

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:

Malta Remote Gaming Council (MRGC)

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?

Yes, we are aware mainly of a number of Studies and Reports.

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

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

There also exist a number of studies amongst which one finds 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, and shows that by having an efficient system of taxation in place, the Italian government effectively managed to curtail the "black market" and consequently increased the level of consumer protection as well as the state income (240% increase of the state budget, from EUR 3.5 billion in 2003 to EUR 8.8 billion in 2009). It remains a fact that between 2003 and 2009 the total income from games has more than doubled, boosting from EUR 15 billion in 2003 to over EUR 52 billion at the end of 2009. This growth is certainly due to the progressive erosion of the market share by the "black market" whose size exceeded any previous estimate by large.

Also 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)

Currently, at a European Level there are many different definitions of what one considers to be the black market. This is mainly due to the different interpretations given at a Member State level, hence it is quite difficult to fully comprehend the nature and the size of the "Black Market." It is our opinion that the Black Market arises from by unlicensed, unregulated and illegal operators and not by those operators lawfully licensed in Member States.

(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?

The MRGC Council is made up of all stakeholders in the remote gaming industry including licensed operators, data carriers, Internet service providers, lawyers and professional services providers.

The Council's main objective is to serve as an ongoing discussion forum giving valuable feedback to the Authority to be able to keep abreast with the latest developments in the industry.

Our experience in Malta has been a very positive one since the Maltese Authorities; in particular the Lotteries and Gaming Authority (LGA) have always ensured that a fair regulatory framework is in place. The Maltese authorities have ensured that the principles of fair and responsible gaming are adhered to at all times by its operators, including those operators based on our platform. It is not the first time that regular or ad hoc checks are carried out to ensure that gaming is kept free from fraud and any other criminal activity.

Maltese legislation enforces regulations in many different sectors of gaming operations and these include:

i) Age Limits

ii) Not allowing Gaming on Credit

iii) Ensuring a Healthy Gaming Environment is provided to the players (ex. by allowing players to self exclude themselves, set limits both on losses or bets which can be placed as well as obliging operators to display betting counters).

Furthermore one should also take note of the positive impact the industry has had in Malta with the creation of highly skilled jobs and investment in the country's infrastructure.

The current scenario at an EU Level is one which in our opinion does not reflect the principles on which the Common Market was built. The current situation is one whereby EU-Licensed operators are persecuted continuously, whilst unlicensed operators are allowed to freely offer their services to the European Consumer.

This situation is arising from the fact that many EU Member States are now opting for a licensing regime believing that they will have a number of operators who will apply for a license and hence generate substantial tax revenue. However what some Member States are not realising is that their markets are in fact quite restricted in size and not economically viable and hence operators will opt to stay out of these markets, clearing the way for Illegal Operators to offer their services in that particular country and this to the detriment of the consumer.

One should ask the question as to whether this is the route which Member States really want to pursue.

(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?

The experience of non-EU based on-line gambling operators is a mixed one. The reason for this is that certain non-EU jurisdictions offer a good and well-disciplined Regulatory Regime, whilst others serve merely as a brass-plate jurisdiction, whereby operators do not go through the same form of compliance processes which EU or certain non-EU jurisdictions make their operators go through.

Furthermore, even the monitoring of such operations is not of the highest standard. Hence one observes a disparity between those EU Licensed operators and the non-EU Licensed operators, creating an unlevel playing field within the European Market; one which ultimately is detrimental to the consumer. The latter is in fact faced with little or no information as to the origins of certain operators, and in the case of them falling victims of wrongful acts they are left with almost no form of legal redress.

Finally, such operators offering their services in the European Market do not provide any form of contribution at all to the markets they operate in, being job creation, financing of sport or other charitable institutions and even gaming tax.

(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?

There are a number of legal issues which arise from jurisprudence, in particular those at an CJEU Level. Such legal issues will then tend to create practical issues for those operators seeking to offer a legitimate service within the EU's territory.

One of the foundations of the EU is its Common Market. This Market has permitted various operators to provide their services in the different Member States, safe in the knowledge that there are a set of fundamental principles which will be respected at all times.

Amongst these principles one finds the Freedom to Provide Services, the Freedom of Establishment and also the Free Movement of Capital.

These principles, together with others, ensure the proper functioning of the Internal market, hence giving commercial entities a form of legal certainty, within the market which means that there will be more confidence in the market and with that more investment and development. Such investment and developments harbours innovation in the different sectors of the market and also ensures adequate growth which is reflected in the creation of jobs within the different sectors.

Unfortunately, this legal certainty is not fully present within the Online Gaming Sector operating within the EU Market.

One of the reasons for this must surely be attributed to the various different positions which the CJEU has taken over the years in a number of cases concerning the online gaming sector. The decisions taken in the Placanica and Gambelli cases gave operators the sense of security that if they obtained a license from an EU Member State then they could operate within the EU territory, and this in line with the Freedom of provision of Services and the Freedom of Establishment.

However following the decision taken by the CJEU in the BWIN Liga Portuguese case things took a different route. This decision was interpreted by the Member States that they could regulate in their own individual manner, and in some cases possibly justifying the safeguarding of the state run monopolies.

A number of Member States took the route of enacting National Legislation to regulate online gaming and creating their own unique licensing system. By having a different licensing system in each Member State, operators are faced with a logistical and operational nightmare which makes it easier for the unscrupulous operators, not licensed in any jurisdiction to continue to offer their services in the different Member States.

The decisions of the CJE have led to a fragmented approach at a Member State level without any form of common approach or at least a minimum set of standards recognised at a European Level.

Since there is no form of common approach, the Member States have adopted their own unique licensing systems. Some of these systems are, in our opinion, in clear breach of the fundamental freedoms of the EU and its Common Market. The requirement of having a license issued by the Member State where an operator wishes to provide its services is not a justified requirement when such an operator is lawfully licensed in another Member State. The ideal scenario for operators would be that of having one license, recognised in other EU Territories. The license must obviously be issued by a jurisdiction which enjoys a formidable reputation in regulating the online gaming industry and has a legislative framework which is geared towards ensuring that all the necessary safeguards are in place. One recognises however that the issue of the payment of gaming tax is a main issue of concern to the Member

States, hence one could look into the possibility of enacting a framework whereby Operators lawfully licensed in a particular Member State pay gaming tax to Member States within whose territory said operators provide their services.

