

CONSUMER PROTECTION IN EU ONLINE GAMBLING REGULATION

Review of the implementation of selected
provisions of European Union Commission
Recommendation 2014/478/EU across EU
States.

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1. Section I - Introduction

1.1. Executive summary / Key findings

1.1.1. In General

- The Commission Recommendation 2014/478/EU aimed to encourage a consistently high level of protection for consumers of online gambling across all Member States through the introduction of common provisions addressing players' identification requirements, prevention of underage gambling and social responsibility measures.
- In the main, the primary objective of the Recommendation has not been achieved. The legal regulation of online gambling and their practical interpretations continue to substantially diverge between Member States exposing online players to varied levels of protection.
- Only one jurisdiction (Denmark) appears to have implemented the Recommendation's principles fully. In all remaining jurisdictions, at least one recommended principle has not been implemented in the national laws. In several jurisdictions the conditions are more onerous while in others they are more lenient or do not exist and consistency is lacking.
- In the Netherlands, online gambling continues to be prohibited. In Ireland and Slovenia, no specific regulations for online gambling exist.
- European Union initiatives led to the creation of a Cooperation Arrangement between the gambling regulatory authorities of the EEA Member States concerning online gambling services. This arrangement was published on 27 November 2015 and has been signed by 27 countries. It provides a concrete tool to increase greater administrative cooperation between the signatories but participation in the arrangement is voluntary and the determination of the actual extent and scope of such cooperation is determined by each individual Member State.
- The majority of regulators from Member States participate in international forums (e.g., GREF) and contribute to the Expert Working Group. Most engage in an open dialogue with their counterparts in other countries to share experiences, best practices and for advice purposes. They issue opinions and statements of intents but due to their voluntary nature and composition they lack legal competence to issue binding decision.
- The lack of uniform implementation of the Recommendation's principles is underpinned by the voluntary and non-binding nature of the instrument. There is also lack of consensus

between Member States as to what measures should be required to ensure effective protection.

- In the absence of such consensus, only mandatory harmonisation measure would be capable of securing greater regulatory convergence.
- However, the EU Commission has no further plans for any other gambling specific initiatives at EU level.

1.1.2. Players' identification & verification requirements

- 25 jurisdictions legally require online players to open an online gambling account in order to play. In the Netherlands, online gambling is not permitted and accordingly no such requirement exists. In two countries (Ireland and Slovenia), no specific regulation applies to online gambling. However, providers that offer gambling services in those countries require players to open a gambling account as well.
- 22 countries require players' identities to be verified upon application to open a gambling account. In 5 jurisdictions (Austria, Ireland, Malta, Slovakia and Slovenia) identity verification is triggered by anti-money laundering legislations.
- 17 jurisdictions permit temporary accounts (Austria, Belgium, Bulgaria, Cyprus, Czech Republic (Czechia), Denmark, France, Germany, Greece, Italy, Luxembourg, Malta, Poland, Romania, Spain, Sweden and UK). In two countries (Bulgaria and Spain) the availability of temporary accounts is partial as they are permitted only once the first stage of verification has been completed. In Croatia, the availability of temporary account or lack of it is not prescribed by law. In 7 countries (Estonia, Finland, Hungary, Latvia, Lithuania, Portugal and Slovakia) players must be verified before they are allowed to gamble.
- The conditions imposed on temporary gambling accounts vary in duration and whether additional financial limits exist or not. 1 jurisdiction (UK) permits temporary accounts for up to 72 hours, 10 allow those accounts to exist for up to 30 days (Belgium, Bulgaria, Cyprus, Czech Republic (Czechia), Denmark, France, Greece, Italy, Romania, Sweden). Austria allows temporary accounts to exist until the verification process is triggered by anti-money laundering legislation and in Malta, operators have additional 30 days form when the player reaches the AML threshold. 5 jurisdictions (Czech Republic (Czechia), Denmark, Germany, Romania and Spain) impose additional financial limits of the maximum amount that can be deposited into a temporary account.

- Only 4 jurisdictions (Denmark, Lithuania, Portugal and Spain) reported the existence of a nationally standardised electronic identification scheme for the purpose of verification of online players. In one jurisdiction (Belgium) verification is carried out through regulator via reference to the Belgian national register but other methods are also permitted. 12 jurisdictions (Austria, Croatia, Czech Republic (Czechia), Estonia, Finland, Hungary, Ireland, Italy, Latvia, Malta, Sweden and UK) permit or direct operators to refer to official national databases or to use identification systems utilised by financial services. In 6 jurisdictions (France, Germany, Greece, Luxembourg, Romania and Slovenia), players are verified by reference to submitted originals or copies of national identity documents. In Czech Republic (Czechia) and from January 2019 in Spain identification must follow a two – stage process. The first stage is electronic, but the second stage requires manual verification via copies of identity documents.

1.1.3. Minors’ protection

- All jurisdictions impose a minimum age requirement for gambling. 22 jurisdictions set a uniform age restriction at 18 years of age for all types of online gambling. As online gambling is prohibited in the Netherlands, no specific age restriction applies to this form. In 5 jurisdictions (Belgium, Estonia, Lithuania, Slovenia, and UK) age restrictions depend on the type of gambling activity. In Greece the minimum age for online gambling is 21.
- 13 countries require ‘no underage gambling’ sign to be displayed on or during commercial advertisements (Austria, Belgium, Bulgaria, Cyprus, Czech Republic (Czechia), Denmark, Finland, France, Hungary, Malta, Poland, Sweden and UK). In 12 jurisdictions no such requirement is legally prescribed although other types of content and zoning restrictions apply. However, in Italy gambling advertising has now been banned and in Latvia gambling advertising is not permitted outside of the gambling venues.
- 8 jurisdictions reported details of specific educational activities that are / were funded by the national authorities / regulatory bodies (Belgium, Croatia, Cyprus, Lithuania, Malta, Poland, Sweden and UK).

1.1.4. Social responsibilities’ measures

- 23 jurisdictions oblige operators to offer self-exclusion facilities for online players. In 5 jurisdictions this is not a legal requirement (Bulgaria, Ireland, Luxembourg, Netherlands, Slovenia). Of those 5 jurisdictions, online gambling remains prohibited in the Netherlands. In

Luxembourg players need to request the closure of their online lottery account. In Bulgaria, Ireland and Slovenia, online operators offer self-exclusion facility voluntarily.

- In 12 jurisdictions self-exclusion can be initiated only by the affected players (Croatia, Cyprus, Czech Republic (Czechia), Estonia, Latvia, Lithuania, Poland, Romania, Slovakia, Spain, Sweden and UK). 11 allow for such exclusion to be initiated by third parties (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Malta and Portugal). France, Hungary and Portugal only allow third party initiations upon a court order. Austria, Denmark, Finland, Germany, Greece, Italy and Malta permit operators to exclude players if social responsibility measures justify such action. In Belgium and Greece, other interested third parties (such as family members) may also apply to exclude another person. In two jurisdictions (Czech Republic (Czechia) and Slovakia) some individuals are barred from gambling by statute. In Belgium, some individuals may be excluded from gambling due to their membership of certain professions.

- 22 jurisdictions require operators to action self-exclusion requests immediately or as soon as it is possible. Only 1 jurisdiction (Croatia) requires self – exclusion request to be confirmed by the applicant in writing within 3 days from the original request.

- Member States do not follow definitions of ‘self-exclusion’ and ‘time-out’ that were adopted by the Recommendation. As such, the distinctions between long-term self exclusions and short – term time-outs are blurred.

- Duration of self-exclusions vary significantly between different countries. In 3 jurisdictions (Estonia, Hungary and UK) minimum and maximum duration of initial self-exclusion is prescribed (6-36 months, 3 months – 2 years, 6 months – 12 months respectively). In all those jurisdictions the original self-exclusion period is/can be extended for a further period. In 6 countries, the minimum period is prescribed but not the maximum: Denmark (1 month), Germany (12 months), France (7 days), Lithuania (6 months), Latvia (12 months), and Portugal (3 months). In Spain, entry onto the self-exclusion register is deemed permanent. The new provisions in Italy (currently being introduced through a staged process) prescribe self-exclusion periods at 30 days, 60 days, 90 days or permanent. All remaining jurisdictions allow self-exclusion periods to be set by the players.

- Temporary self-exclusions can be revoked in 11 jurisdictions (Austria, Belgium, Croatia, Cyprus, Czech Republic (Czechia), Finland, Hungary, Lithuania, Malta, Portugal and Slovakia).

In two jurisdictions (Austria and Malta) termination of temporary self-exclusion can only be actioned after 24-hour cooling off period. In Hungary, temporary self-exclusion can only be cancelled if the original duration amounted to or exceeded 180 days. In Lithuania, this can only occur after a minimum period of 6 months has elapsed. In 4 jurisdictions (Estonia, France, Germany, Latvia) temporary self-exclusion cannot be terminated before the initial duration has passed.

- Permanent self-exclusion can be terminated in all jurisdictions. In 4 jurisdictions (Austria, Cyprus, Czech Republic (Czechia), Malta) a minimum of 7 days must pass before permanent self-exclusion can be revoked. In 5 countries (Italy, Lithuania, Romania, Slovakia and Spain) this minimum period is set at 6 months and in further 5 countries (Denmark, Finland, Germany, Greece and Sweden) at 12 months. In Belgium, requests to cancel permanent self – exclusion are actioned after 3 months cooling off period. In Finland, the cooling off period is also 3 months from the receipt of request but such request can only be submitted once 12 months have passed. In Hungary the minimum period is set at 180 days and in Italy, in addition to the 6 months minimum duration, 7 days cooling off period is also imposed. In Portugal, revocation can be actioned after 3 months plus 1 month cooling off time. In France, permanent self-exclusion can only be cancelled after 3 years.

- No jurisdiction (0) initiate automatic referral to health group organisation or treatment centres upon self-exclusion.

- 14 jurisdictions (Belgium, Denmark, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, Portugal, Slovakia, Spain, Sweden and UK) established national self-exclusion registers. In Czech Republic (Czechia) such register is mandated by the relevant legislation, but the system has not yet become operational.

- Of those 14 jurisdictions, in two (Latvia and UK) operators are allowed but are not legally required to refer to the national register. In the remaining 12 jurisdictions operators are obliged to consult the national registers upon specified triggers.

- All 14 jurisdictions with national self-exclusion registers grants access to all operators licensed in the relevant Member State.

- None of the jurisdiction (0) allows access to national registers to operators licensed in another Member State.

1.2. Study's background

The widespread availability of fast connection to the Internet via personal computers or other 'smart' mobile devices has revolutionised the manner in which businesses operate and interact with their consumers and each other. Increased consumer confidence and trust in e-commerce underpinned the development and rapid growth of the online service sector, including regulated online gambling. In 2015, online gambling accounted for 15% of the overall total gambling market share in Europe and this share is forecast to increase to 18% by 2020¹. Globally, European online gambling market accounts for 47.6% of the total gambling revenues making the European market the largest in the world². As such, online gambling remains widely popular and in-demand amongst European players.

Many advantages accrue to the society and to individual players from gambling participation. Those include significant revenues that gambling generates and can be utilised for public causes and improvements to the well-being and overall health of individuals³. However, such engagement is not inherently risk-free, and, for some persons, it may lead to severe negative consequences, including the development of a gambling disorder⁴. Remote engagement in gambling has been alleged to pose more extensive risks to players in comparison to gambling in land-based establishments and some commentators argue that Internet is particularly conducive towards the development of a gambling disorder⁵. While those allegations have not been proven, it is typically not disputed that Internet presents different risks. Accordingly, cooperation between different jurisdictions and cross-border regulatory convergence is essential for effective minimisation of potential externalities that online gambling may cause.

Despite that, the regulation of online gambling at EU level has largely escaped harmonisation attempts⁶ and the European Court of Justice has traditionally granted Member

¹ 'Europe: Online Shares of the Total Gambling Market in Europe from 2003 to 2020', report from www.statista.com in November 2018

² In press, Trulioo, 'Online Gambling Laws in Europe', 23 January 2018As s

³ MS Kerney, 'The Economics Winners and Losers of Legalised Gambling' (2005) LVIII 2 National Tax Journal 281; R Desai et al., 'Health Correlates of Recreational Gambling in Older Adults' (2004) 161(9) American Journal of Psychiatry 1672

⁴ As recognised by the Diagnostic and Statistical Manual of Mental Disorders DSM – 5 (2013)

⁵ A McCormack, MD Griffiths, 'Motivating and Inhibiting Factors in Online Gambling Behaviour: A Grounded Theory Study' (2012) 10(1) International Journal of Mental Health and Addiction 39; see also J Suler, 'The Online Disinhibition Effect' (2004) 7(3) CyberPsychology & Behaviour 321

⁶ Some harmonisation measures apply to gambling regulations, but many do not. For example, the 4th and 5th Anti-Money Laundering Directive applies explicitly to casinos which will include online casinos. The General

States a wide margin of discretion to determine how gambling should be regulated in their jurisdictions in accordance with their own cultural norms, social, policy and moral considerations⁷. Even though all national regulations must comply with the fundamental principles of the free movements of goods⁸, freedom of establishment⁹ and freedom to provide cross-border services¹⁰, Member States made an extensive use of the derogation rights¹¹. The standard of proof imposed on EU jurisdictions to justify restrictions have always been seen as very low and the almost total absence of any application of the ‘necessity’ requirement makes it legitimate to say that the European Court of Justice has been traditionally rather reluctant to undertake a rigorous scrutiny of national laws¹². Considering this, it is perhaps unsurprising that Member States developed their online gambling frameworks incrementally, without necessarily referring to or comparing with the legislative measures adopted in other European countries. But this caused a significant divergence in adopted approaches that range from a complete prohibition of online gambling, through online monopolies, duopolies or oligopolies to closed and open licensing systems¹³. Even as between the States that permit online gambling under a valid licence, the detailed obligations imposed on licensees vary materially from State to State. However, online gambling is a service that inherently crosses national borders and it is very difficult for any State to provide effective safeguards for the players on an individual basis. Equally, legitimate international gambling operators struggle to comply with the myriads of different obligations and lack of regulatory convergence hinders their ability to develop safer, yet, attractive offer that would divert players’ attention from unregulated sites. Lack of common standards may also hinder players’ ability to differentiate between legitimate and illegitimate sites and may expose

Data Protection Regulation also apply to data collected during gambling transactions. Other relevant EU legislation include: The Unfair Commercial Practices Directive, The Unfair Contract Terms Directive etc. But, for example Audiovisual Media Services Directive 2018 continues to exclude gambling offers that are merely incidental to the provision of the gambling services and the directive on Consumer Rights 2011 also excluded gambling contracts.

