

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:

Interwetten Gaming Ltd

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

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

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

Yes, we are aware of quite a number of studies research projects, both at an EU and a national level. For a comprehensive overview, please refer to the submission of the European Gaming and Betting Association (EGBA) of which Interwetten is a member.

From our point of view, the following conclusions may be drawn from data and research results currently available:

1. Online gaming is a market reality and consumer demand may not be denied.

2. The size of the online gaming market, currently at approx. 10% of the total gambling market, continues to increase. It is important to note, however, that the growth of the online market segment does not jeopardize the traditional offline business if proper regulation is in place.

3. There is no scientific evidence that online gaming bears more risks for players than offline gaming,

4. In countries with a licensing regime for gaming at competitive and reasonable conditions, all stakeholders stand to gain. Consumers, operators and national authorities profit from legal protection, certainty and tax income. Having said that, it is obligatory, from our perspective, that the regulatory regime in place needs to comply with basic EU Treaty rules in order to provide comprehensive protection and legal certainty for an industry based on a truly international medium, i.e. the internet.

(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)

With reference to the so-called "black market", we would like to highlight two difficulties:

1. Only a few of the licensing systems currently proposed actually DO correspond to the EU Treaty principles. All drafts that have been notified within the last few months (notably Germany and Greece) have given rise to serious concerns from the side of the European Commission. Regretfully, however, in many cases, member states do not respect their legal obligations under the Treaty and rush to implement unlawful conditions.

2. Hence, as an operator we are herewith faced with a situation where any member state claims the right to declare us "illegal" or "black market" literally from one day to the other.

3. We are not aware of any research on the "black market" in the EU, but since the parameters for the "black market" keep changing constantly under the current conditions, we do not expect any reliable results from such research..

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

Our experience as an operator based and licensed in Malta is a very ambivalent one. The Interwetten Group of company has been active in the business of remote gaming for the last fourteen years. We have built up our reputation as one of the most established online gaming operators with particular reference to sports-betting. Today, however, we are also offering casino and skill game products on European markets.

Interwetten moved to Malta in 2004 in order to obtain a European license that would grant our customers and us legal protection and certainty.

We have invested heavily in IT infrastructure and human resources in order to comply with the licensing conditions in Malta. In addition, and as a member of the European Gaming and Betting Association (EGBA) we adopted more than 170 self-regulatory standards as well as the CEN Workshop Agreement CWA 16259 : 2011 - 'Responsible Remote Gambling Measures'. To this effect, we voluntarily undergo annual third party audits in order to ensure that we offer a high-level product based on game fairness and the highest consumer protection

standards applicable. As an operator, Interwetten wholeheartedly supports the view that gambling is an activity that should be subject to strict regulation, and we have proven our commitment to this strategy for many years.

On the other hand, it is simply impossible for us to ensure compliance with varying licensing conditions in 27 member states. Apart from the fact that we cannot establish extremely costly IT-infrastructure in each of our core markets and adapt software individually to the applicable licensing regime, the current regulations impose absolutely unrealistic administrative costs (application fees, audit fees, taxes, etc.) and liabilities.

For example: Why should we have to provide a bank guarantee of 5 mio Euros in Spain for the operation of sports-betting and casino, if our liabilities, i.e. the deposits of our Spanish customers, amount to only a fraction of this amount? Why should we have to set up an office in Poland and use only Polish banks for our Polish customers? How can we apply for a gaming license in Germany if it is already foreseeable that our operation will not cover costs, considering the overboarding tax rates, whilst our main product offerings, live-betting and casino, are reduced to a minimum or prohibited?

The administrative, technical and financial burdens of the current market segmentation are excessive and a blatant contradiction of basic EU Treaty principles.

In some of the most restrictive markets, for example France, we had no other alternative than taking the consequences and withdraw our online offer. If the costs of obtaining a license exceed the revenue generated on this particular market by far, there is no other alternative for law-abiding operators than pulling out - leaving consumer demand to unlicensed businesses operating from outside the European Union.

However, whenever a private operator is forced to close down a market, customers will continue gambling on sites that are not concerned about player protection and the exclusion of minors; the national authorities will not generate the tax income expected by the so-called "market opening"; sports association will no longer profit from sponsoring and the publicity granted by our online offer and our marketing budget will be spent on other target markets.

