

Legal Aspects of Responsible Gaming Pre-commitment and Personal Feedback Initiatives

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1. INTRODUCTION

RESponsible GAMBLING AND PLAYER PROTECTION have become increasingly researched topics in the gambling studies field. Information about important aspects of gambling has become a cornerstone of responsible gambling that operators regularly offer. Gambling operators display information about such things as the probability of winning or where to get help if a player thinks they may have a problem. Other popular “information” features include the use of self-diagnostic tests (in which players can assess whether they show any behavioral signs related to problematic gambling) and warning messages (highlighting potential dangers of gambling).

Warning signs have been researched in other areas such as smoking and drinking,¹ but have shown limited effect in enabling behavioral change. In the gambling studies field, Monaghan and Blaszczynski² found that only 15.6% of participants were able to freely recall warning signs attached to land-based gambling machines immediately after play. In a study that compared the mode of display of informational content about the nature of games, Monaghan and Blaszczynski³ found that messages provided during a dynamic pop-up that forced a break in play were more effective in changing gambling-related thoughts compared to a static message attached to the land-based gambling machine.

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The increasingly advanced technological environments of online gambling companies now allow for sophisticated ways of promoting responsible play among gamblers.⁴ For this reason, it is not surprising that over the last few years, a large number of online gambling sites have incorporated specific responsible gambling measures that are only possible to apply in gambling environments where players can be identified and/or tracked behaviorally. Such personalized gambling environments are characterized by the fact that all of a person’s gambling behavior can be recorded over time. This is not necessarily limited to online gambling, but also holds true for land-based gambling in which the use of player cards is mandatory. However, the technical nature of online gambling naturally presumes personal identification, which is not the case for land-based gambling. To the authors’ knowledge (as of June 2015), the use of player

¹P. Fischer, D. Krugman, J. Fletcher, B. Fox, and J. Rojas, *An Evaluation of Health Warnings in Cigarette Advertisements Using Standard Marketing Research Methods: What Does it Mean to Warn?*, 2 *TOBACCO CONTROL* 279–285 (1993). J. Hankin, I. Firestone, J. Slone, J. Ager, A. Goodman, R. Sokol, and S. Martier, *The Impact of the Alcohol Warning Label on Drinking During Pregnancy*, 12 *J. PUB. POL’Y MARKETING* 10–18 (1993).

²S. M. Monaghan and A. Blaszczynski, *Recall of Electronic Gambling Machine Signs: A Static Versus a Dynamic Mode of Presentation*, 20 *J. GAMBLING ISSUES*, 253–268 (2007).

³S. M. Monaghan and A. Blaszczynski, *Impact of Mode of Display and Message Content of Responsible Gaming Signs for Electronic Gaming Machines on Regular Gamblers*, 26 *J. GAMBLING STUD.* 67–88 (2010).

⁴M. Auer and M. D. Griffiths, *Voluntary Limit Setting and Player Choice in Most In-tense Online Gamblers: An Empirical Study of Gambling Behavior*, 29 *J. GAMBLING STUD.* 647–660 (2013). M. D. Griffiths, R. T. A. Wood, and J. Parke, *Social Responsibility Tools in Online Gambling: A Survey of Attitudes and Behaviour among Internet Gamblers*, 12 *CYBERPSYCHOLOGY AND BEHAV.* 413–421 (2009).

cards in land-based machine gambling is currently only mandatory in Norway, Sweden, and parts of Austria. For this reason we predominantly focus in this article on the area of online gambling and specific responsible gambling measures designed to assist players under such circumstances.

Within the context of the European Union, increasing numbers of member states are turning to local licensing regimes for online gambling. During the industry's nascent years, online gambling was either prohibited in some member states because there was no legal basis in national law for online gambling licenses to be awarded, or exclusivity held by incumbent operators in the land-based sphere was replicated in the online realm. Nevertheless, several jurisdictions in and around the EU (and also further afield) established regulatory and licensing regimes for online gambling. Operators established and licensed within the EU sought to rely upon the free movement of services, as one of the principles underpinning the internal market, to offer services licensed in Gibraltar and Malta to those residing in other member states. Following preliminary references to the Court of Justice of the European Union (CJEU), case law emerged which denied the application of the principle of mutual recognition to gambling services. Therefore, national prohibitions or monopolies could remain so long as the resulting restriction on the free movement of services was justifiable.

Member states could have then decided to maintain prohibitions on online gambling within their respective jurisdictions, or likewise, to uphold the exclusivity that an incumbent monopolist enjoyed in the land-based space. Without entering into detail, the case law of the Court established particular requirements as to the regulatory regime applicable to, and the actual behavior of, a monopolist if the restriction on the free movement of services to which it gave rise was to be justifiable. Of course, the fact that a regulatory regime did not amount to a justifiable restriction on the free movement of services would not necessarily entail that the national market should be liberalized. On the contrary regulatory amendments could be introduced to bring the regulatory regime and behavior of the monopolist within the boundaries of behavior that would constitute a justifiable restriction.⁵

From the mid-2000s onwards, an increasing number of member states have sought to license online gambling and thereby replace absolute pro-

hibitions or monopolies with an open licensing regime. Whilst such regulatory reform has opened various national markets to private operators established in other jurisdictions, such national markets have not been "liberalized" in the sense that operators can operate free from the shackles of regulatory requirements. Rules defining license eligibility and a whole swathe of licensing conditions are means by which member states can express national regulatory preferences in line with their "margin of discretion" under EU law when regulating gambling. Such national licensing regimes must also be compliant with free movement case law, too.

Through such national licensing regimes, member states are able to give effect to national policy preferences. The prevention of problem gambling and gambling addiction is one such field, alongside more general consumer protection measures designed to protect (potential) players. National licensing regimes thus enable member states to impose responsible gambling and player protection requirements on licensed operators, on pain of enforcement measures. Thus, whilst responsible gambling measures have emerged from within the industry itself, the emergence and development of national regulatory regimes has increased the plethora of responsible gambling measures found within the European gambling market. As will be discussed subsequently, this has given rise to initiatives at the European level, despite the fact that no EU gambling-specific legislation will be proposed for the foreseeable future.

2. MANDATORY (OPERATOR IMPOSED) LIMIT SETTING

Mandatory (i.e., operator imposed) limit setting initiatives can comprise time and/or money spending thresholds, and whilst the operator imposes limits upon players' behavior in some jurisdictions, this is often the result of licensing conditions to which the operator is bound. However, problematic and pathological gamblers who are increasingly losing control over time and money spent might not be susceptible to voluntary responsible gaming features.

