



Green Paper on Online Gambling in the Internal Market

1. Are you aware of any available data or studies on the EU online 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?

- a. Detailed statistics regarding gambling, including remote gaming, have been made available by the United Kingdom Gambling Commission. Reports have also been compiled by www.gamcare.co.uk as well as H2 Gaming Capital and www.h2gc.com

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

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

- a. The main problem which arises in this sphere is that national legal frameworks vary greatly across the European Union, with different rules applying to licensing, online service payments, public interest objects and the fight against fraud. Legal certainty should be aimed for across borders.

What, if any, is your experience of licensed non EU online 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?

- b. Non-EU licensed operators can be various. The limited experience gained is with the regulatory regime adopted by Alderney in 2009 which, in GO's view, is comparable to that of the United Kingdom and other member states with regard to objectives, design and measures and is considered as positive. No other experience gained with other non-EU operators or jurisdictions.

4. If any, which are the legal and practical problems which 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 EU market for such services?

- a. The same as with the problem of the wide array of national rules which regulate online gambling as outlined in question 3 above, the cases decided by the CJEU do not provide sufficient legal certainty owing to the specificity over every case. Notwithstanding that the CJEU consistently upholds the same principles that gaming is a 'service' and therefore the rules of the internal market in services are fully applicable, the CJEU has always left interpretation in the hands of national courts owing to the fact that the cases have always been referrals from same national courts. Moreover, in line with the principle of subsidiarity, the CJEU has always recognised that the member state has a degree of latitude to decide on their respective national policy, its objectives and degree of consumer protection leading to severe inconsistencies of interpretation and a multitude of restrictive measures. However, the CJEU was always consistent in its preliminary rulings whereby (a) the Court always stated that such restrictions are the exception and should not be considered as the rule, as many Member States are trying to give the impression of (b) the Court was always consistent insofar as placing the responsibility on the National Courts to effect the necessary tests so as to truly determine if such restrictions are truly justifiable, which tests would require that the Member State concerned needs to produce empirical evidence so as to uphold its justification. From a practical viewpoint, this nationalistic approach have created



numerous obstacles whose objectives are at best dubious and therefore require close scrutiny with an aim to streamline regulatory approaches and non-duplication of requirements across the internal market.

5. Do you consider that existing national and EU secondary law applicable to online gambling services adequately regulates those services? In particular, do you consider that coherence/consistency is ensured between, on the 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 online gambling services?

- a. Once again it is our view that there is no consistency in this sphere as no uniform rules exist despite the fact that the majority of member states invoke the same public policy objectives such as the prevention of crime and fraud and a high level of consumer protection.. This leads us to believe that once there are common policy objectives, there should be developed a homogenous and interoperable set of regulatory measures at EU level.

6. How does the definition of online gambling services above differ from definitions at national level?

- a. Online gambling is defined in the Remote Gaming Regulations as any form of gaming by means of distance communications.
- b. Gaming is defined as an agreement, scheme or arrangement between two or more parties to play together at a game of chance in which a prize or reward consisting of money or some other item of value, worth, advantage or opportunity is offered or can be won and can become the property of the winner under defined conditions established for the purpose of the game.
- c. Means of distance communications includes any means which may be used for the communication, transmission, conveyance and receipt of information (including information in the form of data, text, images, sound or speech) or for the conclusion of a contract between two or more persons; without the simultaneous physical presence of those persons; such means may be unaddressed or addressed printed matter, a standard letter, press advertising with an order form, a catalogue, telephone with human intervention (including phone ins during radio and television programmes) or without human intervention (such as automatic calling machine or audiotext), radio, videophone (telephone with screen), videotext (microcomputer and television screen) with keyboard or touch screen, electronic mail, facsimile (fax) and television (teleshopping), and any other means of communication, transmission, conveyance and receipt of information by wire, radio, optical means, electromagnetic means or by any electronic means.
- d. The definitions of online gambling as presented in the Green Paper involve the embodiment of the definition under the one heading of gambling or online gambling rather than the local definitions which refer one to different definitions in order for one to reach a conclusive definition of online gambling.

