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.

Prepared by Dr Margaret Carran
For the European Gaming and Betting Association

Correspondence address:
City Law School,
City, University of London
Northampton Square
London EC1V 0HB
Margaret.Carran.1@city.ac.uk

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 concreate 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.