One however must also keep in mind certain other practical considerations vis-a-vis the above:

1) There exists the distinct possibility that players could indicate that they are coming from a particular country however they could be in fact originating from another. Hence the conflict of player origin will arise. A possibility to rectify such a situation is to introduce Geolocation software for operators. Such software will assist the operator in verifying the location where the player is gambling from.

2) the current scenario in the different EU Member States is that different gaming tax rates are being imposed. This will continue to create even more administrative burdens on operators seeking to lawfully obtain a license from Member States. The reality will be that only a select group of operators will have the means to enter the market of the different EU member States, and not only, in those Member States where the market is not viable, operators will not even opt to enter the market since the administrative costs and taxes will be too prohibitive.

Furthermore, one should also look at certain models of licensing being pursued in other Member States (please refer to Question 6 answer for more details). Said models either give undue advantage to already existing state operators or else are in clear breach of EU Law.

All this contributes a an uncertain legal climate, which as explained previously hinders the development of the industry, and furthermore, encourages unscrupulous operators who are unlicensed to offer their services in the different Member States, and this to the detriment of the Consumer.

(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?

Malta has firmly believed in the setting up of an independent regulator, separate from the operation of gaming, whether gaming is provided by state-owned monopolies or private entities. This is because one cannot realistically pursue economic profits whilst at the same time advocating policies that restrain and 'promote' responsible gaming consumption, in the name of consumer protection.

Malta established its independent regulator, namely the Lotteries and Gaming Authority, in 2004.

Maltese Gaming Legislation is based on a three-tier framework. At the first level one finds the "Parent" or "Enabling" Act which is the Lotteries and Other Games Act of 2001. At the second level one finds Regulations such as the Remote Gaming Regulations (LN176/2004) . At the third level one then finds Technical Specifications which are detailed requirements of the procedures, technical systems, and applications for every specific method of carrying the game. There also exist a number of Legislative Acts and Regulations which are relevant to the gaming industry. These include the Electronic Communications Act, the Data Protection Act,

Prevention of Money Laundering Act, Prevention of Corruption (players) Act and the Prevention of Money Laundering and Funding of Terrorism Regulations.

Malta has always maintained that the principles of fair and responsible gaming are applicable to all gaming sectors, including remote gaming. Malta's regulatory system is based on such principles, providing for the necessary regular and ad hoc checks to ensure that gaming is free from fraud and any other criminal activity which is paramount for all jurisdictions, while it protects consumers. Malta's regulatory regime is recognised by the Commission to be amongst the most advanced in the EU.

A number of different Member States have opted to enact a licensing system within their own territory, justifying this on the need to protect the consumer. Whilst one cannot help but commend the reasons for issuing such licensing systems, one must truly ask if this is the main reason for issuing such legislation, especially when one sees that in certain Member States the state run operators invest very highly in marketing their own product to the consumers. Such a position would appear to be contrary to main reason being used in order to justify the creation of a licensing regime within a Member State. The European Court of Justice itself has stated on a number of occasions, the most recent being in the Stoss and Carmen Media cases, that Member States must have gambling laws which seek to regulate gaming in a consistent and systematic manner.

The legislation enacted in some Member States however does raise eyebrows and in our opinion is a matter of concern vis-a-vis its implications on the fundamental freedoms enshrined within EU Law, let alone being consistent and systematic in nature.

Legislation such as that in Belgium is a clear example of this. Belgian Gaming law requires operators wishing to enter into the market and obtaining a license to have a land based operation already in place.

In Poland, one requires a Polish company set up and operating in Poland in order to obtain a license.

In France, the extremely high tax rates imposed on operators have meant that few operators have chosen to obtain a license in this Member State whilst clearly favouring the state run entities in this field.

Hence, whilst it appears that Member States are seeking to protect their consumers, in reality it would appear that certain Member States are creating a Market which is unduly favouring certain operators over others.

One final note should be on the development on the industry due to this form of regulation. By opting to create a licensing system for each individual Member State, the costs for operators are going to increase. What this means is that only those operators which are financially strong will manage to survive whilst SME's and start ups will have no possibility at all to penetrate the market.

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?

Maltese Law defines On-Line Gambling as any form of gaming which takes place via distance communication. The use of distance communication in the definition varies slightly from that of the green Paper which uses transactions provided at a distance by electronic means.

Furthermore, the definition of gaming in Maltese Law does envisage the possibility of a monetary win however goes a step further by also including other items of value, worth, advantage, or opportunity, hence giving a wider scope of application to the definition. One also finds that the definition refers to all forms of gaming including lotteries and betting.

(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?

The Definition of Remote Gambling in Malta, as highlighted above speaks of any form of distance communication, including the media.

The Maltese Remote Gaming Regulations (LN 176/04) do distinguish between Promotional Games and Gambling since the definition of gaming states that a prize or reward consisting of money or some other item of value can be won and become the property of the winner under defined conditions established for the purpose of the game.

Currently there are discussions taking place in Malta whereby it is being proposed that the Remote Gaming Regulations will be amended in order to reflect the current scenarios in the gambling world, in particular those related to skill gaming in order to ensure that the market is well regulated.

(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?

NO - However Live Casino Services may be offered from the licensed Casinos in Malta.

(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 Advantages of having such a system in place are hard to come by; however one possible advantage is that operators in the online gaming sector will have a form of legal certainty. The uncertainty which currently exists is mainly due to the numerous interpretations given over the years at a European Court of Justice Level as already explained above.

However this will come at a high price, and in fact one must highlight the following difficulties associated with the differing national licensing systems.

1) This system will prove to be a huge administrative burden on those operators who will seek to obtain licenses in the different European Jurisdictions. Furthermore, this fragmentation of licensing systems is leading to each Member State following its own perceived model of what

is the best way forward in licensing online gaming, hence leading to possibly 27 different approaches at an EU Level.