⁵Joined Cases C-186 and 209/11, *Stanleybet International*, delivered on 24 January 2013, at para. 46.

One way of trying to protect this vulnerable group of players is by operators employing *mandatory* time and/or money spending limits. We would like to clarify that what we are talking about here are limits that apply to gambling activities generally, rather than to single games or single game sessions. Maximum bet amounts on single games, and maximum bet amounts or maximum wallet values on gambling sessions, are used among some online operators as well as a few land-based operators. However, such tools do not track players' behavior longitudinally and are not the subject of this article, as the only aim of such initiatives is to protect players within a single game and/or game session.

Mandatory money limit setting is found in government-owned or government-operated online gambling sites such as Instaspill (Norsk Tipping, Norway), win2day (Austrian Lotteries, Austria), and Svenska Spel's gaming platforms (Sweden). Wood and Griffiths⁶ also noted mandatory deposit limits at the online gambling site bwin. Mandatory limits also can be found in other national markets where private operators operate. Although incumbent operators in the Netherlands are currently prohibited from offering true online gambling, they are permitted to offer their land-based services via the Internet, under the so-called "e-commerce" exception. Spending limits then apply. For example, in the Netherlands, De Lotto is required to apply different weekly spending limits to those between the ages of 18–24 years (€100) than to those over 24 years (€1,000) in relation to its sports-betting offer when provided via the Internet.⁷ Private entities in Belgium can obtain a license to offer online slot machine gaming, should they have a license to do so offline. However, the online offer must replicate spending limits applicable to the land-based supply;⁸ for example, the player should not lose, on average, more than €25 per hour.⁹ Mandatory limits can apply to deposits, losses, or wagers combined with different time periods (e.g., daily, weekly, or monthly). The authors are not aware of any mandatory time limits that specify the maximum time players can spend other than operators that utilize a mandatory gambling session time (e.g., Loterie Romande's electronic lottery machines in Switzerland).

From a scientific point of view, the authors are unaware of any empirical studies that have focused on the effects of mandatory spending limits on gambling behavior. Given the fact that such limits are

now being used by gaming operators, research on the effects is needed. However, the derivation of valid results might be difficult as mandatory limits apply to all players (from very occasional gamblers through to problem gamblers), which can make comparisons and effectiveness difficult to interpret.

3. VOLUNTARY (PLAYER CHOICE) LIMIT SETTING

Voluntary spending limits in which players can choose the maximum amount of time and/or money they want to spend within a specific period of time are now found on a growing number of online gambling sites.¹⁰ In relation to monetary spending, Wood and Griffiths¹¹ reported that players' can be restricted in terms of deposit limits, play limits, loss limits, and bet limits. More specifically:

- *Deposit limits*—This refers to the maximum amount of money that a player can deposit into their play account at any given time. Winnings can either be included or excluded from this figure.
- *Play limits*—This refers to the maximum amount of money that a player can actually play with at any given time. As with deposit limits, winnings can either be included or excluded from this figure.
- *Loss limits*—This refers to the maximum amount of money that a player is allowed to lose at any one session.

⁶R. T. A. Wood and M. D. Griffiths, *Social Responsibility in Online Gambling: Voluntary Limit Setting*, 9(11) WORLD ONLINE GAMBLING LAW REP. 10–11 (2010).

⁷Vergunning sportprijzsvragen en lotto 2015/2016, art. B.1, 25 November 2014.

⁸Class II gaming establishments are slot machine arcades for which a "B" type license is required, and a "B+" license for the online variant.

⁹Kansspelwet van 7 mei 1999, gewijzigd door de wet van 10 januari 2010, art. 8, with further details specified in Koninklijk besluit van 11 juni 2009 tot wijziging van verscheidene bepalingen betreffende kansspelen waarvan de exploitatie is toegelaten in de kansspelinrichtingen klasse II.

¹⁰M. D. Griffiths, *Internet Gambling, Player Protection and Social Responsibility*, in ROUTLEDGE HANDBOOK OF INTERNET GAMBLING 227–249 (R. Williams, R. Wood and J. Parke eds., 2012).

¹¹Wood and Griffiths, *supra* note 6.

- *Bet limits*—This refers to the maximum amount of money that can be bet on a single game, or on concurrent games.

Apart from play limits, Lucar et al.¹² found that all types of money limits were found across 50 online gambling sites that were subject to the analysis. However, deposit limits were most common. They also found that daily, weekly, and monthly limits could be chosen. When players want to increase their spending limits, most sites will only allow the changes after a certain period of time. However, if players want to decrease their spending limits, most sites allow the changes immediately. This asymmetric setting helps players who want to increase their spending limit while in an emotional state not to overspend. In land-based gambling, such voluntary limit setting (e.g., daily, weekly, or monthly money spending limits) can only occur if the operator gives their customers player cards. To the authors' knowledge, this is the case in Austria, Norway, and Sweden, where the usage of player cards is mandatory. A trial of a voluntary player card in Nova Scotia was discontinued in 2014, and a voluntary player card system that also allows the setting of money limits was recently introduced in Victoria, Australia.¹³

Regulatory regimes in many EU member states require licensed operators to provide players the opportunity to set limits as part of the player registration process for online gambling. Therefore, it is a mandatory requirement, imposed by the regulatory regime on the operator, requiring the operator to provide the player the opportunity to set limits. A player must set a limit before being able to play, but the amount that the player can select is voluntary. In such situations, the setting of limits is a combination of both the involuntary and voluntary. Such licensing requirements on the operator are frequently accompanied by licensing conditions imposing mandatory cooling-off periods should a player wish to increase a limit (e.g., 72 hours) whilst requiring operators to immediately give effect to a player's instruction to reduce a limit.

For example, secondary legislation in France obligates operators to require that players set a cumulative limit on amounts bet based on a seven-day period before permitting the player to participate in the online games offered. Whilst any subsequent reduction in the limit must take effect immediately, two days must elapse before an increase in the limit

set results in a material change.¹⁴ Danish legislation requires that operators must provide players with the opportunity to set daily, weekly, and monthly deposit limits. Requests to set a limit must be dealt with immediately, whilst any increase to an existing limit can only take effect 24 hours after the request was made.¹⁵

Regulatory reform is currently underway in the Netherlands, and parliamentary discussion to date has directed some attention to the use of limits. Notwithstanding the fact that secondary legislation, which will detail operational requirements, has not been published in any format at the time of writing, it is clear that there will be no mandatory limits. However, operators will be obliged to require players to complete a "player profile" upon registration and as a condition of the player accessing the online gambling offer. In the absence of any upper limit, this is a clear example of the combination of involuntary (i.e., the player must complete the profile) with the voluntary (i.e., the player could set a weekly deposit limit of €5 or €5000). Should a player exceed the limits set, this will be one ground on which the operator will be required to intervene as part of the "active duty of care" which will require that operators monitor and analyze player behavior, and take measures once play is potentially indicative of problem gambling. Intervention could be in the form of an "interview" with the player (via means of remote communication) and—perhaps at a later stage—suggesting to the player that they voluntarily exclude themselves from all nationally licensed remote gaming offers.