⁷ G Anagnostaras, ‘Les jeux sont faits? Mutual recognition and the specificities of online gambling’ (2012) 37(2) EL Rev 191

⁸ Treaty of the Functioning of the European Union – Art 34

⁹ Treaty of the Functioning of the European Union – Art 49

¹⁰ Treaty of the Functioning of the European Union – Art 56

¹¹ Permitted under Art 36 and Art 52 that also applies to freedom to provide services by virtue of Art 62 TFEU

¹² S Van Den Bogaert, A Cuyvers, ‘“Money for Nothing”: the Case Law of the EU Court of Justice on the Regulation of Gambling’ (2011) 48 Common Law Market Law Review 1175

¹³ A legal position that remains valid up to the present day.

patrons to different levels of protection depending on which operators they choose to gamble with¹⁴.

EU initiatives in the context of online gambling originated from the EU Commission Green Paper published in 2011¹⁵. The initiative was further supported by two parliamentary resolutions on the integrity of online gambling and on online gambling in the internal market issued in 2011 and 2013 by the EU Parliament respectively¹⁶. Through extensive consultation that was carried out after the publication of the Green Paper, the EU Commission identified seven ‘problem drivers’ that required attention. Those referred to: (1) easy access to unregulated sites that may exploit the vulnerabilities of players and minors; (2) ‘widespread advertising’ that aggressively promote gambling and represent strong inducement to gambling; (3) ‘poor transparency and information for consumers and minors’ that may undermine the possibility of players to make a fully informed choice of whether to engage in gambling or not; (4) ‘low monitoring of player behaviour’ that may prevent operators from being able to support players who are at risk of developing a gambling disorder; (5) & (6) ‘deficiencies in regulatory measures for protecting consumers and for responsible commercial communications’; and (7) significant variations in social responsibility measures between various Member States¹⁷.

The need to address the identified concerns culminated in the Commission Recommendation 2014/478/EU on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online¹⁸ (later referred to in the text as ‘the Recommendation’). It was issued on the 14th of July 2014 and the extent to which Member States amended their laws, if it was necessary, to accommodate some of the specific provisions of the Recommendation is the focus of this report. In its impact assessment the Commission accepted the need for EU action ‘*to provide a sufficient and uniform level of protection throughout the Union*’¹⁹. It also recognised that the intended objective would be better achieved with a mandatory instrument such as an EU Directive but

¹⁴ M Carran, *Gambling Regulation and Vulnerability* (Edward Elgar, 2018)

¹⁵ EU Green Paper on On-Line Gambling in the Internal Market SEC (2011) 321 Final

¹⁶ European Parliament: European Parliament Resolution of 15 November 2011 on online gambling in the internal market (2011/2084(INI)) P7_TA(2011)0492 and European Parliament: European Parliament resolution of 10 September 2013 on online gambling in the internal market (2012/2322(INI)) P7_TA(2013)0348

¹⁷ Commission Staff Working Document Impact Assessment, [C(2014)4630 final] {SWD(2014) 233 final}

¹⁸ Commission, Recommendation 2014/478/EU

¹⁹ Commission Staff Working Document, Executive Summary of the Impact Assessment, {C(2014) 4630 final}, {SWD(2014) 232 final}

due to the lack of support from the majority of Member States, direct legislative action was not considered to be feasible. Accordingly, the non-binding soft form of a Recommendation was selected as the best possible alternative to a formal legislation. Even then, the Recommendation was challenged by the Kingdom of Belgium that argued, inter alia, that, despite the chosen form, the Recommendation was in substance a disguised Directive and should be annulled²⁰. While the annulment proceedings were not successful, the case demonstrated the level of opposition that exists towards attempts to harmonise gambling laws. It also highlighted that even though the instrument of a Recommendation as such does not have any formal binding force, it has some legal consequences and it is not expected that it could simply be ignored by national legislative bodies and the national courts²¹.

The underlying broad objectives of the Recommendation are listed in paragraph 2. It provides that *'this Recommendation aims to ensure that gambling remains a source of entertainment, consumers are provided a safe gambling environment and measures are in place to counter the risk of financial or social harm as well as to set out action needed to prevent minors from gambling online'*²². More implicitly, the Recommendation's underlying premise is the argument that such high level of protection cannot realistically be achieved by simply imposing a ban on online gambling services as this, in practice, does not preclude players from accessing the wide range of illegal gambling sites. This foundation can be seen from lack of any provision that would encourage Member States to evaluate whether total prohibition would be more suitable to achieve the intended aims. Because of that, the Recommendation presupposes the adoption of a legal gambling markets where the requirements to impose high level of protection can be imposed on the industry. Arguably, the principles stated in the instrument propose relatively minimal interventions and the suggestions are still relatively broad and flexible. But even then, the Recommendation's objectives can only be met if its provisions are indeed implemented within all European jurisdictions, despite their non-binding nature. Under Art 52, the Commission planned to evaluate the implementation of this Recommendation²³. However, until November 2018 such

²⁰ Belgium v European Commission (C-16/16P) EU: C:2018:79(ECJ)

²¹ A Arnall, 'Case Comment: EU Recommendation and Judicial Review' (2018) 14(3) ECL Review 609

²² Commission, Recommendation 2014/478/EU, para 2

²³ Commission, Recommendation 2014/478/EU, Art 52

review has not taken place as ‘insufficient input about the situation in the Member States has been received by the Commission’²⁴.

This review aims to fill in some of the gaps by collecting data and synthesising available information on the extent to which Member States’ national legislation and operators’ practices correspond to the provisions of some of the Commission’s recommended measures. The relevant provisions that have been considered in this evaluation relate to the requirements and methods of the verification of players’ identity, protection of minors from underage gambling and from being induced into premature consumption, and the existence of self-exclusion and other self-limiting tools that aim to minimise incidence of gambling disorder in Europe. Additionally, the study aims to identify the current position and attitudes towards better facilitation of inter-operability of national self-exclusion registers that would be accessible to all online gambling operators irrespective of which Member State issued the relevant licence and irrespective of the gambling operators’ place of establishment. Finally, the study also intended to elucidate what other cross-border cooperation activities that may eventually lead to enhanced online players’ protection and greater regulatory convergence are currently facilitated by the European Union.

1.3. Terms of reference

European Gaming and Betting Association contracted City, University of London to carry out scoping study on the extent to which the current laws and regulation that govern the provision of online gambling within the EU Member States correspond to specific principles set out in the Commission Recommendation 2014/478/EU on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online. Jurisdictional data was collected from each relevant State by the Association and the analysis was carried out by the author of the review.

The scope of the project is confined to the regulatory provisions that deal with online gambling. While the definition of online gambling varies between jurisdictions, in the context of this evaluation, this term means gambling that is carried out on the Internet regardless of how the Internet is being accessed. This include activities that involve accessing gambling websites via personal computers, ‘smart’ mobile phones, internet – enabled tablets and other

²⁴ Direct response from EU Commission via email.

electronic devices but excludes regulations that may affect land-based gambling operators, and which may differ from their online counterpart either generally or with regards to specific details. Gambling regulations that may apply to gambling offered via mobile applications that do not require connection to the Internet as well as 'social gaming' have also been excluded. However, it is worth noting that, to date, no jurisdiction regulates gambling applications separately. The project is focused on the legal position of the Member States of the European Union. Accordingly, laws and regulations within states that are not part of the EU and any potential relationship that Member States may have with such third countries were outside the scope of the project.

The review has been fully funded by the European Betting and Gaming Association. The study was carried out during October and November of 2018. The findings illustrate legal position within Member States as of 30 November 2018. The author declares that outside the commission paid for this review, there are no other conflicts of interests.

1.4. Methodology

Doctrinal research was carried out to identify existing articles and academic commentary on the scope, implementation and evaluation of the Recommendation. Background literature review was carried out on Academic Search Complete, City, University of London's online journals and on Google Scholars. No paper-based search in a physical library was deemed necessary as all relevant articles that would have been published post 2012 are now accessible online. The official EU website <http://ec.europa.eu> was also referred to. The following search terms were used: 'EU AND gambling'; 'EU Commission Recommendation 2014/478/EU'; 'EU AND green paper AND gambling'; 'EU AND cooperation AND gambling'; 'EU AND protection of players'; 'EU AND minors protection'; and 'EU AND problem gambling'. Most search terms produced a very similar list of publications albeit in a different order of displays. However, overall only a negligible number of relevant articles could have been identified.

Empirical data relating to individual national legal position was acquired through three separate processes. At first instance, data was collected via questionnaire that was sent out by the European Gaming and Betting Association to either compliance officers of gambling operators with a valid licence granted by a given EU country, representatives of the

jurisdiction's regulatory authorities or relevant experts known to the European Gaming and Betting Association. Respondents were asked to comment on questions set by the Association relating to the processes invoked to identify / verify online players, availability and scope of temporary accounts, minimum age requirements, existence of educational activities funded by the national authorities to raise awareness among young people of the risks that may be associated with online gambling, existence of the requirement to include a 'no underage gambling' warning sign in commercial communication, requirements to offer self exclusion facilities and other control tools that may allow players to limit their gambling expenditure, existence of national self-exclusion registers and their accessibility to operators licensed in other Member States²⁵. Responses were received from representatives of all EU Member States which represents 100% completion rate.

After the initial data collection, further enquires were sent via email to 25 representatives of regulators or national authorities, or another relevant expert by the researcher. No further enquiries were sent to the Netherlands due to lack of online gambling regulations and to Malta and Luxembourg as their original responses included all relevant information. Contact details of the regulators were provided by the European Gaming and Betting Association and were supplemented by some contacts known to the researcher. The purpose of the second data collection exercise was twofold. Firstly, some of the initial responses required additional clarifications – those varied and clarifying questions differed depending on the jurisdiction involved. Secondly, all regulators were asked to answer the following questions:

- 1) Does your country participate in any arrangement with other Member States (on a bilateral or multilateral level) to tackle problem gambling in Europe?
- 2) Are you aware of any cross-border cooperation measures (at EU level or between individual Member States) which exist to tackle problem gambling in the EU?
- 3) Are you aware of any measures that have been taken by the EU Commission (or are being planned by the EU Commission) to facilitate interoperability between national self-exclusion registers that would be accessible to licensed gambling operators (or / and national authorities) regardless of their location within the EU?

²⁵ Full set of questions and available answer choices are included in Appendix A

4) Please add any other comments that you think may be relevant.

Responses to those queries were received from 16 jurisdictions: Belgium, Bulgaria, Czech Republic (Czechia), Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Poland, Portugal, Spain, Sweden and UK).

Thirdly and independently of the above, enquiries were made of the EU Commission directly via an email sent to grow-gambling@ec.europa.eu. The EU Commission was asked the following questions and response was received to all four questions.

- 1) According to Art 54 of the Recommendation, the Commission was planning to evaluate the implementation of the Recommendation by 19 January 2017. Could you please confirm whether this evaluation took place or not? If not, would you know the reasons for it. If yes, would you please let me know how I can access the evaluation itself?
- 2) What measures have so far been taken by the European Commission to create EU – wide interoperability between national self-exclusion registers that would be accessible to national authorities or to national authorities AND licensed gambling operators?
- 3) What other measures, if any, are planned for the future that would further facilitate such interoperability?
- 4) Are there any other cross-border cooperation measures (either EU-wide or between specific Member States) that exist to address problem gambling in the EU.
- 5) Are any activities undertaken by the Commission that would further facilitate the development of such cooperation measures among the Member States? Are any other initiatives planned for the future in this context?

All data was analysed using doctrinal legal methodology coupled with thematic analysis process.

1.5. Acknowledgement

This evaluation of the legal positions within the EU Member States relies on the information provided by the compliance officers, regulatory representatives of the represented countries, relevant experts, and the EU Commission. Accordingly, special ‘thank you’ goes to everyone who responded to the questionnaires and additional email queries. The European Betting and Gaming Association is also thanked for assistance with co-ordinating the collection of empirical data and for helpful comments on the draft of this review.

2. SECTION II – DISCUSSIONS AND PROJECT’S FINDINGS IN DETAILS

2.1. Players’ identification / verification requirements

The Recommendation’s provisions regarding the identification and verification of online players are contained in Part V of the instrument. Its starting premise is the prohibition of anonymous engagement with online gambling. However, this restriction is not absolute and there is an option of provisional accounts that would allow access to players to gambling services for a short period of time. National laws are encouraged to insist that gambling providers should develop and implement processes that adequately verify their players’ identity in line with the ‘know your customers’ principles. This may be secured through the requirement that all players should register with the gambling provider and should open an account with them²⁶. Upon registration, the laws should oblige licensees to collect personal data that would enable them to confirm the players’ identity²⁷. Such data, as a minimum, should include the name of the players, their address, date of birth and electronic mail address or a mobile telephone number validated by the player but also confirmed through an independent process by the operator²⁸. The verification process should be carried out in a reasonable time²⁹ and in a manner that would be most efficient and least cumbersome to applicants and to gambling operators³⁰. In the interim period (between the application for an online gambling account and completion of the verification process), the Commission recommends that players should be permitted access to a temporary account³¹. Those account should then either be converted into a permanent one once the verification is successful, closed if the verification proves impossible³², or if it transpires that the applicant is underage³³. To minimise regulatory, technical and process – related burdens on operators and to reduce any disruption to players during the registration period, countries were encouraged to ‘adopt electronic identification systems in the registration process’³⁴ or where such systems are not available ‘to facilitate access to national registers, databases or other

²⁶ Commission, Recommendation 2014/478/EU – Art 15

²⁷ Commission, Recommendation 2014/478/EU – Art 18

²⁸ Commission, Recommendation 2014/478/EU – Art 16

²⁹ Commission, Recommendation 2014/478/EU – Art 21(a)

³⁰ Commission, Recommendation 2014/478/EU – Art 21(a)

³¹ Commission, Recommendation 2014/478/EU – Art 22(a)

³² Commission, Recommendation 2014/478/EU – Art 19

³³ Commission, Recommendation 2014/478/EU – Art 8 and Art 9 by implication

³⁴ Commission, Recommendation 2014/478/EU – Art 20

official documents’ against which the operators could verify their players’ identity details³⁵. Players should only be allowed to have access to a permanent gambling account once the registration process is completed³⁶ and security of online accounts should be ensured by making them accessible only with a ‘unique identification username and a password’ or another security feature equivalent to such unique ID and a password³⁷.

