

Faculty of Law  
Master's Program in International and Comparative Law  
International Business Law

*“But Mom, it's fun to win!”*

**The Contemporary Framework of Marketing Regulations applicable to the Gambling Industry and its sway on Children:**

**An analysis of Sweden, Malta and the United Kingdom as regulated markets**

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*To Adelia,*

*thank you for inspiring me to pursue the protection of children  
everyday.*

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<p>Tiivistelmä – Referat – Abstract</p> <p>Gambling is a staple in cultures around the world. As society and technology evolved, so did gambling – going from brick-and-mortar venues to mobile applications. However, gambling is a service that is currently not subject to harmonization within Member States of the European Union. This makes for a very different set of rules on how to regulate gambling, especially its online gambling category and the steps gambling operators have to take to ensure that its services are, and remain, a safe environment and also protect children and other vulnerable persons. This work will analyze online gambling, but only through the lenses of its marketing effects on children and how different Member States (or former Member State in the case of the United Kingdom) approach the matter.</p> <p>The aim is to find out if there is currently a system capable of successfully achieving the protection of children on its marketing regulations. Besides issues concerning consumer law, gambling also has a direct effect on the protection of children – a core value of the European Union.</p> <p>In Chapter 1, the goal and reasons for this study will be introduced, as well as the methodology chosen to conduct this research.</p> <p>Chapter 2 will look back to the origins of Gambling, how it became a legitimate business and set out the current gambling scenario in the European Union.</p> <p>Chapter 3 will analyze the types of marketing used by online gambling websites and how children interact with advertisement in general and how they are firstly introduced to gambling. Following on Chapter 4, the duality between children’s right and gambling will be examined.</p> <p>In Chapter 5, a comparison between the current regulations set out by Malta, Sweden, and the United Kingdom will be made, and Chapter 6 will bring examples of decisions by advertisement agencies that upheld citizen’s complaints for being aimed at children.</p> <p>Chapter 7 evaluates new features in videogames that could be equal to gambling and how the European Union is dealing with it. Followed by a quick look into the additional protection for gamblers due to the COVID-19 pandemic.</p> <p>Finally, taking everything into account we recommend that at least in the respect of protection of children (especially via marketing) gambling should be harmonized in the Internal Market, and proposes a hybrid model taking the best parts of the regulations examined in this study. However, further research is recommended.</p>		
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<b>1</b>	<b>INTRODUCTION .....</b>	<b>6</b>
<b>1.1</b>	<b>DELIMITATIONS .....</b>	<b>8</b>
<b>1.2</b>	<b>OBJECTIVE .....</b>	<b>9</b>
<b>1.3</b>	<b>METHODOLOGY.....</b>	<b>11</b>
<b>2</b>	<b>HISTORICAL INTRODUCTION TO GAMBLING .....</b>	<b>12</b>
<b>2.1</b>	<b>THE PATH TO A REGULATED ONLINE CASINO MARKET.....</b>	<b>15</b>
<b>2.2</b>	<b>HARMONIZATION OF THE INDUSTRY .....</b>	<b>18</b>
<b>3</b>	<b>MARKETING .....</b>	<b>23</b>
<b>3.1</b>	<b>MARKETING AND GAMBLING .....</b>	<b>23</b>
<b>3.2</b>	<b>MARKETING - GAMBLING AND CHILDREN.....</b>	<b>24</b>
<b>3.3</b>	<b>CHILDREN AND SOCIAL MEDIA.....</b>	<b>27</b>
<b>3.4</b>	<b>CHILDREN’S EXPOSURE TO GAMBLING .....</b>	<b>30</b>
<b>4</b>	<b>CHILDREN’S RIGHTS.....</b>	<b>32</b>
<b>4.1</b>	<b>THE CONNECTION BETWEEN CHILDREN’S RIGHTS AND THE GAMING INDUSTRY .....</b>	<b>33</b>
<b>5</b>	<b>COMPARISON OF THE EXISTING LEGISLATION IN THE UK, SWEDEN, AND MALTA .....</b>	<b>37</b>
<b>5.1</b>	<b>CHILDREN PROTECTION IN GAMBLING IN THE UK.....</b>	<b>37</b>
<b>5.2</b>	<b>CHILDREN PROTECTION IN GAMBLING IN SWEDEN.....</b>	<b>42</b>
<b>5.3</b>	<b>CHILDREN PROTECTION IN GAMBLING IN MALTA .....</b>	<b>45</b>
<b>5.4</b>	<b>SIMILARITIES AND DIFFERENCES BETWEEN THE REGULATIONS.....</b>	<b>47</b>
<b>6</b>	<b>DETERRENT EXAMPLES OF GAMBLING MARKETING MATERIALS.....</b>	<b>51</b>
<b>6.1</b>	<b>THE UNITED KINGDOM’S ADVERTISING STANDARDS AUTHORITY’S DECISIONS.....</b>	<b>51</b>
<b>6.2</b>	<b>SWEDEN’S REKLAMOMBUDSMAN AND KONSUMENTVERKET’S DECISIONS .....</b>	<b>52</b>
<b>6.3</b>	<b>MALTA’S COMMUNICATIONS COMMITTEE’S DECISION .....</b>	<b>54</b>
<b>6.4</b>	<b>COMPARISON OF THE ADVERTISING AUTHORITIES ACTIONS .....</b>	<b>55</b>
<b>8</b>	<b>CONTEMPORARY FRAMEWORK OF GAM(BL)ING - LOOT BOXES AND EA SPORTS.....</b>	<b>56</b>
<b>9</b>	<b>COVID-19 IMPACT ON MARKETING .....</b>	<b>61</b>
<b>10</b>	<b>CONCLUSION AND RECOMMENDATIONS.....</b>	<b>63</b>
<b>11</b>	<b>BIBLIOGRAPHY .....</b>	<b>68</b>

## 1 Introduction

Gambling is as old as civilization itself and has always been an important cultural and entertainment element<sup>1</sup>. Consequently, gambling is often associated with the thought of a being part of a social group as well as a great possibility of socializing.

The way humans communicate and take part in social activities has evolved significantly since the first slot machine was invented. From print media to radio and TV, and finally the internet, both communication and gambling have advanced and transformed to fit the new normal.

With the ever-growing presence of social media in people's everyday lives, the crossing between gambling and the internet would not fall far behind. The first online slot machines came just a bit after the internet started to become a possible household item, by the year of 1994<sup>2</sup>.

From the 2010's onwards, one does not need to leave the house to work, communicate, and interact with others and participate in traditional Casino games such as roulette, blackjack, poker, and so on<sup>3</sup>. Live casinos offer 24/7 interaction and services, as well as a great revenue source for the companies involved.

It is estimated that the Gross Gaming Revenue (GGR) for Europe in 2020 could be around 24.7 billion euros for online casino and betting. The forecast by the European Gaming & Betting Association (EGBA) predicts the industry to reach almost 30 billion euros by 2022<sup>4</sup>.

Despite its profitability and source of revenue to States, gambling is undoubtedly an economic activity that can potentially lead to addiction and result in harm<sup>5</sup>, both to oneself and others.

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<sup>1</sup> Jessica Richard, 'Introduction: The Gambling Culture Of Eighteenth-Century Britain', *The Romance of Gambling in the Eighteenth-Century British Novel* (Palgrave Macmillan 2011).

<sup>2</sup> About Us' (Microgaming) <<https://www.microgaming.co.uk/about-us>> accessed 13 March 2021.

<sup>3</sup> Hira Ahmed, 'A Brief History Of Live Casino - The Hidden Gem Of Online Gaming' (Sigma.com.mt) <<https://www.sigma.com.mt/news/a-brief-history-of-live-casino>> accessed 13 March 2021.

<sup>4</sup> 'EGBA - EU Market' (EGBA) <<https://www.egba.eu/eu-market/>> accessed 13 March 2021.

<sup>5</sup> Debi A. LaPlante and others, 'An Empirical Review Of Gambling Expansion And Gambling-Related Harm' (2018) 64 SUCHT.

The potential harmful consequences of gambling, which can include addiction, for example, are still hard to assess as it can often be the result of a cumulation of issues. Abbott supports that understanding by stating that it is possible to be the vulnerability consequence of health issues or financial problems one was already battling with before<sup>6</sup>, this combination consequently paves way for psychological dependency on gambling.

Being such a complex (and profitable) activity, Member States almost always take a stance on gambling. The way they do it is by either banning it altogether, regulating the market, or by utilizing a hybrid model<sup>7</sup>.

When Gambling is regulated, there are two competing interests: first, the wellbeing of the citizens of that State; and the second, the tax revenue the State will produce by making it a legitimate activity<sup>8</sup>.

Quite often, a peace between those interests is achieved by also regulating how gambling can be offered and advertised, as it is in the State's interest to have a consistent revenue from levying taxes but also preventing harm and helping those who suffer from gambling related issues<sup>9</sup>. Studies have found that early exposure to gambling is another potential threat to a citizen's health, and can evolve into later gambling addiction<sup>10</sup>.

In some Member States, special attention is given to advertising aimed at children, as gambling advertising is submitted to heavier scrutiny than adult focused ads. The strict rules of advertising on gambling when it comes to children are intended as a mean to minimize potential harm and safeguard the children's best interests, as well as their human rights<sup>11</sup>.

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<sup>6</sup> M.W. Abbott, 'The Changing Epidemiology Of Gambling Disorder And Gambling-Related Harm: Public Health Implications' (2020) 184 Public Health.

<sup>7</sup> Mikael Arvidsson, James Sjöstrand and Jesper Stage, 'The Economics Of The Swedish Online Gambling Market' (2016) 24 Applied Economics Letters.

<sup>8</sup> V. Marionneau and J. Nikkinen, 'Stakeholder Interests In Gambling Revenue: An Obstacle To Public Health Interventions?' (2020) 184 Public Health.

<sup>9</sup> Ibid.

<sup>10</sup> Malgorzata Anna Carran, *Gambling Regulation And Vulnerability* (Edward Elgar Publishing 2018).

<sup>11</sup> Ibid.

The current system within the European Union is not harmonized, neither is it cohesive nor uniform, and it gives rise to important questions that must be addressed presently. The purpose of this work is to review the safeguards in place devoted to mitigating this problem and assess the need for harmonization.

## 1.1 Delimitations

Marketing on gambling is a broad subject encompassing several different areas of concern, such as gambling advertising on television, State lottery messages and the presence of gambling machines in grocery shops.

Marketing for gambling can relate to both online casinos and land-based ones and can be done including but not limited to: tv adverts, radio messages, newspaper clippings, sponsorships, merchandise, and through new formats enabled by social media. This work, however, will solely discuss marketing relating to online gambling platforms (casinos and betting) and its relation and impact to children within the European Union.

Regulations from Gambling Authorities as well as Advertising supervisory bodies are within the scope of this work. The most relevant legal texts concerning online gambling will be taken into consideration, but special attention will be given to sections regarding the protection of children.

For this work, Sweden, Malta, and the United Kingdom will serve as examples, even though the United Kingdom left the European Union in January 2021.

The countries were chosen by their different characteristics. Sweden is, at this point, the latest<sup>12</sup> to reintroduce the licensing system (2019). The United Kingdom is known in the industry for its hard approach on marketing and the Maltese license being the most used by operators in the EU<sup>13</sup>.

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<sup>12</sup> The Netherlands and Germany are implementing their own licensing system during 2021

<sup>13</sup> 'Why The Top Gaming Companies Choose Malta And An MGA Licence' (*Times of Malta*, 2021) <<https://timesofmalta.com/articles/view/why-the-top-gaming-companies-choose-malta-and-an-mga-licence.851726>> accessed 21 March 2021.



## 1.2 Objective

Gambling is a practice accepted across a wide range of societies and cultures. Gambling as a form of entertainment is a continuous and addictive process that has led the industry to be a quasi-indispensable part of human life<sup>14</sup>. The consumption of gambling is stimulated through commercial advertising and marketing promotions<sup>15</sup>. Research indicates that gambling is one of the most common types of adult entertainment that requires regulation to prevent social harm<sup>16</sup>. Adverse effects of gambling in societies include job loss, poor health, financial hardship, neglect of family, impact on relationships, among other adverse effects that continue to increase public burdens<sup>17</sup>.

The impact of gambling has been specifically singled out among children and minors due to the higher risk posed to the group associated with the development of gambling-related problems from early ages, as witnessed in children<sup>18</sup>. This study aims to conduct research on the perspective of the protection of minors associated with gambling and offer a regulatory comparison of gambling regulations and the need for harmonization. Furthermore, the study will compare the gambling regulations in place, especially in the advertisement and children's protection aspects.<sup>19</sup>

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<sup>14</sup> Blaszczynski, Alex, and Lia Nower. "A pathways model of problem and pathological gambling." *Addiction* 97, no. 5 (2002): 488.

<sup>15</sup> Duff, Rosemary. "What advertising means to children." *Young Consumers: Insight and Ideas for Responsible Marketers* 5, no. 2 (2004): 41

<sup>16</sup> Black, Julia. "Critical reflections on regulation." *Austl. J. Leg. Phil.* 27 (2002): 1.

<sup>17</sup> Bruce Martin, 'Forget About It. The Irrelevance of Traditional Gambling Regulation in the Digital Age and the Possible Alternative' (5th International Gambling Conference, Auckland, February 2014)

<sup>18</sup> Mark D. Griffiths "Internet gambling, player protection, and social responsibility." *Routledge international handbook of Internet gambling* (2012): 227.

<sup>19</sup> Tess Armstrong and others, 'Beliefs About Gambling Mediate The Effect Of Cognitive Style On Gambling Problems' (2020) 36 *Journal of Gambling Studies*.

Psychology research indicates that minors should not engage in gambling.<sup>20</sup> This is supported by the assessment that the younger child develops a gambling disorder, the greater the number of negative consequences<sup>21</sup>, which further increases the severity of later gambling problems as adults<sup>22</sup>. As a result, there has to be a genuine attempt to protect minors as a combination of the risk of gambling, other forms of delinquency, and other vulnerabilities call for the need to put in place gambling laws to reform the current gambling acts and measures<sup>23</sup>.

With the advent of online casinos, the availability for children to acknowledge them via advertising and the fact that the impact of gambling laws on children has received minimal attention despite their detrimental effects<sup>24</sup> attributes this comparative study significant importance.

By comparing existing gambling legislation in the UK, Sweden, and Malta, this study aims to verify if a sufficient framework of protection already exists in a European Union Member State to protect children from gambling-related harm and, if yes, which States' example should be followed and possibly form the foundation for harmonization across the EU?

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<sup>20</sup> Richard J. E. James, Claire O'Malley and Richard J. Tunney, 'Understanding The Psychology Of Mobile Gambling: A Behavioural Synthesis' (2016) 108 *British Journal of Psychology*.

<sup>21</sup> Michael B Walker, *Psychology Of Gambling* (Butterworth-Heinemann 1995).

<sup>22</sup> Julian Harris, ed. *Gaming law: jurisdictional comparisons*. Sweet & Maxwell, 2012.

<sup>23</sup> Julia Hörnle and Brigitte Zammit, *Cross-Border Online Gambling Law And Policy* (Edward Elgar 2010).

<sup>24</sup> Jennifer L. McComb, Bonnie K. Lee and Douglas H. Sprenkle, 'Conceptualizing And Treating Problem Gambling As A Family Issue' (2009) 35 *Journal of Marital and Family Therapy*.

### 1.3 Methodology

The issue of marketing of online gambling effects on children is still relatively new, therefore there is a gap in literature, decisions, and legal articles on the subject.

This work will focus primarily on legal texts, such International Treaties, European Union Law, domestic regulations and directives, decisions from local consumer bodies such as the Advertisement Standard Agency (United Kingdom), *Reklamombudsman* and *Konsumentverket* (Sweden) and Commercial Communications Commission (Malta) and scientific articles, in the field legal science, psychology and sociology.

Firstly, the history and concept of gambling is introduced followed by a direct assessment of the relationship between marketing and children. Following this assessment, the Author compares the mechanisms for protection of children with regards to marketing within the online gambling industry and what could be the future of gambling embedded into gaming features.

