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**COMMISSION STAFF WORKING DOCUMENT**

**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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## Executive Summary Sheet

Impact assessment on Commission Recommendation on principles for the protection of consumers and players of online gambling services and the prevention of minors from gambling online

### A. Need for action

#### Why? What is the problem being addressed?

In Europe online gambling services are widely offered, advertised, and used. With nearly 7 million EU consumers, annual revenue in 2012 was €10.54 bn. It is accessible wherever internet connection is available (computers, mobile phones and smart phones, tablets and digital TV). Whilst there are several EU established operators holding licences in one or more Member State, there is also a significant presence of unregulated gambling sites. In addition there is a lack of measures in the Member States for social responsibility regarding commercial practices, which also impacts on minors, and for the protection of online gambling consumers. At EU level there is no sector-specific 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. National rules and policies in this area are developing largely in isolation and the degree to which Member States address the identified issues varies from one Member State to another.

#### What is this initiative expected to achieve?

By means of a set of principles, this initiative is expected to contribute to the protection of consumers, and citizens in order to safeguard their health and to also minimise eventual economic harm resulting from compulsive or excessive gambling with a view to:

- ensure transparent and understandable information, dedicated support and monitoring of gambling behaviour
- reinforce that gambling commercial communications are to be socially responsible, and to ensure awareness of the inherent risks regarding health associated with gambling
- have more effective measures to ensure that minors are prevented from gambling and reduce as much as possible the exposure of minors to gambling
- keep users of online gambling within an EU regulated context

#### What is the value added of action at the EU level?

Individual EU countries are unable to provide citizens with effective protection owing to the very nature of the online environment and the cross-border dimension of online gambling. Existing EU secondary legislation is applicable only for some of the issues. Without EU intervention the probability is that the prevailing issues would not be adequately addressed. EU citizens will continue to be faced with diverse approaches and measures which, however, do not afford them sufficient or equal protection, whether within respective Member States or across the EU. As for operators, a large number of these are likely to continue to face a fragmented situation and some markets may be left without adequate regulation to protect consumers. Action at EU level should provide for a common level of protection across the Member States. Member States remain responsible for the method of implementation.

### B. Solutions

#### What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

An EU Directive would be best placed to achieve the objectives. At this stage a legislative solution is not feasible, mainly because of the lack of support by a majority of Member States and the EP. In-depth information exchange between regulatory authorities is discarded. It would address common challenges 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 was also considered. This would mean substantial reliance on voluntary measures alone. This is not to say that the existing self-initiatives cannot be helpful. These can complement regulatory requirements. From a political perspective, there is currently distrust from Member States regarding industry-led initiatives as a self-standing

solution. On the other hand a Recommendation addressed to the Member States can provide an enabling framework to achieve the objectives. It can set out principles commonly applicable in the Member States to protect users of online gambling services and to protect citizens more broadly including minors. Industry will be required to have measures in place and be monitored for compliance. A review clause would allow for an assessment of the effectiveness of the measures proposed therein. In terms of acceptability, a Commission recommendation responds to the repeated calls for action to protect citizens, minors and consumers as regards gambling, namely by Member States and by the EP, including their strong reservations on a legislative solution..

**Who supports which option?**

A policy option of soft-law EU intervention rather than legislation or industry self-initiatives alone is largely supported by the European Parliament, the Member States, the Economic and Social Committee and industry. Consumer associations have not been very vocal in the process (including the Green paper public consultation).

**C. Impacts of the preferred option**

**What are the benefits of the preferred option (if any, otherwise main ones)?**

For the benefits to be fully realised the recommendation should be followed by the Member States. To counter the non-binding nature, the implementation of the recommendation will be evaluated by the Commission. The recommendation will provide an enabling framework, and greater clarity, with the objective of ensuring a sufficient and even level of protection of citizens across the EU, improving the social responsibility of operators and improved supervision. Regulators and industry should benefit from greater clarity regarding oversight, which in turn is to the benefit of EU citizens

**What are the costs of the preferred option (if any, otherwise main ones)?**

From an economic standpoint, it will entail marginal compliance costs on a majority of operators but at the same time provides for a more streamlined approach, which can help address their compliance concerns as regards the multijurisdictional licensing mainly. It should have a positive impact on businesses because it provides a basic set of common requirements, and it will have stronger spill-over effect on providers of commercial communications. From a social perspective the combination of options should significantly improve the protection of citizens, consumers and minors, as well as enhancing consumer’s rights when playing online on the regulated sites. It will be effective in helping to improve the social responsibility obligations of operators, to the benefit of citizens. Administratively there should be minimal impacts. It may entail changes to regulations or licence requirements, and it may entail changes to gambling regulatory authorities. The combined approach can help reduce unnecessary administrative burdens both for regulators and for operators. Lack of consistent and comparable data across the Member States does not allow for a costing of impacts. There may be low- medium range expenses depending on whether the Member States follow the Commission Recommendation.

**How will businesses, SMEs and micro-enterprises be affected?**

Businesses, including small online gambling operators will not be negatively impacted, on the other hand the recommendation is intended to yield greater clarity and to reduce unnecessary administrative burden. It will have stronger spill-over effect on providers of commercial communications.

**Will there be significant impacts on national budgets and administrations?**

No significant impacts on national budgets and administrations are anticipated.

**Will there be other significant impacts?**

No other significant impacts are envisaged. Fundamental rights of individuals are respected, the competitiveness of industry in the EU will not be negatively impacted, nor should there be impacts of significance to the EU’s external competitiveness. It also does not impact significantly on simplification of legislation because the method of implementation of the recommendation is up to the Member States.

**D. Follow up**

**When will the policy be reviewed?**

The Recommendation foresees that an evaluation of the implementation could be carried out within [24 months] from the date of adoption by the Commission.

## Introduction

In Europe online gambling<sup>1</sup> services are widely offered, advertised, and used. The online gambling market<sup>2</sup> is a growing service sector, with annual revenues in 2012 amounting to €10.54 billion, in comparison to €6.16 billion in 2008.<sup>3</sup> The supply and demand of online gambling relates to the fast pace development of online technologies and to the increase of internet access of individuals (fast broadband connections, reduced costs).<sup>4</sup> The number of consumers<sup>5</sup> which represent the EU's online gambling market share is estimated to be around 6.84 million. Besides operators<sup>6</sup> regulated in the EU Member States there is a significant prevalence of gambling sites in Europe operating outside any form of EU control.<sup>7</sup>

In view of the growth of online gambling a majority of Member States has engaged in a review of their gambling legislation, in particular to take account of new forms of gambling services that are primarily taking place online, and mainly through the introduction of licensing systems but also the reorganisation of national exclusive right systems. Generally, Member States are seeking to direct people's interest to gamble into safe conduits and to limit potential societal harms. At the same time, the regulations differ significantly from one Member State to another. Similarly, when it comes to commercial communications there are variations in the national rules.

With national related measures alone, individual EU countries are unable to provide individuals with effective protection owing to the very nature of the online environment and, in many instances, the cross-border dimension of online gambling. In addition, the fragmented piecemeal regulatory approach across the EU is not yielding measures which are sufficiently effective as regards commercial communications which are socially responsible and the protection of users of online gambling, to safeguard health including protection against economic consequences that may result from excessive or compulsive gambling.

The Commission has drawn on the responses to the public consultation held in 2011 which **identified the protection of citizens, including minors, and consumers regarding online gambling as a priority area.**<sup>8</sup> Furthermore, since 2008 Member States, the European Parliament (EP), the European Economic and Social Committee (EESC) and industry stakeholders have repeatedly called on the Commission to engage in the protection of citizens

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<sup>1</sup> See Annex II for the definition

<sup>2</sup> H2 Gambling Capital (H2). See section 3.2 for further data

<sup>3</sup> H2

<sup>4</sup> The use of internet in the EU has increased to 73%: Eurostat 50/2012

<sup>5</sup> "Consumers" and "users", as used in this document is intended to refer to individuals above the permitted gambling age in the Member States who search for gambling opportunities. "Citizens" is intended to include all EU persons. "Players" is intended to refer to the individuals participating in online gambling. "Minors" as used in this document includes "children". In line with the UN Convention on the Rights of the Child a "child" means any person below 18 years of age. n

<sup>6</sup> "Operators" as used in this document refers to entities offering online gambling services, which can be both commercial and public operators

<sup>7</sup> "Unregulated" for the purpose of this document is intended to refer to gambling sites and offers operating outside any form of EU control. The availability in the EU of sites without a licence in one or more EU Member State is elaborated on in section 3.4; there are sites which do not hold a licence from a non-EU jurisdiction, or hold a licence but they are not subject to regulatory scrutiny. Some non-EU jurisdictions issue gambling licences and monitor their licensees but these are not established in the EU and do not hold a license in one or more EU Member State.

<sup>8</sup> Summary of responses: Green Paper on online gambling in the internal market

and consumers in the area of gambling.<sup>9</sup> In line with the action plan published in 2012<sup>10</sup> this initiative is a step towards the development of a transparent, safe and responsible European framework for online gambling for the benefit of citizens, businesses and ultimately also for gambling regulatory authorities. It is an approach that brings together the EU, Member States and industry to address the public policy issues.

In connection with the online focus of the above-mentioned consultation, the initiatives will focus on online gambling services that are offered by commercial operators and by State-owned or State-controlled operators. Nonetheless, a number of the principles therein are also pertinent to the offline environment because as with any form of gambling the risks include underage gambling, the loss of funds put into the game and addiction and the health-related consequences.

This document does not pre-judge the final form of any decision to be taken by the European Commission.

## **1. Procedural Issues and Consultation of Interested Parties**

### **1.1. Procedural issues**

An Inter-service Impact Assessment Steer Group, led by Directorate General Internal Market and Services, was set up in February 2013. The preparation of this impact assessment was carried out in cooperation with DG Health and Consumers, DG Education and Culture, DG Enterprise and Industry, DG Justice, DG Home Affairs, DG Communications Networks, Content and Technology, DG Competition, DG Communication, DG Employment and Social Affairs, the Secretariat-General and the Legal Service.

The group met on 20 February 2013, 25 October 2013 and 3 December 2013. Information was also exchanged outside of these meetings.

The draft impact assessment was submitted to the Impact Assessment Board on 17 December 2013. The Board, which met on 22 January 2014, gave a positive opinion and provided its recommendations for improvement, namely to improve the problem description, the added value of EU action, the policy options explored and the analysis of their impacts, the effectiveness of the retained options and the presentation of stakeholders' views.

### **1.2. Consultation and expertise**

The impact assessment draws on a range of sources. It builds on a broad consultation and meetings with a range of stakeholders and Member States since 2011. The protection of citizens in the context of the action plan has also been debated extensively in the EP and EESC, in formal committees and in organised public hearings/conferences in which the

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<sup>9</sup> Council Presidency Progress reports on the framework for gambling and betting in the EU Member States (2008-2011) and 3057<sup>th</sup> Competitiveness Council conclusions, EP: 2008/2215 (INI), 2011/2084(INI), 2012/2322(INI), EESC: 1581/2011-INT/579, 2514/2012-INT/671

<sup>10</sup> Towards a comprehensive European framework for online gambling, COM (2012) 596 final

Commission has participated. Member States and the European Parliament have expressed their political support for addressing the protection of citizens at EU level.<sup>11</sup>

### **1.2.1. Public consultation**

A public consultation on online gambling was held between March and July 2011.<sup>12</sup> It solicited close to 260 responses by Member States, commercial and state-owned or state-controlled online and offline gambling operators, gambling associations, intermediary services, treatment associations, beneficiaries of gambling services and sport entities.<sup>13</sup> The consultation encompassed detailed questions dedicated to issues concerning player support, protection of minors and advertising. As part of the consultation, a series of workshops with a range of stakeholders and with Member States' gambling regulatory authorities were also organised so as to have in-depth discussions on select issues with experts in the field.<sup>14</sup> The public consultation and the workshops below yielded minimal interest from individual consumers and consumer organisations. Feedback was received from entities and individual experts dedicated to treatment of problem gambling.

### **1.2.2. Workshops, expert group meetings: gambling regulatory authorities**

During 2012 three full day workshops were held with national gambling regulators. The objective was to focus the debate, building on the issues identified in the responses to the public consultation. A specific questionnaire was sent out to Member States addressing consumer protection measures and on commercial communications. The feedback was discussed during these meetings.

During 2013, a series of full-day meetings were held with Member States, in the context of the newly created group of experts on gambling services. During these meetings discussions focused in detail on challenges Member States face as regards protection of consumers playing online and of commercial communications through diverse channels. Discussions were used to test ideas with the experts.<sup>15</sup>

### **1.2.3. Workshops: industry**

Two full day workshops with industry were organised in 2013 which included commercial and state-owned or state-controlled online and offline operators, as well as intermediary service providers, on the basis of detailed questions to guide the debate sent to participants in advance. The in-depth discussions focused on the issues concerning the protection of consumers and citizens. These were discussed at length. Discussions were used to test ideas with stakeholder experts across EU jurisdictions.<sup>16</sup>

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<sup>11</sup> See footnote 9

<sup>12</sup> COM(2011)128 final

<sup>13</sup> The summary of responses was published with the action plan (see footnote 10)

<sup>14</sup> For the conclusions: [http://ec.europa.eu/internal\\_market/gambling/green-paper/index\\_en.htm](http://ec.europa.eu/internal_market/gambling/green-paper/index_en.htm)

<sup>15</sup> For the minutes: [http://ec.europa.eu/internal\\_market/gambling/expert-group/index\\_en.htm](http://ec.europa.eu/internal_market/gambling/expert-group/index_en.htm)

<sup>16</sup> For the minutes: [http://ec.europa.eu/internal\\_market/gambling/initiatives/index\\_en.htm](http://ec.europa.eu/internal_market/gambling/initiatives/index_en.htm)

Consultation with industry, in particular with the online gambling operators, shows that both commercial and state-owned or state-controlled operators, as an objective, seek to protect consumers of gambling services. A number of self-regulatory approaches by industry are in place.

#### **1.2.4. The consultation and debates**

The consultations and debates show broad convergence on the importance of protecting citizens across the EU and the measures that should be available across the EU for the adequate protection of citizens. As for the regulatory framework, Member States frame gambling services in different ways, to the extent that EU law affords them a margin of discretion: as a leisure activity, falling under the aegis of the Ministry responsible for the economy or for finance, or as an at-risk social/health activity, falling under the aegis of the Ministry responsible for the interior or for justice. However, there is convergence on the principles to be proposed so as to provide for a common denominator to protect citizens throughout the EU, leaving the choice of applying a higher level of protection and the method of implementation to the Member States. Results of the consultations and debates show that the vast majority of Member States and the European Parliament do not support a legislative instrument in the area of gambling, at this stage at least. At the same time, there is an almost unanimous call for policy action at EU level in order to ensure coherent and comparable solutions by Member States and for gambling operators, media and others to follow.

#### **1.2.5. Behavioural study<sup>17</sup>**

A study on behavioural responses carried out to test a set of consumer protection measures related to online gambling has been a source, in part, for this impact assessment. Behavioural considerations help to inform the regulatory process. The study tested the relative effectiveness of different measures and individuals' reactions. It was carried out to lend support to principles that could be proposed at EU level to adequately protect consumers of online gambling services. In particular, the study is pertinent to the problem drivers in subsections 4.3 and 4.4 below.

## **2. Policy Context**

### **2.1. Definition of the market**

Games of chance are games which involve a sum of money and are generally defined as a game the outcome of which is uncertain or predominantly dependent on coincidence or an unknown future rather than skill or influenced by the player. At national level legal definitions vary or do not exist.<sup>18</sup>

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<sup>17</sup> *Study on online gambling and adequate measures for the protection of consumers of gambling services:*  
[http://ec.europa.eu/internal\\_market/gambling](http://ec.europa.eu/internal_market/gambling)

<sup>18</sup> Please see Annex II for further information on the definition

In terms of **market development and transmission channels**, these include the computers, mobile phones and smart phones, tablets and digital TV.<sup>19</sup> Online gambling is accessible through the devices wherever internet connection is available. Gambling, depending on the nature of the game/bet, can be anonymous or involve interaction with other players, including social through chat functions and message boards for instance. **Upstream actors** also have an interest in, or are affected, by the provision or promotion of online gambling services, such as ISP (internet service providers) and suppliers of software (game) product providers. Other actors concern suppliers of data storage, gambling platform providers and payment service providers.

On-line service providers use **commercial communications** to promote their services, related products and image to final citizens and/or distributors. The following commercial communications are the most frequently used: TV advertising, printed press advertising, on-line commercial communications, sales promotions, direct marketing (which includes direct mail, primarily by e-mails and sms to registered customers, for example personal follow-up contacts), and sponsorship agreements.

## 2.2. Size of the market<sup>20</sup>

Economically and technologically online gambling is growing at a fast pace. This is facilitated by increased access to the internet and faster bandwidth internet connections. Online gambling in the EU represents around 45% of the global online gambling market. Globally the **online** market is around 15% of the whole gambling market. The global gambling market generated €96 billion (GGR) in 2012, around 29% of which represents the European market share. In the EU, **online** gambling services represents more than 12% of the gambling market share (ie €10.54 billion (GGR<sup>21</sup>) in 2012), in a market which is estimated to be €81.7 billion. The market size differs from one Member State to another (Figure 1 shows GGR per Member State, see Annex I for further data). The variations in the national levels of demand are due to diverse factors, including the size of the e-commerce market.<sup>22</sup>

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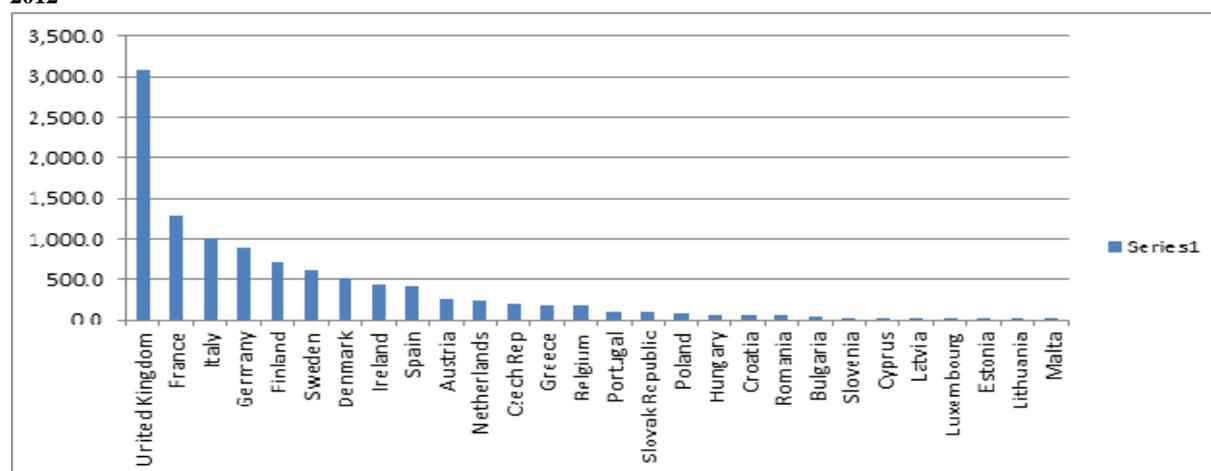
<sup>19</sup> Globally mobile betting, gaming and lottery is estimated to generate €9 billion gross win in 2018, accounting for 44% of total remote gambling gross win. In 2012 it was €4.5 billion, representing 18%.

<sup>20</sup> Source of market data: H2 (unless otherwise indicated)

<sup>21</sup> Gross Gaming Revenue: calculated as stakes less prizes but including bonuses

<sup>22</sup> COM(2011)128 final, page 8

**Figure 1: GGR online gambling per Member State, 2012**



Globally, the number of gambling sites that are regulated is around 3,000.<sup>23</sup> A number of these operators are established in the EU and hold licences in one or more Member State.<sup>24</sup> A significant number of gambling sites offering services in Europe operate outside any regulation within the EU.<sup>25</sup>

No comprehensive data exists for the overall **advertising** expenditure of the gambling sector in the EU. Data from individual Member States however suggests that the advertising and sponsoring expenditure of gambling operators is significant.

