

## 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:

Kyte Consultants Ltd

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

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

**(1) Are you aware of any available data or studies on the EU on-line gambling market that would assist policy-making at EU and national level? If yes, do the data or study include licensed non-EU operators in the EU market?**

Not aware of any recent and serious detailed studies.

**(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)**

Not aware of any and not sure how accurate a survey on the black market can be especially when the definition of a black market differs from state to state.

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

Our company and directors have been involved the online gaming industry for a number of years. We have seen the operators grow in size, in responsibility and in reputation through the stringent regulations in place and also through market requirements. This took place because of the cross border selling of their services as growth is possible in this way, and it is efficient and cost-effective growth. As these operators grew and became more serious, more responsible and also diversified their offerings the consumers have benefitted the most. As monopolies tend to be slow to react, poor in their services and with inferior product offerings, these operators provided a breath of fresh air and consumers with a top quality product. As the online market is relatively small compared to the overall gambling market we can conclude that the effect on the markets in the other states would also have been small.

**(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?**

We believe that a number of such websites are frequented by EU players residing in Member States where they have been banned from playing with other EU licensed operators or EU licensed operators have pulled out due to legal risks. If the product is better, the service is better and the price is better the consumer will automatically seek those sites irrespective of where they are licensed.

**(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 lack of action against Member States who have had infringement procedures instituted against them, the ignoring of ECJ rulings and the blatant ignoring of the EU commission when recommended gambling laws were negatively commented upon does not create a stable legal environment. The calling of cross border selling of online gambling services as 'grey' is further evidence that the principals of the EU treaty and the ECJ rulings have been ignored even at Green Paper level. It is no longer clear what is legal and illegal and what national laws are legal and illegal. To cite just two Member States, Belgium and Poland, who have enacted laws clearly breaching EU directives and ignored comments made on the laws.

**(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?**

Yes. It is not clear what the Public Policy is in the other Member States. On the one hand they talk about public safety, problem gambling, etc but then issue as many licenses as possible to increase turnover and taxes. The monopolies are allowed to do whatever they want, with some States even having involved minors in publicity stunts. We sincerely believe that the private

operators have always acted more professionally and more in compliance with public policy than the monopolies themselves.

### 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?**

The green paper has omitted totally skill games and/or games of skill with chance, such as Poker, backgammon, Belote.

**(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?**

The Maltese market is too small to attract foreign licensed operators to its shores.

**(10) What are the main advantages/difficulties associated with the coexistence in the EU of differing national systems of, and practices for, the licensing of on-line gambling services?**

We cannot see any advantages other than a short term increase in tax revenues from a previously untaxed turnover. For operators and players this is an unacceptable and unsustainable situation. For new entrants to the market this is the death sentence. For SME's it will just restrict them to one small market. The large operators will select a few large Member States and get licenses there. In the smaller states, only the small operators with an interest in that market will obtain a license, if they can afford it, and they will have to compete with the 'ex-monopoly'

### Other comments on issues raised in section 2.1

We see no benefits whatsoever for the Member States, operators, players, service providers and the EU in general. There can be no justification for allowing such a situation where it is known by all that the sole purpose of the whole debate is all about taxes and nothing else. There is no evidence to suggest that since Member States implemented their own licenses all their previously expressed concerns have now disappeared. What we read is that these States are trying to increase the number of licenses, the amount of turnover and therefore start to benefit from higher taxes. We are not aware of any serious studies carried out by these states after they implemented their licensing regimes to prove that online gambling is now no longer

a concern for public safety, money laundering and fraud have decreased or that under age gambling is no longer an issue. We have seen a marked increase in advertising of these online operators in sports events and on the media.

## 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?**

Code of conduct on advertising were issued by the Authority and all licensed operators are bound by them. It is our understanding that advertising, sponsorships, by online gaming operators in certain jurisdictions has been constantly disallowed and even legal action taken against them even though their advertising campaigns complied with the code of conduct. Monopolies on the other hand could advertise freely. Now the States are only allowed Nationally licensed operators to advertise and sponsor.

