

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:

Zammit & Associates Advocates

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 studies and reports that we are aware of are the following:

a study commissioned by the European Parliament's Internal Market (IMCO) Committee and conducted by the Policy Department (Economic and Scientific Policy) entitled "Online Gambling - Focusing on Integrity and a Code of Conduct for gambling", published in November 2008. The study delves into both EU jurisdictions as well as non-EU Jurisdictions.

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

the MAG study entitled "Overview of the Italian Regulatory Framework for Online Gaming, Evolution of the Italian Online Gaming Regulation 2002-2009" which was published in March 2010.

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)

Whilst our view is that the "black market" is composed of unlicensed and unregulated operators and not as operators lawfully licensed in Member States, we do not have any data available relating to the size of the said black market for online gambling services.

There have been unofficial indications which we are aware of which suggest that over 10% of all funds flow outside regulated channels, although we have been unable to confirm such indications.

(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?

Malta has had a significant number of online gambling operators establish their businesses on the island over the past eleven years with a view to offering their games within the European market. We have been actively involved as consultants to various such operators and in this capacity have seen a very strong desire on their part to comply with the regulatory standards imposed by the Maltese Lotteries and Gaming Authority and obtain a license to cover their operations.

Article 5 of the Maltese Lotteries and Gaming Act (Chapter 438 of the laws of Malta) states that a game of chance or a game of chance and skill is prohibited from being operated, promoted or sold by any person in Malta unless it is an authorised game or a game authorised to be operated under any law in Malta, or if it is authorised to be operated under any law enacted by a member state of the European Union (hereinafter "EU") or a member state of the European Economic Area (hereinafter "EEA"), or any jurisdiction or territory approved by the Authority. This therefore crystallises the principle that Malta recognises and accepts that a licences issued in any other Member State is adequate to cover the said games, enabling them to be offered in Malta.

Furthermore, regulation 3 of the Remote Gaming Regulations (Subsidiary Legislation 438.04 of the Laws of Malta), state that “no person shall operate or promote or sell or abet remote gaming in or from Malta unless such person is in possession of a valid licence issued by the Authority or is in possession of an equivalent authorisation by the government or competent authority of an EEA Member State, or any other jurisdiction approved by the Authority”.

Maltese law therefore recognises an equivalent authorisation issued by the government or competent authority of another EU Member state, based on the assumption that such equivalent authorisations offer the same safeguards and standards which the Maltese licence provides.

Based on our experience over the past eleven years, it is our view that the imposition of appropriate licensing standards on operators is desirable for operators and consumer alike, ensuring the fairness of the game/s involved, the protection of consumers generally and increasing choice for consumers and competition within the EU internal market. The availability of appropriate licensing for online gambling is much sought by operators with a view towards providing their players with peace-of-mind about the integrity of their internal systems and controls, having satisfied the relevant home state’s regulatory authority/ies.

Having said this, it is very difficult to quantify the impact on corresponding markets and their consumers, in economic terms, as there is very limited statistical information available to us in this area. For this reason it is difficult to calculate a licensee’s market share, which in turn makes a licensee’s market power, and possible economic impact, impossible to establish. Indeed, the lack of official data has made it particularly difficult to make the relevant calculations for the purpose of merger control notifications which necessarily require statistical information to support the relevant submissions.

(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 considered above, Maltese law prohibits operators not having authorisation equivalent to that available in Malta from operating, promoting and/or selling online gambling in or from Malta. However, it is amply clear that the internet’s transcending of national boundaries allows unregulated operators to promote themselves to players situated within the EU. Some of these black market sites even go as far as falsely indicating that they are licensed in reputable jurisdictions such as Malta, Gibraltar or Alderney to gain credibility.

It is also safe to say that most consumers show little or no interest in where the operator is based or licensed- the reputation of the operator is perhaps judged more on the basis of its marketing and on the feedback of other players than on any scientific research undertaken by the player. Clearly this approach may be changing significantly in those EU states which have implemented their own licensing system for online gaming operators.

The lack of information brings to light the vulnerability of consumers to unregulated black market operators. There is therefore a sufficiently clear case to be made, in our view, that the online gambling market requires definition and a clear stance by the EU Commission in relation to the regulatory treatment to be afforded to online gambling operators. This stance should, as a minimum, seek to ensure consumer protection, the prevention of fraud, the prevention of incitement to squander money on gambling, as well as the preservation of public order as its principal objectives.

Scam operators are bad for the image of the sector and thus very unpopular with EU operators. With a regulatory framework in place within the EU, the reputable, reliable and regulated operators would be given the right conditions to embark on an educational campaign targeted at players/ prospective players and educating them about the dangers and risks of gambling on unregulated websites, similar to the approach taken by the movie, music and software industries against piracy. This would be at no cost to the EU apart from the implementation of a framework which introduces more certainty into the industry for clear commercial, organisational and regulatory decisions to be undertaken by operators.

Whilst there are certain Scam Alert websites and many online advisories where players can verify the good faith of certain operator websites, there is not yet, to the best of our knowledge, any co-ordination of such data with regulators within the EU 27 Member States.

The main risk carried by players when dealing with operators situated outside of the EU is that the body of EU secondary legislation relevant to online gambling is not applicable to such operators and therefore leaves the player somewhat more at risk than those players dealing with EU based operators.

Before the EU can begin considering the approach to be taken towards non-EU online gambling operators it must first have a clear agenda for the treatment of such operators intra-EU, undertake a process of consumer information and education and, on that basis, create whatever distinction/s may be considered appropriate in the treatment of operators based outside of the EU.

(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 jurisprudence of national courts and the CJEU in the field of online gambling has regrettably introduced a high degree of uncertainty towards the legality or otherwise of the cross-border provision of gambling services, to the point of practically permitting outright breaches of the EC Treaty provisions relating to the freedom of movement of services.

The principal problem that arises from the CJEU's jurisprudence that has been developed to date is the complete lack of uncertainty that has been caused for operators by the Court's various observations- whilst Article 56 (ex Article 49) of the EC Treaty provides the general rule that restrictions on freedom to provide services within the European Community are prohibited, the EC Treaty and the case-law developed by the CJEU recognise that the imposition of certain restrictions may be allowable by overriding reasons in the public interest. Article 52(1) (formerly Art 46(1)) clearly allows restrictions justified on grounds of public policy, public security or public health. Thus a number of CJEU cases have understandably recognised various circumstances which could constitute overriding reasons to restrict the freedom to provide services in the public interest, such as the objectives of consumer protection and the prevention of both fraud and incitement to squander money on gambling, as well as the general need to preserve public order.

However, as the case-law of the CJEU has made it amply clear, these exceptions should always be considered in the light of the principle of proportionality and non-discrimination (i.e. between state-controlled operators and other operators or between land-based operators and internet-based operators). Most of the case-law in this respect therefore revolves around the question of whether the restrictions being imposed by certain Member States in the online gaming sphere are justifiable on grounds of public interest or public policy.

There have been numerous judgements on the matter, and whilst it is true that the circumstances of the case have some bearing on the outcome, the reality is that even at the level of the CJEU the judgements tend to be somewhat inconsistent in their conclusions. As recently expressed by the European Courts of Justice, the legislation on games of chance is one of the areas in which there are significant moral, religious and cultural differences between the Member States and it seems that it is these differences that have caused several divergences of views in the interpretational approach taken towards the application of the Treaty provisions to this sector.

