

The EU Action Plan on Online Gambling: A Step Closer to Harmonisation?

The heterogeneous nature of the online gambling regulatory framework across Europe, compounded with the cost and complexity of compliance with diverse jurisdiction-specific licence application requirements, inevitably pose a key challenge to multinational operators. Identity theft of players and a higher level of consumer vulnerability remain major concerns for operators and EU Member States alike.

In light of the limitations and difficulties caused by the fragmented regulatory backdrop, it is generally recognized that a concerted effort by the European Commission and Member States is required. To this end, the European Commission followed up on its 2011 Green Paper on Online Gambling¹, and the public consultation launched thereafter, with its two-year action plan.² The action plan seeks to identify and consequently target the public policy challenges faced by Member States and ultimately determine how the differing national regulatory profiles could be reconciled within a comprehensive European structure in the pursuit of compliance with European law and its underlying principles and freedoms.

The action plan, which is expected to take effect as from 2013, covers five priority action areas. The first two areas identified are compliance of national regulatory frameworks with EU law and the enhancement of administrative cooperation. The latter proposes the development of regulatory dialogue with third countries given that unregulated gambling websites are often provided from outside the EU. The third action area seeks to attain the long-standing objective of national governments being that of protecting consumers and citizens while prioritizing the protection of vulnerable groups particularly minors. The prevention of fraud and money laundering activities constitutes the fourth action area and to such end the Commission has considered extending the scope of the Anti-Money Laundering Directive to all forms of gambling. The fifth action area lends its focus to safeguarding the integrity of sports and preventing match-fixing which will inevitably require the cooperation of operators, sports bodies and national authorities, both at a national and at a regional level.

¹ European Commission, Green Paper on Online Gambling in the Internal Market, COM (2011) 128 final.

² European Commission, 'Towards a comprehensive European framework for online gambling', Strasbourg, 23.10.2012, COM(2012) 596 final.

The aforementioned action plan proposes recommendations that are by their very nature non-binding, hence casting doubt as to whether the objectives sought by the Commission will be attained since it's the Member State that ultimately remain vested with the power to legislate within such area. Indeed, it is often argued that mere recommendations without real sanctions are of limited scope if the Commission cannot effectively bring the competent authorities to toe the line. As a form of legislative patchwork across the EU persists, operators keep straddling between the diverse regulatory and compliance requirements, at a significant cost.

With a review of the action plan expected in two years' time, operators and authorities alike perceive this as a relatively long period given the rapid growth of the sector, which had also led to the further expansion of black and grey markets. Immediate action through the implementation of legally binding measures, such as a Directive, is indispensable for the harmonisation and effective regulation of the online gambling market.