7. 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. By promotional games we are hereby assuming that this refers to prizes awarded as a part of a marketing campaign with no consideration paid. The interpretation given by the Maltese authorities is that a promotional game which requires the participant to answer a question in the form of a quiz prior to being awarded the prize constitutes a game of skill and as a result falls outside the scope of the Lotteries and Other Games Act.
- b. Unfortunately guidelines to regulate broadcasting and media games have not yet been issued by the Lotteries and Gaming Authority Our interpretation of the Maltese framework is that a promotional game which requires the participant to answer a question in the form of a quiz prior to being awarded the prize constitutes a game of skill and as a result falls outside the scope of the definition of a 'game of chance'.



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

- a. Pursuant to the definition of online gambling under national legislation which excludes the simultaneous physical presence of the provider and recipient, and due to the permanent nature of casinos, gambling halls and book maker's shops, in our view such provision of services fall under establishment rules rather than cross-border rules.

9. What are the main advantages/difficulties associated with the coexistence in the EU of differing national systems of, and practices for, the licensing of online gambling services?

- a. Please see replies to Questions 5 and 6 above.

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

- a. The Maltese Lotteries and Gaming Authority has issued a Code of Conduct on Advertising, Promotions and Inducements whilst the Broadcasting Authority has issued directions to broadcasting services imposing requirements as to gambling advertisements and methods of gambling advertising.
- b. As a result of the provisions of the Code of Conduct, a holder of an online gambling license cannot publish in any manner whatsoever through any medium and in any place advertising that:
- encourage anyone to contravene a gaming law,
 - show people who are under the age of 18 gambling,
 - encourage or target persons who are under the age of 18 to gamble,
 - is false or untruthful, particularly about the chances of winning or the expected return to a gambler,
 - suggests that gambling is a form of financial investment,
 - suggests that skill can influence games that are purely games of chance,
 - promotes smoking and, or the abuse of consumption of alcohol whilst gambling,
 - implies that gambling promotes or is required for social acceptance, personal or financial success or the resolution of any economic, personal or social problems
 - contains endorsements by well-known personalities or celebrities that suggest gambling contributes to their success
 - exceeds the limits of decency or tarnishes the goodwill and privilege that is associated or related in any manner whatsoever with being a license holder or tarnishes the image or reputation of another license holder.
- c. The Code of Conduct also contains other restrictions to what license holders may use by way of promotional and advertising material. The Broadcasting Authority Directives on the other hand provide guidelines as to what are the restrictions of broadcasters with regards to the promoting and advertising of gambling.
- d. Specific problems which may arise in the area of advertising are related to different regulations which may be in place across borders relating to this issue and to what extent such limitations occur. What is illegal by way of gambling specific advertising in one Member State may not be illegal in another. Since online gaming providers that are already licensed and regulated in another EEA member state are allowed to provide services in Malta (as per Article 5 of the Lotteries and other Games Act); such instances must be assessed on a case by case basis by the national authorities.



11. Are there specific national regulations pertaining to payment systems for online gambling services? How do you assess them?

- a. Regulation 35 (4) of the Remote gaming regulations stipulate that a licensee cannot accept cash from a player and funds may be received only by any of (i) credit cards; (ii) debit cards; (iii) electronic transfers; (iv) wire transfer; (v) cheques; (vi) any other method approved by the authority. Moreover, according to same regulations, a licensee may not provide credit to a player or act as an agent for a credit provider.

12. Are players' accounts a necessary requirement for enforcement and player protection reasons?

- a. Yes, according to the Remote Gaming Regulations, a player cannot be permitted to participate in an authorized game conducted by a license holder unless that player is registered as such and holds an account with the license holder.
- e. Players account holding players' funds (held in a financial institution) must be separate from bank accounts of license holder and garnishee orders cannot be attached the players' funds. Moreover, according to the Maltese Gaming Legislation, if the license holder uses the player funds held in the red circled players' bank account are used for operational purposes, such as for instance paying bills or payroll, are tantamount to misappropriation of player funds which are punishable up to imprisonment of the operators' directors.

13. What are the existing national rules and practices relating to customer verification, their application to online 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?

- a. The Remote Gaming Regulations provide that a license holder cannot make out a payment in excess of €2,329.37 out of a player's account to a player without first verifying the player's identity, age and place of residence.
- b. According to the same regulations, a license holder may, before remitting funds which are standing to the credit of the account of a player, take such time as is reasonably necessary to verify the player's registration as a player, verify the playing of a game by such player and conduct security and other internal procedures in relation to the player's account.
- c. Online Gaming operators also fall within the scope of the Data Protection Act, Chapter 440 of the Laws of Malta.