The benefits of the identity verification requirements include the facilitation of better protection of minors due to better identification of underage players who may attempt to gamble illegally, more effective prevention of fraudulent and other potentially criminal activities as well as the facilitation of better and more targeted support that may be offered to players through enhanced monitoring possibilities.

Any aspect of the Recommendation that relate to ‘know your customers’ principles needs to be interpreted in conjunction with the mandatory legislative framework that deals with anti-money laundering issues. The 2015/849 Directive on the Prevention of the use of the Financial System for the Prevention of Money Laundering or Terrorist Financing³⁸ (later referred as the 4th AML Directive) is a binding instrument, provisions of which were required to be transposed into national laws by June 2017. In this Directive, gambling services are listed as ‘obliged entities’ in Art 2(1)f with the only proviso that Member States are permitted to exempt partially or fully some gambling services that have been proven, following an appropriate risk assessment, to present a low risk of money laundering³⁹. However, Art 2(2) of the 4th AML Directive specifically prohibits applying this exemption to casinos, regardless of whether they operate through a land – based establishment or online⁴⁰. Accordingly, only providers that limit their online gambling offer to online lotteries and/or sports betting would potentially be able to benefit from such exemption but not providers that also offer online casinos. Under the 4th AML Directive, obliged entities are required to develop, implement, establish and regularly review their policies to minimise the risks of money laundering and

³⁵ EU Commission Recommendation 2014/478/EU – Art 18

³⁶ EU Commission Recommendation 2014/478/EU – Art 15 in conjunction with Art 22

³⁷ EU Commission Recommendation 2014/478/EU – Art 22(b)

³⁸ Full title – DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) No 648 / 2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC

³⁹ 4th Anti-Money Laundering Directive, Directive EU 2015/849 – Art 2(2)

⁴⁰ 4th Anti-Money Laundering Directive, Directive EU 2015/849 – Art 2(2)

financing of terrorism. Such policies must be based on risk-assessment that would often include a holistic consideration of geographic risks, customer risks, transaction risks, products risks and delivery channel risks⁴¹. More specifically, obliged entities are required to apply 'due diligence' process to any individual or entity whose transaction exceeds the threshold of 2000 Euros⁴². Transactions referred to must incorporate deposits of funds, placing of bets, withdrawal of winning or withdrawal of previously deposited funds⁴³. The due diligence process must ensure that relevant customers' identities are properly verified, and their source of funds explored. The 5th Anti-Money Laundering Directive (EU) 2018/549⁴⁴ that amends the 4th AML Directive added to the list of 'obliged entities' the 'providers engaged in exchange services between virtual currencies and fiat currencies' and 'custodian wallet providers'⁴⁵. This directive is due to be transposed into national laws by 10th of January 2020 and, depending on the structure and mode of operation of online gambling licensees, it may increase the number and types of operators that may be subjected to anti-money laundering legislations. Due to the mandatory nature of anti-money laundering provisions, all casinos must have relevant policies and procedures to carry out due diligence and to identify their customers and their source of funds when the relevant threshold of 2000 Euros is reached. To comply with those requirements, many online providers rely on sophisticated technological solutions to detect potential instances of attempted criminal activities and to ensure traceability of funds but those are not universal across all countries. In any case, anti-money laundering obligations are unaffected by any rules that may have been introduced under the Recommendation and typically operate to supplement each other and not as a replacement. Any process that relates to data collection, processing, transfer or destruction of personal data must also comply with the General Data Protection Regulation (EU) 2015/679 (GDPR). This broadly aims to ensure that the data is collected and used only for specific and relevant purposes upon an actual consent from the data subject to whom the data relates⁴⁶.

⁴¹ Practical Law Financial Services, 'Fourth Money Laundering Directive – MLD4', [https://uk.practicallaw.thomsonreuters.com/Document/I4194ff26d62311e498db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.practicallaw.thomsonreuters.com/Document/I4194ff26d62311e498db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)), accessed November 2018

⁴² 4th Anti-Money Laundering Directive, Directive EU 2015/849 – para 21, p 4

⁴³ 4th Anti-Money Laundering Directive, Directive EU 2015/849 – para 21, p 4

⁴⁴ DIRECTIVE (EU) 2018/473 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, and amending Directive 2009/138/EC and 2013/36/EU

⁴⁵ Directive (EU) 2018/843 – Art 1(1)c

⁴⁶ General Data Protection Regulation (EU) 2016/679

The proposals contained in the Recommendation arguably suggest the imposition of only relatively basic standards. Nevertheless, the current legal requirements and processes adopted in Member States continues to vary. The only principle of almost universal application is the licence condition that players must indeed open a gambling account with the operator and their identity must be verified. This requirement applies in all Member States with the exception of the Netherlands, Ireland and Slovenia. In the Netherlands, online gambling continues to be prohibited and accordingly, specific rules that would be applicable to such form of gambling do not exist. Ireland and Slovenia do not have specific legislation that regulates online gambling but providers that offer their services in those two jurisdictions comply with this requirement voluntarily. Of all remaining states, 7 do not allow commencement of gambling until the verification process is successfully completed. In all other jurisdictions players are allowed to gamble using a temporary account. However, the permitted periods vary from 72 hours (UK) to the time when the verification is triggered by anti-money laundering legislations (Austria), and even 30 days from when the anti-money legislation threshold is reached (Malta). However, the most popular duration of a temporary account is 30 days (Belgium, Bulgaria, Cyprus, Czech Republic (Czechia), Denmark, France (one month), Greece, Italy, Romania and Sweden. Some jurisdictions (Denmark, Germany, Czech Republic (Czechia), Romania and Sweden) add additional financial limitations with regards to maximum amounts that can be deposited to such online provisional accounts and all jurisdictions prevent any withdrawals being made until the verification is completed. Temporary accounts are typically allowed only if the electronic verification methods fail. This often happens if the applicant is a foreigner who has only recently settled in a new jurisdiction or who resides there on a temporary basis, but it may also affect some nationals. This will include minors who may have only recently become of full age or citizens that previously resided in the different jurisdictions.

Table 1 – Online identification / verification requirements & existence of temporary accounts per jurisdiction

	Verification triggered by AML requirements	Verification triggered by application to open account	Permissibility of temporary accounts		Maximum permitted duration of temporary account
			Permitted	Not permitted	
Austria	✓		✓		AML threshold
Belgium		✓	✓		30 days
Bulgaria		✓	✓ (Partial)		30 days
Croatia		✓	Unspecified	Unspecified	Unspecified
Cyprus		✓	✓		30 days
Czechia		✓	✓		30 days / CZK 3,000
Denmark		✓	✓		30 days / DKK 10,000
Estonia		✓		✓	
Finland		✓		✓	
France		✓	✓		One month
Germany		✓	✓		Up to 150 Euros
Greece		✓	✓		30 days
Hungary		✓		✓	
Ireland	✓		Unspecified	Unspecified	Unspecified
Italy		✓	✓		30 days
Latvia		✓		✓	
Lithuania		✓		✓	
Luxembourg		✓	✓		Unspecified
Malta	✓		✓		30 days from AML
Netherlands	n/a	n/a	n/a	n/a	n/a
Poland		✓	✓		Unspecified
Portugal		✓		✓	
Romania		✓	✓		30 days / EUR 200
Slovakia	✓			✓	
Slovenia	✓		Unspecified	Unspecified	
Spain			✓ (partial)		30 days / EUR 150
Sweden		✓	✓ (new Act)		30 days / EUR 1000
UK		✓	✓		72 hours

Several countries have their own peculiarities that require separate exposition. In four jurisdictions – Austria, Ireland, Malta and Slovakia – the identification requirement is triggered primarily by anti-money laundering legislation. However, in Slovakia, the need to

perform due diligence arises when the business relationship is established and not only when the relevant threshold of 2000 Euros is reached. This is deemed to occur when a player requests to open their gambling account. This makes their position akin to other jurisdictions that requires verification to take place upon registration. In Slovenia, online gambling does not benefit from separate regulation and no specific legal obligations have been established in this context. Nonetheless, the online casino that is controlled by the Slovenian government (casino.si) only permits gambling after the verification process has been completed. In Poland and Croatia, the rules prescribe the need to identify the customers, but the specific details are lacking. Art 10 of the Croatian Ordinance on Interactive Online Casino Gaming 2010 and Art 11 of the Croatian Ordinance on Organising Remote Betting 2010 clearly stipulate that players' identity must be verified and allows remote operators to access national tax registers for this purpose but do not indicate the time in which this process must be completed and does not mention the availability, or lack of, temporary accounts⁴⁷. Similarly, in Poland, under Art 15(i) of the Gambling Law of 2009 (as amended) online operators are required to display rules regarding players' identification, rules relating to temporary accounts and age – verification processes but exact details are to be devised by the operators themselves subject to the approval by the minister with competency in public finance⁴⁸. Bulgaria's process appears even more complex. According to the Bulgarian Gambling Act, all operators must report on every transaction that takes place and is then registered in the system of the State Commission on Gambling and National Revenue Agency⁴⁹. Players are then provided with an NRA number and only once they receive such a number, they are permitted to open a temporary gambling account. Sweden and Spain have recently approved new legislations relating to gambling that are due to come into force in January 2019 in both. In Sweden, the new Gambling Act⁵⁰ will continue to permit temporary account for up to 30 days and a maximum amount of 1000 Euros which is comparable to the provisions in other EU jurisdictions. In contrast, the new Spanish gambling legislations tightened their conditions by introducing a compulsory second stage of the verification process. Currently, Spanish players are verified by reference to the official police citizen register and temporary accounts are only

⁴⁷ Ordinance on Interactive Online Casino Gaming 2010 – Art 10; Ordinance on Organising Remote Betting 2010 – Art 11

⁴⁸ Polish Gambling Law 2009, Art 15(i)1; 15(i)2; 15(i)3

⁴⁹ Bulgarian Gambling Act – Art 55, 57, 60, 62

⁵⁰ Swedish Gambling Act (Spellagen [2018:1139])

available to foreigners who have 30 days to prove their identity. From January 2019, online operators will be required to also obtain ID copies of all players, in addition to the electronic method. After successful electronic identification, players regardless of nationality will be allowed to deposit up to 150 Euros but their account will only become permanent once the copies of identity documents are received by the operators.

2.2. Electronic verification methods

Due to the substantial divergence in the processes that are utilised by gambling operators to verify their customers, it would not be feasible or beneficial to identify the most prevalent method. Accordingly, in this evaluation, jurisdictions are categorised by reference to three options: (1) jurisdiction where licensed operators can verify applicants by reference to a nationally standardised electronic identification scheme created for the purpose of verification of online players (primary recommendation – Art 20)⁵¹; (2) jurisdictions where licensed operators have access to national registers, database or other official electronic documents against which operators can verify players' identity but which were not created specifically for this purpose (secondary recommendation – Art 20)⁵². This option includes reference to electronic registers that are maintained by public authorities or registers created and maintained by commercial entities. Those may include and are not limited to: electoral registers, census, national tax registers, land ownership registers, road traffic registers or databases created and maintained by credit scoring agencies, and similar⁵³. The third option refers to jurisdictions where there are no specific electronic verification requirements and operators may or may not have access to electronic registers and need to develop their own procedures or rely on manual identification. It is important to note here that in several jurisdiction, operators can develop their own verification methods even when access to electronic database is available. This means that, in several instances, there will be partial overlap between options 2 and 3 depending on the choices of specific online operators. Furthermore, some jurisdictions mandate a two-stage process as it has been discussed in section 2.1.

While electronic verification methods for online gambling remain the preferred option, all operators, regardless of jurisdiction, can revert to the default mechanism of using

⁵¹ Commission, Recommendation 2014/478/EU – art 20

⁵² Ibid

⁵³ Responses to jurisdictional surveys

the traditional offline method of verification for online purposes⁵⁴. This method requires players to submit copies of their identity documents such as ID card, passport or driving licence to the online provider who then manually checks the documents' validity. In the alternative, players may visit offline agency of the online operator where the original document can be checked and verified face to face. This method continues to be obligatory in some countries. Where such system is not legally prescribed, while reliable and available in all other jurisdictions as well, it represents a 'back up' mechanism that is typically reserved for instance when the electronic identification fails. This is because this method is particularly cumbersome and involves an inherent delay in the registration process that may deter some players from gambling altogether or may induce them to use illegitimate sites where identity verification may not be required⁵⁵. Nonetheless, this method remains available and is typically used to verify foreign players whose identity may not appear on the available national electronic registers.