The implications of this on the compliance procedures which will be required of such operators will definitely stretch both the finances as well as the human resources of the different operators.

Furthermore, a number of Member State markets are not attractive enough for operators due to their size as well as heavy tax burdens. Operators will not risk entering into such markets since there will be a considerable risk of running operations within said market at a loss.

This will lead to a situation whereby those operators offering their services illegally will be facilitated in their operations, particularly because most of these seem to operate from offshore jurisdictions with no connection at all to Europe. History has shown that measures such as IP blocking (as adopted in Italy) have not succeeded in blocking the illegal offering. Hence legal operators will be competing in an uneven market whereby illegal operators will have the upper hand.

2) The current regulatory systems being adopted in a number of Member States is one which favours the incumbent monopolies or existing operators. The situation in France is one such example, although the blatant breach of EU regulations in Belgium cannot be ignored.

The requirement of having a permanent off-line gambling and betting establishment must be clearly interpreted and being a restriction both on the freedom of establishment and the freedom to provide services. Whilst recognising that the player protection objectives pursued by the Belgian Law are legitimate, the requirement of the protection of public interests must be considered to be very significantly disproportionate to the attainment of the same objective.

There are other Member States which appear to be following this same route, including Greece with its new proposals. Such measures however do not create a level playing field and distort the market.

3) Another factor which will negatively affect the market if the current system of different national licensing frameworks continues in the various EU Member States relates to Liquidity. The current scenario whereby players are restricted to playing with other players from the same Member State is not a favourable one from a liquidity point of view. By Liquidity one understands the pool of players available to play against in a particular gaming sector, mainly poker, but also in other forms of skill games. By limiting the operators to the individual territories this pool of liquidity will remain restricted, hence not offering the ideal market conditions for operators.

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?

Maltese Legislation on the regulation of Commercial communications for on-line gambling is quite vast. There exist a number of different regulatory instruments which are used:

1) Article 60 of the Remote Gaming Regulations (LN 176/04) specifically regulates advertising in the online gaming market. Regulations seek to protect both minors as well as other vulnerable persons. No advertising that implies that gaming promotes or is required for social acceptance, personal or financial success is allowed nor can it be directed at encouraging less than 18 years of age to engage in remote gaming. Furthermore, advertising cannot contain endorsements by well-known personalities that suggest that remote gaming contributed to their success. Unsolicited mail is likewise not allowed.

The LGA is empowered to act in such a manner also via The Lotteries and Other Games Act (Chapter 438 of the Laws of Malta) which states, in Article 11 (f) that the Authority should ensure that authorised games are operated and advertised fairly and in a responsible manner and in accordance with the law.

2) The Lotteries and Gaming Authority (LGA) has also issued a directive entitled "Code of Conduct on Advertising, Promotions and Inducements." This directive establishes a number of rules which Maltese Licensees must adhere, including banning any form of advertising which encourages anyone to contravene the law, shows people under the age of 18 gambling or even suggesting that gambling is a form of financial investment. The directive also regulates the manner in which promotions are conducted in so much as they cannot commit people to gamble for a player reward scheme or else conduct a promotion that commits people to gamble a minimum amount to qualify for a player reward scheme.

3) All advertising displayed in, or commissioned in, Malta is also subject to the Consumers Affairs Act (Chapter 378 of the Laws of Malta) which prohibits misleading advertising and certain forms of comparative advertising.

4) There are limitations on Direct Marketing by On-line Gambling operators arising from Article 9 of the Processing of Personal Data (Electronic Communications Sector) Regulations, Chapter 440.01 of the Laws of Malta) which require "opt-in" permission.

5) There also exists subsidiary legislation within the Broadcasting Act of the Laws of Malta (Chapter 350 of the Laws of Malta) which is entitled "Requirements as to advertisements, methods of Advertising and Directions applicable to gambling Advertisements" (Chapter 350.25 of the Laws of Malta) whose main objective is to ensure that gambling advertisements in the local broadcasting media are socially responsible, with particular regard to the need to protect children, young persons and other vulnerable persons from being harmed or exploited by advertising that features or promotes gambling.

6) There is also a Directive issued by the Maltese Broadcasting Authority which also seeks the same objectives as the Subsidiary legislation mentioned in point 5.

7) The licensing procedures of LGA include screening of Player registration forms and website content seen by players. Furthermore LGA imposes minimum information standards on its licensees such that all Terms and Conditions offered to players adhere to eCommerce Best Practice (identify the service provider, explain the game rules and all fees in advance,

allow for escalation of complaints to the Regulator, etc). Players are required to accept the Terms and Conditions at Registration and are guaranteed access to these (and any updates). By these means, the LGA licensing regime manages player expectations and awareness.

An issue with cross-border marketing of on-line gambling arises from the variation in the minimum age at which players may gamble for money where the consumer resides. For this reason, it is clearly stated in the approved Terms and Conditions that the player must confirm their eligibility to play and also provide accurate personal data including a real birth date. No operator may target marketing at players who are from registering by their age.

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

At a European level EU Licensed operators make use of payment solutions which are commonly used by other companies in the e-commerce sector. It is important also to note that all the payment systems used by these Operators are authorised and regulated within the EU. They also comply with a number of EU regulations such as the electronic money, electronic commerce, distance selling and money laundering directives.

There are no national regulations related to payment systems that service online gambling services known in Malta. However this is an area where there is considerable confusion, but perhaps also some convergence with the financial services (banking) sector. There are a number of trends and issues that the Consultation should consider. These are outlined briefly here.

- a) Operators who serve many nations 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) Payment method is a major differentiator which is used to win market share. Payment methods correlate strongly with culture/nationality – many nations show a marked preference to use credit cards, others are conservative, some 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.
- d) The difficulties, costs and delays of obtaining a direct Merchant Account (= a bank account with an Acquiring Bank linked to VISA & Mastercard through which 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 a 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 On-line 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 “holdbacks” or other financial guarantees to cover any disruption. This means that the liquidity of a single on-line 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.

h) There is no equivalent to the Banking Almanack for regulated or recognized eWallets. A visit to <http://online.casinocity.com/payment-methods/> will show 200+ payment

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

Yes player's accounts are a necessary requirement and this for a number of reasons including:

i) Know your Customer processes - i.e. giving an element of traceability to any transactions which are undertaken

ii) Consumer Protection - players funds (as illustrated below via the Maltese Remote Gaming Regulation)

iii) Anti-Money Laundering purposes - one has a history of all transactions carried out. This will come in useful if there is the need for any form of investigation.

