

## Report from Sweden: The First State-Owned Internet Poker Site

### Per Binde

Back in 2005, the Internet poker boom in Sweden displayed no signs of abating, as approximately 124,000 Swedes were playing Internet poker regularly.<sup>1</sup> All Internet poker was being played on international Web sites, and huge amounts of money were leaking out of the country to foreign gambling companies. There were concerns about increased problem gambling and general dissatisfaction that more and more gambling in Sweden was unregulated. The state lottery company, Svenska Spel, and the former Social Democratic government came up with the idea of launching a regulated, domestic poker site, which became the first state-owned Internet poker site in the world.

The site was launched in March 2006 in Sweden. This article describes the political and public debate that flared up when plans for the poker site became known, the rationale for the Swedish government granting permission to the site, and the possible implications of this decision for Swedish lottery regulation vis-à-vis European Union law. Finally, some speculations on the future of Swedish gambling regulation are made.

### The regulation of gambling in Sweden

Sweden has a long history of regulated gambling. The state-controlled lottery, *Penninglotteriet*, began in 1897 and is still in operation. Horse betting was legalized in 1923 and sports pools in 1934. Lotto was introduced in 1979 and followed by many other forms of lotteries and betting. Today, approximately 50 forms of legal gambling are available to the Swedes, and a large majority of the adult population gambles regularly: 89 percent has gambled in the past year and about one third gambles every week.<sup>2</sup> The average adult Swede spends approximately three percent of his or her disposable income on gambling (gross expense).

Gambling is mainly regulated by the Swedish Lotteries Act,<sup>3</sup> the Casino Act,<sup>4</sup> and concessions granted by the government. A basic principle is that all commercial gambling is forbidden if it does not possess a valid permit. Yearly concessions are granted to the two main Swedish gambling companies, the state-owned Svenska Spel and the state-controlled ATG. Svenska Spel is a lottery and sports betting company, with a casino subdivision, and ATG has exclusive rights to horse betting. The mandate of these companies is to meet Swedish demand for gambling, in a responsible way free of private profit interest. Most of Svenska Spel's revenue goes directly to state coffers, some of it currently being earmarked for sports and youth organizations. ATG's profit is taxed by the state, and what remains goes to equestrian sports associations. Lotteries run by nonprofit social, sports, and charity organizations are granted permission pursuant to the Lottery Act by the National Gaming Board, which ensures that gambling operations in Sweden adhere to the provisions of the Act. The explicit overall aims of Swedish gambling regulation are:

- to prevent fraud and criminal activity,

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<sup>1</sup> *Spel på Internet: En undersökning bland allmänheten för Lotteriinspektionen* (SIFO Research International 2005).

<sup>2</sup> STEN RÖNNBERG ET AL., GAMBLING AND PROBLEM GAMBLING IN SWEDEN (Statens folkhälsoinstitut, Stockholm 1999).

<sup>3</sup> Lotterilag 1994:1000.

<sup>4</sup> Kasinolag 1999:355.

- to prevent individual, social, and economic harm arising from gambling,
- to protect consumers (gamblers), and
- to minimize private profit interests in gambling and direct gambling sector revenues to the state and for financing social and public-interest activities.<sup>5</sup>

It is not illegal for Swedish citizens to participate in unregulated commercial gambling; however, it is illegal to arrange and promote such gambling. It is thus not a crime to gamble at a foreign Internet casino but it is punishable to run such a casino in or from Sweden and to promote it, for example, by advertising in Swedish mass media. Despite this prohibition, advertising by foreign Internet gambling companies is conspicuous. In the first quarter of 2006, such companies altogether spent over twice as much money on advertising as the main Swedish company, Svenska Spel, did.<sup>6</sup> These companies advertise on TV channels broadcasting from abroad, on Internet sites, and in Swedish newspapers that sell lucrative advertising space to gambling interests (despite the risk of fine faced by their editors-in-chief). Foreign Internet gambling companies are firmly established in the Swedish gambling market; their market share is unknown but substantial.

