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GREEN PAPER

On on-line gambling in the Internal Market

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GREEN PAPER

On on-line gambling in the Internal Market

The purpose of this Green paper is to launch an extensive public consultation on all relevant public policy challenges and possible Internal Market issues resulting from the rapid development of both licit and unauthorised on-line gambling offers directed at citizens located in the EU.

Broadly speaking there are currently two models of national regulatory framework applied in the field of gambling: one based on licensed operators providing services within a strictly regulated framework and the other on a strictly controlled monopoly (state owned or otherwise). These two models co-existed within the internal market given the relatively limited possibilities of selling gambling services across borders in the past.

The online gambling market is the fastest growing segment of the overall gambling market, with annual revenues in excess of € 6,16bn in 2008[1]. Thus monopolies have often been authorised to develop on-line activities and certain Member States[2] with monopoly regimes have gradually opted for an opening of their on-line gambling and betting market. It is important to note that sports betting as against other forms of gambling in certain national regulatory regimes are subject to relatively lighter licensing regimes. In summary, the development of internet and the increased supply of on-line gambling services have made it more difficult for the different national regulatory models to co-exist.

The challenges posed by the co-existence of differing regulatory models is illustrated by the number of preliminary rulings in this area as well as by the development of significant so-called "grey"[3] and illegal on-line markets across the Member States. Enforcement of national rules is facing many challenges, raising the issue of a possible need for enhanced administrative co-operation between competent national authorities, or for other types of action. Furthermore, out of 14,823 active gambling sites in Europe more than 85% operated without any licence[4].

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1 There is limited data available for on-line gambling. These figures provided by H2 Gambling Capital, are estimates primarily based on public information provided by regulators, monopolies and companies. Further guidance and data have also been supplied on a confidential basis (2008 figures). H2 Gambling Capital has also assessed the Member States serviced by operators where not primary information is available. For more detailed information on these figures:http://ec.europa.eu/internal_market/services/gambling_en.htm

2 The Commission is aware that certain on-line gambling services are regulated for at a regional level in a number of Member States. However, for reasons of simplicity, this Green paper only refers to "Member States" or "national".

3 The notion of "grey" market is often used to describe a factual or legal situation in the context of EU law (regarding for instance, i.a., the parallel imports of goods). For the purpose of this consultation, it is used to describe markets consisting of operators duly licensed in one or more Member States providing on-line gambling services in other Member States without having obtained an authorisation to do so under the corresponding national legislation. In contrast, illegal or black markets are used to describe markets on which unlicensed operators seek to provide on-line gambling services.

4 Cyber-criminality in Online Gaming, White Paper by CERT-LEXSI, (Laboratoire d'Expertise en Securite Informatique), July 2006. http://www.lexsi.com/telecharger/gambling_cybercrime_2006.pdf.

In view of the self-evident cross-border impact of this on-line gambling service growth in both its legal and unauthorised dimension, as well as of its nexus with many issues already dealt with by EU legislation, it is the Commission's intention to exhaust a number of questions related to the effects of, and to the possible public policy responses to, this growth in on-line gambling activity in order to have a full picture of the existing situation, to facilitate the exchange of best practices between Member States and to determine if the differing national regulatory models for gambling can continue to coexist and whether specific action may be needed in the EU for that purpose. This consultation also responds to a series of Presidency conclusions (2008-2010) and to the resolution of the European Parliament on integrity in on-line gambling (2009).

The Commission launches this consultation with an open mind in that it does not prejudice the conclusions to be subsequently drawn as to the necessity to take action, the form of such action, as appropriate, and the level at which such action should be taken. Its fundamental purpose is to collect the facts, assess the stakes and to gather the views of all interested stakeholders on a phenomenon that has multiple dimensions.

Comments are invited on all or some aspects of the document. Specific questions are listed after each section.

The consultation and the questions asked in this document focus primarily on on-line gambling, and issues linked to the free movement of services (Article 56 TFEU), due to the well developed cross-border supply of such services. However, although this consultation does not focus on the freedom of establishment (Article 49 TFEU) a number of questions may also be of direct relevance for other gambling services (offered in "bricks-and-mortar" establishments). The Commission would also like to stress that, in the absence of harmonisation in the field, it is for each Member State to determine in those areas, in accordance with its own scale of values, what is required in order to ensure that the interests in question are protected, in line with the subsidiarity principle.

A staff working document accompanying this Green paper is available on the Commission's website: **http://ec.europa.eu/internal_market/services/gambling_en.htm**

This staff working document provides interested parties with additional information relating to the stakeholders involved and their interests, the size of the on-line gambling market, secondary legislation, jurisprudence and the notification of national legislation under Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations.

Member States, the European Parliament, the European Economic and Social Committee and all other interested parties are invited to submit their views on the suggestions set out in this Green Paper. Contributions should be sent to one of the following addresses to reach the Commission by **31 July 2011** at the latest:

markt-gambling@ec.europa.eu

European Commission
DG Internal Market and Services
[J-59 08/061]
Rue de la Loi 200
B-1049

Contributions will be published on the internet. It is important to read the specific privacy statement attached to this Green Paper[5] for information on how personal data and contributions will be dealt with. The Commission asks organisations who wish to submit comments in the context of public consultations to provide the Commission and the public at large with information about whom and what they represent. If an organisation decides not to provide this information, it is the Commission's stated policy to list the contribution as part of the individual contributions. (Consultation Standards, see COM(2002) 704, and Communication on ETI Follow-up, see COM(2007) 127 of 21.3.2007)

In addition, the Commission intends to organise consultations of national authorities and targeted stakeholder meetings and expert workshops. In follow-up to this Green Paper and on the basis of the conclusions drawn from the results of this consultation, the Commission will consider the next steps to be taken.

[5] […]

1. REGULATING ON-LINE GAMBLING IN THE EU: RECENT DEVELOPMENTS AND CURRENT CHALLENGES FROM THE INTERNAL MARKET STANDPOINT

1.1. Purpose of the consultation

This Green paper is launching a public consultation on the regulation of on-line gambling services in the Internal Market. It seeks to canvass views from all interested parties in order to get a better understanding of the specific issues arising from the development of both legal and "unauthorised" offers of on-line gambling services directed at consumers located in the EU. The consultation aims at collecting information on the existence and extent of societal and public order risks associated with this activity. It furthermore seeks contributions on the regulatory and technical means Member States use or could use to ensure consumer protection, the preservation of public order or other public interests, and their effectiveness, in view of the need for a proportionate, systematic and coherent application of their policy vis-à-vis on-line gambling. Finally, the consultation should help identify if the current rules applicable to on-line gambling services at EU level are fit to ensure the overall coexistence of the national systems and determine if greater cooperation at EU level might help Member States to achieve more effectively the objectives of their gambling policy.

Today on-line gambling services are widely offered and used in the EU and the economic significance of the sector is growing. The on-line offer is the fastest growing segment of the gambling market, accounting for 7.5% of the annual revenues of the overall gambling market in 2008, and it is expected to double in size by 2013. At the same time, the regulatory framework applicable to gambling differs significantly across Member States. While some Member States restrict or even ban the offer of certain games of chance, others have more open markets. Many Member States have also recently reviewed their gambling legislation or are in the process of doing so in view of the growth of on-line gambling services.

The advent of the internet and the rapid growth of on-line gambling opportunities combined with the considerably differing national regulations have resulted not only in an increasing legal offer of gambling services in certain Member States but also in the development of a significant unauthorised cross-border market. This consists of both a black market (with unlicensed clandestine betting and gaming, including from third countries) and a so-called "grey" market (operators duly licensed in one or more Member States promoting and/or providing gambling services to citizens in other Member States without having obtained a specific authorisation in those countries). This unauthorised cross-border market remains accessible to consumers, due either to de facto tolerance or lack of effective enforcement, and adds to the legal national offers that are available to consumers depending on the legal situation prevailing in the Member States where they are located.

Since July 2008, Member States have, within a Council Working Party on Establishment and Services, discussed matters of common interest in relation to the gambling sector. Consecutive Presidencies have asked for the European Commission's active participation and detailed consultations. The French Presidency suggested in 2008[6] that the Commission , in due course, should consider the possibility to make proposals to identify ways forward. The Swedish Presidency encouraged the European Commission to engage in the work on this

[6] Presidency progress report, presented on 1 December 2008 (doc ref 16022/08).

topic to address gambling responsibility[7] and the Spanish Presidency invited the Commission to initiate consultations with the stakeholders and the Member States in view of EU actions in this field[8]. Most recently, under the Belgian Presidency, all Member States agreed on Council conclusions that welcome a broad consultation by the European Commission on online gambling in the internal market which will allow for an in-depth discussion on issues raised by on-line gambling services in particular. These conclusions, adopted on 10 December 2010[9] also addressed cooperation between regulatory authorities and noted that the Internal Market Information system could become a useful tool in order to facilitate this administrative cooperation.