The Maltese Remote gaming regulations (LN 176 of 2004) clearly state in Article 35 (1) that the licensee shall establish and maintain a player's account in relation to each player who is registered with the licensee. Furthermore, the Regulations also state in Article 35(3) that the licensee shall not accept a wager from a player unless:

(a) a player's account has been established in the name of the player and there are adequate funds in the account to cover the amount of the wager; or

(b) the funds necessary to cover the amount of the wager are provided in an approved way.

Hence this ensures that players will not be in a position to play on credit, something which is specifically not allowed in the Remote Gaming Regulations in Malta (as per Article 35(5)).

The Remote gaming Regulations also establish that a Licensee may only handle players monies in the manner illustrated in Article 38 of the Regulations, i.e.

A licensee shall not deal with the amount standing to the credit of a player's account except:

(a) to debit to the account a wager made by the player or an amount the player indicates the player wants to wager in the course of an authorised game the player is playing or about to play;

(b) to remit funds standing to the credit of the account to the player, at the player's request, in terms of regulation 37;

(c) to pay reasonable bank charges for deposits received and funds withdrawn; or

(d) as otherwise authorised by these regulations.

This ensures that player funds are always protected and at all times. Furthermore, it has been the norm that the Maltese Authority request that a bank guarantee be issued by the Licensee and this to safeguard the player's monies in the accounts.

The importance of all this is related to the player. The monies of the player need to be protected at all times in order to ensure that there is no possibility of the player being defrauded, even when the Licensee breaches regulations and administrative action or enforcement needs to be taken.

(14) What are the existing national rules and practices relating to customer verification, their application to on-line gambling services and their consistency with data protection rules? How do you assess them? Are there specific problems associated with customer verification in a cross-border context?

The Remote Gaming Regulations (LN 176/04) apply to all on-line gambling conducted in or from Malta. These rules require that real money gambling (or even free money gambling with real prizes) is limited to registered players.

In order to register, a player must provide personal information. If they give false information, they are in breach of the Terms and Conditions (as approved by LGA) so their funds and/or winnings may be forfeit or returned. This removes the incentive for most players to misstate their particulars.

However the normal practice of operators is to passively collect player registration data at first contact and only to engage in the relatively costly/time-consuming verification checks if the player passes a risk threshold (for any one of a multitude of reasons).

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.

A conflict with Data Protection (privacy) arises from the need for the operator to retain the personal details of players who have either become dormant/inactive or who have specifically requested the closure of their account. Anti-Money Laundering regulations are usually cited by operators as a reason to retain ALL player records for up to 10 years.

Where the operator is efficient in removing players from their mailing list on request, the retention of records may not present much of a nuisance. However the trend towards mergers or take over of operators (plus the ever present risk of data leakage) means that a players' details may end up being assigned to a new owner and perhaps one that does not apply EU data protection norms.

The Data Protection Directive was transposed into the local Data Protection Act with effect from 2005. The relevant regulations require that the transfer of personal data outside the EEA (or its equivalent Safe Harbour area) must be notified to the Data Protection Commission (regardless of any consent acquired from the data subjects). This requirement to notify Data Transfer to Third Countries is not generally observed or enforced.

However 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)

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. However there is little incentive for the Regulator or the operators to share information in a hostile environment as pervades the EU situation today.

A great advantage of the data collected and available to LGA in Malta is 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.

Until agreement is reached on the fundamental issues of what constitutes legal and acceptable on-line gambling across all EU member states the opportunity to pool resources and share data will be severely limited.

(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)

At an EU Level there seems to be limited research into the effectiveness of the measures described in the Green Paper. Possibly this could be due to the fact that the rate of problem gambling ranges between 0.5% and 2%, and this as per the Report published by Professor mark Griffiths from the International Gaming Research Unit at the University of Nottingham entitled: "Problem gambling in Europe: An overview" published in April 2009.

This does not mean however that Operators do not take measures in order to protect consumers by preventing or limiting problem gambling. The measures mentioned seek to ensure that Responsible Gambling is the norm. With regards to ranking however the MRGC believes that it is the collection of measures which as a whole ensure adequate consumer protection.

In Malta there is a limited amount of information however 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. In fact a particular operator annually sponsors an award for research conducted by a University student in matters related to problem gambling.

The age limit concept is applied by all licensed operators. It is not in their interest to target such players and hence a series of measures have been developed in order to ensure that underage individuals are restricted from accessing their site. 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 (since most young people have disposable wealth these days).

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.

With regards to the imposition of self limits (both time and money) as well as self exclusion, one may argue that these are voluntary and hence not as effective. However it is the MRGC's opinion that if a common database was created whereby all those players who self exclude themselves from one licensed operator will be notified to all licensed operators then the efficacy of the above mentioned measures will increase.

Reality checks are a necessary requirement under Maltese Law and the MRGC believes that this is an important tool which allows players to have access to their gambling information and support control.

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

At a national level SEDQA, the national Agency which treats drug and alcohol abuse as well as handling gambling related social problems carried out some informal surveys of young adults in Malta. A report was published in 2007; the full findings and recommendations were made available to LGA, but not to the general 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 on-line gambling operators in Malta, or otherwise exposed to the sector, a high prevalence of gambling use may have been expected.

The levels of on-line 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.

At an EU Level the studies mentioned in the answer to question 1 do not delve into the statistics related to problem gambling, however we are aware of the Report published by Professor mark Griffiths from the International Gaming Research Unit at the University of Nottingham entitled: "Problem gambling in Europe: An overview" published in April 2009. This study analyses both the land based and the online sector with the average problem gambling rate found to vary between 0.5% and 2%.

(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?