All spill-over effects that online gaming generates - tax income, sponsoring, considerable marketing expenses and last but not least, "smart" jobs within a digital industry, are lost.

(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?

In the light of the above mentioned development, operators from outside the EU, whether licensed or unlicensed, will be the ones to profit. They will take over the market shares of EU operators who unwillingly abandon less profitable markets. Being out of reach of EU enforcement, non-EU operators will take the profit without facing any consequences and without any commitment to EU law and consumer protection standards. It is needless to say that non-EU operators neither pay taxes within the EU, so that member states will also lose out on any tax revenue deriving from online gaming.

(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?

Online gambling in the EU is characterized by high legal uncertainty (e.g. seven preliminary rulings since June 2010, endless litigation in Member States). The legal uncertainty has a direct impact on the daily commercial operations of operators. The effects of legal insecurity also extend to consumers, including criminal sanctions imposed on consumers for accessing cross-border services.

This legal insecurity is due to:

- Extreme fragmentation (see e.g. the critics by Advocate General Mengozzi in C-46/08, Carmen Media): very different systems (a) state monopolies, (b) single-license systems and (c) multiple license-systems with c.1 limited or c.2 unlimited number of licenses.
- Lack of EU harmonized law (also criticized by Advocate General Mengozzi in C-46/08, Carmen Media), leaving Member States to regulate an inherently cross-border service sector covered by the EU Treaty freedoms
- Lack of a genuine desire of Member States to comply with EU law when it comes to gambling
- Lack of Commission direct referrals of Member States to the CJEU resulting in no judgments on substance by the CJEU to date

The legal insecurity is widely acknowledged, notably also by those Member States that are responsible for the creation of national regulations. Under the Spanish Presidency a common definition of legal gambling was developed that serves as an illustration rather than solution of the inherent tension between strictly national regulations and EU Treaty requirements: 'Operators should adhere to the national laws of the countries where services are offered, and those national laws must be compliant with Treaty principles' (Spanish Presidency Progress Report 25 May 2010, (doc 9495/10)).

Legal uncertainty will not disappear by magic over time. It requires the European Commission and European legislator to take up their responsibility and ensure that legal clarity is offered in the interest of consumers, operators and ultimately Member States.

The European Commission is asked to ensure the fulfilment of the requirements for legal certainty and establish a first standard as part of a European Regulatory Framework in order to establish a secure and well-regulated Online Common Market.

(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?

No, Interwetten takes the position that EU secondary law does not adequately regulate online gambling services. Although importantly a number of EU directives cover gambling in their scope, they harmonize only specific aspects of online gambling. As a result, and despite consumers being able to access online gambling services throughout the EU, they are not protected at an equally high level, and in certain Member States not at all.

The CJEU jurisprudence is not a call for the maintenance of the status-quo. On the contrary, the Commission is called to put material effect to the words of the CJEU (in the Stoss and

Carmen Media rulings, C-316/07 et al and C-64/08) regarding: (i) internal consistency of all gambling offers, (ii) external consistency of all gambling offers and (iii) obligation of Member States to comply with the obligation to "quantitatively measure" and "qualitatively plan" their intended gambling offer while obliging Member States to (iv) provide for prevalence studies to verify the efficiency of their current gambling system.

Online gambling is not adequately regulated in most Member States. The objectives pursued by Member States that form the basis of their market regulation are often not considered as acceptable by the CJEU. With the recent Stoss and Carmen Media rulings the CJEU has clarified that Member States need to have consistent gambling policies. The Court has also set clear criteria what consistency in the area of gambling implies. On the basis of this clarification, it is highly doubtful that the gambling legislation of most Member States can be considered consistent and therefore EU compliant.

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?

Interwetten considers the definition of online gambling on page 14 of the Green Paper as adequate for the purpose of the Green Paper consultation.

(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 refers to any form of distance communication, including the media.

The Maltese Remote Gaming Regulations (LN 176/04) however 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 'coexistence' of differing national systems is unsustainable as it causes challenges for consumers, economic stakeholders and Member States that can only be resolved through a harmonized approach.