This Green paper also responds to the resolution of the European Parliament adopted on 10 March 2009 that called on the Commission to study, in close cooperation with national governments, the economic and non-economic effects of the provision of cross-border gambling services in relation to a wide range of issues[10].

Under EU law, as confirmed by the CJEU, gambling services fall under Article 56 TFEU and are thus covered by the rules on the provision of services. According to these rules, operators authorised in one Member State may provide their services to consumers in other Member States, unless those impose restrictions justified by overriding reasons in the public interest, such as consumer protection or the general need to preserve public order. The Member States' overall policy vis-à-vis on-line gambling must be proportionate and be applied in a consistent and systematic manner. Moreover, such restrictions must also be consistent with EU secondary legislation: although gambling services are not regulated by sector-specific regulation at EU level and excluded from horizontal acts such as the Services Directive (2006/123/EC) or the E-commerce Directive (2000/31/EC), they are subject to a number of rules in EU secondary legislation[11].

In view of recent trends, restrictions imposed to online gambling by each Member State can be expected to continue to vary considerably, with the effect that what is, or will become, considered a legal offer in one Member State will continue to be deemed “unlawful” (in that it has not been implicitly or explicitly authorised) in the territory of another Member State. It follows that, subject to the legal conditions set out above, effective enforcement will be essential to ensure the achievement of the objectives of a Member State's gambling policy.

The Commission’s objective is to contribute, through this consultation and building on the active involvement of the Member States, the Council and the European Parliament, to the emergence in the Member States of a legal framework for on-line gambling providing for greater legal certainty for all stakeholders. The consultation should embrace all the relevant public interest objectives that this activity touches on and allow for the identification of the best possible ways to reconcile them with the Internal Market principles. At the end of this process and in light of the responses received, the Commission will report on what appears to be the most appropriate follow-up.

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7 Presidency progress report, presented on 3 December 2009, (doc ref 16571/09).

8 Presidency progress report, presented on 25 May 2010, (doc ref 9495/10).

9 Conclusions on the framework for gambling and betting in the EU Member States, adopted at the 3057th Competitiveness Council meeting, Brussels, 10 December 2010. Council document 16884/10.

10 The resolution followed the SCHALDEMOSE report. See European Parliament resolution of 10 March 2009 on the integrity of online gambling (2008/2215(INI)); P6-2009-0097. These issues include advertising and marketing and under age people (p 29), fraud and criminal behaviour (p. 30) and integrity, social responsibility, consumer protection and taxation (p. 31).

11 See section 1.2: subsection "*EU secondary legislation relevant to on-line gambling*".

1.2. On-line gambling in the EU: current situation

Main features of the on-line gaming industry operating in the EU

In 2008, the annual revenues generated by the gambling service sector, measured on the basis of Gross Gaming Revenues (GGR) (i.e. stakes less prizes but including bonuses), were estimated to be € 75,9 bn (EU 27[12]), showing the economic significance of the sector. On-line gambling services accounted for annual revenues in excess of € 6.16 bn, 7.5% of the overall gambling market. This on-line market is the fastest growing segment and in 2008 it was expected to double in size in five years[13].

The transmission channels for on-line gambling services can be divided into three main categories, namely internet, mobile applications and IPTV:

	2003	2008	2012	Projected increase
Internet	€ 4.8 bn	€ 5.9 bn	€ 7.32	152.5%
Mobile phones/ other	€ 0.78 bn	€ na	€ 3.51	450.0 %
IPTV[14]	€ 0.32 bn	€ na	€ 1.33	415.6%

Figure 1. Projected increase in three main categories of remote gambling[15]

National levels of demand for these on-line services vary across the Union depending on a number of factors. In that respect it is not surprising to see that the UK is the largest market at the current time given that its e-commerce market is twice as large as the average for the Member States[16] It is however interesting to note that some of the largest markets in 2008 were Member States characterised by the restrictive regulatory model, i.e. France, Germany, Italy and Sweden.

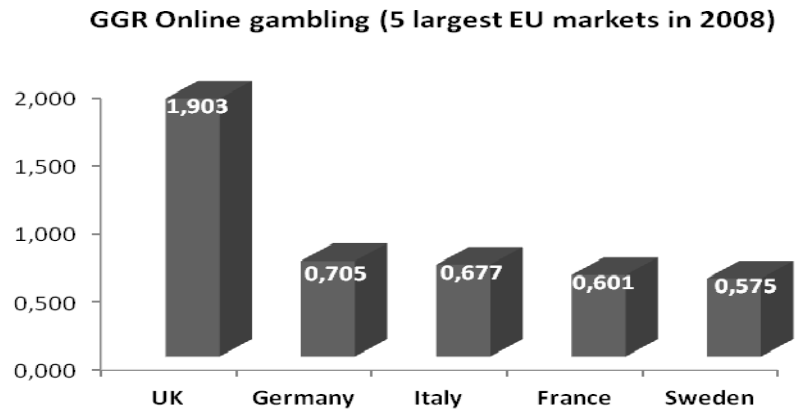


Figure 2. Five largest national on-line gambling markets in the EU in 2008 (GGR in bn €)[17]

12 H2 Gambling Capital (2008 figures).
13 EGBA and H2 Gambling Capital, 2009, http://www.egba.eu/pdf/EGBA_FS_MarketReality.pdf
14 Internet Protocol Television.
15 SICL study, page 1407, http://ec.europa.eu/internal_market/services/gambling_en.htm
16 See Report on retail Market monitoring, 5 July 2010 - COM(2010) 355.
17 H2 Gambling Capital.

Currently internet is the most significant channel but very high rates of growth are expected through the roll out of new mobile applications. Five major categories of on-line gambling services are offered (see Figure 3).

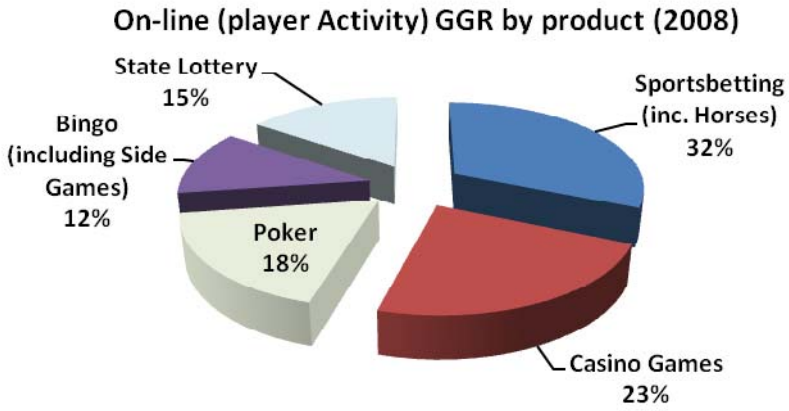


Figure 3. Breakdown of the Gross Gambling Revenues by type of on-line gambling service (EU-27)[18]

A wide range of stakeholders have an interest in, or are affected by, the provision or promotion of on-line gambling services. These include citizens, operators, media, intermediaries, sport events organisers, clubs and associations, good causes and other beneficiaries[19].

As regards citizens, the market for gambling (online and offline) is one of the 50 markets covered in the annual Consumer Market Monitoring Survey. The market is rated 29th out of 50 included markets. The consumer ranking for "comparability" is relatively high, the rating for "trust" is average and the rating for "experienced problems" is much lower than the average. The overall rating for whether the product lived up to what the consumer expected is relatively low but this is perhaps to be expected given the nature of the product[20].

Questions:

(1) Are you aware of any available data or studies on the EU on-line gambling market that would assist policy-making at EU and national level? If yes, do the data or study include licensed non-EU operators in the EU market?

(2) Are you aware of any available data or studies relating to the nature and size of the black market for on-line gambling services? (Unlicensed operators)

(3) What, if any, is your experience of EU-based on-line gambling operators licensed in one or more Member State and providing and promoting their services in other EU Member States? What are your views on their impact on the corresponding markets and their consumers?

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18 H2 Gambling Capital.

19 For a more on the stakeholders and their interests, see "Staff working document".

20 Specific scores for market in specific countries (dashboards), the overall report (where gambling is dealt with on page 243), tables, etc. can be found at this link: http://ec.europa.eu/consumers/strategy/cons_satisfaction_en.htm

(4) What, if any, is your experience of licensed non-EU on-line gambling operators providing and promoting their services in EU Member States? What are your views on their impact on the EU market and on consumers?