Membership in the European Union places Swedish gambling regulation within the framework of EU law and regulation. However, the regulation of gambling services is not harmonized in the EU, and there is currently little that indicates it will soon become so. Gambling regulation in EU member states varies considerably with respect to principles, policies, and express purposes.<sup>7</sup> Guidance as to how national gambling regulation should be shaped to be compatible with the EU Treaty consists of a patchwork of European Court of Justice (ECJ) caselaw. Since the ECJ is generally hesitant to infer directly regarding matters that have been politically determined in member states, it prefers to issue general advice and let national courts decide whether gambling market restrictions are adequately motivated. Consequently, interpretation of ECJ caselaw by national Member State courts varies considerably.<sup>8</sup> In the Swedish case, there is an obvious incompatibility between the restrictions and practical application of the Lotteries Act and EU Treaty Articles 43 and 49<sup>9</sup> regarding free movement of services and freedom of establishment. However, ECJ caselaw states that such national restrictions of the gambling business can be acceptable if done for good reason, such as maintaining public and social order, concern about the harmful effects of gambling, and respect for national culture and religion.<sup>10</sup>

The increasing presence in the Swedish market of foreign companies providing gambling services via the Internet is putting stress on the regulatory system. These foreign companies call for permission to operate in Sweden and typically claim that Swedish gambling regulation is incompatible with EU Treaty articles and ECJ caselaw. Swedish companies dislike the competition of foreign operators and want them to be more effectively hindered from promoting and providing services in Sweden. Many politicians and lawmakers feel that, since the market shares of foreign companies are increasing and more Swedish gambling is therefore unregulated, something must be done to adapt regulations to better fit the age of remote and electronic gambling. Opinions as to what should be done differ greatly, from reinforcing and extending current regulations to imple-

<sup>5</sup> SOU 2006:11, *Spel i en föränderlig värld, Slutbetänkande av Lotteriutredningen* (2006).

<sup>6</sup> Statistics from SIFO Research International.

<sup>7</sup> Swiss Institute of Comparative Law, *Study of Gambling Services in the Internal Market of the European Union* (Lausanne 2006) ; Sytze F. Kingma & Tatiana van Lier, *The Leeway of Lotteries in the European Union—A Pilot Study on the Liberalisation of Gambling Markets in the EU* (Vrije Universiteit Amsterdam, Amsterdam 2006).

<sup>8</sup> Ewout Keuleers, *From Gambelli to Placanica to a European Framework for Remote Gaming*, 21(5) COMPUTER L. & SECURITY REP. 427–431 (2005) [hereinafter Keuleers, (2005a)]; Kingma & van Lier, *supra* note 7.

<sup>9</sup> Treaty Establishing the European Community, Mar. 25, 1957, 298 U.N.T.S. 4, as amended.

<sup>10</sup> For overviews of ECJ caselaw on gambling, see Justin Franssen, *What's Next for the Netherlands? Court Decision Might Nix Dutch Monopoly on Casino Gambling* 10 GAMING L. REV. 33–36 (2006); Keuleers (2005a), *supra* note 8; Ewout Keuleers, *Gambelli: The Need for a European Framework for Remote Gaming*, 9 GAMING L. REV. 134–135 (2005) [hereinafter Keuleers, (2005b)]; Gert Straetmans, *Case C-6/01, Anomar v. Estado Português, Case C-243/01, Piergiorgio Gambelli E.A., and C-42/02, Diana Elisabeth Lindman*, 41(5) COMMON MKT. L. REV. 1409–1428 (2004); *Study of Gambling Services in the Internal Market of the European Union*, *supra* note 7; Thibault Verbiest & Ewout Keuleers, *Gambelli Case Makes it Harder for Nations to Restrict Gaming* 8 GAMING L. REV. 9–13 (2004).

menting a licensing system that would allow foreign gambling companies to operate legally in Sweden. Another option is to allow state-controlled companies to act more competitively—which is what Svenska Spel’s Internet poker initiative is about.

### The Svenska Spel Internet poker site

In October 2004, a new CEO of Svenska Spel was appointed, a relatively young businessman with a background in the IT sector and a reputation for radically reshaping corporate structures. Most business observers concluded that the Svenska Spel board of directors wished for innovation and competitive business initiatives; the new CEO has been no disappointment in that respect. He promptly stated that Svenska Spel was like an antique shop with a stock of old games, and that the company desperately needed to adapt to today’s international and competitive gambling market. As Scandinavia’s largest gambling operator, with a Swedish market share of approximately 50 percent and making a US\$633 million profit in 2005,<sup>11</sup> the company certainly has enough financial muscle to tackle international competition.

