



This article is intended as part of a wider debate concerning the impact of games offered on social media platforms that have the same features as classical gambling activities (e.g. Bingo Blitz, Zynga Poker). It stresses how other social gaming activities, typically marketed to consumers as being mere skill or strategy games, could actually impact on consumer gaming habits and behaviors and could cause or enhance future addiction that would effectively destroy national and EU authorities' efforts to prevent problem gambling, gambling addiction and to improve youth protection against the risks linked with gambling activities. This article does not enter into the more narrow discussion on how to define or regulate social gaming or so-called social gambling activities and their inherent risks.

"Social gaming" is defined here as either social gambling activities (i.e. "for-fun" gambling activities) and/or "Freemium," which the International Social Games Association ("ISGA") defined as activities for which game access and play is free, with certain additional and special features—for example extra lives, extra energy, tools

more, participation in social networks is associated with dependency. Earlier studies have shown that addiction to online gambling often starts with simulation games on Facebook in which children lays 'bets' using virtual money so they cannot incur any losses. Unfortunately, for many of these children, the next step is dependency which leads them to lose real money through gambling [...] Dependence on online gambling is linked to dependence on social networks and games."² The MEPs underlined that such a phenomenon is not limited to a single EU Member State and is spread out among an increasing number of EU jurisdictions (e.g. Greece, Romania and Spain). In light of this information, the European Commission was asked to clarify whether it believes the same restrictions for children's access should apply to both online gambling and simulation games.³

It is increasingly clear that there is a connection between simple social gaming activities and the addiction that players could develop towards real-money online gambling. That not only applies to the relationship between social gambling activities, it also includes any games provided on social platforms or through apps (although often depicted as skill or strategy games rather than games of chance e.g. Candy Crush Saga, Game of War or Clash of Clans). Those games are not simply video games as they increasingly include buying options that enable players to either: progress further in the game, enhance their gaming experience and, in certain cases, such games even require players to buy virtual credits to continue their participation in the game itself. Consequently, although such games could qualify as strategy games or skill games and not as strictly games of chance (be it real-money or virtual currency games of chance), it is clear that money plays a significant and increasing role in the gaming experience.

The EU legislative "landscape" applying to social gaming activities remains fragmented. Three main distinctive features characterise this "landscape." The first major regulatory category includes EU Member States that do not specifically regulate social gaming through particular regulations and instead monitor social gaming based on their current gambling legislation; in other words, the national regulator assesses whether social gaming could qualify as gambling under national legislation and acts accordingly (examples of this type of regulatory regime include Austria, Bulgaria, Denmark, Finland, Italy, the Netherlands). The second regulatory category comprises EU Member States that implement basic gambling qualification analysis by being aware of social gaming's inherent risks and monitoring those activities and which are concurrently developing specific legislative proposals to address the issue (examples include Belgium, France, Malta, Norway and Spain). Finally, other countries, such as the UK, do

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or map to expand the game experience are available for a real money payment.¹

This matter was addressed recently by two Members of the European Parliament ("MEP") who used various examples and statistics to demonstrate how online gambling could generate or multiply the likelihood of dependent behaviours. Given the unanimous acknowledgment of the influence of gambling activities on consumer addiction, that aspect will not be assessed further. However, the two MEPs also emphasised that social gaming activities provided through social networks, such as Facebook, could be the first step leading young people towards real-money gambling activities. The MEPs stated: "Further-

not intend to adopt specific regulation and instead provide guidance explaining how general consumer protection rules should be followed in the social gaming and gaming apps environment.⁴

So the current legislative “landscape” can be summarised as follows: either social gaming activities do fall under the national definition of “gambling” or other specific gambling activities and are thus regulated accordingly; or, they do not meet the conditions necessary to qualify as “gambling” under national legislation and so are subject to general legal provisions and, in particular, Directive 2000/31/CE (the “e-Commerce Directive”) and its national implementing legislation. This situation means that social gaming operators, as far as they do not qualify as gambling services, are not required to be granted a gambling licence and, as they fall under the “home country” principle set out in Article 3 of the e-Commerce Directive, they remain subject to the rules of their “country of origin” or “home country” (which is defined as the country where they are established). This outcome stops the consumer’s Member State from preventing or limiting the provision of such activities to its residents (unlike with the principles applying to online gambling services). Considering the developments in the social gaming environment the absence of control through the gambling legislation is there for very problematic.

