

# Legal status of state gambling authorities in European countries: prospects for Ukraine

*Situación jurídica de las autoridades estatales del juego en los países europeos: perspectivas para Ucrania*

*Estatuto jurídico das autoridades estatais de jogo nos países europeus: Perspectivas para a Ucrânia*

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## Abstract

This article analyzes the diversity of approaches to the organization of activities of state regulators in the field of gambling and lotteries in European countries, their common features and differences, advantages, and shortcomings. Given the uniqueness of approaches to the organization of state regulation in the field of gambling and lotteries, the similarity of some conditions and principles, as well as the prospects of use in Ukraine, special attention is paid to the relevant experience of Belgium, the Netherlands, Germany, the United Kingdom, France, Switzerland, and others. It has been established that the European experience of organizing the activities of the state regulator in the field of gambling and lotteries reveals significant differences in approaches to state regulation in the field of gambling business regarding legal bases, subordination, accountability, the order of formation and composition of the state regulator, the scope of its powers, etc. Despite such differences, state regulation in the field of gambling business is usually entrusted to a separate collegial state body endowed with broad regulatory, licensing, control, and other powers. Conclusions are made about the expediency of applying relevant European experience in the context of improving the legal regulation of the Commission for Regulation of Gambling and Lotteries in Ukraine.

**Keywords:** Authority, commission, European countries, gambling, legal status, lotteries, regulation, state policy, Ukraine.

## Resumen

Este artículo analiza la diversidad de enfoques para la organización de las actividades de los reguladores estatales en el campo de los juegos de azar y loterías en los países europeos, sus características y diferencias comunes, ventajas y desventajas. Dada la singularidad de los enfoques para la organización de la regulación estatal en el campo de los juegos de azar y loterías, la similitud de algunas condiciones y principios, así como las perspectivas de uso en Ucrania, se presta especial atención a la experiencia relevante de Bélgica, los Países Bajos, Alemania, el Reino Unido, Francia, Suiza y otros. Se ha establecido que la experiencia europea en la organización de las actividades del regulador estatal en el campo de los juegos de azar y las loterías revela diferencias significativas en los enfoques de la regulación estatal en el campo del negocio de los juegos de azar en cuanto a las bases legales, la subordinación, la responsabilidad, el orden de formación y composición del regulador estatal, el alcance de sus competencias, etc. A pesar de estas diferencias, la regulación estatal en el campo del negocio del juego generalmente se confía a un organismo estatal colegiado independiente dotado de amplios poderes regulatorios, de concesión de licencias, de control, etc. Se extraen conclusiones sobre la conveniencia de aplicar la experiencia europea relevante en el contexto de mejorar la regulación legal de la Comisión para la Regulación de Juegos de Azar y Loterías en Ucrania.

**Palabras clave:** juegos de azar, lotería, comisión, autoridad, estatus legal, regulación, estantes estatales, países europeos, Ucrania.

## Resumo

Este artigo analisa a diversidade de abordagens à organização das atividades dos reguladores estatais na área de jogos de azar e loterias nos países europeus, suas características comuns e diferenças, vantagens e deficiências. Dada a singularidade das abordagens para a organização da regulamentação estatal na área de jogos de azar e loterias, a semelhança de algumas condições e princípios, bem como as perspectivas de uso na Ucrânia, atenção especial é dada à experiência relevante da Bélgica, Holanda, Alemanha, Reino Unido, França, Suíça e outros. Ficou estabelecido que a experiência europeia de organização das atividades do regulador estatal no campo de jogos e loterias revela diferenças significativas nas abordagens da regulamentação estatal

no campo de negócios de jogos de azar em relação a bases legais, subordinação, responsabilidade, ordem de formação e composição do regulador estadual, o escopo de seus poderes, etc. Apesar dessas diferenças, a regulamentação do estado no campo do negócio de jogos de azar é geralmente confiada a um órgão estadual colegiado separado, dotado de amplos poderes regulatórios, de licenciamento, controle e outros. São feitas conclusões sobre a conveniência de aplicar a experiência europeia relevante no contexto de melhorar a regulamentação legal da Comissão de Regulamentação de Jogos de Azar e Loterias na Ucrânia.

**Palavras-chave:** Jogos de azar, loterias, comissão, autoridade, status legal, regulamento, política de estado, países europeus, Ucrânia.

## I. INTRODUCTION

In European countries, there are various state policies regarding gambling and lotteries, ranging from their complete prohibition to establishing the most liberal rules for organizing and conducting gambling and lotteries. Accordingly, depending on the peculiarities of the form of government and the general model of organization of public authority in European countries, approaches to state regulation in these areas, including the status and organization of the activities of relevant government bodies, may significantly differ.

Since the Commission for Regulation of Gambling and Lotteries in Ukraine is still in the process of its institutional development in the context of Ukraine's Euro-integration processes, it is important to take into account the positive European experience, advantages, and disadvantages of different approaches to organizing the activities of state regulators in the field of gambling and lotteries. Therefore, we consider the issue of legal status of state gambling authorities in European countries and its prospects for Ukraine to be relevant.

Other scholars in various foreign countries have already studied the issue of organizing state regulation in the field of gambling and lotteries. For instance, contemporary challenges and prospects of state policy on gambling in European countries<sup>1</sup> were examined; also, the relationship between national and pan-European policies on gambling<sup>2</sup> was characterized. The specific features of national policies on gambling

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1 Michael Egerer, Virve Marionneau & Janne Nikkinen. Eds. *GAMBLING POLICIES IN EUROPEAN WELFARE STATES: CURRENT CHALLENGES AND FUTURE PROSPECTS*. Springer. (2018). Available at: <https://doi.org/10.1007/978-3-319-90620-1>

2 Simon Planzer, Heather M. Gray & Howard J. Shaffer. *Associations between National Gambling Policies and Disordered Gambling Prevalence Rates within Europe*. *INTERNATIONAL JOURNAL OF LAW AND PSYCHIATRY*, vol. 37, no. 2. March-April 2014. P. 217-229. Available at: <https://doi.org/10.1016/j.ijlp.2013.11.002>

in France and Finland<sup>3</sup> were determined; also, the role of the National Indian Gaming Commission in regulating tribal gaming<sup>4</sup> was explored. Commonalities and differences in regulating gambling in Sub-Saharan Africa<sup>5</sup> were investigated; also, gambling regulation in the Northern Mariana Islands<sup>6</sup> was examined. However, such scholarly works mainly focus on either some basic features of state gambling policy, or the general organization and status of regulatory bodies in specific countries worldwide, without providing their relevant comparative legal characteristics and elaborating on the advantages and disadvantages of different approaches to organizing the activity of state regulators in the field of gambling.

