

## 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:**

This response has been prepared by Abhilash Nair and Dinusha Mendis.

Abhilash Nair is Senior Lecturer in Law at Sheffield Hallam University, where he teaches internet law and intellectual property law. His principal area of research is internet regulation, with specific reference to children's rights, censorship and privacy. Abhilash has published a number of articles on internet law and regulation and is a regular speaker at academic institutions and conferences. A solicitor in England and Wales, he is also a Fellow of the Higher Education Academy and member of the Information Society Network at the University of Exeter.

Dr. Dinusha Mendis is a Senior Lecturer in Law at Bournemouth University and attached to the Centre for Intellectual Property Policy and Management (CIPPM). Dinusha's research interests lie in intellectual property law, intellectual property issues within entertainment law and particularly issues relating to digital copyright. Dinusha has published widely in these areas and has delivered papers at both national and international conferences. Dinusha holds LLB (Hons) from University of Aberdeen; LLM, PhD from University of Edinburgh; and BVC from Nottingham Trent University. Dinusha was called to the Bar of England and Wales in October 2001. She is a member of the Honourable Society of the Middle Temple Inn London and an Associate of the Higher Education Academy.

### Introduction

In light of the myriad of regulatory challenges raised by online gambling, this EC Consultation seeks to receive feedback on the existing situation of the EU online gambling market and the key policy issues that the growth of online gambling generates. This response addresses two specific areas within the Consultation-

1/ Protection of minors & vulnerable groups, prepared by Abhilash Nair, and

2/ Issues related to sports betting, prepared by Dinusha Mendis.

The response provides an overview of the existing framework, and identifies key issues within these areas from a UK perspective. The response generally contends that although UK law is sufficiently broad and adequate, there should be European and wider international co-operation to address some of the challenges of online gambling. It is also identified that a more holistic approach to address problem gambling is required, especially in light of the available evidence of problem gambling linked to social and demographic factors etc.

This response is submitted by the following individuals:

Mr Abhilash Nair, Sheffield Hallam University, UK

Dr Dinusha Mendis, Bournemouth University, UK

Dr Abbe Brown, University of Edinburgh, UK

Felipe Romero Moreno, Oxford Brookes University, UK

### **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?**

**(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?**

**(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?**

**(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?**

**Other comments on issues raised in section 1**

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?**

**(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?**

**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?**

**(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?**

**(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?**

**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)**

**(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)?**

**(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?**

Those under 18 are not to be allowed to gamble under section 45 of the Gambling Act 2005. It is an offence to "invite, cause, or permit" a child or young person to gamble. A child is anyone under sixteen years of age and young person is anyone between 16-18 years of age. It is also an offence for a young person to gamble.

The current age limit appears to be adequate to protect minors.

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

Online age controls are not as straight forward as offline face to face identification and problems remain with respect to effectively verifying the age of customers on the internet. As mentioned above, it is an offence to invite a child or young person to gamble. With regard to offline gambling, it is an offence to invite a child or young person onto the premises. It is also an offence for a young person to enter the premises or provide facilities for gambling to take

place. In an offline context, these are not difficult to enforce, but online gambling may be less straight forward, largely because of the anonymity the internet offers.

UK law requires online gambling providers to verify the age of users before they are allowed to gamble. As discussed below in more detail, although online gambling websites in the UK require proof of age for entering and using the sites, they are not always foolproof. This is particularly so when the only method of verifying age is through credit card verification, where the user enters the correct combination of the card number, expiry date and security number for instance, as it is entirely possible for a minor to use someone else's card (a parent's for example) without their knowledge or consent. The issue of children accessing websites through unauthorised use of credit cards is not specific to the UK or EU. This issue has been identified in a recent OECD report as 'a financial threat to parents if minors have access to a credit card or other means of payment such as a mobile phone' Recent research published in the UK also highlighted a lack of parental controls on a majority of online gambling sites. Preventing children from accessing the sites by adopting more measures such as introducing mandatory parental controls is worthy of consideration.