**Table 1: Advertising and sponsorship spend**

<p><b>Advertising</b></p> <p><b>UK:</b> In 2012 total marketing expenditure of the gambling sector was €248m.<sup>26</sup></p> <p><b>FR:</b> On-line gaming and betting operators spent €255m in marketing in 2012, €314m in 2011.<sup>27</sup> Radio advertising spend in the gambling sector was worth €90m in 2010.<sup>28</sup></p> <p><b>FI:</b> Advertising costs by the horse-racing operator in 2010 was €1.6m. The Finnish lottery spent €4.7m on product advertising in 2010.</p> <p><b>SE:</b> During 2012, the gaming industry increased its advertising spend by about SEK 503m to some SEK 2,1bn (€40m).<sup>29</sup></p> <p><b>IT:</b> Advertising expenditure for gambling services is estimated to be €78m in 2011.</p> <p><b>AT:</b> Industry estimates that gambling operators spent around €41m on advertising in the first 8 months of 2013</p> <p>The gambling advertising expenditure on the major media types (Television, Newspapers, Magazines, Outdoor, Radio, Cinema and Display internet) in 2012 (% total advertising market): <b>ES</b> 4.0, <b>UK</b> 2.2, <b>IE</b> 1.5, <b>BE</b> 1.5, <b>HR</b> 1.0, <b>NL</b> 0.8, <b>IT</b> 0.5, <b>DE</b> 0.4.<sup>30</sup></p> <p><b>Sponsorship</b></p> <p>The gambling sector has in recent years become a significant source of sponsorship in Europe:</p>
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<sup>23</sup> Casino City, 2011: [www.onlinecasinocity.com](http://www.onlinecasinocity.com). Note: different sites can belong to a single operator The American study *Online Gambling Five Years after UIGEA*, 2011, cites that these sites are owned by around 665 companies

<sup>24</sup> This is dependent on the licensing system in the Member States. Licenses may be required per gambling service in some Member States

<sup>25</sup> A study dating to 2006 estimated that around 85% of 14,823 gambling sites in Europe operated without any licence in any EU Member State. [www.lexsi.com/telecharger/gambling\\_cybercrime\\_2006.pdf](http://www.lexsi.com/telecharger/gambling_cybercrime_2006.pdf)

<sup>26</sup> Nielsen

<sup>27</sup> ARJEL

<sup>28</sup> Association Européenne des Radios

<sup>29</sup> Annual report Svenska Spel 2012

<sup>30</sup> Nielsen

- the number of gambling operators becoming leading shirt sponsors in the 5 biggest markets in Europe (DE, ES, FR, IT, UK) grew from 1 in 2002/3 to 26 in 2010/11<sup>31</sup>; in 2012/2013 all first division football clubs in Germany cooperate with a gambling operator<sup>32</sup>;
- Industry estimates that over €150m are spent on sponsorship investments by betting companies in the 5 biggest markets;
- gambling sponsors were ranked joint 7th of all business sectors for worldwide reported deals in 2011, with 73 gambling sponsorship deals reported in 2011 compared to 21 in 2007, 350% growth in five years<sup>33</sup>.

Data indicating the number of **consumers participating in online gambling** is scarce. It is estimated that there are close to 7 million users of online gambling services in the EU, compared to 4.32 million users in Asia and the Middle East. At a global level, the estimated national participation rate of gambling is up to 82%, and up to 6.5% of the adult population gamble online.<sup>34</sup> 73% of individuals in the EU use the internet and nearly 60% of 16-24 year olds use internet on the move, which is part of the convenience and accessibility of gambling.<sup>35</sup> Table 2 illustrates the market in some Member States.

**Table 2: Online gambling participation in the Member States (% adult population), and gambling spend**

<p><b>EE:</b> 123,000 (12%)<sup>36</sup></p> <p><b>DK:</b> 1.7 million player accounts (a player may have more than 1 account)<sup>37</sup></p> <p><b>FI:</b> 1.5 million (34%), with one operator<sup>38</sup></p> <p><b>FR:</b> 2.1 million (3.7%), 7.1% also through tablets<sup>39</sup></p> <p><b>IT:</b> over 5 million player accounts opened, over 2 million active player accounts<sup>40</sup></p> <p><b>NO:</b> 480,000<sup>41</sup></p> <p><b>NL:</b> 500,000(2-3%)<sup>42</sup></p> <p><b>ES:</b> 1.42 million player accounts (a player may have more than 1 account)<sup>43</sup></p> <p><b>UK:</b> 4.9 million (14%),<sup>44</sup> 372,000 use sports betting apps on their iPhones<sup>45</sup></p> <p><b>HU, EE, PT,DK:</b> More than 1.9% of internet users playing poker online in each of these countries. In DE it is around 0.9% of internet users<sup>46</sup></p> <p><b>Gambling Spend</b></p> <p><b>FI:</b> Total spend on gambling across the population (aged 15-74) per month is approximately €143 million - 2.2 % of net income (of respondents)<sup>47</sup></p> <p><b>FR:</b> Total deposits by players in 2012 was €988 million, and €435 withdrawn. On average €73 per month, per player account on average.<sup>48</sup></p> <p><b>IT:</b> €60 million player deposits, €714 million player withdrawals<sup>49</sup></p>
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<sup>31</sup> Sport + Markt 'Sport, Gambling & Sponsorship: The Financial Relationship' presentation, September 2010

<sup>32</sup> Goldmedia, SPONSORS

<sup>33</sup> The World Sponsorship Monitor, 2011

<sup>34</sup> *Recommendations for international gambling harm-minimisation guidelines: comparison with effective public health policy*, Journal of Gambling Studies, DOI 10.1007/310899-013-9389-2, and *Responsible gambling strategies for internet gambling : the theoretical and empirical base of using pop-up messages to encourage self-awareness*, Computers in Human Behaviour 25(2009)

<sup>35</sup> Eurostat, 50/2012: 76% of households have access to internet, though this share varies among Member States. Internet access penetration has increasing in the EU-27, from 50% of households with internet access in 2006 to 70% of households in 2011. Furthermore, broadband access which was about 30% in 2006 has reached about 65% in 2011.

<sup>36</sup> Gambling Prevalence in Estonia, 2012

<sup>37</sup> Danish Gambling Regulator, 2014

<sup>38</sup> Veikkaus, 2013

<sup>39</sup> Observatoire des jeux, June 2013

<sup>40</sup> Italian gambling regulatory authority, Q3 2013

<sup>41</sup> Norwegian Gaming Board, Lotteritilsynet, figures for 2013

<sup>42</sup> *The nature and scale of illegal gaming in the Netherlands*, Ministry of Justice, November 2009

<sup>43</sup> El Mercado de juego online en Espana, April-June 2013

<sup>44</sup> British Gambling Prevalence Survey, 2010

<sup>45</sup> *comScore*, December 2012, <http://www.theguardian.com/technology/appsblog/2013/jun/19/uk-iphone-gambling-apps>

<sup>46</sup> *Online poker in the EU*, Gambling law Review, July 2011

<sup>47</sup> 2011 survey of gambling in Finland commissioned by the Finnish Ministry of Social Affairs and Health

<sup>48</sup> <http://www.arjel.fr/IMG/pdf/bilan-2012.pdf>

<sup>49</sup> Italian gambling regulatory authority, 3<sup>rd</sup> quarter 2013

### 2.3. The regulatory framework

At EU level there is no sector-specific legislation regulating gambling services. However, gambling services are services in the meaning of Article 56 of the Treaty on the Functioning of the EU (TFEU) and subject to legislation which aims to protect consumers, namely the Unfair Commercial Practices Directive ('UCP Directive') and the Unfair Contract Terms Directive.<sup>50</sup> The Directive on Consumer Rights, which aims at striking the right balance between a high level of consumer protection and the competitiveness of enterprises does not apply to gambling services.<sup>51</sup> As regards commercial communications, the misleading and comparative advertising Directive is not concerned with business-to-consumers transactions.<sup>52</sup> Nonetheless, applicable EU secondary legislation is only pertinent for some of the problems. As for the UCP Directive, this concerns consumers' economic interests in relation to measures aiming to or resulting in the classification of a commercial practice as unfair, to the exclusion of other interests such as health and safety.<sup>53</sup>

At national level, requirements differ significantly among Member States as does the role and competence of gambling regulators in terms of competence and scope. Generally, Member States are regulating online gambling in order to channel people's interest to gamble and to limit potential social harms. Few Member States prohibit the offer of online gambling, for certain types of gambling. Monopolistic regimes have been established in some European jurisdictions. It may be unlawful to facilitate participation in foreign games of chance in a Member State, whilst in another it may be unlawful to deliberately participate in a game of chance offered by an operator not licensed by the national authority of the Member State where the participant resides. A growing number of Member States are establishing licensing systems requiring an operator of online gambling offering services on their territories to obtain a licence within the jurisdiction. Whether or not the operator holds a licence from one or more EU Member States may be but is not always taken into consideration.

Annex II provides an overview of the regulatory frameworks in the Member States for online gambling, as well as further information about relevant EU secondary legislation.

As regards **consumer protection rules**, the range and detail of the requirements placed on online gambling operators vary from one Member State to another. Where available, the rules are generally provided for in the gambling law, in subsidiary regulations or in administrative decrees, and they may also be laid out in the operator's licence requirements. Member States generally monitor operators for compliance in real time or quasi, or through reporting schemes. In some Member States these are complemented with codes of practice or service Charters (eg the UK, Italy). An underlying objective of consumer protection rules in the area of gambling activities in the Member States is typically to ensure that gambling remains a source of entertainment or leisure activity, that users of online gambling are adequately

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<sup>50</sup> Directive 2005/29/EC and Council Directive 93/13/EEC

<sup>51</sup> Directive 2011/83/EU

<sup>52</sup> Directive 2006/114/EC

<sup>53</sup> See Report about Directive 2005/29/EC: [http://ec.europa.eu/justice/consumer-marketing/files/ucpd\\_report\\_en.pdf](http://ec.europa.eu/justice/consumer-marketing/files/ucpd_report_en.pdf)

protected, including on the conditions they sign up to with an operator, and do not develop a type of gambling disorder<sup>54</sup>, and that minors are prevented from gambling online.

Similarly, **national rules for commercial communications** of online gambling services differ significantly. The regulatory approach ranges from prohibiting advertising of online gambling services (e.g. Latvia) to restricting the advertising of online gambling services to operators authorised in the Member State where the advertising is placed (e.g. Slovakia) to allowing advertising of online gambling services by those operators authorised in any EU Member State or even third countries (so called while-listed jurisdictions). Member States permitting the advertising of online gambling services often combine the application of general consumer protection and competition law provisions, such as on comparative publicity, misleading information and unsolicited direct communications, with specific online gambling provisions. These rules can be found either in the general gambling law, in specific gambling advertising acts, codes of conduct or guidelines, in the gambling operator's authorisation or in self-regulatory frameworks. Compliance with national advertising rules is often ensured by authorisation schemes and a set of supervision and enforcement measures. Authorisation schemes work either ex-ante – authorisation of advertising concepts or specific campaigns prior to the placing of the advertising or ex-post – detailed rules in conjunction with regular audits or on the basis of complaints. In many cases the responsibility for the ex-post monitoring of gambling advertising does not lie with the gambling regulator but with media regulators or consumer protection authorities. In general regulators do not engage in regular screening exercises but act upon complaints or notices.

Annexes III and IV provide an overview of the requirements regarding consumer protection and commercial communications across the Member States.

**Self-regulatory initiatives** have been developed. The European Committee for Standardisation (CEN) workshop agreement developed a set of control measures designed to ensure the adequate protection of customers and the responsible behaviour of gambling operators, software providers and associated service providers.<sup>55</sup> The CEN workshop agreement incorporates guidelines for responsible marketing. There are other industry initiatives such as Euromat's Statement on Responsible Gambling<sup>56</sup> and the European Lotteries' Gaming Standards and Certification Process.<sup>57</sup> International organisations such as the European Advertising Standards Alliance (EASA) or the International Chamber of Commerce (ICC) have drawn up best practice models and standards respectively for self-regulatory advertising with a view to protecting citizens. These concern advertising in general but principles that advertising should be honest are applicable to gambling-related advertising.

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<sup>54</sup> see footnote 96

<sup>55</sup> European Committee for Standardisation Workshop Agreement (known as 'CWA 16259: 2011')

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[http://www.euromat.org/uploads/documents/EUROMAT\\_brochure\\_1\\_web.pdf?PHPSESSID=03f4dc708a0295528176fe3095576d84](http://www.euromat.org/uploads/documents/EUROMAT_brochure_1_web.pdf?PHPSESSID=03f4dc708a0295528176fe3095576d84)

<sup>57</sup> <https://www.european-lotteries.org/european-gaming-standards>

There are also international self-regulatory initiatives such as the IAGR eGambling Guidelines drawn up by regulators.<sup>58</sup>

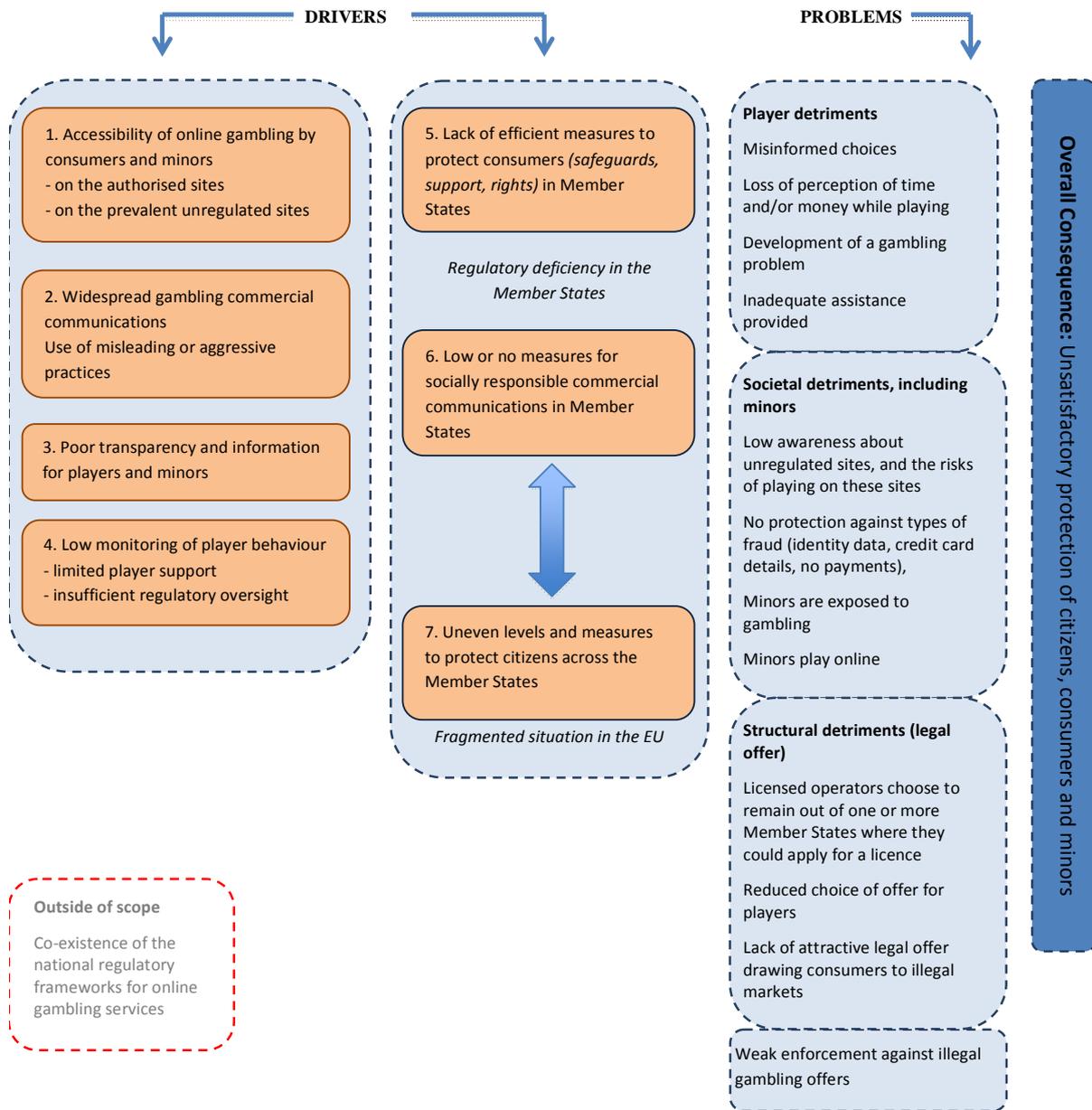
### **3. Identification and Definition of the problem**

In the area of online gambling services, the adequate and efficient protection of consumers and citizens, including minors is affected by four main problems determined by seven problem drivers. The problem drivers originate from the current market situation (problem drivers 1 and 2), the provision of the online gambling offer (problem drivers 3 and 4) and the regulation of the offer (problem drivers 5, 6 and 7). Figure 2 shows the problem drivers and the problems they lead to, as well as their consequences. This section first discusses the problem drivers and then presents the resulting problems and consequences.

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<sup>58</sup> <http://iagr.org/iagr-egambling-guidelines-september-2008/>

**Figure 2: Problem Tree**



### **3.1. Problem driver 1: Accessibility of online gambling by consumers and minors**

A major driver behind the identified problems is the accessibility of online gambling, which concerns not only consumers but also minors. This concerns both online gambling services which are regulated in Member States and those which are outside any form of EU control (unregulated).<sup>59</sup> First, online gambling services are broadly offered and used (see section 3.1.2). Furthermore, the growth of online gambling is also linked to the development of technologies (mobile phones and smart phones, tablets and digital TV), which are accessible wherever internet connection is available, and to the increase of internet access, and convenience of mobile applications, of individuals (fast broadband connections, reduced costs).<sup>60</sup> For instance in France 28% of poker players connect via mobile devices (7% via tablets) and 25% of sports bets are made via mobile devices (21% via smartphones, 4% via digital tablets), whilst a UK survey shows 3.4% of online gambling is via mobile and 0.9% via interactive/digital TV.<sup>61</sup> In Finland, gaming through digital channels increased by €10.6 million over a one year period.<sup>62</sup>

Second, in an online environment a cross-border unregulated offer is also accessible, regulated and unregulated operators are both only a mouse-click away. Available figures show that, significantly, there are up to 15,000 gambling sites prevalent in Europe operating outside EU control.<sup>63</sup> The public consultation responses did not provide other data in this regard. For instance, a study carried out ahead of the 2005 UK Gambling Act estimated over 2000 gambling websites were available, with approximately 0.9 million users in the UK alone.<sup>64</sup> Around 15% of operators on the European market are licensed in one or more Member State. Nonetheless, users of online gambling services because of a lack of supply, perceived unattractive offers or because they seek to maximise returns on stakes search for competing gambling opportunities.<sup>65</sup> Table 3 below provides an indication. A survey in Estonia found that players sought unlicensed environments because of looser registration rules, bonuses offered upon registration, bigger jackpots or chances of winning and larger number of players in poker rooms.<sup>66</sup> The risks that consumers can face when going on unregulated sites are technological, financial and social; because the consumer is outside an environment where the operator is supervised by gambling regulatory authorities and, for example, its gambling equipment has been tested and certified (by accredited bodies). Italy opened its online market, in a gradual manner widening the products offered, and it reduced the market share it considered illegal from 37% in 2010 to 22% in 2012. The Commission recognises the diverse risks and is also addressing these issues through other initiatives it is

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<sup>59</sup> See COM(2012)596 final: this does not imply that they are authorised in other recipient Member States

<sup>60</sup> The growth of such technologies and of types gambling services was reflected in a study commissioned by the Commission in 2006. See part II of the study: [http://ec.europa.eu/internal\\_market/gambling/docs/study4\\_en.pdf](http://ec.europa.eu/internal_market/gambling/docs/study4_en.pdf)

<sup>61</sup> FR: ARJEL, 2<sup>nd</sup> Quarter 2013, UK: Gambling Commission survey data on gambling participation, January 2012.