One of several new business initiatives taken by Svenska Spel was to ask the Swedish government, in January 2005, for permission to set up an Internet poker site. Since Svenska Spel’s mandate is to help meet the Swedish demand for gambling, and since many Swedes were already playing poker on foreign gambling Web sites (approximately 124,000 people, or 1.74 percent of the population age 18 and older),<sup>12</sup> Svenska Spel concluded that there was indeed demand for such gambling in Sweden and that the company therefore not only could, but indeed *should* enter the Internet poker market. Svenska Spel claimed that it could manage a poker site more safely and responsibly than its international competitors could, that more Internet poker gambling in Sweden would be regulated if it entered the market, and that the revenues generated by Swedes playing poker online would not leak out of the country but go to the state. These arguments were accepted by the Social Democratic government, and, in November 2005, it granted the company permission to offer online poker.<sup>13</sup> The basic reason the government gave for granting the permit was the wish to channel Internet poker gambling among Swedes to a safe and responsible company governed by Swedish laws and regulations, which transfers the revenue to the community at large.

Among the conditions imposed by the government for granting the permit were the following:

- only Swedes over 18 years of age should be allowed to play (registration requires a Swedish social security number);
- promotion should not be pushy, being done only in print media and on the Internet, and include the telephone number of the national problem gambling helpline;
- players should be required to set limits to the amount of money lost and time played;
- Svenska Spel should actively seek to prevent problems caused by excessive play;
- the maximum bet per poker hand played should not exceed US\$11,120; and
- the permit is valid for two years and may be revoked immediately if the government finds reason to do so.

The Internet poker site<sup>14</sup> was launched on March 30, 2006, and quickly became a success. In its first 24 hours of operation over 20,000 Swedes registered and played online poker, and within six weeks it had become one of the 15 most frequented poker sites in the world. A survey conducted by Svenska Spel in June 2006 indicated that the site’s share of the Swedish Internet poker market was 22 percent, and that 43 percent of all Internet poker players in Sweden had played on the site. By September, there were 95,000 registered players, of which 25 percent had no previous experience of Internet poker. Sixty percent of the players had set a weekly loss limit of US\$130 or less. Mass

<sup>11</sup> Swedish Krona (SEK) has in this paper been converted to US\$ at a rate of SEK 1.00 = 0.14 US\$.

<sup>12</sup> *Spel på Internet: En undersökning bland allmänheten för Lotteriinspektionen, supra*, note 1.

<sup>13</sup> Regeringsbeslut Fi2005/1317, *Ansökan om tillstånd att anordna lotterier enligt 45 § lotterilagen (1994:1000) —pokerspel över Internet m.m.* (2005).

<sup>14</sup> Svenska Spel, <<http://www.svenskaspel.se>> (select “Poker”, last visited Jul. 16, 2012).

media coverage of the site has been extensive, and as of November 2006 there had been little formal promotion of the site. Evidently, there was pent-up demand for a regulated Swedish poker site.

Svenska Spel is not allowed—according to National Gaming Board stipulations—to offer bonuses, rake-back deals, free entries to tournaments, or the like. On the other hand, the rake (i.e., the amount of money taken as a fee from players) is set at a low and very competitive level, 2.5 percent with a maximum of US\$2.80 per hand. (Most Internet poker sites take a rake of approximately 5 percent). The Svenska Spel poker site is accessed via the company's regular Web site, offering lotteries, sports betting, and some interactive gambling, such as online bingo.

Ever since Svenska Spel presented its plans for Internet poker, the company has emphasized that responsible provision of gambling is top priority. Indeed, the poker Web site was developed with a renowned expert on problem gambling as advisor. On registration, players must set limits for the amount of money lost per day, week, and month, and for the time spent playing per session, day, week, and month. Players can instantly lower these limits, but there is a delay in raising them (a day, week, and month, respectively). There is also a self-exclude option. "Play responsibly" messages and information are visible and quite substantial, including the telephone number of the national problem gambling helpline as well as links to a test, at the company's Web site, designed to indicate various levels of problem gambling.