As for the effectiveness of voluntary limit setting, very few studies have been conducted. Despite an increasing number of gaming operators utilizing

¹²C. Lucar, J. Wiebe, and K. Philander, *MONETARY LIMITS TOOLS FOR INTERNET GAMBLERS: A REVIEW OF THEIR AVAILABILITY, IMPLEMENTATION AND EFFECTIVENESS ONLINE* (2013).

¹³R. Willingham and J. Dowling, *Precommitment Coming to Victorian Pokies in Bid to Curb Spending by Problem Gamblers*, *THE AGE VICTORIA* (Feb. 8, 2015), <<http://www.theage.com.au/victoria/precommitment-coming-to-victorian-pokies-in-bid-to-curb-spending-by-problem-gamblers-20150208-139058.html>>.

¹⁴Décret n° 2010-518 du 19 mai 2010 relatif à la mise à disposition de l'offre de jeux et de paris par les opérateurs agréés de jeux ou de paris en ligne, art. 16.

¹⁵Executive Order No. 66 of 25 January 2012 on the provision of online betting, § 15, and Executive Order No. 67 of 5 January 2012 on online casinos, § 17.

social responsibility tools and practices, there has been very little empirical research. To date, there is no empirical evidence showing that either higher mandatory spend limits or voluntary spend limits are associated with increased levels of problem gambling in either online or offline settings. Broda et al.¹⁶ examined the effects of player deposit limits on Internet sports betting by customers of *bwin Interactive Entertainment*. Overall, the study found that less than 1% of players (0.3%) attempted to exceed their deposit limit. However, Wood and Griffiths¹⁷ argued that the large mandatory limit may be the main reason for this finding, as Broda et al. (2008) noted that the majority of online gamblers never reached the maximum deposit limit. A Canadian study by Focal Research¹⁸ among Nova Scotian video lottery players with player cards found that responsible gaming (RG) features (including player set spend limits) generally reduced the overall levels of player expenditure. However, as Wood and Griffiths¹⁹ note, the specific impact of the player set spend limit was not separated from the impact of the other RG features.

A study of 10,865 online gamblers from 96 different countries by the International Gaming Research Unit²⁰ reported that over two-thirds of players (70%) thought that voluntary spending limits would be a useful RG feature. Further focus group work from the same study found that the majority of players were opposed to mandatory spending limits. Bernhard, Lucas, and Jang²¹ reported similar findings in their focus groups of Las Vegas gamblers. In their study, mandatory spending limits were strongly opposed, whereas voluntary limits were more widely regarded as useful. However, problematic and pathological gamblers who increasingly lose control of their time and money spending may be unlikely to utilize voluntary responsible gaming features.

Griffiths et al.²² carried out a study among Svenska Spel clientele in Sweden, examining players' attitudes and behavior towards using social responsibility tools among 2,348 online gamblers who completed an online survey. The most useful feature was the setting of spending limits, with over two-thirds of respondents (70%) reporting the feature to be "quite useful" or "very useful." Respondents were also asked which social responsibility features (if any) they had used. Over half (56%) had used spending limits. To date, only one study by Auer and Griffiths²³ has investigated voluntary time lim-

its. The study found that both money and time limits were effective among highly involved players. Whereas money limits were most effective among casino players, time limits were most effective among poker players. As poker is partly a game of skill, time limits are important, as poker players can spend long periods of time without losing any money.

4. EXCLUSIONS SCHEMES (VOLUNTARY, FORCED, AND THIRD-PARTY)

Long-term voluntary self-exclusion schemes provide problem gamblers (or those who think they might develop a problem) with an option to prevent further harm. Research has shown that most individuals do not seek help for problem gambling until they reach serious crisis.²⁴ Given this finding, self-exclusion might be an important tool for players to control their spending. An important aspect for self-exclusion to be effective is to prevent problem gamblers playing in environments where they have voluntarily self-excluded. Identification is much easier in online gambling environments where registration is only possible following a thorough identity check. Voluntary self-exclusion schemes are also

¹⁶A. Broda, D. A. LaPlante, S. E. Nelson, R. A. LaBrie, L. B. Bosworth, and H. J. Shaffer, *Virtual Harm Reduction Efforts for Internet Gambling: Effects of Deposit Limits on Actual Internet Sports Gambling Behavior*, 5 HARM REDUCTION J. 27 (2008).

¹⁷Wood and Griffiths, *supra* note 6.

¹⁸FOCAL RESEARCH CONSULTANTS, ASSESSMENT OF THE BEHAVIOURAL IMPACT OF THE RESPONSIBLE GAMING DEVICE (RGD) FEATURES: ANALYSIS OF NOVA SCOTIA PLAYER-CARD DATA. THE WINDSOR TRIAL. Report prepared for the Nova Scotia Gaming Corporation (2007).

¹⁹Wood and Griffiths, *supra* note 6.

²⁰INTERNATIONAL GAMING RESEARCH UNIT, THE GLOBAL ONLINE GAMBLING REPORT: AN EXPLORATORY INVESTIGATION INTO THE ATTITUDES AND BEHAVIOURS OF INTERNET CASINO AND POKER PLAYERS. Report for eCOGRA (e-Commerce and Online Gaming Regulation and Assurance) (2007).

²¹B. J. BERNHARD, A. F. LUCAS, AND D. JANG, RESPONSIBLE GAMING DEVICE RESEARCH REPORT. (University of Nevada, Las Vegas International Gaming Institute, 2006).

²²Griffiths, Wood, and Parke, *supra* note 4.

²³Auer and Griffiths, *supra* note 4.

²⁴H. Suurvali, D. C. Hodgins, and J. A. Cunningham, *Motivators for Resolving or Seeking Help for Gambling Problems: A Review of the Empirical Literature*, 26 J. GAMBLING STUD. 1-33 (2010).

offered by many land-based operators. However, preventing players from re-entering can remain difficult. In Europe, where identity checks in land-based casinos are common, patrons can also regularly self-exclude. In Austria, self-exclusion has been offered to casino players since 1934.²⁵ For voluntary self-exclusion programs to be effective, it is important that such schemes work across venues and operators.