Online gambling under the Treaty rules

The regulatory situation for on-line gambling is characterised by the fact that in 2006 the Commission, following a unanimous demand of the Council and the European Parliament in first reading, excluded gambling services from the scope of its modified proposal for a Services directive[21]. As a consequence of the lack of political will to consider the adoption of secondary law in this sector, the focus turned to the application of primary law. A number of infringement proceedings[22] against cross-border restrictions to such services were processed as a result of the many complaints lodged with the Commission for alleged violations of the Treaty. As the Court of Justice of the EU (CJEU) has now developed and set out a number of guiding principles, a significant proportion of the Member States against which the Commission opened infringement cases have since launched national regulatory gambling reforms and more than 150 draft Acts and regulations have been notified to the Commission[23].

A study by the Commission in 2006[24] examining the various laws regulating on-line and off-line gambling services'[25] and their impact upon the smooth functioning of the Internal Market for these and associated services presented a picture of a very fragmented Internal Market where Member States frequently imposed restrictions to cross-border gambling services. The interpretation of national rules was not always clear and the study listed almost 600 cases before national Courts demonstrating the significant legal uncertainty affecting the EU market for such services[26].

The Treaty on the functioning of the European Union (TFEU)

Article 56 of the TFEU prohibits restrictions on the freedom to provide services to recipients in other Member States. In *Schindler*[27] the CJEU confirmed for the first time that the provision and use of cross-border gambling offers is an economic activity that falls within the scope of the Treaty. The Court furthermore held in *Gambelli*[28] that services offered by electronic means were covered and that national legislation which prohibits operators

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21 COM(2006) 160, 4.4.2006. Currently Article 2(2)(h) of the Services Directive expressly excludes gambling activities.

22 Commission launched inquires into restrictions on sports betting services in a number of Member States on 4 April 2006 (IP/06/436). The Commission was criticised for not processing these complaints fast enough by the European ombudsman following a complaint lodged with his office by the European Parliament (Case number: 289/2005).

23 151 notifications relating to gambling were notified to the Commission under Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204, 21.7.1998, p.37) (amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18)) 2005 - 2010. See also: http://ec.europa.eu/enterprise/tris/index_en.htm

24 Study on gambling services in the EU Internal Market, by the Swiss Institute of Comparative Law. See http://ec.europa.eu/internal_market/services/gambling_en.htm

25 (1) lotteries, (2) betting; (3) gambling offered in casinos; (4) gambling on gambling machines that are placed in locations other than licensed casinos; (5) bingo; (6) media gambling; (7) sales promotion services consisting of promotional games with a prize exceeding € 100,000 or where participation is exclusively linked to purchase; (8) gambling services operated by and for the benefit of recognised charities and non-profit making organisations.

26 587 cases, most of these cases were dealt with by German Courts.

27 Case C-275/92, ECR 1994 Page I-01039.

28 Case C-243/01, ECR 2003 Page I-13031.

established in a Member State from offering on-line gambling services to consumers in another Member State, or hampers the freedom to receive or to benefit as a recipient from the services offered by a supplier established in another Member State, constitutes a restriction on the freedom to provide services.

Restrictions are only acceptable as exceptional measures expressly provided for in Articles 51 and 52 TFEU, or justified, in accordance with the case-law of the Court, for reasons of overriding general interest. A certain number of reasons of overriding general interest have been recognised by the Court, such as the objectives of consumer protection and the prevention of both fraud and incitement to squander on gaming, as well as the general need to preserve public order. The reduction of tax revenue however is not one of the grounds listed in Article 52 TFEU and does not constitute a matter of overriding general interest. The recognised societal issues can all serve to justify the need for national authorities to have a sufficient margin of discretion to determine what consumer protection and the preservation of public order require in terms of type of service provision offered in this field[29].

The case-law also requires that such service provision and the cross-border restrictions that may result from the regulatory approach must bring about a genuine reduction of gambling opportunities and be applied in a consistent and systematic manner to all service offers in the area[30]. In so far as the authorities of a Member State incite and encourage consumers to participate in lotteries, games of chance and betting to the financial benefit of the public purse, the authorities of that State cannot invoke public order concerns relating to the need to reduce opportunities for betting in order to justify restrictions[31]. Restrictions must be applied without discrimination and be proportionate, i.e. they must be suitable for achieving the objective which they pursue and not go beyond what is necessary in order to attain it. The procedure for the grant of a licence is bound to comply with the principles of equal treatment and non-discrimination and with the consequent obligation of transparency[32].

Of particular interest for this consultation is the Court's view that gambling services offered via the internet have several specific characteristics which enable the Member States to adopt measures restricting or otherwise regulating the provision of such services, in order to combat gambling addiction and protect consumers against the risks of fraud and crime. Those specificities are the following:

(1) In the sector of on-line gambling, authorities of the Member State of establishment encounter specific difficulties to assess the professional qualities and integrity of operators. These difficulties justify that a Member State takes the view that the mere fact that an operator lawfully offers on-line gambling services in another Member State, in which it is established and where it is in principle already subject to statutory conditions and controls on the part of the authorities of that Member State, cannot be regarded as amounting to a sufficient assurance that its own consumers will be protected against the risks of fraud and crime[33];

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29 C-275/92, ECR 1994 Page I-01039; Case C-124/97, ECR 1999 Page I-06067; Case C-67/98, ECR 1999 Page I-07289.

30 Case C-67/98, ECR 1999 Page I-07289; Case C-243/01, ECR 2003 Page I-13031.

31 Case C-243/01, ECR 2003 Page I-13031.

32 Case C-203/08, ECR [0000] Page I-0000.

33 Case C-42/07, ECR [2009] Page I-7633, § 69, see also section 2.4 (enforcement) and question 48.

(2) The lack of direct contact between the consumer and the on-line gambling operator gives rise to different and more substantial risks of fraud by operators against consumers compared to the traditional gambling market[34]; and

(3) The particular ease and the permanent access to on-line gambling services and the potentially high volume and frequency of such an international offer, in an environment which is characterised by isolation of the player, anonymity and an absence of social control are factors likely to develop gambling addiction and lead to other negative consequences (The Court also states that the internet may prove to be a source of risks of a different kind and a greater order in the area of consumer protection, particularly in relation to young people and those with a propensity for gambling or likely to develop such a propensity, in comparison with traditional markets for such games)[35].

The Court developed its case-law primarily on the basis of references for preliminary rulings from national courts. At the same time however the Commission launched a series of infringement proceedings against Member States in order to verify on the basis of the jurisprudence of the Court the proportionality of restrictions implemented in Member States. Following reforms in Member States the Commission has already closed some of these cases[36].

Furthermore, the European Commission has opened, under EU state aid rules (Articles 107 and 108 TFEU), a formal investigation to examine whether lower taxes for online casinos in comparison to traditional casinos in Denmark are in compliance with the Treaty rules[37].

EU secondary legislation relevant to on-line gambling

As regards secondary European law, gambling services are not regulated by sector-specific rules at EU level but nevertheless are subject to a number of EU acts[38]. The following texts are noteworthy in this respect[39]: the Audiovisual Media Services Directive[40], the Unfair Commercial Practices Directive[41], the Distance Selling Directive[42], the Anti-Money Laundering Directive[43], the Data Protection Directive[44], the Directive on privacy and electronic communication[45], and the Directive on the common system of value added tax[46]. In

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34 Case C-42/07, cited above, § 70. As regards face-to-face customer identification and age verification, see questions 16 and 24.

35 Case C-46/08, ECR [0000], Page I-0000, §103. As regards factors linked to problem gambling, see questions 17 and 19.

36 See IP/10/504 (Italy) and IP/10/1597 (France). The Commission has also closed a case against Austria (no IP)

37 Case C35/2010 - DA - Duties for online gaming in the Danish Gaming Duties Act (OJ C 22, 22.1.2011) and IP/19/1711. See also Staff working document Section 2.3.

38 See Section 2.1 of the Staff working paper.

39 For a more complete listing of EU secondary legislation, see "Staff working document".

40 OJ L 95, 15.4.2010, p. 1.

41 OJ L 149, 11.6.2005, p. 22.

42 OJ L 144, 4.6.1997, p. 19.

43 OJ L 309, 25.11.2005, p. 15.

44 OJ L 281, 23.11.1995, p. 31.

45 OJ L 201, 31.7.2002, p. 37.

46 OJ L 347, 11.12.2006, p. 1.

other cases gambling services have been explicitly excluded from the scope of EU law. This is the case of the E-commerce Directive[47] and of the Services Directive[48].

Questions:

(5) If any, which are the legal and/or practical problems that arise, in your view, from the jurisprudence of national courts and the CJEU in the field of online gambling? In particular, are there problems of legal certainty on your national and/or the EU market for such services?