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

- a. No evidence available to us

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

- a. No evidence available to us

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

- a. No evidence available to us



- 17. Are there recognized studies or evidence demonstrating that online gambling is likely to be more or less harmful than other forms of gambling for individuals susceptible to develop a pathological gaming pattern?**
- a. No evidence available to us
- 18. Is there evidence to suggest which forms of online gambling (types of games) are most problematic in this respect?**
- a. No evidence available to us
- 19. What is done at national level to prevent problem gambling (e.g. to ensure early detection)?**
- a. The Remote Gaming Regulations provide for the regulator to impose conditions on the licensee relating to; *inter alia*, the protection of players and exigencies of public interest (Regulation 9 (2)). See also reply to Question 22 below.
- b. Moreover, Sedqa, the Maltese national agency against drug alcohol and gambling abuse organizes various prevention programs related to gambling as well. Amongst others, their work targets schoolchildren in order to educate them as to the dangers of gambling and to ensure early detection.
- 20. Is treatment for gambling addiction available at national level? If so, to what extent do online gambling operators contribute to the funding of such preventive actions and treatment?**
- a. Yes, gambling addiction counseling services is offered by Sedqa. Apart from this counseling service, Sedqa also assists individuals in making an appointment with usury lawyers as well as various bank managers who will be able to assist the individual with his or her financial problems.
- b. We have no information with regards to the extent which online gambling operators contribute to the funding of such preventive actions and treatments, since as far as we are aware all contributions from online gaming licensees are directed towards the central budget through which Sedqa and other NGO's are funded .
- 21. What is the required level of due diligence in national regulation in this field (e.g. recording online players' behaviour to determine a probable pathological gambler)?**
- a. The Remote Gaming Regulations provides for certain safeguards in order to ensure the financial protection of players. In a prominent place on the license holder's website, a notice must be placed at all times, which notice shall draw the attention of players to the dangers and addictive qualities of gambling as well as the availability of other links or information on compulsive gambling and where players can seek help.
- b. Moreover, players must have the option of limiting the amount which they can wager within a pre set time, limit the amount which players may lose or exclude themselves from playing for more than a pre set period of time or have themselves excluded from playing at all for such period of time.
- c. Where a game is displayed on a screen, the license holder must ensure that on the website an online counter is displayed to the player, which counter must be updated automatically so that a player is aware of his account balance at all times.
- d. An automatic reality check must be displayed every hour, which reality check shall suspend play, clearly indicate for how long the player has been playing, display the player's winning and losses during such period of time, require the player to confirm that he has read the message and give the player the option of either ending the game or returning to it.



22. Are the age limits for having access to online gambling services in your or any other Member State in your view adequate to attain the objective sought?

- a. No player may be registered as a player of a website which operates online gambling unless such player is at least 18 years of age. I believe that this age limitation is adequate in that it is not an issue of physical age but rather personal maturity.

23. Are online age controls imposed and how do these compare to offline 'face-to-face' identification?

- f. Licensed operators are obliged to conduct 'Know your Client' (KYC) processes on registration, and on payment to players of winnings or remaining deposits. The KYC process also involves age verification.

24. 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 online casino games, sports sponsorship, merchandising e.g. replica jerseys, computer games etc) and use of social online networks or video sharing for marketing purposes)

- a. The Code of Conduct and Broadcasting Authority Directives which have been analyzed in question 11 contain provisions which protect minors from certain promotional and advertising material relating to gambling.

25. Which national regulatory provisions on license conditions and commercial communications for online gambling services account for these risks and seek to protect vulnerable consumers? How do you assess them?

- a. The Code of Conduct and Broadcasting Authority Directives which have been analyzed in question 11 contain provisions which aim to limit the license conditions and advertising and promotional materials and tactic which can be employed by license holders in order that valuable target consumers are adequately protected.

26. Are you aware of studies and/or statistical data relating to fraud and online gambling?

- a. We are not aware of studies in relation to fraud. However, we are aware of official statistics published by the National competent authority on the prevention of Money Laundering, which in its annual reports makes references to investigations performed by the said authority, which in Malta is the Financial Intelligence Analysis Unit. Refer to <http://www.fiumalta.org/Annual-Report>

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

- a. Yes, the Remote Gaming Regulations and the Gaming Devices Regulations contain such rules; compliance with which is verified by independent system auditors and controlled by the authority. Moreover Malta has adopted a remote gaming system standard (Remote gaming – Operators management system requirements: MSA 1600 of 2008) (.).