### Political reactions

Svenska Spel's request for a permit to offer Internet poker, and the government's decision to grant it, was met with fierce criticism that crossed political boundaries, coming from the left, the right, and from within the Social Democrat party itself. Poker is a game that for many Swedes has connotations of dishonesty, bluffing, cheating, and a desire for big and easy money. That the state, through its company, Svenska Spel, should run such a game and make a lot of money from it, was repugnant to some commentators who saw this as blatant evidence of the moral corruption of the Swedish state and in particular of its gambling policy. "Record in hypocrisy" and "scandalous" were trumpeted in newspaper headlines. An editorial in a weekly medical magazine claimed that the decision would be jeopardizing public health by creating more problem gamblers.<sup>15</sup> One newspaper wrote that the state, if it could argue that Svenska Spel could manage Internet poker more safely and responsibly than other providers, could as justifiably sell heroin to drug addicts.<sup>16</sup> Another newspaper suggested the state could as well act as pimp in order to reduce prostitution.<sup>17</sup> The same newspaper resignedly wrote that it should be expected that a state that sells vodka all over the world (the Absolut Vodka brand) would also wish to be a poker dealer, but added that such activities are demoralizing.<sup>18</sup> It was suggested that the government had an "obvious, naked, and crude" intention to profit from Internet poker.<sup>19</sup> Svenska Spel's CEO was quoted as saying that Svenska Spel offering Internet poker was part of a strategy to attract young people to its gambling products in general.<sup>20</sup> This prompted the newspaper to comment that by such reasoning, state-owned liquor stores could just as well promote "alcopop" to attract youth who would later become drinkers of beer, wine, and vodka.

There is a general agreement in Sweden that Internet poker is one of the most addictive forms of gambling. Svenska Spel shares this opinion, as did the former government, but argues that the high risk of problem gambling is a reason for the company to offer Internet poker, since the company—operating under government regulation and without a private profit interest—is a more responsible provider of gambling than its international competitors are. This statement was met with disbelief by numerous commentators, who claimed that the poker site would greatly *add* to problem gambling by offering an attractive option for many who have been reluctant to gamble on international sites. The Swedish National Institute of Public Health recommended, in an official comment

<sup>15</sup> Editorial, *När regeringen legitimerar poker äventyras folkhälsan*, DAGENS MEDICIN, Nov. 30, 2005, at 3.

<sup>16</sup> Kajsa Olsson, *Staten kan lika gärna sälja heroin*, NY TEKNIK, Sept. 30, 2005, at 1.

<sup>17</sup> Editorial, *Bluffpoker*, EXPRESSEN, Nov. 25, 2005, at 2.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Kenny Genborg, *Poker på nätet skall locka unga*, GÖTEBORGS-POSTEN, Dec. 28, 2005, at 48.

to the government, that Svenska Spel should *not* be granted permission, since the poker site was likely to increase problem gambling.<sup>21</sup> Several commentators noted that although players on the Svenska Spel Internet poker site were required to set limits to how much money they could lose in a day, week, and month, there were no upper limits. Likewise, a player could choose a limit of 24 hours of play each day. The maximum bet per hand—more than 11,000 U.S. dollars—was also criticized as being far above what could be regarded as a responsible level.

### Legal implications

The most important judgment in recent years regarding Swedish gambling regulation was delivered in October 2004 by the Supreme Administrative Court, in a case concerning a restaurant that had acted as a representative of a British betting firm.<sup>22</sup> The court judged that Swedish gambling regulation in principle is compatible with EU law. The court referred to ECJ caselaw and found that current legislation is necessary, nondiscriminatory, and proportional to its general aims of protecting the individual and society and directing the profits of gambling to the community at large and good causes. However, the court had concerns with some aspects of the application of Swedish regulations, in particular, the promotion of gambling by Svenska Spel, which it found to be “aggressive.”