In fact, a number of cases have held that the restrictions envisaged under Article 52(1) of the EC Treaty cannot go beyond what is strictly necessary to safeguard its citizens, and there must be a relationship between the concern which a Member State is seeking to address and actual dangers which their citizens are facing. On the other end of the spectrum, the CJEU has held that due to the high risk of crime, fraud and social consequences which exist in the gambling activity, Member States are justified in imposing restrictions on the principle of the free movement of services within Europe to the extent that, in the absence of harmonisation of rules across the EU, one Member State is not obliged to recognise the operator of games licensed in another Member State.

This lack of legal certainty is therefore placing operators in a situation whereby they cannot take long-term decisions relating to their place of establishment or set realistic forecasts for their operations, also placing investors in listed online gambling operators in a very precarious position.

It must be said that the most obvious motivating factor behind several Member States creating obstacles to the freedom of providing services across borders is the equitable attribution of gaming tax/ duty and the loss of revenue that is experienced by a Member State (e.g. UK) when an operator based in another Member State (e.g. Malta or Gibraltar) offers its games to players residing or based in the UK. We feel that such an issue may be circumvented with an open discussion between Member States focusing on solutions, possibly based on the splitting of gaming duty into 2 separate and distinct components to be apportioned between (i) the “home” Member State where the operator is licensed, and (ii) the “host” Member State where the player is situated. In this way, the jurisdictions willing to undertake the regulation of such online gambling activities would generate revenue to compensate for their regulatory efforts whilst the host Member State may control the consumption of online gambling services by adjusting the gaming tax/duty as it applies to all players situated within its political boundaries, just as it would apply tax over alcoholic beverages and/or cigarettes.

The main difficulty with such an approach is the technology/ controls that must be applied to ensure that the relevant components are duly accounted for and paid by the respective operators, but we do feel that the implementation of appropriate procedures for reporting and accountability should be achievable through the combined use of technology and tax collection procedures that are currently available. One possible solution could be the imposition of VAT in respect of gambling services, which VAT would be payable to the MS where the player is ordinarily resident / physically located at the time when playing the game.

(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?

Maltese national law has regulated online gambling services and its regulation and control since 2002, and specific regulations were introduced in 2004. These regulations and the Lotteries and Other Games Act, the parent act in virtue of which the regulations were made, provide a sound legal and regulatory framework for the industry. As a forerunner in the sector Malta did succeed in attracting a number of sizable operators to establish their businesses on the island.

At EU level, the fact that online gambling has been excluded from EU secondary legislative instruments has left the area completely unregulated and uncertain in its legal treatment. These circumstances could very well have been instrumental in leading operators to identify jurisdictions such as Malta, Gibraltar and even Alderney and the Isle of Man for the establishment of their European operations since each of these jurisdictions gave a clear framework within which operators were expected to operate in order to obtain and retain a license.

In our view there is no coherence / consistency between the public policy objectives pursued by Member States in the field of online gambling and the national measures in force in Member States, particularly when considering the actual behaviour of private or public

operators providing gambling services from within that Member State. It is notable that whilst many Member States raise various objections against the promotion or sale of online gambling services which are not licensed by (and therefore not taxable in) that Member State, such objections are not raised against the offering of gambling services (whether online or offline) by state-controlled operators or other private operators licensed in that Member State. As already indicated in our response to Question 5 above, the apportionment of gaming tax/ duty could have a significant impact in the treatment of online gambling services by each Member State.

At an EU level, it is clear that gambling services have not received any sector-specific attention and this appears sufficiently clear from part 2.1 of the Commission Staff Working Paper accompanying the Green Paper. Indeed, the EU Directives that are relevant to online gambling operators are general Directives such as the Audiovisual Media Services Directive, the Unfair Commercial Practices Directive, the Distance Selling Directive, the Data Protection Directive and the Directive on privacy and electronic communication.

By contrast, the e-commerce Directive outrightly excludes online gambling activities from its scope, suggesting that the European Commission / Parliament missed a valuable opportunity when drafting and approving this Directive by omitting to address various industry-specific issues which could have been properly tackled in that instrument, leaving a significant degree of doubt and uncertainty within the industry.

Similarly, whilst the Anti-Money Laundering Directive refers in its text to “casinos”, such term would appear to refer solely to “bricks and mortar” casinos and to exclude all online gambling operations such as sports-betting operations, betting exchanges, and P2P operations. The current position would appear to omit such non-casino operators from the scope of the Anti-Money Laundering Directive and this position is clearly undesirable.

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 common definition for online gambling that is being proposed in the Green Paper for the purpose of defining the scope of the consultation is as follows:

Online gambling services are any service which involves wagering a stake with monetary value in games of chance, including lotteries and betting transactions that are provided at a distance, by electronic means and at the individual request of a recipient of services.

Article 2(1) of the Lotteries and Other Games Act (Chapter 438 of the laws of Malta) contains the following definitions that are relevant for our present considerations:

"bet" means a game in which the player is required to forecast any result or outcome in respect of one event or a set of events; and "betting" shall be construed as the playing of a bet".

"game" means and includes, except for the purposes of the definitions of "amusement machine" and "amusement game" in this subarticle, a game of chance and a game of chance and skill, but does not include (i) a sport event, although it includes a sport bet and any other game of chance and game of chance and skill the operation or playing of which depends on a sport event or a set of sport events or the result or outcome thereof and (ii) an amusement game;

"game of chance" means a game for money and, or prizes with a monetary value, the results of which are totally accidental;

"game of chance and skill" means a game for money and, or prizes with a monetary value, the results of which are not totally accidental but depend, to a certain extent, on the skill of the participant.

"means of distance communication" 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, audiotext), radio, videophone (telephone with screen), videotext (microcomputer and television screen) with keyboard or touch screen, electronic mail, facsimile machine (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;

The Remote Gaming Regulations, which are intended to add flesh to the legal bones of the Lotteries and Other Games Act, provides the following additional definitions:

"gaming" means 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 become the property of the winner under defined conditions established for the purpose of the game;

"remote gaming" means any form of gaming by means of distance communications;

In our view the definition proposed in the Green Paper is somewhat more limited than the definition provided by Maltese law. Whilst the Green Paper definition is limited to gambling services provided at a distance by electronic means at the individual request of a recipient of services, the Maltese definitions taken together would cover a number of other means of distance communication, including those that are specifically referred to by way of example in the definition provided in the Lotteries and Other Games Act. It would perhaps be opportune for the European Commission to take account of all possible forms of distance or remote gambling and include all such forms of gambling services within the remit of the discussions and possible legislative instruments that may result from the current discussions.

(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?