## II. PURPOSE AND ASSIGNMENTS OF THE STUDY

The purpose of this article is to analyze the advantages and disadvantages of various approaches to the legal regulation of the status of state regulators of gambling in European countries, as well as to substantiate the priority directions for improving the organization of the Commission for Regulation of Gambling and Lotteries in Ukraine. To achieve this goal, it seems necessary to analyze national and foreign legislation and scientific works, as well as to characterize the peculiarities of the legal status of state regulators of gambling in Belgium, the Netherlands, Germany, the United Kingdom, France, Switzerland, and in other European countries. The choice of these countries is determined by the peculiarity of the approaches to the organization of state regulation of gambling and lotteries, the similarity of some conditions and principles, as well as the prospects of using such experience in Ukraine.

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- 3 Virve Marionneau. *Justifications of National Gambling Policies in France and Finland*. *NORDIC STUDIES ON ALCOHOL AND DRUGS*, vol. 32, no. 3. 2015. P. 295-309. Available at: <https://doi.org/10.1515/nsad-2015-0027>
  - 4 S. J. Ashton. *The Role of the National Indian Gaming Commission in the Regulation of Tribal Gaming*. *NEW ENGLAND LAW REVIEW*, vol. 37, no. 3. 2002. P. 545-551.
  - 5 J. M. Sichali, C. Bunn, D. McGee, V. K. Marionneau, J. S. Yendork, F. Glozah, M. Udedi & G. Reith. *Regulation of Gambling in Sub-Saharan Africa: Findings from a Comparative Policy Analysis*. *PUBLIC HEALTH*, vol. 214. January 2023. P. 140-145. Available at: <https://doi.org/10.1016/j.puhe.2022.07.018>
  - 6 Robert M. Jarvis. *Gambling in the Northern Mariana Islands*. *GAMING LAW REVIEW*, vol. 26, no. 6. July 2022. P. 316-334. Available at: <https://doi.org/10.1089/qlr2.2022.0026>

### III. METHODOLOGY

When researching the legal status of state gambling authorities in European countries and analyzing prospects for Ukraine, the following scientific methods were used. Analytical method was used to clarify the legal norms and acts regulating the gambling business in European countries and compare them with Ukrainian legislation; historical method, to study the evolution of legislation on gambling in different countries and identify trends in the development of this industry. Comparative method was used to compare the legal status of state gambling authorities in different countries and identify common and distinctive features; empirical methods, to study the opinions and views of experts in the gambling industry in different countries, as well as to analyze statistical data on the gambling market. Legal methods were used to study the legal aspects of regulating the gambling business, as well as the legal basis for the creation and functioning of state regulatory bodies in different countries.

### IV. RESULTS AND DISCUSSION

First, the organization of state regulation in the field of gambling and lotteries in a particular country depends directly on a combination of various factors, the main of which are the degree of legalization and prevalence of gambling and lotteries, the development of legal principles in this field, and general features of the organization of executive power in the state. In general, taking into account the significant risks of corruption and increased responsibility of state regulation in the field of gambling and lotteries is usually entrusted to a separate collegial state body or a separate collegial unit within the relevant ministry. This is confirmed, for example, by the case of Ireland, where against the backdrop of a long absence of a single state regulator in the field of gambling, the establishment of a separate Gambling Regulation Authority (Údarás Rialála Cearrbhachais na hÉireann) was planned for 2023.<sup>7</sup>

The Gambling Control Service (Service de Contrôle des Jeux), which operates within the structure of the Ministry of Finance and Economics in Monaco, has a non-collegial character, consisting only of a chief inspector, his deputy, and inspectors.<sup>8</sup> Despite the highly developed gambling industry in Monaco, this is primarily explained by the country's liberal state policy, small size of it and its government apparatus. Similarly, the Danish Gambling Authority<sup>9</sup> (Denmark) and the Gambling Control

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7 Gambling regulatory authority of Ireland. Available at: <https://tinyurl.com/c96ms6wf>

8 Service de contrôle des jeux. Monaco. Available at: <https://tinyurl.com/49zu4wjf>

9 Who is the Danish gambling authority? Available at: <https://tinyurl.com/6uuw2bhd>

Service of the Ministry of Finance<sup>10</sup> (Lithuania) are also headed by a director alone. In Switzerland, the system of state regulation in the gambling industry remains fairly decentralized and branched, including the Federal Gaming Board, the Conference of Directors of Gaming, the Gaming Court, the Inter-Cantonal Gaming Board, the Swiss Sports Promotion Fund, etc.

## ***1. The United Kingdom Gambling Commission: Legal Status and Activity Organization***

In the United Kingdom, the Gambling Commission is the regulatory body responsible for overseeing the organization and conduct of gambling activities. It was established in 2007, replacing the Gaming Board for Great Britain. Another important step in its institutionalization was the granting of additional powers to regulate lotteries following the dissolution of the National Lottery Commission.<sup>11</sup> This reflects the trend towards a centralized model of state regulation in the field of gambling and lotteries, as the formation of a single professional regulatory body simplifies public administration and promotes orderly relations in this area. However, there are some controversial exceptions to the Gambling Commission's general competence, such as its lack of authority over financial spread betting, which creates risks of inadequate state regulation in this area.