28. 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. In our view the player protection measures incorporated in the Maltese regulations are suitable measures for both the prevention and detection of fraud. We are also aware that the authorities



have taken measures when fraud was detected to stop such activities and punish impose penalties on operators (suspension and even revocation of licence)

29. As regards sports betting and outcome fixing – what national regulations are imposed on online 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?

- a. With regard to national sports, the Malta Football Association is currently following the trial in Germany regarding match fixing allegations which are being alleged to have occurred in the 2007 game between Malta and Norway and investigations in Malta are being conducted. Moreover, the Malta Football Association is closely following the Croatian match fixing allegations which came to light last year.
- b. We are aware that operators licensed in Malta have to adopt procedures in order to ensure integrity of sports as required by the Authority.

30. In your view what issues should be addressed as a priority?

- a. In our view any sports (such as those games involving non-professional or youth players) that may lack sufficient funding and games that are not transmitted on public media may be more at risk to fixing and other integrity issues.

31. What risks are there that a (online) 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?

- a. We believe that any such risks that may prevail in such sponsorship agreements are not only limited to online betting.

32. What cases have demonstrated how online gambling could be used for money laundering purposes?

- a. We are not aware of any cases which were proven. However, we are aware, (also through the Annual Reports of the Financial Intelligence Analysis Unit (see <http://www.fiumalta.org/Annual-Report>) that remote gambling operators actually report any suspicious transaction, which the operator may have a slight suspicion on. The cases are then investigated independently by the Financial Intelligence Analysis Unit.

33. Which micro payments systems require specific regulatory control in view of their use for online gambling services?

- a. Micro payment systems are not regulated by the Lotteries and Gaming Authority but by the Malta Financial Services Authority or the equivalent overseas authority and are therefore subject to the relevant strict controls.

34. Do you have experience and/or evidence of best practice to detect and prevent money laundering?

- a. Yes

35. Is there evidence to demonstrate that the risk of money laundering through online gambling is particularly high in the context of such operations set up on social websites?



- a. No evidence exists as to whether the risks of money laundering through online gambling is particularly high in the context of social websites, although we are aware that such scams have been reported in other countries. We are not aware of any studies that have been conducted locally on the issue.

36. Are there national online gambling transparency requirements? Do they apply to cross border supply of online gambling services and are these rules enforced effectively in your view?

- a. The license holder must forward monthly financial reports to the Lotteries and Gaming Authority. Moreover, the license holder's website must contain a the Lotteries and Gaming Authority kite mark as well as clearly defined procedure as to how a player may proceed to contact the Authority in order to lodge a complaint if such complaint has not been directly seen to by the license holder (or his representatives or employees). Other real time control measures are possible, such as test accounts by the authority and other interventional monitoring of traffic. Moreover, the licensee has to report any incident within 24 hours to the authority.
- b. We are not aware of any cases which were proven. However, we are aware, (also through the Annual Reports of the Financial Intelligence Analysis Unit (see <http://www.fiumalta.org/Annual-Report>) that remote gambling operators actually report any suspicious transaction, which the operator may have a slight suspicion on. The cases are then investigated independently by the Financial Intelligence Analysis Unit.

37. Are there other gambling revenue channeling schemes for the public interest activities at national or EU level?

- a. By virtue of the Lotteries and Other Games Act, the holder of the national lottery license is to pay funds standing in its Unclaimed Prizes Reserve to the Authority. All funds received are to be credited to the National Lottery Reserve Fund and in accordance with the same Act, all funds credited to the latter reserve must be paid to the National Lottery Good Causes Fund held by the Treasury Department. The Good Causes Fund is also made up of a percentage of tax which is collected from gaming activity.

38. Is there a specific mechanism, such as a fund, for redistributing revenue from public and commercial online gambling services to the benefit of society?

- a. The Good Causes Funds is made up of unclaimed prizes as well as from tax payable on gaming activities and it is distributed amongst different organizations in society which are in need of such funds – these also include sporting organizations and as a result it can be said that revenue secured from gambling (in the form of the national lottery) is redistributed to the benefit of society.