Article 2(1) of the Lotteries and Other Games Act (Chapter 438 of the laws of Malta) contains definitions for a "commercial communications game" and for a "broadcasting media game". These are in turn referred to in Articles 40 and 41 respectively – however a footnote to the articles states that these have not yet been brought into force. The relevant articles are quoted hereunder:

"broadcasting media game" means any game which is organised by the owner or operator of a radio or television station, or a subcontractor thereof, where the participation of players therein takes place by or as a result of their presence during the transmission or the recording of the programme during which such game is organised or by any intervention on their part by any means of distance communication during or after the transmission or the recording of the programme during which such game is organised; and

"broadcasting media game licence" means a licence to operate a broadcasting media game granted by the Authority to the owner or operator of a radio or television station or a subcontractor thereof under Article 41, and

"broadcasting media game licensee" shall be construed accordingly.

"commercial communication game" means a game which is organised with the purpose to promote or encourage the sale of goods or services, and which does not constitute an economic activity in its own right, and where any payments required to be made by the participant serve only to acquire the promoted goods or services and not to participate in the game, although it may be a condition that a person purchases the promoted goods or services in order to participate in the game; and

"commercial communication game licence" means a licence to operate a commercial communication game granted by the Authority to a person under article 40, and

"commercial communication game licensee" shall be construed accordingly.

Article 40 of the Lotteries and Other Games Act states as follows:

- (1) The Authority may grant a licence to a person to operate a commercial communication game in terms of the provisions of the Third Schedule.
- (2) No person may operate a commercial communication game unless such person is in possession of a valid commercial communication game licence. Any person who acts in breach of the provisions of this subarticle shall be guilty of an offence against this Act.

Article 41 of the Lotteries and Other Games Act states as follows:

- (1) The Authority may grant a licence to the owner or operator of a radio or television station, or a sub-contractor thereof, to operate a broadcasting media game in terms of the provisions of the Fourth Schedule.
- (2) No person may operate a broadcasting media game unless such person is in possession of a valid broadcasting media game licence. Any person who acts in breach of the provisions of this subarticle shall be guilty of an offence against this Act.

It may also be noted that as discussed in Question 7 above, a "game" is defined under the relevant Maltese law as one through which "money and, or prizes with a monetary value" can be won; and "gaming" means an agreement, scheme, or arrangement ... 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 become the property of the winner”. This would exclude games offered for promotional purposes only.

(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?

Premises dedicated to gambling in Malta primarily consist of 4 casinos, 5 bingo halls and a few dozen outlets offering video lottery terminals (VLTs). To the best of our knowledge and awareness there is little or no cross-border offering of gambling services into Malta into licensed premises dedicated to gambling, particularly due to the fact that the Maltese market is so small, making it practically insignificant to online gambling operators who would look towards the larger Member States to expand their market share.

(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 policy of a European Single Market is intended in order to remove obstacles to trade. For this reason Article 56 (ex Article 49) of the Treaty on the Functioning of the European Union ('the EU Treaty'), guarantees inter alia the free movement of services within the European Union (i.e. the cross-border provision of services). Whilst as discussed above, Article 52(1) (ex 46(1)) provides an exception to this rule by stating that this “shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health”, yet such restrictions cannot go beyond what is strictly necessary to safeguard its citizens, and there must be a relationship between the concern which a Member State is seeking to address and actual dangers which their citizens are facing.

The maintenance of coexisting differing national systems of, and practices for, the licensing of online gambling services in the EU results in a number of consequences which the EU Single Market Policy aims to avoid, amongst which are unnecessary expense to operators in terms of licensing fees, operational set-up costs, duplication of hardware, administration costs, as well as uncertainty created through differing regimes, and administrative problems in reporting to various authorities in different ways. Consequently, we feel that the coexistence of differing national systems of and practices for the licensing of online gambling services creates many difficulties and no advantages for the consumer since such a scenario necessarily creates fragmentation, varying standards and significant obstacles to entry for operators having pan-European ambitions, thereby reducing choice, innovation and competition. The advantages that may be created by such coexistence are exclusively for large operators who may benefit from the obstacle created by differing and multiple regulatory requirements, but certainly not for consumers.

It is submitted that the requirement of co-existing licensing regimes for online gambling across the EU places an unfair burden on operators, which go beyond what is strictly necessary to safeguard its citizens. Such safeguards can be satisfied through the implementation and harmonisation, across the EU, of certain critical minimum standards intended to protect the consumer, ensure integrity of operators and avoid fraud. The stifling

effect of multiple regulatory requirements, in turn, results in a significant reduction of choice and quality of service for the consumer.

The co-existence of differing national systems acts against the fundamental principles of competition, by creating a hefty (and unnecessary) barrier to entry to the online gaming market within the EU. The resulting effect will be that only the dominant market players (which we shall hereinafter refer to as the “Big Boys”) can afford to comply with the requirement of obtaining various licences in several, if not all, Member States in order to offer online gaming services on a pan-EU level. The compliance requirement caused by fragmentation will certainly be too costly for smaller players to take on.

Conversely, the online gaming markets in individual Member State may be too small to justify the operator’s set-up costs, thereby rendering the operation economically unfeasible (diseconomies of scale). The creation of national borders will thus reinforce the market power of the larger operators, thereby driving out smaller competitors, and resulting in less choice to consumers, lack of innovation and the possibility of abusive practices.

A possible consequence of such barriers to entry could be that smaller operators, being unable to comply with the significant compliance costs, will be pushed “underground” by taking their operations offshore, outside of the jurisdictional confines of the European Union, possibly avoiding the need for a license altogether. The economic reality of the capital required to undertake a pan-European marketing strategy will cause start-up operators to be indifferent to the regulatory regime and take their business models out of Europe with the intention of targeting the European market in any case by using strategies that will circumvent any technological obstacles imposed on them, such as IP-blocking within Member States.

This phenomenon could give rise to a number of “Cowboy” operators who will become indifferent to regulation and will seek to obtain market share through such circumventing strategies, based on the generally accepted wisdom that technology develops significantly quicker than the law. If this prediction materialises, the European gambling market may very well end up divided between the compliant “Big Boys” on the one hand and the underground “Cowboys” on the other.

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?

* categories discussed in this section were:

- (1) TV advertising;
- (2) Printed press advertising;
- (3) Online commercial communications;
- (4) Sales promotions;
- (5) Direct marketing (which includes direct mail, primarily by e-mails and SMS to registered customers, for example personal follow-up contacts); and
- (6) Sponsorship agreements.

EU Directive 2002/58/EC of the European Parliament (the "Directive on Privacy and Electronic Communications") was transposed into Maltese law through the enactment of the Processing of Personal Data (Electronic Communications Sector) Regulations, Chapter 440.01 of the Laws of Malta. Regulation 9 contains the general prohibition against unsolicited communications sent through fax, automated calling systems, or e-mail.

Additionally Maltese legislation has taken a step further with respect to unsolicited communications within the remote gaming sector by providing, through Article 60(2) of the Remote Gaming Regulations (LN 176 of 2004), that a licensee (that is, a person to whom the Maltese Lotteries and Gaming Authority has issued a remote gaming licence); "shall not engage in any activity that involves sending of unsolicited electronic mail, whether it is through its own operation or by the intervention of third parties".