Keeping national rules on online gambling fragmented does not address the challenges of the current technological developments. It also puts the EU online gambling market at risk of being outcompeted by other markets such as the US. In addition, since online gambling promotes the development of the European IT industry, different national rules and protectionist measures could have a negative effect not only on the online gambling industry as such, but could also have a negative spill-over effect onto the IT sector.

Why would the current situation be continued? An often used justification is the argument that Member States' attitudes towards gambling varies significantly due to moral, religious and cultural differences.

Although there are doubtlessly different attitudes towards gambling in different Member States, this holds similarly true for many other services and goods that circulate on the Internal Market. Also, when looking at the regulations that are currently being developed by many Member States, the objectives and measures show considerable convergence and duplication despite these differences.

Indeed, all Member States pursue objectives aiming to achieve 'responsible gambling' through specific measures. In the CEN Workshop Agreement on Responsible Remote Gambling Measures, responsible gambling is defined by 9 specific objectives, such as the protection of vulnerable customers, the prevention of underage gambling and the fight against fraud. Notwithstanding the precise wording of these definitions, it would be hard to envisage any legislator having different objectives. Differences might exist in the precise measures taken to ensure the desired level of consumer protection. However, this is common in many other sectors, and it is precisely the objective of EU harmonisation to find the right level of protection through negotiations.

What difficulties result from the current situation?

For consumers in the EU, the current situation leads to:

- Sharply varying levels of protection between and sometimes within Member States (e.g. in Belgium age limits for certain games 18+, for other games 21+) and in some Member States no protection at all
- Inability to play with consumers from other EU Member States (e.g. a French poker player can only play with other French players)
- Impossibility to play anywhere else than in the Member State they reside in
- A loss of consumer welfare due to an uncompetitive offer that forces consumers to play on the so-called 'black market'

For Member States a closed national market leads to:

- A loss of tax revenue

- Economic growth and job creation foregone
- Continuous legal and enforcement action to sustain a national approach
- In practice: channelling is not effective, population drifting into the ‘black market’ (see Germany), circumvention of prohibitions by users, high costs to maintain national system.

For operators the current situation leads to:

- A loss of economies of scale
- High compliance costs (license, product limitations, server requirements, compliance with different age limits etc.)
- Legal uncertainty
- Risk of losing the competitive advantage
- Discrimination in relation to former monopolies and local operators

For other economic stakeholders:

- Due to varying advertising regulations, competing sports federations and clubs in the EU have unequal access to sponsoring and marketing agreements with the online service providers
- Differing rules for sponsorship means that for instance football clubs cannot wear jerseys anywhere in the EU; for example a Lithuanian football club is sponsored by a gambling company but this club may only wear its sponsored jerseys during matches outside Lithuania
- Loss of advertising revenue for media companies; for example the Swedish paper Aftonbladet was considering leaving Sweden as the advertising restrictions threaten the existence of the paper

On a national level, the local re-regulation and increasing local license opportunities will increase the burden of continued compliance in a multi-jurisdiction set-up. If rigid and inconsistent operational requirements will impede or even reduce customer experience, local customers will continue to gamble outside the scope of a local license regime.

In view of this, the following should be considered:

- Requirements should be objective and risk-based. They should recognize the proper characteristics of any e-commerce operation and allow adaptation to the technological evolution. Requirements in other industries, e.g., financial services, could be used as a benchmark (e.g. SAS No. 70);
- Strict technical requirements to ensure that the game is fair and meets required quality standards. Defining high-end technical requirements and duplication of IT infrastructure are two separate issues. Duplication should be avoided as – in most cases – it is based upon a misunderstanding of relevant technical issues;

- Pragmatic operational processes allowing the platform to be run in an appropriate and diligent manner. Processes should be aligned with the needs of a complex and dynamic IT-driven industry;
- Sensible, pragmatic and KPI reporting based auditing and enforcement, instead of devising a local server solution which will be unstable at best, damaging the user experience at worst.

In 2011, local servers add little to the security of the customer, notably as services are provided by so-called “server clouds” i.e. network of servers. Access to information can be ensured in other ways than by duplication of hardware and local IT architecture.

