, and national prevention activities might be more effective.

A further suggestion for cooperation is an alert system, which could notify actions taken against certain operators. For example national black lists of unauthorised gambling operators can be shared to take coordinated action (e.g. website and payment blocking) by authorities in Member States where those operators are not authorised either. Similarly the list of self-excluded players (e.g. persons who are not allowed to play by their own decision) could be distributed among authorities and an access to that list could be provided for gambling operators in accordance with national legislation.

In fields where harmonised rules exist (for example money laundering) mutual assistance is possible in gambling issues. Such cooperation can be based on bilateral and multilateral agreements between the competent authorities designated for that purpose by Member States.

However it was a general remark that without harmonised rules or common standards Member States are not obliged to pursue common administrative actions.

Minimising unnecessary administrative burden

Besides the effective enforcement of national rules, the cooperation might decrease administrative burdens. Member States' views on this issue are largely divergent.

While one Member State proposes a common EU licence for online service providers that would enable them to organise gambling in Member States that accept such a licence, many Member States reject this idea. This would mean a set of minimum standards. Another suggestion is the principle of a simplified licensing process for those operators who are already licensed in another Member State. On the other hand in Member States where online gambling is banned, there is not much point in mentioning the ease of administrative burden.

Certain Member States take the view that sharing information can contribute to a decrease of administrative burden and it can lead to the simplification of the authorisation procedure. For the non-duplication of the administrative process, the Member State of destination could take into account the results of the evaluation carried out by the authority in the home Member State. This would require authorities to build up a thorough knowledge of the administrative procedure and about the condition of granting a licence in other Member States so that they can identify those elements which can be used in their own work.

However most Member States expressed their doubts about the current desirability or feasibility of such a close cooperation, because it would mean a certain level of mutual recognition of the authorisation process of another Member State. Based on a decision of the European Court of Justice, Member States are free to set the objectives of their policy on betting and gambling and, where appropriate, to define in detail the level of protection sought, while taking into account the principle of proportionality. Most Member States are of the view that they are free to determine their system of authorisation, hence they can not be obliged to accept results of procedures of another Member State, while one Member State cited the principle of non-duplication of requirements and controls.

IV. The use of IMI

As regards the forum for inter-authority communication the Hungarian Presidency asked whether the Member States would consider it useful to use a common tool like the IMI (Internal Market Information System), by which coordinated actions can be taken and information can be spread easily.

Based on the responses it can be established, that the opinions are mixed. Beside diverging views, the predominant majority of the Member States considered the future use of the IMI in the gambling sector positive.

Several Member States answered positively subject to further careful analysis as regards

- the benefits of such an information sharing,
- the scope of information sharing and cooperation,
- setting minimum standards of cooperation first.

The level of cooperation has to be defined as well and it should be avoided that the use of IMI creates additional administrative burden to authorities.

As regards the possible purpose of using the system in the field of gambling, the majority of Member States would welcome IMI for tracking/listing of illegal cross-border service providers, where national legislation allows for such use, and sharing information on the requirements to obtain a license in a given Member State and for informing on possible sanctions. Certain Member States are on the view that IMI's aim is to facilitate the free movement of services.

However Member States would like to know more about the application of IMI in general.

Concerns were raised as how the IMI can be used in a non-harmonized sector. Some Member States have stressed the importance of defining the scope of data to be exchanged via IMI. There is a view that in the absence of mutual recognition only general policy information can be shared. Cost considerations also have to be taken into account. For Member States having a federal system the structure of the information sharing is also important (definition of responsibilities).

Several Member States would like to have an assessment on data protection and confidentiality issues. Some Member States take the view that data on police investigations should be excluded from the cooperation. In general, it should be clarified which information can be required and on what topics an exchange is not possible. Discussion is needed to determine whether reciprocity should be the basic principle of cooperation and whether - if Member States decide to use this system - it should be compulsory.

It is also important to clarify whether there would be any legal obligation to deliver information or whether it would stay voluntary; therefore the definition of the legal base of the cooperation is a key issue. Some Member States consider that before introducing the system some timeframe should be agreed between the Member States and the Commission in order to take the necessary legislative steps at national level. Measures should also be taken in order to avoid any possible misuse of the system.

V. Conclusion

Regulatory cooperation already exists at international level and the appearance of cross border online gambling increased its importance. Member States are active participants in world-wide and European level organisations, though these are only consultative fora. However they serve for an appropriate place for exchange of best practices in procedures of licensing, player protection, equipment approval, and even discussing the impact of legal developments. The exchange of practices is the least formal way of cooperation, based on voluntary initiatives.

For a more enhanced cooperation a more structured way of information sharing can be the first step. Disseminating relevant information on features of the online gambling market, on national rules (e.g. licensing procedures) and on online operators, while fully respecting data protection, can improve the enforcement of national legislation. At the same time improved information sharing can contribute to a greater degree of respect among Member States towards each other's gambling legislation.

For structured information sharing several questions require clarification. A common approach is needed to identify the scope of data to be shared, to arrange data protection questions, security issues and even the legal base of participation in such a structured cooperation.

After clarifying the above the IMI system could become an appropriate tool. The majority of the Member States are willing to make further efforts about discovering the use of the IMI in gambling. Structured information sharing does not presume the harmonisation of the substance of national rules (like system of licensing, control or enforcement).

For coordinated or common administrative actions a more substantial alignment of rules would be needed. If common information campaigns would go further than awareness raising on problem gambling, minimum standards of player protection might be necessary to focus on issues which are accepted by every participant. Likewise the decrease of administrative burdens would require a certain level of harmonisation, or at least the recognition of certain elements of the procedure of another Member State. Most Member States are not in favour of mutual recognition or harmonisation. As reflected in the decisions of the European Court of Justice Member States are free to determine their system of authorisation. Most Member States believe that they cannot be obliged to accept results of procedures of another Member State.

The Presidency believes that the findings mentioned above can be seen as a summary of Member State positions as expressed in the Working Party, and that they can be used in future policy making both at EU and at national level.