With regard to sales promotions, sponsorship agreements and general advertising principles, whilst Maltese legislation and policy does not generally prohibit a remote gaming company from advertising its services, it does regulate the manner in which such advertising is done. In this respect, the Code of Conduct on Advertising, Promotions and Inducements ("the Code") issued by the Lotteries and Gaming Authority lays out the restrictions imposed on a licensed company. The provisions of the Code state as follows:

Article 3:

A Licensee shall not publish in any manner whatsoever, through any medium and in any place advertising that:

- a) encourages anyone to contravene a gaming law; or
- b) shows people under eighteen years gambling; or
- c) encourages or targets people under eighteen years old to gamble; or
- d) is false or untruthful, particularly about the chances of winning or the expected return to a gambler; or
- e) suggests that gambling is a form of financial investments; or
- f) suggests that skill can influence games that are purely games of chance; or
- g) promotes smoking and, or the abuse of consumption of alcohol while gambling; or
- h) implies that gambling promotes or is required for social acceptance, personal or financial success or the resolution of any economic, social or personal problems; or
- i) contains endorsements by well-known personalities or celebrities that suggest gambling contributes to their success; or
- j) exceeds the limits of decency; or
- k) tarnishes the goodwill and privilege that is associated or related in any manner whatsoever with being a licensee, or tarnishes the image or reputation of another licensee.

A Licensee shall not:

- a) conduct a promotion that commits people to gamble for a minimum period of time to qualify for a player reward scheme; or
- b) conduct a promotion that commits people to gamble a minimum amount to qualify for a player reward scheme:

Provided that the provisions of this section shall not apply to junket gaming and tournaments.

Article 5:

The licensee shall ensure that promotional material relating to gambling states where the rules, procedures and conditions of the promotion can be inspected.

Article 6:

Sections 4 and 5 of this directive shall also apply to promotions which are intended for patrons who may benefit from a player reward scheme.

Article 7:

When a licensee publishes any advertising or conducts a promotion that encourages people to engage in any activity other than gambling, he shall not refer, whether directly or indirectly, to the licensee's gambling facilities.

Article 8:

The breach of any of the provisions of this directive shall constitute an offence against the Lotteries and Other Games Act.

Furthermore, Article 60(1) of the Remote Gaming Regulations (LN 176 of 2004), places some restrictions on the manner in which a remote gaming company advertises its services. The article states that:

(1) No licensee shall in any way engage in advertising or permit anyone involved in the licensee's operations to engage in advertising that:

- (a) implies that remote gaming promotes or is required for social acceptance, personal or financial success or the resolution of any economic, social or personal problems;
- (b) contains endorsements by well-known personalities that suggest remote gaming contributed to their success;
- (c) is specifically directed at encouraging individuals under eighteen years of age to engage in remote gaming;
- (d) exceeds the limits of decency.

Additionally, Article 11(f) of the Lotteries and Other Games Act (Chapter 438 of the Laws of Malta), gives the LGA the power to “ensure that authorised games are operated and advertised fairly and in a responsible manner and in accordance with the law”.

Adverts are also generally subject to the Consumers Affairs Act (Chapter 438 of the Laws of Malta), which prevents misleading advertising and certain forms of comparative advertising.

With regard to bonuses and other sales promotions, Article 35(5) of the Remote Gaming Regulations (LN 176 of 2004), states that “a licensee shall not provide credit to a player or a player's account or act as agent for a credit provider to facilitate the provision of credit to a player or a player's account”. It is also pertinent to note that Article 47 of the Lotteries and Other Games Act (Chapter 438 of the Laws of Malta) states that it is illegal for a licensee, permit holder, or person exempt from the requirement of a licence, to grant loans or credit to any person, for enabling such person to participate in gaming and betting, even where the games are authorised by law.

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

There are no national regulations related to payment systems that service online gambling services in Malta. However there are a number of trends and issues that the Consultation should consider. These are outlined briefly here, but can be expanded upon if wished.

- a) Operators who serve many jurisdictions generally segment their players for commercial reasons – often by nationality, language preference, risk, time-zone or payment method. Market segmentation often approximates to national boundaries. It is thus not impossible for operators to adopt nation-specific payment or taxation procedures.
- b) The variety of payment methods offered by operators is a major differentiator which is used to win market share. Payment methods correlate strongly with culture/nationality – many jurisdictions show a marked preference to use debit/credit cards whilst others prefer eWallets to banks.
- c) The VISA/Mastercard consortium enforces its own, commercially based standards (see PCI DSS) which provide a baseline of commercially agreed “best practice”. This consortium also imposes the MAC 7994 and 7995 coding for “games of skill” and “games of chance” respectively. However, industry developments resulting from the enactment of the UIGEA in the United States has demonstrated it is relatively easy for merchants to abuse MAC coding so this does not appear to be a sustainable means to limit access to online gambling.
- d) The difficulties, costs and delays of obtaining a direct Merchant Account (i.e. a bank account with an acquiring bank linked to VISA & Mastercard through which debit/credit card payments can be transacted) have caused many eCommerce merchants to opt out. Operators often prefer to use a payment aggregator service whereby payments are made with a third party with an established merchant account relationship. Such assignment of the acquiring bank relationship is very common today and legal.
- e) It is increasingly difficult for any external auditor to review the volume and spread of payment transactions conducted through all forms of eCommerce (including online gambling) given the complexity of the supply chain and the 24x7 operations. The lack of any standstill period for eCommerce (which contrasts with the banking end-of-day functionality) complicates the process. Internal audit should be mandated.
- f) Most payment systems apply complex formulae to their fee calculations and often require variable “chargebacks/ holdbacks” or other financial guarantees to cover any disruption. This means that the liquidity of a single online gambling operator may be shared across multiple third parties at any instant. The records of transactions and settlements are nearly all digitized and payments are generally settled electronically.
- g) Payment gateways execute automated transactions into and out of regulated banks without being regulated themselves. This seems a general and systemic weakness.

A visit to <http://online.casinocity.com/payment-methods/> will show 200+ payment methods in use for online gambling – of varying type, quality and scale.

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

Players' accounts refer to the regulatory control imposed in many jurisdictions whereby player deposits and winning are held in bank accounts designated as holding "customer/ player funds" which are fully segregated from the ordinary bank account(s) used by the operator to settle their bills (i.e. involves internal controls) and, most importantly, from the operator's patrimony.

The practice of maintaining segregated "customer/ player accounts" is considered necessary for the purposes of:

- (i) placing player assets outside of the patrimony of the operator and therefore eliminating the risk that the operator's creditors may attach such funds;
- (ii) keeping a separate record of the movements of player funds, thereby facilitating the auditing and reconciliation of such funds; and
- (iii) confirming the liquidity of the operator.

However the balance of player funds is compromised by the fact that player deposits do not trickle through fully or instantly (due primarily to "chargebacks/ holdbacks" referred to in our reply to question 12 above) and also by the sheer frequency/volume of player actions which are continually altering the individual player account balances.

Many casino games last only seconds so a player may alter their balance several times a minute. Grossing this kind of activity across thousands of concurrent players would require a continual posting of funds between the "player account" and the "operators account", which would both devalue the control and be impractical.

The funds held in the player account(s) are always commingled and thus cannot be re-paid to the relevant players unless the online gambling database/records are accurate and available.

Most operators run multiple Player Accounts (to handle the various currencies and payment methods they work with) as well as multiple operating accounts. The reconciliation of the individual player balances with the funds at bank is thus also complicated by exchange rate variations. The "closed-loop" approach reduces this risk.