According to Eurobarometer 1 in 3 EU citizens has access to the internet through their mobile phones, Special Report 381

<sup>62</sup> One operator reports annual revenues of more than €60 million from digital channels: <http://www2.ray.fi/ray/current>

<sup>63</sup> Response to the Green Paper public consultation by the World Lottery Association: studies from various jurisdictions worldwide indicate it is not possible to definitively establish the size of the illegal market. CERT-LEXSI (footnote 9), cites 14,826 sites. *Incidences des site illegaux sur le marche francais des jeux en lignes*, F. Merlin, cites 10,000-15,000 sites

<sup>64</sup> *Scoping study for UK Gambling Act, 2005 Impact Assessment Framework*, June 2007

<sup>65</sup> There are websites providing a comparison of operators' payouts, promotions and customer service

<sup>66</sup> Centre for Gambling Addiction, 2012

working on with Member States in this area, for instance on better administrative cooperation between national gambling authorities.

**Table 3: Availability of online gambling<sup>67</sup>**

<p><b>DE:</b> 10% of online poker players worldwide are from Germany, where this is banned<sup>68</sup></p> <p><b>FI:</b> The size of the market considered illegal is estimated to be around €100-150million 21% respondents of a survey participated in online gambling in 2011, 16% visited international sites<sup>69</sup></p> <p><b>FR:</b> The market deemed to be illegal in France is estimated to be around 57% of the French online market.<sup>70</sup> 11% of players play on international sites, 25.5% play on French (.fr) and international sites<sup>71</sup></p> <p><b>IT:</b> The GGR of non-Italian (.com) online casinos in 2011 was estimated to be €232 million, whilst 10% of online poker sites and 45% sports betting sites in Italy are deemed to be international sites<sup>72</sup></p> <p><b>NO:</b> 12% of the adult population play online, an increase of 89,000 from 2012, 16% of the people surveyed played only on non-Norwegian sites,<sup>73</sup></p>
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The risk of identity theft online was highlighted by several types of stakeholders in their responses to the public consultation. The Bank of Italy has found that reports of fraudulent activity in the Italian gambling sector have increased, and that in the online segment identity theft remains present (mainly through credit cards).<sup>74</sup> The majority of transactions as regards customer accounts are deemed to be effected via credit cards (around 64-65%), followed by e-wallets, bank transfers and pre-paid cards.<sup>75</sup> The Commission has recognised this risk as part of a growing challenge of cybercriminality and online provision of services in general and is addressing the issues in the context of its policy on cybercriminality.<sup>76</sup>

As for **minors** 18 is the age below which online gambling is not permitted in the majority of Member States, though the situation can differ from one gambling service to another. 75% of under-17 year olds have access to the internet in the EU<sup>77</sup>, and research shows that adolescents in particular are attracted to the internet because of their developmental characteristics.<sup>78</sup> 92% of 14-17 year olds are members of at least one social networking site<sup>79</sup>. And online gambling is accessible to minors. A study shows that 5.9% of 14-17 year olds gamble online in the EU.<sup>80</sup> One in twelve of 12-15 year olds have played a lottery game on the internet over a year.<sup>81</sup>

### **3.2. Problem driver 2: Widespread gambling advertising and marketing**

<sup>67</sup> Data available to the Commission for the Member States is not limited to sites which are outside any form of EU control

<sup>68</sup> Gambling Law Review and Economics, Volume 16 Number 12, 2012

<sup>69</sup> *The Gambling Market in Finland*, 2012, Centre for collaborative research, Turku school of economics

<sup>70</sup> *Jeux en ligne in the French market, Key features, strengths and weaknesses of the French legal gambling offer*, MAG study, February 2011

<sup>71</sup> Observatoire des Jeux, June 2013

<sup>72</sup> *Casinos and slots online in Italy 2011/2012*. % for online poker and sports betting are based on estimates of the national gambling regulator

<sup>73</sup> Norwegian Gaming Board, *Lotteritilsynet*

<sup>74</sup> [www.bancaditalita.it/homepage/notizie/uif/Rapporti\\_UIF\\_annot\\_2012.pdf](http://www.bancaditalita.it/homepage/notizie/uif/Rapporti_UIF_annot_2012.pdf)

<sup>75</sup> Response to Green Paper consultation by an operator.

<sup>76</sup> COM(2012)140 final

<sup>77</sup> COM(2012) 196 final

<sup>78</sup> *Research on Internet Addictive Behaviours among European Adolescents*, funded under Safer Internet plus

<sup>79</sup> idem

<sup>80</sup> 10.36% gambled in an offline environment. idem

<sup>81</sup> *Adolescent gambling on the internet, a review* (2010), using a sample of 8,017 school children. Griffiths & Wood (2007)

The wide spread of gambling commercial practices<sup>82</sup> and the aggressive or misleading manner in which this is repeatedly done drives the problem of lack of social responsibility in this area, resulting in consumers making misinformed choices and minors being attracted to gambling.<sup>83</sup> A wide range of media contribute to gambling commercial communication exposure, including cross-border. These include print media (both display advertising and classified adverts), direct mail, audio-visual media such as radio, television and cinemas, as well as online media, outdoor advertising and sponsoring. In one week during the 2010 football World Cup a survey in the UK counted 471 ads in printed press, 276 internet banner ads, 17 TV and 6 radio ads and 20 direct mailings; 796 ads in total.<sup>84</sup> Table 4 provides a comparative overview for a number of European countries. Gambling operators – commercial and state-owned - spend significant amounts of money for commercial communication purposes, primarily for advertising services on television, printed press and through the internet. Operators use direct mail, banner ads and pop-ups to promote themselves and to recruit new players.<sup>85</sup> Gambling services are finally commonly advertised through other far reaching means such as shirt sponsoring and perimeter advertising in sports arenas.

**Table 4: Spread of gambling commercial practices** (% total advertising activity in category “lottery and gambling”)<sup>86</sup>

	BE	CH	DE	ES	HR	IE	IT	NL	NO	UK
<b>Cinema</b>	1.1	0.1	0.2	1.5	NA	2.0	1.6	0.8	0.6	0.6
<b>Internet</b>	18.9	4.8	9.6	46.6	0.3	NA	18.5	14.3	NA	13.4
<b>Magazines</b>	1.2	2.6	22.5	0.1	0.6	0.3	1.9	3.1	1.1	1.6
<b>Newspapers</b>	4.8	25.9	15.5	6.6	7.3	44.7	34.5	12.4	7.4	22.2
<b>Outdoor</b>	1.9	23.0	12.2	1.4	1.6	2.8	1.4	5.3	3.4	2.1
<b>Radio</b>	23.6	14.1	27.3	25.9	1.0	13.5	0.4	10.6	9.6	3.5
<b>Television</b>	48.4	29.5	12.7	18.0	89.3	36.7	41.8	53.3	77.9	56.6

Minors are frequently exposed to gambling commercial communication as they use media that display gambling advertising, watch or attend sports competitions with gambling sponsoring or advertising.

**Table 5: Minors’ exposure to gambling commercial practices**

<b>UK:</b> 9% of the ads on websites favoured by children are for online gambling and 4% for dating services (Fielder <i>et al.</i> , 2007, p. 11). <sup>87</sup>
<b>NO:</b> A majority of adolescents reported having seen advertising for gambling in the past. <sup>88</sup>

While commercial practices should ensure that citizens and players are sufficiently informed on the choices there are repeatedly instances where gambling advertising was found to be misleading or aggressive, deceiving the consumer in its behaviour or impairing the

<sup>82</sup> "Business-to-consumer commercial practices" (hereinafter also referred to as commercial practices) means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers.

<sup>83</sup> These concerns were highlighted in discussions with Member States and with industry. See footnotes 15 and 16 for the minutes of the meetings.

<sup>84</sup> *Compliance Report - Gambling Advertising Survey 2010*, ASA.

<sup>85</sup> *Internet Gambling: Strategies to Recruit and Retain Gamblers*, Wiebe, Ontario Problem Gambling Research Centre, 2008.

<sup>86</sup> Nielsen, 2012

<sup>87</sup> British National Consumer Council (now Consumer Focus) and Childnet International

<sup>88</sup> NOVA 2010, report nr. 18/10, page 211.

consumer's choice. It raises concerns in terms of timing, location, nature or persistence. Gambling is also portrayed as a solution to financial concerns or linked to personal success or enhanced attractiveness. Adverts were also found to lead to social harm and to exploit inexperience or lack of knowledge. For example advertisements were found irresponsible or misleading when they

- offered a solution to redundancy, debt or financing of children's education (UK);
- promised free games without revealing in a clear manner that withdrawing winnings would be subject to a wager of a disproportionate high amount (UK).

In France revision of commercial communication requirements have been proposed because it is considered that social responsibility in commercial communications needs to be improved, both as regards the messages contained therein as well as regards limitations inter alia on television and internet. The proposed improvements are aimed at preventing problem gambling.<sup>89</sup>

**Table 6: Misleading or aggressive commercial practices**

<p><b>UK:</b> In 2012 873 complaints were made to the Advertising Standards Authority; 37 adverts responsible for more than 600 complaints in 2012.<sup>90</sup></p> <p><b>Europe:</b> In 2012, advertising self-regulatory organisations received 2,005 complaints about advertisements for gambling and lotteries (4.08% of the total amount of complaints received on products and services). The majority of these complaints related to taste and decency issues (52.13%). A further 18.44% concerned allegedly misleading advertising while 11.40% concerned social irresponsible ads.<sup>91</sup></p>
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### **3.3. Problem Driver 3: Poor transparency and information for players and minors**

The problem of consumers making misinformed choices is driven in part by the lack of clear upfront **customer-friendly information** and by information that, despite the provisions of the Unfair Contract Term Directive, is often buried under lengthy or legalistic text on the gambling website. This poor transparency can concern a plethora of information, for instance: how to gamble responsibly, how to access help or counselling, game-specific information, operator financial limits or timeframes regarding payouts of winnings, collection and further processing of personal data, protection of player funds against insolvency, and sign-up bonus policies, as well as where to direct queries and complaints. Improvements to the requirements as to the content, and accessibility, of information on the operator's website about responsible gambling are considered necessary in France.<sup>92</sup> In a number of Member States there is no obligation on operators to provide warning signs or helplines (e.g. Bulgaria, Germany), whilst in others such information may be required but it could be anywhere on the website (e.g. Estonia Slovakia, Slovenia) which can hinder its immediate accessibility by consumers. If information is not transparent or clear consumers may not be able to properly assess sites, or to seek assistance. Solely by way of comparison, four out of five online consumers in the EU

<sup>89</sup> *Lutter contre le jeu excessif ou pathologique*, ARJEL

<sup>90</sup> *UK Gambling Ad Complaints Rocket – But Not Always Because of Gambling*, GamblingCompliance, 28 Feb 2013.

<sup>91</sup> European Advertising Standards Alliance 2012

<sup>92</sup> See footnote 88

used a (price) comparison website in 2010.<sup>93</sup> In France around 16% of players think the player funds are not guaranteed.<sup>94</sup> This is a sub-optimal level of consumer protection because individuals will be unable to make choices based on informed decisions. In the workshops mentioned earlier expert representatives of treatment centres stressed the importance of clearly available helpline numbers, for those players feeling the need for immediate assistance. A typical casino player visits over six casinos over a short time span,<sup>95</sup> and should also be empowered with clear information. Table 7 below provides examples of information awareness in some Member States.

Several operators, as well as a number of Member States, responded in the public consultation, that in a borderless online environment information should be accessible and understandable in different EU jurisdictions so that the average consumer may be able to compare – where this is possible under the applicable law – the offer of online gambling services whilst in another Member State with that of his/her home jurisdiction. The customer registration process is relevant in this respect (see below problem driver 7). In the context of the workshops operators explained that they assume (self)responsibility to implement policies and procedures aimed at protecting players. It follows that this may be either to protect players in a responsible manner or to keep players on their site. Invariably there is a responsibility on national authorities regulating gambling and licensing operators to monitor gambling activities.

The behavioural study carried out on behalf of the Commission found that the information provided to the consumer on the landing page (or home page) of a gambling website serves to inform the consumer for instance about the potential risks associated with gambling, about the operator and the regulating authority. It found that such measures do not directly serve the purpose of safeguarding the player against the possible development of a gambling disorder (see problem driver 4 below).

**Table 7: Consumer awareness in Member States**

<p><b>EE:</b> 67% of players did not notice information on the sites on responsible gambling, and 75% did not notice options for counselling for prevention of gambling addiction. 46% of problem gamblers noticed information on responsible gambling and 32% on the counselling information<sup>96</sup></p> <p><b>FR:</b> 24.9% of players are not aware about French sites<sup>97</sup></p> <p><b>UK:</b> 92% of 100 sites of popular operators in the UK were found not to provide a knowledge base to enable users to easily search and access information online. The questions looked at timing responsiveness, channels available, accurateness of responses and personalisation<sup>98</sup></p>
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As for **player funds**, information about how funds are protected may not be readily available on the site or there may be no such obligations (e.g. Greece, Hungary, UK). Only a few

<sup>93</sup> Staff working paper SEC(2011) 1640 final 'Bringing e-commerce benefits to consumers'

<sup>94</sup> Observatoire des jeux, June 2013

<sup>95</sup> Response to the public consultation quoted study sample of 10,000 internet casino and poker players which found that the typical player visited over six internet casinos in the preceding three months. J. Parke, Salford University

<sup>96</sup> Centre for Gambling Addiction, 2012

<sup>97</sup> Observatoire des Jeux, June 2013

<sup>98</sup> Independent audit, 2006 – 2008. At the same time it found that the sites audited increased their average score from 54% in 2006 to 61% in 2007, outperforming other UK market sectors including online retailers (51%) and broadband providers (54%). <http://www.moxiesoft.com/press/gambling-websites-on-roll-with-customer-service>

Member States require a segregation of player funds from those of the operator's company finances and the paying of winnings into the same deposit account (see Annex III).

The general lack of awareness and education initiatives in order to provide **minors** with a realistic view about gambling, including parental responsibility about filtering software possibilities, is driving the problem of minors gambling online. In Romania, Lithuania and Portugal approximately six out of ten homes do not have filtering or monitoring software on the home computer, whilst in Bulgaria, Slovakia, the Czech Republic and Malta more than a fifth of parents do not know if such software was installed on the home computer.<sup>99</sup> In comparison, in the UK, *BigDeal.org.uk* is designed to educate young people about gambling and how to get help<sup>100</sup>, whilst in Italy an education and awareness raising project in schools has been launched, targeting adolescents.<sup>101</sup> Furthermore, an OECD report identified the misuse of parents' credit cards or other payment methods by children.<sup>102</sup> Credit cards as stated earlier are one of the most used payment method<sup>103</sup>,. Not all online payment possibilities may have inbuilt identification possibilities. Typically operators require deposits into player accounts before playing and any winnings to be transferred into the same payment method from which the stake was made, although as regards some payment methods this may not be permitted. Having said this, payment means used in online services are subject to EU legislation, and are not subject of this impact assessment.<sup>104</sup>

Annex III provides more information about the requirements in the Member States.

#### **3.4. Problem driver 4: Low monitoring of player behaviour**

The loss of perception of time and/or money while playing and the inadequate assistance provided – which might then lead to the development of a gambling problem - is driven in part by limited player monitoring and support. Several of the public consultation responses (Member States, industry, treatment experts) indicated that the efficacy of support measures is more pronounced where several measures are in place, and where self-check possibilities are constantly available. In this respect some systems use risk-assessment mechanisms to assess player behaviour and test the risk level of gambling products.<sup>105</sup>

As regards **player support**, broadly, users of gambling services fall into these categories: social, regular, problem gambler<sup>106</sup>, gambling disorder<sup>107</sup>. Whilst the preventive measures that

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<sup>99</sup> *Towards a safer use of the Internet for children in the EU – a parents' perspective*, 2008

<sup>100</sup> It is the brand name for the GamCare youth services campaign. It links to the GamCare, as site use by many gambling operators site, for immediate access to the services, including the Freephone helpline

<sup>101</sup> "*Gioco online: rischi e pericoli*", launched in 2012

<sup>102</sup> *The protection of children online: risks faced by children online and policies to protect them*, OECD Digital Economy Papers No 179

<sup>103</sup> COM(2011) 128 final, page 17

<sup>104</sup> Directive 2007/64/EC

<sup>105</sup> For example: [www.gamcard.com](http://www.gamcard.com), [www.forschung-gluecksspiel.de/pdf/AsTERiG.pdf](http://www.forschung-gluecksspiel.de/pdf/AsTERiG.pdf), [www.playscn.com](http://www.playscn.com)

<sup>106</sup> A frequently used generic term. It covers early signs of gambling-related problems. Definitions on problem gambling vary.

<sup>107</sup> The International Statistical Classification of Diseases and Related Health Problems (ICD), which classifies diseases and medical conditions and is published by the World Health Organisation (WHO). It lists pathological gambling as a mental and behavioural disorder, consisting of frequent, repeated episodes of gambling that dominate the patient's life to the detriment of social, occupational, material, and family values and commitments. The Diagnostic and Statistical Manual of Mental

a social/regular gambler (the overall majority of players), and a problem gambler require will differ, insufficient measures can affect every type of gambler. Measures like ‘forcing’ a temporary break during play, for example through in-built periodic alerts on responsible gambling or play duration can capture any players’ attention/time disorientation but are not systematically provided. Systems may not be effective on the ground in monitoring fluctuating patterns in player behaviour, and therefore they may also not be effective in detecting changes, and to prevent the development and perpetuation of problem gambling.<sup>108</sup> Further, risk management systems may disproportionately focus on the high value customers but not adequately on others. Social or regular gamblers can still be prone to occasionally gamble more time or money than intended, without this leading to the problem development. Furthermore, there is a fragmented approach when it comes to player requests for upward revisions of their financial limits. The increased limit can be enabled from twenty-four hours, as is the case in Denmark and in the case of the CEN workshop agreement<sup>109</sup> after the request by the player is made or after seven days as the case of Italy. In Spain the player cannot change the limits set within a three month period.

The results of the behavioural study carried out by the Commission showed that the support to players during gambling is of particular relevance in keeping gambling in check and within recreational parameters. One of the measures tested was the pop-alerts about gambling wins and losses and time spent gambling. In the context of the 2011 public consultation, it was pointed out that, whilst it is difficult to detect and approach in early stages of problem development, online gambling provides good opportunities for close monitoring of individual gambling behaviour and early detection of problem development.<sup>110</sup> In a more recent workshop an expert pointed out that the onus to monitor player activity should be on the operator and that measures provided should be user-friendly.<sup>111</sup>

At-risk players can be detected through their verbal and written communication with the operator<sup>112</sup> because consumer correspondence is considered a powerful indicator.<sup>113</sup> Yet, if not appropriately trained, staff are unable to deal adequately with problematic situations, in particular where direct interaction with the player is necessary. Players who show high problem behaviour are more prone to developing a type of gambling disorder and may be more vulnerable<sup>114</sup> The measures have to be adequate in order to serve the intended purpose, for example of a player deciding to take a short or long break from gambling, or indefinitely. Adolescents and students are considered to be particularly vulnerable and

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Disorders (DSM) has reclassified the disorder in the updated DSM-5, under the heading addiction and Related Disorders, renaming it ‘Gambling Disorder’. It identifies nine diagnostic criteria. Persistent and recurrent problematic gambling behaviour is indicated by four or more of these in a twelve-month period. [www.dsm5.org](http://www.dsm5.org).

