

➤➤ Your quarterly guide to the key issues affecting Europe's online gambling sector

Online Gambling **Focus**

THIS ISSUE Online gambling and the European Union



Introduction

As a new mandate of the European Union (EU) institutions begins, it seems appropriate to review the EU's approach to online gambling in this Autumn edition of our

Online Gambling Focus newsletter.

It is already clear that a major objective the new EU institutions share is to make the EU single market fit for the increasingly digitalised economic world. This will require EU regulations which keep pace with the internet's rapid technological development, fully protect the rights and interests of online consumers and lead to online markets less impeded by national borders.

There is no doubt that technological step-changes have raised legitimate questions about how the rights of European consumers, the interests of businesses, and good regulation can intersect harmoniously in the online world. I recognize these challenges. Because in the past 10 years the digital revolution has moved gambling from traditional bookmaker shops into the computers, phones and tablets of millions of Europeans. And with its increasing popularity comes an even greater responsibility to ensure a safer and consistent online gambling environment.

The challenge is obvious: many of the concerns about online consumer protection are cross-border in nature and affect consumers regardless of where they live. But regulating a borderless online environment requires policies which are responsive, flexible, and borderless – that go beyond national borders to establish a more common European regulatory basis. These issues will be explored further in this edition and I'm delighted to be joined by Dr Margaret Carran of the City University of London who gives her perspective on the regulatory situation for online gambling in the EU and the implications of this for good regulation and ensuring a safe and consistent online gambling environment

Maarten Haijer,
Secretary General, EGBA



Europe's diverging online gambling rules are problematic for protecting consumers

By **Dr Margaret Carran**, City, University of London.

It may have been only a matter of weeks since the European Commission's new President has been confirmed but undoubtedly, Ursula von der Leyen will already be heavily preoccupied with determining the most critical tasks of her Commission term. As the first female head of the Commission, she may wish to add to the Commission's many priorities the need to revisit an area that affects the lives of many families within the EU.



➤➤ There are few economic sectors that attract widespread debates, generate substantial revenues but may cause externalities, span across borders – yet seem able to largely escape the regulatory influence of the EU. Online gambling is one of them, regulation of which has traditionally been very resistant to any harmonisation attempts and one that remains firmly within the jurisdictions of individual EU Member States.

This was meant to change with the initiatives of the outgoing Commission – who aimed to enhance the protection of online gambling consumers, prevent minors from being exposed to gambling services and to encourage greater convergence in national gambling regulations. The Commission commenced its work with the publication of a “[green paper on online gambling in the internal market](#),”¹ followed by a [Communication](#),² and supported by two European Parliament resolutions issued in [2011](#) and [2013](#) respectively.^{3/4} These policy initiatives culminated with the Commission issuing “[Recommendation 2014/478/EU on Principles for the Protection of Consumers and Player of Online Services and for the Prevention of Minors from Gambling Online](#).”⁵

The aim of the Recommendation’s was “*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.*” The adoption of a soft, non-binding Recommendation was the result of a compromise as any proposed mandatory legislation would likely attract high levels of opposition from Member States.

■ ■ All Member States care and wish to adequately protect their players but, substantively, the differences in national approaches to regulating online gambling are difficult to justify.

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City, University of London

But precisely because of that, it seems somewhat paradoxical that the Recommendation was still considered to be a sufficient measure that would adequately nudge all Member States into ensuring a high level of consumer protection for their online players and one which led to the Commission’s decision to deprioritise gambling-related issues⁶, as demonstrated by the Commission’s [decision](#), in late 2017, to close all outstanding infringement proceedings in the sector. It is, accordingly, perhaps unsurprising that a study which I published last December demonstrated that any confidence which may have been placed in the effectiveness of the Recommendation was somewhat misplaced.