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 to, 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 refrain 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 players 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 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 and/or demands a pay-out.

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.

In this context, many operators use also third party data providers in order to double-check and verify information provided by the player himself. Due to differences in the applicable data protection regulations, however, third party confirmation can hardly be obtained in some member states, e.g. Germany.

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)

A ranking of the factors listed below would contradict basic theoretical models of epidemiology. Due to the fact that problems emerge if properties of the game match with vulnerabilities of the gambler, a risk factor that is highly dangerous for one player would be harmless for another player and vice versa.

For a player, who is severely discontent with his life, who feels out of control and who's dreaming of a big change, a huge jackpot might be the most important risk factor of all, while the involvement into the game might not affect the player at all. For a challenge-seeker, however, who wants to prove he's better than others, the proposed winnings might be a completely negligible factor, but the involvement might lead this player to invest more time into gambling than originally intended.

Therefore ranking risk factors by a speculated order of importance will not serve preventive goals but rather expose those players who are vulnerable to properties of games that are speculated to be less dangerous.

It is difficult to exactly determine factors as shown by the British Gambling Prevalence Survey 2010 and other studies:

- Recent research revealed that neither the type of game nor the location (if the person plays it online or offline) has an effect on their risk of developing a disordered gaming behaviour (LaBrie, R. A., & Shaffer, H. J., Identifying behavioral markers of disordered Internet sports gambling. *Addiction Research & Theory*). However, the risk seems to increase for players who are unselectively playing a great number of different types of games.
- Science also revealed that a larger variety of different gaming opportunities does not necessarily result in a higher number of problematic gamers, e.g. Las Vegas and the State of Nevada. (LaPlante, D. A.; & Shaffer, H. J. (2007). *Understanding the Influence of Gambling Opportunities: Expanding Exposure Models to Include Adaptation*. *American Journal of Orthopsychiatry*, 77, 616-623).
- Harvard publication, 'Parameters for Safer Gambling Behavior: Examining the Empirical Research' by J. Peller, 2007.

1) Event frequency / 2) Pay-out interval

Event frequency and pay-out interval generally refer to theoretically possible behaviour. In many cases actual usage strongly differs. The Division on Addictions of Harvard Medical School compared actual gambling behaviour of sport bettors that places both classic pre-match and live bets. This setting allowed to investigate whether the faster type of betting (live

betting) holds higher risks than the slower paced form of betting (pre-match fixed-odds sports book).

For both types of sports betting a small group (~ 1%) of distinct gamblers was found that was more involved into gambling and therefore more at risk of developing related problems. Not only is the group of at-risk gamblers not larger for live betting, live bettors also display a very similar behaviour like fixed-odds bettors, incurring roughly the same weekly costs.

Behavior of online bettors. (LaBrie et al., 2007)

Moderate Bettors Fixed-odds betting

(99 %) Live betting

(99 %)

Bets per week 4 5

Stake per bet 4 € 4 €

Cost per week 2 € 2 €

Involved Bettors Fixed-odds betting (top 1 %) Live betting

(top 1 %)

Bets per week 16 42

Stake per bet 44 € 53 €

Cost per week 50 € 66 €

Although live betting has a higher event frequency than the slower paced discontinuous pre-match fixed-odds betting, the risk of excessive behaviour is not increased in practice. One plausible explanation could be that the effects of event frequency and pay-out interval restrict themselves to the range of a few seconds. However, at larger time intervals (minutes or even days), the suspected neuropsychological effects strongly diminish.

3) Accessibility and social environment

As stated in the Green Paper, the United Kingdom is (by far) Europe's largest gambling market. By means of its competitive approach towards gambling, there is – on top of a high number of land-based gambling offers – a regulated online gambling offer. Based on the speculation that physical accessibility is a risk factor, the UK should be facing considerable gambling-related social problems. But instead, the prevalence rate of problem gambling in the UK is one of the lowest in Europe.

Much more realistic is the assumption that consumer/player protection is a moderator for the effects of accessibility. This means that accessibility of unlicensed gambling offers – void of protective measures – can be a driver for gambling-related problems. However, this effect can be fully compensated (or even overcompensated as some researchers point out) by responsible gaming measures and player protection tools.