<sup>108</sup> *Internet self-exclusion: characteristics of self-excluded gamblers and preliminary evidence for its effectiveness*, Hayer, T and Meyer G, International Journal of Mental Health Addiction (2011)

<sup>109</sup> See footnote 54

<sup>110</sup> [http://ec.europa.eu/internal\\_market/gambling/docs/workshops/workshop-ii-conclusions\\_en.pdf](http://ec.europa.eu/internal_market/gambling/docs/workshops/workshop-ii-conclusions_en.pdf)

<sup>111</sup> See footnote 16

<sup>112</sup> For example: requests to lower limits or to be excluded from a product being immediately followed by a request to reverse the limit or product exclusion request, or ‘spamming’ identical requests in frequent succession

<sup>113</sup> *Early detection items and responsible gambling features*, Lucerne University 2010

<sup>114</sup> *Problem and Pathological Gambling*, Whelan, Steenbergh, and Meyers; Harvard University and BWIN research study

potentially prone to develop problem gambling.<sup>115</sup> A recent survey in Estonia found that people in the 20-29 age bracket gamble the most.<sup>116</sup> One organisation stated that it took a total of 54,154 calls during 2011-2012: 2% in the 17-18 age bracket, 31% in the 19-25% age bracket and 33% in the 26-35 age bracket.<sup>117</sup> Recommendations for changes to the regulations have been made in France to incorporate an obligation for operators to train their staff, in particular as regards risks of excessive or pathological gambling.

Annex III provides more information about the requirements in the Member States.

### **3.5. Problem drivers 5 and 6: Deficiency of regulatory measures for protecting consumers and for responsible commercial communications**

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. These concern rules in the individual Member States. An overview of national requirements shows the diverse regulatory frameworks. However, individual Member States are unable to provide citizens with effective protection owing to the very nature of the online environment and its cross-border dimension.<sup>118</sup> The public consultation identified this problem. Furthermore, online gambling regulation is recent in some Member States, which is an indicator of the lack of regulatory and the ensuing necessary technical know-how in certain instances.

The range and detail of national rules regarding **consumer protection** vary from one Member State to another, with some rules being more prescriptive than others (eg residency requirements to open a player account in Italy and France; ‘no credit’ requirement in Malta, Italy; warning signs and help lines on sites required by the UK). Other requirements include temporal and/or financial limit setting and player exclusion possibilities. Limit setting ranges from being prescribed (eg Finland), requiring the operator to provide limit setting at registration (eg Denmark, Spain), ceilings on amounts a player can keep in an account (eg Belgium, France), and requiring the player to have the possibility to set the limits (eg Estonia). Others do not require limit setting (e.g. Croatia, Slovakia, Slovenia). Few national systems clearly require reality checks such as counters to be displayed to the player to show losses and winnings, and requiring the player to acknowledge the message. As for transparency and information, rules are missing in a number of Member States. The Commission notes that whilst regulated gambling sites generally portray a “responsible gambling” sign national rules for these are lacking namely about the message and information behind this (e.g. Bulgaria, Czech Republic, Slovakia), whilst in other cases the information is be produced in cooperation with a treatment centre (e.g. Denmark). The 2012 Consumer Market Scoreboard ranked gambling at 6.9 regarding consumer trust of suppliers/retailers to

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<sup>115</sup> *Moving in the right direction*, GamGare review and plan 2012-2015

<sup>116</sup> Centre for Gambling Addiction, 2012

<sup>117</sup> *Idem*. These may also concern offline players

<sup>118</sup> For example North Americans were estimated to spend over US\$5 billion on internet gambling in 2011, where internet gambling is prohibited. Computers in Human Behaviour 28,2012

respect the rules and regulations.<sup>119</sup> It reflects the need to have clearer rules and to monitor their compliance.

Different solutions are used when it comes to customer identification and verification requirements to open an account with an operator. For instance, verification of identification is not laid out in Austria, Bulgaria, the Czech Republic, Germany, Estonia, Greece or Romania. The efficacy of age limits and of preventing underage gambling depends largely on the effectiveness of verification processes. Some studies<sup>120</sup> as well as Member States' responses to the public consultation suggest that 'fail-safe' age verification processes are lacking. The situation varies across the EU, and often the verification procedures to meet the legal obligation to identify the age are lacking. The challenges for different age verification solutions were discussed in a Commission workshop organised in 2012.<sup>121</sup> Whilst operators may display a 'no underage gambling' kite mark, there are few, if any, other clear provisions, such as accompanying messages, or links messages, on steps taken to prevent access of underage gambling.

As regards self-exclusion possibilities, there are shortfalls in national rules with only a few Member States having some form of central registers whereby a player excluded from one site is excluded from all other sites (e.g. Belgium, Denmark, France, Spain). Although these are times only updated monthly, or do not concern all types of gambling provided. Users of online gambling typically gamble on more than one site. Figures in France show the prevailing risk, with up to 5% of excluded players having tried to open an account. In Denmark the central registry has 2000 self-excluded persons, 65% of these chose permanent exclusion.<sup>122</sup> Estonia also operates a central registry, which has 3000 persons, but it does not apply to all online gambling services. Effective exclusion across the Member States is absent where it does not cover both online and offline, and function in real time. It is also noteworthy that a player may decide to exclude because he/she is not satisfied with the operator, but they are not necessarily screened from those with gambling problems. For example in France and in Italy, operators are required to differentiate between the closure of a player account and self-exclusion by the player.

National rules regarding **commercial communications** also differ from one Member State to another, and where not prohibited, these can restrict the advertising of online gambling services to operators authorised in the Member State where the advertising is placed (e.g. Belgium, Cyprus, Denmark) or allow advertising of online gambling services by those operators authorised in any EU Member State or even third countries (so called while-listed jurisdictions) (e.g. UK). In a number of instances provisions in the law are general ones (e.g. Bulgaria, Cyprus, Estonia, Greece, Poland). These national commercial advertising rules should ensure that gambling advertising is not aimed at children and young people and that no impression is given to the outside world that participation in games of chance will solve

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<sup>119</sup> The ranking scale is 0-10. The survey concerns all gambling services. From 2013 online gambling services are surveyed separate to offline gambling services.

<sup>120</sup> *Internet Gambling: Preliminary results of the first UK prevalence study*, M. Griffiths

<sup>121</sup> Age verification in the digital age, summary report of the workshop, Brussels, November 2012

<sup>122</sup> <http://cms.skat.dk/getFile.aspx?Id=108005>

financial problems of citizens. They can contain (1) quantitative restrictions such as limiting TV advertising for gambling to hours outside "protected times", limiting the number of advertising statements by gambling licence holders, banning advertising in printed press, limiting advertising only to the website used for provision of online bets, and (2) qualitative limitations like aggressive sales promotions, no endorsement by well-known personalities that suggest that gambling contributed to their success, no implication that gambling promotes or is required to gain social acceptance. For instance, in Germany there are restrictions regarding gambling commercial communications on TV, and in Denmark authorised operators are permitted a limited level of advertising. In Belgium, authorised operators are to inform the regulator about their advertisement policy.

Finally, insufficient **regulatory oversight** can give rise to industry vulnerabilities. It is often not clear how the implementation of social responsibility controls, risk management controls and regulatory oversight by operators is ensured. In the UK, a review by the gambling regulator found licensees to have significant shortcomings in player risk controls and problem gambling audit systems, and also identified lack of regulatory oversight in compliance with the licence conditions.<sup>123</sup> There are diverse approaches at Member State level for the reporting and monitoring of operators by the gambling regulators. In some Member States this is done through direct access to operators' systems with real time, or almost, live access (e.g. France, Italy). However, in most of the Member States this is done through reporting obligations, with format and frequency requirements varying greatly between the Member States. In the absence of adequate regulatory oversight both operators and regulators may fail to take action, which impacts on consumers.

### **3.6. Problem driver 7: Across the Member States there are uneven levels and measures for protecting consumers and for responsible commercial communications**

Another issue driving the identified problems is the patchwork of approaches in the EU, with regulatory and technical deficits as regards the implementation of appropriate measures.<sup>124</sup> This is because national rules and policies in this area, aimed at protecting consumers and at commercial communications that are responsible, are developing largely in isolation and the degree to which Member States address the identified issues varies from one Member State to another, as seen in Annex III and IV.<sup>125</sup> The gambling sector is not covered by sector-specific legislation, and only some of the issues are covered by applicable EU legislation as seen in section 3.3 above. Given this, there are loopholes when it comes to the protection of consumers and citizens in the EU. At the same time as explained earlier online gambling is

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<sup>123</sup> <http://www.gamblingcommission.gov.uk/gh-media.aspx>

<sup>124</sup> "... the World Health Organisation (WHO) has published guidelines on alcohol and tobacco policy [...], **no corresponding standards have been developed to guide regulators in establishing evidence-based gambling policies or enabling consistency between international jurisdictions**", Journal of Gambling Studies, DOI 10.1007/310899-013-9389-2

<sup>125</sup> According to the Italian authorities, in the response to the public consultation "there is an ongoing duplication of efforts [...], especially in a sector marked by very limited international cooperation. [...] each Member States makes its regulatory choices regardless of the practices adopted by the other Member States, thus failing to benefit from their experiences and learn from their mistakes. This aspect is especially important in view of the complex technology and constant evolution of the gambling industry."

widely accessible, and market indicators show an ongoing economic growth (see Annex I for the year-on-year growth to date).

A related issue is that as yet there is no common understanding in the EU of ‘player protection’. Across a number of Member States the range of measures intended to prevent and to detect problem gambling can include: age limits, self-limitation, self-tests, self-exclusion, banning use of credit and reality checks. However, as seen in Annex III, as well as from the summary of responses to the public consultation, there is a marked variation in the level and modalities of these measures between Member States’ regulations.

The relevance of this issue is highlighted by the increasing use of **international liquidity**. In some Member States regulations allow for international liquidity whereby players located in different jurisdictions are pooled in for a specific game or event. Sharing is mainly done because a market is too small to satisfy consumer demand and enables a wider range of markets, better odds for customers and more (poker) tournaments.<sup>126</sup> A current example where consumers’ stakes are pooled across EU jurisdictions is Euro Millions where the prize pool is “rolled over” to the next draw if there is no jackpot winner, and prizes can, after a few weeks without a winner, be as high as €90 million. Sharing liquidity across jurisdictions requires some form of cooperation between the participating Member States in order to ensure a sufficient level of consumer protection. However, the existing differences such as age restrictions, player financial limit setting, procedures to safeguard against collusion which can happen where players compete against one another and reporting systems, including the ability to report suspicious patterns of play, might hamper effective cooperation.

As regards **personal data** the information that is to be collected upon registering with an operator to open a player account and the ways it is checked varies. The public consultation revealed that the overall majority of operators (commercial, public) as well as the majority of Member States strongly believe that player registration is a prerequisite for the protection of consumers.<sup>127</sup> Today in the EU there is a lack of mutual recognition of electronic identification and verification.<sup>128</sup> The different requirements in the Member States on personal identification lead to interoperability problems which give rise to challenges in view of the number of EU citizens crossing borders for shorter or longer term periods. As seen earlier the identity verification requirements are not always laid out in regulations. In some Member States this is facilitated through digital verification systems (e.g. Denmark, Spain), in others verification is done against national registries or third-party databases (e.g. UK, Estonia), however in others still manual documentation is required to be sent (e.g. Italy) as well as received (e.g. France). Furthermore, if the registration process to open an account is deemed burdensome consumers do not complete registration. Denmark and Spain are two examples where the regulatory system allows for a ‘work-around process’ and the operator can verify the data provided by the individual against other available sources, where the individual does

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<sup>126</sup> There are some differences as regards lotteries that sell tickets in a number of countries, casinos that co-mingle slot jackpots, exchanges that match bets from different countries onto the same market and platforms like poker networks.

<sup>127</sup> See Summary of Responses to the Green Paper, page 13

<sup>128</sup> COM (2012) 238/2. See also the accompanying impact assessment

not have a national identification number. In the workshop, commercial operators expressed that a consumer will go to another gambling site rather than not bet on a sport event, with the risk of ending up on an unregulated site. At the same time, operators hold significant volumes of individuals' personal and financial data. Identity controls on withdrawals are carried out more against money laundering than purely consumer protection. In this respect, some Member States have opted to apply the Anti-Money Laundering Directive provisions to all gambling products.<sup>129</sup> Extending the scope of the Directive as proposed in the current revision<sup>130</sup> to cover all types of gambling is being discussed by the co-legislators, in the EP and in Council.

To date in the EU no concerted efforts have been undertaken to address the regulatory deficits and to develop a common response. The fragmented landscape in the EU impacts on operators of online gambling services, but also on the providers of related services (see section 2.1.1). In subsequence it impacts on consumers and citizens. More Member States are opening their markets to take account of online gambling services. Most commercial operators established in the EU hold licenses in more than one European jurisdiction. The current regulatory situation is such that operators have to comply with regulatory requirements, which can be overlapping, by replicating most operational resources in each Member State in order to meet the differing technical requirements (eg IT infrastructure, gambling product, testing). Unnecessary duplication of regulatory requirements across the EU negatively impacts the competitiveness of regulated gambling sites. However, whilst consumers, operators and Member States benefit from the regulation of online gambling services, at the same time there is a duty to protect EU citizens from negative social effects, in a proactive (*ex-ante*) rather than reactive manner.

### 3.7. Problems and consequences

The resulting problems from the problem drivers can be determined on the one hand as individual and societal detriments and on the other as structural detriments, with a number of ensuing consequences as presented below. Broadly, individual detriments concern the users of online gambling, societal detriments concern the citizen at large including minors, whilst structural detriments are more concerned with regulatory shortfalls (ie *ex-ante*).

**Player detriments - Misinformed choices resulting from sub-optimal transparency on gambling sites:** Consumers may not be provided with a realistic perception about gambling and about the related impacts regarding consumer interest (unclear bonus terms, vague terms, unprotected funds,) and consumer risk (financial, social, health). A consumer may be unable to assess the protection offered on the regulated gambling site. Data for France indicates that more than half of gamblers compare sites before opening an account.<sup>131</sup> Missing, hidden and unclear information on the site impairs consumer decision about whether to register on the

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<sup>129</sup> Directive 2005/60/EC

<sup>130</sup> Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (COM/2013/045 final)

<sup>131</sup> ARJEL , March 2013

gambling site and about the conditions of doing so.<sup>132</sup> Consequently, consumer choice is affected. Furthermore, because of the diverse mobile applications used where the information cannot feature on a smaller screen in the same way as on a computer screen consumers may be unable to process the information.

Misinformed choices can also be made because of **misleading information on advertisements**, through content or image, such as encouraging high expectations and winning chances. Whilst there is no causal evidence that commercial communications trigger problem gambling, imagery and text about gambling can trigger certain financial or social misperceptions. This can entice individuals to gamble irresponsibly. Researchers have suggested this can lead to unbalanced views about the positive aspects and risks of gambling, and may help to reinforce erroneous perceptions about gambling. Some studies have suggested that for some pathological gamblers, advertising acts as an external impulse that triggers them to re-engage in gambling. The authors recommend that, in addition to advertising, marketing efforts such as free give-aways or free-to-play games should also be investigated.<sup>133</sup>

**Player detriments - Inadequate player protection resulting from sub-optimal player support and oversight:** First, other than for identification, the purpose of providing data is for the operator to maintain individual player accounts and monitor individual gambling behaviour. In an online environment there is a shift of focus onto the player more than the game (product). However, monitoring is not possible without adequate behavioural markers to flag risky play and proactively alert the player directly or the operator to intervene (eg the operator could suggest a lowering of deposit limits or a short break). Individuals may lose perception of time and/or money while gambling, and they will not be adequately monitored as to changes in their gambling activity (e.g. bets placed, time of placing bet), in the time spent online and gambling from various devices. In addition, young adults, typically those in the 18-21 age bracket do not have the experience to be fully aware of the associated risks of gambling. Untrained or inadequately trained operator employees may not identify problem gamblers or detect players showing signs of problem development early enough. Annex III shows that this is required only in a few instances. Belated action allows the player to continue gambling.

Second, an ongoing research project estimates that between 0.1-0.8% of the general adult population has suffered from some type of gambling disorder and an additional 0.1-2.2% demonstrate potentially problematic gambling involvement.<sup>134</sup> Please see Annex VI for further information and for information on individual Member States. Excessive gambling is relative to individual disposable income and time however there is a risk that more time and money can be spent online than intended. The rationale in pre-committing is that an informed decision is made before playing and not when in a state of emotional excitement. This

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<sup>132</sup> These mirror the most common access-types of problems identified in 'Digital content services for consumers: assessment of problems experienced by consumers report 4: final report', Europe Economics, 2011

<sup>133</sup> *The comparative effectiveness of regulatory approaches and the impact of advertising on propensity for problem gambling*; Planzer & Wardle (2011)

<sup>134</sup> See footnote 196

rationale is supported by the behavioural study referred to earlier. Without player control possibilities and without sufficient regulatory oversight a player may be prevented from keeping gambling in check through self-set boundaries. Consequently, there is a risk that an individual can develop a gambling-related problem in the absence of proper controls and monitoring.<sup>135</sup> This also impacts on vulnerable groups (eg in lieu of the financial situation/low incomes, inexperience, previous dependency on chemical substance use and/or addictive use of offline gambling) including individuals working with operators or in close connection to gambling (employees of online or offline operators, sales agents, athletes, referees). One expert point out that the social consequences of problem gambling are not dissimilar to those for alcohol or drug-related problems concerning family, legal and work related problems.<sup>136</sup>

Third, because of lax oversight individuals experiencing gambling problems may not get assistance or they may not know about the service.<sup>137</sup> International research has shown that only 10-20% of problem gamblers seek treatment.<sup>138</sup> Furthermore, excluded players may continue to gamble where the user account has not been disabled, which can be the case with multiple player accounts. Excluded players may also try to open a new account by providing false information, which is why strong verification processes are needed.

Finally, consumers do not always know whether there are complaint procedures and what they are entitled to complain about and seek redress. On the other hand, their complaints may not be adequately replied to. They are often not certain whether their rights have been violated. Therefore, they may not pursue their complaint. Players may also require a mediating support channel in the event of a dispute between operator and player, but are unaware about whether they should go to the regulating authority. It is noteworthy that operators may themselves be subject to attempts by players to reclaim deposit losses or to types of fraud. Consumers and operators should feel confident in carrying out transactions online. The Directive on dispute resolution does not cover consumer complaint-handling systems operated by the trader, disputes between traders and direct negotiation between the consumer and the trader.<sup>139</sup>

**Societal detriments - Negative consequences resulting from the prevalence of unregulated sites:** Consumers who do not complete the registration process on the regulated sites because they feel the ID verification is cumbersome, may choose to switch to sites with potentially less onerous procedures but which are much less secure. In a similar manner to other service areas online while consumers search for the ‘product’ meeting their needs, providers seek to attract customers. Individual citizens may have low awareness about

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<sup>135</sup> Addiction can lead to theft. For example in the UK an individual was taken to Court on charges of theft, which the individual claimed was in order to pay off accumulated gambling debts (online and offline), <http://www.nottinghampost.com/Supermarket-boss-stole-lottery-winnings-pay-debt/story-19774371-detail/story.html>

<sup>136</sup> [http://ec.europa.eu/internal\\_market/gambling/docs/workshops/workshop-ii-conclusions\\_en.pdf](http://ec.europa.eu/internal_market/gambling/docs/workshops/workshop-ii-conclusions_en.pdf)

<sup>137</sup> By way of example, in Austria, the Klagenfurt County Appeals Court in 2004 ruled that a problem gambler should be reimbursed €499,729 by a casino where the gambler claimed that he lost up to €2.5m over the course of three years. He argued that the casino had done nothing to help cure his gambling habit and should pay back some of his losses.