#### References:

OECD (2011), "The Protection of Children Online: Risks Faced by Children Online and Policies to Protect Them", OECD Digital Economy Papers, No 179, OECD Publishing <http://dx.doi.org/10.1787/5kgcjf71pl28-en> p25.

Chambers & Willox, Gambling on compliance with the new 2005 Act: Do organisations fulfil new regulations?, International Review of Law, Computers and Technology, Vol 23, No.3, 2009 p207

**(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.**

Only those online gambling companies that are licensed in the UK or countries in the EEA are allowed to advertise in the UK. It is an offence under s 331 of the Gambling Act 2005 to advertise non-EEA Gambling. The offence covers advertising of gambling by both remote and non-remote means. However, the Act also makes provisions for other countries to be included in a 'white list', and those countries will be treated like EEA states for the purposes of this section.

As per section 45 of the Gambling Act, a person commits an offence if he invites causes or permits a child or young person to gamble. In this context, 'inviting' includes sending a child or young person any document which advertises gambling, or bringing to the attention of a child or young person information about gambling with a view to encourage them to gamble (s46(3)). This is broadly drafted in order to encompass a range of communications aimed at a child or young person, so this provision appears to be adequate.

However, remote advertising is a problematic area in some respect. For advertising that is broadcast by television, the provisions of Part 16 (Advertising) will only apply if the

broadcaster is either under the jurisdiction of the U.K. for the purposes of the Television Without Frontiers Directive (89/552/EEC), or is not under the jurisdiction of an EEA state (if the broadcaster is based in an EEA State outside the UK, it will already be subject to proper regulation in their home country). However, due to the lack of harmonisation in the regulation of online gambling across the EU, this would result in a situation where a broadcaster based elsewhere in the EEA can abide by their home country's regulation and, in theory, break UK law at the same time.

Similarly, where advertising constitutes an information society service, these provisions only apply where the provider is either established in the United Kingdom or outside the EEA. Therefore, a more uniform approach for advertising at EU level, with a view to harmonise the relevant provisions among EEA states has very clear advantages.

Advertisements are subject to two Codes of Practice in the UK, depending on the medium of advertisement - the CAP Code (UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing), and the BCAP Code (The UK Code of Broadcast Advertising). The Advertising Standards Authority (ASA) administers both the Codes. In light of the substantial growth in digital marketing, especially the significant role of the internet in this, the remit of the ASA to apply the CAP Code was extended to include marketing/advertising information on companies' own websites and other non paid space under their control, with effect from March 2011. This is significant in terms of internet advertising for online gambling providers. However, the limitation of this extension of remit is that it only governs advertisements made on the supplier's own website, or 'other non-paid space under their control', which means that advertisements made on other websites, including social online networks may not be covered. Therefore, it excludes paid advertisements placed on third party websites, including online social networks. Considering that a large number of children and young people use online social networking sites, this limitation is significant, especially in light of past research by Consumer Focus and Childnet International, which found that 9% of the advertisements on websites favoured by children were for online gambling.

Reference:

Fielder, et al (2007), "Fair game? Assessing commercial activity on children's favourite websites and online environments", available at [www.agnesnairn.co.uk/policy\\_reports/fair\\_game\\_final.pdf](http://www.agnesnairn.co.uk/policy_reports/fair_game_final.pdf)

**(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?**

The key legislation that regulates gambling in the UK is the Gambling Act 2005. Gambling Commission is the commercial gambling regulatory body, which was set up under the Gambling Act 2005, and it regulates gambling in Great Britain in partnership with other licensing authorities. One of the primary objectives of the Gambling Commission is to protect children and other vulnerable people from the dangers of gambling. The Responsible Gambling Strategy Board (RGSB) was set up in 2008 to advise the Gambling Commission on research, education and treatment programmes needed to support a national responsible gambling strategy and related funding requirements. The Responsible Gambling Fund (RGF), a charity that was set up in June 2009 to provide support for research, educational and treatment services across the gambling field and it distributes funds for the above purposes.

The Gambling Commission license operators that provide, inter alia, remote gambling (including betting online, by telephone, or via any other electronic communication device).