The legal regulation of the organization and activities of the Gambling Commission in the United Kingdom is based on the Gambling Act 2005 and the National Lottery Act 1993,<sup>12</sup> with amendments and additions made to them. However, given the mostly general nature of legislative regulation, the Gambling Commission in the United Kingdom is authorized to independently determine regulatory procedures for its activities (Clause 7 of Appendix 4 to the Gambling Act 2005). In addition, the Gambling Commission also defines corresponding licensing conditions and codes of practice, provides guidance to local authorities, and so on (Clauses 23-25 of the Gambling Act 2005). Overall, similar practices should be supported, although the question of the boundaries and relationship between legislative and departmental

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10 Dėl lošimų priežiūros tarnybos prie lietuovos respublikos finansų ministerijos nuostatų patvirtinimo. N. 1K-062, 2012 m. vasario 21 d. (Lietuva). Available at: <https://tinyurl.com/336ahbfk>

11 The Public Bodies (merger of the gambling commission and the national lottery commission) Order. 12th September 2013 (United Kingdom). Available at: <https://tinyurl.com/yeyyusby>

12 National lottery etc. Act. 21st October 1993 (United Kingdom). Available at: <https://tinyurl.com/bde7kdyh>

regulation in this case largely depends on the peculiarities of the legal system of a particular state.

The Gambling Commission of the United Kingdom is an executive non-departmental public body by its legal status. As a result, the Gambling Commission is not organizationally part of the government and carries out its corresponding state management functions independently without direct interference from the relevant minister, who is also generally responsible for the work of the Gambling Commission. In particular, according to paragraph 17 of Appendix 4 to the Gambling Act 2005,<sup>13</sup> membership of or employment with the Gambling Commission does not constitute public service. On the one hand, this approach ensures greater organizational and functional separation of the Gambling Commission, but on the other hand, it may indicate insufficient guarantees for the status of its members and employees.

In addition, the unilateral appointment and dismissal of the Chair and members of the United Kingdom's Gambling Commission by the Secretary of State for Digital, Culture, Media and Sport is a highly debated issue (Clause 1 and 2 of Appendix 4 to the Gambling Act 2005). In the Netherlands, for example, members of the board of the Gaming Authority (Kansspelautoriteit) are also unilaterally appointed and dismissed by the Minister for Legal Protection.<sup>14</sup> In our opinion, this approach cannot guarantee the necessary transparency and impartiality in the appointment and dismissal process of members of the Gambling Commission, leaving room for abuse and decisions based on political expediency rather than state interests. The same applies to the lack of clear specific requirements for the professionalism of individuals appointed to the positions of Chair and members of the Gambling Commission, democratic procedures for their competitive selection, and so on. For example, in Ireland, members of the newly established Gambling Regulatory Authority are to be appointed by the Minister for Justice based on the results of a competition conducted by the Commission for Public Service Appointment.<sup>15</sup>

At the same time, it should be noted that a positive aspect is the limitation of the term of appointment of members of the United Kingdom Gambling Commission to a five-year term, as well as their opportunity hold those office (consecutively or non-consecutively) for a maximum of ten years overall. This corresponds to similar limitations in Ukraine, where the term of office for the Chair and members of the Commission for Regulation of Gambling and Lotteries is four years. However, we believe that

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13 Gambling Act. 7th April 2005 (United Kingdom). Available at: <https://tinyurl.com/bdf6tcs2>

14 Management and Organization – Kansspelautoriteit. Available at: <https://tinyurl.com/4u6bptc3>

15 Gambling regulatory authority of Ireland. Available at: <https://tinyurl.com/c96ms6wf>

establishing a limit on the total term of membership in the Commission for Regulation of Gambling and Lotteries to an eight-year term (rather than two consecutive terms as it currently stands) would prevent circumventing the current limitations and promote the renewal of the Commission's composition.

It is important to support the inclusion in the 2005 Gambling Act of the objectives of state regulation of gambling, which includes prevention of crime in the industry, ensuring fairness and openness in gambling, and protection of children and other vulnerable groups. In addition to organizational and functional independence, the Gambling Commission of the United Kingdom has a wide range of powers and responsibilities, including licensing of all gaming operators, various forms of regulation and oversight of their activities (visits to licensees, financial checks, audits, monitoring, etc.), and issuance of warnings, fines, suspension and revocation of licenses for violation of legislation. The investigation and consideration by the Gambling Commission of causes related to violations of the relevant law is specifically provided for in section 28 of the 2005 Gambling Act. In this context, an important focus of the Gambling Commission's work is to protect the rights and interests of citizens, particularly with regard to ensuring reliable data protection, preventing fraud, providing information on the risks of gambling, handling citizen complaints, and combating problem gambling.

However, the stated directions of activity of the United Kingdom Gambling Commission and the order of their implementation remain inadequately reflected at the legislative level, which does not contribute to the integrity of its legal status, purposefulness, and consistency of such activity. Among other problematic aspects of the organization of the Gambling Commission's activities, one can note the imperfection of its control mechanisms, particularly regarding online gambling businesses, as well as the absence of a fast and effective procedure for reviewing complaints, which does not always allow for the efficient resolution of conflicts between players and gambling operators.

Interestingly, paragraph 8 of Appendix 4 to the 2005 Gambling Act provides for the right of the United Kingdom Gambling Commission to delegate any of its functions (including conducting inspections, making decisions on license revocation or imposing fines) to individual members of the Commission or its ordinary employees. On the one hand, this significantly enhances the ability of the small Gambling Commission to effectively control this sphere and timely respond to detected violations. On the other hand, this delegation effectively undermines the principle of collegiality in the work of the Gambling Commission and increases the influence of corrupt factors, creating conditions for the controversial adoption of not only procedural but also organizational



and administrative decisions on behalf of the Gambling Commission by its individual members and/or employees.

The structural organization of the Gambling Commission in the United Kingdom includes, in addition to its chair and members, an Executive Team responsible for corporate governance and strategic decision-making, specialized committees (such as audit and risk, lottery, rewards, etc.), and three advisory groups of experts comprising independent experts from the fields of science, healthcare, digital technology, and gambling itself.<sup>16</sup> While acknowledging the importance of adequate public, scientific, and expert support for the state gambling regulator, it is believed that the formation of a single advisory body would be more optimal. This would avoid duplication and facilitate the comprehensive development of recommendations for improving the organization and activities of the state regulator.