My [study](#) titled “*Consumer Protection in the EU Online Gambling Regulation: Review of the Implementation of the Selected Provision of EU Commission Recommendation*

2014/478/EU across EU States,” looked primarily at the national implementation of the Recommendation. The study found that while there is a high level of consumer protection offered in many Member States, there are significant differences in the methods and the extent to which individual jurisdictions do, or do not, protect their online players. The implementation of the principles suggested in the Recommendation has been very variable. Only one Member State – Denmark – has fully implemented the Recommendation and there are still some Member States which do not have any regulations at all governing online gambling.⁷

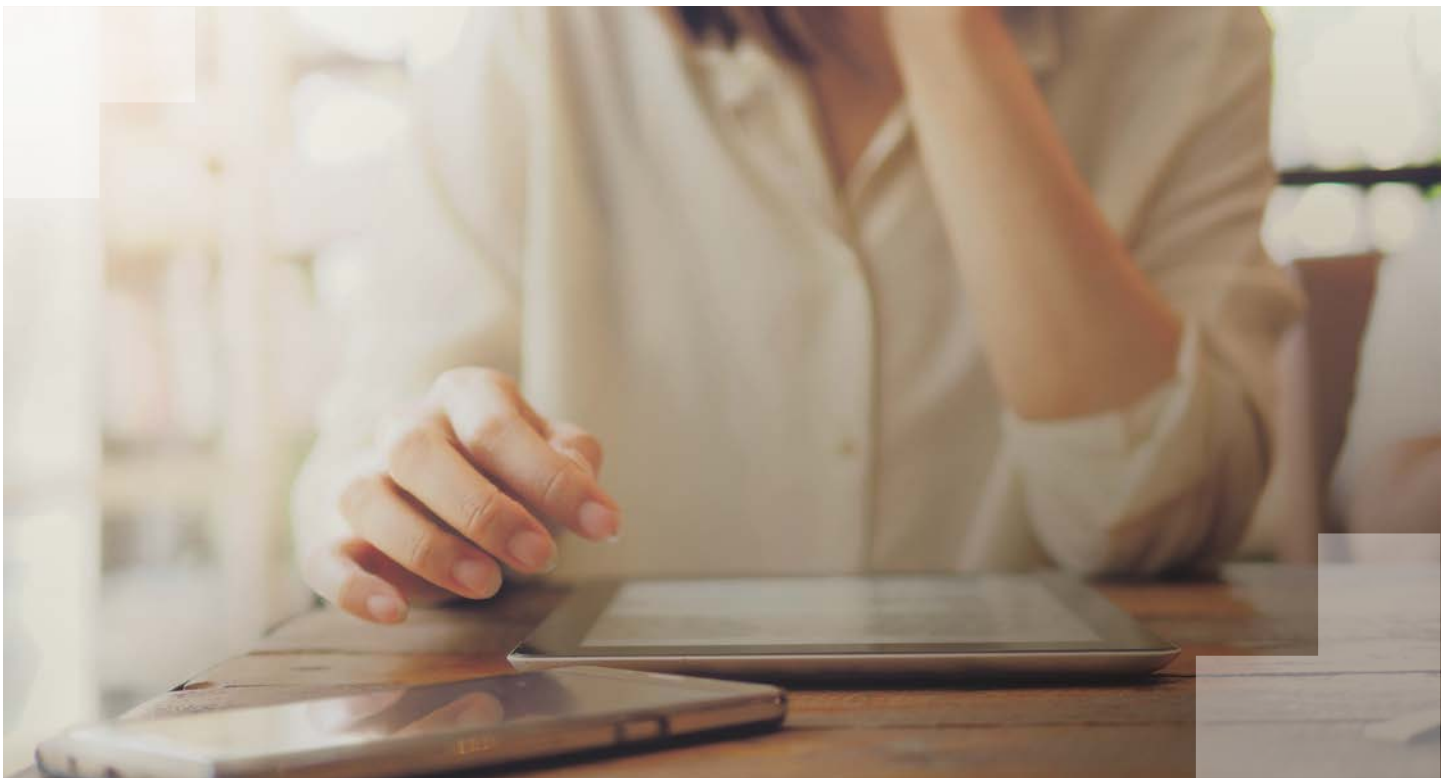
While all Member States impose a minimum age for gambling – mostly 18 years old – only 13 countries legally require a “no underage gambling” sign to form part of gambling advertising and only 8 jurisdictions fund nationally sponsored awareness programmes. Tools for allowing players to self-exclude or block themselves from accessing gambling websites are offered by all licensed gambling operators in Member States – but the legal expectations materially differ as to who can request self-exclusion, its duration and whether it can be terminated before the expiry of its original duration. National self-exclusion registers, a central register allowing players to block themselves from accessing all gambling websites allowed in their country, exist in 14 countries.

