

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:

Hassans International Law Firm, Gibraltar

(Peter Montegriffo, Partner and Mark Henrich, Associate)

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?

We agree with the view that there is significant legal uncertainty in this area of the Internal Market as a result of the incompatibility between national laws and EU legal principles. There very often is uncertainty with regard to access to the relevant markets from operators licensed in other jurisdictions within the EU, such as Gibraltar.

The very marked fragmentation, which arises as a result of the uneasy co-existence of different online gambling regulatory systems in the EU (namely the monopolies, the single-licence system and the multiple-licence systems) is another factor which leads to the present uncertain legal environment. Further fragmentation exists as a result of some Member States regulating only certain aspects of online gambling and not others.

CJEU jurisprudence confirms that online gambling is, in principle, recognised as an economic activity covered by the provisions of article 56 TFEU. At the same time, the CJEU accepts that, in the absence of harmonised rules, national legislators have the prerogative to set their own gambling policy which may act as an Internal Market barrier provided it is non-discriminatory, suitable and proportional in achieving a permissible objective on social, cultural and moral grounds. How such a balance is to be achieved has led to a great deal of concern and legal uncertainty for gambling operators. The volume of case law on the subject is testament to the lack of established practical criteria in this regard.

As evidenced by the recent *Carmen Media* case before the CJEU, it would appear that much of the online gambling legislation which currently exists in Member States, or which national legislators propose to introduce, is not EU law compliant and would fail the test of proportionality.

We consider it is imperative that the EU Commission, as guardian of the Treaty, acts in accordance with its overriding duty to ensure the protection of the fundamental freedom of the Internal Market to permit cross-border services. We are of the view that this must be done, partly, in exercise of its powers to bring and pursue infringement cases against Member States whose legislation is not fully compatible with EU law principles.

The recent CJEU rulings in *Stoss* and *Carmen Media* impose a duty on the CJEU to ensure that Member States have gambling legislation which is EU compliant and, specifically, to ensure that there is consistency in all gambling offerings (both internally and externally).

From a general perspective, we consider that the lack of harmonisation of the rules relating to online gambling in the EU has a significant detrimental impact on both operators and consumers. The loss of economies of scale and the increasingly high costs of compliance, which arise given the uncoordinated rules imposed by various Member States, results in less competitive and coherent offerings to customers. This also prevents operators increasing their market share. It is our view that EU online gambling operators are world leaders in this industry and the fragmentation of the regulatory framework and ensuing legal difficulties risks the loss of this competitive advantage to operators in other regions, such as Asia. From a customer point of view, the current uncertainty invites significantly varying levels of protection.

The uncertainty also gives rise to many other practical difficulties for operators. As a result of the present environment, operators are genuinely unclear as to how to conduct certain aspects of their business. For example, in jurisdictions where some online gambling offerings are regulated, such as poker, but others, such as casino, are not, it is often very difficult for operators to come to a considered view as to the proper licensing and regulatory treatment of such further activities in light of overriding EU principles. In the absence of a harmonised system, operators are faced with taking business risk decisions as to the extent to which they can rely on the Article 56 TFEU freedom to provide their services into a particular Member State where it is unclear whether the national legislation lawfully prohibits the same.

In Gibraltar, there is no legal uncertainty with regard to the provision of online gambling services. The supply of these services is fully provided for in the Gibraltar Gambling Act 2005, which sets out a definition of remote gambling and the regulatory framework for those operators wishing to obtain a licence and provide their services from Gibraltar. With regard to external operators, the laws of Gibraltar do not impose any restriction or impediments on the provision of their services to Gibraltar citizens.

(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?

We are not aware of any sector-specific secondary EU legislation which regulates the provision of gambling services. Only certain features of online gambling are covered by EU directives, such as data protection.

We believe that the appropriate way forward would be to develop and maintain a harmonised EU licensing and regulatory framework, introduced through secondary legislation, which would impose minimum regulatory standards to be met by operators wishing to provide their services to European citizens. This should ensure that the social, cultural and moral concerns of Member States are addressed, and would tackle many of the difficulties arising from fragmentation and regulatory uncertainty. We consider that, in the absence of a pan-European regime, it is extremely difficult for Member States to deal with the cross-border nature of online gambling. EU regulation is the best way to ensure regulatory coherence and to create a strong European market. Such an EU framework would need to have regard to all legitimate Member State concerns, in particular, the protection of customers from fraud and the risk of addiction.

A pan-European regulatory framework exists in other industries, such as in the financial services sector where, subject to meeting the relevant standards, financial service providers are able to passport their services to citizens based in other Member States.

The varying social, moral and cultural differences within the EU, which are often cited as justification for the continuation of the current and patently untenable situation, are not unique to the online gambling sector. Not dissimilar sensitivities exist in other industries, however, such areas of concern have not prevented the emergence of a harmonised and coherent Internal Market.

Other comments on issues raised in section 1

Hassans, the largest law firm based in Gibraltar (see www.gibraltarlaw.com), has been involved in providing advice to the online gambling industry in Gibraltar since its inception and subsequent development to become one of the largest industries locally. We have advised the majority of the gambling companies licensed and operating from Gibraltar in respect of their establishment, licensing, regulatory and continued presence locally.

As a firm, we were closely involved in the drafting of the Gambling Act 2005, the principal legislation governing the licensing and regulation of online gambling in Gibraltar. We advised on the recent merger between bwin and PartyGaming, to form bwin.party Digital Entertainment, and on 888's and PartyGaming's respective floatations on the London Stock Exchange.

We, therefore, consider that we are well placed to have a very good insight into the legal, regulatory and practical challenges facing online gambling operators as a result of the fragmented EU framework in which they operate. We very much welcome the opportunity to provide our views on the future regulation of the EU online gambling market and thereby to participate in this and any future consultation processes.

Given our specific area of expertise (and the many representations that will be made by other interested parties with regard to the broader issues identified in the Green Paper), we have limited our response to the current legal uncertainty in respect of the online gambling industry, referred to at questions 5 and 6. We would be happy to be of any further assistance as may be thought appropriate.

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?

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

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(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.

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(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?

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Other comments on issues raised in section 2.3.1

2.3.2. Public order

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

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

(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?

(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?

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

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

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

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

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

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

Other comments on issues raised in section 2.3.3

2.4. Enforcement and related matters

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

(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