Whether greater availability has an influence on the prevalence rate is therefore questionable. Based on the available evidence, the proposition could be put forward here that the relationship between availability and prevalence of pathological and problem gambling depends on the nature and availability of adequate player-protection mechanisms’.

4) Chasing losses / pay-out / probability of winning

While there is some evidence that especially large jackpots are the primary attractor for lottery-type games, the payback ratio (how much of the deposits are paid out as winnings) has been well researched and found to have no influence on problem gambling behaviour (Parke, 2009). “The review concluded that there is no credible evidence to claim that the payback percentage has an impact on problem gambling. As a result, there is currently no evidence to suggest that placing a maximum limit on payback percentage would be an effective means to prevent or reduce levels of problem gambling.” This implies that games with a higher payback ratio might be more attractive to the customer, but do not bear an increased addiction risk.

A cap on return doesn’t result in punters playing less money:

- In France, players are betting 25% more than they did before the opening but they are getting in effect around 8% less .
- Average return on .com is 93% (vs. 85% in France)

On the other hand, the financial impact of gambling is more severe if the payback ratio is low. This is because the same gambling behaviour leads to fewer winnings and thereby higher costs with a low payback ratio. This is also the reason why several European regulations have imposed minimum payback ratios for slot machines as a measure of consumer protection.

5) Perceived skills and “involvement”

The perception of an influence of skill – taken alone – does not constitute a risk factor. If this was the case, many skill games (like chess) would be highly addictive. However, if this perception of skill is an erroneous one, e.g. based on manipulative game design, the player is tempted to over-estimate the influence of skill and might more easily take irrational decisions.

Examples for manipulative game design are “stop buttons” that do not actually influence the outcome of the game. Another one is the malpractice of exchanging one losing outcome with another, conveying the impression that the player has only barely missed a large win.

However, as far as an inherent element of skill is actually part of the game (which has been successfully demonstrated for poker or sports betting), this is not a risk factor, because it does not constitute a foundation for irrational decisions as long as the gambling operator does not unduly overemphasise this element of skill.

This underlines the importance of player protection measures, safeguarding the informed choice of the customer. The CEN Workshop Agreement on Responsible Remote Gambling Measures CWA 16259 contains several control measures to make sure that the player is given complete, factual and unbiased information about the games and the chances of winning.

6) Commercial communications that could trigger vulnerable groups

Commercial communication should be controlled by regulatory and self-regulatory frameworks. Nevertheless, this control should not aim at restricting commercial

communication as a whole, but instead regulating the way commercial communication is conducted. The standard CEN Workshop Agreement on ‘Responsible Remote Gambling Measures’ offers a list of control measures that can be applied to prevent exploitation of vulnerable groups. The UK advertising standards offer a best practice example of how a regulatory regime can successfully enforce responsible advertising in practice. Also the code of conduct on advertising, promotions and inducements of the Maltese regulator (LGA) is included in the Maltese gambling Act.

(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)

We are aware of only very few academic pieces of research investigating the effectiveness of these tools. One reason could be that the rate of problem gaming (offline and online) in Europe lies at around 0.5 to 3%. This means that the vast majority of people experience no problems from gambling. Online gambling is not treated separately from the broader gambling industry as both sectors are considered to be interrelated in this respect.

EU-licensed online operators are not complacent and acknowledge that it is their clear responsibility to take the appropriate measures to protect consumers. There are indeed very successful tools that exist to reach this goal (e.g. CEN Workshop Agreement on ‘Responsible Remote Gambling Measures’). Responsible gambling policies act here as important mitigators. All these instruments are necessary and complementary to achieve different purposes. We do not advise to rank these measures as none of them is more or less important than any other. Ranking could support the misleading idea of a pick-and-choose-concept whereas in fact all instruments complement each other.