The need to “deposit first, play later” grew out of the limited payment options of the 1990s – a rationale that no longer exists. Operators can work closely with eWallets or other third parties so that funds are returned to the eWallet every session without fee allowing the player greater use of their funds. There is nothing inherently wrong with this system if the eWallet or other party is properly manage/regulated also. In such a situation, the player account liability is minimised and the requirement for a player account may even be eliminated.

Until such a stage is reached, we feel that players' accounts are indeed 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?

Although Malta’s prevention of money laundering and financing of terrorism rules and procedures do not apply to online gambling operators as a matter of law, the LGA has been consistently adamant to have all operators comply with such rules as a matter of policy and compliance.

As a start, it is important to note that online gambling for real money or prizes is limited solely to registered players and, in order to register, players must provide personal data which is held by the operator for identification purposes. Such data is collected and gathered by the operator in its capacity as a registered data controller in terms of the Maltese Data Protection Act, which is fully compliant with the EU Directive on the subject. Consequently, all data processing activities are undertaken within a regulated framework, including the sub-contracting or outsourcing of such functions.

Any misstatement by the registered player invariably constitutes a breach of the operator’s standard Terms and Conditions (which are specifically reviewed by LGA) with the result that their funds and/or winnings must be forfeit or returned, thereby acting as an effective deterrent and ensuring that players provide accurate and current personal information. Coupled with this is the procedure set out in Regulation 36 of the Remote Gaming Regulations which provides that:

36. A licensee shall not make a payment in excess of two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) out of a player’s account to a player until the player’s identity, age and place of residence have been verified.

Therefore, whilst identification is undertaken at the point of registration of the player, verification of such identity takes place at the stage when the player requests a payout in

excess of €2,329.37. At this stage in the process, the player will be requested to furnish certified copies of an identification document, a utility bill and possibly even a professional or bank reference confirming his/her identity. Once these documents are received by the operator's compliance department, the payout is duly made to the player's account from which the monies were originally transferred to the operator, thereby eliminating the risk of fraud/ abuse through the use of player accounts. In our view, this approach is in line with the risk-based approach introduced by the Third Anti-Money Laundering Directive.

Operators have strong commercial reasons to manage their KYC processes in relation to players and are generally very efficient at applying a mix of automated enrolment with back office review of new player accounts and verification against electronic data gathered by independent, third party service providers.

The LGA insist that all operators licensed in Malta are registered with the Data Protection Commission and handle all subject access requests correctly. Moreover the LGA require a resident Key Official to oversee compliance to all applicable local laws and the most active Key Officials ensure that all routine data transfers to Third Countries are notified and managed correctly.

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 available on a national level.

We understand that the LGA has access to gambling data collected by operators. This and the experience of the operators may be applied to derive evidence on problem gambling.

A great advantage of the data collected and available to LGA in Malta is its centralisation due to the fact that all types of games are licensed by the same authority. However the very different commercial risk characteristics are managed under different classes of licence and so the data is reported at differing granularity depending on the applicable class imposed by LGA.

It is our view that more detailed information would become available from regulators and operators in an environment where closer co-operation and common objectives between Member States are identified and implemented.

(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)

There are only three of the “instruments” listed that seem worthy of specific response in the Maltese context – these are “age limits”, “banning the use of credit” and “restricting certain forms of games”, in that order of priority.

For the other instruments, experience suggests that these are worthy, but have little impact on player behaviour since they are generally ignored (especially routine pop-ups or warnings). However, close co-operation with operators and analysis of player behaviour could reveal better intelligence on the success of these instruments in practice. Co-operation between operators and the University of Malta is already in place so it may be possible to sponsor relevant, independent research based on the good relations achieved already. [See Betsson awards]

The age limit concept is generally applied, but rarely explained. Obviously a player who lacks income should not be able to enter into a debt, but this is not the prime motive for restricting under age gambling.

The assumed motive for licensed operators to bar real money gambling by players below the age of 18 is that the formation of a habit in early life is much more likely to lead to addiction. Research indicates that the younger a habit is acquired, the greater the chance of abuse. This being the case, a much more creative and pro-active approach to verifying player age – not only at registration – can be mandated and enforced. Currently the emphasis on registration checks will not prevent the sharing of a legitimate account with a sibling or other under age player at some later date.

Proposals to authenticate (and even to assess player age) include using voice biometrics with a call back facility; incorporating high frequency audio into the games which are intolerable to children (whose hearing range differs from adults) and asking challenge questions with monitoring in place to detect hesitation or other evasion.

“Banning the use of credit” within the online gambling system is completely academic if payment by credit card is accepted – as is normal. The problem has merely been outsourced. Moreover the proliferation of regulated but anonymous payment methods within the EU has made this clause irrelevant (one can use a credit card at the corner shop to buy a pre-paid voucher that is used for an online payment for example).

“Restricting certain forms of games” may be a useful area to research since operators acknowledge that fast games yield most revenue.

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

“Sedqa” is the national agency that treats drug and alcohol abuse <http://sedqa.gov.mt/> - it also handles gambling related social problems. Some informal surveys of young adults in Malta was made by Sedqa and a report published in 2007; their full findings and recommendations are available to LGA, but not public. A national “Gambling Policy” was drawn up by Sedqa and discussed with LGA following their research – it is reflected in the procedures applied by LGA in licensing and monitoring operators based in Malta.

This Lifestyle survey conducted in 2006 assessed a number of vices together in the age group 18-24 including gambling, drinking and the abuse of drugs. As well as asking for the frequency with which each person indulged, their attitude to each activity was also queried.

Given the number of young adults employed by online gambling operators in Malta, or otherwise exposed to the sector, a high prevalence of gambling use may have been expected.

The levels of online gambling use reported were found to be low but rising. 2.1% stated they had used “Internet Gambling sites” of which 0.6% did so regularly (once a month or more). This compared with 53.9% who reported using “Lotto, lottery, scratch cards, quick keno” ever and 17.8% who used these more traditional forms of gambling once a month or more. The low levels of online gambling activity may reflect the lack of marketing in Malta (being a small market and one avoided by LGA licensees).

The survey mentioned was run by the organisation that provides support and accommodation to those in need of rehabilitation. Sedqa have 120 staff and a good number of persons undergoing treatment annually, but no-one has been referred due to online gambling so far.

It cannot be concluded that there is no Problem Gambling in Malta, but only that there is an absence of evidence concerning the need for treatment.

Obviously most of the online gambling operations licensed in Malta are servicing players who are outside Malta and thus unlikely to be known to the authorities here. However anecdotal information is available in Malta from the staff and operators who work in the sector as to the issues they meet with:

- Players who ask to self-bar (very rare)
- Players whose relatives request the problem gambler to be barred (very rare)
- Players who contact the LGA with complaints (quite common)
- Players who contact the LGA seeking advice on problem gambling (very rare)
- Players who contact the support agencies advertised by LGA licensees

Although no empirical evidence can be provided, the issue of Problem Gambling needs to be put into the context of related addictions now being recognised – Internet Addiction (which may be summarised as spending excessive amounts of time and/or money online despite harmful negative consequences or a need to stop) and Gaming Addiction (whether online or on standalone devices/networks which may involve the payment of a subscription or be played free of charge).