Of the three categories, the most prevalent option within Member States is option 2. According to the survey responses, only Denmark, Lithuania, Portugal and Spain introduced a nationally standardised electronic system that was developed or designated specifically for online gambling. In Denmark, the Danish Gambling Authority appointed a company called NemID that is responsible for electronic identification of players. Customers first register with the gambling operator who opens for them a temporary account. This temporary account can only become permanent once the player also registers, within 30 days, with NemID. Then, NemID carries out identity verification process on the applicant and certifies to the relevant gambling operator when this is successfully completed. In Spain, licensed gambling operators can verify their customers through an online interface maintained by the Spanish regulator and connected to the official police citizen register. In Portugal, licensed operators can verify their players by reference to a 'public entity database' accessible via the Portuguese regulator SRIJ. In Lithuania, it was reported that a nationally standardised electronic identification system has been implemented but no further details were provided. At the opposite spectrum, some jurisdictions continue to rely primarily on manual verification that requires

⁵⁴ M Carran, *Gambling Regulation and Vulnerability*, (Edward Elgar 2018), p 183

⁵⁵ C Coadgnone, and others, 'Study on online gambling and adequate measures for the protection of consumers of gambling services' final report, final version (March 2014) EAHC/FWC/2012 86 13

players to submit copies of their identity documents. This position pertains in France, Greece, Luxembourg, Romania and Slovenia. In Germany, the legal requirements are even stricter for first identification as verification takes place face to face and the presentation of the original documents is required. However, once the initial face to face verification is completed, players are included into the electronic database maintained by a credit scoring agency SCHUFA and subsequently can be verified electronically. Two-stage verification process has been adopted in Latvia, Bulgaria and will be required in Spain from January 2019. In Latvia, the initial check can be carried out by reference to the Latvian Population Register but operators are also required to carry out secondary verification. In Bulgaria, players need to take the first step to register with the National Revenue Agency but secondarily, their identity documents have to be checked by the operators as well. In UK, online providers are permitted to rely on electronic verification methods through reference to electoral registers, credit reference agencies or via reliance on payment by credit cards that are only available to those who are over the age of 18 years old but additional random checks are also required. Few jurisdictions do not impose any electronic verification requirements and leave it to the operators to determine how they should identify their customers. Those are: Cyprus, Poland and Slovakia. For detailed breakdown by jurisdiction, see Table II.

As the above discussion demonstrated, the methods of identity verifications differ not only between individual states but also between different gambling providers within any given jurisdiction due to the permission given to the operators to opt for alternative solutions. While this does not mean that customers are not being correctly identified, the diversity of methods hinders the effectiveness of any potential supervision. This, in turn, creates more opportunities for unscrupulous providers to exploit the situation and undermines overall consumer protection. It also indicates that the primary Recommendation's suggestion to develop or dedicate specific electronic verification systems has not proved popular among the Member States. Of the 4 jurisdictions that have reported standardised systems, in two of them (Denmark and Spain) they were already operational prior to the Recommendation being issued. However, the secondary method of verification by reference to national registers is being utilised by many countries and only few continue to rely primarily on manual checks.

Table II – Identity verification methods

	Option A	Option B	Option C	Additional details
Austria		✓	✓	Verification by reference to population register, other options permitted.
Belgium		✓	✓	Verification through regulator via reference to the Belgian national register; other methods also permitted.
Bulgaria			✓	Two staged process – (2) registration with National Revenue Agency, (2) verification of identity documents
Croatia		✓		Verification by reference to database of Tax Administration
Cyprus			✓	Verification methods chosen by operator,
Czechia		✓		Verification by reference of official national registers
Denmark	✓			Operators use NemID, a company chosen by the government to provide electronic verification.
Estonia		✓	✓	Verification by reference to the Estonian Population Registry, other verification options are also allowed.
Finland		✓		Verification via TUPAS authentication method (also used by financial institutions) or via reference to the Population Information System.
France			✓	Verification via copies of identity documents
Germany			✓	Verification via SCHUFA credit scoring upon prior face to face manual identification with original documents
Greece			✓	Verification via copies of identity documents.
Hungary		✓		Verification by reference to the Central Census Register or the Road Traffic Registers.
Ireland		✓	✓	Verification by reference to publicly available database; other methods also available
Italy		✓		Verification through regulator (ADM) via reference to tax database.
Latvia		✓	✓	Two stage process – (1) verification by reference to Latvian Population Register, (2) further verifications are also required, e.g., match between name on the account and payment method.
Lithuania	✓			No further details provided.
Luxembourg			✓	Verification via copies of the identity documents.
Malta		✓	✓	Verification by reference to policy available databases or by using verification systems such as Jumio or Bank-Id
Netherlands	n/a	n/a	n/a	Online gambling is formally prohibited.
Poland			✓	Verification method chosen by the operator
Portugal	✓			Verification through regulator SRIJ by reference to ‘public entity database’
Romania			✓	Verification via copies of identity documents.
Slovakia			✓	Verification method chosen by the operator
Slovenia			✓	Verification via copies of identity documents.
Spain	✓			Verification through specifically designed online interface maintained and controlled by the regulator.
Sweden		✓		Verification via publicly available database
UK		✓	✓	Verification via publicly available databases

2.3. Protection of minors from inducement to gambling and prevention of underage gambling

The need to protect minors from premature initiation into gambling is well documented within the literature and as a broad proposition, it probably represents the least controversial component of any gambling discourse. Ample evidence from studies carried out in Europe as well as through Australian and Canadian research centres demonstrated that the risk of developing a gambling disorder is substantially higher among gambling minors than it is the case with adults⁵⁶. Minors suffering from gambling problems were reported to experience increased number of adverse consequences attributable to being engaged in this form of entertainment⁵⁷ and although causation is almost never possible to prove in addiction studies, early engagement in gambling has been frequently and strongly correlated with problem gambling during adulthood⁵⁸. The actual methods through which minors' protection should be achieved are, however, significantly more contentious and views differ on what the best possible approaches are.

Within the Recommendation, provisions relating to minors' protection are contained predominantly in part IV of the instrument, but other provisions remain relevant. Art 8 contains a general statement that underage players should not be permitted to gamble or to open a gambling account⁵⁹. Operators should be obliged by Member States to age-verify customers in order to prevent minors from being able to gamble⁶⁰ and should be encouraged to 'display links to parental controls' and other tools⁶¹. Art 12 recommends the inclusion of 'no underage gambling' sign on all gambling – related commercial communication. This sign should indicate the age below which an individual is not permitted to gamble⁶². Art 13 advocates the use of zoning mechanism that aims to minimise minors' exposure to gambling marketing through the selection of locations and media where such advertisements should not appear, and Art 14 identifies specific limitations on the content of advertisements to

⁵⁶ See, e.g., G Meyer, T Hayer, MD Griffiths, *Problem Gambling in Europe: Challenges, Prevention and Intervention: Extent and Preventative Efforts* (Springer 2009); RA Volberg 'and others', 'An International Perspective on youth gambling prevalence studies' 22(1) *International J Adolesc Med Health* 3

⁵⁷ R Gupta, JL Derevensky, 'Reflections on Underage Gambling' (2014) 1(1) *Responsible Gambling Review* 37

⁵⁸ D Forrest, IG McHale, 'Gambling and Problem Gambling Among Young Adolescents in Great Britain' (2012) 28(4) *J Gamb Stud* 607

⁵⁹ EU Commission Recommendation 2014/478/EU, Art 8

⁶⁰ EU Commission Recommendation 2014/478/EU, Art 9

⁶¹ EU Commission Recommendation 2014/478/EU, Art 10

⁶² EU Commission Recommendation 2014/478/EU, Art 12

prevent them from being particularly attractive to minors⁶³. Outside of part IV of the Recommendation, Art 4(b) recommends the prominent display of the ‘no underage’ sign on gambling websites and Art 49 encourages Member States ‘to organise or promote regular education and public awareness – raising campaigns to increase knowledge of consumers as a whole and of vulnerable groups, including minors, of the risks that may be associated with online gambling⁶⁴. The Recommendation does not indicate the legal age of overall majority but within the European Union, this is uniformly set when an individual becomes 18 years old even though other age restrictions may apply to different activities.

The recommendation contained in Art 8 has been adopted uniformly by all Member States that permit online gambling and each jurisdiction imposes a minimum age below which an individual cannot lawfully engage in gambling as it can be seen in the Table III below⁶⁵. The most prevalent minimum threshold is set at 18 years of age but exceptions, albeit relatively minor, exist. In Slovenia, the minimum age of 18 applies to casino style gaming but no such limitation is imposed on other forms of gambling. In the UK, the national lottery tickets and online instant win games that represent an online equivalent to paper based scratchcards promoted by the National Lottery operator, Camelot, can be purchased by anyone over the age of 16. In Estonia, the minimum age for lottery products has also been set at 16 but the minimum age for participation in casino types games is 21. In Belgium sports betting is permitted from the age of 18 but casino games are restricted to those over the age of 21. In Hungary, the regular age limit of 18 does not apply to non-organised forms of lottery. Greece adopted a higher limit and only those who are over the age of 21 are permitted to participate in any forms of online gambling. In Lithuania, the higher restriction of 21 years of age applies to category A games and casino types table games while the lower limit of 18 continues to apply to sport betting and category B games.

No scientific evidence exists that would conclusively determine the optimum age when individuals acquire sufficient maturity to be able to take an informed decision as to whether to engage in gambling or not⁶⁶. However, the fact that Member States seem unable to fully agree on something as fundamental as a minimum age of permitted gambling further

⁶³ EU Commission Recommendation 2014/478/EU – Art 13 and Art 14

⁶⁴ EU Commission Recommendation 2014/478/EU – Art 49

⁶⁵ Jurisdictional responses to the project surveys.

⁶⁶ G Valentine, ‘Children and Young People’s Gambling: Research Review’ (RGT 2016)

reinforces the view that without further action at EU level, it is unlikely that Member States would voluntarily bring more similarities into their regulatory frameworks.

Table III – age – restrictions on online gambling by jurisdiction

	Minimum age for online gambling	Exceptions
Austria	18	
Belgium	18 for sports betting	21+ for casino games
Bulgaria	18	
Croatia	18	
Cyprus	18	
Czechia	18	
Denmark	18	
Estonia	18 (Toto / sports betting)	16+ for lotteries / 21+ for casino games
Finland	18	
France	18	
Germany	18	Some State casinos require 21+
Greece	21	
Hungary	18	
Ireland	18	
Italy	18	
Latvia	18	
Lithuania	18 (general)	21+ for category A games and table games (for casino games)
Luxembourg	18	
Malta	18	
Netherlands	N/A	Online gambling is prohibited
Poland	18	
Portugal	18	
Romania	18	
Slovakia	18	
Slovenia	18 casinos, online, slots	No restrictions on other types of gambling.
Spain	18	
Sweden	18	
UK	18	16+ for online lottery & instant-win games

2.4. Requirement to display a ‘no underage warning sign’ on commercial communication.

The implementation of the Recommendation to include a ‘no underage gambling’ sign in commercials is even less uniform. Of all EU Member States, only just over half require the “18+” sign or equivalent to be displayed prominently on or during gambling advertisements. This requirement is typically imposed by the countries statutory instruments, regulatory measures or gambling industry codes. Member States that require the sign to be present are: Austria, Belgium, Bulgaria, Czech Republic (Czechia), Cyprus, Denmark, Finland, France, Hungary, Malta, Poland, Sweden and UK. The majority of those jurisdictions will have further rules and limitations but detailed data on those additional measures were not collected. The

remaining Member States: Croatia, Estonia, Germany, Greece, Ireland, Lithuania, Luxembourg, Portugal, Romania, Slovakia and Spain do not require the warning sign on gambling commercials, but they still typically oblige providers to display it on the gambling websites. Two jurisdictions, Italy and Latvia impose a total or almost total ban on gambling advertising.

Table IV – requirement of ‘no underage gambling’ sign in commercial communication by jurisdiction

	Commercial communications must include ‘no underage gambling’ sign.	No requirement to display ‘no underage gambling’ sign DURING OR ON commercial communication
Austria	✓	
Belgium	✓	
Bulgaria	✓ but direct advertising restricted	
Croatia		✓
Cyprus	✓	
Czechia	✓	
Denmark	✓	
Estonia		✓
Finland	✓	
France	✓	
Germany		✓
Greece		✓
Hungary	✓	
Ireland		✓
Italy	Gambling advertising is prohibited from July 2018	
Latvia	Gambling advertising prohibited outside gambling venue	
Lithuania		✓ but advertising is restricted
Luxembourg		✓
Malta	✓	
Netherlands	n/a – online gambling prohibited	n/a – online gambling prohibited
Poland	✓	
Portugal		✓
Romania		✓
Slovakia		✓
Slovenia		✓
Spain		✓
Sweden	✓	
UK	✓	

Some countries do not impose any restrictions on gambling advertising, but this is rare. For example, according to the Slovakian’s respondent, none of the statutory instruments that deal with gambling in Slovakia regulate gambling advertisements⁶⁷. Other States, in the absence of the ‘no underage gambling’ sign requirement, typically have other restrictions that

⁶⁷ According to the jurisdictional survey response from Slovakia, no specific restrictions are imposed in any of the relevant instruments – Gambling Act, Advertising Act or Act on Broadcasting and Retransmission.

aim to protect minors from excessive exposure to gambling commercials. Those broadly prescribe that gambling advertising must be carried out ‘in a socially responsible manner’ and they ‘should not exploit the inexperience and/or vulnerabilities of young people’. Some of the additional limitations were listed by the respondents from the relevant countries and they have been included and demonstrated here. Those tend to be either zoning / watershed restrictions and / or content restrictions. Zoning restrictions prevent gambling advertising to appear in media or print that either directly target minors or have them as their primary audience while watershed limitations typically prevent gambling advertising from being broadcast in media prior to a specific time slot. Content limitations typically aim to ensure that the format of and the message conveyed in the advert itself does not have a particular appeal to minors⁶⁸.

Despite broad similarities in the provisions affecting gambling advertising, specific details remain very divergent. Accordingly, it would not be safe for any international gambling provider to assume that any given promotional activity that is acceptable in one Member State will be equally permissible in another and adverts need to be checked for conformity in each individual jurisdiction.

Table V – non-exhaustive examples of additional limitations imposed on gambling advertising in selected jurisdictions.

	<i>Zoning restriction in relevant electronic media</i>	<i>Zoning restriction in relevant print media</i>	<i>Mandatory inclusion of warning message relating to problem gambling</i>	<i>Mandatory inclusion of information regarding problem gambling support</i>	<i>Zoning restriction based on proximity to specific places (e.g., schools etc)</i>	<i>Others / broad provisions relating to ‘not targeting minors’</i>
Croatia	✓	✓				✓
France	✓	✓	✓	✓		✓
Germany	✓	✓				✓
Greece	✓	✓				✓
Ireland	✓	✓		✓	✓	✓
Lithuania						No underage sign must be displayed on operators’ websites where the gambling is organised and carried out.