On the positive side, it's worth noting that funding for the Gambling Commission's activities comes not only from the Department for Digital, Culture, Media and Sport, but also from various payments, fees, and fines collected from gambling operators. Similar practices are used, for example, in Belgium, where expenses related to the functioning of the state regulator are fully covered by gambling license holders. This is not only a rational approach to planning government expenditures but also serves as a proper incentive for the Gambling Commission to fulfill its responsibilities adequately, although this requires greater scrutiny of the rationale and legality of the financial measures employed by the state regulator.

It should be noted that according to section 16 of Appendix 4 to the Gambling Act 2005, the United Kingdom Gambling Commission must submit its annual report to the Secretary of State for Digital, Culture, Media and Sport, who may present it to Parliament. In our opinion, the accountability mechanism outlined above is generally insufficient since it neither ensures mandatory direct accountability of the Gambling Commission to Parliament nor provides appropriate forms of public oversight of its activities, which would allow for a transparent assessment of the effectiveness of the Commission.

Thus, the current organization of the activities of the United Kingdom Gambling Commission highlights the need for expanding legislative regulation of its powers and the procedures for their implementation (particularly regarding control and complaint review), clarifying the status of the Gambling Commission, its relationship with the Secretary of State. Another step should be ensuring greater transparency in activities of the Gambling Commission and its accountability to Parliament and the public, establishing a competitive process for appointing the Chair and members of

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16 Who we are? Gambling Commission. Available at: <https://tinyurl.com/3v5pf9cz>

the Gambling Commission and clear requirements for them. Overall, most of these proposals are relevant for improving the organization and activities of the Commission for Regulation of Gambling and Lotteries in Ukraine.

## *2. Features of the National Gambling Authority of France*

In France, the state regulation of gambling and lotteries is entrusted to the National Gambling Authority (Autorité Nationale des Jeux), which was established on the basis of the Online Gambling Regulatory Authority (Autorité de Régulation des Jeux en Ligne) with the aim of strengthening state regulation in this area, according to Ordinance of October 2, 2019 No. 2019-1015.<sup>17</sup> According to Article 34 of Law of May 12, 2010 No. 2010-476,<sup>18</sup> it has the status of an independent administrative state agency, which ensures its necessary institutional capacity, organizational integrity, and functional autonomy. It is worth noting the direct accountability of the National Gambling Authority to the Parliament, to which an annual report is presented, and the relevant committees of each chamber of the French Parliament can hear the President of the National Gambling Authority. It should be emphasized that the transparency, impartiality, and accountability of the state gambling regulator's activities require a combination of various forms of control by the Parliament, government, and the public.

Taking into account the establishment of the National Gambling Authority in France only in 2019, the legal framework for its organization and activities is still in the process of final formation, similar to Ukraine. The main legal acts that regulate the status of the National Gambling Authority in France include the Law of May 12, 2010 No. 2010-476 on the regulation of gambling, the Ordinance of October 2, 2019 No. 2019-1015 on the reform of gambling industry regulation, and Decree of March 4, 2020 No. 2020-199 on the organization of the National Gambling Authority.<sup>19</sup> The particularity of these legal foundations is seen in the extensive legislative regulation of the main elements of the status of the National Gambling Authority, which are further specified in legal acts of varying legal force. In particular, a positive aspect is the substantive consolidation of procedural aspects of the collegial work of the National Gambling Authority, which ensures its necessary legal definition and orderliness.

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17 Ordonnance réformant la régulation des jeux d'argent et de hasard. No. 2019-1015. October 2nd, 2019. (France). Available at: <https://tinyurl.com/478rkcdy>

18 Loi relative à l'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne. No. 2010-476. May 12th, 2010. (France). Available at: <https://tinyurl.com/4dtbx7bv>

19 Décret relatif à l'organisation et au fonctionnement de l'Autorité nationale des jeux. No. 2020-199. March 4th, 2020. (France). Available at: <https://tinyurl.com/bdf9byau>

Article 320-3 of the French Internal Security Code fairly accurately defines the goal of state policy regarding gambling, which is generally to limit and control the offering and consumption of gambling.<sup>20</sup> In view of this, the competence of the National Gambling Authority in France covers the entire spectrum of gambling and lotteries and includes a wide range of means for implementing state policy in the field of gambling, ensuring their transparency, balanced and fair development of this area. In particular, this includes granting permits for conducting gambling, establishing their conditions and rules, certifying gaming software, constantly monitoring the activities of gambling operators, conducting administrative investigations by its own investigators, and suspending or revoking permits in case of violation of established conditions.

In addition, it should be noted that the focus of the National Gambling Authority's activities is not solely on monitoring the compliance of operators of gambling activities with the general terms of its organization and conduct, but also on combating gambling addiction, fraud, and money laundering. In this context, we support the obligation of gambling operators to annually submit their action plans to the National Gambling Authority for approval, with regards to preventing excessive gambling, protecting minors, and combating fraud, as provided in Article 34 of Law of May 12, 2010 No. 2010-476. Operators must report on implementation of those plans and comply with instructions from the state regulator.

It is also appropriate to complement the aforementioned with the implementation of their own legal education and advocacy work, which has not yet been adequately reflected in the legislative regulation of the competencies of the National Gambling Authority in France. The development of these areas of activity is quite promising also for the Commission for Regulation of Gambling and Lotteries in Ukraine, requiring not only the expansion of its powers, but also the intensification of their implementation.

Similarly to Ukraine, in France the National Gambling Authority is not only responsible for implementing the state policy in the field of gambling and lotteries, but also is involved in its development by preparing its own legal and technical standards within its competence, as well as legislative and other acts, and providing conclusions on them. We believe that with a truly responsible approach to such activities of the state gambling regulator, its wide participation in relevant legislation process in both France and Ukraine can significantly contribute to the maximum consideration in current state policy and legislation of existing practices, needs and issues in the field of gambling.

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20 Code de la sécurité intérieure. March 12th, 2012. (France). Available at: <https://tinyurl.com/yc733cjt>

An important guarantee for the activities of the National Gambling Authority in France is the legislatively established principles of its interaction with other competent authorities, in particular regarding obtaining necessary information and documents (both from ministers and gambling operators), hearing any person, visiting gambling operator premises as part of administrative investigations, etc. However, different forms of collaboration between the National Gambling Authority and other competent authorities are not mentioned, which is particularly relevant in terms of implementing appropriate control measures in the field of gambling and lotteries.