This ruling has been criticized by stakeholders in the gambling sector as well as by jurists, some of whom see it as based on implicit political and ideological motives rather than an objective interpretation of ECJ caselaw.<sup>23</sup> In January 2006, an official committee of inquiry into Swedish gambling regulation presented its report.<sup>24</sup> The report extensively discusses the compatibility of Swedish lottery legislation with EU law, concluding that the compatibility is open to dispute both concerning the basic aims of Swedish legislation and its practical application. As to Internet poker, the committee stated: “[I]t is feared that the decision in November 2005 to allow Svenska Spel to arrange Internet poker games may have taken Sweden beyond the point at which its legislation could be considered compatible with Community law.”<sup>25</sup>

Notable among the other commentators reaching a similar conclusion was the National Gaming Board, which recommended in an official comment to the Swedish government that Svenska Spel not be permitted to offer Internet poker.<sup>26</sup> The National Gaming Board stated that such permission might not conform with EU law and hence would possibly jeopardize Swedish gambling regulation in its current form. Representatives of international gambling companies celebrated the government’s decision, since it was both regarded as the final nail in the coffin of Swedish gambling regulation and good for their business. They assumed that Svenska Spel’s entry into Internet poker would stimulate interest in Internet poker at large, and that players recruited by Svenska Spel would eventually try the poker sites of other companies.

The compatibility issues between national gambling legislation and EU law center on EU Treaty Articles 43 and 49 regarding freedom of establishment and the right to free movement of services.<sup>27</sup> In the *Gambelli* case,<sup>28</sup> the ECJ made the following pertinent statements:

§62: . . . the restrictions [on games of chance and betting] must in any event reflect a concern to bring about a genuine diminution of gambling opportunities, and the financing of social activities through a levy on the proceeds of authorised games must constitute only an

<sup>21</sup> Statens Folkhälsoinstitut, *Yttrande över ansökningar från AB Svenska Spel att anordna lotteri enligt 45 § Lotterilagen (1994:1000)* (Dnr 21-05-0192, 2005).

<sup>22</sup> Regeringsrätten, *Mål nr 5819-01 Wermdö Krog / Lotteriinspektionen* (2004).

<sup>23</sup> Ola Wiklund & Harry Bergman, *Europeiseringstendenser och domstolskritik i svensk rätt: Regeringsrättens domar i spelmålen*, 8 EUROPARÄTTSLIG TIDSKRIFT 713–728 (2005).

<sup>24</sup> *SOU 2006:11*, *supra* note 5.

<sup>25</sup> *Id.* at 29.

<sup>26</sup> Lotteriinspektionen, *Yttrande över AB Svenska Spels ansökningar om tillstånd att anordna lotteri enligt 45 § Lotterilagen (1994:1000)* (Diarienummer: 142/2005, 2005).

<sup>27</sup> *See* note 10.

<sup>28</sup> Case C-243/01, *Tribunale di Ascoli Piceno (Italy) v. Gambelli*, 8 GAMING L. REV. 43 (2004) (E.C.J. Nov. 6, 2003).

incidental beneficial consequence and not the real justification for the restrictive policy adopted.

§69: In so far as the authorities of a Member State incite and encourage consumers to participate in lotteries, games of chance and betting to the financial benefit of the public purse, the authorities of that State cannot invoke public order concerns relating to the need to reduce opportunities for betting in order to justify measures such as those at issue in the main proceedings.

As to the decision to allow Svenska Spel's Internet poker site, the following main arguments *pro et contra* compatibility between the national legislation and its application vis-à-vis ECJ caselaw (*Gambelli*) emerge.

*Compatible with Gambelli ¶ 62*

Channeling the public's gambling from nonlicensed to licensed operators is accepted in ECJ caselaw to be allowable national gambling policy, as long there are good justifications.<sup>29</sup> In this case, the express objective of Svenska Spel's poker site is not to increase Internet poker gambling among Swedes, but to channel existing demand for such gambling to a regulated and safer alternative. From the government's permit, it is clear that not only economic safety is intended, but also safety from a problem gambling perspective.

