

**European Gaming and Betting Association**

Maarten Haijer  
50 Rue Gray  
B-1040 Brussels  
Belgium

**To:** Ministry of the Interior  
Director-General, Mr. Kauko Aaltomaa  
Kirkkokatu 12  
Helsinki  
Finland

Brussels, 5 February 2021

**Subject: EGBA comments on the proposal for reforming the Lotteries Act (SMDno-2019-2239)**

Dear Sir/Madam,

We, the European Gaming and Betting Association ('EGBA'), the association representing the leading online cross-border licensed gaming and betting operators in the European Union ('EU'), would like to bring forward our considerations on the proposal made by the Ministry of the Interior to reform the Lotteries Act.

EGBA is closely following the Finnish legislative process and welcomes that Finland wishes to examine and update its gambling framework. However, today's digital reality and well-established demand of Finnish consumers for premium online gambling and related digital entertainment services requires an appropriate legal framework to provide a well-regulated Finnish online gambling market that succeeds in channelling the existing consumer demand towards the local offer.

While EGBA and its members welcome, in general, amendments in view of the objective of consumer protection, we consider that the proposal will have severe negative consequences, which will have an effect opposite to the main objective of consumer protection. In addition, EGBA continues to believe that the Finnish monopoly system is not compliant with the established requirements of European law in relation to monopolies. While we briefly touch upon this point below, EGBA is ready to elaborate further in-depth as to why this is the case, as such an analysis goes beyond the current consultation and submission, since such an assessment is lengthy. However, it should be stressed that the current proposals will unfortunately not remedy the root of the problems which exist in relation to the country's gambling framework.

Most importantly, EGBA would like to express its concerns on certain issues contained in the proposal, particularly on the **(1)** new provisions on payment blocking, **(2)** the channelling objective and addiction rates, and **(3)** the incompatibility with EU law of the Finnish monopoly.

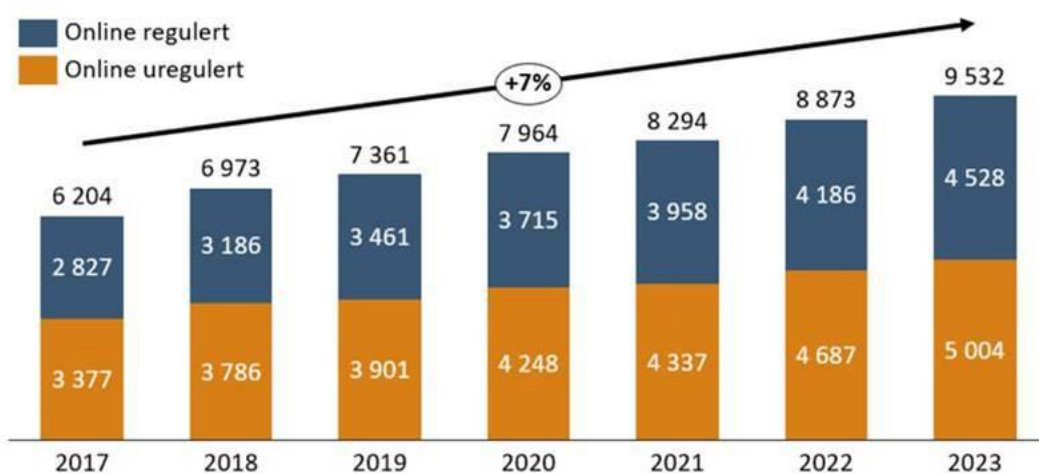
**1. Payment blocking provisions**

EGBA appreciates that the goal of the proposal is to protect consumers and prevent potential harm that could be caused by gambling. However, we would like to highlight that payment blocking measures have proven to be inefficient because they fail to meet the consumer protection objectives put forward by the Finnish government’s gambling policy that would justify such restrictive measures.

One of the main reasons for the blocking proposal is that, according to the Finnish government, foreign online games create more risk of addiction for consumers compared to the games offered by the monopoly. However, the causality between a higher risk of problem gambling and foreign online games cannot be demonstrated by the figures presented.

The Finnish government should not aim to ring-fence their gambling sector through payment service providers (‘PSPs’) blocking measures as this is futile. Experience from other EU and EEA jurisdictions has proven that such blocking measures are harmful and ineffective as a tool to achieve a healthy channelling rate of players towards regulated markets. Norway, which is the only other European country that currently maintains an online monopoly for gambling services, tried implementing a payment blocking regulation in 2010 and amended several times the regulation in order to enforce the state monopoly. However, the law has not achieved its stated goals and, on the contrary, online offshore spending has increased in the last years, as shown by the graphic below<sup>1</sup>. This is further explained by both the fact that players are able to use alternative payment methods or PSPs to bypass the blockings and that in the last years the overall global trend has seen an increase in mobile and online gambling.

Figur 4: Estimert utvikling i markedet for online pengespill frem til 2023 i nullalternativet. Tall i løpende millioner norske kroner. Kilde: H2 Gambling Capital og Menon Economics, 2018



<sup>1</sup> [Social Economical Analysis of a Licensing Model for the Norwegian Market](#), page 17. Please note that the data in the graph is based on estimates of the turnover development until 2023.