In the context of the National Gambling Authority's interaction, the appointment of a special government representative is also quite interesting. According to Article 35 of the Law of May 12, 2010 No. 2010-476, the representative presents the government's position at the Collegial meetings, has the right to an advisory vote, and can receive any documents, initiate extraordinary Collegial meetings and request any inspections. Such an approach to current government control over the activities of the state gambling regulator, without direct intervention in its organizational and managerial activities, contributes to the government's proper awareness of the state of affairs in this area, the legality and effectiveness of the state regulator's activities, and its alignment with the government's gambling policy.

At the same time, it is worth noting a certain gap in the relevant legislation regarding effective mechanisms of public control over the activities of the National Gambling Authority in France, as well as lack of forms and means of involving the public in preparing and making its decisions. In this context, the closed nature of the Collegial meetings of the National Gambling Authority, as provided in Article 3 of the Decree of March 4, 2020 No. 2020-199, is quite controversial and indicates a low level of transparency in its activities.

One of the effective mechanisms for public participation in the work of the National Gambling Authority could be its three permanent advisory commissions. According to the relevant law, these commissions include not only members of the Collegium, representatives of ministers and government officials, but other "competent individuals." However, currently, according to Decree of October 1, 2020 No. 2020-1212,<sup>21</sup> only one representative of independent associations is included in the composition of one commission. Nevertheless, such commissions can serve as effective platforms for providing expert, scientific, and methodological assistance and consultations to the state regulator, although their competence is limited to only some

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21 Décret relatif aux commissions consultatives permanentes de l'Autorité nationale des jeux. No. 2020-1212. October 1st, 2020. (France). Available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042391497>

areas of the National Gambling Authority's activities (preventing gambling addiction, controlling gaming operations, and fighting fraud). In contrast, for example, in the Netherlands, the interaction between the Gaming Authority and the public is quite extensive, including the formation of an Advisory Council and Advisory Committee, as well as the involvement of external experts.<sup>22</sup>

It should be noted that the National Gambling Authority in France includes the Collegium, permanent specialized advisory commissions, a sanctions committee, and a mediator. At the same time, it is worth considering that, despite similar functional loads, the staff of the National Gambling Authority in France consists of only 53 people,<sup>23</sup> and the Swedish Gambling Authority (Spelinspektionen) has about 70 employees,<sup>24</sup> compared to the maximum staff of 200 employees in the apparatus of the Commission for Regulation of Gambling and Lotteries in Ukraine.

According to Article 35 of the Law of May 12, 2010 No. 2010-476, except for decisions related to sanctions, the state powers of the National Gambling Authority in France are exercised by the Collegium. In this regard, we note a number of features of the formation of the personal composition of this Collegium.

Firstly, the College consists of nine members who are appointed for six years and, with the exception of the President, are partially renewed every two years (Article 35 of the Law of May 12, 2010 No. 2010-476). For example, by a decree of the Minister of Economics, Finance and Industrial and Digital Sovereignty of France, dated September 13, 2022, three of its members were changed.<sup>25</sup> Compared to the shorter terms of members of state gambling regulators in other countries, the appointment of members of the College of the National Gambling Authority in France for six years can itself increase the influence of corrupt factors and not ensure democratic change in power.

However, this is somewhat balanced by the practice of gradually partially renewing the personnel of the College of the National Gambling Authority, which can be used in Ukraine as well. This largely contributes to the preservation of the institutional memory of the state gambling regulator, the continuity and consistency of its activities, without reducing its effectiveness through a complete renewal of personnel. Moreover, a similar approach to updating half of the composition every two years

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22 Management and Organization – Kansspelautoriteit. Available at: <https://tinyurl.com/4u6bptc3>

23 The National Gambling Authority. Available at: <https://tinyurl.com/mvswaa83>

24 Organisation – Spelinspektionen. Available at: <https://tinyurl.com/ysc5v54x>

25 Nomination de trois nouveaux membres au collège de l'autorité nationale des jeux. Available at: <https://tinyurl.com/4t435yxj>

is used in the Hellenic Gaming Commission<sup>26</sup> and the Cyprus Gaming and Casino Supervision Commission.<sup>27</sup>

Secondly, only its President works full-time in the College of the National Gambling Authority. In our opinion, such an approach is quite controversial, as it leaves room for conflicts of interest (although direct participation in the gambling is prohibited for members of the College) and limits the opportunities for members of the College to take an active and wide-ranging role in various aspects of the National Gambling Authority activities.

The significance of collegiality in the National Gambling Authority in France is diminished by the possibility of delegating its powers to the President of this body for a period of one year, particularly regarding the authorization of gambling (Article 37 of the Law of May 12, 2010 No. 2010-476, Article 6 of the Decree of March 4, 2020 No. 2020-199). We believe that such delegation not only creates additional corruption risks, but also may reduce the institutional capacity of the National Gambling Authority, as the effectiveness of the President's individual work cannot match the effectiveness of the coordinated, consensus-based activity of all members of state regulator.

Thirdly, the President of the College is determined by the President of France, and one member of the College is chosen by the President of the National Assembly and the Chairperson of the Senate. In addition, six other members of the College are appointed by decree, including one of them being a member of the State Council or the Court of Cassation, designated respectively by the Vice-President of the State Council or the President of the Court of Cassation.

On the one hand, involving representatives of different branches of government in the process of appointing the President and members of the College is intended to ensure their independence and impartiality. On the other hand, this approach being too complicated with five actors determining the personal composition of the National Gambling Authority's College (each of which is *de facto* guided by its own criteria, including political expediency). This does not provide transparency and objectivity in determining the President and members of the College, unlike competitive selection.

Fourthly, the requirements for members of the College relate not only to their economic and legal competence in matters of protecting citizens' rights, digital technologies, combating gambling addiction and money laundering, but also to their gender. Specifically, two members, one male and one female, are appointed by the

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26 Ο Πρόεδρος & τα Μέλη (ΕΛΛΑΔΑ). Available at: <https://tinyurl.com/48dpbb45>

27 Law regulating the establishment, operation, function, supervision and control of casinos and related matters. Law 124(i)/2015. (Cyprus). Available at: <https://tinyurl.com/37nbta7v>

President of the National Assembly and the Chairperson of the Senate, and the remaining six members are also evenly divided by gender.