<sup>138</sup> See for example <http://www.angelfire.com/mi4/ads421/Petry03CGGA.pdf>, <http://www.mentalhealthresearch.ca/Publications/Documents/Knowledge%20Notes%20-%20Hodgins%20-BSDGT.pdf>

<sup>139</sup> Directive 2013/11/EU

unregulated gambling sites and about the risks of playing on rogue sites. Often, these originate from outside the EU. Individuals may not be empowered enough to recognise an unregulated gambling offer. Consequently, they may play on such sites, knowingly or unknowingly and with no protection against fraud.

Furthermore, individuals typically deposit monies into their player account or keep winnings with the operator with the intention to use those funds for future gambling or to withdraw at a later date. Such unsecure sites have little concern for players' financial and social protection,<sup>140</sup> exposing EU consumers to a multitude of risks: misuse/theft of personal or credit card data, loss of deposits, unpaid winnings and the computer affected with viruses and worms through downloads of malicious software from these sites to play the game (by means of which they also gain access to personal information on the computer).<sup>141</sup> In France, 8.8% of gamblers stated they are unaware of the site they are playing on and 40.8% have never had to provide a piece of identity when registering.<sup>142</sup> In a similar vein, in Spain, 21.4% of gamblers stated they had not registered on any gambling site suggesting continued use of certain sites.<sup>143</sup> The general lack of awareness about gambling in the Member States is suggested in the public consultation responses which solicited minimal feedback from consumer associations.

**Societal detriments - minors:** Whether minors are targeted by gambling advertising or not, they are exposed to gambling advertising in the internet, on television, in print media, and on radio. Minors face risks online when (1) they receive online marketing messages that are inappropriate for children (e.g. for age-restricted products such as alcohol); (2) they are exposed to commercial messages that are not readily identified as such (e.g. product placements) or that are intended only for adults (e.g. dating services); or (3) their credulity and inexperience are exploited, possibly creating an economic risk (e.g. online frauds).<sup>144</sup> Studies have shown that adolescents are particularly receptive to (positive and negative) messages contained in advertising. The promotion of gambling can trigger minors' curiosity and foster risky or addictive behaviour. For example children can subscribe to fee-based online services or spend money on online gambling if they have access to means of payment.<sup>145</sup> Research concludes that there is growing evidence that gambling advertisements in the media along with point of sale advertising, website marketing, celebrity endorsements, and the "sportification of gambling" by corporate sponsors and government gambling providers are having a powerful effect on young peoples' perceptions of gambling.<sup>146</sup>

Inadequate verification requirements regarding regulated sites and lack of awareness about gambling and unregulated sites results in minors gambling. A subsequent consideration is that individuals below the age of 18 can be in possession of credit cards or bank account.

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<sup>140</sup> "These jurisdictions [...] little or no regulatory scrutiny. [...] has no regulatory system at all for online gambling companies, while [...] has outsourced its licensing function to a firm [...]" *Online gambling five years after UIGEA* American Gaming Association White Paper, 2011

<sup>141</sup> Example of one site listing types of rogue operators <http://www.casinomeister.com/rogue/>

<sup>142</sup> Observatoire des jeux, June 2013

<sup>143</sup> 2012 study by the Universidad Carlos III of Madrid's Instituto de Política y Gobernanza

<sup>144</sup> OECD Digital Economy Papers No 179

<sup>145</sup> idem

<sup>146</sup> *I've seen them so much there are just there: exploring young people's perceptions of gambling*, McMullan a.o., 2012.

Furthermore, minors exposed to gambling who develop a gambling problem may not know where to get help nor is help for gambling problems dedicated to minors necessarily available. International studies suggest that the prevalence of problem gambling is two to four times higher amongst adolescents than amongst adults.<sup>147</sup> Table 8 indicates the problem in some Member States.

**Table 8: Minors gambling online**

<p><b>BE:</b> 15% of under-18s gamble (includes land-based products)<sup>148</sup>  <b>DE:</b> 24.2% of 16-17 year olds use at least one gambling product in a year<sup>149</sup>  <b>EE:</b> 25% of online players aged 15-20 have played in the past year on websites (21 is the age limit)<sup>150</sup>  <b>IT:</b> From a sample of 700 individuals around 68% of minors had gambled at least once online<sup>151</sup>  <b>UK:</b> 7% of minors aged 11-15 have some experience of playing online games for money, although around half may be by children playing alongside parents or with their parents' permission<sup>152</sup></p>
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**Structural detriments - Inadequate provision of online gambling resulting from regulatory deficiencies for a legal offer and for its supervision:** The negative consequences of gambling are legitimate concerns of Member States. Firstly, the online gambling market is a highly competitive one. Regulated operators established in the EU and holding a licence in one or more Member States find themselves competing with unregulated gambling sites. However, a consequence of regulatory deficiency is that Member States fall short of meeting the objective they aspire to in their national regulations, protecting consumers and preventing problem gambling. The consequences of such shortfalls can be societal and financial. The multiplication of compliance and adaptation costs (customer-facing and backend gambling systems of the sites) together with unclear or overly burdensome requirements can be a disincentive to operators to apply for licences in Member States where this is possible.<sup>153</sup> This situation in particular has a negative impact on smaller or newly-licensed businesses. Broadly, EU-established operators may decide to focus on a limited number of European markets open to competition that they consider viable or they may decide to limit the offer within a jurisdiction to fewer gambling products.

For example around 5% of the Danish market is served by operators without a Danish licence.<sup>154</sup> 45% of the Norwegian population who gamble is estimated to gamble on sites deemed illegal in Norway.<sup>155</sup> Where consumer demand is not met within a regulated context within the EU consumers will continue to turn to non-monitored sites with the ensuing

<sup>147</sup> Online and offline gambling. <https://www.ncbi.nlm.nih.gov/m/pubmed/22239967/?i=9&from=/23541597/related>

<sup>148</sup> Belgian Centre d'Information des Organisations de Consommateurs (CRIOC) 2011

<sup>149</sup> German gambling prevalence survey 2009

<sup>150</sup> Gambling prevalence in Estonia 2012

<sup>151</sup> Project *Skoola.net*

<sup>152</sup> *Underage gambling in England and Wales*, Ipsos MORI on behalf the National Lottery Commission, 2012 (sample of 2,531 11-15 year olds). Exposure to gambling is also linked with higher rates of gambling. For example, children who have visited the National Lottery site are deemed more likely than other children to have gambled in the past week

<sup>153</sup> Estimates based on a multi-licensed operator indicate that costs of one licence application include legal advice and translations, and can concern on average more than 2,000 pages of documentation to be submitted. Translation costs alone can range between €50,000 - €100,000 (including sworn translations and apostilled documents). Cost to obtain one licence can, on average, be as much as €8.7 million. Costs can include the fee associated with the processing of licensing applications, a fee related to the setting up of a platform and databases to enable the regulator to carry out controls for example, apart from the annual licence fees. An audit for a single market can cost on average €5,000, as well as a number of man-days related to this.

<sup>154</sup> Danish Gambling Authority 2012 Annual Report

<sup>155</sup> Regular survey of the Norwegian Gaming Authority

potentially harmful effects outlined earlier. The patchwork of approaches and measures across Member States and industry will prevail. This affects the ability of Member States to provide citizens with adequate protection as well as fighting fraud. In this respect, the CJEU has held that in order to achieve the objective of drawing players away from clandestine betting and gaming, authorised operators must represent a reliable but at the same time attractive alternative to a prohibited activity. Further, the CJEU has held that this may require the offer of an extensive range of games, advertising on a certain scale and the use of new distribution techniques.<sup>156</sup>

Secondly, operators established in the EU should be subjected to controls on commercial practices, gambling behaviour monitoring, harm minimisation measures and prevention against the development of a gambling problem unlike the case with unregulated operators. However, regulating authorities cannot carry out supervision responsibly, as an intrinsic part of the licensing system, if they are not adequately equipped with the competence and know-how to deal with the regulatory challenges. There are currently no common standards regarding reporting and monitoring on the activities of operators. However, a level of standardised reporting could help regulators assess the impact that consumer protection requirements have on consumers. In the EU there is a range of approaches to monitor compliance. Broadly, some regulators have direct access to operator systems with real time or almost live access to certain information held on operator's systems, others entail reporting obligations, with varying format and frequency requirements. For instance, in France, reports on player statistics are required every quarter and reports on gaming-related figures are due on a weekly basis, whilst in Denmark an annual report is submitted which first has to undergo external auditing. Sweden requires the licensee to send monthly written reports which includes information on suspended accounts and on account limits for example. Italy operates a near real time monitoring system.

As responsibility for the monitoring of gambling advertising does not always lie with the gambling regulator but with media regulators or consumer protection authorities it occurs that within one jurisdiction the grant of an advertising authorisation and the subsequent monitoring of the advertising activities is done by two different authorities. This causes a need for good cooperation. While in some Member States the gambling advertising placed is screened pro-actively (in the UK for example the Advertising Standards Association regularly screens the compliance of commercial communications with the advertising codes) regulators in general do not engage in regular screening exercises but act upon complaints or notices or establish reporting obligations for the operators. A set of clear rules and requirements would facilitate the effective supervision of gambling commercial practices.

Other than for adequate monitoring, **regulatory requirements must also be enforceable in order to be effective in protecting consumers.** As more Member States are regulating to take account of online gambling services, they are simultaneously seeking preventive and responsive approaches to enforce the offer of online gambling services in accordance with national law. Preventive compliance measures aim at reducing the initial contact of citizens

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<sup>156</sup> C-347/09 *Dickinger and Omer*, C-258/08 *Ladbrokes*, C-338/04, C-359/04, C-360/04 *Placanica & Others*

with the offer of (cross-border) online gambling services with unauthorised offers such as player education and encouraging responsible business conduct. Responsive compliance measures include limiting access to websites offering unauthorised gambling services, or blocking payments between players and unauthorised gambling operators.

In the context of the expert group of gambling regulators the Commission seeks to enhance the exchange of best practices in the area of compliance measures. It also promotes administrative cooperation amongst gambling regulators because it enhances the efficiency and effectiveness of enforcement including monitoring. This is a first step. Some Member States have signed bilateral agreements amongst themselves, as well as with other jurisdictions (eg Denmark, France, Italy, Malta, Alderney, Gibraltar, Isle of Man, Jersey). Cooperation within the EU alone will not respond to all the challenges, in particular the online offer originating from outside the EU.

### **3.8. How will the current situation likely develop without EU action?**

Under this scenario without EU intervention the problems are likely to continue. National rules on consumer protection and commercial communications in relation to the provision of online gambling services, where they exist, will continue to be inefficient, in particular in a context where the cross-border offer, whether legal or not, is growing, and the uneven levels and measures across the Member States are likely to persist. These regulatory shortcomings in the Member States and fragmentation in the EU would not be able to be addressed at any other level than at EU level. As explained above there has been a significant increase of Member States legislating to take account of online gambling services, with different provisions and different scope. Some Member States are revising their online gambling legislation (e.g. UK) or are assessing its effectiveness in terms of consumer protection (e.g. Denmark, Estonia), whilst have embarked on a review of legislation in particular to take into account new forms of gambling that are primarily take place online (e.g. Ireland, the Netherlands). This can be expected to contribute to an increase of the current segmentation.

Across all Member States the contact of EU citizens with gambling related commercial communications, in all its dimensions, is unlikely to diminish, and consumers of gambling services will continue to search for gambling opportunities online. Member States are likely to continue to take action in isolation. Some markets may even be left without adequate regulation, and consequently exposed to the attractiveness of unregulated offers notably stemming from outside the EU and entailing the risks mentioned earlier. Industry will continue to adapt to innovative developments in technology and more self-regulatory initiatives may be drawn up, in the absence of any benchmark to fall back on. Within this context EU citizens will continue to be faced with diverse approaches and measures which, however, do not afford them sufficient, nor equal, protection, whether within respective Member States or across the EU. As for operators, a large number of these are likely to continue to face a fragmented situation in the EU as operators in the EU increasingly hold multiple licences across several Member States to offer online gambling services.

Whilst a number of self-regulatory initiatives exist as described earlier, on the one hand these tend to contain a more general set of principles regarding online gambling or, in the case of commercial communications, these contain general good practice principles rather than specific rules for gambling activities. On the other hand, these are largely dependent on the voluntary uptake by the gambling operators. In addition, both commercial and public operators have their own set of standards or principles, which whilst having similar objectives do not set out the exact same principles. Other initiatives such as the Gambling Regulator's European Forum, provide a useful platform for debate. However a number of Member States are not present in these debates and no initiatives have been formally adopted by this Forum.

There is no existing EU framework that covers the problem drivers identified regarding gambling services. Existing EU secondary legislation is applicable for some of the issues, and EU case law in this area has developed on the basis of preliminary rulings and does not prescribe the Member States to adopt an exhaustive list of protective measures. Without EU intervention the probability is that the consequences mapped out would not be adequately addressed.

#### **4. Does the EU have a right to act?**

Protecting consumers and safeguarding the health of citizens belongs to shared competences between the EU and the Member States. The TFEU provides that 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, or conversely, if lack of EU action affects EU citizens because they are not adequately protected. The issues identified might be addressed on the basis of Articles 114, 168 and 169 TFEU, in respect of the principle of subsidiarity laid down in Article 5(3). Action at EU level would be compatible with the Charter of Fundamental rights. The underlying issue being addressed concerns consumers of online gambling services in the EU and citizens more broadly, including the aim of preventing minors from gambling.

Owing to the very nature of the online environment and the cross-border dimension of online gambling, and of modes of commercial communications, national action alone does not suffice to protect citizens. Action at EU level will provide a level of protection that is common throughout the Union. Member States remain responsible for the method of implementation. Whilst a number of Member States have acted at the national level, there are significant differences in the national responses. The exercise by consumers and by industry of their rights (of free movement) under the TFEU is undermined in the absence of a common set of measures, and may continue in the present scenario.

#### **5. What are the policy objectives?**

The **general objectives** can be expressed as follows: contribute to a sufficient and even level of protection of citizens, consumers and minors.

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

Broadly, 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

In addition, operators established in the EU and seeking licences in more than one Member State could benefit from a decrease in the current fragmented situation. A convergence in national requirements for consumer protection rules and responsible advertising requirements can make the pursuit of their economic activities at an EU scale more cost-effective.

The objectives are consistent with the Commission's priorities as set out in its action plan, and with the EU objectives broadly of helping consumers make well-informed choices in order to safeguard their health including against economic consequences that may result from excessive or compulsive gambling, of improving the environment for businesses, and of protecting minors online.<sup>157</sup>

The specific and operational objectives are not mutually exclusive. Indeed, it is not feasible to address only one of the objectives in order to ensure the general objective. For example if only the protection of users of online gambling services, from the specific objectives, was addressed no action would be undertaken to prevent minors from gambling. As another example, if only more coherent commercial practices was addressed, users of online gambling would not be protected whilst gambling online nor would the effects of unregulated sites in the EU be mitigated. Therefore only the collective pursuit of the objectives can ensure the general objective. It is pertinent to point out that the international dimension of online gambling is not expected to be addressed solely through the above policy objectives. The Communication on online gambling rolled out a series of initiatives.<sup>158</sup> For instance, the Commission proposed that the Directive regarding anti-money laundering is extended, in the area of gambling, to all gambling services including therefore online gambling. This is relevant as regards 'Know Your Customer' identification requirements. However, through the mix of objectives above, an intention is to address this issue as much as possible.

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<sup>157</sup> COM(2012) 196 final

<sup>158</sup> idem

## **6. Policy options: The nature of possible EU action**

The policy options below can be considered for the content of the initiative. Most of these policy options are not mutually exclusive from one another.

### **6.1. Option 1: No change**

Under this option the Commission would not do anything and would leave the situation to the Member States. This implies a persistence of the existing disparity between national regulations and the isolated efforts together with the sub-optimal level of consumer protection. Feedback through the public consultation, expert group meetings, and workshops with industry suggest that most stakeholders do not deem the status quo should be an option, and that there is a need for EU-level action. Recent EP resolutions have confirmed this position.<sup>159</sup>

*This option would meet none of the operational objectives.*

### **6.2. Option 2: Content and identification requirements**

Under this option, the Commission would propose that Member States set out

1) content requirements for the gambling site, which should provide factually correct and not misleading information, such as identification of the operator and the regulator,

- clear terms and conditions,
- warning messages against gambling addiction
- how to gamble responsibly and how to access help or counselling,
- timeframes regarding payouts of winnings,
- protection of player funds against insolvency,
- contact details for queries and complaints.

and in consideration of the devices used because some have a smaller screen than others. The UK, as an example, is looking into a visible standardised emblem to reflect the level of protection the operator offers.<sup>160</sup>

2) requirements for identifying and verifying an individual before gambling. This could include the minimum identity details that must be requested from the individual to enable verification to be carried out, access to national databases to verify identification, and that an account is not fully activated before the identity is verified. Verification procedures are important a priori to immediately filter out gambling by minors. In this respect the policy objective of the UK Gambling Act (2005) to protect minors is complimented with the technical response requiring operators to verify the age and the stakes to be returned where it

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<sup>159</sup> European Parliament resolution of 15 November 2011 on online gambling in the Internal Market (2011/2084(INI)); European Parliament resolution of 10 September 2013 on online gambling in the internal market (2012/2322(INI))

<sup>160</sup> It also foresees accompanying this with a statement along the lines of 'We offer a basic/ medium/ high level of protection...'. The consultation concerns primarily customer funds  
<http://www.gamblingcommission.gov.uk/pdf/Protection%20of%20customer%20funds%20consultation%20document%20-%20September%202013.pdf>

emerges that a child has gambled.<sup>161</sup> Some of the responses of commercial operators to the public consultation quoted that this ‘model’ is found to be a good practice of keeping minors away from online gambling.<sup>162</sup>

3) content requirements applicable to commercial communications of gambling. This is also by way of curbing misleading and aggressive commercial practices. These requirements would include in particular:

- identification of the advertiser,
- factual and clear information,
- risk and warning messages, including actual winning and losing possibilities,
- use of bonus and discounts in advertising and marketing,
- misleading commercial practices (skill, portrayal of gambling as socially attractive or as a solution to financial problems, chance of winning),
- aggressive commercial practices (unsolicited practices, frequency, vulnerable players).

Businesses within the gambling sector are significant sponsors of sports teams and events in Europe. In order to improve social responsibility, requirements should be clear that sponsorship is to be legal, honest and responsible.

4) requirements for the protection of minors. In order to avoid excessive exposure of minors to gambling such as

- clear “no underage gambling” message and indication of minimum age above which gambling is permissible, both as regards the gambling website and commercial communications,
- age verification procedures when an individual is registering with a gambling operator,
- prohibition to use images of underage persons or campaigns that particularly appeal to minors,
- prohibition to advertise in proximity of schools, youth sporting facilities,
- restrictions on commercial practices in different media when aimed at or normally accessible by minors.

Information requirements should also serve to inform and educate about the availability and accessibility of gambling, inter alia the prevalence of both regulated and unregulated websites. In addition, it is expected that consumers would become more aware of the regulated online gambling offer, and together with an improved efficiency of player registration process would be less inclined to seek potentially harmful gambling websites.

*This option would help address operational objectives 1 to 4.*

### **6.3. Option 3: Electronic player registration systems**

Under this option, the Commission would propose that Member States put in place robust and efficient online registration systems, facilitating the process through electronic identification schemes, including verification means which also serve to prohibit minors from gambling.