Moreover, even if the Norwegian monopoly aimed to protect its players better, data shows an increase in the number of problem gamblers, from 34.000 in 2015 to 55.000 in 2020, and players at risk, from 88.000 to 122.000 in the last year<sup>2</sup>.

Additionally, indirect consequences of blockings are administrative and operational costs for PSPs. Even though some operators may be deterred from offering their services, others, especially those from outside the EU, will quickly fill in the gap to the detriment of consumer protection, fraud prevention, tax revenue, and legitimate and regulated websites. For this reason, PSPs blockings are not justifiable or legitimate given their limited effectiveness and considerable side effects. Overall, consumer protection is best preserved through an attractive and internationally competitive regulation, which keeps consumers away from the black market.

Finally, the European Commission itself found in a recent study<sup>3</sup> on gambling enforcement tools that the payment blockings' effectiveness is hindered by the difficulty *“to determine how many players, and thus operators, are actually impacted by such blocking measures; unless a regulator can capture all payment methods and payment service providers, there will be others who are not subject to an order who continue to process payments. Or, in the case of payment disruption, differing appetites for regulatory risk between payment service providers will entail that if one ceases to serve a national gambling market, there will be others who will step in.”*

EGBA therefore advises the Finnish government to not regulate and implement any provisions related to payment blocking, since, as described above, they cannot be considered as necessary nor proportionate tools to guarantee consumer protection and are clearly in violation of fundamental rights and freedoms.

## 2. Channelling objective and addiction rates

EGBA acknowledges the Finnish government's view that effective consumer protection under Finnish law can be achieved to a greater extent if Finnish consumption is channeled towards locally regulated operators. The attractiveness of the local Finnish offer, product range, user experience and pricing will determine how many consumers will choose to play within the regulated market and thus, conversely, how many will decide to continue to play outside the licensing regime.

Clearly, if a significant proportion of Finnish consumers do not find the locally licensed product sufficiently attractive then they will continue to gamble with operators not licensed in Finland, in most cases even outside of the EU, where consumer protection standards may be significantly lower than those in Finland, or in other EU Member States, and high standards of responsible gaming and sports integrity according to the 2014 EC Recommendation on responsible gambling are not applied. Whilst all online consumers are price sensitive, some are highly price and user experience sensitive, and all

---

<sup>2</sup> [https://www.vg.no/nyheter/innenriks/i/GGVdp4/55000-nordmenn-har-spilleproblemer?utm\\_source=inline-teaser&utm\\_content=dOVyxB](https://www.vg.no/nyheter/innenriks/i/GGVdp4/55000-nordmenn-har-spilleproblemer?utm_source=inline-teaser&utm_content=dOVyxB)

<sup>3</sup> [Evaluation of regulatory tools for enforcing online gambling rules and channelling demand towards controlled offers](#), page 81.

will be able to find – without much burden – an alternative offer if the regulated offer is not made attractive enough.

A study published by the Düsseldorf Institute for Competition Economics (DICE)<sup>4</sup> looked into the channelling rates of different European countries and found that certain regulatory measures correlate with a high channelling rate, while others are clearly detrimental to achieving high channelling rates. The factors affecting such rates are different, e.g.: the level of taxation, any restrictions to the number of licences, the variety of products offered, a consumer-friendly registration and identification procedure.

EGBA believes that maintaining a monopoly for online gambling does not acknowledge the established current digital reality in which a consumer can easily access foreign operators’ websites, if the local offer does not suit his expectations. The goal of channelling Finnish consumers into the locally regulated gambling market can only be achieved if licensed operators can offer an attractive product. Particularly online, customers' tolerance for frustration is very low and it is very easy for players to find alternative offers. This is further confirmed by a recent survey which showed that last year 16.4% of Finland’s online gambling revenue, equivalent to €105m in taxable revenue, was spent by Finnish players on international betting websites which pay their taxes elsewhere<sup>5</sup>.

Moreover, even if the monopoly aims to protect players better, data shows that the problem gambling rate in Finland is 3% of its population. As shown below, this is in contrast with other countries like, e.g. Spain, where the problem gambling rate is 0.3% even though there is no monopoly, a multi-license model is in operation and the number of players is much higher.

A transparent and non-discriminatory licensing regime that is open to all gambling operators would be an example of a less restrictive and more efficient means to regulate and control gambling in order to reduce risks of gambling addiction. Only a national licencing regime would make it possible for the government to bring foreign games of chance within its jurisdiction and effective control. An overview of gambling related problems across several jurisdictions shows that there is no correlation between gambling related problems and licensing regimes:

Country	Regulatory regime	Prevalence of gambling problems
Norway	State monopoly	Problem/pathological: 1.4 % <sup>6</sup>
Finland	State monopoly	Problem/pathological: 3.0 % <sup>7</sup>

<sup>4</sup> See EGBA Newsletter 25 “Channelling the consumer to the regulated offer”, Prof. Dr. Justus Haucap, Director at the Düsseldorf Institute for Competition Economics – DICE, “A comparison of different European approaches to gambling regulation with respect to their channelling effect”, <http://www.egba.eu/media/EGBA-News-Issue-25-Channelling-the-consumer.pdf>, September 2017.