Assessment:

Full implementation of the Gambling Act 2005 came into force on 1st September 2007. The British Gambling Prevalence Survey, 2010, which was sponsored by the Gambling Commission, is particularly helpful in assessing the efficacy of the regulatory framework although it is too early to reach a formidable conclusion. This was the third such prevalence survey carried out in the UK (earlier ones being in 1999 and 2007), but the first since the new legislative changes under the Gambling Act 2005. The 2010 Prevalence Survey shows that 5% of the adult population (aged 16 and over) participated in gambling online on poker, bingo, casino and slot machine style games. This shows a 2% rise from a similar survey in 2007.

Interestingly, it was identified in the survey that problem gamblers were more likely to be 'male, younger, have parents who gambled regularly and had experienced problems with their gambling behaviour and be a current cigarette smoker'. There are a few studies that link social and demographic factors to problem gambling. This is just an illustration that reinforces the view that regulatory initiatives need to follow a holistic approach in adopting measures to tackle the problems of gambling and protecting vulnerable groups and children rather than just relying on legislation.

As regards remote gambling, the Gambling Commission can only license those operators who use gambling equipment situated in Great Britain (s 67). However, this has the effect that not all gambling websites accessible to the public in Great Britain are regulated by this body; as a large number of websites are based and regulated overseas, so the Act will not really apply to them. Even within the UK, despite the existing safeguards an undercover investigation by the Gambling Commission found 'deficiencies' in more than 33% of bookmaking and casino sites which could allow under-18s to place bets. Debit cards registered to minors were used by investigators to access sites and test their security filtering measures

It is a requirement under s 83 of the Act that if an operators finds out that a child or young person has gambled using their business, their stake must be returned 'as soon as is reasonably possible'. However, the operator cannot demand repayment of any prizes/money that was paid before becoming aware that the participant is a child/young person. This provision has been criticised as a 'possible loophole' (Chambers & Willox, cited above) in the protection of children.

Whilst recognising the fairness issue behind this provision, it is questionable from a purely logical point of view whether providing any sort of incentive for gambling for children serves any purpose. Allowing any form of financial incentives for online gambling for children and young people are counter-productive, so this provision should be subject to reconsideration. It is an offence for a young person to gamble, so it is inconceivable that a young gambling offender should be allowed to keep the prize they won through illegal means.

On a positive note, the confidential intelligence line run by the Gambling Commission (functional from May 2010), which can be used to report illicit gambling, has been regarded as effective with a good number of calls received that have assisted ongoing criminal and regulatory investigations.

Reference:

"Third of gambling sites open to under 18s", The Daily Telegraph, 14 January 2009.

### **Other comments on issues raised in section 2.3.1**

At European level, there are clear merits of EU wide regulation. However, it still remains questionable whether efforts at EU level alone would be effective in the absence of a wider international agreement. Nonetheless, initiatives at EU level as envisaged in the Green Paper can offer a basis for further international co-operation.

#### 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?**

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

In UK a number of regulations were put in place by the Gambling Act 2005, none more important than the setting up of the Gambling Commission to regulate gambling in partnership with licensing authorities. The regulations which apply generally to remote gambling, also applies to sports and outcome-fixing which will be discussed in more detail below.

The Gambling Commission carries out a rolling programme of 'mystery shopping exercises' as part of its ongoing compliance programme. This is done in an attempt to eradicate malpractice such as outcome fixing in sports betting. The programme looks at various aspects of social responsibility and the Commission particularly focuses on betting operators who have previously been found wanting or are suspected of foul play. In May 2009 the Commission carried out an extensive mystery shopping exercise which returned a failure rate which caused concern. The exercise covered all the major betting operators, accounting for around 80% of betting shops, and the initial results showed that in 98% of the 100 shops visited a 17 year old was allowed to place a bet at the counter .