The use of the internet over the years, has grown exponentially. This has also led to an increased use of online gambling by consumers and some jurisdictions have argued that online gaming is in fact riskier and poses greater social risks. However research now indicates that this is not the case. One particular report; "Review of the Espace Jeux responsible gambling strategy" commissioned by Loto Quebec and prepared by Dr Richard Wood states that "it is not to say that these potential risks do not exist for Internet Gambling, rather the

case has not been made that they pose a significantly greater risk for people gambling on the Internet when compared to those who gamble in more traditional ways."

Refer Also to Question 17 Answer

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

Refer to Question 15 Answer

(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.

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.

Gaming on 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.

Licensees 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 €2,300, 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.

The MRGC is also a signatory to the CEN Workshop agreement on Responsible Gambling Measures which are aimed at securing a high level of protection of online players in the European Union. The main policy objectives are as follows:

The Protection of Vulnerable Customers

The prevention of underage gambling

Combating fraudulent and criminal behaviour

Protection of customer privacy and safeguarding information

Prompt and accurate customer payments

Fair Gaming

Responsible marketing

Commitment to customer satisfaction and support

Secure, safe and reliable operating environment

(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?

In Malta treatment for gambling addiction is available, and this is offered through Malta's National Agency for the treatment of abuse and addiction - SEDQA. This agency offers a number of services to assist the pathological gambler, both directly and indirectly and also assists the families of such a gambler.

On-line gaming operators in Malta also have links with national non-profit organisations and a number of operators contribute through training, advisory services or financial donations to said entities. Furthermore, a number of Maltese Operators have also assisted by having their employees volunteer to assist said NGO's in a number of their projects, including infrastructural ones.

(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?).

With regards to the level of due diligence in place in Malta reference should be made to the reply to question 20 (above).

Furthermore, one must take note of the monitoring which is undertaken by Malta's Lotteries and Gaming Authority (LGA) which seeks to enforce compliance with the Maltese Regulations. Such monitoring takes place at a number of levels, during license audits, regular inspections, ad hoc inspections as well as the monitoring of customer complaints.

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?

The Maltese Remote Gaming Regulations (LN176/04) state that a player is any person who is over eighteen years of age and who takes part in remote gaming. The Regulations also state in 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.

One must also take note of the fact that the LGA respects national age limitations which are different from those imposed by Maltese law, as long as these do not go under the age of eighteen. Hence, for example, players from Estonia who as yet have not reached the age of 21 are not authorised 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 (LN176/2004) establishes strict adherence to the applicable Anti-Money Laundering procedures. As a matter of fact the Lotteries and Gaming Authority (LGA) has developed a thorough licensing procedure which is spread over three stages. The second stage involves an in depth analysis of the documentation submitted by the applicant. As part of this second stage, the Lotteries and Gaming Authority conducts severe

examinations of the Fraud Management procedures which the applicant is potentially going to adopt.

These procedures are divided into two main branches. The first consists of Anti-Money Laundering procedures which must be run according to the Financial Action Task Force (FATF) Recommendations. These 40 Recommendations provide a complete set of counter-measures against money laundering (ML) covering the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation.

Operators based in Malta are obliged to have very strict Know Your Client Procedures (KYC) in place. Part 9 of the Remote Gaming Regulations (LN 176/2004) establishes a strict player registration procedure whereby a licensee will not permit a person to participate in an authorised game (i.e. a licensed activity) unless said person is a registered player and holds an account with the licensee. The registration may only take place once an application by said person is filed with the licensee. Such application must show clearly the person's identity, place of residence, age as well as a valid e-mail address. If the Licensee becomes aware that a person has provided false information in this respect, the licensee shall not register such person and where that person has already been registered, the licensee shall immediately cancel that person's registration as a player with the licensee.

Furthermore, with regards to the payment of player's winnings, the Regulations also establish that 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.

It is our opinion that the controls exercised at an online level are amongst the most vigorous and hence seek to ensure that no underage person opts to try and access such online gaming sites.

Operators also have in place early detection mechanisms should an under age persons have obtained access to credit card details and used these to access online gaming sites. Hence it is important that proper educational campaigns are in place as well as adequate parental control is exercised. It is the responsibility of parents to ensure that their children do not gain access to their Identity, banking or Credit Card details. Also, parents should ensure that they prevent their children from accessing age restricted services for products online. Players should also ensure that they have secure ID's and passwords for those sites which they play on.

Furthermore, this is an area where the Commission could look at establishing co-operation between member States. A possible common position at an EU level on this matter could also provide an excellent platform for future discussion and collaboration.

(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.

In Malta the regulation of Communications for gambling services is regulated on a number of different levels. Article 60 of the Maltese Remote Gaming Regulations (LN 176/04) specifically regulates advertising in the online gaming market. Regulations seek to protect both minors as well as other vulnerable persons. No advertising that implies that gaming promotes or is required for social acceptance, personal or financial success is allowed nor can it be directed at encouraging less than 18 years of age to engage in remote gaming.

Furthermore, advertising cannot contain endorsements by well-known personalities that suggest that remote gaming contributed to their success. Unsolicited mail is likewise not allowed.

Additionally, the Lotteries and Gaming Authority has issued directives concerning advertising / marketing which licensees are to adhere to. These directives prohibit a licensee from, amongst other things, publishing in any manner whatsoever, through any medium and in any place advertising which shows people under eighteen years of age gambling or targets people under that age to gamble. Neither can the advertising be false or untruthful, particularly about the chances of winning or expected return. Furthermore, a licensee cannot conduct any form of promotion which commits people to gamble for a minimum period of time or a minimum amount to qualify for a player reward scheme.

The Broadcasting Authority has also issued directions to broadcasting services imposing requirements as to gambling advertisements and methods of gambling advertising. The main objective of these directions is to ensure that gambling advertisements in the local broadcasting media are socially responsible, with particular regard to the need to protect children, young persons and other vulnerable persons from being harmed or exploited by advertising that features or promotes gambling. The directions also seek to promote appropriate ethical standards in the content of this category advertising.

With regards to what goes on at an EU level the current situation is one which is very fragmented. Hence from a consumer protection point of view it would be ideal to look at the possibility of having a harmonised approach to commercial communications regulations in order to ensure that there is a strong push towards the protection of minors and also other vulnerable persons.

(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?