The methodology used in this research followed the pragmatic philosophy due to the fact that the recognition of children's rights in gambling is a result of industry practices and has its effects spread out into many fields of regulatory law and its current consequential effects in real life cases. Therefore, reflecting the urgency for States to address the great influence that gambling carries onto social responsibility current and future actions.

## 2 Historical introduction to Gambling

Games of chance and divine devotion are so embedded in humanity's history that it is very hard to assess which one came first. The word "lottery" itself has its origin in a mix of divination and chance<sup>25</sup>. According to David, "The early Teutonic tribes employed the drawing of lots in some of their religious rites. The word "lot" is itself of Germanic origin and found its way into the Romance languages through the Italian "lottery" and returned to English by this route."<sup>26</sup>. It also is believed that the Germanic origin was in fact from Dutch, having lot the meaning of "fate" in English<sup>27</sup>.

Psychology considers gambling an excellent "distractor task"<sup>28</sup>. One of the effects of a distractor is that the capacity to block the perception of pain. Additionally, gambling for an increased period of time may cause the person to achieve a "dissociative state"<sup>29</sup> of mind, which can cause the person to lose track of time, black out, or have lapses in memory<sup>30</sup>.

This corresponds with what is believed to be the origin of gambling in history. Studies say that the first mass organized gambling-games were first recorded in Lydia around 1200 BCE<sup>31</sup> during a period of famine. According to David<sup>32</sup>: "For some time the Lydians bore the affliction patiently, but finding that it did no pass away, they set to work to devise remedies for the evil. (...) The plan adopted against famine was to engage in games on one day so entirely as not to feel any cravings for food, and the next day to eat and abstain from games. In this way they passed eighteen years."

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<sup>25</sup> Gerald Willmann, 'The History Of Lotteries' [1999] Department of Economics, Stanford University.

<sup>26</sup> F. N David, *Games, Gods And Gambling* (Griffin 1962).

<sup>27</sup> 'Lot' <<https://www.merriam-webster.com/dictionary/lot>> accessed 21 March 2021.

<sup>28</sup> Kei Mochizuki and Shintaro Funahashi, 'Effect of emotional distracters on cognitive decision-making in Cambridge gambling task' (2009) 52 *Psychologia*.

<sup>29</sup> Jon E. Grant and Suck Won Kim, 'Dissociative Symptoms In Pathological Gambling' (2003) 36 *Psychopathology*.

<sup>30</sup> *Ibid.*

<sup>31</sup> Robert Drews, 'Herodotus 1.94, The Drought Ca. 1200 B.C., And The Origin Of The Etruscans' (1992) 41 *Historia: Zeitschrift für Alte Geschichte*.

<sup>32</sup>F. N David, *Games, Gods And Gambling* (Griffin 1962).

Towards the East during the Han dynasty (206 BCE–220 CE)<sup>33</sup>, a type of game called *baige piao* started gaining popularity, the game used a ticket system for betting on homing pigeons<sup>34</sup>. The effect of this game is still seen today, being the predecessor of the popular games keno, lotto, and bingo<sup>35</sup>.

The middle of the Edo era<sup>36</sup> in Japan (1603 – 1868) observed the rise of the amusement games stalls in festivals. This phenomenon is explored by Noritake “We should be sure to take note of another development too: of the amusement-oriented equipment which began to appear in these places. These were essentially shooting games and amusements that involved winning prizes and they link directly down to the present day. Target practice for shooting featured among them, as did quoits, *sugoroku* (a dice game), *hagashie* (where one tears a picture out of paper), bird-catching and so on.<sup>37</sup>”

The popularization of the festivals quickly created an opportunity for the optimization of the profitability of gambling, therefore blurring the line between playing and gambling. Kanzani explains: “The amusements that are typified by target practice games combine the fun of playing with the material rewards of winning a prize. Whilst these games focus on children, we can call them elementary gambling games since the essence of gambling is certainly present”<sup>38</sup>.

On the other hand, in response to the ever-increasing potential players volume connected to the applicability of the model of gambling to different types of games presented the opportunity of diversifying the targets of gambling operators. Thus, adult focused games were more and more available, eventually outgrowing special events and festivals, and establishing themselves as an independent business activity.

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<sup>33</sup> Han Dynasty | Definition, Map, Culture, Art, & Facts' (*Encyclopedia Britannica*) <<https://www.britannica.com/topic/Han-dynasty>> accessed 14 March 2021.

<sup>34</sup> 'Keno | Gambling Game' (*Encyclopedia Britannica*, 2021) <<https://www.britannica.com/topic/keno>> accessed 14 March 2021.

<sup>35</sup> The New York Times, 'Chinese Gambling Games: Mysteries Of Fan Tan And Boo Hop Bu' (1888)

<sup>36</sup> Tokugawa Period | Definition & Facts' (*Encyclopedia Britannica*) <<https://www.britannica.com/event/Tokugawa-period>> accessed 14 March 2021.

<sup>37</sup> Kanzaki Noritake, 'Shooting Games And Prizes : The Origins Of Gambling' (1995) 40 *Senri ethnological studies*.

<sup>38</sup> *Ibid*

By the early eighteenth century in Venice, gambling, together with its Carnival celebrations, gained popularity with foreign visitors. During that time “Venetians gambled mainly on the outcome of simple dice or card games, or other games of chance. Playing at cards inevitably meant gambling: the Italian / Venetian word *giocare* or *zuogar* can mean both 'play' and 'gamble’”<sup>39</sup>

The popularization of gambling in Venice extrapolated the Noblemen sphere, becoming available to the entire population, independently from social class or status. The propagation of gambling business spaces, associated with satellite pastimes lead to a new interpretation of gambling by the State, as J. Walker states, the “Consumption of cash (...) of food and alcohol; the state linked profligacy and lack of discipline with a failure to fulfil male responsibilities as heads of households, and thus with dishonour”<sup>40</sup>.

The departure from the association of gambling as a Noble pastime and its increasing ties with organized crime resulted in the practice losing its morality validation, which resulted in the Government banning the activity. Other commonly known consequences of gambling include bankruptcies, fraud, and tax evasion, all having a significant impact on the State finances. The ban, however, brought two exceptions: the possibility to play at their own house or in a boat with family and friends<sup>41</sup>.

Nevertheless, the ban did not achieve its goal but instead created the need for a shuffle on the management of the gambling activities, leaving the openness and acceptance of the Government and re-establishing itself on an underground framework under a veil of secrecy.

Whereas some countries followed the Italian approach of prohibition, others chose a different path, seeing potential for profiting out of the business and safeguarding their own interests. In some situations, their interests were closely connected to nationalism, as countries did not want

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<sup>39</sup> J. Walker, 'GAMBLING AND VENETIAN NOBLEMEN C. 1500-1700' (1999) 162 Past & Present.

<sup>40</sup> Ibid

<sup>41</sup> Ibid

their citizens to spend money on lottery and sports betting abroad<sup>42</sup>. In other cases, to recover or increase their tax revenues<sup>43</sup>.

## 2.1 The Path to a Regulated Online Casino Market

As mentioned earlier, the connection between gambling and countries or markets is not the same across the globe. Different countries, and therefore, different cultures have distinct approaches towards what constitutes gambling and how regulated it should or should not be.

The online gambling industry divides the countries in three different categories: green, grey, and black market.

Green market refers to a market where gambling is not only allowed but regulated (such as Sweden, Malta, and the United Kingdom).

Grey markets relate to countries that either have no explicit prohibition/permission to online gambling but might have prohibitions/permissions to land based casino and other type of games of chance (such as Brazil, where land-based gambling is prohibited – except for the National Lottery, which is run by the State via its Federal Bank, the *Caixa Econômica Federal*).

Black markets<sup>44</sup> are the ones where online gambling is explicit and extremely forbidden<sup>45</sup> (such as Indonesia, The United States of America, and China).

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<sup>42</sup> Riitta Matilainen, 'Production And Consumption Of Recreational Gambling In Twentieth-Century Finland' (Doctoral dissertation, University of Helsinki 2017).

<sup>43</sup> Anne Edwards, *The Grimaldis Of Monaco* (Lyons Press 2017).

<sup>44</sup> Although the industry has identified illicit/prohibited activity as “black market”, this Author acknowledges that this is an historically outdated and derogatory term associate with colonialism racist origins and therefore recommends that future citations should rely on “Underground market” or “Prohibited markets”.

<sup>45</sup> Isaac Wohl, 'The Antigua-United States Online Gambling Dispute' [2009] *Journal of International Commerce and Economics*.

Antigua and Barbuda was the first green market to introduce an online casino licensing regime already in 1994<sup>46</sup>. Many licensed operators started offering its services to other countries, such as the United States. This led not only to the first arrest in connection to an online casino<sup>47</sup> but also to the first time a country withdrew a commitment before the World Trade Organization (WTO)<sup>48</sup>.

Although studied in the context of the United States of America, the “cycle of legalization” is applicable to many States across the globe. Rose<sup>49</sup> explains this cycle as “Like a prophecy fulfilled, it looks like we are doomed to repeat our history, having failed to learn the lessons of the past. Twice before in American history, players could make legal bets in almost every state, but these waves of legal gambling came crashing down in scandal, ruin, and ultimately prohibition.”

Nevertheless, the outcome of Antigua-United States debacle and the stance of maintaining the prohibition on online casinos do not seem to have changed or limited the consumption of foreign online gambling sites by the American population. According to a House Committee on the Judiciary report<sup>50</sup>, foreign online casinos made at least \$6 billion during 2005.

The European Union, oppositely, begun to legalize or to regulate, the later via licensing system online gambling businesses. In 2001 Malta started offering its licenses to gaming operators, followed by the United Kingdom in 2005 and most recently Sweden in 2019.

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<sup>46</sup> Mark Gibbs, 'Pirates Of The Caribbean: Antigua And Barbuda Turn From Internet Gambling To Legalized Piracy' (*Forbes*, 2013) <<https://www.forbes.com/sites/markgibbs/2013/01/29/pirates-of-the-caribbean-antigua-and-barbuda-turn-from-internet-gambling-to-legalized-piracy/#:~:text=Now%2C%20in%201994%20an%20important,applying%20to%20open%20online%20casinos.%22>> accessed 7 April 2021.

<sup>47</sup> Michael LaPointe, 'The Pioneer Of Online Gambling' (*The Paris Review*, 2020) <<https://www.theparisreview.org/blog/2020/03/03/the-pioneer-of-online-gambling/>> accessed 14 March 2021.

<sup>48</sup> Isaac Wohl, 'The Antigua-United States Online Gambling Dispute' [2009] *Journal of International Commerce and Economics*.

<sup>49</sup> I. Nelson Rose, 'The Third Wave Of Legal Gambling' (2010) 17 *Gambling and the Law*.

<sup>50</sup> 'Committee On The Judiciary. Internet Gambling Prohibition Act Of 2006: Hearing Before The Subcommittee On Crime, Terrorism, And Homeland Security Of The Committee On The Judiciary' (Washington D.C., 2006).



The European Union approach to regulating the gambling markets was also a reflection of the early 2000's and specifically the terrorist attacks on the World Trade Center buildings in New York<sup>51</sup>. These events sparked a debate in the international community on money laundering and financing of terrorism<sup>52</sup>.

Although the focus of the EU counterterrorism efforts has not been on online gaming, this is quickly changing<sup>53</sup> as online gaming can enable terrorist activities such as radicalization and recruitment (via chats), communication and money laundering, and terrorist financing<sup>54</sup>.

Casinos have been associated with financial market and institutions since they first opened its doors. Land-based casinos, especially, have been targeted by criminals to launder their money in an uncomplicated format. The most common ways this has been recorded<sup>55</sup> is by either buying casino chips with the dirty money, wandering around the casino for a few hours then cashing in the chips as if they were winning prizes from gambling. The second strategy used is placing bets on both possible outcomes (such as placing bets on red and black) to legitimize the winning.

This issue has led many countries to regulate or tighten their current regulation, imposing strict requirements to mitigate the possibility of money laundering and financing terrorist operations. Although this is not the sole factor observed when developing the current gambling legislation framework.

Between other contributing factors to the implementation gambling as a legal activity, it is also necessary to evaluate the social responsibility aspects that the licensing authority must take into consideration when regulating the market.

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<sup>51</sup> Directorate General For Internal Policies, 'Evaluation Of EU Measures To Combat Terrorist Financing' (European Parliament 2014) <[https://www.europarl.europa.eu/RegData/etudes/note/join/2014/509978/IPOL-LIBE\\_NT\(2014\)509978\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2014/509978/IPOL-LIBE_NT(2014)509978_EN.pdf)> accessed 21 March 2021.

<sup>52</sup> June Buchanan, 'Money Laundering Through Gambling Devices' (2018) 13 Society and Business Review.

<sup>53</sup> EU Counter-Terrorism Coordinator, 'Online Gaming In The Context Of The Fight Against Terrorism' (Council of the European Union 2020) <<https://rm.coe.int/research-report-the-use-of-online-gambling-for-money-laundering-and-th/168071509c>> accessed 14 March 2021.

<sup>54</sup> Ibid.

<sup>55</sup> Jon Mills, 'Internet Casinos: A Sure Bet For Money Laundering' (2001) 8 Journal of Financial Crime.

The licensing system has its pillars on the principles that gaming should be free of crime, be fair and transparent and protect children and vulnerable persons for harm and exploitation, otherwise known as safer gambling<sup>56</sup>.

Within the European Union there is an increasing concern on creating a balance between the personal circumstances of a player (such as age, health, occupation, affordability) and the profitability of gambling operators.

Thus, in addition to the focus on Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) measures, all three countries chosen for this study focused on the protection of vulnerable people and have clearly defined its marketing limitations.

## **2.2 Harmonization of the Industry**

The subject of European Union Law originates from The Treaty on the Functioning of the European Union (TFEU)<sup>57</sup> together with the Treaty on European Union (TEU)<sup>58</sup>, the two being the primary Treaties that rule the composition of the European Union as an economical block.

The Treaty of Rome<sup>59</sup> gave life to the European Economic Community (EEC), back in 1957 with the objective of creating a single market, which would be finally organized in 1992 with the formalization of the European Union<sup>60</sup>.

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<sup>56</sup> 'Social Responsibility' (Gamblingcommission.gov.uk) <<https://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/General-compliance/Social-responsibility/Social-responsibility.aspx>> accessed 14 March 2021.

<sup>57</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C202/1.

<sup>58</sup> Treaty on European Union, 7 February 1992, 1992 O.J. (C191) 1, 31 I.L.M. 253

<sup>59</sup> Treaty of Rome: Treaty Establishing the European Economic Community, 25 March 1957, 298 U.N.T.S. 3, 4 Eur. Y.B. 412

<sup>60</sup> Treaty on European Union, 7 February 1992, 1992 O.J. (C191) 1, 31 I.L.M. 253

The principles established to promote the internal market are the freedom of movement of goods, capital, services, and people. The most relevant for this thesis being principle of freedom of services, which definition and scope is found in article 57 of the TFEU<sup>61</sup>.

Harmonization of laws can be defined by the creation of standards that are common to the Member States, creating a more cohesive internal market. Bremus and Kliatskova<sup>62</sup> explains this occurrence in the financial markets: “The channels through which European policymakers aim to deepen and further integrate financial markets include standardization and harmonization of rules through supervisory convergence, elimination of differences in financial regulations between the EU countries, wider access to information, increased transparency (e.g. on the creditworthiness of firms), and convergence in tax and insolvency rules (European Commission, 2015).”

The goal, therefore, is to assure that there is consistency in regulations, practices, and laws which also serve as a means to promote fairness and equal treatment to businesses within the internal market.

In practice, the foreseeability of a harmonized market brings benefits to all stakeholders. Consumers are better protected; businesses have clear regulatory and compliance matters to tend to and taxes are defined and allocated between countries<sup>63</sup>.

Gambling, however, is not a service that falls under the TFEU, resulting in the lack of harmonized laws and regulation within the internal market. This is mainly due to a decision by the European Union Commission back in 1992<sup>64</sup> – before online gambling being a real or even feasible possibility.