1) Age limits

- It is not in the interest of responsible online gambling operators to target a minor audience. Hence, European online gambling operators have developed sophisticated measures and tools in order to prevent underage individuals from accessing online gambling and to verify the age and identity of individuals:

- Display on homepage linking to clear 18+ message
- Advertising not to target or portray children
- Links to recognized filtering programme
- Confirmation of age during the registration process
- Training to all employees involved in age verification
- Additional routine checks of users to ensure compliance with age restrictions
- Account closed and refunded immediately if underage gambling is identified or suspected

- These measures and tools have proved efficient wherever they are put in place as confirmed by UK Children’s Charities’ Coalition on Internet Safety report 2010. It quotes online gambling as an example that should be followed by other e-commerce industries: “The fact that the gambling industry has been able to introduce successfully a system which keeps children off their sites proves that, at least so far as the sale of products and services rated 18

and above are concerned, scalable working solutions are available now. They are simply not being taken up. They should be.”

- These measures are also efficient in particular when compared to offline products (see Question 24).

2) Self-limitation (financial and time) and self-exclusion

- Study on early detection of gambling problems based on customer communication by Prof. Haefeli, November 2010, page 6 et seq

The study states that ‘in online gambling self-exclusion or exclusion by the providers is – in combination with other protective measures – an effective means of gambler protection’.

Nevertheless there is a remaining problem: ‘Despite the wide acceptance of the measure, exclusion programmes always entail the risk that a blocked gambler moves from one operator to another and then continues gambling without protection (Nelson et al., 2009). One way to solve this would be to use a common database for all providers.’

Regarding gambling limits the study shows that ‘in the land-based sector, this measure is fraught with difficulties’ while ‘in the online sector, however, all aspects of gambling behaviour (deposits, bets, losses, duration of play ...) can generally be observed in real time and can thus also be limited’.

‘In summary, it can be said that online gambling generally offers optimal conditions for the implementation of protective measures for gamblers (Parke et al., 2007). As mentioned above, the gambling activities of each customer are recorded with the utmost precision.’

- Harvard study on effects of imposed limits on actual Internet sports gambling behavior, August 2008.

This study indicates that imposed deposit limits affect only a very small minority of internet sports bettors and – in contrast to self-committed deposit limits – do not lead to a sustainable change in gambling behaviour. However, the vast majority of internet bettors seem to be able to regulate themselves and require little additional safeguards.

3) Information/warnings/self-tests (more easily applied on-line than off-line)

Study on early detection of gambling problems based on customer communication by Prof. Haefeli, November 2010, table 1 page 9. This study demonstrates that there are more and better tools for detecting and controlling problem gamers online than in offline gaming.

4) Banning the use of credit

Interwetten does not allow customers to be given credit nor are they allowed a negative balance.

5) Reality checks

It is important to provide tools that allow players to have access to their gambling information and support control through the use of a set of self-control procedures:

- A clearly visible clock shall be available for use by the player at all times.

- The denomination of each credit shall be clearly displayed on the games screen.
- Customers shall be provided with remote access to their account history dating back for a minimum period of 60 days, and offline access dating back for a minimum period of 6 months, including all deposits, withdrawals and wagers.

6) Diligence obligation for the on-line operator

No evidence.

7) Restricting certain forms of games or bets that are considered to be the most risky (e.g. casino games or in sports betting restricting bets to final results only)

The product is not the problem. It is rather the player's behaviour which can be problematic. Even if there is a prohibition or a restriction in place, players will be encouraged to go elsewhere (and will most likely end up with non-responsible operators).

Rather than banning certain products and encouraging players to use the 'black market' or making exceptions for one provider, regulators need to establish a clear set of stringent licensing requirements, granting all operators that fulfil those requirements a license. By doing so, policy makers would indeed channel the demand from unlicensed 'black market' operators that comply with no rules whatsoever to licensed, regulated and responsible operators (irrespective of their ownership structure), thereby protecting public health and welfare.

MAG study, "Jeux en ligne in the French Market, Key features, strengths and weaknesses of the French legal gaming offer", February 2011, shows how restrictions and high taxation are only beneficial to the 'black market'.

8) Other (e.g. limits on commercial communication – restrictions on the use of certain media, sales promotions and sign-up bonuses or free practice games).

Rather than banning commercial communications it would be more useful to put in place responsible measures which regulate them (e.g. CEN Workshop Agreement on 'Responsible Remote Gambling Measures').

