

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:

Virgin Games

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?

The study commissioned by the European Parliament's Internal Market (IMCO) Committee, conducted by the Policy Department (Economic and Scientific Policy) and is entitled "Online Gambling - Focusing on Integrity and a Code of Conduct for gambling". This study was published in November of 2008.

Another report is the Study of Gambling Services in the Internal Market of the European Union which was compiled by the Swiss Institute of Comparative Law and was published in June 2006. This report focuses solely on the EU Member States and their different regulatory methods.

The MAG study, "Overview of the Italian Regulatory Framework for Online Gaming, Evolution of the Italian Online Gaming Regulation 2002-2009" which was published in March 2010, which indicates that regulation effectively curtailed the "black market" and increased the level of consumer protection as well as generating income.

Conversely, the MAG study, "Jeux en ligne in the French Market, Key features, strengths and weaknesses of the French legal gaming offer" published in February 2011, shows how restrictions and high taxation are only beneficial to the "black market" which represents more than half of the entire online gambling market in France.

(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)

Anecdotal the black and shadow market is worth more than the regulated market. Whilst there is some research (H2, Gambling Compliance, etc.) much of it is based upon estimations rather than tangible facts. An appropriate measure however might be to use the studies referenced in Q1 as a starting point together with information from member states who are currently in the coping process via regulation e.g. Greece.

(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?

A positive one provided that there is a minimum standard in respect of player protection and operating practices which enforce integrity and fairness. Not only does this support the principles and spirit of the EU of free market and cross border co-operation in terms of law enforcement and customer experience, it also provides customers with the protection afforded by an entity which is above the Member State. Provided that there is a minimal standard and only those operators licensed and regulated by an approved entity are allowed to operate across borders, this can only increase consumer choice and add to the player experience within a closely regulated and safe environment.

The result will be a better player experience due to shared liquidity, greater player protection, greater consumer confidence resulting in better market perception which can only increase participation and revenue.

The issues with Member States regulating unilaterally is essentially one of consumer choice and consumer protection. The costs of establishing a fully licensed operation in each individual Member State places immediate barriers to entry on small to medium operators with the result that this is only a viable option for the big boys who have the funds or black and unregulated operators. The ultimate result of this is likely to be a European landscape dominated by the big boys and the cowboys which will have an inevitable impact on the consumer. The obvious conflict between a unified European experience and variable localised customer experiences aside, individual Member State legislation is based upon point of consumption however the march of emergence of newer technologies is going to make it harder to pinpoint the actual point of consumption making it very difficult to police and therefore providing even greater opportunity for rogue operators, and a constant loop of catch up regulation.

(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?

As an operator which is licensed both inside (Malta) and outside (Alderney) but does offer its services to EU customers our experiences have been positive based upon the key fact that the regulating bodies apply a minimal operating standard which meets the requirements of both the individual Member States and the EU.

Again consumer choice married with consumer protection and operating protocols which mirror those of the EU can only be a positive move. In fact, given that some non-EU regulatory bodies have greater experience and do in fact apply higher operating standards than the EU member states this is an opportunity for the EU to learn and set high standards from the outset.

The result will be a better player experience due to shared liquidity, greater player protection, greater consumer confidence resulting in better market perception which can only increase participation and revenue.

(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 issues with Member States regulating unilaterally is essentially one of consumer choice and consumer protection. There is the larger issue of local regulation breaching the wider spirit and principles of the Common Market. The costs of establishing a fully licensed operation in each individual Member State places immediate barriers to entry on small to medium operators with the result that this is only a viable option for the big boys who have the funds or black and unregulated operators. The ultimate result of this is likely to be a European landscape dominated by the big boys and the cowboys which will have an inevitable impact on the consumer. The obvious conflict between a unified European experience and variable localised customer experiences aside, individual Member State legislation is based upon point of consumption however the march of, and emergence of newer technologies (mobile, cloud) is going to make it harder to pinpoint the actual point of consumption making it very difficult to police and therefore providing even greater opportunity for rogue operators, and a constant loop of catch up regulation.

(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?