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<sup>61</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C202/1, Article 57

<sup>62</sup> Franziska Bremus and Tatsiana Kliatskova, 'Legal Harmonization, Institutional Quality, And Countries' External Positions: A Sectoral Analysis' (2020) 107 Journal of International Money and Finance.

<sup>63</sup> Daniel Antonio Paez Zambrano, 'The Impact Of European Commercial Law Harmonization. Is Further Harmonization Of Commercial Law In The EU Necessary?' (Master Thesis, University of Oslo 2014).

<sup>64</sup> European Council, 'EUROPEAN COUNCIL IN EDINBURGH - 11 AND 12 DECEMBER 1992 CONCLUSIONS OF THE PRESIDENCY' (1992) <[https://ec.europa.eu/commission/presscorner/detail/en/DOC\\_92\\_8](https://ec.europa.eu/commission/presscorner/detail/en/DOC_92_8)> accessed 21 March 2021.

In 2006, the Services Directive<sup>65</sup> was published in order to further harmonize the provision of services within the internal market yet it, this time it simply fails to include gambling as a service subject to its provisions, the reason could be attributable to either lack of effort or due to irreconcilable legal framework differences between Member States, but in reality, no official reasoning has been provided. Nonetheless, the matter of gambling is settled by decisions of the Court of Justice of the European Union (CJEU), which considered gambling to fall under the scope of the TFEU<sup>66</sup>.

The European Commission states that “The CJEU has confirmed that the provision and use of cross-border gambling services constitutes an economic activity that falls within the scope of the fundamental freedoms of the Treaty on the Functioning of the European Union (TFEU). In particular, Article 56 TFEU prohibits restrictions on the freedom to provide services to recipients in other EU countries. Nevertheless, there is no obligation of mutual recognition of authorizations or licenses to provide gambling services granted by an authority in an EU country<sup>67</sup>.”

Many articles have been written on the need for harmonization to achieve a better functioning internal market. Nonetheless, Margaret Devaney concluded in her study that “This fundamental lack of agreement between Member States as to the morality of, and risks attached to, online gambling is probably the greatest obstacle to regulation at EU level.<sup>68</sup>”

While the subject of harmonization has been studied through the lenses of consumer law, tax law, or in light of the fundamental freedoms of the European Union, no attention has been

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<sup>65</sup> Council Directive (EU) 2006/123/EC of 12 December 2006 On the Services in the Internal Market [2006] OJ L376.

<sup>66</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C202/1.

<sup>67</sup> 'Gambling Case Law - Internal Market, Industry, Entrepreneurship And Smes - European Commission' (*Internal Market, Industry, Entrepreneurship and SMEs - European Commission*) <[https://ec.europa.eu/growth/sectors/gambling/infringements-court-cases\\_en](https://ec.europa.eu/growth/sectors/gambling/infringements-court-cases_en)> accessed 21 March 2021.

<sup>68</sup> Margaret Devaney, 'Online Gambling And International Regulation: An Outside Bet' (2009) 18 Information & Communications Technology Law.

given to the need for harmonization in order to safeguard the interests and rights of a child, which is enshrined in the Treaty of Lisbon and amended the TEU, coming into force in 2009<sup>69</sup>.

Since then, the protection of children has been set out as a core value of the European Union, with provisions such as seen on Article 2 “The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall **promote social justice and protection**, equality between women and men, solidarity between generations **and protection of the rights of the child**. (...)” (emphasis added)

The rights of the child can be found in Article 24 of the Charter of Fundamental Rights of the European Union of 2012. It states that “Children shall have **the right to such protection and care as is necessary for their well-being**. (...) In all actions relating to children, whether taken by public authorities or private institutions, **the child’s best interest must be a primary consideration**. (...) (emphasis added).

Many other issues concerning children are harmonized across all Member States, such as the Directives 2003/20/EC, known as the “seat belt directive”<sup>70</sup>, the 2009/46/EC on the Safety of Toys<sup>71</sup>, and Directive 2010/13/EU on audiovisual media services<sup>72</sup> (limiting the amount of marketing during children oriented tv shows and overall targeted content).

Considering the best interest of children, the rapid increase in the number of Member States who are changing their system to allow for online gambling providers and the need to have a working and stable internal market, the harmonization of gambling law seems inevitable, at least with regards to the fundament of protection of children and other vulnerable people.

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<sup>69</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, 13 December 2007, 2007 O.J. (C306) 1

<sup>70</sup> Council Directive (EU) 2003/20/EC of 8 April 2003 on the approximation of the laws of the Member States relating to compulsory use of safety belts in vehicles of less than 3.5 tonnes [2003] OJ L115.

<sup>71</sup> Council Directive (EU) 2009/48/EC of 18 June 2009 on the safety of toys [2009] OJ L170.

<sup>72</sup> Council Directive (EU) 2010/13/EU of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services [2010] OJ L95.

As an example, when repealing Directive 2001/37/EC<sup>73</sup> and introducing the new Directive 2014/40/EU<sup>74</sup> concerning tobacco and related products, the European Parliament also invoked the principle of protection of children to further restrict the promotion of tobacco such as flavored cigarettes. This is illustrated by the following passages:

“In line with the purposes of this Directive, namely to facilitate the smooth functioning of the internal market for tobacco and related products, taking as a base a high level of health protection, especially for young people, and in line with Council Recommendation 2003/54/EC (1), Member States should be encouraged to prevent sales of such products to children and adolescents, by adopting appropriate measures that lay down and enforce age limits<sup>75</sup>”

and

“Tobacco products or their packaging could mislead consumers, in particular young people, where they suggest that these products are less harmful. This is, for example, the case if certain words or features are used, such as the words ‘low-tar’, ‘light’, ‘ultra-light’, ‘mild’, ‘natural’, ‘organic’, ‘without additives’, ‘without flavours’ or ‘slim’, or certain names, pictures, and figurative or other signs (...)”<sup>76</sup>

That said, a harmonized gambling legislation should implement a system that will sustain different levels of protection for the wellbeing and mental health of children across its internal market, not acting against its own regulation and core values.

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<sup>73</sup> Council Directive (EU) 2001/37/EC of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products [2001] OJ L194.

<sup>74</sup> Council Directive (EU) 2014/40/EU of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC [2014] OJ L127.

<sup>75</sup> Council Recommendation (EU) 2003/54/EC of 2 December 2002 on the prevention of smoking and on initiatives to improve tobacco control [2002] OJ L22.

<sup>76</sup> Ibid.

### 3 Marketing

Historians trace the use of marketing techniques back to the Roman Empire<sup>77</sup>, having registered evidence of “widespread use of advertisements written or inscribed on walls, mural advertisements, and shop signs”<sup>78</sup>.

Our understanding of the concept of marketing has changed over the decades, starting from the thought that marketing was merely the performance of business activities, growing to encompass the planning and promotion of business to its own separate structure within an organization that set the processes for the creation, communication and delivery of certain values to end-users<sup>79</sup>.

#### 3.1 Marketing and Gambling

Marketing in gambling has a different approach than marketing on other games and services. According to Hing, Cherney, Blaszczynski, Gainsbury & Lubman “gambling is a mature market in many western countries, evidenced by relatively stable demand, stagnant sales growth and steady per capita expenditure, with most potential users already participants”<sup>80</sup>. Therefore, “growing opportunities tend to be restricted to between-sector competitions, resulting in a zero-sum change in consumption.”<sup>81</sup>.

Due to the mature market, marketing in gambling focuses on retaining their existing users by aiming to extend the time a player is participating in online gambling by offering free bets or

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<sup>77</sup> Richard A. Hawkins, 'The Origins Of Marketing Practice In Britain: From The Ancient To The Early Twentieth Century' (2017) 9 *Journal of Historical Research in Marketing*.

<sup>78</sup> Ibid

<sup>79</sup> William L. Wilkie and Elizabeth S. Moore, 'What Does The Definition Of Marketing Tell Us About Ourselves?' (2007) 26 *Journal of Public Policy & Marketing*.

<sup>80</sup> Nerilee Hing and others, 'Do Advertising And Promotions For Online Gambling Increase Gambling Consumption? An Exploratory Study' (2014) 14 *International Gambling Studies*.

<sup>81</sup> Ibid

spins, no deposit required bonuses (although some restriction towards wagering requirements for bonuses before claiming possible wins)<sup>82</sup>.

As any profit driven company, however, one part of their marketing strategy is to acquire new customers, either from other gambling operators or new customers altogether<sup>83</sup>. Aiming at potential new customers, heavy marketing campaigns are used across old media (newspapers, radio, and TV) and new media, such as social media platforms.

Over the years, gambling became more socially acceptable, partially – if not exclusively – due to the marketing campaigns promoting the behavior for exploitation reasons. According to Monaghan, Derevensky & Sklar, “it is widely known that the media have a powerful effect on people’s behaviors and attitudes, and that the objective of any commercial advertisement is to capture consumer attention, convey positive attitudes towards the product, and encourage the adoption of the messages espoused.”<sup>84</sup>

### **3.2 Marketing - Gambling and Children**

The relationship between children and marketing steadily developed over time. A stream of thought considers the child as an independent, assertive person “(...) have rationalized it with the assumption that children are autonomous, have natural, presocial needs, and have the free-speech right to learn about products through advertising.<sup>85</sup>”. This conclusion is based on an outdated notion of ‘maturity’ from the 1920’s that has little to no significance to the age we are living in<sup>86</sup>.

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<sup>82</sup> Ibid

<sup>83</sup> John L. McMullan and Melissa Kervin, 'Selling Internet Gambling: Advertising, New Media And The Content Of Poker Promotion' (2011) 10 International Journal of Mental Health and Addiction.

<sup>84</sup> Sally Monaghan, Jeffrey Derevensky and Alyssa Sklar, 'Impact Of Gambling Advertisements And Marketing On Children And Adolescents: Policy Recommendations To Minimise Harm' [2008] Journal of Gambling Issues.

<sup>85</sup> Gary Cross, 'Valves Of Desire: A Historian's Perspective On Parents, Children, And Marketing' (2002) 29 Journal of Consumer Research.

<sup>86</sup> Ibid



Despite children not having an income of their own, they are part of a big market. According to Amani Al Abbas et al<sup>87</sup>: “they have significant access of cash to spend on their needs and wants” and “children are likewise a future market as they progress on being adults.”.

A major part in the relationship between marketing and children is the creation of brand awareness. Research found that children as young as 3 years old already possess brand awareness<sup>88</sup>. Even though most of them were regarding toys or snacks, children were able to recognize brands that were marketed at adults (household items, cleaning supplies, etc.).

While brand awareness can start developing at a young age, the same is not true when it comes to identifying what an advert is and what its purpose is, with special difficulty concerning online adverts. There is sufficient evidence<sup>89</sup> showcasing that despite young children being able to differentiate marketing materials from typical children’s content, they do not have the capability to assess the intent and objective of the marketing material<sup>90</sup>.

Spiteri Cornish<sup>91</sup> explains that originally parents were only concerned about advertising in television, which was clear and easier to monitor the children’s exposure to them. She goes on to say that “However, the rise of new media technology means that for parents to be effective gatekeepers, they need insight into many new forms of online advertising techniques and the skills to effectively monitor their children’s exposure to ever more subtle marketing messages.”<sup>92</sup>

According to data gathered by UNICEF<sup>93</sup> in 2012, it was concluded that children in 12 countries (including Japan, United States and United Kingdom) spent around 39 hours per week online, which was found to be almost double the time their parents believed they spent<sup>94</sup>.

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<sup>87</sup> Amani Al Abbas, Weifeng Chen and Maria Saberi, 'The Impact Of Neuromarketing Advertising On Children: Intended And Unintended Effects' [2019] KnE Social Sciences.

<sup>88</sup> Ibid.

<sup>89</sup> M. Carole Macklin and Les Carlson, *Advertising To Children* (Sage Publications 1999).

<sup>90</sup> Ibid

<sup>91</sup> Lara Spiteri Cornish, "Mum, Can I Play On The Internet?." (2014) 33 *International Journal of Advertising*.

<sup>92</sup> Ibid.

<sup>93</sup> UNICEF, 'The State Of The World'S Children 2012' (United Nations Children's Fund (UNICEF) 2012) <<https://www.unicef.org/sowc2012/fullreport.php>> accessed 11 February 2020.

<sup>94</sup> Ibid

In 2020, the WHO–UNICEF–Lancet Commission published its study “A future for the world’s children?”<sup>95</sup> where it describes the explicit need to adapt the current framework regarding marketing and children, especially due to their increase presence online, “Children’s large and growing online exposure, while bringing benefits in terms of information access and social support, also exposes them to exploitation, as well as to bullying, gambling, and grooming by criminals and sexual abusers.<sup>96</sup>”

Moreover, the effect of marketing - at least on adolescents - is that they perceive that gambling can lead to “easy money” being a fun, risk free, and enjoyable activity which requires none of the efforts of school or job<sup>97</sup>.

Research from western countries shows that 63% to 82% of children (12 to 17 years) gamble each year<sup>98</sup>. Additionally, a study<sup>99</sup> conducted with 490 children from age 6.3 and 9.9 years showed that 53 of them had tried gambling at least once. The same study points out that children who suffered from conduct problems (Oppositional defiant disorder (ODD)<sup>100</sup> and Conduct Disorder (CD)<sup>101</sup>) were twice as likely to have been already initiated into gambling than their counterparts.

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<sup>95</sup> Helen Clark and others, 'A Future For The World's Children? A WHO–UNICEF–Lancet Commission' (2020) 395 *The Lancet*.

<sup>96</sup> *Ibid*

<sup>97</sup> Jeffrey Derevensky and others, 'The Effects Of Gambling Advertisement On Child And Adolescent Gambling Attitudes And Behaviors' (International Centre for Youth Gambling Problems and High-Risk Behaviors McGill University 2007).

<sup>98</sup> Sally Monaghan, Jeffrey Derevensky and Alyssa Sklar, 'Impact Of Gambling Advertisements And Marketing On Children And Adolescents: Policy Recommendations To Minimise Harm' (2008) *Journal of Gambling Issues*.

<sup>99</sup> Caroline E. Temcheff and others, 'Precocious Initiation Into Smoking, Alcohol Use, And Gambling Among Children With Conduct Problems' (2016) 61 *The Canadian Journal of Psychiatry*.

<sup>100</sup> DSM-5 313.81. Oppositional Defiant Disorder. Behavior includes a pattern of angry or irritable mood, argumentative/defiant behavior or vindictiveness. Display of irrational rebellious behavior and anger at authority figures, occurring mostly in younger children.

<sup>101</sup> DMS-5 312.81. Conduct Disorder. Typically associated with individuals under 18 who usually violates the right of others and will not conform their behavior to the law or social norms expected for their age, can also be described as “juvenile delinquency”.

In many different areas of marketing the wellbeing and health of children is the center of attention<sup>102</sup>, from adverts of junk food, high fat, sugar or savory foods and drinks<sup>103</sup> to tobacco, alcohol and, of course, gambling.

It is important to note that even though the World Health Organization recognizes gambling as a health issue problem<sup>104</sup>, there is still no mention of the factual numbers and its impact on children. Moreover, the concern with children's health is usually regarding their physical health, paying little attention to the effects on their mental health<sup>105</sup>.

### 3.3 Children and Social Media

Presently, social media has become not only a communication platform where people interact with one another but also use as a source of information, educational tool<sup>106</sup> and marketing channel<sup>107</sup>.

Platforms such as Instagram, Facebook, Snapchat, TikTok and Twitter are commonly populated by children<sup>108</sup> (even though their terms and conditions do not allow for under 13s to register as a user).

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<sup>102</sup> Carly Nyst, 'Children And Digital Marketing: Rights, Risks And Responsibilities' [2018] UNICEF <[https://www.unicef.org/csr/css/Children\\_and\\_Digital\\_Marketing\\_-\\_Rights\\_Risks\\_and\\_Responsibilities\(2\).pdf](https://www.unicef.org/csr/css/Children_and_Digital_Marketing_-_Rights_Risks_and_Responsibilities(2).pdf)> accessed 5 February 2020.

<sup>103</sup> Jennifer L. Harris and others, 'Marketing To Children In Supermarkets: An Opportunity For Public Policy To Improve Children's Diets' (2020) 17 International Journal of Environmental Research and Public Health.