But access to these national registers is not shared with other Member States – which is clearly a problem in a cross-border, internet age where players can play on websites based in other countries. This means a self-excluded player in one EU country could rather easily be able to access websites based in another. Also, no Member State requires automatic referral of self-excluded gamblers to treatment centres. Identity verification, an important measure for preventing money laundering and minors from gambling, equally varies in its robustness. All Member States require online players to be verified but there are as many methods as there are EU countries and gambling companies.

All Member States care and wish to adequately protect their players but, substantively, the differences in national approaches to regulating online gambling are difficult to justify. Most Member States in principle acknowledge that effective consumer protection is difficult to be achieved within the confines of individual national borders. Protective measures are often the same even if they differ in form or appearance. So why is regulatory convergence still only a distant possibility?

The Commission should thoroughly evaluate consumer protection in online gambling across the EU to determine whether the differences genuinely stem from real disagreements of what is, or is not, effective or whether it stems more from disguised national protectionism. The Commission may then still decide not to pursue any corrective action but, at the very least, the question should be asked

- 1 Green Paper on Online Gambling in the Internal Market SEC (2011) 321 Final, European Commission.
- 2 Towards a Comprehensive European Framework for Online Gambling COM (2012) 596 Final, European Commission.
- 3 Resolution of 15 November 2011 on online gambling in the internal market (2011/2084(INI)), European Parliament.
- 4 Resolution of 10 September 2013 on online gambling in the internal market (2012/2322(INI)), European Parliament.
- 5 Recommendation 2014/478/EU on Principles for the Protection of Consumers and Player of Online Services and for the Prevention of Minors from Gambling Online, European Commission.
- 6 Press Release of 7 December 2017 “Commission closes infringement proceedings and complaints in the gambling sector”, European Commission.
- 7 “Consumer Protection in EU Online Gambling Regulation: Review of the Implementation of European Union Commission Recommendation 2014/478/EU across EU States”, Dr. Margaret Carran, City University of London (2018).



Five reasons why more EU policy would benefit online gamblers and minors

By **Maarten Haijer**, Secretary General, EGBA

As the new EU term begins, much attention has already been given to the importance of making Europe's digital economy work better for European consumers. Ensuring the EU single market embraces the digital reality and is less impeded by national barriers is a major challenge.

And while much progress has already been made in terms of the EU digital single market rules, it is vital to ensure these rules harmoniously intersect to safeguard the rights of consumers and promote the interests of online businesses. Because today the online economy goes far beyond music streaming, or buying a book online, and includes almost anything you could imagine – including placing a bet on the outcome of your favourite football team's next match. EU regulation needs to keep up. Here are five reasons why:

1: Online gambling is popular and inherently cross-border

Like any other activity, the emergence of the internet also transformed gambling. Beginning less than 20 years ago, one-fifth of Europe's gambling is now conducted online. Today, EGBA's member companies have over 12 million European customers, living across 19 EU countries, and who are now able to find the best offers online. The challenge in today's borderless, digital world is to ensure that these citizens only use gambling websites licensed in the EU and are fully protected by European consumer protection rules when they play online.

2: There is a patchwork of national rules and no single market

Although some EU regulation applies to online gambling, such as the GDPR and the anti-money laundering directive, it is a sector almost entirely regulated by national policies. The result: 28 different sets of national rules working in isolation to each other – leading to policy fragmentation and divergence. In an era when Europeans can easily access websites operated from anywhere in the world, policy inconsistencies can lead to its citizens being exposed to different rules or websites that don't protect their rights or interests.

