Study on the role of regulators for online gambling: authorisation, supervision and enforcement

EXECUTIVE SUMMARY

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EXECUTIVE SUMMARY

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# Table of Contents

Acknowledgements ........................................................................................................ 3
Table of Contents ............................................................................................................ 5
Executive Summary ........................................................................................................ 1
  The context for this study ......................................................................................... 1
  The approach and conduct of the study ................................................................. 1
  The main findings of the study .............................................................................. 1
National rules and commonalities in regulator practices ............................................ 2
Good practices ............................................................................................................ 4
Areas with potential for cooperation ..................................................................... 5
Conclusion .................................................................................................................. 7
Executive Summary

The context for this study

The increased supply of online gambling services, authorised and unauthorised, their cross border impact and the progressing regulation of gambling services in Member States raised the immediate question about the need for enhanced administrative cooperation amongst the competent authorities and efficient national enforcement. The response to the 2011 Green Paper consultation\(^1\) was almost a unanimous call from Member States, the European Parliament and stakeholders for enhanced administrative cooperation between gambling authorities at EU level.

Currently, administrative cooperation is taking place but only to a limited extent relative to the volume of cross-border online gambling activity, and this is often on an ad-hoc basis and in an informal manner.

The Commission Communication “Towards a comprehensive European framework for online gambling” defined an action plan identifying initiatives to be taken at national and EEA level. One of the key priority areas identified in the Communication is administrative cooperation.

In this context, this study is intended to assist in preparing the ground and facilitating a number of initiatives announced in the Communication.

The approach and conduct of the study

The primary information and data gathering tool for this study was a set of detailed questionnaires, tailored towards the different key stakeholders targeted. Questionnaires were prepared and submitted to the identified stakeholders: Regulators/Authorities; State-owned Operators; and a selection of Commercial Operators; Service Providers and Associations. The responses served as the core material for the study.

In almost all cases, the stakeholders were interviewed by the online gambling specialists involved in the study, most of which were PwC consultants in each EU/EEA Member State, who collated the responses and presented them to the PwC core study team. The analysis and reporting was carried out by the core team with reviews and contributions from key experts from Gambling Compliance and W.H. Partners.

The main findings of the study

In spite of differences between Member States on what type of online gambling service is permitted, the policies towards local online gambling services compared to cross-border service offerings and the processes of licensing and enforcing regulations, the study found numerous commonalities. Where practices differed, often the objectives are consistently directed at: player protection; responsible gambling; and combating unauthorised activities.

Another dimension that projects Member States at various stages is the fact that some countries have been regulating online gambling for many years whilst others have only recently enacted legal frameworks. In addition, the extent of openness of the market varies to reflect the national policies that seek to contain the risk of negative social impacts such as irresponsible gambling or gambling addiction.

\(^1\) Green paper on on-line gambling in the Internal Market (COM(2011) 128 final)
The study and the structure of the sections within this report cover four main areas of online gambling regulation, namely:

- The role and competence of the national regulatory authorities;
- Authorisation and licensing procedures and conditions;
- Rules and practices on the supervision of online gambling services authorised according to national law; and
- Rules and practices on enforcement against online gambling services not authorised according to national law.

National rules and commonalities in regulator practices
The first part of the study analyses the various approaches and practices of the regulatory authority in each Member State and focuses on commonalities as well as different practices that individual regulatory authorities apply towards meeting the objectives.

The role and competence of the national regulatory authorities
Despite the existing variations in the day-to-day operations of the national regulatory authorities and their different organisational structures, the regulatory and supervisory responsibilities for gambling (including online gambling), in practically all Member States, ultimately fall within the remit of a particular government ministry or department. Although the organisational structures vary, the regulatory authorities in many Member States are generally responsible for the implementation of government policy and tasked with ensuring that the legal requirements for online gambling services are fulfilled by the operators at all times. The roles may differ in that some Member States limit the type of gambling that may be licensed; and in some cases, jurisdiction is at a regional rather than a central level.

Authorisation and licensing procedures and conditions
An open licensing regime (i.e. no restriction on the number of online gambling licences that may be granted) is a model common to a substantial number of Member States. In other Member States, the number of licences is restricted; subject to market saturation as set out in national law; or dependent on a call being issued for a fixed number of licences or periodic applications. In a few other Member States, an online gambling licence or authorisation is only granted to specific entities, types of entity or state bodies and no other entity may apply for an online gambling licence.