<sup>104</sup> 'Addictive Behaviours: Gaming Disorder' (Who.int) <<https://www.who.int/news-room/q-a-detail/addictive-behaviours-gaming-disorder>> accessed 15 March 2021.

<sup>105</sup> Darren Powell, 'Harmful Marketing To Children' (2020) 396 The Lancet.

<sup>106</sup> Mark Grabe and Kimberly Christopherson, 'Evaluating The Advantages And Disadvantages Of Providing Lecture Notes: The Role Of Internet Technology As A Delivery System And Research Tool' (2005) 8 The Internet and Higher Education.

<sup>107</sup> Melody Y Kiang, T.S Raghu and Kevin Huei-Min Shang, 'Marketing On The Internet — Who Can Benefit From An Online Marketing Approach?' (2000) 27 Decision Support Systems.

<sup>108</sup> 'Facebook Building A Version Of Instagram For Children Under 13' (*the Guardian*, 2021) <<https://www.theguardian.com/technology/2021/mar/19/facebook-building-a-version-of-instagram-for-children-under-13>> accessed 7 April 2021.

All these platforms (to varying degree) are filled with advertisements. Facebook started selling advertisement space as early as 2007, followed by YouTube in 2009, twitter in 2010, Instagram in 2013 and Snapchat in 2014. TikTok is the latest one to start selling advertisement space, launching its program in June 2020.

There are many ways a company can explore the advertisement space on those platforms, from short clips that will disappear in 24h, posts on main feed of an account to short commercial breaks within a video.

These platforms also allow the advertising company to display their advert to a specific demographic by using a technique called “targeted advertising”<sup>109</sup>. Allowing companies to select which age, gender, and interest groups they would like to reach with their ads.

Another technique used by companies is the “behavioral targeting”<sup>110</sup>, allowing the companies to show their adverts to singled out persons with a specific interest, buying history or internet behavior.

Those features are helpful to allow gambling companies to place advertisement responsibly, allowing them to select only people above the legal age to be the receiver of their ads and at the same time making sure to show the advert only where it is legal to do so. However, the system is not foolproof and failures either by mistake or misconduct<sup>111</sup> are known to have happened.

This issue was noted by the Advertisement Standards Agency in the United Kingdom when assessing a complaint concerning the display of gambling advertisement on a children’s application due to the use of parent’s login information: “We considered that age-restricted ads on online platforms should not be targeted solely based on age data, because of younger users

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<sup>109</sup> Sonya A. Grier and Shiriki Kumanyika, 'Targeted Marketing And Public Health' (2010) 31 Annual Review of Public Health.

<sup>110</sup> Carly Nyst, 'Children And Digital Marketing: Rights, Risks And Responsibilities' [2018] UNICEF <[https://www.unicef.org/csr/css/Children\\_and\\_Digital\\_Marketing\\_-\\_Rights\\_Risks\\_and\\_Responsibilities\(2\).pdf](https://www.unicef.org/csr/css/Children_and_Digital_Marketing_-_Rights_Risks_and_Responsibilities(2).pdf)> accessed 5 February 2020.

<sup>111</sup> 'ASA Ruling on Anexxio Ltd t/a LottoGo' (Advertisement Standard Agency 2021) <<https://www.asa.org.uk/rulings/annexio-ltd-a19-561621.html>> accessed 3 February 2021.

misreporting their age on social media or different people sharing the same device. Also, advertisers should support this method of targeting by using interest-based factors to help remove those aged under 18 years of age from the target audience of gambling product ads.<sup>112</sup>

A more subtle (and sometimes illegal<sup>113</sup>) social media advertisement is called “Influencer marketing”<sup>114</sup>, meaning that individuals with an established online following are often paid to endorse specific products, services, or brands in general.

Influencer marketing is remarkably advantageous due to the increase in exposure and approachability to influencers because of the constant use of social media platforms. This is well explained by Chen Lou and Shupey Yuan: “Contrary to celebrities or public figures who are well-known via traditional media, social media influencers are “regular people” who have become “online celebrities” by creating and posting content on social media. (...) consumers may accord social media influencer a similar level of trust as they hold their friends.”<sup>115</sup>

In December of 2018, influencer Jake Paul uploaded a sponsored video to his YouTube channel entitled “I spent \$5,000 ON MYSTERY BOXES and you WON’T believe WHAT I GOT...(insane)”<sup>116</sup>. Jake Paul, originally from Disney Channel, has children as target audience. The video was heavily criticized<sup>117</sup> but no formal action has been taken and the video is still available on YouTube, accumulating 3.2 million views.

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<sup>112</sup> 'ASA Ruling on WHG (International) Ltd (Advertisement Standard Agency 2021)

<<https://www.asa.org.uk/rulings/annexio-ltd-a19-561621.html>> accessed 3 February 2021.

<sup>113</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') 2005.

<sup>114</sup> Chen Lou and Shupey Yuan, 'Influencer Marketing: How Message Value And Credibility Affect Consumer Trust Of Branded Content On Social Media' (2019) 19 Journal of Interactive Advertising.

<sup>115</sup> Ibid

<sup>116</sup> Jake Paul, 'I Spent \$5,000 ON MYSTERY BOXES & You WONT Believe WHAT I GOT... (Insane)'

<<https://www.youtube.com/watch?v=9wO2RIEKMSg>> accessed 14 March 2021.

<sup>117</sup> Rebecca Jennings, 'Youtube Stars Promoted Gambling To Kids. Now They Have To Answer To Their Peers.' (Vox, 2019) <<https://www.vox.com/the-goods/2019/1/4/18167341/youtube-jake-paul-ricegum-mystery-brand>> accessed 14 March 2021.

Gambling advertisement is restricted on the YouTube platform described by “We support responsible gambling advertising and abide by local gambling laws and industry standards, so we don’t allow certain kinds of gambling-related advertising. **Gambling-related ads are allowed if they comply with the policies below and the advertiser has received the proper Google Ads certification.** Gambling ads must target approved countries, have a landing page that displays information about responsible gambling, **and never target minors.** Check local regulations for the areas you want to target.<sup>118</sup>” (emphasis added). None of the requirements were fulfilled in Jake Paul’s case.

The situation is concerning especially considering that “(...) research has found that youth populations are particularly vulnerable to gambling problems as they are less able to critically assess the messages of various marketing campaigns.”<sup>119</sup>

To understand the issue better, it is necessary to first understand how children are introduced to the world of gambling and how they are affected by the marketing on gambling.

### 3.4 Children’s exposure to Gambling

The theory of consumer socialization is described as a process on which children will gain knowledge, skills, and attitude to function as consumers in a marketplace setting<sup>120</sup>. There are different roles involved in the consumer socialization such as peers, media, and parents.

Additional factors will also result in influence on children’s attitude towards gambling. It is proven by research that a child’s first contact with gambling is almost always done via family members<sup>121</sup>. However, as points out Søren Kristiansen, Maria Camilla Trabjerg, and Gerda

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<sup>118</sup> 'Google Ads Policies - Advertising Policies Help' (Support.google.com)

<[https://support.google.com/adspolicy/answer/6008942?visit\\_id=637514046945745108-823350722&rd=1](https://support.google.com/adspolicy/answer/6008942?visit_id=637514046945745108-823350722&rd=1)>  
accessed 15 March 2021.

<sup>119</sup> Søren Kristiansen, Maria Camilla Trabjerg and Gerda Reith, 'Learning To Gamble: Early Gambling Experiences Among Young People In Denmark' (2014) 18 Journal of Youth Studies.

<sup>120</sup> Hannah Pitt and others, 'Factors That Influence Children’S Gambling Attitudes And Consumption Intentions: Lessons For Gambling Harm Prevention Research, Policies And Advocacy Strategies' (2017) 14 Harm Reduction Journal.

<sup>121</sup> Ibid

Reith, “(...) little is known about young people’s early introduction to gambling and the context of these introductions.<sup>122</sup>”.

What we do know is that currently children are being exposed to gambling much more than in the past<sup>123</sup>. The Advertisement Standard Agency conducted an experiment in the UK during 2019 on which fake children’s online profiles were created. The result over two weeks of experimenting was that those children were exposed to 43 gambling advertisements as well as 11 displayed on children’s websites<sup>124</sup>.

Consequently, the need to balance gambling companies’ rights to conduct their business and safeguarding the rights of the children are imperative.

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<sup>122</sup> Søren Kristiansen, Maria Camilla Trabjerg and Gerda Reith, 'Learning To Gamble: Early Gambling Experiences Among Young People In Denmark' (2014) 18 Journal of Youth Studies.

<sup>123</sup> Ipsos MORI on behalf of GambleAware, 'The Effect Of Gambling Marketing And Advertising On Children, Young People And Vulnerable Adults' (GambleAware 2020) <[https://www.begambleaware.org/media/2160/the-effect-of-gambling-marketing-and-advertising-synthesis-report\\_final.pdf](https://www.begambleaware.org/media/2160/the-effect-of-gambling-marketing-and-advertising-synthesis-report_final.pdf)> accessed 15 March 2021.

<sup>124</sup> Digital Advisory Panel, 'Advice On The Impact Of Online Platforms On Gambling-Related Harm' (United Kingdom Gambling Commission 2019) <<https://www.gamblingcommission.gov.uk/PDF/Digital-Advisory-Panel-Advice-on-the-Impact-of-online-platforms-on-gambling-related-harm.pdf>> accessed 15 March 2021.

## 4 Children's Rights

The concept of 'children' is currently so mundane and unquestionable that it might be difficult to remember that this wasn't the case for most of our history. As explains Marta Prucnal, "Most medieval languages did not even contain a word for "child": childhood wasn't seen as a distinct stage in life. At that time children were considered to be small adults. Medieval society distinguished only infants from adults."<sup>125</sup>

In 1959, the international community recognizes the importance of play and recreation for children, which is enshrined in the Declaration of the Rights of the Child: 'The child shall have full opportunity for play and recreation (...) and society and the public authorities shall endeavor to promote the enjoyment of this right' (art. 7)<sup>126</sup>.

Children's rights are strengthened by the Convention on the Rights of the Child (CRC), that builds upon the Declaration of the Rights of the Child – which all Member States of the European Union have ratified – to maintain specific protections on children due to their physical and mental immaturity<sup>127</sup>. The Convention stipulates that "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier"<sup>128</sup> shall be considered a child.

CRC through the Committee on the Rights of Children explicitly states in article 31 and outlines the right of the child to rest, leisure, play, recreational activities, cultural life, and the arts<sup>129</sup>. The international community has however raised a concern on the implementation of

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<sup>125</sup> Marta Prucnal, 'WHO IS A CHILD? THE INTERNATIONAL DEFINITION OF A CHILD', *Sovereignty of Children in Law* (Cambridge Scholars Publishing 2012).

<sup>126</sup> CRC, Nations. "Convention on the Rights of the Child." (2010).

<sup>127</sup> Smith, Moira, Tim Chambers, Max Abbott, and Louise Signal. "High stakes: Children's exposure to gambling and gambling marketing using wearable cameras." *International Journal of Mental Health and Addiction* (2019): 20.

<sup>128</sup> CRC, Nations. "Convention on the Rights of the Child." (2010)

<sup>129</sup> Livingstone, Sonia, and Monica E. Bulger. "A global agenda for children's rights in the digital age. Recommendations for developing UNICEF's research strategy." LSE/UNICEF Office of Research (2013).



the article in the signatory States especially on the recognition of the article and its significance on the lives of children<sup>130</sup>.

The committee specifically expressed its concern in the insufficiency of investment in provision of the suitable structures, weak or non-existing protective legislature and lack of planning in the local and national levels on children. The international community hopes to see States engage in investments through the provision of organized and structured activities and creation of time and space for children to get involved in spontaneous play, creativity, recreational activities and promotion of societal manners that encourage and support the development of children.

#### **4.1 The Connection between Children’s Rights and the Gaming Industry**

The United Nations Guiding Principles on Business and Human Rights<sup>131</sup> is clear on the need for gaming companies to recognize children rights and play their role with a clear understanding of the potential impact that gaming has on children rights. Gaming companies are therefore required to establish policies, process, and offer guidance to ensure that children’s rights are respected, and specific remedies are provided when required.

Based on the Convention of the Rights of the Child definition of political, civil, social, economic, health and cultural rights of children, online gaming impacts on the rights of children in various ways<sup>132</sup>. The ratification of human rights treaties in the world by States hold responsible governments as they are legally bound to uphold children rights<sup>133</sup>. Additionally, the CRC also recognizes the responsibility and rights of parents and caregivers to fulfill the laws as expected and recommended by the Committee on the Rights of the Child.

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<sup>130</sup> Wiseman, Mary Jane. "Gambling and virtue in government." *Journal of Business and Public Affairs* 1, no. 1 (2000): 2

<sup>131</sup> United Nations, 'Guiding Principles On Business And Human Rights' (United Nations 2011).

<sup>132</sup> Wardle, Heather, Gerda Reith, Erika Langham, and Robert D. Rogers. "Gambling and public health: we need policy action to prevent harm." *Bmj* 365 (2019).

<sup>133</sup> Laura Lundy, 'Voice' Is Not Enough: Conceptualising Article 12 Of The United Nations Convention On The Rights Of The Child' (2007) 33 *British Educational Research Journal*.

The gaming industry is required to act based on the rights which show the positive and negative impacts that online gaming is likely to impact on children<sup>134</sup>. Thus, the industry is required to always act in the best interest of the child as outlined in article 3 of the CRC and is a fundamental legal principle<sup>135</sup> and to work with parents delineated on article 5, which calls for parent to offer guidance consistent with the child's evolving capacities<sup>136</sup>.

The right to leisure, play, and culture specifically related to the gaming industry as gaming is a mainstream activity that children engage in to socialize, interact, play, and relax with others. A Child's right to freedom of association outlined in article 15 is also relevant to the gaming industry.

A Child's right to non-discrimination prescribed in article 2 affects the gaming industry by calling them to ensure that unsafe and unfriendly<sup>137</sup> environments are excluded in gaming activities to avoid discouraging participation<sup>138</sup>.

The gaming industry also impacts children rights on protection from sexual abuse<sup>139</sup> respect for the views of the child<sup>140</sup>, right to freedom of expression, and protection of the privacy and personal information which are all important for consideration by online service provides especially games<sup>141</sup>.

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<sup>134</sup> UNICEF. "Child rights and online gaming: Opportunities & challenges for children and the industry." Dostupno na: [https://www.unicef-irc.org/files/upload/documents/UNICEF\\_CRBDigitalWorldSeriesOnline\\_Gaming](https://www.unicef-irc.org/files/upload/documents/UNICEF_CRBDigitalWorldSeriesOnline_Gaming).

<sup>135</sup> Ranade, Sangeeta, Stuart Bailey, and Alexandra Harvey. A literature review and survey of statistical sources on remote gambling. DCMS, 2006

<sup>136</sup> UN Committee on the Rights of the Child. "General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)." (2013).

<sup>137</sup> Philippsohn, Steven. "The UK Gambling Review Report: A Summary of the Recommendations and the Objectives." *Gaming Law Review* 5, no. 6 (2001): 562.

<sup>138</sup> Bennett, Susan, Stuart N. Hart, and Kimberly Ann Svevo-Cianci. "The need for a General Comment for Article 19 of the UN Convention on the Rights of the Child: Toward enlightenment and progress for child protection." *Child abuse & neglect* 33, no. 11 (2009): 785.

<sup>139</sup> Article 34

<sup>140</sup> Article 12

<sup>141</sup> Hart, Stuart N., Yanghee Lee, and Marie Wernham. "A new age for child protection—General comment 13: Why it is important, how it was constructed, and what it intends?." *Child abuse & neglect* 35, no. 12 (2011): 970.

The right of children to be protected from all types of exploitation included in article 36 addresses gaming industry activities such as advertising, which can foster commercial exploitation<sup>142</sup>. The industry must support children right to education through the provision of educational games and provision of innovative ways of learning and teaching<sup>143</sup>. By so doing the industry will present valuable opportunity that support education through fun and engagement and provision of an effective learning platform<sup>144</sup>.