3: Current EU consumer protection standards are inadequate and diverge significantly

Recognizing this problem, in 2014, the European Commission outlined a list of safeguards⁸ (Recommendation 2014/478/EU) for online gambling – and for responsible advertising and sponsorship – that EU countries should adopt to ensure a high level of protection for European consumers and minors. The Commission committed to review the implementation of the Recommendation by January 2017, but recently acknowledged⁹ it isn't prepared to measure the effectiveness of its own proposals. However, as shown by Dr Carran's study,¹⁰ only one EU country has fully implemented the safeguards,





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➔ and big gaps exist in how gamblers are protected across Europe, which is solely dependent on where they live. A recent European Parliament study¹¹ found that closing these gaps would also save €6 billion per year. To ensure a safer online gambling environment across EU countries the incoming Commission should start by enforcing its existing consumer protection proposals.

4: There is no formal framework for regulatory cooperation between EU countries

Every major European consumer market is served by regulatory cooperation between market authorities, with the exception of online gambling. The Commission previously facilitated a national expert group of gambling regulators which it disbanded¹² in 2018 despite regulators considering it to be a great success and a valuable platform for information exchange. There is now no formal framework for regulators to even communicate, let alone to jointly tackle the big issues affecting the sector, which are cross-border and require common solutions. In the absence of policy consistency, more cooperation between regulatory authorities is a vital necessity to encourage exchanges of best practice and better alignment of national policies. The incoming Commission should reinstate regulatory cooperation between national gambling regulators to ensure better policy consistency.

5: EU rules are not being enforced in the sector

The Commission made these matters worse, in 2017, when it decided¹³ to stop enforcing EU single-market law in the sector. Since then, it has systematically disregarded any complaint

about the application of EU law in EU countries. The effect: national authorities know they don't need to worry about whether their policies comply with EU law, and consumers and business are being treated differently than in other EU countries. The application of EU law should not be optional. Any serious legal complaint should get a fair consideration, irrespective of the sector it pertains to.

You might find it seem strange to hear of an industry calling for more EU regulation, not less. But the truth is the existence of 28 different sets of rules, each with their own compliance requirements, means significant administrative and regulatory costs for companies. We need one set of rules providing better regulation of Europe's online gambling activities, better-protected citizens and clear rules for gambling companies to comply with.

We have a simple message to EU policymakers: don't bet against online gamblers. That's why we urge all policymakers, EU and national, to work together in this new EU term to establish a better standard of protection for all Europe's online citizens and single-market policies fit for the digital age.

- 8 Recommendation 2014/478/EU on Principles for the Protection of Consumers and Player of Online Services and for the Prevention of Minors from Gambling Online, European Commission.
- 9 Page 199, DG GROW Annual Activity Report 2018, European Commission.
- 10 "Consumer Protection in EU Online Gambling Regulation: Review of the Implementation of European Union Commission Recommendation 2014/478/EU across EU States", Dr. Margaret Carran, City University of London [2018].
- 11 Contribution to Growth: The European Digital Single Market – Delivering economic benefits for citizens and businesses, European Parliament (2019).
- 12 Demise of EU Expert Group Decried, Gambling Compliance (2019).
- 13 Press release of 7 December 2017 "Juncker's 'Political' Commission Leaves Gambling Reforms to the Courts," EGBA.

EGBA | European Gaming & Betting Association

The European Gaming and Betting Association (EGBA) is the Brussels-based trade association representing the leading online gaming and betting operators established, licensed and regulated within the EU. EGBA works together with national and EU authorities and other stakeholders towards a well-regulated market that provides a high level of consumer protection and takes into account the reality of the digital economy and consumer demand.

European Gaming and Betting Association
50 rue Gray
1040 Brussels
Belgium

T: +32 2 554 0890

E: egba@egba.eu

egba.eu