Refer to answer to questions 11 & 25

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?

There is no evidence to suggest the e gaming is at any greater risk to money laundering than any other product or industry. In fact the processes and audit trail are so detailed as to deter such attempts. A regulated environment is one where fraudsters are deterred from trying to abuse from websites especially because of the unique traceability and transparency measures which are in place.

There were two significant studies in 2009 that corroborate this:

[http://www.ifc.org/ifcext/gfm.nsf/AttachmentsByTitle/Tool10.11.GSMAMethodology-AssessingAMLRisk/\\$FILE/Tool+10.11.+GSMA+Methodology+-+Assessing+AML+Risk.pdf](http://www.ifc.org/ifcext/gfm.nsf/AttachmentsByTitle/Tool10.11.GSMAMethodology-AssessingAMLRisk/$FILE/Tool+10.11.+GSMA+Methodology+-+Assessing+AML+Risk.pdf) ;

http://www.rga.eu.com/data/files/final__mha_report_june_2009.pdf

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

Yes there are. The Maltes Remote Gaming Regulation (LN176/04) in the third schedule lays out the technical requirements for the gaming system which must be adhered to at all times by the licensees.

The schedule establishes a set of requirements which seek strict conformity, between the gaming system and the game rules published by the operator as well as conformity between the gaming transactions and the financial transactions undertaken. The schedule also seeks the highest standards vis-a-vis randomness and the independence of results as well as utmost user-friendliness.

These standards are also complemented by voluntary self-regulation standards such as the EGBA standards, the CEN workshop agreement as well as the eCOGRA framework, the latter being a framework which Malta based operators have fully subscribed to and this also following specific interventions by the MRGC. All these ensure a safe, secure and reliable operating environment.

(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?

Licensed operators should apply a number of different methods to prevent fraud. These apply on a risk approached basis.

1) Players against Operators:

As outlined above, operators licensed in Malta are to apply a risk-based approach in line with the Remote Gaming Regulations 2004 and the 3rd Anti-Money-Laundering Directive. This implies that customer due diligence depends on the profile and type of the customer.

Please note that the following anti-fraud measures may be used at different stages of a player's account life.

Upon registration, operators licensed in Malta identify customers, check and store their details. To prevent fraud, the risk-department in charge will, for instance, monitor a number of characteristics such as:

- Initial deposits of substantial sums;
- Deposits not immediately used as stakes in betting
- Deposits and withdrawals made without placing any bets

If the evaluation of these characteristics leads to the conclusion that there are grounds for suspicion, the user's account is closed and deposits are returned.

In addition and as outlined above, all operators' use, whenever available, third party data in order to:

- Support the age verification process
- Prevent money-laundering and the funding of international terrorism by referring to international watch lists for suspected members of terrorist organisations and Political Exposed Persons,
- Monitor payments from countries that are not the same as a customer's registered home country

Last but not least, all operators apply internal anti-fraud mechanisms based on business knowledge and past experiences. For example: Is the same payment card being used by more than one customer? Is one customer using several credit cards or payment accounts? Highly qualified and experienced risk and fraud officers make use of a multitude of single units of information in order to build up a customer profile that allows a very precise risk assessment.

2) Operators against players:

In our opinion this type of practice may exist, but only amongst unlicensed operators from outside the EU. Licensing conditions in Malta prevent such types of practices. The Regulations in Part 16 establish the punishments which can be breached on those operators who do not adhere to the regulations. These include the suspension or revocation of the license, imposition of fines as well as possible penal sanctions. Also any attempts to contravene would appear counterproductive as they would damage any operator's reputation.

Furthermore, the study conducted by the Policy Department (Economic and Scientific Policy) and entitled "Online Gambling - Focusing on Integrity and a Code of Conduct for gambling" states, in page 7 that it had found limited hard evidence of gambling operators defrauding customers. They are not excluding that this does not happen, however there is little evidence in the public domain and prima facie it happens on a very small scale.

3) Players against Players

EU Licensed operators, in particular those who offer Poker games seek to ensure that such instances do not occur. To this effect both themselves and the network they operate on will seek to actively monitor the operations to ensure that they identify any possible forms of fraud, cheating etc.

With regards to the procedures in assisting in complaints procedure it is important to note that this is part of the regulatory requirement and an essential condition in order to obtain a Malta Remote Gaming License. Hence one can see that EU Licensed operators seek to ensure that players are protected and their rights as a Consumer are safeguarded. However can the same be said for those players who unfortunately fall victim of unlicensed and unregulated operators?

(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?

With regards to the occurrence of match fixing at a national level there have been no incidents related to those operators who are licensed in Malta. However, at an international level MRGC operators have always co-operated with the police whenever the need arose.

On a regulatory level it is important to point out that Maltese Law has a specific legal instrument entitled the Prevention of Corruption (Players) Act (Chapter 263 of the Laws of Malta). This act seeks to provide for the prevention of corruption of players and other officials in sports. Punishments range from fines to terms of imprisonment.

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

One of the main issues which should be looked at is that of harmonisation. The European Union should look at the possibility of starting off via looking at those areas where there seems to be consensus by all stakeholders in the industry - player protection. One could look at enacting a harmonised set of rules applicable at a pan European level. This would mean that both operators and regulators will have a common set of norms to refer to. This would aid both the development of the industry but also facilitate the work of regulators. potentially, this could then lead to further harmonisation over the years in other areas which are currently contentious.

As mentioned in the Green paper, the number of sites that are available to the general public which do not have any license are in the region of 85%. This undoubtedly brings about a certain level of suspicion and being un-regulated is prone to abuse from the parties involved. This point should be addressed mainly for the industry's reputation as well as to avoid the end consumer (players) to be cheated and thus brand the whole industry as a cheat. The Licensed sites go through a very laborious and undergo stringent tests/ reviews of their operations by the licensing authorities. A central repository, controlled independently, should be maintained, that lists all EU licensees together with their urls. This would allow end consumers to verify whether they are passing on their details to licensed operations. Also licensed operators will be required to display the seal of approval which would be branded at EU Level.