The impulsive and anti-social aspects of these related activities are very similar to the public interest objective that is cited as a reason to curtail access to online gambling.

(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?

We are not aware of any such studies.

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

We are not aware of any such evidence.

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

The Maltese Remote Gaming Regulations are formulated in such a manner as to seek that the maximum possible player protection measures are in place.

Age limits: Maltese legislation including the Remote Gaming Regulations (LN176/04) specify an age limit of 18 years for any player wishing to participate in remote gaming. However, a higher age limit in a Member State where the operator is offering the service is to be respected. Prevention is better than cure – but early detection is essential to both.

The Remote Gaming Regulations also specify that a licensee cannot permit a person to participate as a player in an authorised game conducted by the licensee unless the said person is registered as a player and holds an account with the licensee. The details required for the proper registration of players are listed in said Regulations and include the confirmation of the

age of the player, the identity of the player, the player's place of residence as well as a player's valid email address. A player, by law, is permitted to register and hold one single account with a licensee. Furthermore, the licensee is obliged to make available to a player all the rules relating to the authorised games conducted by said licensees as well as any processing fees which may be incurred by the player.

The Regulations provide rules with regard to any licensee who discovers that a person under the age of eighteen has opened an account. If any funds are deposited or any money is won by any such person then these shall be forfeited with immediate effect to the authority and the account closed.

Prohibition of granting credit: The Remote Gaming Regulations (LN176/04) strictly prohibit all forms of gaming on credit. The licensee is not allowed to act as an agent for a credit provider to facilitate the provision of credit to a player's account.

Healthy Gaming Environment: Maltese licensees, by law, are obliged to display at all times and in a prominent place, on the entry screen of the website, a warning on the risks of addiction possibilities of gaming and information and links to other websites assisting compulsive gamblers.

Registered players have the faculty, by written notice or electronic notice sent to the licensee to:

- set a limit on the amount he/she can wager within a specified period of time;
- set a limit on the losses he/she can incur within a specified period of time;
- set a limit on the amount of time he/she may play in any one session;
- exclude himself from playing for a definite or indefinite period of time

A licensee is obliged to abide to said instructions provided by the player.

With regard to the display of counters, where the game is displayed on a screen, the licensee is obliged to display on the screen, and at all times, a counter which automatically updates and shows the player's balance. Also, the licensee shall make available to every player an automatic reality check at intervals of one hour. Such reality check shall suspend play, clearly indicate the time which the player has spent playing the game, the winnings and losses during such period of time, the requirement of the player confirming that he/she has read the message as well as granting the option to end the session. Furthermore, full screen games are prohibited unless a real time clock is displayed on the screen at all times and players are given the facility to exit the game.

Licenses cannot accept cash from a player and funds may be received from the player by methods such as credit cards, debit cards and electronic transfer. In the case of winnings these must be paid directly into the players account within five working days, however, when the payment of winnings exceeds the sum of €2,329.37, the licensee shall only make such payment once the identity, age and place of residence of the player have been verified. The Remote Gaming Regulations also stipulate that a licensee shall keep players' funds separate from the licensee's own funds in a clients account held with a credit institution approved by the Authority. Furthermore, for the purpose of protecting player's funds, the Authority can request the licensee to take out a bank guarantee in favour of the Authority. Such guarantee shall be in such amount and for such period, as determined by the Authority.

With regard to request for withdrawals, these must be processed and the funds remitted to the player's account within five working days from the receipt of request. Furthermore, it must be noted that an amount may only be remitted to the same account from which the funds paid into the player's account originated.

(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?

The National Agency for the treatment of abuse and addiction known as SEDQA is the body which offers treatment for such forms of addiction. The treatments available aim to offer a number of services with a view to assisting pathological gamblers in a direct and indirect manner while also assisting of the gambler's family to supplement the treatment.

Furthermore, the Online gaming operators in Malta have formed links with many national non-profit organisations. The operators also make it a point to donate to such organisations as well as offer training and advisory services to such causes. This has also included such operators having their employees occasionally volunteer with these NGO's on a variety of projects.

(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?).

The level of due diligence in this regard can be found in the answer to question 20 above.

One must also take further note of the monitoring which is carried out by the LGA which is constantly seeking to enforce compliance with the Maltese Regulations. The said monitoring occurs on a number of levels, during license audits, regular or ad hoc inspections as well as the monitoring of customer complaints on an ongoing basis.

Finally one should also take note of the fact that any failure by an operator to adhere to the above will lead to the LGA taking enforcement action which can range from fines, suspension of the license or the withdrawal of the actual license.

(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?

Under the Remote Gaming Regulations (LN176/04), a player is any person who is over eighteen years of age and who takes part in remote gaming. It is further stated in the same regulations under Article 32(3) that no person under the age of eighteen years may be registered as a player and any funds deposited or any money won by any such persons shall be forfeited to the LGA.

It should also be noted that in practice, the LGA respects age limitations imposed in other states on condition that these do not go below eighteen years of age. One may take the example of Estonia where the minimum age would be twenty-one years of age. In such a case, the LGA will not allow such persons to register with operators duly licensed in Malta.

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

The Maltese Remote Gaming Regulations establish a strict regime of compliance and adherence to the applicable Anti-Money Laundering procedures. The said procedures involve the identification of the player at the point of registration and his/her verification through the submission of various documents, as considered in the answer to question 14 above.

It can be stated that the current checks implemented by Maltese remote gambling operators are so meticulous in their nature that they go considerably far to ensure that minors are restricted access to online gambling services. Nonetheless, it would be unrealistic to assume that these checks are watertight- there have been occasional cases where a minor has managed to bypass this system by means of a parent's or guardian's credit card. It is for this reason that proper education of parents and their children through appropriate campaigns is an ever growing priority.

(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.

Besides the restrictions to the promotion and inducement of gambling services which has been considered in the reply to Question 11 above, it is noteworthy that Article 60 of the Remote Gaming Regulations (LN 176 of 2004), states that: "no licensee shall in any way engage in advertising or permit anyone involved in the licensee's operations to engage in advertising that is specifically directed at encouraging individuals under eighteen years of age to engage in remote gaming."

Any contravention of this restriction is considered an offence against the Lotteries and Other Games Act and any person found guilty of an offence shall, on conviction, be liable to a fine (multa) of not less than six thousand and nine hundred and eighty-eight euro and twelve cents (€6,988.12) and not more than two hundred and thirty- two thousand and nine hundred and thirty-seven euro and thirty-four cents (€232,937.34) or to imprisonment for a term of not more than two years, or to both such fine and imprisonment. If the offender is a relapser, such punishment is increased to between eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87) and not more than three hundred and forty-nine thousand and four hundred and six euros and one cent (€349,406.01), or to imprisonment for a term of not less than six months and of not more than three years, or to both such fine and imprisonment.

Provided further that where the person so found guilty is the director, manager, secretary or other similar officer of a company or other undertaking, the said person shall be deemed to be vested with the legal representation of the same company or other undertaking, which shall accordingly be liable in solidum with the person found guilty for the payment of the said fine.

(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?

N/A

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?