(6) Do you consider that existing national and EU secondary law applicable to on-line gambling services adequately regulates those services? In particular, do you consider that coherence / consistency is ensured between, on one hand, the public policy objectives pursued by Member States in this field and, on the other hand, the national measures in force and/or the actual behaviour of public or private operators providing on-line gambling services?

2. KEY POLICY ISSUES SUBJECT TO THE PRESENT CONSULTATION

The following sections of this Green paper examine the key issues associated with the efficient and fair regulation of on-line gambling services. These issues, which may not be exhaustive, can be broken down into four main categories: conceptual/organisational, societal, public order and economic/good causes.

All considerations and questions developed hereunder and pertaining to the organisation or regulation of the on-line gambling sector are without prejudice to the wide margin of appreciation left to Member States as to their regulatory approach to this activity, including as to the use of the revenues from gambling activities. For example, the discussion of issues such as licensing is not based on any presumption that there is a *de jure* obligation on Member States to allow on-line gambling or to open their markets to private operators. Member States remain free to determine their approach to this sector within the limits of the principles as set out by CJEU case law.

2.1. Definition and organisation of on-line gambling services

Definitions

A large number of differing gambling services are covered by the term “online gambling”. These include on-line provision of sports betting services (including horse racing), casino games, spread betting, media games, promotional games, gambling services operated by and for the benefit of recognised charities and non-profit making organisations and lottery services.

Internet (and other interactive technological platforms, such as m-commerce[49] or IPTV) are used to (a) offer gambling services to consumers, (b) allow consumers to bet or gamble

[47] OJ L 178, 17.0.2000, p. 1.

[48] OJ L 376, 27.12.2006, p. 36

[49] Mobile Commerce - completed by using mobile access to computer-mediated networks with the help of an electronic device (for example a mobile phone).

against each other (e.g. betting exchanges or on-line poker) or (c) as a distribution technique (e.g. to purchase lottery tickets directly on-line).

The long-standing definition that exists for gambling activities in general in EU secondary legislation is that relied upon to exclude such services from the e-commerce directive:

> *"gambling activities ...involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions."*

In later texts such as the Services directive and most recently in the Audiovisual Media Services Directive a slightly different definition is "games of chance involving a stake representing a sum of money, including lotteries, betting and other forms of gambling services"[50]. The term 'casino' is not defined in the Money laundering Directive.

Subject to the outcome of the present consultation, it is the Commission's preliminary view that the broader definition as set down in the e-commerce directive should be maintained for gambling and that this should be combined with that for information society services as set down in Directive 98/34/EC such that the following common definition for on-line gambling services should be applied as defining the scope of the current consultation:

> *On-line gambling services are any service which involves wagering a stake with monetary value in games of chance, including lotteries and betting transactions that are provided at a distance, by electronic means and at the individual request[51] of a recipient of services.*

Questions:

(7) How does the definition of on-line gambling services above differ from definitions at national level?

(8) Are gambling services offered by the media considered as games of chance at national level? Is there a distinction drawn between promotional games and gambling?

(9) Are cross-border on-line gambling services offered in licensed premises dedicated to gambling (e.g. casinos, gambling halls or a bookmaker's shop) at national level?

Establishment and licensing of on-line gambling services

According to the Court's case law under Article 49 TFEU, the concept of establishment is a very broad one, allowing an EU national to participate, on a stable and continuous basis, in the economic life of a Member State other than his State of origin and to profit from this

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50 In a proposal for a regulation concerning sales promotions on the Internal Market - COM(2001)546 - the Commission drew a distinction between games of chance and games of skill. This was necessary due to differing national definitions of "chance". Such differences could also be explaining differing national regulations of certain betting activities or poker.

51 "At a distance" and "at the individual request" meaning a direct on-line request from the recipient to the on-line gambling operator without reliance on any intermediaries such as shop staff working at a point of sale. To the extent that the distance transaction takes place through a network of natural persons acting as intermediaries using electronic means it is not intended to be contained in the above definition.

market, so contributing to economic and social interpenetration within the Community[52]. However, in order for the provisions relating to freedom of establishment to apply, it is generally necessary to have secured a permanent presence in the host Member State[53]. Such a permanent presence could for example be an office set up to follow sport in order to set fixed odds or a commercial office with the objective to promote cross border gambling services or to provide local customer support.

According to the e-commerce directive[54], a company offering information society services is established where it pursues its economic activity. It is therefore neither the place where the technology supporting its website is located nor the place where the website is accessible. In cases where it is difficult to determine from which of several places of establishment a given service is provided, the place where the company has the centre of its activities relating to the particular service should be the deciding factor. Since a company can use one or multiple servers or a "cloud-based"[55] infrastructure and since it can switch and relocate them within a very short period of time, a server cannot be considered a secure link to determine the company's place of establishment relating to a particular on-line service.

National laws sometimes set quantitative limits on the number of licences that may be held for on-line gambling services or may even ban them altogether within their jurisdictions. (E.g. a prohibition or a legal or de facto monopoly for one or more categories of gambling services). Other Member States do not set limits on the total number of licences that they may issue – a licence is given to any on-line operator that meets a number of conditions set out in law or regulations. Licences may be limited in time or granted for an undefined period. Within the EU, the largest number of licensed on-line gambling operators is to be found in Malta (ca 500 licences in 2009).

The current regulatory situation in the Member States is such that operators may be required, when offering the same type of on-line gambling service (e.g. sports betting) in different Member States, to apply for a licence in each of these Member States. Certain Member States recognise licences issued in other Member States that are notified to them (white listing) and allow such licensed providers to offer their on-line gambling services into their territories without an additional licence. Others may take account of such licences when issuing their own licences to such operators but impose double licensing regimes whereby each operator, irrespective of whether he is operating in another Member State, must be licensed within their territory before he can offer such services.

Question:

(10) What are the main advantages/difficulties associated with the coexistence in the EU of differing national systems of, and practices for, the licensing of on-line gambling services?

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52 Case C-55/94, ECR 1995, Page I-4165.

53 Case C-386/04, ECR 2006, Page I-8203.

54 The e-commerce directive, cited in footnote 47, recital (19).

55 A cloud is a platform or infrastructure that enables execution of code (services, applications etc.), in a managed and elastic fashion.

2.2. Related services performed and/or used by on-line gambling services providers

A number of services, including marketing and payment services, are used by gambling operators to encourage or facilitate on-line gambling. Some of these services are subject to secondary legislation.

Promotion of on-line gambling – Commercial Communications

On-line service providers use commercial communications to promote their services, related products and image to final consumers and/or distributors. The Commission understands that the following commercial communications are the most frequently used:

(1) TV advertising;

(2) Printed press advertising;

(3) On-line commercial communications;

(4) Sales promotions;

(5) Direct marketing (which includes direct mail, primarily by e-mails and sms to registered customers, for example personal follow-up contacts); and

(6) Sponsorship agreements.

The Commission is aware that, in many Member States, there are restrictions on such commercial communications ranging from prohibitions to content requirements on media advertising of on-line gambling services. Whereas the Commission welcomes comments on such restrictions (points (1) and (2) above) it wishes to focus its consultation on certain forms of commercial communications, points (3) – (6)

– *On-line commercial communications*

On-line banners and pop-ups on non-gambling sites are two forms of internet advertising intended to redirect traffic to on-line gambling services. They therefore appear on non-gambling information society services. They do not fall under the scope of the E-commerce directive but fall within the scope of the Unfair Commercial Practices Directive and, in so far as the use of on-line commercial communications includes the collection and processing of personal data, the Data Protection Directive 95/46/EC and E-Privacy Directive 2002/58/EC.

– *Sales promotions*

Sales promotions cover discounts of all forms; premium offers, free gifts, promotional contests and promotional games. They are an important multi-faceted tool that can be adjusted to various circumstances: to enter into markets with innovative products; to encourage customer loyalty; to stimulate short-term competitive actions; or to rapidly respond to lost sales. One of the most common types of sales promotions are the use and communication of registration and deposit bonuses, i.e. where on opening a player's account a sum of money is paid or extra funds are added to deposits made by an already registered customer.

Sales promotions relating to on-line gambling services are regulated by the Unfair Commercial Practices Directive as well as Data Protection Directive and E-Privacy Directive 2002/58/EC.

– *Direct marketing*

All on-line gambling operators use direct marketing strategies (via mail, telephone, Internet and direct response) as they are considered an essential tool for companies to approach, inform and retain customers, as well as providing customer after-sales services. These are regulated by the Distance Selling Directive, the Unfair Commercial Practices Directive, Data Protection Directive 95/46/EC and the E-privacy Directive 2002/58/EC. Such direct marketing may include player-to-player marketing and could be combined with sales promotions.