It should be emphasized that ensuring gender equality in government bodies is important for achieving real equality for citizens, equality in participating in state affairs, including regardless of gender. However, the mandatory requirements for the gender of College members of the National Gambling Authority, which are not directly related to evaluating their prospective effectiveness in the position, effectively push competence criteria to the background. In addition, it objectively complicates the determination of College members by the President of the National Assembly and the Chairperson of the Senate, who are forced to coordinate their candidates by gender.

Therefore, we consider it inappropriate to establish gender requirements for the personal composition of the state gambling regulator. After all, gender equality in a developed democracy should be ensured not so much by imperative legislative requirements as by genuinely equal conditions for access to public positions and an objective evaluation (for example, in a transparent competition) of compliance based on a person's competence, not their gender or other subjective characteristics. The same generally applies to similar requirements regarding the gender of members of the National Gambling Authority Sanctions Committee.

Moreover, the relevant law explicitly mentions appointment only five members of the College "based on their skills." However, both this provision and the general mention of appointing College members based on their economic and legal competence remain too abstract in themselves to guarantee the professionalism, experience, and high moral and business qualities of the members of the French National Gambling Authority.

In addition, unlike the specifics of appointment, the profile Law of May 12, 2010 No. 2010-476 does not regulate the grounds and procedure for terminating the powers of the President and members of the French National Gambling Authority (except for the breach of the prohibition on participating in gambling and the established court non-compliance with professional secrecy). Therefore, currently only the general principles of termination of the powers of an independent administrative body member, set out in Article 6 of the Law of January 20, 2017 No. 2017-55, apply to them.<sup>28</sup>

Also, it is worth noting that decision-making by the College requires majority votes of its members present at the meeting, provided that at least half of the members of the College are present (Article 3 of Decree of March 4, 2020 No. 2020-199). This

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<sup>28</sup> *Loi portant statut général des autorités administratives indépendantes et des autorités publiques indépendantes*. No. 2017-55, January 20th, 2017. (France). Available at: <https://tinyurl.com/mu58uy33>

allows for the actual adoption of such decisions by a minority of College members. At the same time, this encourages them to actively participate in meetings and reduces the risk of such meetings being disrupted due to the non-appointment of individual College members or their refusal to participate in meetings.

The formation of a separate Sanctions Committee within the National Gambling Authority is somewhat controversial. According to Articles 41, 43, and 44 of Law of May 12, 2010 No. 2010-476, the Committee is responsible for imposing various sanctions on gambling operators (warning, license term reduction, its suspension or revocation, fine).

On the one hand, such an approach ensures greater concentration, impartiality, and expertise of the state regulator in applying sanctions. Especially since two members of the State Council, two advisors of the Cassation Court, and two magistrates of the Audit Chamber are appointed to the Sanctions Committee for six years, although specific criteria of professionalism and impartiality for such persons are not provided. On the other hand, the Sanctions Committee operates in parallel with the College, which performs the rest of the powers of the National Gambling Authority, resulting in its decentralization and the lack of unity of the management center as a whole responsible for state gambling regulation.

On the positive side, we must note the inclusion of a mediator in the French National Gambling Authority, who is appointed by its President after consulting with the College for a three-year term. Due to their independence and impartiality in accordance with Articles 45-1 and 45-2 of Law of May 12, 2010 No. 2010-476, the mediator performs mediation functions for the extrajudicial resolution of disputes between players and gambling operators. Since the institution of the mediator contributes to the protection of the rights and legitimate interests of both citizens and organizers of gambling and lotteries, the resolution of their disputes, and, as a result, the normal functioning of this sphere, we consider it appropriate to use such experience in Ukraine.

Therefore, among the positive aspects of the organization of the activity of the French National Gambling Authority, which should be properly utilized in Ukraine, are: extensive legislative regulation of the status of the state regulator, the principles of its interaction and activity procedures; a focus on combating fraud and money laundering in the gambling sphere; direct accountability to Parliament. Other positive aspects are: making decisions of the state regulator by a majority of its members present; gradual partial renewal of the composition of the state regulator, a small staff of its apparatus; the introduction of the position of an independent mediator and the participation of a special government representative in the meetings of the state regulator.



Some other features of the organization of the activity of the French National Gambling Authority are quite controversial regarding the prospects of their implementation in Ukraine. In particular, these are: the possibility of delegating the powers of the state regulator to its leader personally; closed nature of state regulator meetings; insufficient transparency of activity and the lack of effective mechanisms for public control. This is also: non-competitive appointment of state regulator members by various government bodies; requirements for the gender of state regulator members in the absence of clear requirements for their professionalism; decentralization of the state regulator and the establishment of a separate Sanctions Committee.

### ***3. Belgian Gaming Commission: Legislative Regulation, Functions and Composition***

In Belgium, the state regulator of the gambling sphere is the Belgian Gaming Commission (Commission des Jeux de Hasard), operating on the basis of the Law on Games of Chance of May 7, 1999 on games of chance, betting, gambling establishments and player protection.<sup>29</sup> According to Article 9 of this Law, it is established within the Federal Public Service of Justice of Belgium as a “consultative, managerial and supervisory body in the gambling sphere,” which allows the Belgian Gaming Commission to carry out its tasks completely independently. In its activities, it relies primarily on its own Secretariat,<sup>30</sup> which provides comprehensive support for its regulatory, licensing, control, and other activities.

At the same time, the functional independence of the Belgian Gaming Commission is considered to be sufficiently balanced by its annual reporting to the legislative chambers, as well as to the Ministers of Economy, Internal Affairs, Finance, Justice and Health. However, there are still questions about the consequences of such reporting and its effectiveness in controlling the activities of the Belgian Gaming Commission, ensuring its transparency and impartiality. In this context, greater development of the system of public control over the activities of the Belgian Gaming Commission may be appropriate, as even its meetings are currently held in a closed mode.