In terms of player winnings, once the operation is regulated, it can be controlled by introducing regulations (as is already the case in Malta) that payouts to customers are to be made within a specific time period from when the licensee received the request. These instances are easily controllable as users may be informed of such regulations through the terms and conditions as well as through the authority's website. Customers may follow up or lodge a complaint to the authority who can then investigate and resolve the issue. imposing administrative fines for non compliance is also an option. In the Maltese jurisdiction, complaints received by the authority are to be answered within 48 hours, thus enabling a speedy response to the end customer.

The other points mentioned, namely "identity theft, data protection issues" and "manipulation of the gaming result" would also be addressed once the operator is licensed as such procedures are to be addressed by the licensing authority. This process is already in place within the Maltese jurisdiction. Data collection and usage, in particular for marketing purposes needs to be controlled with customers having the option to opt out from such marketing. Furthermore, these need to be seen in view of any responsible gaming policies set by either the operator or the authority.

Manipulation of the gaming result may of course, technically, be done. However it is to be noted that for such things to happen collusion by a good number of involved parties is required. Such instances are usually traceable and can be traced / audited after the event and actions can be taken to rectify the situation. In practice, with particular reference to the Maltese Jurisdiction, a two pronged approach is taken:

1) The authority carries out an in depth due diligence and probity check on the individuals and officials of the company prior to granting a license. Furthermore any recruitment made by the operator also undergoes a simple due diligence process to ensure that the individuals being recruited had not previously been involved in any sort of fraud. Declarations by the various individuals are also requested.

2) Regular system reviews, submissions of gaming data reports as well as following up all complaints received are the other tasks carried out by the authority that would help identify abuse by the operator.

(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?

In our opinion the risks that a licensed online sports betting operator will try to influence the outcome of a sports event is almost minimal. The reason we state this is that in today's environment it is highly difficult to succeed in influencing a sporting event without getting detected. Hence if an operator were to attempt to influence the outcome and get caught the loss of reputation as well as criminal and administrative action would lead to it shutting down its operations.

In general, sports betting operators are interested in the "balancing of the books" which means that whatever the result of the event, the operator would have limited exposure / risk. this is usually managed by taking bets on both sides of the event thus creating a situation whereby the operator can control his exposure.

Other controls that may be considered is the introduction of:

1) imposing the operator to inform the users when placing bets on such events whereby the same operator is a sponsoring party. - this may be implemented through a sort of pop up message or other to the player.

2) retroactive detailed review of events and the transactions therein when such event sponsored by the operator has taken place. - difficult to identify abuse and requires specialist resources, besides normal audit resources.

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

As far as we are aware none have been identified, and if any, I believe these are more Fraud related rather than money laundering.

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

Credit and debit cards are well regulated and in the majority of cases are issued by the traditional financial institutions whereby a full due diligence would have been carried out on

the individual requesting the card. Furthermore, these are quite heavily regulated and controlled by the issuing parties and it is in the interest of the operator to avoid chargebacks as this would generally entail higher processing fees and in some cases also withdrawal of the processing. In such cases, particularly the latter, would mean a severe loss to the operator.

In terms of the micropayment systems, the following areas need to be monitored to a greater extent:

1) e-wallets

E-wallets are mushrooming over the internet and (these are not particularly regulated). Users can open accounts without the need to provide any identification. Furthermore transfer of funds between accounts is generally allowed to the extent that the use of e-wallets has increased extensively and are nowadays utilised in all sectors /industries that are available online. This issue is not solely related to remote gaming. Availability of funds, identity theft as well as the functionality to transfer funds from one account to another all allow for the increased risk of money laundering. These risks can be mitigated by the licensing authority (as is the case for Malta) imposing due diligence requirements for the operators to carry out on players dealing with amounts of money in excess of a pre-determined value.

2) prepaid cards

the use of prepaid cards is on the increase. Individuals can buy cards of a small value (usually not more than €50 that basically allows the same individual to utilise the card (rather than a normal credit card) to purchase goods or services over the internet. The advantage to the individual is that no credit card details have been provided, thereby protecting him/her self. on the other hand, the providers (in this case operators) have extended their reach. in terms of money laundering due to the low amounts the risk is limited, nevertheless, the system can be abused and thus needs to be regulated better. Thus when exceeding a certain limit, as explained above, certain restrictions or further due diligence may need to be carried out.

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

Prevention is better than cure - in money laundering the risks are high and the actual activity may sometimes be difficult to identify, however the perpetrators are becoming more sophisticated. The Remote Gaming Regulations are geared towards ensuring that money laundering does not take place.

This prevention has to be first addressed at operator level, and is currently being addressed as follows:

- 1) Due diligence on company officials (directors) and shareholders to ensure that they are fit and proper, not involved in any sort of money laundering or other illicit activity
- 2) review of business plan and financing so as to ensure that the operator is financially stable and capable of running a gaming operation
- 3) approval by the authority of any recruitment made by the operator
- 4) review of policies and procedures so as to ensure that all detective controls are in place. this would also include controls in respect of payments being made only to the same source

from where they were remitted, no transferring between accounts, identification of irregular bets, not allowing for credit etc etc

5) the review of the parameters set by the operator for example maximum bets/stake (in value terms) possibly placed by an individual player on a particular event, maximum win amounts.

6) review by the authority of the gaming data being provided by the operators

7) regular reviews of the operations and in particular to the outsourcing functions (if any) as this would have bypassed the authority's approval.

The uniqueness of the online gaming market makes it such that it provides a strong element of traceability, hence allowing operators to monitor all the transactions taking place on their site. This definitely proves to be a strong deterrent. Furthermore, history has shown that in case of suspicious activities, the EU Licensed operators are in a strong position not only to detect them at an early stage but also to notify the relevant authorities so that the necessary action is taken.

(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 don't have any data on this issue; however it is our understanding that in social media web sites the amounts paid are very small. Operators of such websites seek to generate money from the volume rather than individual transactions.

(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?

Operators licensed in Malta must file suspicious activity reports (SAR's) to their local financial investigations unit (FIU).

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?

Not that we know of.

(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?