The line between video games and gambling has become significantly blurred due to monetization of the gaming industry, which has consequently introduced gambling styles games to children<sup>145</sup>, this issue will be dealt with in Chapter 8.

Recent evaluation and research on gambling and treatment of children has established that the gaming industry has a significant impact on children<sup>146</sup>. The European Union is known for its legislative work aiming to better the lives of children, thus the lack of consistency across the internal market when the well-being and mental health of children is at stake is ruthless.

Making gambling a safe and child-free adult environment and prohibiting gambling like features in children's games goes hand in hand with assuring the child's right of play and leisure. Whatever circumstance has an effect on children, the European Union should not solely rely on self-regulated industries and national legislation.

Moreover, the connection between children and gambling should not focus on creating a safe environment between the two, but rather how to there should be no relation between them.

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<sup>142</sup> Sarah Te One, 'Defining Rights: Children's Rights In Theory And In Practice' (2011) 2 He Kupu <<https://www.hekupu.ac.nz/article/defining-rights-childrens-rights-theory-and-practice>> accessed 22 March 2020.

<sup>143</sup>William Magnus Northington, Sharon E. Beatty and Andrew M. Lindridge, 'The Relationship Between Motivation, Self-Control And Locus Of Control Within Gambling' [2015] Marketing Dynamism & Sustainability: Things Change, Things Stay the Same....

<sup>144</sup> Lansdown, G., M. Akullo, J. Carr, M. Hecht, and T. Palmer. "Child safety online: Global challenges and strategies." (2011).

<sup>145</sup> Clare Brindley, 'The Marketing Of Gambling On The Internet' (1999) 9 Internet Research.

<sup>146</sup> Unicef. Child safety online: Global challenges and strategies. UNICEF Innocenti Research Centre, 2011.

Gambling regulation should focus on how it can best protect children on the basis of prevention of contact rather than how to minimize damage.

## 5 Comparison of the Existing Legislation in the UK, Sweden, and Malta

As discussed in the previous chapter, online gambling is not harmonized. There are many different regulations, compliance requirements, and marketing guidelines within the European Union. Liisa M. Thomas et al. states that “it is not possible for a responsible marketer to have an in-depth background of global advertising laws as they apply to children. Nevertheless, responsible marketers should have a good understanding of some of the more important issues that may arise in a given country, and the foresight to involve lawyers in the planning stages of their Internet activities.”<sup>147</sup>

It is crucial for society as a whole that Operators take the necessary steps to make sure that its marketing is age appropriate. A report by the OECD concerning the protection of children online showed that “The promotion of gambling and dating services can trigger minors’ curiosity (Fielder *et al.*, 2007, p. 11, 14, 18) and foster risky behavior which might lead to financial loss or set the scene for sexual solicitation.”<sup>148</sup>

### 5.1 Children Protection in Gambling in the UK

Gambling is an inherent part of the British culture yet controversial due to its detrimental effect on the population. In 2005, the Gambling Act (the Act) was enacted which liberalized the UK Gambling Industry. The Act encompasses all types of gambling, including remote operations. It enacted as a reform to create an environment where commercial government was offered in a free market setting and the industry could stimulate its consumption through advertising<sup>149</sup>.

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<sup>147</sup> Liisa M. Thomas and Melissa S. Dill, 'Legal Considerations For Online Advertising To Children' (2002) 3 Young Consumers.

<sup>148</sup> Organisation for Economic Co-operation and Development, 'The Protection Of Children Online - Recommendation Of The OECD Council Report On Risks Faced By Children Online And Policies To Protect Them' (OECD 2012).

<sup>149</sup> Philip W. S. Newall and others, 'Live-Odds Gambling Advertising And Consumer Protection' (2019) 14 PLOS ONE.

Gambling in the United Kingdom is regulated and supervised by the United Kingdom Gambling Commission, which issues licenses for operators to conduct their businesses in the UK.

The UK has positioned the 2005 Gambling Act as a sufficient measure to prevent gambling from harming minors. However, research shows that young people have continued to have access to gambling, and they are exposed to significant gambling advertising that appeals to them<sup>150</sup>.

According to the Act, minors are not typically allowed to engage in gambling and thus the Act has a statutory duty to prevent minors from accessing gambling<sup>151</sup>.

In the UK, the general minimum age for gambling is 18 years, and that applies to gaming centers, betting shops<sup>152</sup>, racetracks, online gambling, and bingo halls<sup>153</sup>. The law however has exemptions on Scratch cards and the National lottery where minors from the age of 16 are allowed to engage<sup>154</sup>.

This is problematic as it is an action contrary to the aim of protecting minors although the decision was based on the deficiency of proof that participation in such games causes harm in children. The passage of the gambling act without scrutiny on its effects on minors has had detrimental impacts on children.

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<sup>150</sup> Ipsos MORI on behalf of GambleAware, 'The Effect Of Gambling Marketing And Advertising On Children, Young People And Vulnerable Adults' (GambleAware 2020) <[https://www.begambleaware.org/media/2160/the-effect-of-gambling-marketing-and-advertising-synthesis-report\\_final.pdf](https://www.begambleaware.org/media/2160/the-effect-of-gambling-marketing-and-advertising-synthesis-report_final.pdf)> accessed 15 March 2021.

<sup>151</sup> Jeffrey Derevensky and others, 'The Effects Of Gambling Advertisement On Child And Adolescent Gambling Attitudes And Behaviors' (International Centre for Youth Gambling Problems and High-Risk Behaviors McGill University 2007).

<sup>152</sup> Ibid

<sup>153</sup> Isabelle Lussier and others, 'Youth Gambling Behaviors: An Examination Of The Role Of Resilience.' (2007) 21 Psychology of Addictive Behaviors.

<sup>154</sup> Amy Bestman and others, 'Children'S Attitudes Towards Electronic Gambling Machines: An Exploratory Qualitative Study Of Children Who Attend Community Clubs' (2017) 14 Harm Reduction Journal.

The Act in the first section specifies its objective as to protect “children and other vulnerable persons from being harmed or exploited by gambling”.<sup>155</sup> Recent studies in the UK which focus on the engagement of children aged 11 to 16 years on gambling with the goal of rating the problem of gambling, the profile of children Gamblers, and emerging trends and movements<sup>156</sup> concluded that gambling has an actual influence on minor behavior and attitudes<sup>157</sup>.

Minors in the UK are also exposed to a wide range of gambling related commercials that appeal to them<sup>158</sup>. The regulations imposed include i) minimum age requirement for gambling which in the UK depends on the type of gambling activity<sup>159</sup>, ii) requirement of the No underage gambling sign to be displayed on and during commercial advertising<sup>160</sup>, and iii) engagement in educational activities funded by the national authority and regulatory bodies<sup>161</sup>.

In parallel with the Act, the United Kingdom Gambling Commission issued (and updates periodically) its ‘Licence Conditions and Codes of Practice’ (LCCP). According to the UKGC, the LCCP “is not static. We make amendments or additions to take account of developments in the industry or emerging evidence on the most effective means of promoting socially responsible gambling.”<sup>162</sup>

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<sup>155</sup> Hibai Lopez-Gonzalez and Mark D. Griffiths, 'Is European Online Gambling Regulation Adequately Addressing In-Play Betting Advertising?' (2016) 20 Gaming Law Review and Economics.

<sup>156</sup> Nicki Dowling, *Children At Risk Of Developing Problem Gambling* (Gambling Research Australia 2010).

<sup>157</sup> Sally Gainsbury, Jonathan Parke and Niko Suhonen, 'Consumer Attitudes Towards Internet Gambling: Perceptions Of Responsible Gambling Policies, Consumer Protection, And Regulation Of Online Gambling Sites' (2013) 29 Computers in Human Behavior.

<sup>158</sup> Julia Hörnle and Malgorzata A Carran, 'A Sieve That Does Hold A Little Water – Gambling Advertising And Protection Of The Vulnerable In The UK' (2018) 38 Legal Studies.

<sup>159</sup> Richard L. Lippke, 'Should States Be In The Gambling Business?' (1997) 11 Public Affairs Quarterly.

<sup>160</sup> Rohan Miller and Grant Michelson, 'Fixing The Game? Legitimacy, Morality Policy And Research In Gambling' (2012) 116 Journal of Business Ethics.

<sup>161</sup> Roy Light, 'The Gambling Act 2005: Regulatory Containment And Market Control' (2007) 70 Modern Law Review.

<sup>162</sup> 'Licence Conditions And Codes Of Practice (LCCP)' (*Gamblingcommission.gov.uk*)

<<https://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/LCCP/Licence-conditions-and-codes-of-practice.aspx>> accessed 18 March 2021.

Currently, the LCCP has specific provisions concerning i) combating problem gambling, and ii) preventing access to gambling by children and young persons.

Although setting worthy objectives, the Act and LCCP are inherently flawed, as it can be too generic and rely too much on the gambling operator's own policies and procedures.

As an example, Section 17.1.1 of the LCCP states that "Licensees must obtain and verify information in order to establish the identity of a customer before that customer is permitted to gamble. Information must include, but is not restricted to, the customer's name, address and date of birth.<sup>163</sup>" It, however, does not state what type of verification should be done, leaving too much to Operators to interpret, possibly resulting in a less efficient measure.

This can be due to the fact that the United Kingdom does not have an Identity Card<sup>164</sup> system unlike countries like Malta and Sweden, resulting in a certain level of difficulty to assess and confirm a player's age.

Yet, the LCCP has its merits, including the prohibition of free to play games (also known as "demo versions") before a gambling operator can verify the player's age<sup>165</sup>. Another matter that deserves praise is the prohibition of game thumbnails that might be appealing to children.

In practice, this means that thumbnails such as the below<sup>166</sup> should not be visible before a player logs into their account, although it is not always so easy to assess what exactly is appealing to children.

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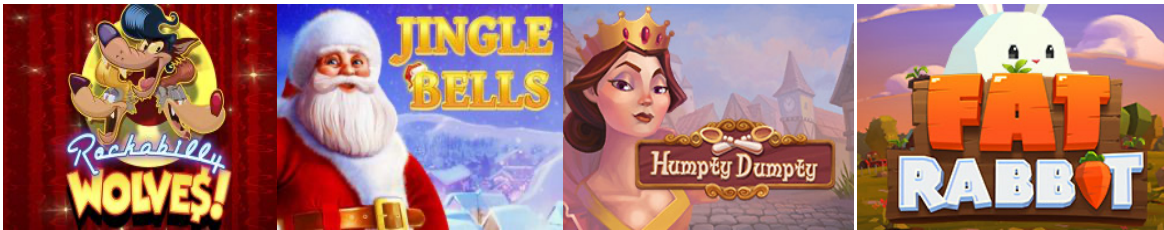
<sup>163</sup> Ibid

<sup>164</sup> 'Identity Cards' (GOV.UK) <<https://www.gov.uk/identitycards>> accessed 20 March 2021.

<sup>165</sup> 'Licence Conditions And Codes Of Practice (LCCP)' (*Gamblingcommission.gov.uk*) <<https://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/LCCP/Licence-conditions-and-codes-of-practice.aspx>> accessed 18 March 2021.

<sup>166</sup> From left to right: Rick and Morty Megaways (by Blueprint Gaming), Fairy Gate (by Quicksand), Jungle Books (by Yggdrasil), Hugo (by Play'N'Go), Rockabilly Wolves (by Microgaming), Jingle Bells (by Red Tiger), Humpty Dumpty (by Push Gaming), Fat Rabbit (by Push Gaming).





Furthermore, the LCCP also states that “Licensees should also follow any relevant industry code of practice on advertising, notably the Gambling Industry Code for Socially Responsible Advertising”<sup>167</sup> (ICSRA). The Industry Group for Responsible Gambling is part of the Betting & Gaming Council and has some of the biggest gambling operators as its members<sup>168</sup>.

The ICSRA specifies a few steps Operators can take to improve the protection of children. It recommends that i) every advert should carry a visible +18 symbol (or +16, depending on the type of games), ii) Operators use age restriction in all direct marketing videos available online, and iii) sponsored social media adverts should only target +25 years old.

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<sup>167</sup>Licence Conditions And Codes Of Practice (LCCP) (Gamblingcommission.gov.uk) <<https://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/LCCP/Licence-conditions-and-codes-of-practice.aspx>> accessed 18 March 2021.

<sup>168</sup> Such as Microgaming, Kindred Group and Bet365.

The UK is showing an ever increasing and deep concern due to the growing number of children gamblers and those at risk of developing gambling problems<sup>169</sup>. In the UK, children are bombarded with gambling adverts and are exposed to gambling related harm, which has caused the treatment of gambling in children as a serious public health issue<sup>170</sup>.

The Gambling Commission in the UK has reported that over 450,000 minors engage in gambling, spending an average £16 each week<sup>171</sup>. Over 60% of minors are exposed to gambling advertisements on social media and televisions. Products such as Lootboxes<sup>172</sup>, which are elements of video games, are legal in the UK and are training children to gamble, with the potential to cause addiction to gamble in later life<sup>173</sup>.

The Act is somewhat inadequate to address the effects of the increased spread of gambling opportunities. This is mainly due to the generic level of the definitions which leaves too much for interpretation and lack of effective means to control children's access to gambling. Furthermore, the Act is fundamentally mismatched with the need to protect minors from harms related to gambling<sup>174</sup>.

## 5.2 Children Protection in Gambling in Sweden

Sweden has put in place laws and regulation to control gambling<sup>175</sup> and make it a safe environment for players. The Swedish Gambling Authority (SGA) is mandated to ensure legality, safety, and reliability in gaming. It works with the Swedish Gambling Act and various related

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<sup>169</sup> Tony Coles, 'The Regulation Of Lotteries In Great Britain Following The Gambling Act 2005' (2006) 10 Gaming Law Review.

<sup>170</sup> Simone van der Hof and others, 'The Child'S Right To Protection Against Economic Exploitation In The Digital World' (2020) 28 The International Journal of Children's Rights.

<sup>171</sup> Mark Griffiths, *Problem Gambling In Europe* (Nottingham Trent University 2009).

<sup>172</sup> See 8.1.1.

<sup>173</sup> Gambling Commission. "Report of the Gambling Commission 2005-06." London Stationery Office: London, UK (2006)

<sup>174</sup> Sebastian Schwidessen and Philipp Karius, 'Watch Your Loot Boxes! – Recent Developments And Legal Assessment In Selected Key Jurisdictions From A Gambling Law Perspective' (2018) 1 Interactive Entertainment Law Review.

<sup>175</sup> Rina Gupta and Jeffrey L. Derevensky, 'Adolescent Gambling Behavior: A Prevalence Study And Examination Of The Correlates Associated With Problem Gambling' (1998) 14 Journal of Gambling Studies.

laws, including the Swedish Gambling Tax and Gambling Ordinance<sup>176</sup> which regulate gambling for money provided in Sweden.

The law provides that all gambling activities directed to that market must hold a Swedish license<sup>177</sup>. Failure to have a license is considered illegal and, therefore, prohibited.

Sweden also has specialized child protection laws that have existed since the 1900s, in order to enhance child protection such as the Parental Code, the School Act and special provisions for youth<sup>178</sup>.

It is also possible for the State to intervene and take a child into protective care in cases of development of any socially destructive behavior. In 2014, the District Administrative Court in Linköping authorized the Social Welfare Committee to put a 14-year-old in protective care due to excessive gaming<sup>179</sup>.

Chapter 14 of the Sweden Gaming Act advocates for responsible gambling, sets the age limit for engagement in gambling at 18 years and entrance into casinos at 20 years<sup>180</sup>. On gambling marketing, the Act states that a degree of moderation should be practiced, and marketing should not be directly aimed at underage children.

According to the Swedish Longitudinal Gambling Study, Swelogs, one of the largest longitudinal gambling studies in the world investigating the proportion of children involved in gambling<sup>181</sup>, minors engage in all forms of gambling despite the statutory laws that set the gambling

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<sup>176</sup>Per Binde, 'Gambling In Sweden: The Cultural And Socio-Political Context' (2013) 109 *Addiction*.