The profile Law of May 7, 1999 sufficiently regulates the procedure for appointing the Chairperson and members of the Belgian Gambling Commission, as well as other features of its organization and activities. The current procedural rules for the functioning of the Belgian Gambling Commission were approved by its Decision of

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<sup>29</sup> Kansspelwet. May 7th, 1999. (Belgien). Available at: <https://tinyurl.com/da2p24ns>

<sup>30</sup> Secretariat. Gaming Commission. Available at: <https://tinyurl.com/83ssbekx>

November 16, 2020<sup>31</sup> and were endorsed by six interested ministers. At the same time, one of the gaps is the legislative non-regulation of the grounds and procedure for terminating the powers of the Chairperson and members of the Gambling Commission.

For example, in Article 7 of the corresponding Cyprus Law of 2015,<sup>32</sup> the reasons for removing the head and members of the Cyprus Gaming and Casino Supervision Commission are elaborately listed. Article 14 of the Law of May 7, 1999, which defines the issues of the organization, composition, and functioning of the Secretariat of the Gambling Commission, is also debatable, as it is determined not by the Commission itself, but by the King of Belgium. This not only does not correspond to the high level of legal regulation, but also excessively restricts the organizational independence of the Belgian Gambling Commission.

According to its status and competence, the Belgian Gambling Commission has three functional areas of activity. The first two is traditional for similar state regulators in different countries and include management (issuing licenses for gambling and betting, as well as other industry leadership) and supervisory (monitoring compliance with gambling legislation with the possibility of imposing sanctions, protecting players).

Of particular note is the provision by the Belgian Gambling Commission of consultations to the government and Parliament on gambling issues. In particular, according to Article 20 of the Law of May 7, 1999, and at the request of the relevant ministers or Parliament, it provides a recommendation on any legislative or regulatory initiative related to gambling. Although not initiated on its own, this allows the Belgian Gambling Commission to effectively influence the formation of state gambling policy, thereby ensuring a feedback loop between legal practice and lawmaking to improve it.

However, we see the legislative unregulated nature of the powers of the Belgian Gambling Commission to prevent gambling addiction, fraud, and money laundering in this area as a disadvantage. In contrast, for example, in Germany, according to the State Treaty on Gambling 2021,<sup>33</sup> the Joint State Gambling Authority (Gemeinsame Glücksspielbehörde der Länder) is directly responsible for protecting players, especially young people, from gambling addiction.

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31 *Règlement d'ordre sur les jeux de hasard, les paris, les établissements de jeux de hasard et la protection des joueurs et directives déontologiques*. November 16th, 2020. (Belgique). Available at: <https://tinyurl.com/2shfphvk>

32 *Law regulating the establishment, operation, function, supervision and control of casinos and related matters*. Law 124(I)/2015 (Cyprus). Available at: <https://tinyurl.com/37nbta7v>

33 *State treaty on the re-regulation of gaming in Germany*. October 29th, 2020 (Germany). Available at: <https://tinyurl.com/8dpzha6>

Please note that the Belgian Gambling Commission has broad powers to conduct investigations and even criminal proceedings in order to fulfill its duties. According to Article 15 of the Law of May 7, 1999, members of the Commission's Secretariat may be granted the status of criminal police officers and Assistant Prosecutors, which allows them to visit any premises and establishments, carry out inspections and interrogations, seize evidence, etc. Overall, these measures are seen as effective means of ensuring compliance with gambling legislation, enabling the Belgian Gambling Commission to not only detect violations in a timely manner, but also to respond adequately to them (issuing warnings, suspending or revoking licenses, imposing fines).

At the same time, in our opinion, the forms and scope of state regulator's control depend largely on the peculiarities of the organization of public authority and the legal system of a specific country. Therefore, in the case of institutional differentiation between the state gambling regulator and law enforcement agencies (such as in Ukraine, for example), the question of establishing constructive interaction between them becomes crucial, particularly in the context of identifying and confirming gambling violations.

It is also necessary to support legislatively guaranteed joint meetings of the Belgian Gambling Commission with representatives of gambling operators (at least once a year) and with representatives of consumer and behavioral addiction expert centers (at least twice a year). It is believed that these and other joint activities (such as public consultations) should be conducted with slightly greater intensity, and their outcome should not only be an exchange of opinions, but also the development of mutual proposals and initiatives for improving the activities of the state regulator, compliance with the law, protecting the rights of gambling operators and players.

The possibility of holding meetings of the Belgian Gambling Commission via videoconference or written procedure, as provided by the Procedural Rules of November 16, 2020, is considered quite ambiguous. On the one hand, the use of innovative technologies corresponds to the challenges of modern times, such as the COVID-19 pandemic, ongoing Russian-Ukrainian war and other emergencies. On the other hand, holding meetings via videoconference requires addressing issues related to ensuring the technical security of the software used and verifying the actual expression of will of remote participants. Additionally, the written procedure involves sending materials by e-mail, and even if a participant does not respond in a timely manner, it will be deemed that they approve the decisions put to a vote. Clearly, this procedure has vulnerabilities related to absentee voting, the use of e-mail, the presumption of approval in the absence of a response, etc.

It should be noted that, according to Article 10 of the Law of May 7, 1999, the Gambling Commission is composed of a Chairperson and twelve members appointed by the King of Belgium for six years, of whom no more than two-thirds may be of the same gender. In our opinion, this number of members on the Gambling Commission could be considered excessive and could complicate the conduct of its meetings, whereas collegiality in decision-making could be ensured with a slightly smaller number of members.

Furthermore, it is important to consider the relatively complex mechanism for appointing its members, as two representatives are delegated each by the Minister of Justice, the Minister of Finance, the Minister of Economy, the Minister of Internal Affairs, the Minister of Health, and the Minister responsible for national lotteries. Additionally, the Minister of Justice separately provides a proposal to the King regarding the candidacy for the Chairperson of the Gambling Commission. On the other hand, the opposite approach regarding the inclusion of only “up to three members, including its Chairperson” in the board of directors of the Netherlands Gaming Authority (Article 33c of the Gambling Act<sup>34</sup>) is unlikely to be in line with the interests of collegiality.

