

TÜV Rheinland Group

Response to the Commission's Green Paper on on-line gambling in the Internal Market

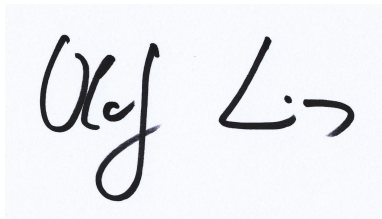
We thank the Commission for the opportunity to comment on the Green Paper on On-line Gambling in the Internal Market and explicitly support the Commission's initiative.

After a brief introduction of the TÜV Rheinland Group you will find a presentation of our expertise in on-line gaming and gambling accompanied by a list of reference projects.

Thereafter, with regard to question (10) of the questionnaire we would like to stress the importance of comparable standards in the different Member States' licensing processes for on-line gambling providers. Therefore, TÜV Rheinland Group suggests a pan-European certification system, which facilitates the comparability of national standards and licensing requirements. Technical service providers like TÜV Rheinland Group could certify that an on-line gambling provider fulfils certain (minimum) standards, e.g. regarding protection of minors, monitoring of player behaviour or a transparent gambling system (random number generator etc.), agreed upon by all or at least some Member States.

Since a fully harmonised regulation of on-line gambling in the Internal Market does not seem very likely at the moment, a reliable pan-European standardisation system could provide legal certainty for providers and costumers while respecting Member State's authority.

In addition, we would like to make the Commission aware of the TÜV Rheinland i-sec's (formerly TÜV Rheinland Secure IT) study "What can the Internet do" from June 2009, which is attached to this response. The study deals with the technical opportunities offered by the internet with regard to consumer protection, the protection of minors, the fight against compulsive gambling, fraudulent actions and money laundering in the area of on-line gambling.

A handwritten signature in black ink on a light blue background. The signature reads "Olaf Siemens" in a cursive, handwritten style.

Olaf Siemens

TÜV Rheinland Group

About TÜV Rheinland Group

The TÜV Rheinland Group is a leading provider of technical services worldwide. Founded in 1872 the Group employs more than 14,500 people in 500 locations in 61 countries and generates annual revenues of € 1.3 billion. The Group's mission and guiding principle is to achieve sustained development of safety, security and quality in order to meet the challenges arising from the interaction between man, technology and the environment.

From its headquarters in Cologne, Germany, TÜV Rheinland is active in all major industrial sectors and areas of life. These include the energy business, the production of consumer goods, the automobile industry, basic materials, investment goods, environmental technology, trade, construction, the food industry, aviation, the IT sector, logistics, banks and financial service providers, agriculture, leisure and tourism, as well as the education and healthcare sectors. The company offers around 2,500 services in the six divisions Industrial Service, Mobility, Products, Life and Health, Training and Consulting and Systems.

Our experts evaluate management systems, IT processes, and complete businesses in accordance with internationally recognized standards, or on the basis of individual performance criteria. Around the world, companies trust in the excellent reputation of our TÜV Rheinland mark – a synonym for tested safety, security and quality.

TÜV Rheinland's Expertise in On-line Gaming and Gambling

TÜV Rheinland i-sec GmbH is an enterprise of the TÜV Rheinland Group. We are specialized in the assessment and evaluation of information security and efficiency of information security systems and processes. Our specialists have developed methods and procedures in order to establish optimized processes in an organization, and to recognize and minimize risks within the IT infrastructure. Appropriate processes are analyzed and assessed regarding suitability, systematic approach, completeness and effectiveness.

Since many years we engaged in improving the security, fairness and user experience of on-line gaming and gambling. Out of our engagement we have developed standards which document the quality of these games. Technical and organizational inspections are conducted on the basis of international norms (such as ISO 27001, PCI Data Security Standards) and best practices developed out of our industry experience. Our certifications cover the following aspects:

- Protected and trustworthy storage and use player's data (Data security and data privacy)
- Correct implementation of the games
- Correct operation of the games
- Controlled process designed to exclude the possibility of manipulation of games
- Confidential and protected treatment of all data

The following organizational and technical aspects will be examined during a certification process:

- IT-Security Policy
- Organization of security
- Classification and control of company values
- Personal security
- Physical and environmentally-related security
- Management of communication and operation
- Access controls
- System development and servicing
- Management of the business operation
- Security Incident Management
- Infrastructure
- Firewall systems
- System hardening
- Protection of stored data
- Compliance with the Vulnerability Management
- Development and operation of secure applications
- Data processing and storage
- Network connections and access to the systems
- Administration of the infrastructure
- Monitoring

Reference Projects

Here is list of projects that TÜV Rheinland i-sec GmbH has conducted in the field of on-line gaming and gambling:

- Various certifications for private on-line gaming portals
- Technical analysis of on-line betting portal
- ISO 27001 certification for a German state-owned lottery
- Quality assurance services for an on-line lottery portal
- Study on the possibilities and limitations of restricting anonymous on-line gaming and gambling
- Source code analysis of randomness generators
- Analysis of an algorithm for riffing cards in an on-line game

Question (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?

In a connected world basically every on-line gambling offer is available all over the world at any time.

However, it is undisputed that different countries have different approaches towards gambling. Consequently, Member States' regulatory frameworks are different, too, since they are very much shaped by the countries' traditions and cultural backgrounds. In addition, the subsidiarity principle is a leading principle of the EU.