⁶⁸ J Hornle, M Carran, ‘A Sieve that A Sieve that Does Hold a Little Water – Gambling Advertising and Protection of the Vulnerable in the UK’ (2018) 38(4) Legal Studies 529

Portugal	✓	✓			✓	Prohibition on association of gambling with lending services / others
Spain	✓	✓				✓
Greece			✓			✓

2.5. Educational activities

Despite age restrictions, age-verification measures and limitations on targeting children and young people with gambling advertising, it is well known that a significant proportion of minors engage in gambling before they legally permitted to do so⁶⁹. This appears to apply to all jurisdictions regardless of the minimum age limits and other provisions that aim to counteract underage access. In its preparatory Communication, the Commission reported that within the European Union, the prevalence rates of underage online gambling where a minor spent real money on the activity were estimated to range from 7% to 68% depending on the country surveyed. Such high prevalence levels naturally led to calls for additional activities that would address this specific concern. Often the best candidates for such initiatives are deemed to be educational and awareness raising campaigns that aim to increase knowledge and understanding among minors of the risks that may be associated with online gambling. While the effectiveness of such educational campaigns is rarely assessed⁷⁰, they are typically viewed as an important element that complements the relevant overall strategies adopted by countries that aim to protect minors from gambling-related harm⁷¹. The Commission's recommendation has not focused on educational activities that should specifically target minors. Instead, it encouraged Member States more broadly *'to organise or promote regulator education and public awareness – raising campaigns to raise awareness of consumers and vulnerable groups including minors about online gambling'*⁷².

This review aimed to elucidate how many Member States fund nationwide educational activities that are primarily focused on raising awareness of online gambling risks

⁶⁹ See e.g., Gambling Commission, 'Young People and Gambling 2016: A Research Study Among 11-15 Years Olds in England and Wales; (November 2016); JL Derevensky, R Gupta, M Magoon, 'Adolescent Problem Gambling: Legislative and Policy Decisions' (2004) 8(2) Gaming Law Review 107; D Giacoppassi, BG Stitt, M Nichols, 'Motives and Methods of Underage Casino Gamblers' (2006) 22 J Gambling Studies 413

⁷⁰ B Keen, A Blaszczynski, F Anjoul, 'Systematic review of empirically evaluated school – based gambling educational programs' (2017) 33(1) Journal of Gambling Studies 301

⁷¹ JL Derevensky, and others, 'Teacher Awareness and Attitudes Regarding Adolescent Risky Behaviours: Is Adolescent Gambling Perceived to be a Problem?' (2014) 30(2) Journal of Gambling Studies 435

⁷² EU Commission Recommendation 2014/478/EU – Art 49

among children and young people. It is important to note that a significant divergence was noted between the responses received from compliance officers and those that were sent by the regulatory bodies. This highlights that while many educational activities may be organised, they may not be sufficiently publicised and accordingly may have a limited reach. Nonetheless, several educational activities have been identified.

In Belgium, a major campaign was launched in May 2018 prior to the World Cup titled 'FC Losers'. Additionally, the Belgian Gaming Commission carries out a prevention initiative that targets young people aged between 14 and 18 years old, called "BLUFF"⁷³. For this initiative, the Commission created a preventative film, an educational toolkit and an educational board game that secondary schools in Belgium can access free of charge. In Cyprus the PIN Prevention and Intervention Programme funds activities that mobilise and empower young people to address problem gambling issues, or those that aim to prevent or reduce addictive behaviours. Those schemes may also relate to activities that would improve learning or facilitate the creation of peer support schemes or networks. In Lithuania, the Lithuanian Gaming Authority organises lectures about risks of gambling in schools within their jurisdictions and Malta and UK fund various educational activities via their respective funding bodies: Responsible Gaming Foundation (Malta) and GambleAware (UK). In Poland, the Minister of Health operates the Gambling Problem Fund that was created under Art 88 of the Polish Gambling Act. This fund sponsors various initiatives, including educational ones, that aim to address problem gambling matters. On the Minister's behalf and upon his direction, the national Bureau for Drug Prevention developed five programmes that cover gambling-related research, prevention activities and their improvements, information, education as well as additional actions that aim to address issues arising from gambling and other non-substance addictions⁷⁴. Furthermore, the National Revenue Administration carried out a campaign to discourage people from accessing illegal sites and to raise awareness among young people of the risks of gambling and of addiction to gambling⁷⁵. In Spain, the regulator (DGOJ) participates regularly in forums and conferences related to problem gambling and they also have their own educational website that is specifically dedicated to responsible

⁷³ See https://www.gamingcommission.be/opencms/opencms/jhksweb_en/protection/BLUF/

⁷⁴ See <http://www.kbpn.gov.pl/portal?id=1769203>

⁷⁵ Regulator's response from Poland.

gambling⁷⁶. On this website, any individual can find information about potential risks of gambling for minors, and how parents of legal guardians can prevent them from gambling. Additionally, the DGOJ offers a permanent consultation system where every citizen can ask for advice relating to gambling issues.

More indirectly, in Croatia, the Croatian Ministry of Science, Education and Sport on Youth Gambling supported a team from the University of Zagreb to carry out research study into the prevalence of sports betting among minors. The Croatian Teacher Training Agency further supported the project by organising lectures and workshops in schools that aimed to inform schools about the research findings but also to raise awareness among school staff about the prevalence of youth gambling and early signs of possible problem behaviour⁷⁷.

Other jurisdictions' preventative initiatives tend to be more generic. In Austria, Czech Republic (Czechia) and Luxembourg, the national authorities operate a website with information on gambling related risks, responsible gambling and / or problem gambling. In Bulgaria, no specific initiatives were known to the respondent, but the gambling operators are required to pay annual 'responsible gambling' levy⁷⁸ and Finland funds services that provides counselling, information and advice. The Swedish Gaming Authority does not currently fund any educational initiatives but in 2015/2016 they devised a free of charge information package titled 'Let's Talk about Gambling' for secondary schools that contained information about generic risks and chances in gambling⁷⁹. In Portugal, a proportion of online gambling tax is being earmarked for public bodies that work to reduce the instance of addictive behaviours.

The limited examples given should not be taken to indicate that no other initiatives are taking place. However, those tend to be organised and carried out by charities, voluntary or social organisations which may or may not be funded by the national authorities. Many of them also tend to be local and do not necessarily achieve a widespread reach. Often, they also are temporal and not regular or ongoing. Accordingly, while the above discussion shows the existence of several activities that correspond to the Recommendation, it also

⁷⁶ See <http://www.jugarbien.es>

⁷⁷ Jurisdictional survey responses from relevant countries

⁷⁸ Of 50,000 BGN by operators of online betting; 5,000 for all other operators of gambling and 10,000 for operators of land based gambling

⁷⁹ Jurisdictional responses to the project's surveys.

demonstrates that only a negligible number of educational initiatives exist that would focus specifically on minors and on the unique risks of online gambling. This is somewhat surprising given the popularity of Internet among the ‘digital natives’ and the fact that risks that apply to online gambling are not always the same as the risks that may be associated with other forms.

2.6. Protection of vulnerable players from gambling – related harm

The need to develop a suitable framework that places consumer and vulnerable players’ protection at the forefront of any policy was the main underlying driver behind EU initiative to facilitate better convergence of regulatory regimes. Upon holistic interpretation, it can therefore be argued that all EU Commission’s proposals contained in the Recommendation are designed to facilitate the achievement of the broad policy objectives. Indeed, the main purpose of the Recommendation is stated in Art 1 that prominently proclaims that *‘Member States are recommended to achieve a high level of protection for consumers, players and minors through the adoption of principles for online gambling and for responsible commercial communication of those services, in order to safeguard health and to also minimise the eventual economic harm that may result from compulsive and excessive gambling’*⁸⁰. Nonetheless, for vulnerable players some provisions are more relevant than others while the general population is likely to benefit from all. It is also an area where States’ intervention, convergent approach and cross-border cooperation is essential for the successful achievement of the stated objectives. Lack of coordinated initiatives places legitimate operators who genuinely take their social responsibilities seriously at a competitive disadvantage as any players that may, for example, have financial or time limits imposed by operators may simply move to a different site whether within the given jurisdiction or abroad. Similarly, due to the significant proliferation of gambling opportunities, self – exclusion schemes can only be truly effective if they incorporate at least the majority of gambling providers who are able to verify whether individuals have or have not excluded themselves upon attempted registrations and upon each attempted log-in. Otherwise, the same situation may arise where players, upon being refused service by one provider, despite this being requested by them, simply chose another site from which they have not excluded themselves or which do not carry adequate checks to prevent such access.

⁸⁰ Commission Recommendation 2014/478/EU – Art 1

The most relevant principles relating to the protection that Member States should offer to vulnerable players are contained in parts VI and VII of the Recommendation. Part VI relates to players' activities and support. Operators should be encouraged to allow players to set up financial and temporal limit that would encourage gambling to remain within recreational parameters⁸¹. Operators should not permit gambling that exceeds those limits⁸² but players should be allowed to decrease⁸³ or increase⁸⁴ them, as appropriate. While requests to decrease are recommended for immediate action⁸⁵, increases should only be allowed after a cool-off period of at least 24 hours⁸⁶. Gambling on credit should generally be discouraged⁸⁷ and players should have easy access to information about their account balance⁸⁸, in addition to regular messages that would alert them to how much they have won or lost during a given time and how much time they have spent on gambling⁸⁹. Operators should be contactable by 'online forms or live chats or telephone'⁹⁰ and gambling websites should contain links to relevant helplines and contact details of support organisations, or at least one of them, that offers assistance to those who suffer from problem gambling⁹¹. Under Art 30, operators should develop and implement '*policies and procedures ... which facilitate interaction with players whenever their gambling behaviour indicates a risk of the development of a gambling disorder*'⁹² and Art 31 deals with the collection and retention of data relating to players' deposits and winnings⁹³. Part VII focuses on the availability of 'time-outs' and 'self-exclusions'. Those terms are partially defined in the Recommendation's Art 33. '*Time out serves to suspend gambling for at least twenty-four hours*'⁹⁴ and 'self exclusion' should last for a minimum of six months⁹⁵. Excluded players should have their accounts closed⁹⁶, they should not be permitted to re-open their account until after the exclusion

⁸¹ Commission, Recommendation 2014/478/EU – Art 24

⁸² Commission, Recommendation 2014/478/EU – Art 27(a)

⁸³ Commission, Recommendation 2014/478/EU – Art 29(a)

⁸⁴ Commission, Recommendation 2014/478/EU – Art 29(b)

⁸⁵ Commission, Recommendation 2014/478/EU – Art 29(a)

⁸⁶ Commission, Recommendation 2014/478/EU – Art 29(b)

⁸⁷ Commission, Recommendation 2014/478/EU – Art 27(b) and Art 28

⁸⁸ Commission, Recommendation 2014/478/EU – Art 25(a)

⁸⁹ Commission, Recommendation 2014/478/EU – Art 26

⁹⁰ Commission, Recommendation 2014/478/EU – Art 25(b)

⁹¹ Commission, Recommendation 2014/478/EU – Art 25(c) in conjunction with Art 4(d)

⁹² Commission, Recommendation 2014/478/EU – Art 30

⁹³ Commission, Recommendation 2014/478/EU – Art 31

⁹⁴ Commission, Recommendation 2014/478/EU – Art 33(a)

⁹⁵ Commission, Recommendation 2014/478/EU – Art 33(b)

⁹⁶ Commission, Recommendation 2014/478/EU – Art 34

period has passed and upon their own personal, written or electronic requests⁹⁷, and States should devise rules with regards to who can initiate self-exclusion⁹⁸. Furthermore, States are encouraged to create national self – exclusion registers and to facilitate access to such registers to gambling operators⁹⁹.

2.7. Existence of self – exclusion schemes and other limiting tools

Terms used in this section do not have an easy reference point as different names are used by different countries to describe the same or similar principles and identical terms can be used to denote a different meaning, depending on the context. For example; short term exclusions are called interchangeably as ‘cool offs’, ‘cool downs’, ‘time outs’, or ‘opt-outs’. Equally, the term ‘cool-off’ may mean a period of a short-term self-exclusion (for e.g., 24 hours) or it may indicate a time given to players to decide whether they wish to self-exclude or not. The Recommendation provides that time-outs should last 24-hours, and self-exclusions should be for a minimum of 6 months. However, these definitions have not been adopted by various Member States who allow self-exclusion for shorter periods of time. Accordingly, to prevent potential misunderstandings and to avoid leaving durations of between 24 days and 6 months unaccounted for, the terms in this report are used as follows:

- ‘Cool – off’ – this term is used to denote a period given to a player before his/her request is actioned. This may indicate time before self-exclusion becomes operational or before self – exclusion period can be terminated.
- ‘Time – out’ – this term refers to short – term exclusion from gambling of typical duration of 24 hours.
- ‘Self – exclusion’ – this refers to exclusion from gambling of a duration longer than 24 hours.

Almost all jurisdictions encourage operators to offer some form of self – exclusion and time out facilities. Most countries also recommend to the operators to allow players to set financial and temporal limits that stipulate the maximum amount that may be lost in a given period or maximum period of time to be spent during gambling. In the majority of jurisdictions

⁹⁷ Commission, Recommendation 2014/478/EU – Art 35

⁹⁸ Commission, Recommendation 2014/478/EU – Art 36

⁹⁹ Commission, Recommendation 2014/478/EU – Art 37 and Art 38

those options are voluntary and are set at the discretion of the players. Some jurisdictions (e.g., Finland, Latvia, Sweden) impose mandatory limits. In Latvia, the mandatory limits that are set for a single game or a gambling session can be altered by a player upon a 7-day waiting time. Voluntary limits tend to be operator specific and are not aggregated between numerous accounts that players may have on different websites offered by different providers¹⁰⁰. Only Bulgaria, the Netherlands, Ireland, Luxembourg and Slovenia do not impose any formal obligations in this respect. In Slovenia, this is due to the overall lack of regulation relating specifically to online gambling as their land-based counterpart must offer self-exclusion scheme that prevents players from accessing gambling halls for 6 to 36 months¹⁰¹. Despite the lack of mandatory requirement, all operators in Bulgaria offer self-exclusion and time-out facilities¹⁰² and in Luxembourg, the only monopoly that offers lottery products and instant games allows players to request a closure of their account¹⁰³. Under Irish law, there is no licensing pathway for online gambling and the majority of operators are licensed in UK that imposes the obligation to have procedures for self-exclusions. This may change if the draft of the General Scheme of the Gambling Control Bill that is currently being redrafted by the Irish Department of Justice and Equality¹⁰⁴ becomes law¹⁰⁵. In Austria, self-exclusion schemes are limited to the territory of Upper Austria, Vienna and Salzburg.