Licensed operators in Denmark are required to provide players with the opportunity to request temporary or permanent exclusion from gambling. Temporary exclusion must be for a period of at least one month, but players should also have the opportunity to opt for a short-break (24 hours) from gambling. During such periods the account is deactivated. Permanent exclusion entails closure of the player account, and the individual cannot become a customer with the operator in question during a one-year period following account closure.²⁶ Alongside exclusion at the level of the operator, the Danish Gambling Authority maintains a register of players who want to be excluded from all Danish licensees, on a temporary or permanent basis. Upon each and every player log-in, the operator must check this central register and decline play for individuals contained within the register; likewise, when an individual is in the process of setting up a new player account, the operator must refuse to open an account if, after having checked the central register, an individual would-be player is listed within it. After a year of being listed as permanently excluded, an individual may request to be deleted from the central register.²⁷

Central exclusion systems are also on the horizon in Great Britain, which, as of the start of 2015, has switched to regulation based on the point of consumption, as opposed to the location of the operator. At present, online gambling providers must provide players with the opportunity to self-exclude; this is done at the level of each individual licensee. A period of not less than six months, but no more than twelve months, should be offered as the minimum self-exclusion period, whilst providing players with the option of selecting an exclusionary period of up to at least five years. Once the period selected by the individual has expired, the individual will remain excluded from gambling for at least seven years unless the individual takes “positive action to gamble again” (through contact with the operator via the telephone or in person; mere re-registration online will not suffice). From a date yet to be deter-

mined by the Gambling Commission, such operators will have to participate in the “national multi-operator self-exclusion scheme.”²⁸

In addition to giving players the possibility to exclude themselves from gambling activities, several jurisdictions (in land-based, rather than online gambling) also enforce exclusions. This means that operators can ban individuals from playing (mostly) for welfare-related reasons. Singapore is an example, where players are excluded from the two existing casinos if they receive financial aid from the government or have been declared bankrupt. As with the case of mandatory spending limits, such an initiative aims to prevent problem gamblers from suffering further harm if they are unable to stop gambling themselves. Exclusions initiated by operators are also found in land-based gambling environments where (like online gambling environments) players might not be allowed to register if credit checks fail. To the authors’ knowledge, mandatory exclusions of active players are not common in online gambling environments. In some land-based gambling environments, third-party exclusions can also be initiated by family members of problem gamblers. This is used, for example, in Singapore. Applications for such Family Exclusion Orders do not immediately take action, but are reviewed by an official panel.

Approaches to nationwide exclusion registers in some European member states go beyond mere voluntary exclusion. Belgian legislation enables an interested person to recommend to the Belgian Gaming Commission that an individual should be excluded from online gambling (and also some land-based venue types) because of gambling addiction.²⁹ The Gaming Commission makes a decision

²⁵T. Hayer and G. Meyer, *Self-exclusion as a Harm-minimization Strategy: Evidence for the Casino Sector from Selected European Countries*, 27 J. GAMBLING STUD. 685–700 (2011).

²⁶Executive Order No. 67 of 25 January 2012 on online casinos, § 18. Executive Order No. 66 of 25 January 2012 on the provision of online betting, § 16. Executive Order No. 67 of 25 January 2012 on online casinos, § 17.

²⁷Executive Order No. 67 of 25 January 2012 on online casinos, § 19.

²⁸GAMBLING COMMISSION, LICENCE CONDITIONS AND CODES OF PRACTICE (Feb. 2015, updated Apr. 2015), Social responsibility code provision 3.5.3.

²⁹Wet van 7 mei 1999 op de kansspelen, de weddenschappen, de kansspelinrichtingen en de bescherming van de spelers, art. 54, § 3.4.

after having heard the individual concerned. Draft legislation in the Netherlands foresees the introduction of a central register of excluded players, covering online gambling, land-based casinos, and land-based slot machine arcades. Operators should recommend to players, whose situation(s) so warrants such a recommendation, that they voluntarily self-exclude from gaming services. Should a player not abide by such advice, it will be possible, according to draft primary legislation, for the operator to transfer the “file” to the Gaming Authority, which will determine whether the player should be involuntarily included in the register. This will result in exclusion from all licensed online gambling, land-based casinos, and land-based slot machine arcades.

Research on the effectiveness of voluntary self-exclusion in online gambling is rare. Hayer and Meyer³⁰ investigated a sample of 256 Internet gamblers who self-excluded and also submitted follow-up surveys one month, six months, and one year later. They found that self-exclusion had favorable psychosocial effects. Players showed a marked decrease in the willingness to play on the Internet shortly after they self-excluded. Haefeli et al.³¹ did not directly investigate the effects of self-exclusion, but tried to predict future self-exclusion via analyzing player’s e-mail correspondence. E-mail content from self-excluders was compared to a control group and clustered according to what the e-mails were about (e.g., enquiries about changing limits, self-exclusion, etc.) and the tonality of e-mails (neutral, complaint, threats, etc.). Using these data, Haefeli et al.³² were able to correctly predict 76.6% of future self-exclusions.

5. PERSONALIZED FEEDBACK

Personalized feedback describes information provided to players that incorporates the players’ individual behavior. One example is player spending summary reports that are commonly offered by online gambling operators. Players have the possibility to retrieve a summary of their spending over long periods of time (e.g., weekly, monthly, annually). Other feedback interventions include dynamic “pop-up” messages that are triggered by aspects of behavioral play (e.g., after a player has played for an hour or played 1,000 consecutive games). Providing specific information in the form of messages to players while gambling (within session

pop-ups) is one way of intervening and helping gamblers who play excessively. It is believed that information that is given to people to enable behavioral change should encourage reflection, as research has shown that self-monitoring can enable behavioral change in the desired direction.³³

At present, several responsible gambling accreditation organizations (e.g., GamCare based in the UK) mandatorily require pop-ups for gaming operators to receive gambling social responsibility certification. Within-session pop-ups are used in both online and offline gaming environments that utilize gaming screens (e.g., slot machines, games played via laptops and tablets). Experimental studies on gamblers playing slot machines³⁴ have shown that giving players messages that encourage self-appraisal (e.g., “Do you know how long you have been playing? Do you need to think about a break?”) result in a significantly greater effect on self-reported thoughts during playing sessions and subsequent playing behavior compared to purely informative messages.

