

Public consultation on the Green Paper on on-line gambling in the Internal Market

You are invited to reply to the on-line questionnaire. The questions listed in the Green Paper are reproduced in the same order hereunder. A pdf version of the [Green Paper](#) is available in all EU languages for guidance to the questions.

There are 51 questions in the consultation document. You may reply to those questions in any one of the EU languages. You may focus your contributions on the areas of most interest to you; you are not obliged to answer all the questions.

Please save this document on your computer. Once you have completed the questionnaire, come back to the on-line questionnaire. You will be able to upload your answers on page 3 of the on-line questionnaire.

The consultation will close on 31/07/2011.

We thank you for your participation.

Your name / Your organisation:

Contact Advisory Services Ltd

Questions from the Green Paper on on-line Gambling in the Internal Market

1. Regulating on-line gambling in the EU: Recent developments and current challenges from the Internal Market standpoint
 - 1.1. Purpose of the consultation
 - 1.2. On-line gambling in the EU: current situation

(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?

Not aware of study specific to licensed or non licensed operators

(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)

No, however, with the current trend in the EU for National licenses the number we believe will grow.

(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?

Our experience is considerable. We believe that this has been very beneficial for the operators, players and many other industry sectors such as banking, call centres, software development, etc. We have seen a growth in SMEs, both as operators and as service providers of different services to the operators. We have also seen innovation, research, in the gaming industry the likes of which have never been seen before due to the monopolies and the inability of people with ideas to enter the markets. Players have benefitted from new products, new ideas and the stiff competition this has brought about. Unlike the governments and monopolies these operators thrive in competition and therefore welcome it and do not try to stifle it. As stated in the green paper online gambling is still a very small percentage of the overall gambling market and although growing at a fast pace will continue to be the smaller percentage of the overall gambling turnover for a number of years to come.

(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?

These were the only operators offering online services until a few years ago when Malta revolutionised the market by enacting a very serious and forward looking legislation. Operators preferred to get a Maltese license to a non-EU license available at the time due to the seriousness of the license. A number of non-EU licenses have since then, improved their regulatory regime resulting in more reputable license, albeit not to the standards of the Maltese license. Money is still being lost by the EU to these non-EU licensed operators due to the restrictions in place by a number of jurisdictions which is pushing licensed operators in the EU out of these member states and therefore, the consumer/player has no option but to start playing again with those operators that ignore the member state laws. Their pricing and products are normally much better than those being offered in the restricted environments.

(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?

The ECJ was clear on a number of occasions that cross border services cannot be stopped unless there are special circumstances. These circumstances were created by Member states to stop perfectly licensed operators by one Member State from offering their services in another member state. It is plain and clear for all to see, especially now that these Member States are licensing online gambling in their own countries that the only reason for want to stop cross border online gambling was for tax purposes. ECJ has been ignored on many an occasion to the detriment of operators and service providers. The licensing regimes being adopted have not added anything to the control of online gambling that was not previously there. Therefore, it is very confusing to understand why infringement procedures against Member states illegally blocking properly licensed operators have not carried on. It is clear in our minds what is legal and not legal based on EU principles and ECJ rulings, however, it seems that the commission and other Member States who want to keep their taxes for themselves intentionally confuse the matters placed in front of them and continue to ignore the obvious and the EU without punishment. Even, in our opinion, the Green Paper has itself ignored the

ECJ rulings when commenting that Member states offering cross border services were a 'grey market' instead of stating that Member States illegally block cross border trading.

(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?

An area of improvement we believe is responsible gambling where an EU pool of problem gamblers should be created so that problem gambling can be effectively controlled. If this is really the main concern of the EU then this is what needs to happen. By licensing someone in France or Italy or Malta if they are advertising and offering the same services what has been achieved in the area of responsible gaming by just changing where the license is issued. The only change brought about is where tax is paid.

Other comments on issues raised in section 1

The consumer is not being given enough importance in the decision making process. Gamblers also have fundamental rights and the right of choice, the right to fair pricing and the right to a decent service. Players, especially those that participate in poker, betting exchanges and other similar peer-to-peer products are the ones to suffer the most as less and less players are made available on the networks.

2. Key policy issues subject to the present consultation

2.1. Definition and organisation of on-line gambling services

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

Maltese regulations also take into account games of skill where there is an element of chance. Games of chance would exclude a number of card games, such as poker, and other games like backgammon where there is a lot of skill with an element of chance.

(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?

(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?

We do not see any advantages for the operator or consumer, the only advantage is for the Member State so that it can collect taxes. National systems will fail over time as it will be impossible for any operator to profitably sustain 27 licenses and the requirements to satisfy such licenses. The smaller countries in the EU will be, in all probability, stuck with the monopoly as operators will have to be very selective in the licensing process. It will indeed be a pathetic situation especially, as already stated previously, if French poker players or Belote players can only play against other Frenchmen, Italians can only play against Italians, and so on. We will also experience stagnation in research and development of new products; new companies will not be able to enter the market; big companies will grow bigger and we will end up with either monopolistic situation or at best an oligopolistic one. Finally, the whole concept of the EU will be destroyed by the very same Member states that founded the principals of cross border trade and one economy. Well it seems that what is said and what is practised are two totally different things.

Other comments on issues raised in section 2.1

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

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

The Remote Gaming Regulations LN 176 of 2004 and the Code of Conduct directive issued by the Lotteries and Gaming Authority specify how advertising can be carried out. It does not specify where such advertising can or cannot take place in relation to other jurisdictions.

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

The remote gaming regulations specify what is and what is not acceptable forms of payments. The regulations also cater for the possibility of innovative products that may be introduced for payments, however, these must be analysed and approved by the authority before being implemented.