<sup>5</sup> <https://thl.fi/en/web/thlfi-en/-/prevalence-of-at-risk-gambling-has-decreased-gambling-problems-still-as-common-as-before>

<sup>6</sup> [https://www.uib.no/sites/w3.uib.no/files/attachments/omfang\\_av\\_penge-og\\_dataspillproblemer\\_i\\_norge\\_2019.pdf](https://www.uib.no/sites/w3.uib.no/files/attachments/omfang_av_penge-og_dataspillproblemer_i_norge_2019.pdf)

<sup>7</sup> <https://thl.fi/en/web/thlfi-en/-/prevalence-of-at-risk-gambling-has-decreased-gambling-problems-still-as-common-as-before>

Sweden	Licensing regime	Problem/pathological: 1.4 % <sup>8</sup>
UK	Licensing regime	Problem/pathological: 0.7 % <sup>9</sup>
Spain	Licensing regime	Problem: 0.3% <sup>10</sup>
France	Licensing regime	Problem: 0.3 % <sup>11</sup>
Denmark	Licensing regime	Problem: 0.17 % <sup>12</sup>

Most European countries have already moved from an online gambling monopoly to an open-licensing system. When Denmark did it, the percentage of online gambling taking place on foreign websites dropped from 28% in 2012 to 8% in 2019<sup>13</sup>. This also brought more tax revenues for the Danish state and more Danes gambling within the regulated framework and its accompanying consumer protections. The new licensing model did not affect negatively the former monopoly company, Danske Spil, and its ability to contribute to good causes: its revenues actually trebled, from DKK 0.75bn in 2011 to DKK 2.1bn in 2019, since<sup>14</sup>.

Similar effects were brought to Sweden from its recent re-regulation and opening of the market to private operators in 2019: the amount of Sweden’s online gambling taking place on international websites dropped significantly – from 56% in 2016 to 15% in 2020<sup>15</sup>. Introducing an open-licensing system has also raised money for the Sweden state: with the 102 newly licensed companies contributing around SEK 4bn annually in gaming taxes.

### 3. Incompatibility with EU law of the Finnish monopoly

Finally, it should be stressed that EGBA considers that the Finnish monopoly raises serious concerns in relation to EU law, as it can be considered incompatible with Article 56 of the Treaty on the Functioning of the European Union (‘TFEU’), since the monopoly restricts the freedom of people residing in Finland to receive online services that are being offered to them from other EU Member States. At the same time the foreign operators established in other EU Member States are also declined the right to provide and market the said services. Further, the Court of Justice of the European Union (‘CJEU’) ruled that any restriction to the freedom to provide services must be proportionate and must be applied equally without discrimination on grounds of place of

<sup>8</sup> <https://www.folkhalsomyndigheten.se/contentassets/e2f80df7971e4abfa615a5edcf460897/resultat-swelogs-2018-2019.pdf>

<sup>9</sup> <https://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-participation-in-2018-behaviour-awareness-and-attitudes.pdf>

<sup>10</sup> <http://cejuego.com/documentacion/files/Juego%20y%20Sociedad%20XI%202020.pdf>

<sup>11</sup> <http://www.arjel.fr/IMG/pdf/rapport-activite-2016en.pdf>

<sup>12</sup> <https://www.spillemyndigheden.dk/en/news/new-study-slightly-more-danes-risk-becoming-addicted-gambling>

<sup>13</sup> [Report on illegal gambling](#), Danish Gambling Authority (2020), page 14. The channelisation rate for Denmark’s regulated online market grew from 72% in 2012 to 92% in 2019.

<sup>14</sup> [Danske Spil Report, Gambling Compliance](#) (2020).

<sup>15</sup> [http://www.bos.nu/wp-content/uploads/2020/04/Final\\_en\\_BOS\\_28april-1.pdf](http://www.bos.nu/wp-content/uploads/2020/04/Final_en_BOS_28april-1.pdf), page 10.

establishment of the company seeking to exercise the commercial activity. Moreover, the CJEU developed substantial case law on requirements imposed on gambling monopolies, as the consistency requirement, which should also be taken into account when assessing the compliance of the Finnish monopoly with EU law. Again, EGBA stands ready to provide an in-depth, concrete analysis in relation to the incompatibility of Finnish gambling law with EU law.

#### **4. Conclusion**

In conclusion, EGBA would like to stress that it acknowledges Finland's efforts of wanting to regulate and control gambling in order to reduce risks of gambling addiction, etc. However, a transparent and non-discriminatory licensing regime that is open to all EU gambling operators is an appropriate and efficient way to achieve this objective, instead of a monopoly which raises doubts on its compatibility with EU law and CJEU case law. Further, EGBA does not support inefficient measures, such as a payment blocking, which pursue the same objective, but are very difficult to enforce and burdensome for PSPs.

We would like once again to thank you for the opportunity of having our concerns heard. We thank you in advance for your consideration of our contribution.

Yours sincerely,



**Maarten Haijer**

Secretary General  
European Gaming and Betting Association (EGBA)