*Noncompatible with Gambelli ¶ 62*

Sweden forbids international gambling operators to run and promote Internet poker sites within its borders. This restriction is in agreement with EU law, as long as it is motivated by a "concern to bring about a genuine diminution of gambling opportunities." That such a concern is of importance is called into question by the decision to allow Svenska Spel to add Internet poker to its lineup of games, as this obviously increases rather than decreases gambling opportunities. The "channeling" argument is invalid, since it has not been proven that the Svenska Spel poker site in any respects is safer or more responsible than those of commercial gambling providers. The British betting firm Ladbrokes applied to the Swedish government in March 2006 for permission to offer Internet poker in Sweden on the same responsible terms as are stipulated by the government for the Svenska Spel Internet poker site, but was nevertheless denied a permit. This can be regarded as proof that the real reason the state increased gambling opportunities was to make money.

*Compatible with Gambelli ¶ 69*

The main objectives of Swedish gambling regulation are to maintain public and social order and prevent problem gambling. Fiscal policy considerations are nowadays not stated as being important, revenue from gambling to state coffers and good causes being viewed as a positive side effect of the general and acceptable policy of restricting private profit interests in this market sector.<sup>30</sup> To prove that such considerations are in fact important, but concealed, would be difficult. As to inciting consumers to participate in gambling, the government's permit expressly states that advertising for the poker site should not be pushy and not placed on TV, a medium in which advertising is often perceived by the public as undesired and virtually unavoidable.

*Noncompatible with Gambelli ¶ 69*

It is evident that state-controlled Swedish companies "incite and encourage consumers to participate in lotteries, games of chance and betting." For a number of years, Svenska Spel has been one of the top 10 buyers of advertising space in Swedish media. At the same time, the Swedish state has, over the years, derived huge income from Svenska Spel and from the tax levied on ATG (in 2005,

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<sup>29</sup> Study of Gambling Services in the Internal Market of the European Union, *supra* note 7.

<sup>30</sup> *Id.* at SOU 2006:11, *supra* note 5.

US\$651 million).<sup>31</sup> Thus, through massive marketing the state encourages the population to gamble, and the income from gambling emerges as an important reason for the regulation's current form and application, rather than an "incidental beneficial consequence." The state's Internet poker draws customers by force of the strong brand created by Svenska Spel over many years of massive marketing.

Naturally, these issues should be viewed in the larger context of the EU principles of "subsidiarity", i.e., that matters should be dealt with at the lowest competent political and juridical level, "proportionality", i.e., a national restriction should be proportional and not excessive for the objects at which it is aimed, and the "country of origin" principle, i.e., that if a company is regulated and supervised in one EU member state, then there are no reasons for other countries to distrust the company's integrity. Furthermore, issues of unfair discrimination between domestic and foreign companies are raised and it might be asked whether the Swedish gambling regulation is generally based on an adequate analysis of its appropriateness in relation to the alternatives.

### **The future**

The establishment of a state-owned Swedish poker site is a telling example of the rapid and profound changes in the gambling market brought about by remote and electronic gambling. Who could have guessed, 30 years ago, that the Swedish state would assume the role of poker dealer with a hundred thousand Swedes as eager players?

It appears as though the Social Democratic government was well aware that the decision to permit Svenska Spel to offer Internet poker games adds to the question of compatibility between Swedish national legislation and EU law. Restricted promotion of the site, emphasizing the responsible provision of gambling, and the expressed purpose of "channeling" players to a regulated and safer alternative are conditions stated in the permit that are necessary for arguing that the decision is compatible with EU law.

As mentioned, there is little today that suggests that gambling regulation in the EU will be harmonized in the near future. Gambling is excluded from both the Directive on Electronic Commerce<sup>32</sup> and the new Service Directive.<sup>33</sup> Furthermore, most observers would be surprised if the ECJ allowed significantly less latitude for national courts to decide on the compatibility between EU law and national gambling regulation. The ECJ acknowledges that the provision of gambling services is a special form of business, and it is relatively tolerant of national gambling regulations motivated by concerns regarding national culture, religion, and the maintenance of social order.<sup>34</sup> As suggested by the strong political reactions to the Svenska Spel poker site, it appears as though changes to Swedish gambling regulation are more likely to be the consequence of national political decisions rather than of EU-level directives and laws.

