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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Commission Recommendation

**on principles for the protection of consumers and players of online gambling services
and for the prevention of minors from gambling online**

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Introduction

In Europe online gambling services are widely offered, advertised, and used. Online gambling in the EU represents around 45% of the global online gambling market. In the EU, online gambling services represent more than 12% of the gambling market share (ie €10.54 billion (GGR) in 2012). Online gambling services cover a range of games of chance, such as sports betting, poker, casino games and lotteries, with around 6.8 million consumers participating in or more games. However, there are also thousands of unregulated gambling websites, often from outside the EU, to which consumers are exposed and which carry significant risks such as fraud and money laundering.

In spite of the cross-border significance of online gambling there is no sector-specific EU legislation regulating gambling services. At the same time a majority of Member States has been undertaking regulatory reforms in particular to take account of new forms of gambling services that are primarily taking place online.

A public consultation held in 2011 identified the protection of citizens, including minors, and consumers regarding online gambling as a priority area.¹ Based on this finding, the Commission launched a dialogue with Member States and the industry on matters concerning consumers of online gambling services and commercial communications as regards gambling.

1. The problem

A major contributing factor is the **accessibility of online gambling**, which concerns online gambling services which are regulated in Member States and those which are outside any form of EU control (unregulated). The growth of online gambling is also a result of the rapidly developing technologies, the increase of internet access and the convenience of mobile applications. Whenever online players perceive a lack of supply, unattractive offers or low returns on their stakes, they start looking for competing gambling opportunities. These are readily available, often in the form of unregulated gambling websites.

Consumers are drawn in by advertising – on which both commercial and state-owned gambling operators – spend significant amounts. Harmful **commercial practices** are widespread. Aggressive and misleading sales techniques, including the manner in which this is repeatedly done, results in misinformed choices and minors being attracted to gambling.

The **lack of clear upfront customer-friendly information** is a major cause of misinformed user choices. Information on responsible gambling, processing of personal data and the protection of player funds against insolvency is often buried in lengthy texts full of legal jargon on the gambling site, despite the provisions of the Unfair Contract Terms Directive,. If information is not transparent or clear consumers may not be able to properly assess the risks or seek assistance when they need it. Owing to inadequate monitoring and support, consumers risk losing track of their time and/or money while playing – which might then lead to the development of a gambling problem, including a health-related problem.

¹ http://ec.europa.eu/internal_market/gambling/docs/121023_online-gambling-summary-of-answers_en.pdf

As for the **regulation of the offer**, there are two main issues driving the identified problems, the lack of efficient measures to protect consumers, and low or no measures as far as gambling commercial communications are concerned. Existing legislation has failed to address these issues effectively. Across the Member States there are uneven levels and measures for protecting consumers and for responsible commercial communications. Member States mostly develop their policies in isolation and there is no overarching EU approach to align them. This has resulted in divergent and inadequate regulatory supervision. It is often unclear how Member States monitor gambling services for social responsibility and risk management. Finally, the unnecessary duplication of legal requirements across the EU causes a significant administrative burden for regulated operators and undermines their competitiveness.

The problem drivers described above lead to a number of problems. Individual consumers may not be provided with a realistic perception about gambling and about the risks regarding health and eventual economic harm resulting from compulsive or excessive gambling. There is a risk that an individual can develop a type of gambling disorder in the absence of proper controls and monitoring. For example, excessive gambling is relative to individual disposable income and time, nonetheless there is a risk that more time, and money, can be spent online than intended without adequate player control possibilities. As for commercial communications imagery and text about gambling can create misperceptions about gambling and what it can achieve, both financially and socially. It can entice individuals to gamble irresponsibly. In addition to health considerations, unregulated gambling sites, expose consumers to risks such as fraud and other criminal practices. Minors are at risk because of inadequate age verification requirements, lack of awareness about gambling and the availability of unregulated gambling.

There is a need for better consumer protection. Commercial practices, harm minimisation, prevention of problem gambling and monitoring of gambling behaviour, should be regulated more strictly.

The online gambling market is highly competitive. Where consumer demand is not met within an EU regulated context consumers will continue to turn to unmonitored sites.

In the absence of EU action, Member States are likely to continue working in isolation and the uneven levels and measures across the Member States are likely to persist. Across all Member States the exposure of EU citizens to gambling commercial communications is unlikely to diminish, and users of gambling services will continue to search for gambling opportunities online.

2. Does the EU have a right to act?

Consumer protection is an area of shared competences between the EU and the Member States. Under the Treaty on the Functioning of the European Union action at EU level is justified if divergent national regulations and insufficient or ineffective measures create a fragmented internal market for consumers and for businesses. EU action is also justified if EU

citizens are inadequately protected without it. Owing to the very nature of the online environment and the cross-border dimension of online gambling and the way online gambling is advertised, national action is not enough. EU action is needed to provide a sufficient and uniform level of protection throughout the Union.

3. The objectives

The initiative aims at contributing to a sufficient and even level of protection of citizens, consumers and minors as regards online gambling services.