Nonetheless, it is just as much beyond any controversy that different national regulatory systems and licensing procedures within the EU, regardless of the business area they are regulating, constitute restrictions to the EU's fundamental freedoms. Accordingly, different national systems of and practices for, the licensing of on-line gambling services constitute obstacles to the freedom to provide services and the freedom of establishment in the gambling sector.

As a matter of course, regulatory measures which constitute restrictions to the EU's fundamental freedoms may be justified by imperative requirements in the general interest, such as consumer protection, the need to preserve public order or the prevention of both fraud and incitement to squander money on gambling (Case C-275/92 *Schindler* [1994] ECR I-1039, paragraph 58; Case C-67/98 *Zenatti* [1999] ECR I-7289, paragraph 31; Case C-6/01 *Anomar and Others* [2003] ECR I-8621, paragraph 73; Case C-243/01, *Gambelli* [2003] ECR I-13031, paragraph 67; Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* [2007] ECR I-189, paragraph 46).

The aforementioned points describe the dilemma each Member State, each on-line gambling provider and each costumer in the EU that wants to regulate, offer or participate in on-line gambling is confronted with.

With regard to the facts, that on the one hand EU Member States insist on their regulatory authority but on the other hand gaming providers and consumers have the technical possibility to cross borders with just a "mouse-click", a solution on a EU-level has to be found, which respects the Member State's authority as much as it respects the consumer's will to gamble and the on-line gambling provider's right to offer its services in the EU in legal certainty.

A full harmonisation of the on-line gambling market in the EU would probably simplify the consumer's and gambling provider's situation best, but restrict the Member States' authority and undermine the subsidiarity principle. Moreover, since there are still huge differences in the Member States' approach to gambling and the level of liberalisation, a full harmonisation of the on-line gambling market in the EU is - at least at the moment - unrealistic.

But there might be room for (minimum) harmonisation where Member States pursue the same objective. It is obvious that all Member States want to protect minors, they want to

reduce the risk of compulsive gambling or incitement to squander money on gambling, and as well they want to fight fraudulent or other criminal actions in the gambling sector.

Therefore, TÜV Rheinland Group agrees with Jürgen Creutzmann, MEP, Rapporteur for the Green Paper on on-line gambling in the Internal Market, that pan-European uniform minimum standards for the protection of gamblers and consumers and for combating crime are essential (see point D., draft report on on-line gambling in the Internal Market, <http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&mode=XML&language=EN&reference=PE467.028>).

To begin with, Member States that have similar regulatory frameworks or comparable standards in certain areas of the gambling sector could agree to cooperate on a voluntary base. Instead of an obligatory mutual recognition Member States could establish a system of conditional recognition as a first step towards harmonized minimum standards.

However, such a system would create the need for easily comparable transparent standards for all parties involved.

Certification of standards would facilitate a system of conditional recognition, since Member States and their gambling authorities could rely on the certificate. Therefore TÜV Rheinland Group suggests a certification system, which facilitates the comparability of standards and licensing requirements. Technical service providers like TÜV Rheinland Group could certify that an on-line gambling provider fulfils certain (minimum) standards, e.g. regarding protection of minors, monitoring of player behaviour or a transparent gambling system (random number generator etc.), agreed upon by all or at least some Member States.

A reliable pan-European standardisation system could provide legal certainty for on-line gambling providers and costumers while respecting each Member State's authority and the requirements established by the European Court of Justice regarding the assessment of licence criteria:

“A MEASURE WOULD BE EXCESSIVE IN RELATION TO THE AIM PURSUED, HOWEVER, IF THE REQUIREMENTS TO WHICH THE ISSUE OF A LICENCE IS SUBJECT COINCIDED WITH THE PROOFS AND GUARANTEES REQUIRED IN THE STATE OF ESTABLISHMENT. IN ORDER TO MAINTAIN THE PRINCIPLE OF FREEDOM TO PROVIDE SERVICES THE FIRST REQUIREMENT IS THAT IN CONSIDERING APPLICATIONS FOR LICENCES AND IN GRANTING THEM THE MEMBER STATE IN WHICH THE SERVICE IS TO BE PROVIDED MAY NOT MAKE ANY DISTINCTION BASED ON THE NATIONALITY OF THE PROVIDER OF THE SERVICES OR THE PLACE OF HIS ESTABLISHMENT; THE SECOND REQUIREMENT IS THAT IT MUST TAKE INTO ACCOUNT THE EVIDENCE AND GUARANTEES ALREADY FURNISHED BY THE PROVIDER OF THE SERVICES FOR THE PURSUIT OF HIS ACTIVITIES IN THE MEMBER STATE OF HIS ESTABLISHMENT.”

Case C-279/80 *Webb*, [1981] ECR I-3305, paragraph 20

Hence, national regulators, on-line gambling providers and consumers alike would benefit from certified (minimum) standards:

- More efficient gambling authorities in each member state, without limiting the Member State's authority and discretion on how to regulate its national gambling sector because of a reduction of the scope of assessment of licence applicants who can already provide a certificate of compliance with standardised licence criteria.

- More transparent, cheaper and faster licensing processes for on-line gambling providers.
- More trustworthy gambling offers for consumers and better protection against compulsive gambling.

In conclusion, a pan-European system of certification of certain (minimum) standards is a key requisite for a constantly growing European on-line gambling market that respects the subsidiarity principle as well as the freedom to provide services and the consumers wish to enjoy the benefits of the European Internal Market also in the area of on-line gambling.