The National Lotteries Good Causes Fund, is set under the Lotteries and Other Games Act, 2001 Section 50 (7) and has the main scope of helping out various individuals, agencies or organisations that have a social, cultural, educational, sport, philanthropic or religious

activity. The National Lotteries and Good Causes Fund Committee administers and operates the fund.

The Fund generates its income through:

- 1) percentage contributed from the amount of tax payable from gaming activity;
- 2) unclaimed prizes; and
- 3) dormant accounts - online player accounts who are not contactable and have been inactive for 30 months.

The funds are to be utilised under four broad areas of activity. The areas are:

- Religious, philanthropic and social
- Social, educational and civic nature
- Sport
- Cultural

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

The scope of the Good Causes fund includes agencies that have a social or philanthropic scope. SEDQA (The Maltese Agency which deals with Gambling addiction) falls under such a category and hence is eligible to benefit from such funding.

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

N/A

(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?

N/A

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

N/A

(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?

No, there is no evidence that online gambling services reduce revenues to public interest activities. On the contrary, online gambling services generate additional revenue streams for sporting associations and clubs, charitable and other related organisations.

In fact, on its part the MRGC as an organisation sponsors a table tennis club in Malta and assists the clubs up and coming players.

Furthermore a number of operators in Malta sponsor sports clubs and also charitable organisations.

(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?

In Malta, the rules regulating the Good Causes fund allow the maximum possible form of transparency whereby it is possible for the Ministry responsible for the Fund, i.e. the Ministry of Finance to publish the manner in which the funds are distributed to various organisations, including sports and philanthropic organisations. Such reports are also tabled in Parliament.

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?

Malta established its independent regulator, the Lotteries and Gaming Authority, in 2004. The LGA is a single regulatory body that is responsible for the governance of all gaming activities including online gaming.

The LGA has a wide array of powers hence providing it with the necessary tools needed to implement effective regulation. The LGA seeks to ensure:

- 1) Protection of minors and vulnerable persons
- 2) Safeguarding Players' rights
- 3) Promoting responsible gaming in a safe environment
- 4) Ensuring the integrity of games and gaming devices
- 5) Keeping Gaming free from criminal activities
- 6) Operate a successful and a fully integrated Authority;
- 7) Support the industry and technological innovation;
- 8) Provide authoritative and accessible information;
- 9) Provide a one-stop-shop for licensing.

Furthermore the LGA also:

- 1) Conducts research on various aspects of gaming;
- 2) Grants licences relating to gaming and lotteries;
- 3) Monitors licensed gaming;
- 4) Collects gaming taxes on behalf of the Government;
- 5) Supports good causes;
- 6) Ensures that the sector contributes to the country's development

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

Yes there is. It is accessible via the Lotteries and Gaming Authorities Website - <http://www.lga.org.mt/lga/content.aspx?id=86949>

The LGA is responsible for keeping this list 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?

GREF - Gaming Regulators European Forum is an entity which we are aware of, however we are not fully aware of what is discussed and what decisions are taken.

Furthermore we have recently read reports regarding possible bi-lateral agreements which will be entered into by regulators, the most notable one being the agreement between France and Italy which seems to be based on the exchange of information and best practices.

With the reality of different Member States opening up licensing regimes, it is the firm belief of the MRGC that cross-border administrative co-operation is a must. This should look at not only exchanging information and best practices but also look at the manner in which operators are licensed in another Member State and taking such controls into account when issuing a license i.e. the principle of non-duplication of controls.

Furthermore one could possibly look at establishing closer collaboration in areas such as Consumer protection as well as Fraud and money laundering, with particular importance being given to the reporting procedures.

(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?

No

(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?

At a National Level, here in Malta no form of IP Blocking, DNS Filtering and Payment blocking is done.

We are aware that currently in Italy some form of DNS Filtering and IP blocking is in fact exercised however operators still find the means to go around this blocking and offer their services to Italian players.

Financial restrictions and ISP blocking mechanisms have not managed to curtail the black market either in France where this amounts to around 60% of the total market.

We are also aware that the Netherlands has discussed the possibility of introducing IP blocking (a discussion which started back in 2008) and also that some form of Payment transaction blocking is also put in place. This discussion took place also in 2008 however it has met with much opposition from the Dutch Banking Association and also a Civil Court case was opened by an online operator against the Dutch Government for breaching its freedom to provide services and also breaching the principle of free movement of capital by trying to impose a payment ban. Furthermore, this same operator made an official complaint to the European Commission on the same issue.

With regards to payment bans one must also acknowledge that banks cannot completely monitor or block financial transactions between Member State nationals where the ban is imposed and online gaming operators. Banks cannot prevent Member State nationals from transferring funds through a third party, such as an online bank account at a bank in another jurisdiction.

Hence one questions just how effective such measures really are.

ISP blocking, or other similiar measures will not keep the Internet open for all users.

Furthermore such restrictions have also been criticised by the European Commission in more than one occassion (Belgium, Poland, Denmark, France and Italy)

(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 opinion the methods mentioned above constitute a means whereby certain Fundamental freedoms enshrined in the EU Treaty are breached - mainly the Freedom to Provide Services as well as the Free Movement of Capital. If a Member State wishes to introduce such measures it must do so only if the measures:

- Justified by overriding reasons relating to public interest
- Appropriate for ensuring the attainment of the objectives which it pursues
- Must not exceed what is necessary for attaining them
- Must not be applied in a discriminatory manner.

We beleive that the introduction of such measures is in fact disproportionate and incompatible with EU law. Such measures distort the proper functioning of the Internal market. Not only,

however these measures have proved to be ineffective to adequately enforce the objectives sought, i.e. enhanced consumer protection.

It would be more ideal for Member States, in our opinion, to recognise those operators who are already lawfully licensed in another EU Jurisdiction and recognise the licensing process which is in place within such a jurisdiction. In this manner Member State could devote their energies in seeking out those operators who are not licensed in any jurisdiction and offer their services in their own Member State with possible negative consequences for their own citizens.

Lest we forget, history has shown that whenever prohibition was introduced as a means to limit some form of practice, this has had the opposite effect, leading to the growth of an illegal offering which provides no form of protection to consumers.

Other comments on issues raised in section 2.4

Other comments on issues raised in the Green Paper