No. The obvious conflict within and the body of the Italian and French regulations shows clearly that the only way to ensure coherence and consistency in an area where the objectives of individual Member States are driven by generating tax revenue, is for a body higher than the Member States to establish minimal operating standards which embody both primary and secondary EU law. Currently the EU 3rd Directive is only fully integrated into the on-line gaming laws and regulation of 1 EU state - others are either still in consultation or apply it as a broader law. Add in the fact that no clear regulation has the natural consequence of no clear penalty, and policing and monitoring even the regulated operators becomes difficult, nevermind the non-regulated ones.

Other comments on issues raised in section 1

The only seemingly logical solution to enabling online gaming within the spirit of the EU i.e. the freedom of movement of trade and services whilst ensuring consumer choice and protection and encompassing both primary and secondary legislation is to have a EU regulatory body which either issues licences or operates in partnership with Member State regulatory bodies to not only establish minimal standards but more importantly monitor, enforce and act.

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?

The definition varies enormously from the definitions applied at national levels. Not only does it fail to account for games which arguably fall into the category of skill, such as poker it also fails to take into account the charitable and variable definitions of lottery and the growing trend towards a unified multi-channel experience which encompasses server based land and non-remote gambling from one primary platform and one customer account.

(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?

A distinction needs to be drawn between prizes (promotional games or free play) and winnings (cash gambling) not only in respect of clear regulation, but also in anticipation of the growing trend in social gaming which threatens to blur the boundaries and expose loopholes in laws and regulation.

(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?

Whilst many would argue no, the fact is there are already operators who provide server based gambling in fixed premises where the server is located outside of national boundaries. This needs to be considered, as does the offering of a unified multi-channel (remote and non-remote) experience which enables the customer to access the same games (and gaming servers) using the same customer account across all media.

(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?

The primary advantage of differing national systems is allowing for tax, cultural nuances and protecting national operators and/or state monopolies. The primary disadvantages are lack of consistency across the EU, lack of growth as a result of limited liquidity (poker, bingo, multi-player games) and little or no monitoring and enforcement of legislation where the access media does not allow for clarity on the point of consumption e.g. proxy servers and mobile, particularly close to borders.

Other comments on issues raised in section 2.1

The only practical route to an EU definition of gambling is to over-ride current national definitions and apply a protocol at community level. Ideally to ensure compliance across all member states this should be via a new or amendment to existing Directive as issued by an EU Gaming authority which has the powers to police and enforced across the community. This would still allow for individual nation states to set local operator rates based upon a licence to trade/advertise in state.

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 current regulations are varied across each and every member state, and whilst it may be possible to regulate within that nation state the fact is that today's technology makes it relatively simple to breach national regulations across all advertising media with little or no penalty, unless there is a requirement to change the law in respect of postal services, broadcasting, telephony and mobile interaction.

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

Some national states do apply rules pertaining to payment systems based upon hereditary and existing financial law (FSA etc.), however these do not all extend or apply to the newer payment methods such as e-wallets, mobile payments and voucher systems. Whilst some regulators require a degree of due diligence on third party associates, this would not apply to all, and very few make reference to the newer payment technologies. The simplest route to consistency is to ensure that all cash transactions meet the requirements of the AML directive, but at the commencement of the relationship as opposed to the current thresholds which are inconsistent across the different forms of gambling.

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

Absolutely - but only if the player account is then managed and administered in the manner dictated by regulation, and that regulation is an operating requirement of the terms and conditions of the license with the operator subject to a full and transparent periodic audit.

(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?

The existing national rules and practices are all different and vary from regulator to regulator - there is no consistency. In respect of verification, some require verification prior to a cash transaction/relationship commencing, whilst others apply after the relationship has started and others still at the point where the customer requests a withdrawal. There is more consistency in relation to Data Protection, and much is driven by supplementary regulation/compliance such as PCI-DSS rather than specific primary/secondary legislative compliance. There are

challenges with the cross-border context however these could be addressed via a consistent set of standards which could carry a requirement for cross-border co-operation across national data, financial and law enforcement agencies.