– *Sponsorship*

Sponsorship means any commercial agreement by which a sponsor, for the mutual benefit of the sponsor and sponsored party, contractually provides financing or other support in order to establish an association between the sponsor's image, brands, goods or services and a sponsorship property in return for rights to promote this association and/or for the granting of certain agreed direct or indirect benefits[56]. Sponsorship is central to on-line gambling service providers' marketing mix whether they are national lotteries or commercial operators.

Question:

(11) With focus on the categories mentioned above, how are commercial communications for (on-line) gambling services regulated for at national level? Are there specific problems with such cross-border commercial communications?

– *On-line payment services, pay-outs and customer identification*

Since truly effective distance micro-payment services are not yet available, on-line gambling operators typically require their customers to deposit funds on player accounts before playing. Deposits can be made by credit cards, e-Wallets, bank transfers, pre-paid cards or cash transfers.

Payment method	Estimated percentage[57]
Credit cards (including Maestro)	64-65%
E-wallets	12-14 %
Bank transfers	11-13%
Prepaid cards	9-11%

[56] ICC International Code on Sponsorship (2003) http://www.iccwbo.org/policy/marketing/id926/index.html

[57] European Commission estimates based on information from operators that accept deposits from customers who are resident in another Member State (February 2010).

Additional limits are typically set by on-line gambling operators, such as on deposit and withdrawal levels from the player's account. Limits on withdrawals range from a fixed limit to the requirement for the player to contact a bank in person to withdraw larger sums from the player's account.

Certain operators require that the same payment method is used for both deposits and withdrawals of funds (a so-called “closed” system).

Gambling services offered over mobile telephony or IPTV will also include transmission charges linked to invoices for telephony services.

Questions:

(12) Are there specific national regulations pertaining to payment systems for on-line gambling services? How do you assess them?

(13) Are players' accounts a necessary requirement for enforcement and player protection reasons?

Customer identification is necessary for, in particular the protection of minors, fraud prevention, "know-your-customer" controls and prevention of money laundering. Customer identification may raise specific Internal Market problems when the service provider and customer are at different locations and also because of the current lack of mutual recognition of electronic identification and authentication across the EU[58]. In contrast, bricks-and-mortar establishments that offer games of chance will have the possibility to obtain an identity card and carry out a face-to-face recognition at the gambling venue.

Today, on-line gambling service providers' customer identification is based on:

– Previous identifications carried out by payment service providers, as most of the payment options require that the customer has a bank account;

– Own controls in view of information and documents requested from the potential customer; and

– Controls by verification service providers subject to compliance with obligations laid down by EU data protection law.

Mystery shopping exercises of licensed operators suggest that there are very few weaknesses that could allow for under aged persons to gamble and withdraw winnings[59]. Age verification takes place before the new customer can start playing. It has been suggested that additional pay-out age verification could work as a further deterrent to minors and adolescents seeking to register.

[58] See also A Digital Agenda for Europe - COM(2010) 245, 19.5.2010.

[59] The UK Gambling Commission conducts a rolling programme of mystery shopping on gambling websites as part of its compliance activity, see www.gamblingcommission.gov.uk/.

Question:

(14) What are the existing national rules and practices relating to customer verification, their application to on-line gambling services and their consistency with data protection rules? How do you assess them? Are there specific problems associated with customer verification in a cross-border context?

2.3. Public interest objectives

The Commission fully respects the principle of subsidiarity and recognises that Member States have a margin of discretion to protect valid public interest objectives in accordance with the Treaty.

This section focuses on the following three public interest objectives which, to various degrees, may be valid for Member States in terms of their national on-line gambling policies: Consumer protection (2.3.1); Public order (2.3.2) and financing of what they define as public interest activities (2.3.3).

2.3.1. Consumer protection

The evidence available to the Commission at this stage seems to indicate that a majority of players do not suffer from problem gambling. However, those that do must be fully accounted for given the associated social costs for the player, his or her family and society as a whole. All gamblers need protection against fraudulent services. For this reason regulators seek to ensure that all games offered are controlled, fair (i.e. that random number generators are in conformity with technical standards and in line with the rules for each game) and free from crime. Transparency is key.

Problem gambling

The need to protect players and to prevent problem gambling is invoked when restricting the offer of on-line gambling services to consumers.

Problem gambling is often described as an urge to gamble despite harmful negative consequences or a need to stop. To assess the extent of problem gambling in the population of a country, comprehensive surveys, so called 'prevalence' studies, are carried out. The two most widely used screening instruments to identify problem gamblers are DSM-IV[60] and SOGS[61]. Depending on the responses to a list of questions, the player is defined as a problem gambler (SOGS), a potential pathological gambler (DSM-IV) or a probable pathological gambler (SOGS and DSM-IV), also referred to as a gambling addict (see below).

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60 Diagnostic and Statistical Manual of Mental Disorders, 4th ed. for pathological gambling, American Psychiatric Association, 1994. A publication of the 5th edition of Diagnostic and Statistical Manual of Mental Disorders (DSM-V) is foreseen for May 2013.

61 The South Oaks Gambling Screen, Lesieur & Blume, 1987. Both tools (DSM and SOGS) also exist in versions adapted to adolescents: DSM-IV-J (juvenile), DSM-IV-MR-J (multiple response-juvenile) and SOGS-RA (revised for adolescents).

The Commission is aware of nationwide prevalence studies for problem gambling in eight Member States[62] and seven more[63] have carried out some studies of limited scope (either regional or on specific age categories, mostly adolescents). The level of problem gambling in the eight Member States that have carried out nationwide prevalence studies varies from 0.5% of the entire population in the UK to 6.5% in Estonia[64]. As regards the prevalence of problem gambling in the field of on-line gambling in the EU, only four Member States[65] provide nationwide statistics, three others[66] provide some partial information (surveys of limited scope, carried out on a certain age group or concerning only a certain type of on-line games).

These studies suggest that the main *factors* that influence problem gambling are the following:

(1) Event frequency. The briefer the time between the game taking place and the opportunity to place a stake the greater the risk.

(2) Payout interval. The time between placing of the stake and the result. The shorter this is the greater the risk.

(3) Accessibility and social environment.

(4) Chasing losses or being close to winning, The greater the pay-out and probability of winning, the greater the delusion that lost stakes can be won back and therefore the increased risk (this is also linked to "excitement" or "dream effect").

(5) Perceived skills and “involvement”. The possibility of getting involved in the event being gambled on and of using one’s own skills to assess the chances of winning provide evidence of the ‘near-miss’ psychology. This strengthens the feeling that one is in control of the game, thus increasing the risk. This includes variation of the stake. Note that this effect may be enhanced when some element of skill rather than purely chance is perceived to be a characteristic of the game.

(6) Commercial communications that could trigger vulnerable groups.

In this respect different types of games or different kinds of bets might pose different risks to players. For example, fast pay out slot machines, scratch cards and casino games are often considered to be the most problematic in this respect. Lottery games that are run on a weekly basis are considered less risky (although suffering from factor (4) mentioned above) than those run on shorter intervals (because of factors (1) and (2)). Sports betting and poker are considered to suffer more from the risk identified under point (5) above. "Live" sports betting suffers additionally from the risk set out under point (1).

Question:

(15) Do you have evidence that the factors listed above are linked to and/or central for the development of problem gambling or excessive use of on-line gambling services? (If possible, please rank them)

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62 BE, DK, EE, FI, DE, NL, SE and UK.

63 ES, HU, IT, LT, RO and SK.

64 M. Griffiths, *Problem gambling in Europe: An overview,* Appex Communications, April 2009.

65 BE, EE, NL and UK.

66 FI, DE and MT.

To date across the Member States the *instruments* that have been used to try to limit excessive "problem gambling" in on-line services are those applied to all gambling, viz.,

(1) Age limits,

(2) Self-limitation (financial and time) and self-exclusion,

(3) Information/warnings/self tests (more easily applied on-line than off-line),

(4) Banning the use of credit,

(5) Reality checks,

(6) Diligence obligation for the on-line operator,

(7) Restricting certain forms of games or bets that are considered to be the most risky (e.g. casino games or in sports betting restricting bets to final results only), and

(8) Other (e.g. limits on commercial communication – restrictions on the use of certain media, sales promotions and sign-up bonuses or free practice games).