It should be remembered that the case-law of the Court of Justice of the EU (“CJEU”) and the EU institutions’ decisions have defined criteria, conditions and requirements that strictly apply to the provision of gambling services with the intention of offering consumers the most responsible gaming activities. To that end, the CJEU has set out different criteria and, especially, the requirement that legal lottery operators should refrain from providing an extensive and inconsistent range of games and should limit their advertising campaigns and their offerings (both in qualitative as well as quantitative terms).⁵ Moreover, national authorities set out a number of requirements to ensure the responsible provision of lottery and other gambling activities (including technical requirements and testing procedures/drawing procedures; hourly loss restrictions; “cooling down” periods; specific advertising hours; strict prohibition to direct minors). The recent publication of the European Commission’s Recommendation on online gambling of 14 July 2014⁶ also aims to serve the same purpose. This Commission document provided recommendations on a variety of issues concerning responsible gaming messages, advertising and “self-exclusion” and “time-out” mechanisms, all intended to ensure a fair and responsible gambling offering, although in most Member States the national standards are higher. It should be noted that social gaming operators’ associations, such as the ISGA, have defined principles and guidelines intended to ensure proper and responsible provision of such activities. Nevertheless, it must be pointed out that those principles only remain at the level of self-regulation and so are non-binding legislative instruments that, if not complied with, do not lead to any punishment.

Indeed all the principles outlined above do not apply to social gam-

ing activities that do not qualify as gambling based under the national legislation concerned. At the same time those activities could entail elements and features identical or at least similar to gambling activities, without being subject to the same requirements. This situation has been noted recently within national frameworks and, in particular, in Belgium. The Belgian Gaming Commission, following several complaints from consumers, investigated and recently issued a police report against the company operating the social game Game of War (i.e. Machine Zone). The Belgian Gaming Commission found that although this game had been introduced as a simple skill and strategy game, it nevertheless exploited elements commonly used in games of chance and led a 15 year-old individual to spend more than EUR 20,000 to enhance his gaming experience. The Belgian Gaming Commission concluded that the game entailed lots of real-gambling features and that Machine Zone offered de facto gambling-type activities to minors in breach of Belgian gambling legislation. The police report has been transferred to the public prosecutor for the criminal proceedings to follow its course. The outcome of the court case is of course very important.

In conclusion, lotteries are subject to constant and increasing requirements at the national and EU level concerning responsible gaming and use their best efforts to enhance their corporate social responsibility and to fight against risks inherent to gambling (e.g. through training sessions, funding medical programs, the provision of helplines), while social gaming operators’ activities could wipe out all those hard-won benefits achieved over the last 20 years.

All social gaming activities offered through social media platforms or apps that target minors and that are portrayed as mere skill, strategy or soft gambling games (while allowing players to take the full advantage of the gaming experience through the purchase of specific credits, without any strict requirements, limitations or any other criteria aimed at restraining addiction(s) that players could develop through their participation) should be regulated and subject to specific conditions.

Currently, social gaming operators seem allowed to include gambling features in their so-called strategy or soft games while at the same type not falling under the specific requirements and safeguards applicable to gambling operators; this situation seems to favour the early development of addiction behaviours. Furthermore, all efforts carried out by lotteries to prevent gambling addiction could turn out to be pointless should nothing prohibit young consumers from taking part in social gaming activities that give rise and/or increase the propensity to gamble.

Based on the Belgian Gaming Commission’s example, national and EU authorities must act proactively to prevent social gaming operators circumventing all requirements applicable to lotteries and other legal gambling operators while, at the same time, creating and boosting the behaviours that legal lottery operators are currently fighting against and trying to limit. ■

1 “International Social Games Association—Best Practice Principles Version 2,” October 2014—http://www.i-sga.org/wp-content/uploads/2013/11/ISGA_best-practiseprinciples_October2014.pdf

2 Question for written answer E-002326/2015 submitted to the European Commission on 12 February 2015 by MEP’s Kefalogiannis and Zagorakis (PPE)—available through <http://www.europarl.europa.eu/plenary/en/parliamentary-questions.html>

3 European Commission’s answer is still pending.

4 See e.g. the UK Office of Fair Trading “The OFT’s Principles for online and app-based games”—https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288360/oft1519.pdf

5 See e.g. CJEU, Placanica, C-338/04, C-359/04 and C-360/04 of 6 March 2007; Markus Stoss, C-316/07, 358/07, 359/07, 360/07, 409/07 & 410/07 of 8 September 2010; Carmen Media, C-46/08, of 8 September 2010.

6 Commission Recommendation of 14 July 2014 on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online (2014/478/EU).