Other comments on issues raised in section 2.2

The EU needs to move away from the term on-line gambling, and apply just gambling if it is to future proof against changes in both the industry and technology. Gambling is an opportunity to win a cash value greater than or equivalent to the initial investment whether this be by chance or the application of skill and judgement. Gaming is the opportunity to win a non-cash value, prize or other reward.

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)

The factors listed in the Green Paper certainly have an impact on the development of a gaming problem, however anecdotal evidence from charities and support organisations which deal with gaming problems, suggest that gaming problems can also be a secondary and visible outcome of non-gaming related trauma or medical issues, and regulation should also allow for this. Aside of this, based on anecdotal evidence the ranking for the items listed would be: 6, 4, 5, 3, 2, 1

(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)

Yes, with the exception of 7, where an addict will simply find an alternative. In terms of ranking 6, 1, 2, 3, 4, 8, 5 and 7. The most effective measure would be a duty of care and responsibility on the operators to educate and monitor player activity and take pro-active action early - prevention rather than cure.

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

The best sources of accurate information are the gaming problem charities, support organisations and national health services. The UK Gambling Prevalance Study gives some information however everything indicates that whilst there is a problem it is not an extension one and that regulation is a positive aid to addressing whereas no regulation allows the problem to continue and go un-checked.

(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?

See 17.

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

See 17 - there is a chain of thought, again based upon anecdotal evidence that the instant gratification or minimum stake with big win, lotteries and lottery associated scratchcards which promise big returns, are accessible without verification checks are the worst offenders as there are no player protection measures around them, despite being accessible to a younger audience.

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

Aside of the player protection obligations outlined in nation state gaming regulations very little. Many governments commission studies and research and some pay lip service to consumer education but very little provide state funded assistance (although there are some exceptions) - much of this is provided by charitable organisations, many of which are funded as a result of operator donations - some mandatory some voluntary.

(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?

There is very little by way of state funded treatment. The level of required contributory funding from operators very much depends on each individual regulator - some require a minimum as part of their license conditions however these are very much the minority.

(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?).

Currently there only appears to be one non-EU regulator actively and methodically enforcing this. As an operator who falls under this regulator, we can say that this is not a requirement which is difficult or onerous.

(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. Yes the existing limits to protect minors to some extent. Where they fall down and this is possibly true of other member states too, is where state lotteries where the prize is significantly greater than any offered by a gambling operator are accessible to those below the age of majority and without any verification prior to purchase.

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

Yes and they are significantly more stringent as they are mandatory and applied to every customer as opposed to land based where the checks, dependent on the regulation in force, can be applied on an ad hoc or subjective basis, or based upon financial thresholds.

(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.

Whilst some regulators do provide clear guidelines others will cross reference to other bodies within the jurisdiction such as ASA in the UK, or require adhere to a voluntary or self-regulated code of practice. ASA in the UK has taken some action but this is often based upon the number of complaints submitted by consumers, rather than a regimented policy of policing.

(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?

Some regulators make provision but not entirely sure whether this is enforced via a system of checks and balances unless a customer makes a complaint.

Other comments on issues raised in section 2.3.1

Given that many operators view responsible play as the natural enemy of enhanced revenue, player protection needs to be driven by regulation to ensure consistency and enforcement.

2.3.2. Public order

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

There is no acknowledged research into this area however criminal investigations have indicated that gambling sites (poker especially) are used by criminals and terrorists to move and launder money. There have also been instances of customers hacking into systems and/or manipulating game results which have resulted in successful legal prosecutions.

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

Again this varies from regulator to regulator with the AGCC who require full technical testing and certification prior to go live at one extreme, those in the middle who may conduct an inspection some time after the operator has been live, to the less stringent regulators such as Curacao at the other, who whilst not a member state may be accessed by EU citizens.

(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?

A full licensing process which requires proof of process, systems and procedures prior to being able to operate, included CDD and AML/CTF, which is then supported by the submission of monthly and quarterly reports and an annual on-site inspection. In the case of network and peer to peer offerings, an independent and dedicated security team whose role is to monitor all actively across the network. This would also ensure against operators behaving in a manner which could be deemed illicit or unacceptable.