39. Are funds returned or re-attributed to prevention and treatment of gambling addiction?

- a. As already stated above by virtue of the Good Causes Fund some of the revenue acquired through gaming is channeled to public interest activities. However, we have no specific information as to whether any of such funds are redistributed specifically to the prevention and treatment of gambling addiction. However, we have no specific information as to the magnitude of such funds being redistributed specifically to the prevention and treatment of gambling addiction. GO is aware that the Lotteries and Gaming Authority funded specialized programmes for the staff of the National Agency (SEDQA) which deals with Problem Gambling.

40. What are the proportions of online gambling revenues from sports betting that are redirected back into sports at national level?



- a. As per our reply to question 40 above.
- 41. Do all sports disciplines benefit from online gambling exploitation rights in a similar manner to horse racing and, if so, are those rights exploited?**
- a. No, there are no local online gambling exploitation rights as of the date of this report.
- 42. Do online gambling exploitation rights that are exclusively dedicated to ensuring integrity exist?**
- a. Not Applicable
- 43. Is there evidence to suggest that the cross-border “free riding” risk noted above for online gambling services is reducing revenues to national public interest activities that depend on channeling of gambling revenues?**
- a. No Evidence
- 44. Are there transparency obligations that allow for gamblers to be made aware of whether and how much gambling service providers are channeling revenues back into public interest activities?**
- a. No
- 45. Is there a regulatory body in your Member State, what is its status, what are its competences and its scope of action across the online gambling services as defined in this Green Paper?**
- a. The Lotteries and Gaming Authority is the regulatory body that is responsible for the overseeing of all gaming activities in Malta. Its mission statement is to ‘regulate competently the various sectors of the lotteries and gaming industry that fall under the Authority by ensuring gaming is fair and transparent to the players, preventing crime, corruption and money laundering and by protecting minor and vulnerable players.’
- b. The functions of the Authority are:
- c. To issue a National Lottery license and licenses to operate other games and to supervise the operation of license holders to ensure that such license holders comply with the terms and conditions of their license and with the provisions of the Lotteries and other Games Act and with the regulations made under it and with any applicable directives issued by the Authority in terms of the Act or other regulations made under it
- d. To issue permits to sellers of games forming part of the National Lottery
- e. To inquire into the suitability of license holders and their main suppliers to ensure that those involved in the operation, promotion or sale of authorised games are fit and proper persons to carry out their functions relative to such games
- f. To ensure that license holders publish the rules of the authorized games operated by them in terms of their license in such manner as may be deemed appropriate by the Authority
- g. To use all powers vested in it by this Act or any other law to ensure that games and gaming are kept from criminal activity, and to prevent, detect and ensure prosecution of certain offences against the Act
- h. To ensure that authorised games are operated and advertised fairly and in a responsible manner and in accordance with the law
- i. To regulate, by license, the manufacture, assembly, repair, service placing on the market, distribution, supply, sale, lease, transfer, making available for use, hosting and operation of relevant gaming devices and to ensure that they are secure and satisfactory for the use for which they are intended



- j. To supervise, attend and validate the draws of the National Lottery and of such other authorised games as it deems necessary
 - k. To receive and investigate complaints by consumers related to games
 - l. To Advise the Minister responsible on new developments, needs and risks in gaming and to make such proposals as may be deemed necessary or expedient
 - m. To advise the Minister on the making of regulations
 - n. To issue directives which it is authorised to issue in terms of the Act or of any other law or regulations made thereunder
 - o. To perform any other function as may from time to time be assigned to it by the Lotteries and other Games Act or by any other laws or regulations made thereunder.
- 46. 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?**
- a. Yes, such a register is available and can be accessed by the public through the Lotteries and Gaming Authority website. It is managed and kept up to date by the same Lotteries and Gaming Authority.
- 47. Which forms of cross-border administrative cooperation are you aware of in this domain and which specific issues are covered?**
- a. We are aware that the Lotteries and Gaming authority cooperates, albeit informally, with other gaming regulators in the EU and other jurisdictions. Malta is also member of GREF and IAGR.
- 48. Are you aware of such enhanced cooperation, educational programmes or early warning systems that are aimed at strengthening integrity in sport and/or increase awareness among other stakeholders?**
- a. Some such research on ways to strengthen integrity in sport does exist, one such study was conducted by Oxford Research¹ However, we are not aware of such studies that have been conducted locally.
- 49. Are any of the methods mentioned above, or any other technical means applied at national level to limit access to online 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 online gambling?**
- a. The Attorney General of the European Court of Justice in its Opinion in the Scarlet/Sabam Case C-70/10 held that the Belgian ISP Scarlet should not have to filter copyright infringing traffic from its service because to do so would invade users' privacy. Scarlet had been ordered by a Belgian Court to filter traffic that infringed copyrights. The AG, Pedro Cruz Villalon said that such a system would violate rights guaranteed under EU law. He stated that 'the installation of the filtering and blocking system is a restriction on the right to respect for privacy and communications and the right to protection of personal data, both of which are rights protected under the Charter of Fundamental Rights.'
 - b. He continued by stating that these rights listed under the Charter of Fundamental Rights can be restricted but *only in line with national law and even these laws must meet certain standards*. The AG continued by stating that the demands made by the Belgian Court would be extensive and would lead to the blocking of files that no Court had said definitely infringed copyright.
 - c. 'The Court order would instead apply in abstracto and as a preventive measure which means that a finding would not first have been made that there had been an actual infringement of an intellectual

