

**EXCESSIVE REGULATION OF SPORTS BETTING – NEGATIVE
CONSEQUENCES FOR LEGAL BUSINESSES**

Overregulation of sports betting business has become reality. Of 52 European states, only in 2019, fifteen of them were actively examining the change in regulations, mainly concerning advertising of gambling and changes in taxation¹. The year 2019 in Europe's gambling industry was marked by continued negative perceptions of the industry, followed by the beginning of regulatory reforms that are deservedly anticipated to achieve the opposite effect to that intended – instead of making gambling safer and more transparent, the risks of over-regulation and red tape may significantly jeopardize overall integrity and safety of the market.

In recent years, the industry news is dominated by the information on new fines, advertising bans or licence suspensions. This is the result of an increasing pressure and tensions between the industry and the regulators. Regulators, faced by the pressure from both the parliamentary groups and consumer rights associations, design rules without consulting the business stakeholders. This is how red tape and highly bureaucratized framework for sports betting business is created, with rules that are irrational and complicated. The industry, in turn, faces increasingly negative media pressure and public perception, which generates vicious circle of reforms resulting in completely opposite public policy effect to that intended.

Although the nature of sports betting business does bear inherent risks for underage and vulnerable social groups, in the last few years the industry is clearly in a risk of being the subject of regulation for the sake of regulation. And, as the examples of other businesses show, that is never a good thing.

Recent warnings from the UK – excessive regulation does not help eliminating black market, on the contrary

One of the markets with most acute problems of gambling overregulation is surely the UK one. In average, the UK-licenced companies annually pay 20 million euros in fines, which may be one of the factors contributing in a 5% decrease in number of licenced operators in this jurisdiction².

¹ Source: https://gamblingcompliance.com/premium-content/research_report/interactive-map-online-gambling-regulatory-horizon-europe

² Source: <https://www.gamblingcommission.gov.uk/news-action-and-statistics/Statistics-and-research/Statistics/Industry-statistics.aspx>

In light of this trend, the accountancy firm PwC has compiled a report on the implications of excessive regulation for the channeling of customers (players) into legal and regulated sports betting offer. **The report's main conclusion is that the excessive regulation of sports betting, especially of the online segment, poses great risks of pushing the players towards the unregulated 'black' market** ³.

To support with the concrete evidence, the report estimated that the size of the active online gambling black market in the UK was worth €1.67 billion or 1.2% of complete market turnover, which is a substantial number to consider.

The economic theory also supports ⁴ that sports betting players are very sensitive to change in odds or “price” and if they can't get the bets they want, have to prove source of funds or they just can't play the products they want, they are more than ready to go to a non-licensed, offshore operator. As the PwC research supported, 2.2% of total bettors in UK have wagered money betting at an unlicensed operator's website in 12 months preceding to the PwC research (October 2019).

Over-regulation trends: lessons learnt from Europe and consequences for sports betting business

Lessons from elsewhere in Europe also show the importance of a complex balance between solid regulation and avoiding friction points with players and the risks of them moving to unprotected business environments.

As a general rule, the main critical points of over-regulation of sports betting in Europe are found in:

³ <https://www.racingpost.com/news/latest/black-market-could-lure-customers-in-wake-of-gambling-regulations-report-claims/406497>

⁴ Research conducted by UK Customs and Revenue service, in charge for raising taxes from sports betting, at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/322845/report313.pdf

- complicated customer due diligence measures
- total advertising bans
- too restrictive player credit cards limitations
- excessive taxation of sports betting

It is precisely these factors that, in case they act as disincentive for players to enjoy legal and licenced sports betting offer, that motivate players to migrate to offshore and illegal betting websites and risk fraudulent attempts and being the victim of criminality. In general, the central dilemma for regulating sports betting is the desire to balance consumer enjoyment against potential harm (and other social costs related with the business).

Excessive due diligence harmful for a successful customer interaction. In last few years, appropriate customer due diligence programs and measures have evolved into substantially decentralized rules and procedures, depending on the geographical distribution of customers' origin. This creates compliance complexity and lengthy procedures for players to pass the check-ups from operators' customer support departments.

Betting advertising restrictions. We agree that betting advertising market, especially in terms of live gambling ads during sporting events, may be jeopardy for minors and vulnerable social groups, and that throughout EU there is an intense campaign of advertising betting offer during live sports events. This is hot regulatory topic in jurisdictions such as UK (“the January 2020 FA Cup live streaming case”), Spain, Sweden, Netherlands, Italy – to name some of the most visible ones⁵. However, significant dependence of TV broadcasters and sports teams having on the revenue derived from advertising of betting needs to be taken into consideration. Instead of the blanket ban”, we advocate that whistle-to-whistle ban in force during the matches broadcast, is the most suitable solution to protect underage and vulnerable groups and minimize potential negative social consequences.

⁵ Source: https://gamblingcompliance.com/premium-content/research_report/interactive-map-gambling-advertising-across-europe

Player credit cards limitations. Last few months this is becoming a high-priority regulatory issue in UK, with UK Gambling Commission banning the use of these type of cards to fund player online accounts. Although this change in policy cannot be argued, we deem this adverse regulatory measure is the result and part of a broader problem to solve – distrust of banking sector to sports betting industry. As more and more betting transactions are processed online, they as such are visible, traceable, relatively easy to control and transparent due to the digital footprint they leave behind. However, considerable number of banks do not want to cooperate with gambling companies, either by opening bank account or processing the player payment transactions at regular market conditions. The most commonly used excuse for this policy treatment is that gambling is flagged as suspicious activity due to high potential for frauds and money laundering. **It is important to note that although each money laundering activity includes elements of fraud/crime, the majority of fraud is not related with money laundering as its final motive. There is a plenty of other industries that are much more prone to risks and vulnerabilities arising from ML/TF.**

Excessive taxation is the de facto over-regulation. The overall regulatory attitude, philosophy and intents of the state towards the sports betting business can also be read from the taxation system implemented, which, if does not respect the legitimate interest of operators, can be understood as over-regulation aimed at depressing investment, discouraging innovation and jeopardizing employment. Two most common taxation burdens suffered by operators in Europe relates to a) imposing harmful tax base (taxing betting winnings or turnover instead only the gross profits) b) introducing high tax rates. Any tax other than that imposed on GGR and at the rate of not higher than 15% creates distortions of the competition and migration of players towards black market.

EOGL, fully acknowledges and advocates that certain forms of hereby described restrictions remain an important segment in maintaining the safety of customers, as well as integrity and reputation of the industry. However, they must not turn into their own contrast.