The Swedish elections in September 2006 resulted in a shift of parliamentary majority from left to right and the formation of a new government dominated by the Moderate Party (conservative). The previous Social Democrat government was intent on keeping the current gambling legislation: in a delicate balancing act—on the borderline between what is and is not allowed according to EU law—it permitted state-controlled companies to expand their business while not permitting foreign companies to operate. As proven by the Svenska Spel Internet poker site, state-owned companies can enter the Internet gambling market and compete successfully. Even if such companies are late-comers to the market, they typically have specific advantages: large customer bases, strong brands, and the financial resources to enter the market forcefully and stay the course throughout a consolidation phase.

However, the new Swedish government may chart a different course regarding gambling regulation. Over the past five years, support for a licensing system has increased among politicians,

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<sup>31</sup> Annual financial reports for 2005, ATG and Svenska Spel.

<sup>32</sup> Directive 2000/31/EC on electronic commerce.

<sup>33</sup> Directive 2006/123/EC on services in the internal market.

<sup>34</sup> Straetmans, *supra* note 10; *Study of Gambling Services in the Internal Market of the European Union*, *supra* note 7.

public administrators, jurists, and people in the gambling business. The new government rests on a coalition of four parties. Two of these—the Moderate and the Liberal parties—have for ideological reasons long favored a licensing system: they hold that the state should have minimal involvement in business enterprises and that competition, even with respect to gambling, is preferable to monopoly. Leading members of the third party in the coalition, the Christian Democrats, have recently changed opinion and now support a licensing system, arguing that current regulations are ineffective, especially when it comes to the Internet and remote gambling. They believe that a licensing system will make it easier to counteract problem gambling, and expect the licensing fees to generate money that can be used for preventive measures and the treatment of gambling addicts. If the fourth party in the coalition—the Centre Party—changes its opinion in this matter, then Sweden is likely to initiate the process of shifting to a licensing system.

A licensing system would allow commercial companies to operate in specific sectors of the Swedish gambling market.<sup>35</sup> It would be more transparent than the current system, since rules for the provision of gambling will have to be specified in greater detail. It would also be easier to reconcile with EU law and perhaps foster healthy competition in the gambling market that would benefit consumers. It must be emphasized that a licensing system does not necessarily mean a more liberal view of gambling in society. As pointed out, Christian Democrats favor a licensing system not because they favor gambling more generally, but because they think that such a system would allow for stricter control of gambling in Sweden.

The Svenska Spel poker site has become a formidable success in terms of turnover and the number of players it has attracted, but it raises a number of legal, political, and moral questions. Legally, the poker site clearly adds to the questions concerning the compatibility between Swedish gambling regulation and EU law. Restrictions of the gambling business in a member country should, according to the ECJ, be motivated by a concern to “bring about a genuine diminution of gambling opportunities.”<sup>36</sup> This is surely in line with the policy of not allowing foreign companies to run or promote Internet poker business in Sweden, but only in line with the decision to launch a state-owned Internet poker website if a chain of reasoning, concerning the alleged benefits of such a site, is presented—and accepted. There are clearly weak links in that chain.

In public debate, political and moral objections have been voiced more strongly than legal ones. The objections all center on whether or not it is socially and morally acceptable for the state to run poker business. Sweden has a history of over half a century of pervasive state intervention in society, a system known as the Swedish welfare state. The basic ideological tenets of the system are solidarity, equality, social security, and protection of the vulnerable in society. This ideology has been reconciled with a state de facto monopoly on lotteries and football pools, forms of gambling that generate money for the public good and are regarded as harmless parts of Swedish culture. To reconcile a welfare state ideology with the game of poker is evidently much harder. Poker is not about solidarity, equality, security, or protection of the vulnerable. On the contrary, the game is about competition, the success of the smartest, taking risk, and taking advantage of those who are vulnerable. The central question in Sweden is thus whether the state should engage in the poker business or whether, through implementing a licensing system, it should restrict itself to regulating and supervising. The option of outlawing Internet poker is no longer viable in Sweden.

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<sup>35</sup> *SOU 2006:11, supra* note 5.

<sup>36</sup> *Gambelli, supra* note 28, at ¶ 62.