In any case, the appointment of members to the Belgian Gambling Commission does require coordinated staffing efforts among the aforementioned ministries, which in turn must ensure that the Commission’s members possess a variety of expertise in the field of competence of respective ministries. This contributes to the comprehensive competence of the Commission’s personnel and to some extent to the constructive cooperation established with the relevant ministries. However, given the fairly broad range of entities involved in appointing members to the Belgian Gambling Commission, it would also be possible and expedient to delegate public representatives to its composition.

On the positive side, it should be noted that there is a fairly adequate criterion for gender equality, which does not require achieving absolute gender parity and is limited to the requirement that “no more than two-thirds of the members be of the same sex.” This does not give gender a leading, defining role, allowing for a focus on other criteria when selecting members of the Belgian Gambling Commission. Taking into account the socio-political and national aspects of Belgium, there are also strict requirements for an equal distribution of Dutch-speaking and French-speaking members in the Gambling Commission.

However, one cannot unequivocally agree with this, as the members of the Gambling Commission should be guided in their activities not by their linguistic or

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34 Wet op de kansspelen. October 1st, 2022. (Netherlands). Available at: <https://tinyurl.com/3tdyvw4a>

other identity, but by their level of competence. Instead, it could be an obligation for members of the Gambling Commission to have a competent level of both Dutch and French, which are the official languages of Belgium. This would be especially logical for the Chairperson of the Gambling Commission, who is currently appointed from among “Dutch-speaking or French-speaking judges.”

On the other hand, we need to support the clear definition in Article 11 of the Law of May 7, 1999 of specific requirements for the Chairperson and members of the Belgian Gambling Commission. In particular, among other things, they are required to have impeccable morality, not to perform duties in the gambling business, not to hold elected positions in any government bodies, and to have at least ten years of experience in academic, legal, public administrative, economic, or social work.

Although evaluating individual criteria in a non-competitive manner is quite difficult and subjective (for example, regarding impeccable morality), such an approach overall contributes not only to the professionalism of the personal composition of the Belgian Gambling Commission, but also to avoiding conflicts of interest during their duties. Another requirement – appointing the Chairperson of the Gambling Commission from among judges – is intended to ensure the highest level of his overall professionalism. Although, as with members of the Gambling Commission, competence specifically in the area of gambling is not required in this case. However, according to Article 94 of the Federal Law on Gambling of September 29, 2017,<sup>35</sup> at least one member of the Swiss Federal Gaming Board<sup>36</sup> must have special knowledge of addiction prevention issues.

Furthermore, in Belgium, there are restrictions on performing any paid functions in the gambling industry or having a personal interest in it for a period of five years after the end of the term of office of the Chairperson and members of the Gambling Commission. It is generally important in the context of preventing conflicts of interest, unlawful use of the authority of the Gambling Commission and information that may have become known in connection with their work.

Another interesting feature of the organization of the Belgian Gambling Commission is the appointment of twelve deputy members alongside its twelve members, who are subject to similar requirements and appointment procedures (Articles 10 and 11 of the Law of May 7, 1999). It should be emphasized that the use of the institute of deputy members of the collegiate body contributes to the continuity of its functioning and the preservation of institutional capacity even in the event of the

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35 Bundesgesetz über Geldspiele. September 29th, 2017. (Deutschland). Available at: <https://tinyurl.com/3wa68fmx>

36 Eidgenössische Spielbankenkommission.

impossibility (or avoidance) of some members of the collegiate body participating in its work. However, the question of the ultimate effectiveness of the involvement of deputy members of the Gambling Commission in view of the timing of their full inclusion in the current work of the state regulator remains open.

So, some features of the Belgian Gambling Commission's activities that could be used in Ukraine are: annual reporting to Parliament and relevant ministers; providing consultation to the government and Parliament on gambling issues; broad regulatory control powers and cooperation with relevant ministries; holding joint meetings with representatives of gambling operators and the public; the ability to conduct online meetings. This is also: clear requirements for members of the state gambling regulator, appointment of their deputies; imposing a five-year restriction on former members of the state regulator to work in the gambling industry.

In addition, some other features of the Gambling Commission's activities in Belgium remain controversial in terms of their possible implementation in Ukraine. These include: a small share of self-regulation of its activities; legislative unregulated powers to prevent gambling addiction and fraud; closed-door meetings of the state regulator, the possibility of their conduct through written procedures; underdeveloped public control over the state gambling regulator. Other such features are: non-competitive appointment of state gambling regulator members by six ministers, with the Chairperson being appointed from among active judges; selection of state regulator members based on their proficiency in certain state languages; granting certain members of the state regulator's Secretariat the status of police and Prosecutor's office employees.

## V. CONCLUSIONS

In European countries, the organization of state regulation in the field of gambling and lotteries primarily depends on the degree of legalization and prevalence of gambling and lotteries, the development of legal regulation of these relationships, the peculiarities of the organization of executive power in the state, as well as the traditions and practices of state governance. This leads to significant differences in approaches to state regulation in the field of gambling regarding legal bases, subordination, accountability, the order of formation and composition of the state regulator, the scope of its powers, etc.

Despite such differences, usually state regulation in the field of gambling is entrusted to a separate collegial state body or a separate collegial unit within the relevant ministry, endowed with broad regulatory, licensing, control and other powers (Belgium,

Greece, Cyprus, Netherlands, United Kingdom, France, Sweden). The sole authority of the state regulator may be caused primarily by the small scope of its powers, the relatively small size of the country and its state apparatus (Denmark, Lithuania, Monaco), and significant federalization of the state may lead to decentralization and branching of the system of state regulation in the field of gambling (Switzerland). The legal basis of the activity of the state regulator in the field of gambling and lotteries in European countries is usually determined by specific laws or, less often, at the sub-legal level and only in rare cases includes constitutional regulation (Switzerland).

The use of relevant European experience in Ukraine should primarily involve strengthening the transparency and accountability of the Commission for Regulation of Gambling and Lotteries, gradual partial renewal of its composition, expansion of interaction with relevant authorities, gambling business entities and the public, as well as strengthening control powers and participation in the struggle with gambling addiction and fraud. It is also important to expand the legislative regulation of the powers of the Commission for Regulation of Gambling and Lotteries in Ukraine and the procedure for their implementation, setting clear requirements for its Chairperson and members, appointing their deputies, intensifying interaction with state regulators of foreign countries and their international associations.

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