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<sup>161</sup> It does not, however, require that winnings are returned to the operator where these have been remitted

<sup>162</sup> UK-based Children Charities Coalition on Internet Safety, Report of 2010

For example in Denmark electronic identification with a code is obligatory, together with a secure digital signature which the players provide when they register with a gambling operator,<sup>163</sup> with the costs of verifying the information borne by the operator. Under this option, the number of players completing registration can be expected to increase, and conversely the number of players dropping out and not completing a registration process would be reduced. It is also expected to improve the prevention of minors from gaining access to (regulated) gambling websites.

*This option would help address operational objectives 1 and 3.*

#### **6.4. Option 4: Player protection requirements**

If designed in an appropriate manner, requirements to safeguard the well-being of players under this option will significantly enable online gambling to remain within recreational parameters. Under this option, the Commission would propose that Member States require that operators:

- have a no credit policy,
- provide the player with deposit and temporal limit setting possibilities,
- provide the player with the gaming session activity,
- provide the player with self-exclusion possibilities,
- track and monitor player behaviour against risky changes in gambling patterns (eg betting patterns, fluctuations in deposit patterns),
- provide a complaint handling process.

In this respect, Italy and Malta each operate a charter complimenting licence requirements, the former is a quality service charter and operators lose points for failure to meet the requirements, the latter concerns player rights and obligations.<sup>164</sup> In the case of Italy failure to meet the requirements can also lead to suspension or revocation of licence.

*This option would help address primarily operational objective 1.*

##### **6.4.1. Option 4a: EU-wide player self-exclusion**

Under this option, the Commission would propose that Member States set up central online databases of players excluded from gambling in order to set up an EU-wide online database functioning in real time. Under the option personal data is collected and further processed across the Member States and operators established in one or more Member States can check identification details against this database to screen out players that are (self)excluded from gambling. It is pertinent to point out that the exclusion of for instance “politically exposed persons” would come under specific EU legislation.<sup>165</sup> This option is concerned with persons experiencing a type of gambling disorder.

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<sup>163</sup> <http://cms.kat.dk/SKAT.aspx?old=2035321&lang=US>

<sup>164</sup> <http://www.snapadministration.com/snapdatafiles/files/lga/634089271340775000.pdf>,  
<http://www.gamblingdata.com/node/44728>

<sup>165</sup> Directive 2005/60/EC. By way of example in terms of costs, operators responding to a public consultation regarding this

*This option would help address operational objective 1.*

### **6.5. Option 5: Strengthen regulatory supervision through real time monitoring**

High level of safety and security for consumers and citizens is optimally achieved by having efficient and enforceable monitoring systems. Under this option operators would be monitored in real time or quasi by the regulatory authorities. This would require Member States to set up electronic systems to supervise the operators, whose systems would be linked to the regulator. Under this option operators would also be required to link their systems to the regulatory authorities and designate compliance officers.

Under this option regulatory authorities would be required to extract and assess data received. Under this option operators would be required to have a qualified compliance officer to help to ensure interaction with the regulator and responsibility for the operator's compliance with the required measures. Supervision would be further strengthened by having clear enforcement provisions, including sanctions.

In addition, the Commission would propose to Member States to enhance education and awareness about the risks associated with gambling, as well as about peer responsibility (eg software filtering in the homes, safe placing of credit cards at home). In particular, the aim is intended to protect minors from gambling, which is also in light of the prevalence of gambling sites operating outside EU control, and from normalising gambling behaviour. .

*This option would help address primarily operational objective 1.*

## **7. Analysis of impacts**

This section looks at the economic, social and administrative impacts resulting from the policy options presented above. None of the policy options have impacts that can be predicted with accuracy given the raw data available. As for environmental impacts these are not included since at most they are marginal.

### **7.1. Analysis of option 1: no policy change**

Without action undertaken at EU level Member States may continue taking action in isolation at the national level, or not take any action. No **economic impact** is foreseen of an EU initiative on large or small business and Member States and their regulatory authorities. From a **social perspective** it would have a negative impact as regards the general and specific objectives set out in section 6. **Administratively** no impacts have been identified, there would be no incentive for reducing any unnecessary administrative burdens for operators or for the regulatory authorities.

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Directive, estimated that the cost of access to databases to check if a person is a politically exposed person or features on Sanctions (crime-related) can exceed the €100,000 benchmark per year, which may not be affordable for small businesses on the one hand but which, on the other hand, would face increased administrative resources to manually screen out such customers.

## 7.2. Analysis of option 2: Content and identification requirements

No significant **economic impact** is foreseen on operators under this option. Adaptations will essentially be on the consumer-facing end of the website more than on the back-end systems. On the other hand, common minimum requirements across Member States would benefit those operators that hold multiple licences in EU jurisdictions, and operators that are seeking to enter another EU market. Currently, operators need to operate jurisdiction-specific websites. They do not operate a “one website fits all” and the customer-facing elements have to be adapted for each jurisdiction, in accordance with national requirements. Typically, administrative resources would also be required for the running and maintenance of each website, even if some operators might buy software and not develop their own. Option 2 could have a positive impact in particular on small operators who might typically consider operating costs and viability in the shorter, rather than longer, term. From a **social perspective** it is anticipated to have a positive social impact, broadly because it seeks greater transparency and enables consumers to be better informed. It also enables consumers to make choices based on informed decisions and of being aware of risks (social well-being and financial). It should have a positive impact on citizens in general and on businesses. Furthermore, in particular it should have a positive impact in preventing minors from gambling. **Administratively** other than changes to legislation or administrative regulations no significant costs are anticipated, other than the competence and know-how required by the competent authorities to supervise the operators against such requirements.

As regards industry stakeholders, both private and public operators, as well as consumer organisations and organisations providing assistance and treatment to players experiencing a type of gambling disorder should be supportive of the measures envisaged under this option. As regards Member States, the possible measures have been discussed with Member States’ experts in the context of the expert group on gambling services. Member States have been largely supportive.

## 7.3. Analysis of option 3: Electronic player registration systems

From an **economic standpoint** this would entail costs for operators as regards technical adaptations to meet the electronic registration scheme in the Member States. However, the operating costs would gradually be offset against the various methods and resources that currently need to be used by a single operator to carry out verification because this would be efficiently carried out electronically upon registration. Currently, it is estimated that the cost per check to verify an individual’s identity against an electronic database is up to €2.50, whereas manual verification entails much higher costs to collect and verify documents.<sup>166</sup> Under this option, the operational costs are likely to be reduced. From a **social perspective** this option would have a positive impact on consumers, as well as in preventing minors from gambling because it helps strengthen age verification. It would improve confidence for consumers as it would help secure a unique player account and user, and it would enhance

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<sup>166</sup> Submission by an operator to the consultation on the European commission’s report on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

interoperability of identity authentication schemes. **Administratively**, there would be costs for the Member States to put in place an electronic registration system. At the same time it should serve to facilitate the administrative work of the gambling regulatory authorities, in particular where identification documents are required to be manually provided to the regulator who in turn would need to confirm these.

As regards industry stakeholders, private and public operators, should be supportive of such a measure, as well as consumer organisations and organisations providing assistance and treatment to players experiencing a type of gambling disorder. This is also because it would strengthen the objective of preventing minors from gambling. As regards Member States, a few Member States have set up such systems. However, in particular in light of the potential costs involved, there would not be support by a number of Member States, at least not in a first initiative at EU level regarding the protection of consumers on online gambling services.

#### **7.4. Analysis of option 4: Player protection requirements**

For the same reasons as option 2, no significant **economic impact** is foreseen. A number of operators do have measures in place, to varying degrees, intended to protect players. Some customer-facing elements and back-end adaptations would be necessary. At the same time, as explained in sub-section 8.2, some common minimum requirements across member States would have a positive impact for operators. From a **social perspective** it is anticipated to have a positive social impact on the way consumers participate in online gambling, in protecting consumers and in keeping gambling within recreational parameters. It should also have a positive impact in reducing the number of persons seeking counselling or treatment, and the related costs of this. Consider that unemployment or work absenteeism (because of problem gambling/treatment) involves a social cost. **Administratively** the possible impacts would be the same as those foreseen under option 2.

As regards industry stakeholders, both private and public operators, as well as consumer organisations and organisations providing assistance and treatment to players experiencing a type of gambling disorder should be supportive of the measures envisaged under this option. As regards Member States, the possible measures have been discussed with Member States' experts in the context of the expert group of gambling regulators. Member States have been largely supportive.

#### **7.5. Analysis of option 4a: EU wide player self-exclusion**

There would be an **economic impact** on operators as they would need to carry out technical adaptations. However these would be partially offset by the efficiency of being able to check whether a person is self-excluded from gambling during the registration against readily available information through such a database. Currently, this information is not readily available in all Member States. From a **social perspective** it would have a large positive impact because it would effectively bar a person who decided to self-exclude from a gambling site from any gambling facility and therefore prevent further harmful behaviour of individual players. **Administratively**, there would be costs for the Member States to set up national

registries and to share/link these. At the same time such costs should gradually be offset by the positive societal considerations of this option, including the social costs referred to in sub-section 8.4. By way of example, the budget for setting up EU-wide web-based platforms can be around € million, aside from annual costs.

As regards industry stakeholders, consumer organisations and organisations providing assistance and treatment to players experiencing a type of gambling disorder should be supportive of such a measure. This is both because of its potential in reducing the possibility that people experiencing problems continue gambling as well as, from an operator's perspective its potential efficiency in checking whether a player is excluded or not from gambling during the player registration process. As regards Member States, a few Member States have set up, or are setting up central systems. However, in particular in light of the potential costs involved, there may not be support by a number of Member States, at least not in a first initiative at EU level regarding the protection of consumers on online gambling services.<sup>167</sup>

#### **7.6. Analysis of option 5: Strengthening regulatory supervision through real time monitoring systems**

From an **economic standpoint** this would entail some costs for operators as regards technical adaptations. On the other hand a margin of streamlining of basic requirements and frequency should have a positive impact on the running expenses of operators. Currently, reporting systems have to be met by an operator for each EU jurisdiction where a licence is held, one technical system (as well as auditing) cannot be automatically used for another market due to differing national requirements. From a **social perspective** it should have a positive impact on consumers, as well as in protecting minors from gambling because it helps strengthen supervision of online gambling operators. It should enhance consumer protection and confidence in light of strengthened regulatory oversight to ensure that requirements regarding consumer protection are being complied with. **Administratively**, there will be costs for the Member States with regard to setting up the monitoring systems and linking the operators to this, as well as in carrying out awareness raising. Under this option concise reporting (including external auditing) by operators at regular intervals would be required to be submitted to the regulatory authorities regarding compliance with the required measures to protect consumers, including the number and type of complaints received (in respect of the responsible competent authorities in the Member States).

As for commercial communications, the Commission would propose to Member States to set out a commercial practices policy because it will enable operators to be monitored for compliance against prescribed guidelines. The Commission would also encourage active monitoring of commercial practices. It would also include clearer responsibility on use of

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<sup>167</sup> Another consideration is that such an option may entail legislation to be implementable, not least considering that it would be concerned with personal data of individuals being shared

customer information and spamming<sup>168</sup>. To ensure social responsibility there should be clear ex-post control carried out by the regulator.

As regards industry stakeholders, in particular private operators, these should be supportive of this measure in particular because of its potential in reducing reporting and auditing costs. As regards Member States, a few Member States have set up real time or quasi monitoring systems. However, in particular in light of the potential costs involved, there would not be support by a number of Member States for a fully-fledged electronic monitoring system, at least not in a first initiative at EU level regarding the protection of consumers on online gambling services. This would also be because some Member States have only recently engaged in a review of their national gambling frameworks.

### 7.7. Impact on EU budget

As far as the possible impact on the EU budget is concerned no additional costs for the EU budget would be incurred as compared to the baseline scenario.

### 7.8. Overview of impacts

Impact <sup>169</sup>	Option 1 No change	Option 2 Content and identification requirements	Option 3 Electronic player registration systems	Option 4 Player protection requirements	Option 5 Strengthen regulatory supervision through real time monitoring systems
				<i>Option 4a EU-wide player self-exclusion</i>	
Economic	0	+	++	+	+
					++
Social	0	++	++	++	++
					++
Administrative	0	+	+	+	-
					-
<b>Overall assessment</b>	0	++	++	++	+

<sup>168</sup> As regards spamming, within the meaning of Directive 95/46/EC and Directive 2002/58/EC

<sup>169</sup> The notation used to assess the impacts compared to the baseline scenario is the following:

-: negative impact    0: no impact    +: positive impact    ++: very positive impact    n/a: not applicable

## 8. Comparing the options

The table below<sup>170</sup> presents an overview of the compared options and how each contributes to the operational objectives, and the overall objectives as presented in section 5.

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
<b>Effectiveness</b>						
Ensure transparent and understandable information, dedicated support and monitoring to consumers	0	++	++	++	++	++
Reinforce that gambling commercial communications are to be socially responsible, and to ensure awareness of the inherent risks associated with gambling	0	++	0	n/a	n/a	++
More effective measures to ensure that minors are excluded from gambling and reduce as much as possible the exposure of minors to gambling	0	+	++	+	n/a	++
Keep users of online gambling within an EU regulated context	0	++	+	++	+	++
Decrease the fragmented situation for operators established in the EU and holding a licence in one or more Member States	0	+	+	+	+	++
<b>Efficiency</b>		++	++	++	++	++
<b>Acceptability</b>						
<i>by Member States</i>	0	++	-	++	-	-
<i>By industry</i>	0	+	+	++	+	+

### 8.1. The preferred option

The options are not mutually exclusive, and based on the analysis above, they could be combined to address the individual problems. This combination of options is the most feasible to address the specific and operational objectives outlined in section 6. Although option 3, sub-option 4a and option 5 are not being considered further at this stage, this combination

<sup>170</sup> Same as for the footnote above

yields an improvement to the current situation. It should generate the most suitable expected benefits in a timely and efficient manner. Furthermore, it presents an overall positive impact. In addition, this approach best demonstrates that the Commission is responding to the call for action by Member States, by the EP and by industry, as well as demonstrating societal considerations. A combination of options 2 and 4, on balance is the safer choice and the better suited option.

From an **economic standpoint**, it will entail marginal compliance costs for customer-facing and back-end systems for a majority of operators but at the same time provides for a more streamlined approach, which can help address their compliance concerns as regards the multijurisdictional licensing mainly. It should have a positive impact on businesses because it provides a basic set of common requirements, and it will have stronger spill-over effect on providers of commercial communications. From a **social perspective** the combination of options should significantly improve the protection of citizens, consumers and minors, as well as enhancing consumer's rights when playing online on the regulated sites. It will be effective in helping to improve the social responsibility obligations of operators, to the benefit of citizens. **Administratively** there should be minimal impacts. It may entail changes to regulations or licence requirements, and it may entail changes to gambling regulatory authorities. The combined approach can help reduce unnecessary administrative burdens both for regulators and for operators. Implementation costs should range from low to medium expensive depending on whether the Member States follow the Commission Recommendation. This option is not expected to have a direct impact outside the EU. It may however provide operators outside of the EU who so wish to enter the EU market in one or more Member States with some of the minimal requirements that they will need to comply with. On the other hand the recommendations can provide added market value and attractiveness for those operators established in the EU seeking to enter third country markets, contributing to Europe's external competitiveness.

As for the discarded options (option 3: electronic registration, option 4a: EU wide self-exclusion and option 5: real time monitoring), 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, and are to the benefit of consumers, operators and regulators. However, they are discarded on basis of non-acceptability as indicated in the table above.

## **9. Instrument options**

Four possible instruments have been considered to attain the policy objectives, one of which has been retained: EU Directive, industry self-regulation, in-depth exchange of information between Member States and a soft-law approach. It is not feasible to propose legislation at this stage and on this premise some options were discarded.

### **9.1. EU legislation (Directive)<sup>171</sup>**

Achieving the policy options by means of a legislative solution would mean proposing a set of measures that Member States would be under an obligation to transpose and implement as well as enforce. At the same time it enables Member States to integrate rules into their different legal systems, whilst respecting their margin of discretion as to their regulatory system. Member States would benefit from common solutions to protect citizens across the EU, they would not have to come up with their own solutions, and it would improve regulatory oversight. However, even though EU legislation would be best placed to achieve the objectives through the selected policy option, 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 EP.

### **9.2. Industry self-regulation**

Achieving the policy option through industry self-initiatives would mean reliance on voluntary measures by industry alone to address the problems. The disadvantage of this approach is that implementation and compliance would be voluntary, even though some operators may be audited against self-set standards. In addition it will be difficult if not impossible for competent authorities to ensure regulatory oversight. This is not to say that the existing self-initiatives are not fit for purpose. Industry self-regulation can be complimentary to regulatory requirements, and existing self-regulatory initiatives do provide examples of good practices. Finally, from a political perspective, there is currently distrust from Member States regarding industry -led -initiatives functioning as a self-standing solution.

### **9.3. In-depth information exchange between regulatory authorities**

Achieving the policy options through an in-depth exchange of information and best practices between Member States' gambling regulatory authorities, would help address common challenges and exchange know-how. This initiative would in any event need to comply with the data protection requirements as set out in particular in Directive 65/46/EC. It could imply benefitting from the Internal Market Information system (IMI) (used in other service areas). However the use of IMI for gambling services requires an enabling EU legal instrument. For the same reasons as 9.1.1 this option is being discarded to achieve the objectives through the selected policy option. Furthermore, information exchange may not encourage any adaptations to improve the regulatory deficit. At the same time general information exchange can continue to be facilitated amongst gambling regulators in the context of the Commission expert group.

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<sup>171</sup> A regulation is not considered since a Directive would allow the Member States a margin of manoeuvre when as regards implementation and therefore respecting the national regulatory systems.

#### **9.4. Commission Recommendation**

A recommendation addressed to Member States can provide an enabling framework to achieve the objectives through the selected policy option. It would encourage Member States to take action at national level whilst leaving the choice of implementation to each Member State. While a recommendation will have an impact, for the benefits to be fully realised it has to be followed by the Member States. The process of their adoption is likely to involve the engagement of national regulatory authorities to comply with them. It will be complimented with close monitoring by the Commission. A review clause would allow for an assessment of the effectiveness of the measures proposed therein.

The recommendation would focus on users of online gambling services, seeking to improve transparency, player support and monitoring of players. It would also seek to prevent minors from gambling. It would also focus on commercial communications in consideration of the broader outreach and societal considerations, seeking to ensure that this takes place within socially responsible parameters regardless of the channels used.

In terms of acceptability, a Commission recommendation responds to the repeated calls for action to protect citizens, minors and consumers as regards gambling, namely by Member States and by the EP, including their strong reservations on a legislative solution.

#### **10. Monitoring and Evaluation**

The proposed recommendation would foresee periodic monitoring to track progress in implementation, mainly in the context of the group of experts on gambling services. It should also stipulate that Member States should report on the measures taken in view of the recommendation, This will enable an evaluation of the progress made and of the effectiveness of the recommendation, within two years from the date of adoption.

In light of the four operation objectives:

- In the short term focus will be on the implementation of the recommendation. During 2014 this could be discussed in meetings of the expert group. Use will also be made of the repository, the virtual library which the Commission has set up in the context of the expert group, where Member States place national regulations and other relevant documents which are accessible to all Member States.
- The Commission on the basis of specific indicators that it could develop with Member States in the expert group, will assess the extent to which the principles contained in the recommendation have been implemented. The Commission may also view any principles commonly not transposed, to understand why.
- In the medium to long term the Commission, in liaison with Member States, will track progress by collecting data inter alia about any changes in gambling habits/patterns, the number of persons in the Member States opening a player account, the number of persons not completing registration, the percentage of persons seeking exclusion from gambling sites, and the percentage of minors considered to have accessed gambling

sites. The Commission will also seek to collate data on the number of complaints concerning commercial communications (including those withdrawn) and concerning operators (to the competent national authorities), and the timeliness of responses to these. These indicators will help evaluate developments.