We are not aware of any studies and/or statistical data relating to fraud and online gambling. In our view, however, the rigorous preventive measures inherent in the online medium such as audit trails act in such a manner as to significantly deter and record such practices, facilitating prosecution.

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

These regulatory considerations fall within the remit of the Third Schedule of the Remote Gaming Regulations, which essentially lays down the technical requirements for the gaming system which all operators need to keep in order to remain compliant with the law. The main aim of these requirements is basically to ensure not only conformity to the law but also to create an environment with high technical standards with regard to randomness and user-friendliness.

The above standards are further supplemented by a variety of self-imposed regulations such as EGBA, the CEN workshop agreement as well as the eCOGRA framework.

(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?

All reputable operators give significant importance to implementation and monitoring of fraud prevention procedures. Due to the suspicion-based nature of such procedures, these naturally have to operate on the basis of risk assessment of behavioural patterns.

The process as far as operators in Malta go involves a risk assessment department, fundamentally similar to security and monitoring measures undertaken at land-based casinos, which are responsible for monitoring player behaviour including:

- Initial value of deposits of player's funds;
- Deposits not used immediately as stakes in betting;
- Pattern of regularity and volume of transactions undertaken;
- Deposits and withdrawals made without placing any bets;

Suspicion in any of the areas above could lead to investigation by the operator into the player's behaviour and ultimately lead to the operator closing the account and reporting the behaviour to the police where it is justified. Whether or not the player's funds would be refunded to the player will depend on the nature of the suspected activity- where criminal activity is suspected, such funds are withheld to be made available to police authorities as part of their investigation.

Besides the possible risks of fraud being undertaken by players against the operator, there is also the possibility that fraud is conducted by the operator to the prejudice of one or more players. However, the latter concern tends to arise almost exclusively in the realm of unlicensed gaming operators since reputable and regulated operators will not risk using their license and their good reputation. This being said, individual employees of the operator could certainly be involved in fraud to the prejudice of the operator and/or of players and it is also the operator's fraud prevention unit to monitor activities and flows of funds to ensure that no fraud is being conducted internally by any employee or officer of the operator. The rule in the Remote Gaming Regulations requiring that player funds may only be paid out to the player's account from which the funds are originally remitted to the operator goes some way to ensuring that player funds find their way back to the account and the person where they originated in the first place, thereby reducing the risk of fraud.

Another possible scenario of fraud is where a player effectively defrauds another player. This is a particular concern in the EU with regard to Poker operators (e.g. collusion). This requires a constant monitoring of gaming activity so as to ensure the prevention of hacks or concerted practice between players. This is supplemented by a system of complaint procedures which are an essential condition for a licence in Malta. We understand that operators use a number of automated and human-based methods of identifying such illegal activity and that several cases are identified and addressed by operators at a very early stage.

(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?

We are not aware of any documented incidents of match fixing on a national level in this regard with reference to operators licensed in Malta. It is worth mentioning that Malta has legislation in this regard in the form of the Prevention of Corruption (Players) Act. This act seeks to prevent the fraudulent practice of any sportsman or official in sports.

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

The introduction of common minimum EU standards pertaining to online gambling operations is certainly a long-outstanding issue that ought to be considered as an absolute priority. It is recommended that the European Union should give most attention to the protection of players and the elimination of operational barriers within the internal market.

The fact of the matter remains that further harmonisation will not only improve the issues of legal certainty, but will also most certainly have a bearing on the levels of cooperation that will be possible between member states and also operators in attempting to resolve the legal issues which will certainly continue to in the sector. By creating minimum regulatory standards, principles and procedures on the basis of which member states will be expected to model their regulatory frameworks and, on that basis, address any specific moral, religious and/or cultural idiosyncrasies which that member state may consider necessary, provided that any additional regulatory requirements are applied in a non-discriminatory manner to all land-based and online gambling operators offering their services within that member state.

Any proposed legislative instrument should be built around the following central considerations:

- (i) ensuring the fairness of the game/s involved;
- (ii) protecting consumers; and
- (iii) increasing choice for consumers and competition.

The proposed framework should certainly establish a central forum within which the regulatory authorities from each Member State would participate and co-operate with each other with a view to addressing the various issues that arise within the industry, particularly in the face of continued technological and commercial developments.

(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?

As far as we are concerned, this possibility, while existent, is highly unlikely with regard to licensed operators. Not only is it well known by operators that such conduct constitutes a criminal offence but it is also becoming progressively more difficult to carry out such an action in a subtle manner. Operators are more concerned, in practice, with controlling their exposure to any form of liability and so they are more interested in offering fair betting options while limiting their own risks in the process. Also worthy of mention, once again, is the Prevention of Corruption (Players) Act which acts as a legal instrument regulating any possible corruption of people involved in sporting events in such a way as to prevent match fixing.

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

We are not aware of any cases which serve to demonstrate how online 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?

In our view, the following micropayment systems ought to be monitored:

- E-Wallets

This form of payment is becoming increasingly popular despite being arguably insufficiently regulated. Clear identification procedures must be imposed to avoid identity theft, fraud and/or money laundering.

- Prepaid cards

These types of payment have also seen an increase. Whilst they create a degree of protection to the user, such cards could very well be abused of for the purposes of laundering money and therefore require further regulation.

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

Since online gambling takes place through computer systems in the complete absence of physical cash and leaving an auditable trail of money flows, the use of such undertakings for money laundering is very unlikely. Considering that both the operator and financial institutions providing payment solutions are constantly monitoring money flows to identify any suspicious activities, there would appear to be a high degree of risk and detection for potential money launderers. The real challenge lies in the consideration that, despite the audit trail that is left through all transactions taking place through the operator's systems, the large volumes of data being processed contemporaneously by the operator poses a real difficulty in analysing relevant data in a timely manner, and it is this challenge that operators focus their efforts on in the interests of detecting any possible fraudulent and/or money laundering activities.

In summary we are of the view that the prevention of money laundering begins with player identification at the point when the player opens his/her account and the verification of such identity at the stage when material payouts are being effected to the player/s. This double check system makes it very difficult to pass off money laundering activity. Detection on the other hand requires an on-going monitoring role by the operator which is also necessary for the detection of fraud and possible collusive behaviour (e.g. poker).

The element of traceability both from the operators' perspective along with the banks/ financial institutions/ payment institutions which work alongside them for the purpose of money laundering prevention creates a system where it is increasingly more difficult for money laundering to take place through this medium.

(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?

We are not aware of any such evidence.

(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?

All of the operators licensed in Malta are obliged to notify the Maltese Financial Intelligence Analysis Unit (FIAU) of any form of suspicious activity the moment they come across it. This procedure works well in practice and has brought the FIAU's attention to circumstances which warranted further investigation.

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?

We are not aware of any.

(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?

A National Lotteries Good Causes Fund is established in virtue of the provisions of the Lotteries and other Games Act. This fund is intended to support such persons, organisations, bodies or other entities pursuing objectives of a religious, philanthropic, cultural, sports, educational, social or civic nature or in support of other deserving causes as may be determined by the Minister after consultation with the relevant Advisory Board.

It is important to note that, as its name implies, this fund is intended to redistribute revenue derived exclusively from the national lottery and NOT from online gambling activities.