Pop-up messaging has also been used to help gamblers set limits while gambling. Stewart and Wohl³⁵ demonstrated that adherence to monetary limits was significantly more likely among participants that received a monetary limit pop-up message compared to participants who did not receive a pop-up message. Studies have also investigated the optimum time at which pop-up messaging

³⁰Hayer and Meyer, *supra* note 25.

³¹J. Haefeli, S. Lischer, and J. Schwarz, *Early Detection Items and Responsible Gambling Features for Online Gambling*, 11 INT’L GAMBLING STUD. 273–288 (2011).

³²*Id.*

³³G. Gilberts, M. Agran, C. Hughes, and M. Wehmeyer, *The Effects of Peer-reviewed Self-monitoring Strategies on the Participation of Students with Severe Disabilities in General Education Classrooms*, 26 J. ASS’N PERSONS WITH SEVERE HANDICAPS 25–36 (2001). W. Hardeman, M. Johnston, D. Johnston, D. Bonetti, N. Wareham, and A. Kinmoth, *Applications of Theory of Planned Behaviour in Behaviour Change Interventions: A Systematic Review*, 17 PSYCHOL. AND HEALTH 123–158 (2002). U. Schwedes, M. Siebolds, and G. Mertes, *Meal-related Structured Self-monitoring of Blood Glucose*, 25 DIABETES CARE 1928–1932 (2002).

³⁴Monaghan and Blaszczynski, *supra* note 3. S. M. Monaghan, A. Blaszczynski, and L. Nower, *Do Warning Signs on Electronic Gaming Machines Influence Irrational Cognitions?*, 105 PSYCHOL. REP. 173–187 (2009).

³⁵M. J. Stewart and M. J. Wohl, *Pop-up Messages, Dissociation, and Craving: How Monetary Limit Reminders Facilitate Adherence in a Session of Slot Machine Gambling*, 27 PSYCHOL. ADDICT BEHAV. 268–273 (2013).

should occur within a gambling session. Cloutier et al.³⁶ reported the most effective social responsibility feature was a pop-up message after 60 minutes of gambling (compared to 15, 30, and 45 minutes) and resulted in an overall decrease in the length of time spent gambling among players.

A study by Auer, Malischnig, and Griffiths³⁷ investigated the effects of a slot machine pop-up message in a real online-gambling environment. The results indicated that, following the viewing of a pop-up message after 1,000 consecutive gambles on an online slot machine game (i.e., “You have now played 1,000 slot games. Do you want to continue? [YES/NO]”), nine times more gamblers ($n=45$) ceased their gambling session than did those gamblers who had not viewed the message ($n=5$). The authors concluded that pop-up messages influence a very small number of gamblers (less than one percent) to cease their playing session. A follow up study by Auer and Griffiths³⁸ showed that the pop-up could be improved through adding normative and self-appraisal information. The percentage of players who stopped after receiving the enhanced pop-up message doubled (although it was still less than 1.5% gamblers).

Just like with other consumption patterns (e.g., drinking alcohol, smoking cigarettes), gamblers may hold the normative belief that others spend as much as (or even more than) they do themselves. Normative feedback is designed to correct such misconceptions. Normative beliefs have significantly influenced the behavioral outcome in studies of getting individuals to quit smoking,³⁹ use condoms,⁴⁰ and reduce marijuana consumption.⁴¹ In a study of American college student gambling, Celio and Lisman⁴² demonstrated that personalized normative feedback decreased other students’ perceptions of gambling and lowered risk-taking performance on two analogue measures of gambling. They concluded that a standalone personalized normative feedback intervention may modify gambling behavior among college students.

With the use of motivational interviewing, Miller and Rollnick⁴³ have also emphasized normative feedback as an important aspect in facilitating behavioral change. In a study investigating personalized feedback interventions, Cunningham et al.⁴⁴ found that participants who received a personalized feedback summary along with information about other Canadians of the same gender showed a reduction in the amount of money they spent in a three-

month follow-up survey. Very few online gambling operators appear to offer their players normative feedback. However, the responsible gaming tool mentor (used by the online gambling websites win2day, cashpoint.com, and tipp3.de) incorporates normative feedback on money as well as time spent by players. Current legislative proposals in the Netherlands, in regards to introducing a licensing regime for remote gaming, point to the fact that secondary legislation (which has not been published at the time of writing) will require operators to provide feedback to their players on a case-by-case basis. Trained staff members provide feedback via e-mail, pop-ups, online chat, or telephone.⁴⁵

Some researchers argue that early warning signs of problem gambling can be detected in online

³⁶M. Cloutier, R. Ladouceur, and R. Sevigny, *Responsible Gambling Tools: Popup Messages and Pauses on Video Lottery Terminals*, 140 J. PSYCHOL. 434–438 (2006).

³⁷M. Auer, D. Malischnig, and M. D. Griffiths, *Is “Pop-up” Messaging in Online Slot Machine Gambling Effective as a Responsible Gambling Strategy? An Empirical Re-Search Note*, 29 J. GAMBLING ISSUES 1–10 (2014).

³⁸M. Auer and M. D. Griffiths, *Testing Normative and Self-Appraisal Feedback in an Online Slot-Machine Pop-Up in a Real-World Setting*, 6 FRONTIERS IN PSYCHOL. 339 (2015).

³⁹B. Van den Putte, M. Yzer, M. Willemsen, and G. J. de Bruijn, *The Effects of Smoking Self-Identity and Quitting Self-Identity on Attempts to Quit Smoking*, 28 HEALTH PSYCHOL. 535–544 (2009).

⁴⁰M. C. Yzer, F. W. Siero, and B. P. Buunk, *Can Public Campaigns Effectively Change Psychological Determinants of Safer Sex? An Evaluation of Three Dutch Safer Sex Campaigns*, 15 HEALTH EDUC. RES. 339–352 (2000).

⁴¹M. C. Yzer, M. Fishbein, and J. N. Cappella, *Using Behavioral Theory to Investigate Routes to Persuasion for Segmented Groups: A Case Study of Adolescent Drug Use*, in FREIBERGER BEITRAEGE ZUR INTERKULTURELLEN UND WIRTSCHAFTSKOMMUNIKATION: A FORUM FOR GENERAL AND INTERCULTURAL BUSINESS COMMUNICATION, VOL. 3 297–320 (M. B. Hinner ed., 2007).

⁴²M. A. Celio and S. A. Lisman, *Examining the Efficacy of a Personalized Normative Feedback Intervention to Reduce College Student Gambling*, 62 J. AM. COLLEGE HEALTH 154–164 (2014).