The inherent characteristics of self – exclusions, time-outs and other limiting tools mean that broad provisions are very similar in all jurisdictions. However, the exact particulars vary enormously, and the specific nuances are almost infinite¹⁰⁶. Requests to self – exclude are typically submitted to gambling operators directly or to the relevant authorities / organisations responsible for maintaining national self-exclusion registers, if such exist. In Denmark, the players apply to be added to the self-exclusion register by using their individual security number that every Danish citizen has in conjunction with their unique key card that is also used to access bank accounts or during e-mail communications with the government.

¹⁰⁰ Jurisdictional survey responses

¹⁰¹ Jurisdictional survey from Slovenian's respondent.

¹⁰² Regulators' response to clarification queries

¹⁰³ Jurisdictional survey from Luxembourg's respondent

¹⁰⁴ More specifically the process is driven by David Stanton who is the Irish Minister of State in the Department of Justice and Equality.

¹⁰⁵ Gambling Compliance, 'European Online Gambling Outlook' (2018)

¹⁰⁶ Because of that a complete list of the differences would not be possible but specific examples are included.

Self-exclusion requests are aimed to be processed as soon as possible in almost all countries with the exception of Croatia where the application will only be processed if the player confirms the request in writing. This must take place within 3 days of the original application. Self – exclusion can typically be initiated only by the affected gamblers, but some significant exceptions apply. In Austria, Denmark, Finland, Greece, Italy and Malta, operators are permitted to unilaterally exclude customers if such action can be justified on social responsibility grounds. In Czech Republic (Czechia) individuals in receipt of hardship or other emergency benefits, bankrupts and those who were prohibited from gambling by a court order will be automatically entered on the national register of self excluded persons once this register becomes active. Similar position is already implemented in Slovakia where individuals in receipt of certain social assistance, those diagnosed with compulsive gambling and university students in receipt of social scholarships are barred from gambling by s.35(2)a of the Slovakian Gambling Act 171/2005¹⁰⁷. Those individuals are included on the national register of excluded persons automatically. Respondents from Belgium, France, Hungary and Portugal have also indicated that individuals may be subject to compulsory exclusion under a court order. Such judicial prerogative may exist in other jurisdictions as well but would need to be permitted under gambling legislation as no inherent jurisdiction of the courts in this context could be presumed.

In Belgium and Greece self-exclusions can also be initiated by interested third parties (e.g., family members) without the necessity of a court intervention. In Belgium such requests can be filed to the Gambling Commission by ‘an interested third party’ or ‘legal representative of a person under tutorship’. Self-exclusion requests initiated by third parties are typically subject to providing a proof that such exclusion is necessary for the protection of the players and their immediate family or relatives. They are not actioned immediately and remain within the discretion of the relevant regulator. In Belgium, some individuals may also be barred due to their specific professions. Those include members of the police, magistrates, notaries and bailiffs.

The durations of self-exclusions are typically chosen by the players themselves, except for Finland and Sweden where the limits are imposed by the operators¹⁰⁸. The large number

¹⁰⁷ Slovakian Gambling Act 171/2005, s 35(2)a; jurisdictional response to the project’ survey.

¹⁰⁸ Jurisdictional surveys from Finnish and Swedish respondent

of variations makes it impossible to determine any common parameter. Some countries impose minimum and maximum periods. In France, the minimum period for self-exclusion is 7 days. In Denmark this is set at 1 month, but players can also benefit from a 'time-out' option of 24 hours. In Italy, the options currently being introduced through the PACG of the ADM Remote Gambling office give the choices of 30, 60, 90 days or permanent¹⁰⁹. This is being introduced through a staged approach. Until the full roll-out is completed operators can provide self exclusions that are shorter than 30 day and longer than 90 days¹¹⁰. Estonia and Hungary stipulate the minimum and maximum period of 6 and 36 months and 3 months and 5 years respectively. In Hungary time out options are also available of 24 hours, 7 days or 30 days. In the United Kingdom, the initial duration of self-exclusion is recommended to be between 6 and 12 months but upon expiry of this period, online self-exclusion automatically extends to 7 years unless the player takes an active step to recommence gambling. In Lithuania the minimum period is 6 months, in Portugal it is 3 and in Latvia and Germany this is set at 12 months. In Spain, any inclusion on the self-exclusion register is deemed permanent. Jurisdictions with no maximum duration also allows for permanent / lifetime exclusions.

Once self-exclusion agreement is entered into it should last for the relevant duration. However, with regards to temporary self-exclusion, several countries allow for the agreement to be revoked at the request of the player and all countries allow permanent self-exclusion to be terminated. This is subject to minimum periods that must elapse before cancellation is permitted. Those also vary from state to state and some (e.g., Belgium, Finland, Italy and Portugal) impose further cooling off periods from the receipt of the relevant request. All operators are required to have on their website information about what support organisation or helplines may be available to problem gamblers and those who self-exclude themselves are usually directed to those details. However, no jurisdiction facilitates an automatic referral to health group organisation or health professionals upon exclusion. Such automatic referral would need to be specifically required under the relevant national legislation as otherwise it would be likely to infringe data protection law.

¹⁰⁹ G Carboni, 'Protocol of Gambling Account Registry PACG 2.0' (2018) European Gaming Lawyers & Advisors

¹¹⁰ G Carboni, 'Protocol of Gambling Account Registry PACG 2.0' (2018) European Gaming Lawyers & Advisors

Table VI – Self – exclusion schemes and other social responsibility tools by jurisdiction.

	Mandatory self-exclusion scheme	Duration	Initiation of exclusion by third parties?	Revocability of temporary self-exclusion	Revocability of permanent self – exclusion be revoked?	Minimum period before a permanent exclusion can be revoked	Automatic referral to health group upon exclusion?	Other details
Austria	✓ (partial)	Set by the players / operators	✓ (Operators)	✓ (upon 24 hours cooling off period)	✓	7 days	No	Self-exclusion rules apply to Upper Austria, Vienna and Salzburg Website must have links to available support for problem gambling.
Belgium	✓	Set by the players	✓ (Interested parties or representatives under tutorship)	✓	✓	3 months from request	No	Additional individual may also be banned from gambling – those in specific professions – e.g., magistrates, notaries, bailiffs and members of the police. Player limits were introduced by a Royal Decree of October 2018
Bulgaria	No	n/a	n/a	n/a	n/a	n/a	No	There is no obligation in Bulgaria to offer self-exclusion but all operators registered in Bulgaria offer such facility to players.
Croatia	✓	Set by the players	No	✓	✓	None	No	Self – exclusion requests are actioned if confirmed by players in writing in 3 days. Temporary and financial limits also available. All can be cancelled upon request from a player. Self-excluded players shall be informed of the available help.
Cyprus	✓	Set by the players	No	✓	✓	7 days	No	
Czech Republic (Czechia)	✓ (indirectly)	Set by the players	No	✓	✓	7 days	No	Some individuals are barred by statute Barred individuals – those

								in receipt of hardship benefit or other emergency relief, bankrupts, prohibited from gambling by court order. Once the new national register of excluded player is operational, self-excluded gamblers will not be able to terminate their self exclusion unless at least 12 months have passed. Until then, the current position remains.
Denmark	✓	Min 1 month	✓ (Operator)	Not specified	✓	12 months	No	Time out of 24 hours available Self-excluded players shall be informed of counselling and treatment options but no automatically referral
Estonia	✓	6-36 months	No	No	n/a	n/a	No	Financial and temporary limits available at the option of the player; Exclusion does not terminate automatically but only upon application from the player on to the Tax and Customs Board
Finland	✓	Set by the operator	✓ (Operators)	✓	✓	12 months + 3 months cooling off period	No	Financial and temporal limits available, some limits are mandatory – e.g., maximum deposit of 5000 Euros, maximum daily loss – 500 Euros, no deposit between 12am and 6am
France	✓	Min 7 days / permanent	✓ (upon court order)	No	✓	3 years	No	Third party may initiate exclusion but only upon judicial proceedings.
Germany	✓	Min 12 months	✓ (Operators)	No	✓	12 months	No	

Greece	✓	Set by the player or operator / min 6 months	✓ (players' family; operators)	Unknown	✓	12 months	No	Decision No 163/5/9.7.2015 – Art 5(1)9 – time out periods, Art 5(1)8 – financial and temporary limits
Hungary	✓	3 months / 5 years	✓ (upon court order)	✓ (only for exclusions of min 180 days)	✓	180 days	No	Time out of 24 hours, 7 or 30 days; Information of available support must be provided.
Ireland	Unspecified	n/a	n/a	n/a	✓	n/a	No	Despite lack of regulatory requirements many operators will voluntarily develop self exclusion scheme
Italy	✓	30 days / 60 days/ 90 days / permanent	✓ (Operators)	Unknown	✓	6 months + 7 days cooling off period	No	The new self-exclusion durations apply under the new protocol 2.0 PACG of the ADM Remote Gambling Office (Dec 2017). Not yet mandatory as introduced through staged process. Deposit limits also apply
Latvia	✓	12 months	No	No	n/a	n/a	No	Self-exclusion does not terminate automatically but only upon application from the player. Time out periods can be applied voluntarily by operators.
Lithuania	✓	Min 6 months / permanent	No	✓ (After min 6 months)	✓	6 months	No	
Luxembourg	No	n/a	Unspecified	n/a	n/a	n/a	No	Players may request the closure of the account
Malta	✓	Set by the players	✓ (Operators)	✓ (24 hours cooling off period)	✓	7 days	No	But players should be referred to treatment centres.

Netherlands	n/a	n/a	n/a	n/a	n/a	n/a	n/a	Online gambling is prohibited in the Netherlands
Poland	✓	Unspecified	No	Unspecified	Unspecified	Unspecified	No	Self exclusion and temporary limits must be available but exact rules are up the operator subject to approval from the Minister. Information on support for problem gamblers must be available.
Portugal	✓	Min 3 months / Permanent	✓ (upon court order)	✓	✓	3 months + 1 month cool-off period	No	The 1 month waiting time is triggered by the application to terminate self-exclusion.
Romania	✓	Set by the player	No	No	✓	6 months	No	Time out for a maximum period of 7 days / upon self-exclusion operators are obliged to point the players to counselling or treatment centres
Slovakia	✓	Unspecified	No	✓ (Unless statutory bar)	✓ (Unless statutory bar)	6 months	No	Some individuals are barred from gambling by statute: those in receipt of certain social assistance; those diagnosed with compulsive gambling; University students on social scholarships
Slovenia	Unspecified	Unspecified	Unspecified	Unspecified	Unspecified	Unspecified	Unspecified	
Spain	✓	Permanent	No	n/a	✓	6 months	No	Registration with the national self-exclusion register is permanent but can be terminated after 6 months
Sweden	✓	Set by the operator upon players' requests	No	Unspecified	✓	12 months	No	Time out period of 24 hours
UK	✓	6 months / 12 months	No	No	n/a	n/a	No	Temporary self-exclusion extends automatically unless the player wishes to start gambling again

2.8. Availability of national self-exclusion registers and their interoperability between Member States.

Of the 28 Member States under consideration, 14 have established and have operational national self-exclusion registers that are maintained either by the relevant regulatory authorities or voluntary organisations. Those may be commissioned or sponsored by the government or regulatory bodies or may be governed by charities. Jurisdictions with national self-exclusion registers are: Belgium, Denmark, Estonia, France, Germany, Italy, Latvia, Lithuania, Portugal, Slovakia, Spain, Sweden and UK. In Czech Republic (Czechia) the creation of national self-exclusion register has been mandated by the Czech Gambling Act 2016. However, this register is not, as of 30 November 2018, operational and the time scale for its development is unclear. Ireland was also reported to have carried out discussions with the view of determining whether such a national register should be created but no formal proposals have been submitted. In the absence of formal regulation applicable to online gambling in Ireland, it is unlikely that it could become functional in any foreseeable future.

Access to existing registers is granted to all operators licensed by the given Member States. However, this does not necessarily mean that operators are legally required to refer to those registers in all Member States although most will do regardless of whether they do so in pursuance of a legal obligation or due to their own voluntary code. For example; in UK, it is not yet a licence condition for the operators to consult the national self-exclusion register operated by GamStop although such a condition is planned to be introduced in the future edition of the UK Licence Conditions and Codes of Practice. In Latvia, the Latvian Gaming Authority (IAUI) maintains a national register of restricted players and distribute the list to the operators. However, players are allowed to cancel their self – exclusion directly with the gambling provider without necessarily informing the national authority of such termination. This may lead to a situation where the national list of excluded players does not accurately reflect who should or should not be prevented from gambling. Nonetheless, most countries expect operators to consult the registers upon certain triggers. Those triggers include but are not limited to: (1) registering for a new gambling account (all jurisdictions with mandatory requirement to consult national registers); (2) when players log-in to their accounts (Belgium, Denmark, Spain, Sweden); (3) on a daily basis (Portugal), (4) on a weekly basis (France); (5)

when there is an alteration to the players' details (France). Jurisdictions with monopoly providers oblige the relevant monopolies to create and maintain their own registers. As they are the only entity with whom the nationals of the given country are legally able to play with, this is equivalent, (albeit not the same) to having a national self-exclusion register.