The terms “gambling” and “online gambling services” exist at an EU level. There is no common definition of “online gambling services” or “remote gambling services” across the Member States but, broadly, the definition is largely based on a player’s participation in gambling by some form of remote or electronic means. Given the different definitions across the Member States, the gambling activities that trigger a licensing requirement may also differ from one Member State to another. In most cases, licences issued by regulatory authorities in a Member State or a third country are not directly recognised nor, generally, are these considered during the licensing process regarding the same operator in another Member State. Nevertheless, in some Member States, the regulatory authority can exercise discretion whether or not to take into account factors in the licensing process of an operator, such as a licence obtained in another Member State, controls satisfied in another Member State and technical requirements satisfied in another Member State.
The majority of Member States require separate licences for the different types of games or betting that operators can offer in that Member State. Furthermore, many Member States set out a number of other conditions that operators have to satisfy in order to successfully obtain a licence, including the type of legal setup, share capital and location of equipment.

The licensing and authorisation procedure in most Member States is carried out through the submission of application forms, which in some Member States is completed electronically, together with specific documentation in order for the regulatory authority to assess the applicant and the sustainability of the business plan. Common procedures and documentary requirements for licence applications include probity checks, financial projections, gaming operation business plans, compliance audits, and testing of gaming systems. In the vast majority of Member States, operators must comply with significant technical standards in order to obtain an online gambling licence. These requirements frequently relate to the gambling equipment, including software. Very often, operators' systems must be certified by a recognised testing house prior to the system going live.

**Rules and practices on the supervision of online gambling services**

Supervision is the principal mechanism by which the national regulatory authorities monitor gambling licensees, market trends and practices. The supervision of licensed gambling operators is carried out principally through reporting requirements and record keeping obligations that operators are to comply with. Monitoring activities are largely carried out by the regulatory authorities.

The manner and mechanics in which reporting is effected differs in each Member State. Most Member States set out specific reporting standards (such as encrypted storage, information transfer content and formats) or forms as to how reports should be submitted to the regulatory authority. Operators are commonly required to report on their financial data, gaming data and operational data on a periodic or regular basis. A widespread practice is the requirement for operators to report any changes to the gambling; employees and staff; and shareholders, directors and management personnel.

In addition, operators are commonly required to maintain financial and operational records including information for anti money-laundering purposes.

The monitoring of online gambling data traffic varies across Member States. Some regulatory authorities operate systems that are able to monitor the activity of all operators in real time or quasi real time, others carry out monitoring indirectly, mainly through reporting obligations, or on an ad-hoc basis. A number of regulatory authorities also carry out regular or periodic inspections and audits. Primarily, these are aimed at ensuring that the operators are adhering to the licence conditions.

**Rules and practices on enforcement**

Practically all Member States have implemented enforcement practices concerned with preventive and responsive measures intended to reduce the initial contact of citizens with gambling that is not permitted according to national law. The most common approach adopted by regulatory authorities is the imposition of restrictions on advertising of gambling, which is either an outright prohibition or restrictions to limit the scope or reach of advertising. A common responsive measure is the imposition of administrative penalties and fines. Other approaches common in the Member States include whitelisting and blocking of websites or DNS and financial transactions related to online gambling. Website or DNS blocking is more commonly applied than payment blocking. The manner in which this is done differs between the Member States where
this is carried out. In some Member States the regulatory authority is to provide the website addresses to the internet service provider, in others it is on the basis of a court order.

**Cooperation arrangements**
A number of regulatory authorities in the Member States have entered into bilateral or other cooperation arrangements. The principle mechanism for cooperation used in most agreements is typically an exchange of information arrangement. As for further cooperation, whereas Member States seem to be willing to explore further areas, ways and means of cooperation in principle, cooperation would only be possible if the appropriate conditions exist.

The primary areas that may be the subject of further cooperation between Member States include:

- Addressing issues concerning gambling service providers that are not authorised according to national law requirements, and combatting and preventing illegal gambling offers including through the blocking of the gambling websites;

- Promoting responsible gambling and creating common awareness about gambling and about risks associated with gambling;

- Protection mechanisms for players with problems related to gambling and for vulnerable groups, and measures for exclusion of such players;

- Knowledge sharing, exchange of experiences, and secondments and employee training programmes;

- Exchange of information and good practices between the national regulatory authorities particularly with respect to the licensing and enforcement procedures and methods;

- Matters concerning crossborder liquidity; and

- Communication of legislative and technological evolvements

**Good practices**
The last section of the study presents cases that may be considered to be good practices based on characteristics that strengthen player protection including game fairness and responsible gambling, and those that prioritise the prevention of unlawful activity such as money laundering and fraud. Each subsection also presents corresponding opportunities for administrative cooperation between the Member States.