Whilst there has been action taken against the operators concerned and the Commission has worked with the Association of British Bookmakers (ABB) to produce an action plan and supplementary code of practice on age verification, it led to questions on the regulation of online gambling and the issues surrounding age verification as discussed above. Whilst this issue continues to be addressed in the UK, the Gambling Commission will continue to conduct mystery shopping exercises at a number of licensed betting operators' premises as part of its compliance programme. These exercise will revisit operators already tested and also test a number of smaller betting operators.

Horse racing, in particular, has been at the heart of outcome fixing and has been a major attraction for Internet betting exchange gambling with the case of Kieren Fallon v. MGN (No. 3) (QBD) 2008 bringing the issue to the forefront. Apart from Horse racing, similar malpractice has also been reported by the Association of Tennis Professionals (ATP). ATP discovered that bets of up to £80,000 were being placed on individual matches with irregular betting patterns being revealed around matches involving players not ranked in the top 100. In the area of cricket, the Test and County Cricket Board (TCCB) states that players should not gamble on matches in which they take part, although, it is not very clear whether the players can gamble in matches in which they are not competing (Gordon above).

As a result of such events, the online betting company Betfair, has signed a Memorandum of Understanding (MoU) with several sports bodies including the Jockey Club, Rugby League, Test and County Cricket Board and ATP amongst others. The MoU states that these sporting bodies' security departments will have access to individual identities and betting records of Betfair gamblers when a race or match produces unusual betting patterns or competition results. By developing such internal policing relationships with relevant sports governing bodies, Betfair remains confident that corruption in sports which includes outcome fixing can be removed as electronic transactional records will assist investigators to identify those involved in illegal activities thereby creating a 'safe' Internet gambling site .

#### Conflict of interest issue

Whilst a 'safe' Internet gambling site is important in any national system, the issue with the present system arises in relation to 'conflict of interest' where sports integrity is sacrificed in order to maximise sports related gambling revenues as a result of an exclusive commission being paid to sports governing bodies for recommending that gamblers deal with 'official' or 'approved' betting exchanges. Striking a balance is difficult particularly in relation to on-line gambling which has to deal with lucrative gambling opportunities and gambling anonymity which can ultimately endanger the integrity of sporting competitions (Gardiner & Gray above).

Furthermore, it is also important that in carrying out this process, customers' rights are protected. In accordance with the UK Data Protection Act 1998 (DPA 1998) customers must be kept informed of any changes which affect the way in which their personal data is used. The betting exchange operators Betfair and Sporting Options have amended their privacy policies to expressly state that customers' personal details may be disclosed in limited circumstances to third parties who are concerned with investigating actual or suspected criminal activity, including any demonstrable threat to the integrity of sporting events. They emphasise that non-personal data will be disclosed in place of personal data wherever possible and it will only disclose personal data where it has been assured that such information is necessary. In such cases, personal data such as customers' names and transaction details which could be used to identify the customer will only be used in relation to the investigative purpose which is allowed under DPA 1998 for the purpose of the prevention or detection of crime.

Available data and/or studies on this problem are scarce and at the time of responding to this consultation, such information was not available.

References:

G. Gordon, Sports Betting: law and policy – A UK perspective The International Sports Law Journal July-Oct (2009) p. 5.

Gardiner S., & Gray J., Can sport control its betting habit? (2004) 89 Sports Business International, 55.

Prinsley M. & Johnson S., Betting and protecting the integrity of sports (2003) World Online Gambling, pp. 15-16.

**(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?**

**(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?**

**(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?**

**(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?**

The Betting Levy Board exists for redistributing revenue from horserace gambling to the benefit of society. Under this scheme, gambling operators are required to pay a flat percentage charge of 10.75% on their gross profits. The money which is received is in turn used for upkeep of racecourses; improvement of breeds; veterinary research, training which all benefit society.

The Gambling Commission and the Responsible Gambling Strategy Board also work towards redistributing revenue from on-line gambling to assist with gambling addiction; socially responsible gambling, education and training to name a few.