⁴³W. R. MILLER AND S. ROLLNICK, *MOTIVATIONAL INTERVIEWING: PREPARING PEOPLE TO CHANGE ADDICTIVE BEHAVIOR* (1991).

⁴⁴J. A. Cunningham, D. C. Hodgins, T. Toneatto, A. Rai, and J. Cordingley, *Pilot Study of a Personalized Feedback Intervention for Problem Gamblers*, 40 BEHAV. THERAPY 219–224 (2009).

⁴⁵Ministerie van Veiligheid en Justitie, *Nota van aanleiding van het verslag, Wijziging van de Wet op de kansspelen, de Wet op de kansspelbelasting en enkele andere wetten in verband met het organiseren van kansspelen op afstand* (33 996, nr. 6), Apr. 2, 2015.

gambling environments via analyzing player behavior.⁴⁶ In a real-world study of online gamblers, Braverman et al.⁴⁷ found several risk factors to be highly associated with future problem gambling. Among players who engaged in more than two different gambling activities in their first month of gambling, and who also demonstrated high variability in their casino wager amounts, the authors reported that these players were eight times more likely to exhibit gambling-related problems. The possibility of the detection of early signs related to future gambling-related problems naturally raises the question of possible interventions, such as appropriate player messages. Such messages could potentially address players who are predicted to develop gambling-related problems and provide helpful advice and assistance. Such messages act in a preventive way.

If future problem gambling can be predicted, then the question arises as to whether operators are obligated to take action beyond messaging (e.g., banning players as part of a “duty of care”). However, it must be noted that such predictive systems are statistical in nature and can never achieve 100% accuracy. Players who do not develop problems in the future will always partly be predicted to do so and vice versa. Consequently, such algorithms should not be used as the sole source in leading operators to actively ban or inhibit players from gambling.

Personalized messages have been shown to change behavior in several areas, such as smoking cessation,⁴⁸ diabetes management,⁴⁹ and fitness activity.⁵⁰ Personalized messages that address players who exhibit playing patterns presumed to be indicative of future gambling-related problems are exceptionally rare among online gambling operators. This might be due to the fact that research in this area is limited and also that sophisticated behavioral tracking systems have to be deployed (which can be very expensive). To the authors’ knowledge, only two commercially available RG systems (i.e., PlayScan and mentor) provide such messages and are being used by several European gambling operators.

6. EUROPEAN REGULATORY PERSPECTIVES

July 2014 saw the European Commission publish the *Recommendation on Principles for the Protec-*

*tion of Consumers and Players of Online Gambling Services.*⁵¹ European Commission output on this topic reflects the identification of the “protection of consumers and citizens, minors and vulnerable groups” as one of five priority areas for action in its October 2012 *Communication Towards a Comprehensive European Framework for Online Gambling.*⁵² The Communication followed the *Green Paper on Online Gambling in the Internal Market*, through which the European Commission sought to “canvass views from all interested parties in order to get a better understanding of the specific issues arising from the development of both legal and ‘unauthorised’ offers of on-line gambling services directed at consumers located in the EU.”⁵³ The Communication recognized that “[a]ll citizens should enjoy a high level of common protection throughout the internal market” and considered that “[a]ppropriate action in the EU” is required so as to meet a number of consumer protection

⁴⁶E.g., Haefeli, Lischer, and Schwarz, *supra* note 31.

⁴⁷J. Braverman, D. A., LaPlante, S. E. Nelson, and H. J. Shaffer, *Using Cross-game Behavioral Markers for Early Identification of High-risk Internet Gamblers*, 27 *PSYCHOL. ADDICT BEHAV.* 868–877 (2013).

⁴⁸A. L. Stotts, J. Y. Groff, M. M. Velasquez, R. Benjamin-Garner, C. Green, J. P. Carbonari, and C. C. DiClemente, *Ultrasound Feedback and Motivational Interviewing Targeting Smoking Cessation in the Second and Third Trimesters of Pregnancy*, 11 *NICOTINE AND TOBACCO RES.* 961–968 (2009).

⁴⁹J. H. Cho, H. C. Lee, D. J. Lim, H. S. Kwon, and K.H. Yoon, *Mobile Communication Using a Mobile Phone with Glucometer for Glucose Control in Type 2 Patients with Diabetes: As Effective as an Internet Based Glucose Monitoring System*, 15 *J. TELEMEDICINE AND TELECare* 77–82 (2009). A. Farmer, O. Gibson, P. Hayton, K. Bryden, C. Dudley, A. Neil, and L. Tarassenko, *A Real-time, Mobile Phone-based Telemedicine System to Support Young Adults with Type 1 Diabetes*, 13 *INFORMATICS IN PRIMARY CARE* 171–178 (2005).

⁵⁰F. BUTTUSSI, L. CHITTARO, AND D. NADALUTTI, *BRINGING MOBILE GUIDES AND FITNESS ACTIVITIES TOGETHER: A SOLUTION BASED ON AN EMBODIED VIRTUAL TRAINER* 29–36. *Proceedings of Mobile Hci 2006: 8th International Conference on Human-Computer Interaction with Mobile Devices and Services* (2006).

⁵¹European Commission, *Commission Recommendation on Principles for the Protection of Consumers and Players of Online Gambling Services and for the Prevention of Minors from Gambling Online*, 14 July 2014, 2014/478/EU (hereinafter *Recommendation*).

⁵²European Commission, *Communication Towards a Comprehensive European Framework for Online Gambling*, 23 October 2012, COM(2012) 596 final (hereinafter *Communication*).

⁵³European Commission, *Green Paper on Online Gambling in the Internal Market*, 24 March 2011, COM(2011), 128 final, at 6 (hereinafter *Green Paper*).

related objectives, including that which most closely resonates with the topic of this article: to “prevent the development of gambling-related disorders.”⁵⁴ Elaboration of a common set of principles with the aim of “ensuing a high level of consumer protection” by way of the aforementioned Recommendation was advanced as a means to move forwards.⁵⁵

According to its preamble, the Recommendation “aims to ensure that gambling remains a source of entertainment” whilst establishing an environment for consumers which is “safe” and in which there are measures “in place to counter the risk of financial or social harm,” as well as to prevent minors from accessing gambling online.⁵⁶ This is subsequently expanded upon by reference to the objective of safeguarding “the health of consumers and players,” and thus to also “minimise eventual economic harm that may result from compulsive or excessive gambling.”⁵⁷ To achieve this the Recommendation draws upon “good practices” in the member states when recommending “principles for a high level of protection of consumers, players and minors.”⁵⁸ This is reflected in the first article that sets forth the purpose of the Recommendation.⁵⁹

Various principles are thus advanced so as to achieve the “high standard” in relation to matters such as information to be provided to the player, measures regarding minors and, in particular, regarding advertising, measures surrounding the process of player registration and player accounts, commercial communications, sponsorship, education, and awareness. In terms of the content of this article, the two most-relevant sets of principles are those put forward in relation to “player activity and support” and “time out and self exclusion.”⁶⁰

In terms of player activity and support functions discussed above, approaches to setting limits are reflected as measures identified as those contributing to a high level of protection. Naturally, there are further measures too, which have fallen outside the scope of those that the authors have sought to discuss in the present article, such as the prevention of deposits once the monetary deposit limit has been exceeded. However, providing easy access on the gambling website to the player’s account balance⁶¹ is a form of personalized feedback in which players receive objective information about their past spending.