The good practices presented in the study are selected from the wide range of activities undertaken by regulatory authorities irrespective of the type of licensing regime (i.e. whether the regime is an open licence regime or a restricted market reserved for specified operators). The selection is based on practices that reflect efficient or particularly effective actions that typically are the result of an evolved approach that combines the regulatory authority’s point of view with those of other stakeholders. They also include actions that promote sustainability of the industry.
The role and competence of the national regulatory authorities
In terms of the role and competence of the national regulatory authority, the practices highlighted are focused on the structured cooperation of regulatory authorities with other national authorities, the provision of expert input in a consultative role in the drafting of legislation and practices involving the regular training of employees in legal, financial or technical skills.

Authorisation and licensing procedures and conditions
As for the authorisation and licensing procedures and conditions, the practices identified relate to the different stages of the due diligence process, such as the fit and proper tests on the applicants and the various business viability tests, with particular focus placed on the practices relating to technical standards, testing and certification during the licensing process including compliance with international standards.

Rules and practices on the supervision of online gambling services
In the context of the supervisory practices in the Member States, the practices identified mainly concern the reporting obligations, with a particular focus on the type of data that is required to be reported and the various reports that have to be submitted, such as when certain changes occur in the operator’s technical setup, activities or personnel. As regards monitoring, the practices identified are centred around the scope of audits and inspections carried out in the Member States, as well as the timing and frequency of audits and inspections.

Rules and Practices on Enforcement
The good practices in this section are divided into two main areas: the preventive enforcement practices, such as the restriction of advertising and the various whitelisting and blacklisting practices; and the reactive enforcement practices including the imposition of administrative penalties and internet and payment blocking procedures.

Areas with potential for cooperation

Staff training: Member States may agree to share and exchange information about their experiences in specific types of staff training and may consider cross-border training opportunities.

Certificates of Good Standing: Improved cooperation may be achieved through the sharing, between regulatory authorities, of information relating to “certificates of good standing”. This would be of benefit to both the regulatory authorities and the operators. Regulatory authorities could utilise their existing supervisory resources and processes as a basis for providing feedback on a licensee whilst operators will avoid reproducing time-consuming and at times, cumbersome procedures.

Third party technical testing and certification houses: With a view to more reliability and assurance of the integrity of testing and certification, Member States may consider the sharing of information regarding technical standards and their implementation, testing methods and the testing houses approved in the respective
Member State and what standards are recognised. Member States may draw up a list of approved testing houses across the EU/EEA.

**Reporting:** Proportionate reporting obligations. In the event that any data reported by an operator warrants particular attention (e.g. a sudden downturn in financial performance), the regulatory authority in receipt of such data may share it with other the regulatory authorities in the Member States where the operator is also present.

**Inspections and Audits:** Regulatory authorities may agree to share information when events trigger the initiation of an inspection or audit of an operator.

**Advertising Rules and Restrictions:** It may be fruitful for regulatory authorities in Member States to share and exchange information about the impact of advertising restriction measures on the gambling sector, including any market reactions and trends.

**Whitelisting and Blacklisting:** Regulatory authorities may cooperate through the sharing of whitelists and blacklists – that is, permitted and forbidden online sites.

**Voluntary self-exclusion:** Player self-exclusion is an important player protection mechanism to prevent problem gambling or an escalation of the problem or of gambling addiction - subject to data protection safeguards that are applicable throughout the EU/EEA.

**Player complaint handling system:** Regulatory authorities may share information and practices relating to complaint handling systems and procedures as the subject of complaints indicate new or evolving trends in the dangers that players face. Regulatory authorities may also agree to share information when there is an abnormally high incidence of complaints directed at an operator that is licenced in multiple Member States.
Conclusion

Considering the areas for cooperation identified in this study, which are based largely on the exchange and sharing of information amongst Member States, widespread and comprehensive sharing and exchange of information is encouraged, beyond what is currently in place. Online gambling regulatory authorities are operating in a market characterised by fast-paced growth and technological development. The challenge is therefore to control, by means of national laws, the inherently cross-border elements of the online gambling market.

Establishing memoranda of understanding may facilitate the exchange of views on the efficacy and suitability of the online gambling regulatory frameworks. Establishing such agreements for the purpose of exchanging information should enable regulatory authorities to improve efficiency in the licensing and monitoring processes, and ultimately increase the effectiveness in key areas, with a view to protect players and combat unlawful online gambling.

An online central information sharing facility would be an ideal tool to achieve efficient, ongoing multilateral exchanges. The basic functionality of an information sharing facility should allow the regulatory authorities to subscribe to a secure online system. Regulatory authorities may use the central facility or repository to share information as they deem appropriate and according to the various agreements in force between them. Once information is uploaded, they may choose the extent to which the information is shared i.e. across all Member States, or to one or more particular Member States.

The information exchange mechanism is a tool that would support the underlying measure of cooperation that is the agreement between two or more Member States to share information for mutual benefit.