<sup>177</sup> Mikael Arvidsson, James Sjöstrand and Jesper Stage, 'The Economics Of The Swedish Online Gambling Market' (2016) 24 *Applied Economics Letters*.

<sup>178</sup> David Miers, 'Another U-Turn: Great Britain's Casino Questions And Other Gambling Issues' (2007) 11 *Gaming Law Review*.

<sup>179</sup> Förvaltningsrätten i Linköping, Unit 2, Decision No. 2042-14 (Apr. 11, 2014)

<sup>180</sup> Rina Gupta and Jeffrey L. Derevensky, 'Adolescents With Gambling Problems: From Research To Treatment' (2000) 16 *Journal of Gambling Studies*.

<sup>181</sup> June Buchanan and Lester W Johnson, 'Corporate Social Responsibility And The Gaming Industry: A Contradiction In Terms?' [2007] *ANZMAC* 2007.

age to be at a minimum of 18 years<sup>182</sup>. Gambling and its impact on minors are therefore seen as a growing public concern in Sweden.

Sweden sets high standards in protection of children from gambling related harm. Sweden has in place regulatory laws that protect children from exposure to gambling content likely to influence and encourage them to engage<sup>183</sup>. For example, the country has passed legislation to ban gaming advertising targeted at children, which includes all commercials aired before, during and after children television programs<sup>184</sup>.

The Swedish Gaming Authority, through the Gambling Act 2018 and Gambling Ordinance, enhance the protection of children through requirements of licenses for gambling offered through a licensing system<sup>185</sup>. The authority also requires operators to ensure that players are 18 years of age and thus must have function to verify age which aims at protecting the minors<sup>186</sup>. Unlike the United Kingdom, this can be easily achievable due to the use of bank identification via social security numbers. Of course, that this can also be circumvented but the likelihood is significantly lower.

The authority also regulates advertising and presentation of marketing materials by demanding that they reflect realistic possibilities and are presented in a moderate way and do not reach the vulnerable populations of minors<sup>187</sup>.

Swedish marketing matters are dealt with by two distinct institutions, the *Konsumentverket* (Swedish Consumer Agency) and the *Reklamombudsman*, which is a self-regulated advertising

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<sup>182</sup> Donald W. Black, 'The Challenge Of Conducting Gambling Research' (2016) 2 BJPpsych Open.

<sup>183</sup> Peter Jones, David Hillier and Daphne Comfort, 'Corporate Social Responsibility In The UK Gambling Industry' (2009) 9 Corporate Governance: The international journal of business in society.

<sup>184</sup> David Miers, 'Regulation And The Management Of Risk In Commercial Gambling In Great Britain' (2015) 15 International Gambling Studies.

<sup>185</sup> Wood, Robert T., and Robert J. Williams. "Internet gambling: Past, present and future." Elsevier, 2007.

<sup>186</sup> Mark Griffiths, 'Internet Gambling: Issues, Concerns, And Recommendations' (2003) 6 CyberPsychology & Behavior.

<sup>187</sup> Daria J. Kuss and Mark D. Griffiths, 'Online Gaming Addiction In Children And Adolescents: A Review Of Empirical Research' (2012) 1 Journal of Behavioral Addictions.

organization carrying its work based on the Advertising and Marketing Communication Practice from the International Chamber of Commerce.

The *Konsumentverket* is a governmental body and can impose financial and other sanctions towards companies in breach with marketing regulations whereas the *Reklamombudsman* cannot<sup>188</sup>.

Sweden, although new to the regulated markets, has showed that it has a low tolerance with companies that infringe their regulation<sup>189</sup>. The level of security for players to register and participate in gambling is satisfactory to avoid (to the maximum permitted in technology today) children from accessing online casinos. However, children could still access front pages of the website and play on demo versions.

### 5.3 Children Protection in Gambling in Malta

Malta is recognized as an important global jurisdiction associated with online gambling. Recently, the country has experienced a remarkable increase in gaming companies, including casinos and other service providers. As a result, the Malta Gaming Authority (MGA) was established to regulate the gaming industry<sup>190</sup>. It is the main regulatory body for all gaming activity in Malta and is preferred as a global remote gaming regulator.

The MGA's functions include enhancing player protection, ensuring fair gaming, separation of player funds and enhancement of operator accountability. In relation to gambling, the Maltese law and Malta Gaming Authority, regulation for amusement machines also known as restriction Regulations have been put in place<sup>191</sup>.

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<sup>188</sup> 'FAQ - Reklamombudsmannen.Org/Eng' (*Reklamombudsmannen.org*)

<<https://reklamombudsmannen.org/eng/faq>> accessed 20 March 2021.

<sup>189</sup> 'Bolag Som Bedriver Olaglig Spelverksamhet' (*Spelinspektionen.se*)

<<https://www.spelinspektionen.se/olaglig-spel/beslut-om-forbud/>> accessed 14 April 2021.

<sup>190</sup>David Miers, 'Implementing Great Britain's Gambling Act 2005: The Gambling Commission And The Casino Question' (2006) 10 *Gaming Law Review*.

<sup>191</sup> Robert Ladouceur and others, 'Pathological Gambling And Related Problems Among Adolescents' (1999) 8 *Journal of Child & Adolescent Substance Abuse*.

The regulations have no age limit for the use of such machines, which means that children are not prohibited from seeking out gambling halls and from using the amusement machines<sup>192</sup>. Children in Malta are therefore able to access and use machines such as “kiddie ride” machines, music boxes, and public soccer tables<sup>193</sup>, which are operated using money without offering any benefit except the opportunity for children to participate<sup>194</sup>.

Malta has signed international laws such as the convention on the Rights of the Child and other protocols<sup>195</sup>. However, failure to incorporate the treaties into the domestic law of the country has continued to prevent their application and thus children rights are not fully protected by the Maltese law<sup>196</sup>.

In gambling, Malta was the first country in the European Union to introduce online gambling<sup>197</sup>. Malta is therefore one of the largest gambling jurisdictions and has become a popular site where gambling sites seek licensing<sup>198</sup>.

Malta gaming licenses allow free advertisements and aims to create an environment where gaming operators feel safe and protected<sup>199</sup>. The Malta Gaming Authority, though mandated to protect minors and vulnerable persons, does not fully embrace and engage in this role and thus

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<sup>192</sup> Leon Y. Xiao, 'Which Implementations Of Loot Boxes Constitute Gambling? A UK Legal Perspective On The Potential Harms Of Random Reward Mechanisms' [2020] International Journal of Mental Health and Addiction.

<sup>193</sup> Robert Ladouceur and others, 'Is The SOGS An Accurate Measure Of Pathological Gambling Among Children, Adolescents And Adults?' (2000) 16 Journal of Gambling Studies.

<sup>194</sup> Martha C. Shaw and others, 'The Effect Of Pathological Gambling On Families, Marriages, And Children' (2007) 12 CNS Spectrums.

<sup>195</sup> Nerilee Hing and Jo McKellar, 'Challenges In Responsible Provision Of Gambling: Questions Of Efficacy, Effectiveness And Efficiency', 2004.

<sup>196</sup> James Banks, *Online Gambling And Crime: Causes, Controls And Controversies* (Routledge 2016).

<sup>197</sup> David Miers, 'From Constraint To Competition: 50 Years Of Change In British Gambling Policy' (2011) 15 Gaming Law Review and Economics.

<sup>198</sup> Gill Valentine. Literature review of children and young people's gambling. Birmingham, UK: Gambling Commission, 2008.

<sup>199</sup> Max W Abbott and Rachel A Volberg, *Gambling And Problem Gambling In The Community* (Dept of Internal Affairs 1999).

leaves children exposed to gambling related harm through the internet, gambling advertisements and online gambling websites<sup>200</sup>.

The establishment of the Commercial Communications Committee, for example, came 18 years later than the online gambling regulation.

Moreover, Malta does not have restrictions on the availability of free to play games before a player's age is verified, which allows children to play demo version of casino games.

Overall, Malta has taken a pro-operator stance with regards to gambling regulations, sacrificing the wellbeing of children in order to capitalize form foreign and local revenue of a so-called open market.

#### **5.4 Similarities and Differences between the Regulations**

All countries analyzed require the sign of “no underage gambling” to be displayed on and during commercial advertisements and related commercial communication<sup>201</sup>. The countries also engage in specific educational activities on gambling and protection of minors, which are funded by the national authority and regulatory bodies<sup>202</sup>.

Requirements on operators to engage in age verification of customers to prevent minors from gambling<sup>203</sup> and display links to parental controls and other tools are also shared between the countries.

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<sup>200</sup>Betsi Beem and John Mikler, 'National Regulations For A Borderless Industry: US Versus UK Approaches To Online Gambling' (2011) 30 Policy and Society.

<sup>201</sup> Philip Veerman, 'The Ageing Of The UN Convention On The Rights Of The Child' (2010) 18 The International Journal of Children's Rights.

<sup>202</sup> Carmen Messerlian, Andrea Byrne, & Jeffrey Derevensky, (2004). Gambling, youth and the internet: should we be concerned?. The Canadian Child and Adolescent Psychiatry Review, 13(1), 3.

<sup>203</sup> Mark Griffiths and Andrew Barnes, 'Internet Gambling: An Online Empirical Study Among Student Gamblers' (2007) 6 International Journal of Mental Health and Addiction.

The countries have all adopted a zoning mechanism to minimize the exposure of gambling marketing to minors<sup>204</sup> through the selection of location and media where gambling advertisements should not appear<sup>205</sup>, each to their own degree of implementation and success. Additionally, they have instituted specific limitation on the content of advertisements that prevents the advertisements from being particularly attractive to minors<sup>206</sup>.

The UK, Malta, and Sweden promote regular education and public awareness and have raised campaigns aimed at increasing the knowledge of consumers especially the vulnerable populations and groups such as minors on the risk associated with online gambling<sup>207</sup>.

The countries have similar recommendations that permit online gambling<sup>208</sup> but impose a minimum age below which individuals are not lawfully allowed to engage in gambling activities<sup>209</sup>.

The prevalent age of gambling in Sweden and Malta is 18 years<sup>210</sup>. In the UK, the national lottery tickets and paper scratch cards all available to anyone over the age of 16 and the age of a minor or child<sup>211</sup> is defined at 14, which offers more opportunities for children and adolescents to engage in gambling activities compared to Sweden and Malta.

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<sup>204</sup> Genevieve Gordon. 'Sports Betting: Law And Policy' [2012] ASSER International Sports Law Series.

<sup>205</sup> N. Critchlow and others, 'Visibility Of Age Restriction Warnings, Harm Reduction Messages And Terms And Conditions: A Content Analysis Of Paid-For Gambling Advertising In The United Kingdom' (2020) 184 *Public Health*.

<sup>206</sup> Liisa M. Thomas and Melissa S. Dill, 'Legal Considerations For Online Advertising To Children' (2002) 3 *Young Consumers*.

<sup>207</sup> Izabela Ramona Todirita and Viorel Lupu, 'Gambling Prevention Program Among Children' (2012) 29 *Journal of Gambling Studies*.

<sup>208</sup> Jeffrey L. Derevensky, Rina Gupta and Ken Winters, 'Prevalence Rates Of Youth Gambling Problems: Are The Current Rates Inflated?' (2003) 19 *Journal of Gambling Studies*.

<sup>209</sup> Udovicic, Ante Z. "Special Report: Sports and Gambling a Good Mix? I Wouldn't Bet on It." *Marquette Sports Law Review* 8, no. 2 (1998): 401

<sup>210</sup> Robert Ladouceur and others, 'Is The SOGS An Accurate Measure Of Pathological Gambling Among Children, Adolescents And Adults?' (2000) 16 *Journal of Gambling Studies*.

<sup>211</sup> Buil, Pilar, JOSÉ SOLÉ MORATILLA, and Pablo Garcia Ruiz. "Online Gambling Advertising Regulations in Spain. A Study on the Protection of Minors." *Adicciones* 27, no. 3 (2015).



The regulatory bodies ‘Responsible Gaming Foundation’ in Malta and ‘Gamble Aware’ in the UK fund various educational activities that inform minors on the risks of gambling<sup>212</sup>.

The programs mobilize and empower the youth to address gambling issues and help in the reduction of addictive behaviors<sup>213</sup>. On the other hand, in Sweden, the Swedish Gaming Authority does not fund any educational initiatives<sup>214</sup>. A recent introduction in Sweden is the free of charge information package titled ‘Let’s Talk about Gambling’<sup>215</sup> which is designed for secondary schools and contains information about generic risks and chances in gambling.

In Sweden, limited initiatives have been introduced by their national authority, and majority of the educational and learning activities are organized by charities and social organizations<sup>216</sup>. The activities are also mainly local and thus lack a widespread reach<sup>217</sup>. The activities that specifically focus on minors are minimal and fail to outline the unique risks of online gambling<sup>218</sup>.

Although Sweden has a weaker awareness program, they have stronger technical requirements that prevents children from gambling on websites.

There are good initiatives and requirements in each of those jurisdictions, however, none of them are perfect and could introduce each other’s requirements for a full rounded regulation towards protecting children.

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<sup>212</sup>Carwyn Jones, Robyn Pinder and Gemma Robinson, 'Gambling Sponsorship And Advertising In British Football: A Critical Account' (2019) 14 Sport, Ethics and Philosophy.

<sup>213</sup> Yanica Sant "Regulating for socially responsible advertising within the gambling industry." Master's thesis, University of Malta, 2016.

<sup>214</sup> Robert T. Wood, and Robert J. Williams. Internet gambling: Prevalence, patterns, problems, and policy options. Final Report prepared for the Ontario Problem Gambling Research Centre; Guelph, Ontario, 2009.

<sup>215</sup> Jennifer Borrell, 'The ‘Public Accountability Approach’: Suggestions For A Framework To Characterise, Compare, Inform And Evaluate Gambling Regulation' (2007) 6 International Journal of Mental Health and Addiction.

<sup>216</sup> Ken C. Winters and others, 'A Prospective Study Of Youth Gambling Behaviors.' (2002) 16 Psychology of Addictive Behaviors.

<sup>217</sup> Williams, Robert J., Beverly L. West, and Robert I. Simpson. "Prevention of problem gambling: A comprehensive review of the evidence and identified best practices." (2012).

<sup>218</sup> Cheng, T. J. "Introduction to sociology of gambling." (2009).

A better alternative would count on having a strong verification mechanism that would prevent children from registering and playing on online casinos (such as in Sweden), banning all adverts before, during and after children's programs on Tv (as it is in Sweden) as well as the use of cartoonish images or animated animals (as it is in the UK). Attention should also be paid to the relationship between gambling and sports, therefore a limitation on sponsorship by online casinos to sports people or teams should exist as well (as it is partially in the UK).

## 6 Deterrent examples of gambling marketing materials

Although the above-mentioned countries have their own guidelines and interpretations of how to manage and safeguard children's rights regarding gambling, it is fair for an operator to question the practical applicability of such regulatory measures. Even more so, in the event of an operator holding licenses in more than one jurisdiction, as is often the case.

In light of that, the best way to understand the practicalities is to explore beyond the basic guidelines and dive into the actual issued and published decisions, as they can unarguably expose the goals attributed to the principles by each State.

### 6.1 The United Kingdom's Advertising Standards Authority's decisions

The Advertising Standards Authority (ASA) have upheld citizen's complaints against several licensed gaming operators in the United Kingdom. Among the complains of unfair terms, misleading advertisement, and other issues there is a plethora of cases concerning advertisements that were considered appealing to minors.

One website featured "cartoon graphics of a pirate with sunglasses and a large gem-studded beard, and of a goat with gold teeth and a chain around its neck. Below this were descriptions of game features, such as "Be a Gangsta' Pirate Create and customise your own unique character. You need dat style to grab dat booty".<sup>219</sup>

Another operator made use of the image of Optimus Prime from the Transformers franchise to promote their online casino. On the advert, Optimus Prime is seen holding up a sign stating "'£30,000 WILL BE WON THIS WEEK ... TRANSFORMERS ... BATTLE FOR CYBER-TRON ... PLAY NOW FOR YOUR CHANCE TO WIN!'"<sup>220</sup>

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<sup>219</sup> 'ASA Ruling On Geo24 UK Ltd T/A Booty Pirates' (Advertisement Standard Agency 2015)

<<https://www.asa.org.uk/rulings/geo24-uk-ltd-a15-311328.html>> accessed 3 February 2021.