Question:

(16) Do you have evidence that the instruments listed above are central and/or efficient to prevent or limit problem gambling relating to on-line gambling services? (If possible, please rank them)

Gambling addiction

Where such information is available, rates of probable gambling addiction appear to vary from 0.3% to 3.1% of the entire population[67]. Pathological (addictive) gambling has been considered by some specialists as an impulse control disorder[68] and therefore not referred to as addiction. However, recent studies have discovered similarities between gambling and substance addiction[69]. As mentioned in section 3.1, gambling problem screening tools used in surveys allow for the identificationof individualsthat have severe problems with their gambling behaviour. There are contrary views as regards the addictive potential of on-line gambling. Although remote gambling fulfils the criteria of availability and accessibility, making frequent playing easier than in case of land-based gambling venues, it is difficult to draw direct links between remote gambling and the likelihood of becoming an addicted gambler.

On-line gambling provides operators with more sophisticated possibilities to track the transactions of each player compared to off-line gambling formats. In contrast to prevalence studies, on-line gambling data allow for studies of the player's real behaviour. A study of on-

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67 Data from 7 Member States, M. Griffiths, *Problem gambling in Europe: An overview,* Appex Communications, April 2009.

68 Diagnostic and Statistical Manual of Mental Disorders, 4th Ed., American Psychiatric Association, 1994.

69 Draft of the Diagnostic and Statistical Manual of Mental Disorders, 5th Ed., American Psychiatric Association, publication planned for 2013.

line gaming behaviour carried out by the Division on Addiction, Cambridge Health Alliance, a teaching affiliate of Harvard Medical School[70], based on a long term analysis of individual gaming activity of a random sample of nearly 50,000 on-line casino players from 80 countries and an almost equal sample of on-line sports betting participants showed that 99% of the customers of on-line sports betting did not display any unusual gaming behaviour compared to 95% in the case of on-line casino players[71].

The report prepared for the Swedish Presidency in 2009[72] mentions that although some research suggests the existence of a positive link between accessibility and gambling addiction, the available empirical data do not always confirm this. Where it has been possible to compare the results of prevalence studies carried out 7-10 years ago (when on-line gambling was less popular) with the results of studies carried out more recently, the gambling addiction prevalence rate remained steady[73].

Also the British Gambling Prevalence Survey carried out for the Gambling Commission in 2007 found that addiction rates for on-line gambling in the UK were lower than for some types of off-line games and that the addiction seemed to be more linked to the introduction of new and thus more "attractive" types of games, whether on-line or off-line[74].

The Commission notes that most on-line gambling websites established and licensed in the EU have hyperlinks to help-lines or organisations working with problem gamblers. However, even if 15 Member States have carried out national or regional prevalence studies – there is little information available about the relevant policy response to these studies (e.g. launch of educational campaigns or additional recourses given to prevention or treatment) or to what extent problem gamblers have access to treatment[75].

Questions:

(17) Do you have evidence (e.g. studies, statistical data) on the scale of problem gambling at national or EU level?

(18) Are there recognised studies or evidence demonstrating that on-line gambling is likely to be more or less harmful than other forms of gambling for individuals susceptible to develop a pathological gaming pattern?

(19) Is there evidence to suggest which forms of on-line gambling (types of games) are most problematic in this respect?

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70 The study was carried out in a research partnership with bwin who made its customer database available.

71 LaBrie, LaPlante, Nelson, Schaffer, Assessing the Playing Field: A prospective Longitudinal Study of Internet Sports Gambling behaviour (with Schumann,) Journal of Gambling Studies, 2008; Inside the virtual casino: A prospective longitudinal study of Internet casino gambling (with Kaplan), European Journal of Public Health, 2008 and Population trends in Internet sports gambling" (with Schumann),Computers in Human Behaviour, 2008.

72 Svenska Spel, The cost of gambling. An analysis of the socio-economic costs resulting from problem gambling in Sweden. Council of the EU. DS 406/09. Brussels, 2009.

73 For example: Finland and UK.

74 Addiction rates among past year gamblers. *British Gambling Prevalence Survey 2007*, National Centre for Social Research, Sept 2007.

75 Only 4 Member States (AT, EE, FI and UK) provided the Commission with information on problem gambling in the context of the Commissions study "Study on gambling services in the EU Internal Market", Chapter 9.9, p. 1453, cited above.

(20) What is done at national level to prevent problem gambling? (E.g. to ensure early detection)?

(21) Is treatment for gambling addiction available at national level? If so, to what extent do on-line gambling operators contribute to the funding of such preventive actions and treatment?

(22) What is the required level of due diligence in national regulation in this field? (E.g. recording on-line players' behaviour to determine a probable pathological gambler?).

Protection of minors and other vulnerable groups

The regulatory frameworks in all Member States seek in different ways to protect minors, i.e. children and adolescents, against the risks of gambling in general[76]. Age limits for gambling may be set out in law or in licence conditions and operators (including retailers/concession holders) are obliged to carry out age verification. The age limits in an individual Member State may also vary from one gambling service to another.

Questions:

(23) Are the age limits for having access to on-line gambling services in your or any other Member State in your view adequate to attain the objective sought?

(24) Are on-line age controls imposed and how do these compare to off-line 'face-to-face' identification?

Minors' access to payment systems

Payment processing systems can be an effective means to prevent access to on-line gambling services by minors. Though it is possible for persons under the age of 18 to open bank accounts, there are limitations. A wide range of documents and proofs of identity must be presented and, as a rule, a parent or a legal guardian must present him/herself in the bank together with the underage account holder (parental control). Young persons are not normally legally responsible for their debts so they are unlikely to be granted an overdraft on a bank account and credit card applications from people under the age of 18 will be turned down. As a consequence, the bank or the financial service provider will provide an extra level of age verification before a young player can open a player's account with an on-line operator.

However, stakes can, and will increasingly, be paid by using a mobile phone (added to the invoice), e.g. by a text message or a call to premium rate phone number and in these cases it may be easier for minors to be able to gamble.

– *Minors and marketing of on-line games*

As Member States authorities (and operators) seek to prevent minors from having access to on-line gambling services, they also seek to control marketing and promotion of such services. Examples of restrictions include rules that require promotions for such services not to:

[76] The age of majority in all Member States except Austria is 18 (Austria 19).

– Be directed at those aged below the national limit for participation;

– Be broadcast (TV or radio) or communicated during specific programmes aimed towards young people on mainstream channels, or for certain periods of time before or after such programmes;

– Include or display a person that appears to be of an age below the national limit for participation;

– Otherwise appeal to children or young persons, e.g. by being associated with youth culture or communicated by a celebrity (e.g. replica jerseys promoting an on-line gambling operator) ; or

– Be displayed close to areas that children frequent (e.g. billboard advertising close to schools).

Question:

(25) How are commercial communications for gambling services regulated to protect minors at national or EU level? (E.g. limits on promotional games that are designed as on-line casino games, sports sponsorship, merchandising (e.g. replica jerseys, computer games etc) and use of social on-line networks or video-sharing for marketing purposes.

– *Other vulnerable types of players*

Other players may be vulnerable due to their:

– *Financial situation*; players on low incomes;

– *Inexperience*; in particular young adults (aged 18-21) and/or those that are not awareof the risks associated with problem gambling;

– *Previous dependency or addiction* relating to a chemical substance use or behaviour (use of off-line gambling services);

– *Easy access to gambling*; sales agents or employees of gambling service providers or contractors; and

– *Other frequent exposure to gambling and/or strong links to betting objects.* This could include persons employed in the horse racing sector, athletes (amateurs and professionals), coaches, referees, stock-brokers etc.

Question:

(26) Which national regulatory provisions on licence conditions and commercial communications for on-line gambling services account for these risks and seek to protect vulnerable consumers? How do you assess them?

2.3.2. Public order

Prevention of fraud

All Member States seek to prevent fraud and unfair games. National legislation aims to protect, consumers (from fraudulent and criminal operators), operators (from fraudulent players or player syndicates) and event organisers. Examples include: unauthorised use of credit cards, which may also be associated with "identity theft" and 'match-fixing' (event-fixing) where an individual, a group of persons (typically associated with organised crime) seek to influence the outcome of an event (e.g. a sports event or a card game)[77]. Fraud also occurs when a group of players colludes against another player (e.g. rigged poker tables).

The Commission has identified the following three types of fraud on which it wishes to consult:

– Players not receiving their winnings. Typical examples include fraudulent "lottery scams", where an unlicensed illegal operator contacts consumers asking them to pay an amount of money (handling fee) or give personal information (bank details) before a prize can be paid. Such scams frequently make false reference to authorisations given by European gambling authorities[78].

– Identity theft and data protection related issues. These involve the unauthorised use of another person's personal information to assume that person's identity and thus access resources or obtain credit and other benefits in that person's name.

– Manipulation of the outcome by tampering with the software associated with the game or through corruption of persons involved in organising the game or event.

Questions:

(27) Are you aware of studies and/or statistical data relating to fraud and on-line gambling?