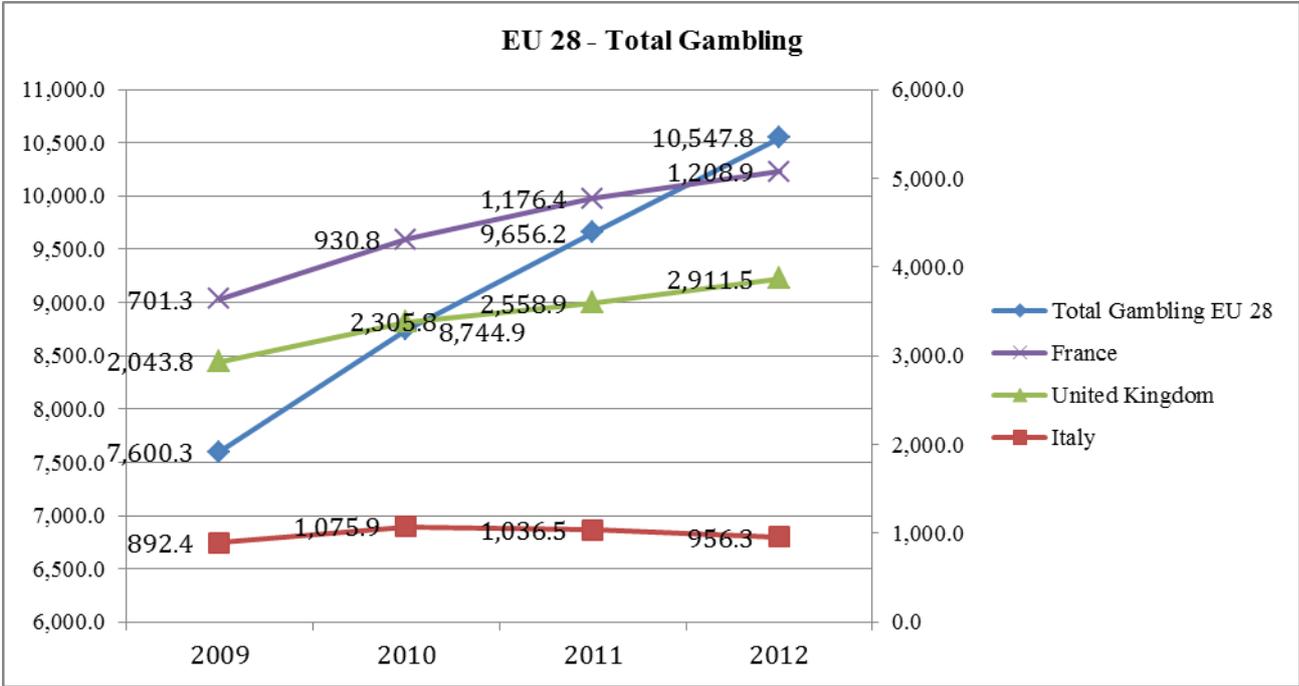
The Commission may also organise workshops to track corresponding improvements by industry based on the recommendation including the training of staff, and the liaison with treatment centres. Furthermore, the Commission will seek to involve consumer associations in the area of gambling. In this respect the Commission will also make use of the Consumer Market Scoreboard

## **11. Annexes**

Annex I	Online gambling in the EU
Annex II	The regulatory framework
Annex III	Consumer protection rules in the Member States
Annex IV	Advertising rules in the Member States
Annex V	Example of why players need to contact the operator
Annex VI	Average online player profile and public health considerations
Annex VII	Executive Summary of the Study on online gambling and adequate measures for the protection of consumers of gambling services

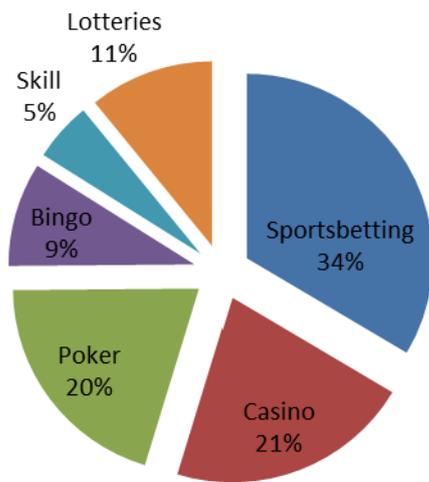
**ANNEX I**

**Online gambling in the EU**



Online gambling covers several types of games: betting, poker, bingo, casino, lottery, sales promotions. These can be games which are played instantly (eg a bet on a sport before/during the event). Sport bets generally can be placed on a range of national and international events. Gambling can be of short duration (eg slot-machines, scratch-cards, draw games, roulette) and can be played in frequent succession. Others such as poker tournaments are of longer duration. Member States differ in the range of gambling services they regulate and authorise (See Annex II).

**Online gambling in EU by type of service (2012)**



## ANNEX II

### 1. The regulatory framework

Article 56 of the TFEU requires the abolition of all restrictions on the freedom to provide and to receive services, which are likely to prohibit, impede or render less advantageous the activities of a gambling service provider established in another Member State where it lawfully provides similar services. Since the first judgement in a gambling case in 1994<sup>172</sup> the Court has established overriding reasons in the public interest that can objectively justify the restrictions on the provision of gambling services. The Court's case-law in the field of gambling has mainly developed on the basis of reference for preliminary rulings by national courts under Article 267 TFEU.<sup>173</sup>

The Commission has taken the view that the following definition should be applied, which is reflective of the Green Paper consultation:

*Online gambling services are any service which involves wagering a stake with monetary value in games of chance, including lotteries and betting transactions at a distance, by electronic means and at the individual request of a recipient of services.*<sup>174</sup>

The protection of consumers and of society at large is one of the stated policy objectives of Member States in setting out their national policy for online gambling. The Court gives Member States in principle a wide discretion on the choice of regulatory model for their national gambling market and on the measures to enforce this model. As for justifications which have been accepted the Court has observed that the objectives pursued by national legislation adopted in the area of gambling usual concern the protection of the recipients of the services in questions and of consumers more generally, and the protection of society. Within these two general categories of objectives, the fight against gambling addiction and the reduction of gambling opportunities are amongst the interests that have been identified by the Courts. Member States must demonstrate the suitability and necessity of the measure in question, in particular the existence of a problem linked to the public interest objective at stake and the consistency of the regulatory system. As is the case with any restriction to fundamental freedoms of the Treaty the overall national policy vis-à-vis online gambling Member States must demonstrate that the public interest objectives are proportionate and pursued in a consistent and systematic manner. They must not undertake, facilitate or tolerate measures that would run counter to the achievement of these objectives.

### 2. EU secondary legislation

The **Unfair Commercial Practices Directive**<sup>175</sup> is a full harmonisation directive and operates without prejudice to authorisation systems of Member States. The Directive is particularly relevant to advertising and marketing regarding gambling. It has a very broad scope of

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<sup>172</sup> Case C-275/92 Schindler

<sup>173</sup> For a summary of the main jurisprudence on gambling rules see SWD (2012) 596 final, Section 5

<sup>174</sup> SWD (2012) 596 final, Section 2

<sup>175</sup> Directive 2005/29/EC

application, as laid down by the definition of commercial practices: *'any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers'*. Product is described as *'any goods or service including immovable property, rights and obligations'*. It applies not only at the advertising / marketing stage of a transaction but also *'...during and after a commercial transaction in relation to a product'*. Gambling advertising falls foul of the Directive if it is contrary to the requirements of professional diligence and if it is distorting the economic behaviour of the average consumer or a clearly identifiable group with an underlying vulnerability. The Directive covers vulnerable persons (mental or physical infirmity, age or credulity).

There is also EU legislation that aims to protect European consumers against unfair terms in the contracts they conclude with professionals. The **Unfair Contract Terms Directive**<sup>176</sup> introduces a notion of "good faith" in order to prevent significant imbalances in the rights and obligations of consumers on the one hand and sellers and suppliers on the other hand. This general requirement is supplemented by a list of examples of terms that may be regarded as unfair. Terms that are found unfair under the Directive are not binding for consumers. The Directive also requires contract terms to be drafted in plain and intelligible language and states that ambiguities will be interpreted in favour of consumers.

**The Audiovisual Media Services Directive (AVMSD)**<sup>177</sup> aims at ensuring the free circulation of audiovisual media services in the EU. Article 1(1)(h) is intended to cover all forms of audiovisual commercial communication defined as 'images with or without which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity'. Audiovisual commercial communications must be recognisable as such, must not be surreptitious, must not use subliminal techniques, must not encourage behaviour prejudicial to health or safety, and must not exploit minors' inexperience or credulity (among others). However, the AVMSD does not apply to gambling services as such.

The **Anti-Money Laundering Directive (AMLD)**<sup>178</sup> requires certain institutions and businesses to apply a series of preventive measures with a view to prevent money laundering and terrorist financing. For the gambling sector the AMLD explicitly covers casinos. Some Member States have extended the rules to other categories of gambling. In particular, those subject to the Directive are obliged to verify the identity of their customer and to monitor their business relationship with the customer (casino customers must be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2000 or more). It furthermore imposes enhanced due diligence procedures in certain situations which carry higher risks of money laundering, e.g. where the customer has not presented himself physically. The Commission adopted a proposal for the revision of the AMLD, which inter

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<sup>176</sup> Council Directive 93/13/EEC

<sup>177</sup> Directive 2010/13/EU

<sup>178</sup> Directive 2005/60/EC

alia covers all types of gambling, further to calls from Member States, the EP and industry stakeholders.

The **Data Protection Directive**<sup>179</sup> sets out the general framework for the protection of individuals with regard to the processing of personal data and the free movement of such data by inter alia laying down principles relating to the quality, purposes and scope of the processed personal data. The **Directive on privacy and electronic communication**<sup>180</sup> contains specific rules on processing of personal data and the protection of privacy in the electronic communications sectors, and regulates areas such as confidentiality, billing and traffic data, rules on spam/unsolicited commercial communications, cookies, etc. For gambling services these rules not only cover static data such as contact or financial information but also behavioural data, like gambling frequency and pattern or the stake.

The **Directive on Consumer Rights**<sup>181</sup> aims at achieving a real business-to-consumer (B2C) internal market, striking the right balance between a high level of consumer protection and the competitiveness of enterprises. The Directive contains requirements on the information to be provided by traders prior to the conclusion of all consumer contracts, provides for specific information requirements and regulates the right of withdrawal distance and off-premises contracts and for rules on delivery and passing of risk applicable to contracts for the sale of goods as well as certain rules applicable to all types of consumer contracts. These include rules on the costs for the use of means of payment (e.g. credit or debit cards), on telephone hotlines operated by traders as well as on additional payments and pre-ticked boxes. The Directive on Consumer Rights does not apply to contracts for gambling (Article 3(3), sub (c)). The Directive incorporates the provisions of the Distance Selling Directive<sup>182</sup>. The Distance Selling Directive applied to contracts for gambling.

The **Directive on alternative dispute resolution (ADR)**<sup>183</sup> aims to provide for full coverage of ADR at EU level, providing an ADR procedure for contractual disputes in the Member State. ADR entities will have to meet quality criteria which guarantee that they operate in an effective, fair, independent and transparent way. Those traders who commit or are obliged to use ADR will need to inform consumers about ADR on their websites and in their general terms and conditions. The **online dispute resolution Regulation**<sup>184</sup> aims to enable EU consumers and traders to submit disputes arising from online purchases to an EU-wide dispute resolution platform which will link **national ADR entities**. Online traders should also provide an electronic link to the platform on their websites to inform consumers.

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<sup>179</sup> Directive 95/46/EC

<sup>180</sup> Directive 2002/58/EC

<sup>181</sup> Directive 2011/83/EU

<sup>182</sup> Directive 97/7/EC

<sup>183</sup> Directive 2013/11/EU

<sup>184</sup> Regulation (EU) No 524/2013

### 3. Regulatory framework for online gambling in Member States

<b>MS</b>	<b>Lottery</b>	<b>Sports betting</b>	<b>Poker</b>	<b>Casino</b>
<b>AT</b>	Monopoly	Monopoly	Monopoly	Monopoly
<b>BE</b>	Monopoly	Licensing system	Licensing system	Licensing system
<b>BG</b>	Monopoly	Licensing system	Licensing system	Licensing system
<b>CY</b>	Monopoly	Licensing system	Ban	Ban
<b>CR</b>	Monopoly	Licensing system	Licensing system	Licensing system
<b>CZ</b>	Monopoly	Licensing system	Licensing system	Licensing system for live card games
<b>DE</b>	Monopoly	Licensing system	Ban	Ban
<b>DK</b>	Monopoly	Licensing system	Licensing system	Licensing system
<b>EE</b>	Monopoly	Licensing system	Licensing system	Licensing system
<b>EL</b>	Monopoly(ies)	Licensing system - Legislation still to clarify the games permitted		
<b>ES</b>	Monopoly	Licensing system	Licensing system	Licensing system
<b>FI</b>	Monopoly	Monopoly	Monopoly	Monopoly
<b>FR</b>	Monopoly	Licensing system	Licensing system	Ban
<b>HU</b>	Monopoly	Licensing system	Licensing system	Licensing system
<b>IE</b>	No rules			
<b>IT</b>	Monopoly	Licensing system	Licensing system	Licensing system
<b>LT</b>	No rules			
<b>LU</b>	Monopoly	Monopoly	Licensing system	Licensing system
<b>LV</b>	Monopoly	Licensing system	Licensing system	Licensing system
<b>MT</b>	Monopoly	Licensing system	Licensing system	Licensing system
<b>NL</b>	Monopoly	Monopoly	Ban	Ban
<b>PL</b>	Ban	Licensing system	Ban	Ban
<b>PT</b>	Monopoly	Monopoly	Ban	Ban
<b>RO</b>	Monopoly	Licensing system	Licensing system	Licensing system
<b>SE</b>	Monopoly	Monopoly	Monopoly	Monopoly
<b>SI</b>	Monopoly	Monopoly	Licensing system	Licensing system
<b>SK</b>	Monopoly	Monopoly	Monopoly	Monopoly
<b>UK</b>	Monopoly	Licensing system	Licensing system	Licensing system

## ANNEX III

### Consumer protection rules in the Member States<sup>185</sup>

Member State	Regulator logo on operator homepage	Player Registration Process	Verification of identification	Player funds segregation from operators' funds	Limit setting possibilities
AT		Name, date of birth, email or phone number, address	Via an inquiry agency and population register	No Playing on credit not permitted	Players are to define limits. €300 maximum deposit per week. Higher limit request: after 72 hours.
BE	✓	Unique player code		No Playing on credit and use of credit cards not permitted.	€300 maximum can be in the account at any time, automatic pay-out to player's bank account when the player account is above this amount
BG		ID card or citizen number	Not laid out	No	No
CY	✓	Name, age, email, address to be provided by player	Not laid out, but verification is to be within 30 days	✓ One payment method per account is allowed	Operator must offer betting and loss maximum limit setting possibilities. Player request for payouts is to be wired within 5 working days from when requested.
CZ	No	Player has to go to offline betting premises	Operator has to check personal ID of the player	✓ No	No
CR				✓	No
DE			Not laid out		Players must be enabled to choose to set a maximum daily, weekly or monthly stake limit, with a turnover limit of €1,000 per month
DK	✓ "Approved by the Danish Gambling Authority"	E-registration Temporary account to be closed if player not correctly identified within 30 days	✓ e-verification. Digital signatures cannot be used for mobile devices.	✓ Playing on credit not permitted	Players must be able to set daily, weekly and monthly deposit limits at registration.
EE		Name, age, email, address to be provided by player	Not laid out	No	Players must be enabled to set limits during or after registration
EL		Individual gaming card and tax ID required	Not laid out	No	
ES	✓	Fiscal residence and tax ID required. Regulator must be consulted during registration process	✓ Identity verification system connected to Ministry, in real time or in 3 days. For non-Spanish persons operators can verify data through other systems eg ID uploaded or sent by fax/email/mail, within a month	✓	Operator must offer daily, weekly and monthly deposit limits. Legislation establishes maximum limits. Players cannot change the limits set within a 3-month period.
FI		e-identification. Player is to provide Finnish bank account, social security number and permanent address	✓ Against the national register 'Population Information System'	✓ Use of credit cards is not permitted	Player has to set daily, weekly and/or monthly spending limits during registration. For slot machine and casino there is a default daily spending limit of €500/category, for single

<sup>185</sup> To be read with Annex II.2, LT, IE are out of the table because of the absence of regulations for online gambling

					player online casino games there is a maximum player account balance of €5000. €300 daily spending limit on live betting; €100 for bingo.
<b>FR</b>	✓	ID documents and proof of player bank account to be provided within 60 days to complete registration	✓ Operators send an activation code via mail to the player's home address, which is to be typed online within 45 days, if not account is closed	Bank account, including e-wallet and pre-paid cards, are the only payment method to be used	Player has to set weekly betting limit and weekly deposit limit during registration. An amount of money is to be defined which triggers an automatic pay-out to the player's bank account when the player account reaches the defined amount
<b>HU</b>				No	
<b>IT</b>	✓	Tax ID required. Player data is registered at the same time in the regulator's central control system.	1 <sup>st</sup> step: against Italian tax database in real-time through an application programming "PGAD". 2 <sup>nd</sup> step: copy of ID uploaded or sent by fax/email/mail within 30 days otherwise player to be suspended.	✓ Playing on credit not permitted	Players have to set a weekly or monthly deposit limit before accessing the games (on opening of gaming account), which cannot be less than a week. Lower limit request: must be immediately effected Higher limit request: to be effective after at least 7 days
<b>LI</b>				No	No
<b>LV</b>				No	No
<b>MT</b>	✓			✓ Playing on credit not permitted	Operator must offer player limit setting possibilities
<b>NL</b>					
<b>NO</b>				Regulations do not oblige player accounts; operators require it Playing on credit not permitted	Maximum deposit limit of €1250 per player per day
<b>PL</b>					
<b>PT</b>	✓	Player card system, Personal Identification Number. ID and residence card required	Account closed if copy of ID is not sent within 30 days	Bank account is the only payment method to be used Playing on credit is not permitted	Prepaid player card. Top up daily limit of €300. Winnings from €150 to €4,999,99 automatically paid into the player's bank account
<b>RO</b>			Not laid out		
<b>SE</b>			Not laid out	No Playing on credit not permitted	
<b>SK</b>		e- identification, name, surname, email, phone number, age verification by "birth number", ID number, address, Slovak bank account required	Not laid out	No	No
<b>SI</b>				No	No
<b>UK</b>	Link to regulator website; display of 'licensed and regulated by the Gambling Commission'; licence number	Procedures to verify age	Procedures to verify age	No licensees to inform player in writing whether they protect player funds in case of insolvency and the method by which this is achieved	Players have to be offered the possibility to set limits at registration stage or at point of first deposit of payment Higher limit request: only after 24 hours