<sup>220</sup> 'ASA Adjudication on Metro Play Ltd t/a metroplay.co.uk' (Advertisement Standard Agency 2014)

<<https://www.asa.org.uk/rulings/metro-play-ltd-a13-246212.html>> accessed 3 February 2021.

On the same line, another operator displayed on their website a “game (...) in a comic-book style format. It featured images of Spiderman and text stated "THE AMAZING SPIDER-MAN"<sup>221</sup>.

All of the aforementioned cases were upheld based on the provisions 16.1 and 16.3.12 of the UK Code of Non-broadcast Advertising and Direct Promotional Marketing (CAP Code). Section 16 of the CAP Code is dedicated exclusively to Gambling. Although segments regarding children are addressed on section 5 of the CAP Code, provisions 16.1 and 16.3.12 are specifically designed for protecting children from exposure of gambling advertisement.

Provision 16.1 states that “Marketing communications for gambling must be socially responsible, with particular regard to the need to protect children, young persons and other vulnerable persons from being harmed or exploited.”, and 16.3.12 “be likely to be of particular appeal to children or young persons, especially by reflecting or being associated with youth culture”.

Moreover, the ASA made news in 2019 when they upheld a complaint that was not connected to imagery. The ASA analyzed a complaint<sup>222</sup> related to two paid-for Google ads when inserting the term “Jack and the Beanstalk”. Even though no image of the slot game appeared on the search, just the fact that an advert for casino showed up associated with the well-known fairy tale was enough for it to be considered aimed at children.

Notwithstanding the somewhat strict approach by the ASA, they do not include financial penalties for CAP violations<sup>223</sup>.

## **6.2 Sweden’s *Reklamombudsman* and *Konsumentverket*’s decisions**

Sweden has only recently opened its market to private casino operators, therefore there are a lack of formal decisions due to the time elapsed between its new regulation (2019) and today

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<sup>221</sup> 'ASA Adjudication on Cassava Enterprises (Gibraltar) Ltd t/a 888.com' (Advertisement Standard Agency 2013) <<https://www.asa.org.uk/rulings/cassava-enterprises-gibraltar-ltd-a13-227765.html>> accessed 3 February 2021.

<sup>222</sup> 'ASA Ruling on 32Red Ltd' (Advertisement Standard Agency 2019) <<https://www.asa.org.uk/rulings/32red-ltd-A19-1019068.html>> accessed 3 February 2021.

<sup>223</sup> Advertising Practice, 'Sanctions' (Asa.org.uk) <<https://www.asa.org.uk/codes-and-rulings/sanctions.html>> accessed 18 March 2021.

(2021). However, even in such short amount of time, there have been complaints against gaming operators and, amongst them, a few cases concerning children.

This was the case of an advert that featured *“Affischerna visar en tecknad manlig figur mot en blå bakgrund. Han är klädd i en grön, vit och svart dräkt med ett par gröna vingar. På bröstet har dräkten en grå bröstplåt. På den syns tre fyrkantiga lampor, och fyra mindre röda lampor, i färgerna rött, gult och grönt. På bröstet har figuren även en svart cirkel som sitter centrerat på den grå plåten. I cirkeln syns ett versalt ”H” i grön färg. På axlarna är dräkten randig i grönt och svart. Figuren har en svart hjälm med ett grönt parti runt ögonen. Bakom figuren strålar ränder i ljus- och mörkblått.”*<sup>224,225</sup>

The Opinion Board debated whether this advert could be considered specifically aimed towards children or not, and after deliberation they have unanimously decided that it, indeed, infringed the provisions of the International Chamber of Commerce rules, which states that “All marketing communication should be legal, decent, honest and truthful.”<sup>226</sup>

Their reasoning was explained by the rapporteur Gunilla Welander: *“Opinionsnämnden konstaterar att reklamen har visats i Stockholms tunnelbana, som är en miljö där både barn och unga vuxna vistas. Frågan är om annonsen kan anses särskilt riktad till barn eller unga som inte har fyllt 18 år. Nämnden finner att bilden som visar en tecknad person i vad som ser ut som en superhjälteklädsel med vingar på ryggen, texten i tecknad stil som påminner om text ur en serietidning och utformningen av annonsörens logotyp sammantaget gör att annonsen har*

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<sup>224</sup> Unofficial translation: The posters show a cartoon male figure against a blue background. He is dressed in a green, white and black suit with a pair of green wings. On the chest, the suit has a gray breast plate. It shows three square lamps, and four smaller red lamps, in the colors red, yellow and green. On the chest, the figure also has a black circle centered on the gray plate. In the circle you can see a capital "H" in green color. On the shoulders, the suit is striped in green and black. The figure has a black helmet with a green section around the eyes. Behind the figure, stripes radiate in light and dark blue.

<sup>225</sup> Examples: 'Föreläggande L&L Europe | Konsumentverket' (Konsumentverket.se, 2019) <<https://www.konsumentverket.se/aktuellt/mal-domar-och-forelagganden/informations--och-forbudsforelagganden/forelagganden-2019/forelaggande-ll-europe/>> accessed 18 March 2021.

'Föreläggande Mr Green | Konsumentverket' (Konsumentverket.se, 2019) <<https://www.konsumentverket.se/aktuellt/mal-domar-och-forelagganden/informations--och-forbudsforelagganden/forelagganden-2019/forelaggande-mr-green/>> accessed 18 March 2021.

<sup>226</sup> International Chamber of Commerce, 'ICC Advertising And Marketing Communications Code' (International Chamber of Commerce (ICC) 2018).

*en sådan utformning att det kan antas att barn eller ungdomar lägger märke till och kan påverkas av den. Nämnden finner därför att annonsen strider mot spellagens krav på att marknadsföring inte får särskilt rikta sig till barn eller unga som inte har fyllt 18 år. Att det i reklamheten finns information om att man måste vara över 18 år ändrar inte bedömningen. Reklamerna strider därmed mot kravet på att reklam ska vara laglig och strider därmed mot artikel 1 första stycket i ICC:s regler.”<sup>227228</sup>*

Differently than the ASA, the *Konsumentverket* has imposed heavy fines on gambling operators<sup>229</sup>, however, none of those cases were related to advertisement to children.

### **6.3 Malta’s Communications Committee’s decision**

Despite being the first one out of the three countries selected for this study, Malta has only focused its attention on marketing compliance during 2019, when it created the Commercial Communications Committee<sup>230</sup> (CCC). Additionally, according to the data available for research, The CCC has only dealt with 89 cases to date and only one concerning children.

The lack of information accessible makes it virtually impossible to assess the details of the issues and its possible repercussions.

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<sup>227</sup> Unofficial translation: The Opinion Board notes that the advertisements have been shown in the Stockholm metro, which is an environment where both children and young adults stay. The question is whether the ad can be considered specifically aimed at children or young people under the age of 18. The board finds that the image showing a cartoon character in what looks like a superhero costume with wings on its back, the cartoon-style text reminiscent of text from a comic book, and the design of the advertiser's logo combined make the ad such a design that it can be assumed that children or young people notice and may be affected by it. The Board therefore finds that the advertisement is contrary to the Gambling Act's requirement that marketing may not be specifically aimed at children or young people under the age of 18. The fact that the advertising unit contains information that you must be over 18 years of age does not change the assessment. Advertising is therefore contrary to the requirement that advertising be legal and is therefore contrary to the first paragraph of Article 1 of the ICC rules.

<sup>228</sup> 'Hajper - Reklamombudsmannen.Org' (*Reklamombudsmannen.org*) <<https://reklamombudsmannen.org/uttalande/hajper>> accessed 18 March 2021.

<sup>229</sup> See footnote 225

<sup>230</sup> Christopher Formosa, 'MGA Sets Up A Commercial Communications Committee And Publishes Guidelines - Malta Gaming Authority' (*Malta Gaming Authority*, 2019) <<https://www.mga.org.mt/mga-sets-up-a-commercial-communications-committee-and-publishes-guidelines/>> accessed 18 March 2021.

“Case Number 0040 - Promotional Article on a Website”<sup>231</sup>, for example, only states that “The commercial communication featured popular characters and personalities, which were deemed to be predominantly attractive to minors. (...) The Committee deemed the licensee to be in breach of Regulation 5<sup>232</sup> and Regulation 20(d)<sup>233</sup> of the Gaming Commercial Communication Regulations (S.L 583.09)”.

#### **6.4 Comparison of the Advertising Authorities actions**

There is a lack of resources available to draw a conclusion on which authority/agency does a better supervision work. Although the ASA has a bigger number of complaints, it is not plausible to conclude that they are more strict or tougher.

Malta and Sweden only recently developed their online gambling market advertisement guidelines (even though Malta had a licensing system since 2001).

From the data analyzed in this study, only one country (Sweden) has a body that can impose financial penalties for their failure to comply with marketing guidelines alone. Moreover, it illustrates how Malta is purposely falling behind in the industry it helped create. Not only there is limited data available on advertisements, Malta has yet to make a statement on contemporary features attributed to gaming that could be considered gambling, such as in-game/application purchases of loot boxes, which will be dealt with in more detail in the following chapter.

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<sup>231</sup> 'Commercial Communications Committee - Malta Gaming Authority' (Malta Gaming Authority) <[https://www.mga.org.mt/cc/#w1\\_50](https://www.mga.org.mt/cc/#w1_50)> accessed 21 March 2021

<sup>232</sup> 5. Commercial communications must be socially responsible, with particular regard to the need to protect minors and other vulnerable persons from harm or exploitation

<sup>233</sup> 20. Without prejudice to the provisions of regulation 6, commercial communications must not: (a) be directed towards minors or vulnerable persons; (b) encourage or target minors or vulnerable persons to play a game; (c) feature minors; (d) appeal to minors or vulnerable persons in any way; (e) exploit the susceptibilities, aspirations, credibility, inexperience or lack of knowledge of minors or vulnerable persons, or present gaming as a sign of maturity or move to adulthood.

## 8 Contemporary framework of gam(bl)ing - Loot boxes and EA Sports

Today, in-game purchases are no novelty, videogame players are used to “traditional” in-game or in-app purchases, meaning, games would offer the possibility for the player to purchase defined special items for a set price. Those items were concrete, and the player knew exactly what they were paying for.

The first big game studio to use the feature was Bethesda in 2006 who introduced a “two pieces of horse armor” available for in-game purchase<sup>234</sup>. However, the reaction from the players was not good. Despite the first wave of negative feedback, in-game purchase only increased from there.

Back in 2006, there was no reason for players to sell those items to other players as they were available directly for purchase. Currently, the way games or apps offer items are based on chance and varying odds which created a scenario where children are prematurely subject to the concept of commercialization, resulting in frustration and other emotions that they are not equipped to deal with.

This new way of selling items in games or apps is usually called loot boxes or prize crates. These are virtual boxes in video games (or apps) which contain randomized virtual prizes that can be redeemed<sup>235</sup>. The prize can be a simple customization for the gamer’s avatar or piece of equipment that will assist on the player’s mission in the game.

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<sup>234</sup> J. Ransom-Wiley, 'Bethesda Responds To Oblivion Backlash' (*Engadget.com*, 2006)

<<https://www.engadget.com/2006-04-04-bethesda-responds-to-oblivion-backlash.html>> accessed 20 March 2021.

<sup>235</sup> Chanel J. Larche and others, 'Rare Loot Box Rewards Trigger Larger Arousal And Reward Responses, And Greater Urge To Open More Loot Boxes' (2019) 37 *Journal of Gambling Studies*.



Those boxes, of course, can be either purchased or received as a bonus/gift that can depend on the purchase of a key to be opened. When these were first introduced, the debate on the categorization of them as gambling was faint, because in that situation - unlike actual gambling - players could not receive the money they spent back out of the virtual set up<sup>236</sup>.

However, soon a “black market” appeared where players could exchange their prizes with other players in return for cash, making the line between game and gambling less blurry.

The United Kingdom Gambling Commission has been voicing its concern on loot boxes since 2017. Their argument was that from the moment the virtual prizes can be exchanged for money in real life they become the pure and simple definition of gambling and therefore should be subject to the same obligations as licensed gambling operators.<sup>237</sup>

In 2019, the Sveriges Riskdag (the highest decision-making assembly in Sweden) has submitted a question<sup>238</sup> to Prime Minister Ardalan Shekarabi on the Lootbox issue. The Prime Minister then requested that the Konsumentverket (consumer agency) Sweden’s<sup>239</sup> consumer agency issued an opinion that due to the lack of research and evidence on the topic they could not recommend further measures on the case. This goes in a different direction than the understanding adopted by the Swedish Gambling Agency<sup>240</sup> that states “Om du i ett datorspel vinner något med slumpens hjälp (exempelvis i en så kallad lootlåda) som kan köpas eller säljas för

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<sup>236</sup> Leon Y. Xiao and Laura L. Henderson, 'Towards An Ethical Game Design Solution To Loot Boxes: A Commentary On King And Delfabbro' (2019) 19 International Journal of Mental Health and Addiction.

<sup>237</sup> United Kingdom Gambling Commission, 'Virtual Currencies, Esports And Social Casino Gaming – Position Paper' (United Kingdom Gambling Commission 2017)

<<https://www.gamblingcommission.gov.uk/PDF/Virtual-currencies-esports-and-social-casino-gaming.pdf>> accessed 20 March 2021.

<sup>238</sup> 'Lootlådor Svar På Skriftlig Fråga 2018/19:931 Statsrådet Ardalan Shekarabi (S) - Riksdagen' (*Riksdagen.se*, 2019) <[https://www.riksdagen.se/sv/dokument-lagar/dokument/svar-pa-skriftlig-fraga/lootlador\\_H612931](https://www.riksdagen.se/sv/dokument-lagar/dokument/svar-pa-skriftlig-fraga/lootlador_H612931)> accessed 20 March 2021.

<sup>239</sup> Konsumentverket, 'Kartläggning Av Konsumentskyddet Vid Lotteri- Eller Kasinoliknande Inslag I Datorspel (Fi2019/01630/KO)' (Konsumentverket 2019)

<<https://www.konsumentverket.se/contentassets/83509d8dffff48559d44de6546ecc362/kartlaggning-av-konsumentskyddet-vid-loteri--eller-kasinoliknande-inslag-i-datorspel-fi-2019-01630-ko.pdf>> accessed 20 March 2021.

<sup>240</sup> 'Lotterier, Frågor Och Svar' (*Spelinspektionen.se*) <<https://www.spelinspektionen.se/fragor--svar/lotterier/>> accessed 20 March 2021.

pengar/pengars värde utanför dataspelets virtuella miljö kan det ska betraktas som spel om pengar<sup>241</sup>”.

Even though not part of the comparison dealt with on this study, the Dutch Gaming Authority (KSA) conducted a study<sup>242</sup> on loot boxes to assess if those would fall under the definition of gambling as per their gaming act.

It is important to point out a few of the conclusions reached by said study: loot boxes with a higher score have integral elements that are similar to slot machines; opening loot boxes can encourage vulnerable groups such as young people to play games of chance (this is especially concerning since the risk for gambling addiction in this group is higher than in adults); when the prize of a loot box can be transferred it should be considered to fall under the Dutch Betting and Gaming Act.

There are many similarities between loot boxes and gambling that would grant it the status similar of slot machines.

As an example, loot boxes can be bought using real money or the in-game currency created by the game. This is equivalent to a casino requiring players to use chips. Leon Y. Xiao and Laura L. Henderson concludes: “(...) players can be logically expected to make less rational purchasing decisions when using in-game currency and are therefore more likely to overspend on loot boxes. It is relevant to note that casinos, rather than asking patrons to spend real money, deceptively require the use of exchanged chips as the ‘in-game currency’ within their establishment (...) Lapuz and Griffiths (2010) demonstrated that players ‘gambled significantly more with chips than with real cash’ (p.34).<sup>243</sup>”

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<sup>241</sup> Unofficial translation: “If in a computer game you win something with the help of chance (for example in a so-called loot box) that can be bought or sold for money / money value outside the computer game's virtual environment, it can be considered a game for money.”