Table VII – existence of national self-exclusion registers and their accessibility

	Existence of national self-exclusion registers	Direct access by licensees of the Member States	Access by licensee of other Member States	Other details
Austria	X	n/a	n/a	
Belgium	✓	✓	X	Checks upon registration and log-in
Bulgaria	X	n/a	n/a	
Croatia	X	n/a	n/a	
Cyprus	X	n/a	n/a	
Czechia	X	n/a	n/a	National register mandated by law but not yet operational.
Denmark	✓	✓	X	(ROFUS). Checks upon registration and log-in.
Estonia	✓	✓	X	Registered maintained by the Estonia Tax and Custom Board
Finland	X	n/a	n/a	The Monopoly is obliged to keep its own register.
France	✓	✓	X	Registry of Banned Players (Mistry of Interiors). Checks upon registration, changes to personal data and at least once a week.
Germany	✓	✓ (partial)	X	OASIS
Greece	X	n/a	n/a	
Hungary	✓	✓	Unspecified	Player Protection Register
Ireland	X	n/a	n/a	
Italy	✓	✓	X	Gambling Account Register maintained by AMD
Latvia	✓	Indirectly	X	IAUI (Latvian Gambling Authority) keeps a register that is distributed to operators.
Lithuania	✓	✓	X	Restricted Gambling Register
Luxembourg	X	n/a	n/a	
Malta	X	n/a	n/a	Plans to introduce a national self – exclusion register
Netherland	n/a	n/a	n/a	Online gambling is not permitted in the Netherlands.
Poland	X	n/a	n/a	
Portugal	✓	✓	X	Register of banned persons maintained by SRIJ. Check upon registration and every day.
Romania	X	n/a	n/a	
Slovakia	✓	✓	Not specified	Register of natural persons excluded from gambling
Slovenia	X	n/a	n/a	
Spain	✓	✓	X	General Register of Gaming Access Ban / information also passed to Autonomous Regions.
Sweden	✓	✓	X	Checks upon registration and log-in
UK	✓	✓	X	GamStop

In the context of national registers' accessibility, the position in all relevant Member States is uniform. They all grant access to operators licensed in their respective territory but do not share the information with licensees of other Member States. Operators are permitted to consult the registers only for the purpose of preventing included individuals from being able to access gambling. Access to other details (e.g., the exact reasons for the inclusion on the register or who may have initiated it) is restricted due to privacy considerations.

The European Parliament in its resolution on online gambling in the Internal Market¹¹¹ encouraged, inter alia, the facilitation of interoperability of national self-exclusion registers between Member States but this did not lead to any meaningful results and the EU Commission does not currently have any initiatives that would support such interoperability. This lack of cooperation is primarily attributable to the lack of mutual recognition principle with regards to gambling licensing frameworks¹¹², and secondarily, to data protection legislation¹¹³. Within the European Union, only Malta formally operates on the reciprocity principle that permits providers licensed by other Member States to offer their services in Malta and as such it is the only country that is considering granting access to online self-exclusion register to operators licensed in other Member States once the national self-exclusion register becomes established. Mutual recognition principle applied also in the United Kingdom, but the reciprocity provisions were removed by the Gambling (Licensing and Advertising) Act 2014¹¹⁴. This means that operators are only legally able to offer their gambling services in the jurisdictions where they are in a possession of a valid licence. This grants them automatic rights of access to the registers, if they exist. Simultaneously, offering remote services to gamblers from jurisdictions where the gambling providers are not licensed becomes illegitimate and no State would share access to national registers with entities whose operations are deemed illegal. While this technical legality fully explains the present status quo, it ignores the realities of the Internet environment and the difficulties that some vulnerable players experience when endeavouring to control their gambling behaviour online. The legal argument becomes even more unsatisfactory when it is recognised that

¹¹¹ European Parliament Resolution of 10 September 2013 on online gambling in the internal market (2012/2322(INI))

¹¹² S Van Den Begaert, A Cuyvers, '“Money for Nothing”: the Case Law of the EU Court of Justice on the Regulation of Gambling' (2011) 48 Common Market Law Review 1175

¹¹³ D Pavlovic, 'Identification of Online Gamblers in the EU: A Two-Edged Sword' Part of the IFIP Advances in Information and Communication Technology book series (IFIPiACT, volume 476

¹¹⁴ M Carran, *Gambling Regulation and Vulnerability* (Edward Elgar, 2018)

some jurisdictions prohibits foreign operators from promoting their gambling services in their territory without a valid licence, but do not impose a corresponding obligation on individual players that would prevent them from seeking out and accessing foreign gambling websites. Jurisdictional efforts to black – list and block foreign unlicensed operators from being accessible in a given territory using geolocation and other technological tools have typically been deemed legal and constitutional by national courts¹¹⁵ but their actual effectiveness relies on highly extensive, expensive and time-consuming efforts that renders them less successful in practice than in theory. Moreover, the effectiveness of such territorial restrictions is further undermined by the widespread mobility and free movement of people across the Member States. The EU competency to regulate such matters is far from certain but in the absence of EU harmonising measures that would create EU-wide register of self-excluded players, the legal position is unlikely to change. But this materially undermines the high-level protection that the Recommendation aimed to achieve and probably represents one of the strongest arguments in favour of further EU action in this context.

2.9. EU initiatives and cooperation agreement between Member States

From the introduction of the Green Paper on Gambling in the Internal Market¹¹⁶ until the adoption of the Commission Recommendation 2014/478/EU, the EU Commission commenced several initiatives that aimed to facilitate a better understanding of the relevant online players protection measure adopted by individual countries and to promote a better administrative cooperation between Member States. In its 2012 communication ‘Towards a Comprehensive Framework for Online Gambling’¹¹⁷ the Commission recognised the benefits and progress that has been made by the Gaming Regulatory European Forum (GREF) and the International Association of Gambling Regulators (IAGR) but also noted the limitations and constraints under which the groups operate¹¹⁸. The Gaming Regulatory European Forum

¹¹⁵ V Chloupek, ‘Blocking of Illegal Online Gambling Webster Found Acceptable by the Czech Constitutional Court’ (2017) 21(5) Gaming Law Review 393; see also; V Marionneau, J Järvinen-Tassopoulos, ‘Consumer protection in licensed online gambling markets in France: the role of responsible gambling tools’ (2017) 25(6) Addiction Research & Theory 436

¹¹⁶ Green Paper on On-Line gambling in the Internal Market (COM (2011) 128 final)

¹¹⁷ Commission Staff Working Document Online Gambling in the Internal Market: Towards a Comprehensive Framework for Online Gambling {(COM)2012 596 final}

¹¹⁸ Ibid, no 127

(GREF) is a European organisation with members from 31 countries¹¹⁹ and two main objectives: “A. To provide a forum in which European gaming regulator can meet, exchange views and information and discuss policy on gaming matters; and B. on special occasions and with the agreement of participants, to represent the different views of European gaming regulators and also [to] provide a central point of contact for enquiries directed at them from authorities or related organisations in Europe and elsewhere”¹²⁰. As of 30 November 2018, the forum’s activities are complemented by three working groups on e-gambling and technical issues, information and statistics, and responsible gambling and addiction. The main purpose of International Association of Gambling Regulators is similar to GREF’s objectives to the extent that it also establishes a forum where gambling regulators can ‘exchange views and information, and discuss policy issues’, ‘foster cooperation between gaming regulators’, and act as ‘a central point of contact for inquiries from governments, gaming regulatory agencies and personnel, and representatives of the international gaming industry’¹²¹. However, IAGR is not limited primarily to European countries but extends globally and its members represent jurisdictions from all continents¹²². Since their inceptions, both organisations were particularly effective at exchanging experiences and best practices as well as facilitating discussions on a variety of gambling related issues. In 2015, IAGR published Multi-Jurisdictional Testing Framework for the independent testing of online gambling products¹²³, and more recently in 2018 it produced e-gambling guidelines¹²⁴. In September 2018 GREF issued a joint declaration of 15 gambling regulators ‘on their concerns related to the blurring of lines between gambling and gaming’ and the issue of whether ‘loot boxes’ or other virtual currencies can be treated as equivalent to money or money’s worth in the context of gambling¹²⁵. However, their voluntary nature and lack of overall authority to issue binding decisions or recommendations hinders their ability to enter into formal cooperation agreements that go beyond informal discussions, statements of intentions or sharing of best

¹¹⁹ Aland Islands, Alderney, Austria, Belgium, Bulgaria, Croatia, Cyprus (Republic), Czech Republic (Czechia), Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Ireland, Isle of Man, Jersey, Latvia, Lichtenstein, Lithuania, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Sweden, Switzerland, UK.

¹²⁰ See - <http://www.gref.net/about-grefexecutive-board/main-objectives/>

¹²¹ See - <https://www.iagr.org/about-iagr/about-iagr>

¹²² See – <http://www.iagr.org>

¹²³ Entered into by the UK Gambling Commission, the Danish Gambling Authority, the Gambling Control Commission in Alderney and the Isle of Man Gambling Supervision Commission.

¹²⁴ <https://www.iagr.org/membership/iagr-e-gambling-guidelines>

¹²⁵ <https://www.eurogamer.net/articles/2018-09-17-15-european-gambling-regulators-unite-to-tackle-loot-box-threat>

practices. In 2012 the Commission also reviewed the (then) existing administrative multilateral and bilateral cooperation and identified possible areas where a more formal and more concerted efforts would be desirable¹²⁶. Those would relate to sharing of information regarding ‘competencies of national regulatory bodies, best practices and licensing requirements’ and more specifically details about applicants, testing results and certification of gaming equipment, enforcement principles and their practical applications and results of monitoring and supervision of licensees¹²⁷.

The Commission also indicated its willingness to explore the provision of relevant tools that would facilitate such cooperation¹²⁸. To facilitate that, by Decision C (2012) 8795, the Commission established an Expert Group on Gambling Service. Its membership includes representatives of public authority of all EU country except the Netherlands and Switzerland plus representatives of Norway and Lichtenstein. Initially, the group was set up for the duration of three years. It was further extended in 2015 by Decision C (2015) 8643 for another three years, up to and until 31 December 2018. It is not clear if the existence of this group will be further extended. Under Art 2 of the Commission’s decision the group was charged with the following tasks “(a) to establish cooperation between Member States’ authorities and the Commission on matters relating to gambling services; (b) to advise and assist the Commission in the preparation and implementation of policy initiatives relating to gambling services; (c) to monitor the development of policies and emerging issues in the area of gambling services; (d) to bring about an exchange of experience and good practice in the area of gambling services, including its international dimension”¹²⁹. There is also a more limited Group of Experts of Gambling Services that is formed of regulators from Austria, Italy, Germany, France, Spain and the UK and Nordic States organise their own annual meetings with representatives from Denmark, Norway, Sweden, Finland and Iceland.

For the purpose of this section, the most relevant instrument arising from the working of this Expert Group is the voluntary ‘Cooperation Arrangement between the gambling regulatory authorities of the EEA Member States concerning online gambling services’. It was issued on the 27th November 2015 and, at the time of writing, it has been signed by 27

¹²⁶ Commission Staff Working Document Online Gambling in the Internal Market: Towards a Comprehensive Framework for Online Gambling {{COM}2012 596 final} pp 51-57

¹²⁷ Ibid,

¹²⁸ Ibid,

¹²⁹ Commission Decision C (2012) 8795 – Art 2

countries¹³⁰. The main aspects of cooperation under this arrangements are listed in Appendix II and relate to: (1) organisation of gambling (including legal and technical licensing requirements, tender protocols, technical details), (2) supervision and compliance (including details regarding social responsibility measures; prevention of criminal activities, monitoring and supervision processes, and report requirements), (3) education and research (including educational initiatives and research findings); and (4) other issues such as complaints, statistical data, staff trainings and operators' interactions with players¹³¹. In Appendix IV it provides a standard application form that should be used to request cooperation and Appendix III provides details from each member state on the scope of the arrangements and contacts of the relevant national authority. Although it is a non-binding instrument, it represents a significant tool by which inter Member States administrative cooperation can be facilitated. On a micro level, the agreement may help with the application of the 'unfair operator' principles and may lead to convergence in testing standards¹³². According to the EU Commission this agreement 'would [also] encompass Member States' actions in the fight against problem gambling. This would include, amongst others, the exchange of information on the results of surveys and studies conducted by regulatory authorities on the subject of gambling disorders and gambling addictions'¹³³. On macro level, and perhaps more importantly, it signifies the Member States willingness toward more 'open and constructive cooperation' and recognises that individually, Member States cannot effectively protect their online consumers. Many regulators emphasised in their responses that they keep regular bilateral contacts with their European counterparts in order to exchange information, share experiences, discuss regulatory initiatives and more generically for networking and advisory purposes. For example, France participates in five bilateral cooperation agreement signed by the ARJEL with the British, Danish, Italian, Portuguese and Spanish counterparts.

Furthermore, in pursuance of the proposal also made in the Green Paper regarding the possibility of adopting common European reporting standards relating to online gaming,

¹³⁰ Signatories to the Cooperation Arrangement – Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Republic of Latvia, Republic of Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, Slovak Republic, Republic of Slovenia, Kingdom of Spain, Sweden and United Kingdom.

¹³¹ Cooperation Agreement between the gambling regulatory authorities of the EEA Member States' concerning online gambling services – Appendix III.

¹³² V Peano, 'The Cooperation Arrangement on Online Gambling Services – a Concrete Tool' (2016) LEXANDGAMING, European Gambling Law Journal (29 April 2016)

¹³³ EU Commission direct response via email to the query on this point

the Commission issued an implementing decision C (2018) 1815 of 4.4.2018. This decision directs the European Committee for Standardisation (CEN) to draft ‘a European standard or set of standards ... on reporting to gambling regulatory authorities ... for the purpose of supervision of online gambling services’¹³⁴ and resulted from the consultation that was carried out via the expert group between 2013 and 2016. Once created, the measures may be adopted voluntarily by the regulators and would represent another important step towards regulatory convergence of online gambling regulations.

However, despite the aforementioned initiatives, it is important to note that recently, the EU Commission decided to “de-prioritise the gambling file”¹³⁵. In December 2017, the Commission closed any outstanding infringement and complaints proceedings against Member States and advised parties aggrieved by potential non-compliance of gambling regulations with EU laws to seek appropriate remedies from national courts¹³⁶. This, coupled with insufficient information being provided by Member States, also led to the decision to ‘refrain from evaluating the implementation of the Recommendation’¹³⁷. The EU Commission also confirmed that they have no further plans to facilitate interoperability between self-exclusion registers outside the encouragement contained in the Recommendation and no further plans for any other specific gambling – related European level initiatives. It acknowledged that data protection regulations and lack of uniform standards for self-exclusions schemes make interoperability difficult to implement in practice. However, it reinforced the message that ‘it supports Member States in their efforts to modernise their online gambling regulatory frameworks, and in particular to enhance the protection of consumers including the fight against gambling addiction’¹³⁸.