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

Under the Gambling Act 2005, all online gambling operators operating from the UK have to be licensed by the Gambling Commission. This will require all gambling operators including on-line gambling operators to pay a licence fee. Apart from the licence fee, gambling operators have to make two further payments. These are:

- (1) A remote gaming and betting duty of 15% of their profits and corporate tax rates up to 30%;
- (2) A requirement to contribute to the treatment of problem gambling which will be taken from the levy paid in by gambling operators.

Section 123(4) of the 2005 Act states that:

The Commission shall, with the consent of the Treasury and of the Secretary of State, expend money received by way of levy for purposes related to, or by providing financial assistance for projects related to—.

- (a) Addiction to gambling,
- (b) Other forms of harm or exploitation associated with gambling, or
- (c) Any of the licensing objectives.

In order to give effect to this section, the Responsible Gaming Strategy Board (RGSB) was set up in late 2008 to advise the Gambling Commission and the Department for Culture, Media and Sport (DMCS) on research, education and treatment programmes needed to support a national responsible gambling strategy and associated funding requirements in England, Scotland and Wales.

The Board is chaired by Baroness Neuberger DBE and is further supported by eight Board members whose expertise amongst others covers socially responsible gambling, preventive education and addiction and counselling services.

In February 2011, the RGSB welcomed the Third British Gambling Prevalence Survey. Professor David Miers, Chair of RGSB, stated that this survey will act as a “useful tool in understanding who gambles and how they gamble and thus aid us in refining our thinking about ways of preventing people affected by gambling-related harm, as well as helping to develop educational and research programmes aimed at tackling the problem”.

There are also several charities and Government run schemes that are available to help gamblers who may have an issue with gambling addiction. These include:

- (1) The Financial Services Authority;
- (2) The British Horse racing Authority;
- (3) The National Lottery Commission;
- (4) The Office of Communications (OFCOM); and
- (5) The Gambling Appeals Tribunal.

The First-tier Tribunal (Gambling) is an independent body set up to hear appeals against the decisions of the Gambling Commission.

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

In the UK, in the area of horse racing, a Betting Levy Board – a public body – exists to raise money for the improvement of horse racing and the advancement of veterinary science and education. It does this through collecting a statutory levy from bookmakers. Levy is collected from bookmakers as a percentage of their gross profits on British horserace betting business. Section 123 of the Gambling Act 2005 also gives effect to the levy scheme.

The UK horse race betting levy scheme was introduced in 1961 and at present is in its 50th levy scheme. The 49th Levy Scheme established that off-course betting such as telephone and particularly internet betting will be liable to pay a flat percentage charge of 10% without abatement. The levy for on-course betting is charged at a flat fee of £200 only. However on-course bookmakers who use and/or operate a betting exchange are also liable to pay levy at the rate of 10% on their gross profits received from Horse racing Betting Levy Board (HBLB).

According to the 50th Horse race Betting Levy Scheme published in March 2010 and determined by the Government in February 2011, it is submitted that the levy will increase from 10% to 10.75% . This rate will apply to telephone and internet betting operators (including betting exchanges) as well as Licensed Betting Offices.

For financial year 2009/2010 the levy was distributed as follows in the area of horse racing:

£'000	
Horseman (inc prize money)	64,000
Integrity services	25,342
Racecourses	6,638
Administration	3,153
Improvement of breeds	2,056
Veterinary	2,055
Training	1,225
Other	1,135
Bookmakers' Committee	2
Total	105,865

Table 1: Horse racing Betting Board Results at <http://www.hblb.org.uk/>

According to the new regulations, gambling operators which are not under a UK licence are not required by law to pay the levy. In view of this, it is interesting to note that Betfair the 'biggest online betting company' which moved off shore to Gibraltar at the beginning of 2011 handed over a £6m lump sum to the Horse racing Betting Levy Board in June 2011 . This figure is equal to the money that the company would have been required to pay in the terms set out in the 50th Levy Scheme for 2011-12. This is certainly very encouraging for online gambling and fair returns.

The response does not focus on the proportions of on-line gambling revenues from other sports as the research did not return a regulated levy system for other sports as it does for horse racing. This is something which other sporting organisations will have to consider and implement.