<sup>242</sup> 'Loot Boxes' (*Kansspelautoriteit*, 2018) <<https://kansspelautoriteit.nl/english/loot-boxes/>> accessed 20 March 2021

<sup>243</sup> Leon Y. Xiao and Laura L. Henderson, 'Towards An Ethical Game Design Solution To Loot Boxes: A Commentary On King And Delfabbro' (2019) 19 *International Journal of Mental Health and Addiction*.

Contrary to online slot games, loot boxes are not required to provide the players with the probability of being awarded particular items. In practice this means that the relationship between the game studio and the player is not transparent and therefore the decision is not an informed one. Online slot games are required by the UKGC, MGA and SGA to inform the Return to Player (RTP) to players before they choose to engage in a game, this means that even though the games are still by nature a game of chance, players can at least make conscious decisions based on probability.

The most famous case concerning loot boxes involves game studio Electronic Arts (EA), publisher of the FIFA football video game franchise and the Netherlands<sup>244</sup>. Based on the 2018 investigation by the Dutch gaming authority, the KSA imposed a fine of up to five million euros for violating its gambling act by offering loot boxes to Dutch nationals<sup>245</sup>. However, the fine does not seem proportional to the revenue made by EA in that year. It is reported that EA generated more than one billion dollars via its platform, revealing the level of profitability of its business model<sup>246</sup>.

However, and quite surprisingly, a report by the European Parliament Committee on the Internal Market and Consumer Protection<sup>247</sup> published in July 2020 recognizes the problems and “design failures” of the loot boxes but still does not category them as gambling.

The report exposes the opinion that although harmful and possibly leading to a “irresistible urge to play” loot boxes fall into the consumer law scope, distancing it from being considered

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<sup>244</sup> 'Imposition Of An Order Subject To A Penalty On Electronic Arts For FIFA Video Game' (*Kansspelautoriteit*, 2020) <<https://kansspelautoriteit.nl/nieuws/2020/oktober/imposition-an-order/>> accessed 20 March 2021.

<sup>245</sup> 'ECLI:NL:RBDHA:2020:10428, Rechtbank Den Haag, AWB - 20 \_ 3038' (*Uitspraken.rechtspraak.nl*, 2020) <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2020:10428&showbutton=true&keyword=gokken>> accessed 20 March 2021.

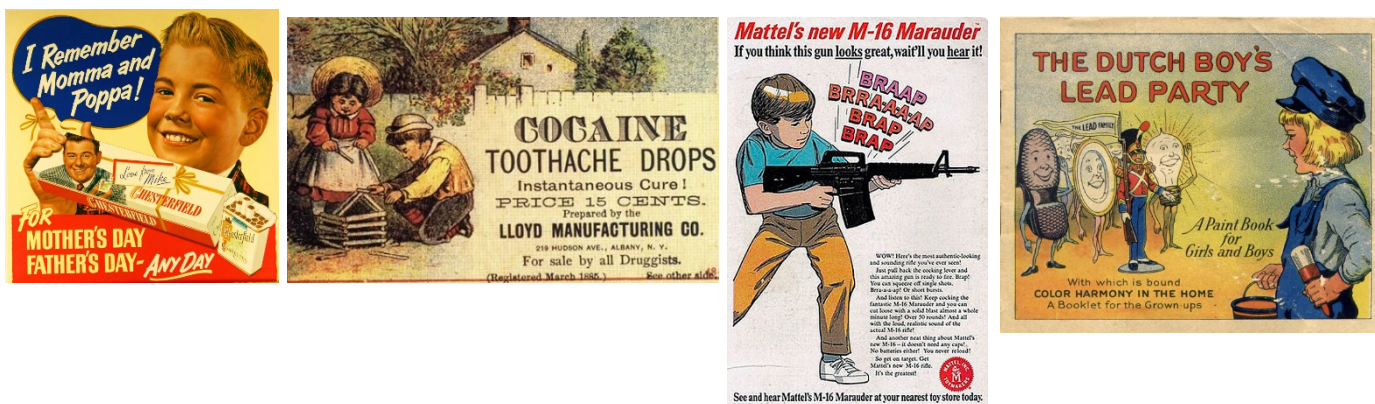
<sup>246</sup> 'The Mind-Blowing Figures Behind EA Sports' Net Revenue From Ultimate Team' (*Sportbible.com*, 2020) <<https://www.sportbible.com/football/gaming-news-the-figures-behind-ea-sports-net-revenue-from-ultimate-team-20200521>> accessed 20 March 2021.

<sup>247</sup> Dr. Annette Cerulli-Harms and others, 'Loot Boxes In Online Games And Their Effect On Consumers, In Particular Young Consumers' (European Union 2020) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL\\_STU\(2020\)652727\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU(2020)652727_EN.pdf)> accessed 20 March 2021.

gambling for children. In reality, that is exactly the reason the Committee failed to categorize it as gambling, because it was clearly aimed at children<sup>248</sup>.

The idea that something cannot be considered gambling only because it is aimed at children seems to challenge reason and can only exist in a reality in where there is no learning from past experiences, which goes entirely against the definition of jurisprudence, for example.

During the 1950s and 1960s cigarettes, toy guns, lead paint and cocaine were products made for children's consumption<sup>249</sup>. Nonetheless, nowadays they are all considered against the best interest of children, not to say, incredibly dangerous.



<sup>248</sup> Ibid

<sup>249</sup> Chesterfield Cigarettes, 1950; Lloyd Manufacturing CO Cocaine Drops, 1885; Mattel M-16 Marauder, 1967; Dutch Boy's Lead Paint, 1923.

## 9 COVID-19 Impact on Marketing

Regulated markets quickly took action to mitigate the possible ripple effects of the novel corona virus and quarantines on gambling behavior.

The United Kingdom Gambling Commission increased the requirements on player protection imposing, among other things, that the Operators conduct affordability assessments, monitor patterns of play, and spend to pick up on any changes in behavior during lockdown<sup>250</sup>.

Under 18s, pre-teens and even children are now spending the majority of their time at home on computers for online classes and activities, with more exposure to the online environment than ever<sup>251</sup>. Parents are also full time at home, which might increase the exposure of gambling to kids. Future research will tell what effects, if any, this exposure had on the relationship between children and gambling.

Similarly, the gambling authorities in Sweden<sup>252</sup> and Malta<sup>253</sup> have imposed a few restrictions (less advertisement, deposit limits), but also did not tackle the possible extra exposure of gambling on children.

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<sup>250</sup> 'Gambling Commission Instructs Tighter Measures To Protect Consumers During Lockdown' (*Gamblingcommission.gov.uk*, 2020) <<https://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2020/Gambling-Commission-instructs-tighter-measures-to-protect-consumers-during-lockdown.aspx>> accessed 21 March 2021.

<sup>251</sup> Anna Bryson, 'In Age Of Coronavirus, Could Social Media Be Kids' Saving Grace?' (*Sarasota Herald-Tribune*, 2020) <<https://eu.usatoday.com/story/news/education/2020/04/12/coronavirus-kids-cope-pandemic-snapchat-tiktok-instagram/5126302002/>> accessed 7 April 2021.

<sup>252</sup> 'Government Introduces Temporary Responsible Gambling Measures' (*Regeringskansliet*, 2020) <<https://www.government.se/articles/2020/06/government-introduces-temporary-responsible-gambling-measures/>> accessed 21 March 2021.

<sup>253</sup> Malta Authority, 'MGA Issues Notice On Socially Responsible Commercial Communications With Respect To COVID-19 - Malta Gaming Authority' (*Malta Gaming Authority*, 2020) <<https://www.mga.org.mt/mga-issues-notice-on-socially-responsible-commercial-communications-with-respect-to-covid-19/>> accessed 21 March 2021.



## 10 Conclusion and Recommendations

Society and technology have evolved past the consumption of goods and service in the typical brick-and-mortar business model. Together with that shift, gambling operators have also migrated their business to internet-based platforms.

There is enough evidence that children do not possess the maturity to understand what gambling is and how it can affect their lives<sup>254</sup>. Children also do not have the skills to determine the intentions behind and advertisement, especially concerning gambling<sup>255</sup>. Early exposure to such scenario can be linked to a higher probability of problem gambling in their adult lives<sup>256</sup>.

Studies show that in many countries, the line between gambling and video games is blurred which calls for protection of children from gambling related harm<sup>257</sup> and is in line with current regulatory guidance. Society as a whole has a duty to address the raised concerns on the gaming industry practices and the adverse impacts that their action have on children<sup>258</sup>.

The many risks associated with children exposure to gambling and the evolution of gaming such as bullying, cybercrime, online insecurity<sup>259</sup>, inequality, aggressiveness and unpleasant behaviors adversely affect socialization, growth and development in children<sup>260</sup> and increases the risk of addiction to gambling, not only later in life but at every age stage after exposure.

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<sup>254</sup> Digital Advisory Panel, 'Advice On The Impact Of Online Platforms On Gambling-Related Harm' (United Kingdom Gambling Commission 2019) <<https://www.gamblingcommission.gov.uk/PDF/Digital-Advisory-Panel-Advice-on-the-Impact-of-online-platforms-on-gambling-related-harm.pdf>> accessed 15 March 2021.

<sup>255</sup> Gary Cross, 'Valves Of Desire: A Historian's Perspective On Parents, Children, And Marketing' (2002) 29 *Journal of Consumer Research*.

<sup>256</sup> Sally Monaghan, Jeffrey Derevensky and Alyssa Sklar, 'Impact Of Gambling Advertisements And Marketing On Children And Adolescents: Policy Recommendations To Minimise Harm' [2008] *Journal of Gambling Issues*.

<sup>257</sup> Donald W. Black, 'The Challenge Of Conducting Gambling Research' (2016) 2 *BJPsych Open*.

<sup>258</sup> Laurie Dickson, Jeffrey L. Derevensky And Rina Gupta, 'Youth Gambling Problems: Examining Risk And Protective Factors' (2008) 8 *International Gambling Studies*.

<sup>259</sup> Eadington, W. "Trends in gambling and responsible gaming in the United States and elsewhere." (2003).

<sup>260</sup> L. Dyal, S. Tse and A. Kingi, 'Cultural Icons And Marketing Of Gambling' (2008) 7 *International Journal of Mental Health and Addiction*.

There is a need for governments to engage in appropriate content management, setting up educational activities to equip children with digital resilience for online gambling<sup>261</sup>. There is also a need for scrutiny of gambling acts to foster a better definition of gambling and enhancement of laws that protect minors and ensure that they reflect the reality of children experiences of spending money within games, which will increase the scrutiny of gaming practices and their impact on children<sup>262</sup>.

However, the offering of gambling services online is not harmonized across the Member States, which results in different levels of protection on children, especially concerning the promotion of the services.

The issue of harmonization of gambling legislation has been debated against other interests at stake, such as tax law and unfair commercial practices. However, it has not yet been considered based on the best interest of a child, which is a core value of the European Union.

Until the harmonization of online gambling law is implemented in the European Union there will still be an imbalance in the protection of children depending solely on their nationality/residency. This work, for example, limited the analysis to the current legislations of the jurisdictions of Malta, Sweden and the United Kingdom where the difference in gambling regulation guidelines clearly has no mature harmonization, especially, concerning the provisions regarding marketing and the protection of children.

The lack of consistency in the internal market leads the author to suggest the following solution: Marketing regulations concerning online gambling services should be harmonized via establishing minimum requirements to be met across the internal market, which in the EU would be achieved through a Directive<sup>263</sup>.

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<sup>261</sup> Hannah Pitt and others, 'Factors That Influence Children'S Gambling Attitudes And Consumption Intentions: Lessons For Gambling Harm Prevention Research, Policies And Advocacy Strategies' (2017) 14 Harm Reduction Journal.

<sup>262</sup> Sue Fisher, 'Governmental Response To Juvenile Fruit Machine Gambling In The U.K: Where Do We Go From Here?' (1991) 7 Journal of Gambling Studies.

<sup>263</sup> 'European Union Directives' (*Eur-lex.europa.eu*) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=URISERV:114527>> accessed 6 April 2021.



From the examples analyzed, some aspects of the United Kingdom regulation should be used and improved as well as aspects of the Swedish regulation.

The United Kingdom has an interesting approach concerning not allowing free to play (demo versions) of games before an Operator can validate the player's age as well as not permitting games with cartoonish features to be displayed in a pre-login area.

However, whereas the first requirement can be easily met by adjusting settings in the game, the latter is broader and can lead to interpretation. The solution then might be to have game providers, which are also subject to the licensing system, be mandated to not rely on cartoonish thumbnails for their games and submit thumbnails when getting their new releases certified with the Authority.

Features of the CAP Code could also be used as a standard considering it prohibits the use of children in adverts for gambling<sup>264</sup> and celebrities/sportspeople who are or appear younger than 25 years-old<sup>265</sup>.

Sweden's use of BankID to authenticate player's information in order to make use of online gambling could be a secure approach on making sure only adults are using online gambling websites.

Unfortunately, this Author did not find any particular feature of the Maltese legislation to sufficiently prevent minors from being exposed to gambling. Therefore, Malta Gaming Authority would benefit from implementing basic provisions to bring them in line with its fellow licensing authorities related to the best interests of children.

For the Member States, the possibility of having minimum requirements set out, which would be possible through a Minimum-Harmonization Directive<sup>266</sup>, allows for them to implement the requirements and build upon them however they see fit without possibly causing harm to their

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<sup>264</sup> 'Betting And Gaming: Featuring Under 25'S' (*Asa.org.uk*) <<https://www.asa.org.uk/advice-online/betting-and-gaming-featuring-under-25s.html#no>> accessed 25 March 2021.

<sup>265</sup> Ibid.

<sup>266</sup> 'European Union Directives' (*Eur-lex.europa.eu*) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=URISERV:114527>> accessed 6 April 2021.

competitiveness within the EU. This type of Directive would set the minimum standards not limiting Member State's autonomy, which could achieve both respect for the rule of law and promote new business.

Needless to say, Member States, especially the ones with universal healthcare, would also benefit in the long term by possibly having less cases of problem gamblers resulted from children being exposed to online gambling.

Nonetheless, the EU should assist in clarifying a clear harmonized definition of what gambling is as well as what constitutes gambling in order to support the Member States in establishing the foundation for the harmonization of both online gambling and new issues, such as loot boxes and other features that could equal to gambling.

Both the private sector and State's monopolies would greatly benefit with the foreseeability of the Directive.

Minimum standards for gambling services concerning the protection of children is paramount, in order to ensure a higher level of protection regardless of the nationality/residency of the child. This is especially urgent considering the special nature and impact of gambling with proven harm and detriment of children's and adult's mental health.

However, it is necessary to continue studying the specifics of this topic because there is still a significant gap in the knowledge of this area. A large-scale study of children's gambling addiction across all Member States with the involvement of psychologists, doctors and other specialists is proven necessary to solve the problem of gambling addiction. In connection to this, it is necessary to develop a good complex methodology allowing to get practically significant and scientifically grounded results quickly and reliably.

In addition to harmonizing the issue within the European Union there should also be a parallel work in suppressing illegal gambling sites. Only through a combined effort by all stakeholders to combat children's exposure to gambling (and their possible addiction) significant positive results could be achieved. This is the difficulty in solving the challenge.

The best interest of Children was already used when considering bans or limitations in alcohol and tobacco<sup>267</sup> advertisement which sets precedents to also be considered on the legal subject of gambling.

Hopefully, the European Union will be able to conclude that the benefits of harmonization supersede the current challenges, at least concerning the protection of children, when issuing a minimum requirement directive. This measure, would not only set the standard for the protection of Member States' children but would also result on the likely influence on gambling policies of third-countries, which would in turn reflect in benefits to the children of the international community.

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<sup>267</sup> World Health Organization, 'Ban Tobacco Advertising To Protect Young People' (2013) <[https://www.who.int/mediacentre/news/releases/2013/who\\_ban\\_tobacco/en/](https://www.who.int/mediacentre/news/releases/2013/who_ban_tobacco/en/)> accessed 25 March 2021.

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