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

Yes.

(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?

Yes, all operators licensed in Malta must follow data protection laws and all players must be verified should transaction volumes exceed certain limits. In our experience we have noted that operators tend to exceed regulatory requirements due to high fraud risks faced in

ecommerce. This is not a risk limited to the remote gaming industry but a risk faced by any online business. Verification of customers is not always easy as not all jurisdictions make data available. Operators and providers of verification services have learnt how to cope with each jurisdiction and are constantly coming up with innovative processes and procedures to better manage the fraud risks.

Other comments on issues raised in section 2.2

2.3. Public interest objectives

2.3.1. Consumer protection

(15) Do you have evidence that the factors listed in the Green Paper 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)

We cannot understand why the issue of problem gambling is being focused on. The solutions being put forward of a national system of licensing will not reduce the presumed online gambling problem it will just transfer it from one license to another. In fact, it will also force players/consumers back onto the black market and un-regulated operators. We understand that it is important that any licensing regime, in whichever State, must implement a set of minimum controls to prevent problem gambling or at least better control it.

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

(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?

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

The remote gaming regulations in Malta provide a series of controls and requirements that each operator must meet to prevent or control problem gambling.

(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?).

(23) What is the statutory age limit for having access to on-line gambling services in your Member State? Are existing limits adequate to protect minors?

18 years old.

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

(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.

Code of conduct for advertising.

(26) Which national regulatory provisions on license conditions and commercial communications for on-line gambling services account for the risks described in the Green Paper and seek to protect vulnerable consumers? How do you assess them?

Other comments on issues raised in section 2.3.1

2.3.2. Public order

(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?

Yes, very clear rules are identified in the Remote Gaming Regulations.

(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?

Operators have developed their own anti-fraud procedures over the years over and above those required by regulation as they gain experience in patterns and methods of verifying data provided. Member states can assist in this process by providing access to their databases for cross border verification of data provided during registration. With regards to complaints operators are required to publish a complaint procedure and also provide information how to contact the Authority if complaint resolution is not satisfactory.

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

(31) What issues should in your view be addressed in 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?

Whilst there are always risks of such an event will happen it is not restricted to online sportsbetting operators. We believe the risk to be very low.

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

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

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

The best ways of preventing money laundering is to properly verify the operators before awarding a license. Online gambling, we believe, poses a smaller risk than land based shops and casinos where cash is used. As only approved payment methods can be used in online gambling it is much more complex and difficult to organise a money laundering scheme that will remain undetected. The remote gaming regulations of Malta also require that when funds are withdrawn they are withdrawn to the account from where they originated.

(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?

Not that we are aware of.

(37) Are national e-commerce transparency requirements enforced to allow for illegally operated services to be tracked and closed? How do you assess this situation?

Other comments on issues raised in section 2.3.2

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

(38) Are there other gambling revenue channeling schemes than those described in the Green Paper 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?

(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?

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

(45) Do there exist 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?

Other comments on issues raised in section 2.3.3

2.4. Enforcement and related matters

(46) Which form of regulatory body exists in your Member State and what are its competences, its scope of action across the on-line gambling services as defined in the Green Paper?

The Lotteries and Gaming Authority are responsible for licensing and regulating onling gaming, land based casinos and gaming parlours, bingo halls, National Lottery, Super 5 and any other gaming activity. Its scope is ensure that only licensed gambling and betting takes place, that it is fair, transparent, responsible and free of criminal activity.

(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?

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

We believe that France and Italy have just entered into a bi-lateral agreement to share data for the purposes of regulating more effectively. CEN have produced a paper on standards for remote gambling.

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

(50) Are any of the methods mentioned in the Green Paper, 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?

Italy implemented a blocking of domain names, rather hi-jacking the domain and re-directing it to the AAMS warning. We understand that Italy also want to block payments to non .it websites. These are very draconian measures that require non-state entities to implement and be responsible for. We believe that they are ultimately ineffective, costly, impractical to implement. We understand that a number of member states have tried to emulate the USA and block payments as all else has failed.

(51) What are your views on the relative merits [in terms of suitability and efficiency] of the methods mentioned in the Green Paper as well as any other technical means to limit access to gambling services or payment services?

In our opinion, education is the only way of ensuring that consumers gamble with the right operators, i.e. those that are properly regulated. Gambling has been going on for ever and we believe that with the age of the internet it is only a natural progression that was going to happen. It is impossible to stop it and the efforts should be directed at regulating and managing the phenomenon. Prohibition is not an option, regulation is the only way that will ensure that online gambling will carry on within the EU and for the benefit of the EU consumers and the industry in general. What we do not want is to have a pre 2004 situation where the majority of the funds, human resources, technology were outside the EU.

Other comments on issues raised in section 2.4

Other comments on issues raised in the Green Paper

The Green Paper provides a number of valid points. We feel that the situation being created by the so-called 'liberalisation' of the market with National licensing regimes is not sustainable. This is already visible in France and Italy. Operators are not cash machines and players are consumers that have rights which must be respected. All the issues raised will not be resolved with National licenses but only with proper regulation and co-operation irrespective of where it happens. Gambling is not a new phenomenon created by the Internet, it is a human trait that is now satisfied, as are so many other things, over the Internet. This is a fact and it cannot be changed. Furthermore, attempts to change this trend, or attempts to restrict it for tax purposes will only make the problem greater and expose gamblers to unscrupulous, unregulated operators, either online or offline. Finally, we believe that the EU has failed the industry by ignoring rulings and not following up infringement procedures which have lead to the pathetic state of affairs, lack of clarity and rampant abuse and illegal legislation by a number of Member States.