<b>Member State</b>	<b>Warning sign, or kite mark and helplines on operator home page</b>	<b>Reality checks: account activity (winnings/losses, time)</b>	<b>Exclusion / cooling-off possibilities</b>	<b>Operator employee training</b>	<b>Player queries to operator, and dispute resolution</b>
<b>AT</b>	✓ player protection link helplines and information links , <i>not obliged on home page</i>	✓ account activity	✓ Players can take a break or bar themselves for periods of time	✓	Links to FAQs and online forms for requests
<b>BE</b>	✓		✓ Player request is transmitted to a national exclusion list, which is connected to the regulator. Exclusion applies to all gambling. List includes legally excluded persons.	✓	
<b>BG</b>	no			No	
<b>CY</b>	✓ Link to help site	✓	✓		
<b>CZ</b>	No	No	No	No	
<b>CR</b>			✓ Player can request exclusion in written form for a defined period. Request to be carried out within three days		
<b>DE</b>	No Licence applicants are to submit a social concept outlining how they will provide information and warnings on gambling addiction risks				
<b>DK</b>	Warning information must be produced in cooperation with a treatment centre	✓ Account balance at all times Player must have access to gambling history for at least 90 days	✓ Players can also choose a short break of 24 hours Player request is transmitted to a national exclusion list. Regulator holds the central registry. Online operators should verify whether a player is registered on this self-exclusion system	Operator to have written rules for employees	Player must be able to file a complaint with the operator about the gambling service players cannot file complaint about operator decision with regulator
<b>EE</b>	✓ warning information to be provided, <i>not obliged on home page</i>		✓ For online games of chance. Central register kept by the regulating authority. Player can request exclusion request for 6 months to 3 years.		
<b>EL</b>			No		
<b>ES</b>	✓ Link to help centres	✓ Clock showing actual time or player's session duration	✓ Register maintained by national regulator, which is communicated to gambling authorities in the autonomous communities. Hourly updates of register.		Customer service contact details must be displayed
<b>FI</b>	✓ Link to responsible gambling	Daily and monthly loss limits, available at all time via 'my account'	✓ Instant 12 hour self-exclusion, or rest of day, week, month		Contact can by phone, email or live

	page and to helpline	page, and session information and time duration per gaming session	and year. Can self-exclude permanently, close account, also by operator		Disputes: Player can request recommendation from regulatory authority through link on operator page
<b>FR</b>	✓ Helpline number	✓ Player account balance permanently	✓ Operators must consult a registry of persons banned from gambling, updated monthly by the Ministry of the Interior.		Customer service contact details must be displayed
<b>HU</b>	✓				
<b>IT</b>	✓	✓ Player must have access to gaming account balance	✓ Operators must offer and clearly display self-exclusion possibilities. Self-exclusion can be temporary (time chosen by player) or permanent (cannot be revoked before 6 months have passed). Self-exclusion only applies on an operator basis (it is not yet centralised)	No	Customer service contact details must be displayed. Further complaints can be addressed to a dedicated email and are processed by the regulator.
<b>LI</b>	✓				
<b>LV</b>	✓			No	
<b>MT</b>	✓ warning information, link to help site to be provided, <i>not obliged on home page</i>	✓ Continuous display of losses and winnings. Player has to acknowledge the account balance message	✓ Operators must offer self-exclusion possibilities	✓	Customer service contact details must be displayed To be looked by operator into within 21 days
<b>NL</b>	✓	No	No	No	
<b>NO</b>	✓				
<b>PL</b>			No	✓	Independent entity for dispute resolution
<b>PT</b>		Players have access to account activity	Players can request to close account		
<b>RO</b>	✓				
<b>SE</b>	✓		No	✓	✓ The regulator can investigate complaints and give an opinion
<b>SK</b>	✓ self assessment and helpline to be provided, <i>not obliged on home page</i>	Player account balance at regular intervals	Player can request exclusion in written form	✓	Custom service contact details must be displayed
<b>SI</b>	✓ warning information, link to help site to be provided, <i>not obliged on home page</i>		✓	✓	
<b>UK</b>	Warning information, how to access information, and help in respect of problem gambling to be provided, <i>not obliged on home page</i>	Time and balance information to be provided	Player can request self-exclusion, minimum 6 months, and up to 5 years		Customer service contact details must be displayed and third party dispute resolution offered (funded by operator)

## Age verification

<b>Member State</b>	<b>Age Limit</b>	<b>'No underage gambling' kitemark on operator homepage</b>	<b>Message on registration page on steps to verify age</b>	<b>Message on registration page on steps where underage player is identified</b>
AT	18		No	No
BE	21 18 for betting			
BG	18	No	No	No
CY	18	✓	No	No
CZ	18	✓	No	No
CR	18		No	No
DE	18			
DK	18	✓		
EE	21		No	No
EL	21 <sup>186</sup>			
ES	18	✓		
FI	18	No		
FR	18	✓	✓	✓
HU	18		No	No
IT	18	✓	No	No
LI			No	No
LV			No	No
MT	18	✓		No
NL			No	No
NO	18		No	
PL	18		No	No
PT	18			
RO				
SE	18			
SK	18		No	Rejected registration
SI		No	No	No
UK	18		✓	✓

## International liquidity

<b>Member State</b>	<b>Not regulated</b>	<b>Regulated</b>	
AT, BG, CY, CZ, DE, EL, HU, LV, PT, RO, SI	✓		
BE, DK, EE, MT		✓	
FR			Currently, only between players on the .fr platform
ES	✓		Foreign players can open accounts with online operators holding a Spanish licence
FI, IE, LT, NL, SK SE			Not applicable
LU			Pooled funds for playing on German lotteries website (betting and lottery products)
UK			allowed

<sup>186</sup> For private operators

## ANNEX IV

### Advertising rules in the Member States<sup>187</sup>

<b>Member State</b>	<b>Under gambling law</b>	<b>Financial Penalty (operator)</b>	<b>Financial Penalty (player)</b>	<b>Criminal Penalty</b>	<b>Restrictions on authorised operators</b>	<b>Sponsorship</b>
<b>AT</b>	Advertising of unlicensed gambling is an administrative offence	✓	✓ For electronic lotteries	✓		Not covered in the law
<b>BE</b>	Advertising without gambling licence is prohibited	✓	✓	✓	Licensed operator must inform the regulator of its advertisement policy	
<b>BG</b>	Advertising without licence is prohibited			✓	General provisions in the law for licensed operators	Right to sponsor by licensed operators included in the Gambling law
<b>CY</b>	Advertising without gambling licence is prohibited	✓		✓	General provisions in the law for licensed operators	
<b>CZ</b>	Advertising without gambling licence is prohibited	✓		✓ Penal Code		By licensed operators
<b>CR</b>	Advertising without gambling licence is prohibited			✓ Criminal Code		
<b>DE</b>	Advertising without gambling licence is prohibited			✓ Criminal Code	Advertising of sports betting on TV directly before or during live broadcast is prohibited	
<b>DK</b>	Promotion without licence is prohibited	✓	✓	✓	Licensed operators permitted a limited level of advertising	Deemed to be caught by the provision in the gambling law on prohibition to promote illegal gambling
	Advertisement ban on unlicensed operators	✓		✓		
<b>EE</b>	General prohibition on gambling advertising	✓		✓	General provisions in the law for licensed operators	By licensed operators
<b>EL</b>	Advertising without gambling licence is prohibited	✓		✓	General provisions in the law for licensed operators	
<b>ES</b>	Advertising without gambling licence is prohibited (advertising rules)			✓	No specific regulations for licensed operators; code of conduct for commercial communication	By licensed operators; authorisation from the regulator
<b>FI</b>	Advertising without gambling licence is prohibited	✓		✓		By licensed operators
<b>FR</b>	Advertising without gambling licence is a statutory offence	✓				
<b>HU</b>	Advertising without gambling licence is prohibited				Advertising law states that advertising is only by licensed operators	Unlicensed operators prohibited from sponsoring media service or programme under rules on media

<sup>187</sup> To be read with Annex II.2

						services
<b>IE</b>					Betting law prohibits football betting advertising and promotion; lotteries law prohibits publication or promotion of lotteries other than results	
<b>IT</b>	Advertising without gambling licence is prohibited	✓		✓	Guidelines for advertising by licensed operators	By licensed operators
<b>LU</b>	General prohibition on advertising – except for exemptions to the casino and national lottery			✓		
<b>LV</b>	General prohibition on advertising, except in gambling venues – interpreted by authorities as extending to online	✓		✓		Latvian licensed operators sponsoring sport events and organisations permitted to advertise during Olympic games
<b>MT</b>	Guidelines in the law				Advertising codes apply	
<b>NL</b>	Advertising or promoting without gambling licence is prohibited					
<b>NO</b>	General prohibition on marketing and promotion - except for the monopoly				General provisions in the law	By the monopoly
<b>PL</b>	General ban on advertising	✓			General provisions in the law for licensed operators	Gambling distinguishes sponsorship from advertising
<b>PT</b>	General prohibition on advertising (advertising rules), applied to unlicensed operators				Exemption for the monopoly	By licensed operators
<b>RO</b>	Advertising without gambling licence is prohibited	✓			No provisions in the law for licensed operators	
<b>SE</b>	Promotion of unauthorised gambling is prohibited					
<b>SK</b>	Advertising without gambling licence is prohibited	✓			General provisions in the law for licensed operators	By licensed operators
<b>SI</b>	Advertising without gambling licence is prohibited	✓				
<b>UK</b>	Advertising from non-EEA or white listed countries is prohibited	✓		✓	Advertising codes and standards	Included in the definition of gambling advertising in the Gambling Law

### The responsible authorities in the Member States

Gambling Regulator: BG, CY, IT, MT (and broadcasting authority), ES (and media authorities), FR (and audiovisual authority)

Advertising authority: SK, UK

Jury for Ethical Practices on advertisements: BE

Media / Broadcasting authority: CR, CZ (and data protection office), IE, NO

Consumer body: HU, PT, RO

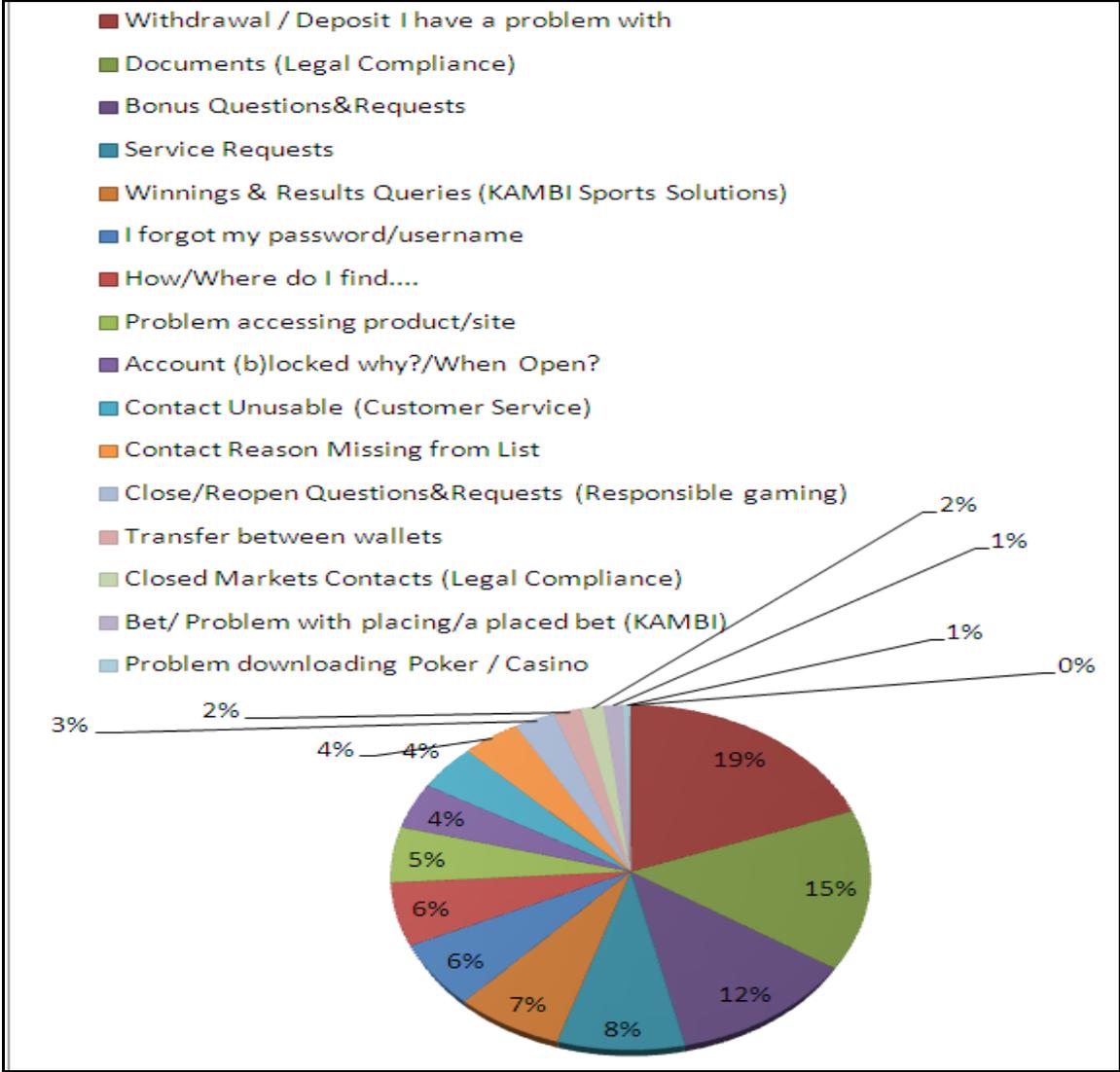
National Police Board and the Ministry of Internal Affairs: FI

Ministry for Culture: EE, LV

Ministry of Finance: AT, PL

ANNEX V

Example of why players need to contact the operator<sup>188</sup>



<sup>188</sup> Response of Unibet to the Green Paper public consultation

## ANNEX VI

### 1. Average online player profile

**DK:** 80% of online betting and casino players are male, mainly in the 26-35 age bracket<sup>189</sup>

**FI:** Internet gambling is most common in the 35-49 age bracket<sup>190</sup>

**FR:** Typically male, 36 years old, employed, having a 2-year University education, living with partner, has no children and is a renter, spending less than €50 online per month<sup>191</sup>

**IT:** Typically male, from the Centre and South of Italy, aged 25-44. 2 out of 3 users play less than €50 per month<sup>192</sup>

**ES:** Under 45 years of age, predominantly from upper or upper-middle class backgrounds, geographically concentrated in Madrid, Catalonia, Andalusia and Valencia, spending €37 per month<sup>193</sup>

**Operators:** Typically 32 years old, placing 179 bets per year with an average value per stake of £7<sup>194</sup>

For online casino games - players of a cohort average of 30 years (93% male) played once every 2 weeks during a 9-month period and lost about €6.5 at each session; players of a cohort average of 31 years<sup>195</sup>

For sports betting (fixed-odds) - players of a cohort average of 31 years (91.3% male) placed 2.5 bets of €4 every fourth day during 4 months, incurred a loss of 29% of the amount wagered<sup>196</sup>

### 2. Public health considerations

The development of online gambling has given rise to gambling disorder considerations across Member States. A distinction is to be made between approaches to harm minimisation and prevention to consumers from that of individuals who already have problems and where treatment is the domain of specialists of public health.

Available research indicates that the majority of people participate in gambling as a source of recreational activity, that they exercise normal consumer choice and do not gamble excessively or irresponsibly. However, gamblers can experience problems, which can be as severe as mental disorder. Behavioural research in this area is in its infancy. There is a gap in research literature and scientific accuracy. The lack of empirical evidence or comparable national studies do not allow for a much-needed comprehension of the prototype, the percentage of the adult population gambling online excessively and the elements categorising the behaviour of a person. Current research or academic writings extend to two ends of the pendulum ranging from gambling overall viewed as inherently dangerous to views that the majority of the population and consumers of gambling in that respect are not subject to gambling-related actual harm.

Problem gambling behaviour is generally characterised by difficulties such as a player spending significantly more money and time gambling than he/she can afford, leading to

<sup>189</sup> <http://cms.skat.dk/getFile.aspx?Id=108005>

<sup>190</sup> <http://www.doria.fi/bitstream/handle/10024/85707/THE%20GAMING%20MARKET%20IN%20FINLAND.pdf?sequence=1>

<sup>191</sup> Gambling Compliance

<sup>192</sup> Osservatorio (Milan Inst)

<sup>193</sup> 2012 study by the Universidad Carlos III of Madrid's Instituto de Política y Gobernanza

<sup>194</sup> Response to the 2011 Green Paper

<sup>195</sup> *Inside the virtual casino: a prospective longitudinal study of actual Internet casino gambling*, European Journal of Public Health Advance Access, April 2008. The overall majority of the sample representing players residing in Germany, Austria, Greece, Italy, Spain, France, Denmark, Italy, Poland.

<sup>196</sup> *Assessing the Playing Field: A Prospective Longitudinal Study of Internet Sports Gambling Behaviour*, Journal of Gambling Study, DOI 10.1007/s10899-007-9067-3. The overall majority of the sample representing players residing in Germany, followed by Austria, Greece, Italy, Spain, France, Denmark, Italy, Poland

adverse consequences for the gambler such as significant distress, disruption of his/her life, work problems, health and psychological disorders, bankruptcy, crime and suicide.<sup>197</sup> Harmful consumption of all types of gambling can lead to social and health problems for the player and can have harmful effects on the family and at the workplace. As announced in the action plan, the Commission is seeking to acquire relevant information through ALICE RAP, an EU co-funded research project which should inter alia compile data, classify addiction, assess determinants and the transition to dependence, present governance practices on addictions and provide a consolidated figure for the scale of the problem in the EU. The project has drawn up interim reports.<sup>198</sup>

### Scale of the estimated problem in Member States<sup>199</sup>

MS	Year	Scale of problem given
Austria	2011	0.4% of the surveyed persons showed problematic behaviour and 0.7% pathological gambling behaviour – “ <a href="#">Austrian Study for the Prevention of Gambling Addiction</a> ” by the Zentrum für Interdisziplinäre Suchtforschung (ZIS)
Belgium	2007 Report	20,000 deemed pathological players from an estimated 100,000 players
Croatia	Zagreb Psychiatric Hospital	Although not an official prevalence study, it states that there are 50,000 pathological gamblers ( around 1.1% of the population), and 100,000 problem gamblers (around 2.3% of the population)
Denmark	2013	gambling has developed into pathological gambling for about 5,000 individuals (Danish regulator website)
Finland	2011 Survey	2.7% of the population deemed problem gamblers of which 1% deemed gambling addicts
France	2011 Survey	0.4% (200,000) of adult population are considered to be pathological gamblers, 0.9% (400,000) are deemed to be at moderate risk
Germany	2011 Study, Hasse	0.4% of 18+ year olds deemed to have a problem gambling, 0.2% deemed to suffer from pathological or excessive gambling
Italy <sup>200</sup>	2010	1.01% of 18-74 deemed problem gamblers, 1.71% of adult gamblers deemed problem gamblers
Norway	2010, Pran Survey 2010 Study	4.4% of 15+ year olds deemed problem gamblers, 2.1 % deemed pathological or excessive gamblers Adolescent (13-17) gaming: 1% deemed problem gamblers
Poland		3% of the population deemed problem gamblers
Sweden	2009/10 Study	1.9% deemed at moderate risk, 0.3% deemed problem gamblers
UK	2012 Survey	Problem gambling is 0.8% (men) and 0.2% (women) or 0.6% (men) and 0.1% (women) of adult population (2 screening instruments used). Overall prevalence is that 4.8% (men) and 1.6% (women) are deemed as low risk gamblers and 1.7% (men) and 0.4% (women) at moderate risk gambling. Online gambling represented 2% of the gamblers.
<b>Other</b>		
INSERM global study <sup>201</sup>	2008	1-2% of the population deemed problem gamblers (at risk players)
Harvard Medical School affiliate	2007 Study	1% of players considered highly involved bettors

<sup>197</sup> *Recommendations for international gambling harm-minimisation guidelines : comparison with effective public health policy*, National Research Council 1999; Neal et al 2004, cited in *Gambl Stud*, DOI 10.1007/310899-013-9389-2, *Computers in Human Behaviour* 25(2009)

<sup>198</sup> [http://www.alicerap.eu/resources/documents/cat\\_view/1-alice-rap-project-documents/19-policy-paper-series.html](http://www.alicerap.eu/resources/documents/cat_view/1-alice-rap-project-documents/19-policy-paper-series.html)

<sup>199</sup> Data is taken from various sources

<sup>200</sup> Carried out by Lottomatica in collaboration with La Sapienza University of Rome and Eurisko

<sup>201</sup> National de la sante' et de la recherche medicale