References:

Department for Culture, Media and Sport Government reaches decision on the 50th Levy Scheme – New terms are ‘fair deal for racing and bookies’ says Jeremy Hunt. Press release (16 February 2011) at [http://www.culture.gov.uk/news/media\\_releases/7859.aspx](http://www.culture.gov.uk/news/media_releases/7859.aspx)

Chesters L., Betfair stumps up £6m for UK betting levy (19 June 2011) The Independent.

**(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**

In the UK the issue of sports betting and in particular outcome fixing is becoming a significant issue. The Gambling Commission’s ‘mystery shopping exercise’ attempts to deal with these issues, and whilst it has been successful as reflected by the exercise carried out in 2009, its success at a much broader level including issues thrown up by remote gambling, can be questioned. In 2010, outcome fixing allegations during England’s Test cricket match against Pakistan was brought to light by a newspaper organisation which alleged that some Pakistan players were at the heart of a match-fixing scandal .

In addressing the issue, the Gambling Commission has done the right thing in signing a Memorandum of Understanding with various sports bodies. However paying an exclusive commission to sports governing bodies for recommending that gamblers deal with ‘official’ or ‘approved’ betting exchanges gives rise to a conflict of interest. Putting in place a levy fee or a ‘return’ which is redirected into the development of the sport at national level as discussed above is one way of tackling this issue. Whether this issue can be adopted more successfully at European level is to be seen.

Apart from this, giving the sporting bodies' security departments access to individual identities and betting records of gamblers registered with gambling operators, when a race or match produces unusual betting patterns or competition results, can also lead to a conflict of interest. This in turn raises the issue of anonymous gambling particularly in relation to online/remote gambling. Should it be a requirement that an individual registering with a gambling operator be compelled to reveal their true identity? This is an issue to be considered. To deal with the issue of dealing with individual (and true) identities for the purpose of investigating unusual betting patterns, a strict compliance of the Data Protection Act 1998 is important. The problem, however for remote gambling, is that DPA 1998 will only apply to those gambling operators who are licensed in the UK and those gamblers accessing a UK server. For example, Betfair, which moved to Gibraltar in early 2011, will not come under the remit of DPA 1998. An agreement at EU level will remove such restrictions particularly in relation to the challenges of online gambling which currently apply at national level.

In the UK there is a fund, for redistributing revenue from public and commercial on-line gambling services to the benefit of society. This exists in the form of a Betting Levy Board (BLB) for horse racing. The money which is received is in turn used for upkeep of racecourses; improvement of breeds; veterinary research, training which all benefit society. For example, the proportions of on-line gambling revenues from horserace betting that is redirected back into horse racing at national level stands at a flat percentage of 10.75% without abatement for off-course betting and similarly 10.75% of gross profits for on-course bookmakers who use and/or operate a betting exchange. This is a rise from 10% which was the levy in 2010. However, not every sport in the UK benefits from such an organised fund or a clear proportion of revenues being redirected into the sport. Whilst horse racing has clear regulations in terms of the BLB, what is needed is a dedicated and clearly regulated fund which will assist both individual and team sports respectively in UK. Maybe an EU-wide framework in this area which takes into account other sports could assist.

In accordance with the Gambling Act 2005, the Responsible Gambling Strategy Board (RGSB) was set up to advise the Gambling Commission and the Department for Culture, Media and Sport and work towards redistributing revenue from on-line gambling to assist with gambling addiction; socially responsible gambling and education and training for problem gambling. There are also other Government run schemes which exist to help gamblers who may have an issue with gambling addiction as set out at p. 11. However, as identified above, problem gambling is linked to social and demographic factors as evidenced by various studies. As such whilst regulatory initiatives are welcome and whilst the RGSB does significant work in this area, what is also needed is a holistic approach to dealing with problem gambling rather than relying on legislation alone.

Reference:

Quinn B., Match-fixing allegations hit England v Pakistan Test at Lord's (29 August 2010), The Guardian.

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?**

**(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?**

**(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?**

**(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?**

**Other comments on issues raised in section 2.4**

**Other comments on issues raised in the Green Paper**