(28) Are there rules regarding the control, standardisation and certification of gambling equipment, random generators or other software in your Member State?

(29) What, in your opinion, are the best practices to prevent various types of fraud (by operators against players, players against operators and players against players) and to assist complaint procedures?

(30) As regards sports betting and outcome fixing - what national regulations are imposed on on-line gambling operators and persons involved in sport events/games to address these issues, in particular to prevent 'conflicts of

[77] E.g. criminal organisations based in China or Croatia have been involved in match fixing in BE, DE and FI.

[78] This should not be considered to be associated with delayed winnings where a licensed operator withholds winnings for due diligence purposes without giving the player sufficient information why this is done. The operator should in such cases explain why the payment is withheld. The most common explanation for such delays is additional customer identification controls.

interest'? Are you aware of any available data or studies relating to the magnitude of this problem?

(31) In your view what issues should be addressed as a priority?

(32) What risks are there that a (on-line) sports betting operator, which has entered into a sponsorship agreement with a sports club or an association, will seek to influence the outcome of a sports event directly or indirectly for profitable gain?

Prevention of Money laundering

The two extreme types of "money laundering" activity are on the one hand, complex transnational operations designed to hide the criminal origins of large scale crimes so that people and property are made to appear legitimate, and on the other, any activity that conceals, disguises, or disposes of the proceeds of any crime, no matter what the sum (self-laundering by offenders – sometimes expenditure – but also crimes to feed gambling addiction).

As regards money laundering techniques, there is very limited information or evidence suggesting that licensed on-line gambling operators in Europe are subject to money laundering activities. However, the problem is obviously linked to illegal operators. The Commission understands that the following practices could potentially be used for such purposes:

– On-line gambling firms could credit winnings or unused funds back to an account other than the one from which the original bet was made.

– They could allow one player to register multiple accounts with the same operator.

– Peer-to-peer games such as e-poker, where value transfers can occur between both electronic and human players as a result of deliberate losses, at a relatively low cost to the players. Such games could allow for on-line “chip dumping”. For example; a player deposits funds with a stolen credit card and then "dumps" the chips at a table to an accomplice or another account he created. These activities can be detected given that the principles are simple – players will make large bets on very bad hands (expecting to lose to the accomplice)[79].

– Use of e-cash as a payment option or similar means of payments such as Stored Value Cards[80] (those of concern are characterised by high limits, no post-purchase monitoring and poor know-your-customer (KYC) controls). This could also include payment enabled mobile phones that have not been through adequate KYC controls.

Questions:

(33) What cases have demonstrated how on-line gambling could be used for money laundering purposes?

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79 On-line poker rooms are aware of this scam and are seeking to detect perpetrators before their cash-outs are approved.

80 A stored-value card refers to monetary value on a card not in an externally recorded account and differs from prepaid cards where money is on deposit with the issuer similar to a debit card.

(34) Which micro-payments systems require specific regulatory control in view of their use for on-line gambling services?

The 3rd Money laundering Directive[81] is applicable to the financial sector as well as to other areas including casinos (bricks-and-mortar and on-line).

A particular problem with the enforcement of the provisions of this directive to on-line gambling services is that such websites frequently offer a variety of other (non-casino) gambling services and the operator may be licensed in more than one jurisdiction.

In addition to such general principles, the Commission is aware that licensed on-line gambling operators and national regulators have established a range of operational practices to fight against money laundering. These include:

– **Customer due diligence** – only registered players holding an account with the licensee are allowed to play. Application forms must be completed containing information (1) that the player is over the legal age limit to gamble (2) the player's identity (3) the player's place of residence and (4) the player's valid e-mail address. The due diligence process may include velocity analysis (deposit/trades), geographic risk analysis, player behaviour anomaly, exposing player associations and cybercrime arrest policy. In all cases the player has to opt-in to provide the relevant personal data to allow for his account to be established.

– **Payment controls** - the player should always receive any payout from winnings (balance of account) by the same means in which the money was originally received (and to the account from which it was deposited). Operators must also make sure that they have control over the credit card numbers and personal data, relating to players, which they have stored in their systems. Moreover, direct payments between customers are prohibited.

– **Operational controls –** Operators use age verification lists and lists used by banks to identify terrorists and politically exposed persons (PEPs), i.e. World Check[82] and the European Sports Security Association's (ESSA[83]) watch list. Operators also keep statistical records of transactional behaviour, which must comply with EU data protection rules, in order to be able to identify suspicious activities. They are required to apply stricter due diligence requirements where there are high limits on stakes. Operators must also submit Suspicious Activity Reports (SAR) to the national Financial Intelligence Units (FIU).

Questions:

(35) Do you have experience and/or evidence of best practice to detect and prevent money laundering?

(36) Is there evidence to demonstrate that the risk of money laundering through on-line gambling is particularly high in the context of such operations set up on social web-sites?

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81 Cited in Section 1.2.

82 http://www.world-check.com/politically-exposed-person-pep-compliance/

83 http://www.eu-ssa.org/Home/tabid/36/Default.aspx

Prevention of other crimes

Other crimes that may be linked to on-line gambling include:

– Provision of gambling services offered by illegal operators (e.g. criminal organisations or individuals). A French report on Cyber crime and Gambling estimates that a thousand gambling websites are *directly* operated by criminal groups[84],

– Non-authorised on-line games offered by a licensed operator,

– Tax evasion (where there is an obligation for the user to pay tax on winnings, i.e. tax evasion may primarily be invoked in relation to winnings from off-shore activities).

There are also a number of criminal activities that are relevant for many gambling services but not specifically for on-line gambling, such as (i) match fixing or rigged poker tables (see above), (ii) loan sharking activities and (iii) criminal activities carried out to finance the use of gambling services (e.g. theft) and (iv) the financing of terrorism.

Question:

(37) Are there national on-line gambling transparency requirements? Do they apply to cross border supply of on-line gambling services and are these rules enforced effectively in your view?

2.3.3. Financing of benevolent and public interest activities as well as events on which on-line sports betting relies

Restrictions on gambling services at national level are at times justified by policy reasons such as the financing of benevolent or public interest activities. Notwithstanding that the systems put in place for this purpose should comply with applicable state aid rules, it is noteworthy that according to the Court of Justice the funding of such social activities may not constitute the substantive justification for the restrictive policy but only an ancillary beneficial consequence[85]. Such restrictions seek to assist the funding of "public interest activities" that society at large can benefit from. More specifically, the public interest activities that currently benefit directly in this manner in the Member States are the arts, culture, sport[86], youth/educational programmes and charity related activities.

Systems of revenue channelling

The reliance on gambling revenues to fund public interest activities is organised in various ways. The organisation or company responsible for the public interest activities:

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84 The French Institute (CERT-LEXI) analysed 70 million websites in 2005 and found 14823 sites offering online gambling. Only 2005 websites were subject to a licence.

85 E.g. case C-67/98 (Zenatti) §§ 36-37 and case C-316/07 (Markus Stoß) § 104. See also the Judgement of the EFTA Court in case 3/06 (Ladbrokes) §63.

86 See also the Commission's Communication "Developing the European Dimension in Sport" - COM(2011) 12, which notes the need to take account of the sustainable financing of sport when addressing the provision of gambling services in the Internal Market (page 9)

(1) Is granted a licence[87] to offer on-line gambling service in order to support the "good cause" recognised by the relevant licensing authority (e.g. a national Olympic committee, a national horse racing body , an association for blind persons etc.);

(2) Receives funds directly from a State gambling operator (e.g. a national lottery) according to a rate fixed by the licence or legislation regulating that operator;

(3) Receives funds from a State gambling operator indirectly via the State budget into which that State operator has contributed;

(4) Receives funds from one or more private gambling operators and the contribution of funds is:

(a) Determined by the licence or legislation or

(b) Based on voluntary contributions from the operators;

(5) Receives economic compensation for the use of an event it organises and on which bets are placed even if the organisation or company is not involved in the organisation of the gambling activity itself;

(6) Receives funds from the State budget that has been contributed to by both State and commercial gambling operators.

Questions:

(38) Are there other gambling revenue channeling schemes for the public interest activities at national or EU level?

(39) Is there a specific mechanism, such as a fund, for redistributing revenue from public and commercial on-line gambling services to the benefit of society?

(40) Are funds returned or re-attributed to prevention and treatment of gambling addiction?

[87] Organisations or companies responsible for benevolent or public-interest activities may, to varying degrees, be allowed to enter into agreement with private operators that provide the gambling platform and promote the gambling services (who fully or partly runs the operations and receives economic compensation for this).