¹³⁴ Commission Implementing Decision of 4.4.2018 on a standardisation as regards a European standard on reporting in support of supervision of online gambling services by the gambling regulatory authorities of the Member States’ C (2018) 1815 final

¹³⁵ EU Commission direct response to a query on this point (email enquiries)

¹³⁶ European Commission Press release, ‘Commission closes infringement proceedings and complaints in the gambling sector’, 7 December 2017

¹³⁷ EU Commission direct response to a query on this point (email enquiries)

¹³⁸ EU Commission direct response to a query on this point (email enquiries)

3. SECTION III – CONCLUSION

3.1. Concluding remarks and recommendations

This review evaluated the extent to which the principles recommended by the EU Commission in the Recommendation 2014/478/EU on online players' identification and verification, minors' protection and self-exclusion schemes were adopted by EU Member States. It further discussed the current and planned EU initiatives regarding gambling-related regulations and the existence and scope of administrative cooperation between European countries. The underlying objective of the evaluation was to ascertain whether the Recommendation, despite its non-binding nature, was sufficiently influential to encourage greater regulatory convergence and consistently high level of consumer protection across the European Union.

In the main, the discussion demonstrated that the primary query raised in this evaluation must be answered in the negative. While many broad legislative commonalities between some Member States have been identified, a detailed consideration of the specific rules applicable in each jurisdiction clearly highlighted a significant divergence and variations in their scope and actual applications. Even the overall regulatory regimes differ. In the Netherlands, the Dutch parliament is currently debating the introduction of the Online Gambling Bill. However, until this legislation is passed and brought into force, according to the official decision of the Dutch Gaming Authority (Kansspelautoriteit), offering or marketing online gambling in the Netherlands continues to be illegal¹³⁹. Dutch players are formally not permitted to access foreign online gambling sites, but they are not prosecuted if they do so. Accordingly, the online gambling ban does not prevent Dutch players from playing online with foreign gambling operators, but it exposes them to varying levels of protection depending on which operator they choose to gamble with. In Ireland and Slovenia online gambling is not prohibited but specific legislation that would regulate this delivery channel has not, as yet, been enacted. In Ireland, the Irish Cabinet granted permission to the Irish minister, David Stanton to draft a new General Scheme of the Gambling Control Bill. The Bill would seek to establish a licensing regime for online gambling and would authorise the creation of an independent regulator. However, it is needs to be noted that the original Irish bill that was

¹³⁹ In Press, E Brown, 'The Current State of Online Gambling in the Netherlands', 25/03/2018, DutchReview.com; <http://dutchreview.com>

similar in scope was first published five years ago in 2013 but did not find its way into the statute books¹⁴⁰. This clearly reveals that, in the absence of mandatory measures issued by the European Union, the process of enhancing players protection in individual Member States remains protracted and slow.

All remaining jurisdictions regulate online gambling fully or to some extent but only some measures are broadly similar across all countries. The only broad principles that benefit from almost universal applications are: (1) the requirements that players must register with operators and open an online gambling accounts in order to gamble; (2) their identity must be verified; (3) individuals below a certain age should not be permitted to engage in gambling; and (4) operators should offer self-exclusion and other self-limiting tools to players. However, the regulation of almost everything else varies significantly between various jurisdictions. Even when broad principles appear similar, the actual details and how it is implemented in practice very substantially from State to State. Member States do not seem able to voluntarily agree even on such a fundamental issue as the age below which individuals should not be permitted to gamble and the minimum age restrictions range from 16 to 21 years of age. While all online players must be identified, only four jurisdictions (Denmark, Lithuania, Portugal and Spain) established a nationally standardised electronic verification system. The majority of other countries direct or permit operators to rely on available electronic databases but there are still six countries (France, Germany, Greece, Luxembourg, Romania and Slovenia) that continue to rely primarily on verification through manual check of submitted copies or originals of the identity documents and in three countries (Cyprus, Poland and Slovakia) the method adopted to verify players is primarily left to the discretion of the operators. Temporary accounts are specifically permitted in 17 jurisdictions but in three (Croatia, Ireland, Slovenia) their legal status is unclear. The conditions imposed on temporary accounts range from a maximum duration of 72 hours (UK) to the period when verification is triggered by anti-money laundering requirements (Austria) and even 30 days from AML threshold (Malta). Some countries impose a maximum amount that can be deposited to such provisional accounts, but others do not impose such financial limits. In the context of minor protection, 13 countries impose the requirements to display 'no underage gambling' sign on or during commercial communications promoting gambling. Some jurisdictions ban gambling

¹⁴⁰ Gambling Compliance, 'European Online Gambling Outlook 2018'.

advertising altogether and most others rely on other content and zoning restrictions, but it remains the case that in Slovakia, there are no restriction on gambling advertisements at all. Educational activities are carried out in the majority of EU countries but only in minority of them they are systematic and regular with nationwide reach. With regards to social responsibility measures, self-exclusion facility must be offered to players in 23 jurisdictions. This requirement is not imposed directly in Bulgaria, Ireland, Luxembourg and Slovenia and in Austria it applies only in specific territories. Despite that, in Bulgaria, Ireland and Slovenia, operators offer the facility voluntarily and in Luxembourg players are able to request the closure of their account. However, even though the self-exclusion schemes are available (mandatorily or voluntarily) in all jurisdictions, the manner in which they operate vary substantially, especially in with regards to their minimum – maximum duration, who can initiate such self – exclusion and whether temporary self-exclusion can be terminated before the expiry of the set period. Permanent self-exclusion can be revoked in all jurisdictions, but this right is also subject to diverge terms and conditions. In terms of administrative cooperation, the Cooperation Arrangement between the gambling regulatory authorities of the EEA Member States concerning online gambling services that was entered into on the 25th November 2015 represents the most important instrument. However, their voluntary nature that applies not only to whether to sign the agreement in the first place, but which extends to individual cooperation requests is likely to undermine its effectiveness. Regulators are engaged in bilateral and multilateral discussions with regulators of other Member States on regular basis through their participation in conferences, expert working groups and international forums but their scope and voluntary nature also means that they are typically unable to issue binding decisions.

Admittedly, several European jurisdictions already offer a very high level of consumer protection for online gambling in their territory and already comply broadly with the majority of the principles promulgated by the Recommendation. However, this is not consistent across all Member States and accordingly, online players are exposed to a varying level of protection depending on the jurisdiction in which they are based. The EU Commission relied on the Recommendation to encourage Member States to voluntarily homogenise national laws relating to protection of online players and minors, but this approach has not proved successful. This is perhaps unsurprising if all aspects are considered that would have contributed to this outcome. The EU Commission adopted a soft form of a Recommendation

in preference to a mandatory Directive precisely because Member States were unwilling to support any mandatory measures. This of itself represented an important indication that some Member States may be unwilling to implement the provisions if they are not formally obligated to do so. Secondly, the European Court of Justice, when asked to rule on the legality of national laws, has traditionally granted Member States a wide margin of discretion on what restrictions would be deemed compatible with the EU fundamental freedoms. Member States were permitted to rely on the need for increased consumer protection, fighting addition and overspending¹⁴¹, preventing fraud and other criminal conduct and preventing gambling from being a source of private profit subject only to the requirement that the measure must not be discriminatory¹⁴². Although all those objectives appear to enhance consumer protection, their actual practical application and their overall consistencies with other activities carried out by Member States have rarely been rigorously tested. The ECJ tended to accept them at face value¹⁴³. This means that traditionally Member States have had relatively little incentive to converge regulatory principles as legitimate objectives also indirectly support other aims such as protection of national operators or maximisation of national gambling revenues even though those objectives have always been formally disallowed¹⁴⁴. The recent decision to close all infringements and complaints proceedings relating to gambling-related matters¹⁴⁵ may potentially contribute to further protectionism within Member States even though it was not supposed to lead to such an outcome.

The lack of universal adoption of the Recommendation's principles provides a strong indication that voluntary measures are unlikely to exert sufficient influence across all Member States' governments. In contrast, the majority of regulators appear to see the need for greater cooperation and greater similarities in the approaches taken towards social – responsibilities tools and measures. As Jenny Williams stated in the UK House of Commons, *“the holy grail, the answer, is for us all to agree on common standards and a common way of compliance and*

¹⁴¹ EC Stoss v Wetteraukreis (C-316/07) [2011] All ER (EC) 644 (ECJ (Grand Chamber)) Winner Wetten GmbH v Burgemeistern der Stadt Bergheim (C – 409/06) [2011] 1 CMLR 21 (ECJ (Grand Chamber)); Carmen Media Group Ltd v Land Schleswig – Holstein (C – 46/08) [2011] All ER (EC) 688 (ECJ (Grand Chamber)).

¹⁴² G Anagnostaras, 'Conditions for the legality of national gambling monopolies: assessing Stanleybet through the lens of Liga Portuguesa' (2013) EU Focus 1

¹⁴³ S Van Den Bogaert, A Cuyvers, "'Money for nothing": the case law of the EU Court of Justice on the Regulation of Gambling' (2011) 48 Common Law Market Law Review 1175

¹⁴⁴ Nemzeti Adó- és Vámhivatal Központi Irányítása C – 3/17) [2018] 3 CMLR 18

¹⁴⁵ European Commission Press release, 'Commission closes infringement proceedings and complaints in the gambling sector', 7 December 2017

enforcement. That is something that I have been pushing for, but we are a long way off it at the moment"¹⁴⁶. However, as evidenced in this evaluation, such common agreement is unlikely to materialise in the absence of further measures taken at the European Union level and accordingly the current status quo hinders the achievement of regulatory convergence and the achievement of a consistent high level of consumer protection across the whole of the European Union.

Accordingly, this review recommends that the EU Commission should re-evaluate its decision to de-prioritise gambling – related matters. It should acknowledge that although the Recommendation has contributed to better consumer protection in several EU jurisdictions, it has failed to ensure consistency across all and it did not lead to regulatory convergence. It should also recognise that there is more willingness towards and greater appetite among Member States for deeper administrative cooperation than it was the case in 2014. As such there may be more support for a direct, mandatory harmonisation measures in the context of gambling that would more effectively achieve the objectives that were intended to be secured through the Recommendation.

3.2. Limitations / Disclaimer

The above evaluation is the results of project carried out over the period of two months of October and November 2018. The main limitation stems from the duration afforded to the study. The time limitation meant that there was no opportunity to test the questions contained in the jurisdictional questionnaire. This resulted in some overlap between the answers which, in some instances, made it difficult to demarcate the answers between the different options. This particularly relates to the question on existence of nationally standardised verification methods where responses blurred option (i) with option (iii). Accordingly, this report presents how respondents classified their jurisdictional identity verification methods. Furthermore, this review is unable to represent an exhaustive and fully comprehensive evaluation of existing evidence. Rather, it aimed to elucidate and report on the broad legal position that pertains in Member States in the context of gambling regulations and measures taken to minimise gambling-related harm. The data relied on in this report has been provided by compliance officers of gambling operators, representatives of some

¹⁴⁶ The Gambling Act 2005: A bet worth taking? - Culture, Media and Sport Committee
<https://publications.parliament.uk/pa/cm201213/cmselect/cmcmds/421/42105.htm>

regulatory authorities and representatives of the EU Commission. As such, the findings are based on how those respondents understand and interpret their laws and regulation of their countries. Some of the responses may have been misunderstood by the researcher. Although the aforementioned risks are likely to be small in the context of the study questions, they need to be noted. Finally, this review presupposed that the proposals contained in the Commission Recommendation would achieve their intended aim and objective if fully and adequately implemented by Member States. However, it is recognised that this proposition remains contentious. There is no consensus among various jurisdictions that measures recommended are indeed adequate or appropriate. Accordingly, this review has not attempted to endorse or rebut this assumption.

All information contained in the review are to the best of my knowledge as of 30 November 2018.

4. SECTION IV – SUPPORTING INFORMATION

4.1. Appendix A – jurisdictional survey questions

Requested information

1) Know Your Customer

- a. Which of the following best explains the country's identity verification requirements for online gambling (please select one):
 - i. The country has implemented a nationally standardised electronic identification scheme for the registration process of players
 - ii. The country has some form of electronic identification system. If so, please specify what these requirements are
 - iii. Gambling operators have access to official national registers, databases or other official documents against which operators can verify players' identity details. If so, can you please specify which databases, and whether these databases are made available to gambling operators directly or via third party bodies
 - iv. None - there are no electronic identification requirements and / or operators do not have access to official national registers to verify players' identity.
- b. Within what period must identity verification take place?
- c. Can the customer play before identity verification is completed?

2) Minors' protection

- a. Do the country authorities require commercial communications related to gambling to carry a sign indicating the minimum age below which gambling is not permissible?
- b. What is the minimum age allowed for online gambling?
- c. Do the country authorities fund any nation-wide educational initiative to raise awareness among minors about potential risk of online gambling?

3) Tackling and prevent problem gambling

- a. Has the country authorities introduced rules on temporary exclusion for players, e.g., time out and cool off period?
 - i. If yes, is there a definition of the timing and cool off period
- b. Does the country have a national registry for excluded players?
 - i. If so, can operators licensed in the Member State verify player exclusion through these national registries?
 - ii. If so, is there register available to regulators or operators in other jurisdictions?
- c. Do the country authorities require operators to provide player self-exclusion options?
 - i. If yes, are these permanent, time-bound, at the discretion of operator or the consumer.
 - ii. Do the country authorities allow excluded players to undo their permanent self-exclusion?
 - iii. If so, is there a minimum period during which self-excluded players cannot undo their exclusion?
- d. Have the country authorities introduced players exclusion by third parties?
- e. If a player is excluded, either by their own accord or by third parties, does the country authorities ensure that problem gambling support, treatment groups or health care professional are informed about the player? E.g., either automatically through the national exclusion register or through third parties such as operators or the national gambling regulator?

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