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

We have not undertaken any specific enquiry regarding the criteria for the apportionment and re-attribution of such funds. Having said this, SEDQA, the national agency against drug and alcohol abuse (which also includes within its social causes the prevention and treatment of gambling addiction) would clearly be entitled to receive benefits from such a fund.

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

We have not undertaken any specific enquiry regarding such statistical information.

(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?

We do not possess any information in this regard.

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

We do not possess any information in this regard.

(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?

We are not aware of any evidence which suggests that the cross-border "free-riding" risk for online gambling services has reduced or 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?

We are not aware of any such transparency obligations which apply in Malta.

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?

Part IV of the Lotteries and Other Games Act Chapter 438 of the Laws of Malta), establishes the Lotteries and Gaming Authority, which is a body responsible for the regulation of all gaming activities in Malta.

Article 11 of the same law lists the following functions of the Authority:

- (a) to issue a National Lottery licence and licences to operate other games and to supervise the operation of licensees to ensure that licensees comply with the terms and conditions of their licence and with the provisions of this Act and of regulations made under the Lotteries and Other Games Act and with any applicable directives issued by the Authority in terms of the Act or regulations made thereunder;
- (b) to issue permits to sellers of games forming part of the National Lottery;
- (c) to inquire into the suitability of licensees and the main suppliers thereof, and to ensure that those involved in the operation, promotion or sale of authorised games operated by such licensees are fit and proper persons to carry out their functions relative to such games;
- (d) to ensure that licensees publish the rules of the authorised games operated by them in terms of their licence in such manner as may be deemed appropriate by the Authority;
- (e) to use all powers vested in it by this or any other law to ensure that games and gaming are kept free from criminal activity, and to prevent, detect and ensure the prosecution of any offence against the Lotteries and Other Games Act;

- (f) to ensure that authorised games are operated and advertised fairly and in a responsible manner and in accordance with the law;
- (g) to regulate by licence 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;
- (h) to supervise, attend and validate the draws of the National Lottery and of such other authorised games as it deems necessary;
- (i) to receive and investigate complaints by consumers relating to games;
- (j) to advise the Minister on new developments, needs and risks in gaming and to make such proposals as may be deemed necessary or expedient to respond thereto;
- (k) to advise the Minister on the making of regulations;
- (l) to issue directives it is authorised to issue in terms of the Lotteries and Other Games Act or of any other law or of regulations made thereunder;
- (m) to perform any other function as may from time to time be assigned to it by this Act or any other law or by regulations made thereunder.

(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?

The Maltese Lotteries and Gaming Authority keeps a national register of licensed operators of gambling services. The register is available on the Authority's website and can be viewed at <http://www.lga.org.mt/lga/content.aspx?id=86949>.

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

It is our understanding that the Maltese Lotteries and Gaming Authority has been ostensibly open to undertake discussions and establish arrangements with other jurisdictions in respect of cross-border administrative cooperation. Despite this open approach we are only aware of a single informal arrangement that was undertaken between the LGA and the Kahnawake Gaming Commission (KGC) which allows for the sharing of investigative findings and

materials regarding existing and prospective licensees. The press release announcing this arrangement is available at:

www.lga.org.mt/common/file_provider.aspx?id=633540668347500000

It is noteworthy, however, that paragraph 5 of the Fourth Schedule to the Remote Gaming Regulations, which was introduced in March 2011, provides that:

The Authority may issue directives regulating the granting of reduction, credit, set-off or other relief in respect of gaming tax, which shall be granted either on a unilateral basis or pursuant to bilateral or multilateral treaties, agreements, memoranda of understanding or other arrangements entered into with any foreign government or any local or foreign authority or government agency.

This provision serves as unequivocal authority for the LGA to undertake discussions and conclude arrangements with other jurisdictions in respect of the apportionment and attribution of gaming tax/ duty. It is intended to provide for future developments in the evolution of the online gambling industry and the development of a more intricate and organised system for the collection of gambling tax, which is bound to become the single most important focal point for cooperation between Member States and also between Member States and third countries.

Besides those areas of cooperation listed in the Green Paper (namely common standards for licence holders (including licence conditions, professional qualities of staff and integrity of operators); unlicensed and fraudulent operators (common blacklisting); issues of a technical nature, such as national standards, testing and certification; and good practices (including public campaigns to prevent crime or problem gambling and the costs and effects of such campaigns)), other possible areas of cooperation between Member States should be focussed on the protection of consumers generally and the elimination monopolies in the gambling sector.

(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?

We are not aware of any such efforts.

(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?

Whilst no restrictions exist in Malta for the offer of online gambling services being licensed in Malta or in the EU, Malta licensed gambling operators have been subjected to enforcement measures adopted most notably by Italy to restrict accessibility to the websites of Malta-based gaming operators. In February 2006 the Amministrazione Autonoma dei Monopoli di Stato (AAMS) - which falls within the responsibility of the Italian Ministry of the Economy and Finance - ordered Internet Service Providers (ISPs) based in Italy to block over 650 internet gaming sites which were not licensed in Italy and considered to be illegal, to protect Italian gamers from “phishing” – the fraudulent acquisition of passwords and credit card details. All operators based and licensed in Malta were included in this list. The ISPs faced a fine of € 180,000 for each default in blocking the listed sites in breach of the order. Malta-based operators and the LGA were obviously outraged by the situation and took collective action to counter the effects of the order without delay.

The Maltese government and a number of Malta-based operators separately lodged formal complaints with the European Commission about the measures introduced by AAMS with a view to having infringement proceedings instituted against Italy.

Although Italy’s enforcement measures were generally effective in blocking out Malta-based operators from Italian ISPs, the changing of the operators’ respective Internet Protocol addresses represented a simple solution adopted by such operators to circumvent such measures and continue to offer their services to Italian players despite such action.

It should also be mentioned that the Italian approach to imposing this blockade represented an unfairly onerous burden on the ISPs which faced hefty fines in case of breach of the AAMS directive, which burden could very well be in breach of Section 4 (Articles 12-15 of the e-Commerce Directive).

(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?

In our view, the efforts resulting from the process that has been initiated with the current Green Paper should be aimed towards identifying the common ground which exists between the EU Member States and which should be adopted to implement minimum regulatory standards, principles and procedures intended to give consumers the appropriate protection and safeguards and operators a level playing field to comply with such standards, principles and procedures and compete in a market where protectionist measures are dismantled and the rule of law becomes a reality rather than an ideal.

The advent of the internet as an integral part of our lives means that online gambling is an aspect of this development which is here to stay. The EU’s approach should be that of focussing on the consumer’s interest in the light of the treaty freedoms and devising a system whereby gambling tax revenue is divided into two components- one component imposed by the Member State where the operator is based and another component imposed by the Member State where the player is resident or situated when playing the game.

The creation of restrictions / prohibition would have the effect of pushing operators offshore and reducing rather than increasing the safeguards for consumer protection. Perhaps one way of pushing towards a unified market and blocking out unauthorised/ unlicensed operators from the EU could be that of involving financial/ banking institutions to control payments intended for gambling services.

Other comments on issues raised in section 2.4

Other comments on issues raised in the Green Paper