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

Yes, specific payment systems are regulated in the Remote gaming regulations. Credit is not allowed and cash is not allowed. The regulations also contemplate approving payment systems that are not contemplated for in the law. The listed payment systems are the standard ones used for other ecommerce business and are adequate for the business model.

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

It is important that each player is properly identified and verified to ensure under age gambling does not take place, and to also enforce money laundering requirements and for fraud prevention purposes. Furthermore, players can, in this manner, request specific measures to protect against personal gambling problems.

**(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?**

All players are required to provide name, address, date of birth and a valid email address as well as to have an account and to have funds BEFORE they can start gambling for money. Various methods have been developed by operators and service providers to verify the accuracy and integrity of data provided by the players. Some checks are semi-automated and alert the operators to potential issues, some operators use third parties to verify data, others use codes and surface mail communications to confirm data received. Payment gateways also provide functions to better control fraudulent transactions and activity. Not all jurisdictions provide access to their databases thus hindering the verification of data from players of those jurisdictions. Checks on identity document numbers provided have been developed so at least the genuineness of the document can be confirmed.

### 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)**

No evidence is known to us.

**(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?**

We understand that a lot has been said about this issue but to date there is no strong evidence to suggest that the problem is of more concern with the introduction of online gaming.

**(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?**

Not aware of any recent serious and detailed studies. We believe that in Australia there is an intensive study being carried out.

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

We understand that repetitive games (e.g. slots) are more problematic both in the online and land based types of gambling.

**(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?**

18 years old. Yes, if a person can choose a government and drive a car then they can choose whether they want to gamble or not. Our comment would be that whilst these limits apply to money games some operators allow play for fun games to any person as these are not considered to be gambling as no money is spent. This situation, in our opinion, should not be accepted as it could lead to creating gamblers from an early age.

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

Regulations require that operators confirm during registration stage that players confirm they are over 18 years of age. Whilst this can easily be accomplished in a face to face environment it is more difficult in an online situation to effect this verification especially if there is identity theft. However, recent studies carried out in the UK showed that age was not regularly being verified in the sale of lottery tickets at authorised outlets even those this is a regulatory requirement.

**(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.**

As stated previously the code of conduct also talks about how to advertise, to whom, when and how to protect the advertising being available to minors. However, a number of football teams, bicycle teams, etc are sponsored by online operators, irrespective of where they are licensed and children see these websites being advertised. So it is debatable how one can really effectively control who is exposed to advertising of online gaming operators.

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

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

**2.3.2. Public order**

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

Not specific to online gambling. Our company works with business using the internet who are not gaming operators and they too face fraud issues. This risk is not restricted to the online gaming industry but is prevalent in any ecommerce business and also in normal land based

businesses. Fraud existed before ecommerce came about and has never been effectively controlled by the card brands.

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

Yes, the remote gaming regulations provide for a number of requirements to be satisfied to ensure fairness, transparency and completeness of records maintained and available to players and regulator. Moreover, with experience in the industry, the Authority has imposed more requirements than are stipulated in the regulations to ensure that the controls are continuously updated as threats and environments continue to change and develop.

**(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?**

The best practices are a mix of automated and manual controls implemented by operators and also the services provided by companies specialising in player authentication, age verification and other related services. The REmote Gaming Regulations of Malta have specific controls designed to protect player funds and to allow players to complain directly to the Authority. Issuing banks can assist in reducing fraud by allow certain checks to be made on credit card data available and also to be quicker in updating hot card lists and reporting potential charge backs. In our experience, the issuing banks are not helping in the effort to reduce credit card fraud.

**(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?**

An international database of suspicious bet reports would be an ideal solution. The main control is always to ensure that the licensed operators have been properly checked and continuous due diligence carried out on the owners, directors and employees. These are the best controls as they are preventive, all else are detective controls identifying the event after it has taken place. What needs to be done is to stop it happening and this cannot be totally achieved as human beings are prone to carry out these sort of activities no matter how many controls are implemented. The main controls should be on the actual officials, managers, officers of the sports team and also on the players themselves.