Upon registration with an operator at the account opening stage, the Recommendation suggests that

by default, a player must have to set “monetary deposit limits, as well as temporal limits,”⁶² and that whilst a reduction to a deposit limit must take effect immediately any increase should only come into effect “at least twenty-four hours after the player’s request.”⁶³ It also provides that players should be able to take “time out” and to self-exclude.⁶⁴ This reflects Danish provisions requiring that operators give players the possibility to exclude themselves from that operator’s services for 24 hours.

In terms of information provided to the player, the Recommendation provides that information alerts should be provided “by default” about winnings, losses, and time spent playing, as well as that players should be provided with the opportunity to continue or suspend play upon having received an alert.⁶⁵ Here, the Recommendation reflects the above discussion surrounding pop-ups and their effectiveness, as well as personalized feedback. Both initiatives are basically informing players about their behavior in different ways. Dutch legislative proposals concerning interaction with a player via online chat or another means of communication, following indications of problem gambling behavior, embody the principle found in the Recommendation that member states should require operators to have “policies and procedures in place which facilitate interaction with players whenever their gambling behaviour indicates a risk of the development of a gambling disorder.”⁶⁶ This notion basically goes in line with the possibility of early detection of problematic gambling discussed above and

⁵⁴Communication, *supra* note 52, at 10.

⁵⁵*Id.* at 10-1.

⁵⁶Recommendation, *supra* note 51, at Recital 2.

⁵⁷*Id.* at Recital 9.

⁵⁸*Id.*

⁵⁹Recommendation, *supra* note 51, at art. 1(1): “Member States are recommended to achieve a high level of protection for consumers, players and minors through the adoption of principles for online gambling services and for responsible commercial communications of those services, in order to safeguard health and to also minimise the eventual economic harm that may result from compulsive or excessive gambling.” Recommendation, sections VI and VII, respectively.

⁶⁰Recommendation, *supra* note 51, at sections VI and VII, respectively.

⁶¹*Id.* at art. 25(a).

⁶²*Id.* at art. 24.

⁶³*Id.* at art. 29(b).

⁶⁴*Id.* at art. 29(c).

⁶⁵*Id.* at art. 26.

⁶⁶*Id.* at art. 30.

providing subsequent personalized communication. Both aspects have been subject to research and are also applied by several online-gambling operators.

In terms of time out and self-exclusion measures, the Recommendation provides that on an operator's website, the player should be able to time out or self-exclude "from a specific online gambling service, or from all types of online gambling services."⁶⁷ Regulatory requirements generally require exclusion at the level of an operator to apply to the entirety of an operator's suite of games, rather than requiring operators give players the opportunity to exclude from only a single form of online gambling (e.g., online slot machines) which means that play could continue via other online gambling offers available on the same website (e.g., online poker). Of course, an operator may elect to do this alongside applicable licensing requirements.

According to the Recommendation, a "time out" should suspend gambling for at least 24 hours, whilst self-exclusion with an operator should result in exclusion for at least six months, with such exclusion entailing closure of the player's account.⁶⁸ This latter time period reflects conditions that are likely to enter into force during the course of 2015 in Great Britain. The Recommendation also encourages the establishment of national registries and that operators must "regularly consult" such registries.⁶⁹ As detailed above, consultation of such registries must take place upon a player logging in to a website in the case of Belgium, Denmark, and the Netherlands under current proposals. Interestingly, the Recommendation only suggests that third party exclusion takes place at the level of the operator. Proposals for "involuntary" exclusion in the Netherlands should result in the Gaming Authority determining whether an individual should be entered into the national central register of excluded players. Under Belgian legislation, a third party, such as a family member, can recommend to the national regulator that an individual be excluded from online gambling services. As described earlier, the Belgian legislation and that proposed in the Netherlands go further than the high level of protection embodied in the Recommendation in this regard.

Indeed, the Recommendation makes multiple references to a "high level of protection" but upon no occasion does it seek to define or quantify this notion. Equally, the principles advanced are, by and large, open to interpretation and do not fix precise, quantifiable measures. Where principles refer

to quantities, member states are free to implement measures providing a higher level of protection, and this is reflected in the terminology used. For example, a time out results in the suspension of gambling "for *at least* twenty four hours."⁷⁰

Anything greater than this would betray the legal context within which these principles, and thus the Recommendation as a whole, are positioned. CJEU case law has, as indicated above, sought to balance the freedom of establishment and the freedom to provide services with the competence of member states to regulate gambling at the national level in the absence of any harmonization at the EU level on this topic. Member states enjoy a "margin of discretion" within which they are able to restrict the cross-border movement of gambling services, through the imposition of a monopoly or licensing system, on condition that the restrictive measure in question is justifiable in terms of the narrowly interpreted grounds of an exemption to the free movement of services which prevail in Article 52 Treaty on the Functioning of the European Union for measures which directly discriminate on the basis of nationality or establishment.⁷¹ Restrictive measures that do not directly discriminate, so-called indistinctly applicable measures, are generally found in greater abundance and can be justified should they serve an objective justification in the public interest. Consumer protection and the prevention of addiction are recognized as providing such a basis to justify restrictive measures, such as, for example, the requirement to hold a license of the member state in which gambling services are supplied.

Through the evolution of the case law, the CJEU has, in common with more general free movement case law, required that such indistinctly applicable measures are proportionate and that the public interest objective is pursued in a consistent and systematic manner in relation to the given objective.⁷² Nevertheless, there is considerable academic literature highlighting the fact that the CJEU has taken a light touch and, in so doing, granted national

⁶⁷*Id.* at art. 32.

⁶⁸*Id.* at arts. 33 and 34.