¹ <http://www.eusportsplatform.eu/Files/Filer/examination%20of%20threats%20to%20sports%20integrity.pdf>

property right or even that an imminent infringement was likely.' He also added that the measure would apply and affect many in that customers of the ISP would be prevented from transmitting material to others who were not.

- d. The Attorney General found that neither the filtering system (which was intended to be applied in a systematic, universal, permanent and perpetual basis), nor the blocking mechanism, which can be activated without any provision being made for the persons affected to challenge it or object to it are coupled with adequate safeguards.
- e. The outcome of this case could also have far reaching effects on the Italian authorities' filtering of foreign online gambling websites in that if such practices are struck down as illegal, Italy would also not be able to impose on its internet providers to filter such internet content.
- f. The E-Commerce Directive, in fact in article 15, states that ISPs are generally not responsible for the activity of customers and that Member States must not put ISPs under any obligation to police illegal activity on its service.
- g. With regards to payment blocking and liability regimes for ISPs as mentioned in the Green Paper:
- h. As is stated in this Green Paper, the efficiency of a blocking system depends on a pre-defined and updated list of items to block as well as efficient software systems. If the blocking system was applied as was attempted in Belgium in the above mentioned case, this would certainly not fall within the ambits of an efficient blocking system. Moreover, according to article 15 of the Directive, Internet Service Providers are not responsible for the blocking of such content.
- i. The article in question in fact provides that Member States shall not impose a general obligation to monitor, to monitor the information which they transmit or a general obligation to actively to seek facts or circumstances indicating illegal activity.
- j. One of the inherent problems with filtering as already stated by the Attorney General in the Scarlet/Sabam Case is that of over-blocking. Current technology is not able to accurately identify and block specific internet content without including some content which poses no threat or reason to block. Under-blocking is another flaw which poses the opposite problem in that even if a filtering mechanism is in place, certain content slips through the cracks. 'Blunt filtering methods such as IP blocking can knock out large swaths of acceptable websites simply because they are hosted on the same IP address as a site with restricted content.'²

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

- a. Technology advances by the day. As a result any internet filtering mechanism which is implemented today will be circumvented and rendered useless tomorrow. With this knowledge, attempting to impose certain methods of internet filtering becomes generally useless in that certain content will still find its way through and blocking legitimate content in vain. 'Web content is constantly changing, of course, and no state we have studied in the past five years seems to be able to carry out its Web filtering in a comprehensive manner.'³

² <http://opennet.net/about-filtering>

³ http://opennet.net/sites/opennet.net/files/Deibert_03_Ch02_029-056.pdf



- b. Internet filtering cannot be sufficiently carried out in a way which ensures that civil liberties are protected. Weighing such disadvantages of internet filtering against some possible advantages which may be gained from its imposition it is clear that the deficiencies outweigh any positive outcome. 'Internet filtering implicates human rights concerns, particularly the freedom of expression, and extends to the freedom of association, of religion and of privacy in some instantiations. Finally, one might conclude that Internet Filtering is unwise on public policy grounds because it is in direct conflict with the advantages which ICTs bring with them, such as innovation, creativity and stronger democracies.'⁴

⁴ http://opennet.net/sites/opennet.net/files/Deibert_03_Ch02_029-056.pdf