**(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?**

Our view is that risks are minimal especially since the operators that can afford these types of sponsorships are too big to risk doing these things knowing that they will lose their license.

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

None that we are aware of. Money laundering is about cleaning dirty cash. Cash is normally not part of the online gambling process. Although there are business models in the online gambling industry where cash may be involved, limits are strictly imposed and agents involved are themselves required to undergo due diligence and to strictly conform to imposed limits.

**(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?**

As stated in point 33, money laundering requires the presence of cash and would also require the operator to be a part of the process. The most important preventive measure is strict due diligence on owners, officers and employees of the operators.

**(36) Is there evidence to demonstrate that the risk of money laundering through on-line gambling is particularly high in the context of such operations set up on social web-sites?**

Not that we are aware of. It still has to be established whether online gambling is actually a real money laundering risk. Please see fatf guidelines for Casinos which also include online casino and other gambling.

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

**Other comments on issues raised in section 2.3.2**

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

**(38) Are there other gambling revenue channeling schemes than those described in the Green Paper for the public interest activities at national or EU level?**

**(39) Is there a specific mechanism, such as a Fund, for redistributing revenue from public and commercial on-line gambling services to the benefit of society?**

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

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

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

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

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

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

**Other comments on issues raised in section 2.3.3**

2.4. Enforcement and related matters

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

The Lotteries and Gaming Authority was created to regulate all gambling and betting activities. Its general scope is to license these activities and ensure that these activities are fair and transparent, players are protected, operators are verified and monitored, licenses are issued, advertising is controlled and they ensure that gambling is kept free of criminal activity.

**(47) Is there a national register of licensed operators of gambling services? If so, is it publicly accessible? Who is responsible for keeping it up to date?**

Remote gaming licensees can be found on [www.lga.org.mt](http://www.lga.org.mt) with the Lotteries and gaming Authority responsible for keeping it up to date.

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

We believe that on the 28<sup>th</sup> June, France and Italy signed a bi-lateral agreement which allows them to exchange information for the better regulation of the industry.

**(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?**

Italy have had in force for a number of years the blocking of domain names of any website offering gambling products. The ISPs are required to implement this blocking. WE also understand that Italy want to impose restrictions on payment methods, however, this still needs to be passed in Parliament. Holland also were considering this and Norway, we believe have implemented it too. These methods have not been effective at all as there are many ways of bypassing these controls. We have seen in recent events in North Africa that no matter how many attempts were made by the regimes to stop internet activity this always failed as the internet cannot be stopped.

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

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

We seriously hope that when assessing the possible solutions to the problems created in the online gaming industry in Europe the feasibility of each option for the operators is considered as well as the rights of the consumers to the best products, the best prices and the right of choice. Furthermore, we must not forget that the EU itself challenged the USA's actions at WTO level as did Antigua and the WTO found in favour of Antigua. What is happening is that member states are doing what the USA did to other countries, to other fellow Member

States. This is an illogical and hypocritical approach by the EU of the issue of cross-border online gaming.

The idea of each operator potentially requiring 27 licenses (or more if the EU expands further) is unsustainable and will definitely lead to the smaller states not being attractive for operators to operate in. The high costs of maintaining more than 1 license will also keep SMEs out of a number of markets and will also stifle new ideas and new operators. We understand that irrespective of the industry type, job creation, economic growth and SMEs are key objectives of the EU.

We have also seen that the French and Italian licensing regimes, although a number of operators reluctantly obtained national licenses, are proving to be too expensive to maintain as turnover figures are not as predicted. The Cash Cow these governments expected online gaming to be was a misplaced expectation. We also understand that these governments are desperate to issue more licenses and generate higher turnovers, obviously to get more taxes. This course of action by these Governments makes it more obvious that they were never concerned with problem gambling, fraud or money laundering as we are not seeing any efforts by them to curb online gambling but to generate more of it!!