(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?

Again a relatively un-regulated area with a reliance upon voluntary disclosure. Sports Integrity bodies are moving in the correct direction, and there is much informal exchange of information between trading teams however again an entrenchment of obligations in respect of reporting and disclosing, in regulation would assist greatly.

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

Peer to peer exchange betting where it is possible to bet negatively i.e. deliberately lose and make a profit

(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?

If they are regulated very little, if anything the sponsorship carries a high profile reputational risk if wrong-doing or attempt to manipulate the outcome is discovered.

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

UK: R v Younes Tsouli and Wasim Mughal (2007) R v Alistair Peckover (2010) with a number of on-going cross border investigations by both law enforcement and the security services

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

The same regulatory controls should be applied to all payment systems (e-wallets, Vouchers, touchless potentially) and include micropayments systems which are often offered by the established payments providers as part of their folio e.g. PayPal.

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

Yes. Virgin Games adheres to several sets of regulation/legislation in respect of Money Laundering (Alderney, Guernsey, Malta, UK and EU primary legislation) and a number of third party gaming and payments services providers. We can say unequivocally, that ensuring compliance is not a burden - if anything it ensures that we keep both customers and the company safe.

(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?

The case referenced in Q 33 shows the risks of money laundering through on-line gambling sites. Currently the fact that social gaming sites do not allow funds back into the system means there is limited or no risk, however should there be a move to marry social with traditional cash gambling then arguably the risks would be commensurate.

(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?

Whilst operators are required to submit SAR reports, it is arguable whether there is proactive enforcement beyond this. Without a significantly greater degree of co-operation from the financial and payments services industry and cross border intelligence agencies it is unlikely to change. Currently the only real option is to report to law enforcement and hope they escalate as appropriate.

Other comments on issues raised in section 2.3.2

There are significant inconsistencies of how integrity and security are managed from regulator to regulator. Without a wider set of regulations which also include the primary EU Directives management will remain ad hoc and difficult.

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?

Industry groups: RGA, EGBA etc. which would undertake research in the interests of the public, but the primary channel is state lotteries.

(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?

Variable for each member state and managed per specific area, e.g. lottery to charity, horseracing levy to support race courses, etc.

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

Where the law and regulation requires but no consistency - some is regulatory, some is voluntary

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

Variable with the exception of the Levy Board in the UK

(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?

No, despite the UK dispersing to culture and sports it is arguable that there is consistency or any clear criteria, in which case it would be open to exploitation.

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

In some areas but not closed to exploitation

(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?

According to the UK Levy Board the move of some UK operators to sites outside the UK would suggest there is an impact, however there are relatively easy ways of addressing such issues without impacting on the consumer.

(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?

Not that we are aware of.

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 UK Gambling Commission - a regulatory body whose primary role and scope is to regulate gambling as outlined in the Green Paper. It should be noted however that the most stringent regulator is associated with the UK and that the UKGC appears to be borrowing more of these higher standards.

(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?

Yes, yes and the UKGC

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

UK white-list which ensures minimum standards. MoUs and Bi-lateral and co-operation agreements between various regulators both within and outside of the EU. There are a number of global industry and regulatory associations covering a number of different issues e.g. Gamshield - fraud and security

(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?

Integrity in Sport - research and studies are currently on-going in terms of how best to advance in this area.

(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?

Currently all of the above are in place in some shape or form across the EU. France and Italy may embark on cross-border initiatives. They have a degree of effectiveness, but most appear to be ignored until such time as a state or provider indicates clean intent to act and impose penalties.

(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?

They are only as effective as the technology available to over-ride them. Emerging technology means that it is not so very difficult to hide IPs, DNS can be re-directed and there will always, as the experience of the US has shown, be a payment provider willing to facilitate and assist. The most effective route is to place the burden of responsibility on the operator.

Other comments on issues raised in section 2.4

Other comments on issues raised in the Green Paper

It is important that the findings of the consultation process are publicised and if areas of concern are identified that the EU acts quickly and pro-actively to prevent a fragmented European landscape where the primary winners are the big boys and the cowboys and the primary loser the consumer.