The Commission wishes to focus further on two issues:

Possible existence of a principle of return to event organisers

National and non-domestic sport events are used by on-line operators to present an attractive selection of gambling services to their potential customers. These events may benefit from such gambling activities in that they create additional public interest and possibly also increase the event's media exposure. There is a broad consensus that sport events, on which gambling relies, should receive a fair return from the associated gambling activity:

– Taking the specific case of horse-racing some Member States impose an exclusive licence for horse race betting to an organisation or company with the objective to ensure that the turnover from horse-race betting, except for winnings, totalisator fee and operating expenses, is given to equestrian sports, horse breeding and horse husbandry. While national structures vary, the support to the horseracing and equine sector can be significant rising to more than 8% of the total betting turnover in certain countries. A specificity of horse racing compared to other sports is that its primary attraction is for gamblers. Thus, to a greater degree than other sport events, its viability will depend on sufficient proportions of gambling revenues being reinvested into the activity. Furthermore, in certain Member States the tradition of equestrian sports, horse breeding and husbandry, all of which are supported through this channelling of gambling revenues, have and continue to play an important economic role in rural areas and may therefore be linked to regional development and territorial cohesion policy objectives.

– Other sports have a more mixed revenue stream either because they have wider public appeal and/or because they lend themselves less to gambling services. Nevertheless, when gambling services are offered on an organised sport competition, the issue of whether the organisers (sport organisations, teams etc.) should be able to generate an additional revenue stream through such exploitation of their images or events by gambling service providers has been addressed by Member States. Given that without the use of their events the gambling services would not be viable, a fair return for the use of their events is sought. Certain State operators offering sports betting services on professional sports are thus obliged to channel revenues back into grassroots sports and thus help assist the public interest activities of encouraging participation in sporting activities in general. The Commission has launched an EU study on the funding of grassroots sports which should show the real importance of the different funding sources, including revenue from the organisation of gambling services, for grassroots sports[88].

Finally, sport events on which sports betting can be organised may, due to criminal activities, be subject to a higher risk of match fixing. One Member State (France) has established a non-exclusive sports betting right for gambling services to contribute to the investment by organisers of sport competitions that is motivated primarily on the grounds of the need to ensure integrity.

Questions:

[88] COM(2011)12 p. 9

(41) What are the proportions of on-line gambling revenues from sports betting that are redirected back into sports at national level?

(42) Do all sports disciplines benefit from on-line gambling exploitation rights in a similar manner to horse-racing and, if so, are those rights exploited?

(43) Do on-line gambling exploitation rights that are exclusively dedicated to ensuring integrity exist?

The risk of "free-riding" through the provision of on-line gambling services

Member States, given their differing national cultural and historical traditions, will rely on differing gambling revenue channelling systems and rates. For example, Member States that have no history of horse-racing or horse husbandry obviously have no need for a revenue channelling scheme for that purpose. Likewise, certain Member States will choose to finance certain public interest activities exclusively from fiscal revenue whereas others may wish to also rely on channelling gambling revenues for the same purpose.

It follows that when gambling services are offered on events taking place in other Member States or when gamblers from one Member State choose to place stakes on gambling services provided from another Member State there will be direct effects on the efficiency of national gambling revenue channelling systems. This will be particularly the case when gamblers are exclusively focussed on seeking highest returns. This "free-riding" problem is strictly speaking not limited to cross-border on-line gambling services since gamblers can in principle always physically cross borders to access gambling services but nevertheless on-line gambling services in practice differs as it heightens this possible effect significantly.

The effect may be tempered or even reversed by the fact that certain gamblers play on particular gambling services because those services are linked to the financing of public interest activities. This may be because the link to the public interest activities reduces the social stigma associated with gambling or may even be the primary motivation for gambling on such services. For example, given the very low odds of winning in certain types of gambling services (e.g. low value lotteries offered by charitable organisations) it can be considered that many players of such games place a stake on them rather than on other types of gambling services offering higher odds of winning primarily because they consider that that stake will go to a valid public interest activities. These types of gamblers may even be attracted to offers of such on-line gambling services emanating from other Member States that have stronger direct links to public interest activities that they wish to support compared to national on-line gambling service offers.

Questions:

(44) Is there evidence to suggest that the cross-border "free-riding" risk noted above for on-line gambling services is reducing revenues to national public interest activities that depend on channelling of gambling revenues?

(45) Are there transparency obligations that allow for gamblers to be made aware of whether and how much gambling service providers are channelling revenues back into public interest activities?

2.4. Enforcement and related matters

An unauthorised cross-border market may be accessible to consumers, due either to de facto tolerance or lack of effective enforcement. Effective enforcement is essential for Member States to ensure the achievement of the public interest objectives behind their national gambling policy.

Gambling authorities in the Member States

Different types of organisational structures are used for the granting of licences, regulation and supervision of on-line gambling. The independence and power of these structures vary. Within a Member State differing forms of on-line gambling services may also be regulated or supervised by separate bodies (e.g. promotional games, media games and spread betting)[89].

Activities of gambling authorities may cover a wide range of issues, including:

– Issuing, suspending and revoking licences;

– Control and supervision functions including administrative or financial controls, on-site inspections, technical inspections (e.g. equipment or software), and on-line monitoring of activities;

– Enforcement - to open, institute and prosecute proceedings involving offences relating to (a) provision of illegal/unauthorised gambling services; and (b) commercial communications relating to gambling services or operators (legal as well as illegal/unauthorised gambling services);

– Providing advice, information or support to Government, players (the public) and/or operators.

Questions:

(46) Is there a regulatory body in your Member State, what is its status, what are its competences and its scope of action across the on-line gambling services as defined in this Green Paper?

(47) Is there a national register of licensed operators of gambling services? If so, is it publicly accessible? Who is responsible for keeping it up to date?

Administrative cooperation

Administrative cooperation between EEA regulators is today based on ad-hoc cooperation between a limited number of Member States. Regulators from all over Europe have a specific forum in which they meet, exchange views and discuss policy on gaming matters (GREF[90]). Possible areas of administrative cooperation include sharing or exchanging information relating to:

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89 The differing authorities at national level that carry out the regulatory tasks are as follows: (i) A ministry with no specialised office; (ii) A specialised office within a ministry; (iii) A ministerial office located outside the ministry; (iv) An agency/inspectorate under ministerial control; and (v) A State recognised independent regulatory body.

90 http://www.gref.net/index.htm

– licence holders (including licence conditions, professional qualities of staff and integrity of operators);

– unlicensed and fraudulent operators (common blacklisting);

– issues of a technical nature, such as national standards, testing and certification;

– good practices (including public campaigns to prevent crime or problem gambling and the costs and effects of such campaigns).

Question:

(48) Which forms of cross-border administrative cooperation are you aware of in this domain and which specific issues are covered?

Enhanced cooperation with other stakeholders

Gambling authorities in the Member States may also be working with national/European sport stakeholders and/or public/private betting operators to develop:

– Educational programmes or campaigns for athletes (amateurs and professionals), coaches, referees, persons employed in the horse racing sector or by public/private on-line gambling operators etc.; and/or

– Early warning systems to strengthen enforcement to prevent match-fixing.

Question:

(49) Are you aware of such enhanced cooperation, educational programmes or early warning systems that are aimed at strengthening integrity in sport and/or increase awareness among other stakeholders?

Payment blocking and liability regimes for ISPs

Payment and communication providers (telecom operators, television channels and information society providers) enable on-line gambling services. Today, in order to restrict "unauthorised" and cross-border on-line gambling services the following types of methods are imposed on such intermediary service providers:

– **Domain Name System** (**DNS**) **filtering**; A DNS filtering mechanism seeks to ensure that potential customers are prevented to gamble on unauthorised pre-listed sites or are redirected to another address (website) on the basis of a pre-defined list of internet addresses (domain names) e.g. from a .com site to one established within the relevant national jurisdiction[91].

– **Internet Protocol (IP) blocking.** Every device connected to the public internet is assigned a unique number known as an IP address, which includes the hostname. IP blocking prevents the connection between a server/website and one or more IP addresses.

[91] Italian experiences suggest that millions of redirections take place every week.

– **Payment blocking,** may be based on the operators "Merchant Category Codes" (MCC)[92]. However, the prohibition of processing of payments linked to a certain code may block licit commercial transactions other than payments relating to stakes and prizes.

The efficiency of a blocking system depends on a pre-defined and updated list of items to block as well as efficient software systems.

Questions:

(50) Are any of the methods mentioned above, or any other technical means, applied at national level to limit access to on-line gambling services or to restrict payment services? Are you aware of any cross-border initiative(s) aimed at enforcing such methods? How do you assess their effectiveness in the field of on-line gambling?

(51) What are your views on the relative merits of the methods mentioned above as well as any other technical means to limit access to gambling services or payment services?

[92] The MCC used for gambling is 7995.