In more concrete terms, the **specific objectives** are intended:

- to protect users of online gambling services
- to protect minors from gambling
- to provide for more coherent commercial practices
- to improve awareness in order to mitigate to the extent possible the adverse effects on consumers of unregulated gambling sites in the EU

From an **operational perspective**, the objectives are:

1. to ensure transparent and understandable information, dedicated support and monitoring of gambling behaviour
2. to support greater social responsibility in commercial practices, and to ensure awareness of the inherent risks regarding health associated with gambling
3. to have more effective measures to ensure that minors are prevented from gambling and reduce as much as possible the exposure of minors to gambling
4. to keep users of online gambling within an EU regulated context

4. Policy options

The following policy options are being considered:

- enhance information and identification requirements, in relation to the devices used, and as regards commercial communications through the diverse channels used;
- strengthen the registration systems to open player accounts and have more robust verification procedures to filter out minors from the start;
- enhance the requirements for safeguarding the well-being of online players and keep their gambling within recreational parameters
- facilitate EU-wide player self-exclusion through an online database, and operators established in one or more Member States can check identification details against this database to screen out excluded players;
- strengthen the regulatory supervision to provide consumers and citizens with a high level of safety and security and raise awareness of the risks associated with gambling.

The table below examines how well each policy option will be able to achieve these objectives.

Policy options → ↓ Objectives	Option 1 No change	Option 2 Content and identification requirements	Option 3 Electronic player registration systems	Option 4 Player support requirements	Option 4a EU-wide player self-exclusion	Option 5 Strengthen regulatory supervision through real time monitoring systems
Effectiveness						
Provide transparent and understandable information, dedicated support and monitoring to consumers	0	++	++	++	++	++
Make gambling commercial communications socially responsible, and raise awareness of the inherent risks associated with gambling	0	++	0	n/a	n/a	++
			0			
Introduce more effective measures to exclude minors from gambling and reduce as much as possible their exposure gambling	0	+	++	+	n/a	++
Keep users of online gambling services within an EU regulated context	0	++	+	++	+	++
Reduce the fragmented situation for operators established in the EU and holding a licence in one or more Member States	0	+	+	+	+	++
Efficiency		++	++	++	++	++
Acceptability						
by Member States	0	++	-	++	-	-
By industry	0	+	+	++	+	+

5. The policy instruments considered

The following are considered: EU legislation through a directive, self-regulation by industry, in-depth information exchange between regulatory authorities and a Commission recommendation.

Although an EU Directive would be best placed to achieve the objectives it is not feasible at this stage to propose a legislative solution. This is mainly because of the lack of support for

this course of action, manifest in the responses to the public consultation, the position of the overall majority of the Member States and resolutions of the European Parliament. An in-depth information exchange between regulatory authorities must also be discarded. It would address common challenges and exchange of know-how but it may not sufficiently achieve the objectives. General information exchange can continue to be facilitated amongst gambling regulators in the context of the Commission expert group.

Industry self-regulation would mean relying on voluntary measures alone to address the problems. Under this approach implementation and compliance would be voluntary, even though some operators may be audited against self-set standards. Industry self-regulation can be complimentary to regulatory requirements. As Member States lack confidence in industry-led initiatives as a solution in themselves, self-regulation can only be complimentary to government regulation.

A Commission recommendation to Member States could provide a framework enabling them to work towards the policy objectives. It would encourage Member States to take action at national level while leaving them free to choose the means as they see fit. A review clause would allow for an assessment of the effectiveness of the measures proposed therein. A Commission recommendation appears the most acceptable instrument, as it accommodates the strong reservations of Member States and the European Parliament about a legislative solution while responding to their repeated calls for action to protect consumers from the risks associated with gambling and to protect minors.

6. The preferred option

Firstly, option 3 (electronic registration), option 4a (EU wide self-exclusion) and option 5 (real time monitoring) are not being considered further at this stage. These would have contributed significantly to the attainment of the objectives. In particular, in light of the subject matter of this impact assessment - online gambling - these options consider online solutions to the benefit of consumers, operators and regulators. However, they are discarded on basis of non-acceptability as indicated in the table above.

Secondly, further to the analysis carried out, options 2 and 4 are retained with a view to effectively addressing the individual problems. This combination of options is deemed the most feasible to address the specific and operational objectives.

In light of the problems identified and of the objectives, the recommendation would focus on consumers and players of online gambling services, seeking to improve transparency, player support and monitoring the behaviour of players, as well as education and awareness raising about gambling in general. It would also seek to prevent minors from gambling. It would focus on commercial communications in consideration of the broader outreach and health, including societal considerations, seeking to ensure that this takes place within socially responsible parameters regardless of the channels used.

7. Impact

From an **economic standpoint**, the changes will bring about marginal compliance costs for a majority of operators. At the same time the changes will provide for a more streamlined approach, which can help address their compliance concerns as regards the multijurisdictional licensing costs mainly. A basic set of common requirements will be introduced, which will have a stronger spillover effect on providers of commercial communications. From a **social perspective** the public will benefit from better protection, from the risks association with gambling, the exclusion of minors, better consumer protection and more stringent social responsibility obligations for online gambling operators. The **administrative impact** should be minimal. Member States may have to amend regulations and licence requirements, and regulatory authorities may have to adapt their organisation. A combined approach can help reduce the unnecessary administrative burden for regulators and operators alike. Implementation costs should range from inexpensive to moderately expensive, depending on whether, and to what extent, Member States follow the Commission Recommendation.

8. Monitoring and evaluation

The Commission plans to monitor progress periodically, in particular through the group of experts on gambling services.

In the short term focus will be focus on the extent to which the Member States have followed the recommendation. This could be discussed in two expert meetings, on the basis of indicators to be developed. In the medium to long term the Commission plans to track progress with Member States, by monitoring the number of people opening player accounts, the number of people failing to complete registration, the percentage of people seeking exclusion from gambling services, the percentage of minors estimated to have accessed gambling sites and types of breaches related to commercial communication. The Commission may also organise workshops to track improvements introduced by industry based on the recommendation, such as staff training, and contacts with treatment centres.

The Commission should carry out an evaluation after 24 months from the date of adoption of the recommendation.