⁶⁹*Id.* at arts. 36 and 37.

⁷⁰*Id.* at art. 33(a).

⁷¹These being public policy, public security, and public health.

⁷²Case C-243/01, *Gambelli*, 2003 E.C.R. I-13031.

authorities a greater margin of discretion than it has done in relation to other economic activities.⁷³

Monopoly-based models of supplying (online) gambling services can be entirely compliant with EU law but—reflecting the gravity of the restriction on free movement which such a regulatory approach inherently entails—a monopoly can only be justified by a “particularly high level of protection.”⁷⁴ This must be combined with a legislative framework “suitable for ensuring that the holder of the said monopoly will in fact be able to pursue, in a consistent and systematic manner, the objective thus determined by a means of supply that is quantitatively measure[d] and qualitatively planned by reference to the said objective.”⁷⁵

Given the margin of discretion that member states enjoy, which includes not only determining the forms of gambling permitted but also the means by which those forms are supplied (e.g., an open licensing regime or a monopoly⁷⁶), there is no scope for prescriptive measures setting out in detail what member states should or should not do. Yet it would be wrong to interpret the Recommendation as a document lacking any relevance in a legal sense.⁷⁷ Whilst recommendations lack legal effect (indeed, they do not require implementing measures at the national level, in a manner comparable with directives), they do have consequences. For example, recommendations can be relied upon within the national judicial system of a member state. The CJEU has established that national courts are “bound to take recommendations into consideration” and “in particular where they cast light on the interpretation of national measures adopted in order to implement them or where they are designed to supplement binding Community provisions.”⁷⁸ Should a dispute arise before national courts which involves national responsible gambling measures, then the Recommendation would very likely aid the interpretation of such national measures, even in a regulatory system in which the monopoly-based supply of online gambling prevails. In this sense, the impact of this Recommendation remains to be seen.

By drawing upon good practices from across the member states when forming the Recommendation, the European Commission encapsulates existing practices, and this is reflected by the preceding narrative. Whilst the Recommendation may encourage some national authorities to review, and perhaps revise, prevailing responsible gambling measures, the open nature of the principles leaves considerable

room for interpretation and scope for convergence, or at least of a sense of convergence, between member states. In clear-cut cases it will be evident that a member state lacks a particular measure which is indicative of a “high level of protection” according to the Recommendation, but equally, a member state will be exercising its margin of discretion if operators are required to impose a time out period of only six hours, instead of twenty four. Furthermore, some may argue that a combination of some measures may be more effective than a particular measure that a member state lacks.

7. CONCLUDING REMARKS

The passage of time will reveal the true impact of the Recommendation. Whether it is relied upon before one or more national courts also remains to be seen. Nevertheless, member states are “invited” to report information to the European Commission during the course of 2016, in light of which the Commission “should evaluate the implementation of the Recommendation by 19 January 2017.”⁷⁹ Should member states decide to respond to the invitation, which information does the Recommendation seek to tease out of the national regulatory authorities?

Firstly, by January 19, 2016, member states are invited to notify the Commission “of any measures taken pursuant to this Recommendation” so that the Commission can, notwithstanding the non-binding

⁷³D. Doukas, *In a Bet There Is a Fool and a State Monopoly: Are the Odds Stacked against Cross-border Gambling?*, 36 EUROPEAN L. REV. 243–263 (2011). J. HÖRNLE AND B. ZAMMIT, *CROSS-BORDER ONLINE GAMBLING LAW AND POLICY* (2010). A. LITTLER, *MEMBER STATES VERSUS THE EUROPEAN UNION: THE REGULATION OF GAMBLING* (2011). S. Van den Bogaert and C. Cuyvers, “*Money for Nothing*”; *The Case Law of the EU Court of Justice on the Regulation of Gambling*, 48 COMMON MARKET L. REV. 1175–1213 (2011). S. PLANZER, *EMPIRICAL VIEWS ON EUROPEAN GAMBLING LAW AND ADDICTION* (2014).

⁷⁴Case C-212/08, *Zeturf*, 2011 E.C.R. I-5633, at para. 47.

⁷⁵Case C-316/07, *Markus Stoss*, 2010 E.C.R. I-8069, at para. 83. See also Case C-347/09, *Dickinger and Ömer*, 2011 E.C.R. I-8185, at para. 57 in particular.

⁷⁶Case C-156/13, *Digibet*, delivered on 12 June 2014, n.y.r., at para. 32 and references to earlier judgments therein.

⁷⁷See also W. Hambach and A. Littler, *The EC’s Recommendations on Consumer Protection*, 14(1) WORLD ONLINE GAMBLING L. REP. 12–13 (2015).

⁷⁸Case C-322/88, *Grimaldi*, 1989 E.C.R. I-4407, at para.18.

⁷⁹Recommendation, *supra* note 51, at art. 54.

nature of the Recommendation, “evaluate the implementation of this Recommendation.”⁸⁰ As can be clearly derived from the preceding narrative, some member states will already have various measures embedded in existing regulatory regimes that mirror the responsible gambling measures advanced by the Recommendation. Despite the legal nature of the Recommendation, it will be interesting to discover whether the introduction of measures at the national level can be directly traced to the Recommendation.

Secondly, “for the first time by 19 January 2017,” member states are invited to communicate information acquired in response to the invitation “to collect annual reliable data” concerning:

- (a) the applicable protection measures in particular the number of player accounts (opened and closed), the number of self-excluded players, those experiencing a gambling disorder and complaints by players;
- (b) commercial communication by category and by type of breaches of the principles.⁸¹

Reference to the “first time” raises the spectre of the European Commission, presumably at a point

after its January 2017 evaluation exercise, undertaking subsequent attempts at cajoling member states into giving information on responsible gambling measures. Undoubtedly the Recommendation will ensure that responsible gambling measures remain on the radar of the European Commission, but whether the Recommendation gains traction on the ground (or should that be in the cloud?) remains to be seen.

At the very least, the authors hope that the Recommendation will sharpen the focus of various stakeholders on the responsible gambling measures contained therein, and the issue more generally. Ideally, and notwithstanding the fact that the Recommendation does not “interfere” with the right of member states to regulate gambling services, the Recommendation will encourage critical review of measures at the national level across both public and private operators. Should it encourage greater evidence gathering and scientific research in the field, then it will also contribute to securing a better understanding of the specific issues surrounding online gambling services—information and insights which will hopefully find their way into rational policies at the national level.

⁸⁰*Id.* at art. 52.

⁸¹*Id.* at art. 43.