(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 the Lotteries and Gaming Authority (LGA) in Malta. 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 a report published by Professor Mark Griffiths from the International Gaming Research Unit at the University of Nottingham, "Problem gambling in Europe: An overview" (2009) 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?

While Internet accessibility has multiplied during the past few years, prevalence studies across the world and Europe did not find any increase in disordered gaming (see above question 17).

Peer-reviewed studies on the potential harm of online gambling do exist. As opposed to opinion-based studies, peer-reviewed studies allow for a more objective assessment of the potential harm of online gambling as they are scrutinized by a community of experts in the same field before being published. In addition the raw data used as a fundament for the research of Harvard Medical School Faculty is published in the Framework of the Transparency Project for other researchers to verify the findings or conduct their own research based on this data

With the expanding access to the internet providing a 24/7 offer, researchers speculated that online gaming could be riskier and might even lead to a loss of control. Factual data, however, proves this assumption wrong.

A research conducted by Harvard Medical School Faculty underscores the fact that gaming behaviour is determined by the interaction between the individual and environmental conditions. This means that a person’s gaming behaviour and any symptoms of a disorder that might appear can be modified in the course of a lifetime. Recent research increasingly disclaims early speculations that online gambling might be more dangerous. Effects that were interpreted in this way are now corrected by acknowledging that problem gamblers typically use all types of games and therefore also use online gaming. However, online gaming is no longer considered to be a source of increased risk.

“In summary, it is not to say that these potential risk factors 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 compared to those who gamble in more traditional ways.” (Wood, 2010 p.4).

Online versus offline offered possibilities: “On-line gambling provides operators with more sophisticated possibilities to track the transactions of each player compared to off-line gambling formats” (EC Green Paper statement). This is the case both in terms of detection and prevention:

Detection: In an online environment, every step a customer takes is traceable. Other businesses cannot claim to know when a customer came for the first time, how long he or she stayed, when he or she came to visit again, what he or she did exactly while using the “premises” etc This information can be used to detect changes in a player’s gambling

behaviour that could potentially indicate the emergence of gambling related problems, giving operators the opportunity to intervene proactively. Detection of emerging problems is also possible through customer communication. A study carried out by Joerg Haefeli in 2010 showed that communication between customers and the operators exists online. Based on roughly 150,000 customer services contacts per month per operator, the study showed that there are powerful indicators for at-risk gambling. The model applied in the study proved that it was able to identify roughly one third of all potential problem gamblers solely based on the analysis of their correspondence. The impact of moderate gamblers falsely assumed to be at risk was minimal – 93.2% of all customers would be classified correctly.

Prevention: This takes place through measures such as cooling-off and self-exclusion, or the lack of credit given to customers. All measures, typically provided in online gambling are also common practice in land-based gambling with the exception of the limitation of gambling expenses. The CEN Workshop Agreement on ‘Responsible Remote Gambling Measures’ is an evidence of all the measures put in place guaranteeing a safe online gambling environment.

Mystery shopping exercises show as well that land-based shops tend to be more dangerous in term of minor protection as they reveal the lack of enforcement of age restrictions in the offline gambling market with an impressive rate of 71% of offline points of sale which were found selling illegally lottery tickets to minors.

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

No, there is no evidence of a causal link between problem gambling and certain forms of online gambling.

Studies produced by the Harvard Medical School identify between 1% (for sports betting) and 5% (for poker and casino) of involved players among the playerbase. However, being an involved player is not equal to experiencing gambling-related problems. Nevertheless, involved players have an increased need for protection and should take additional protective measures (e.g. self-limitation of gambling expenses) to prevent the emergence of problems.

Other studies such as the British Prevalence Study of 2010, which is based on self-reporting, (see link) estimated that the rate of problem gambling among online sports bettors was 3% (horse, dog and other sports and non-sports related bets), the same as for other online gambling products (including national lotteries, football pools, casino and slot machines) and lower than for most other types of gambling.

In terms of problem gambling by type of gambling, there appear to be some consistent trends across European jurisdictions that conducted research. Prevalence studies in Europe (e.g. Estonia, Germany, Holland, Norway, Sweden and Switzerland) tend to report that problem gamblers are most likely to be electronic gaming machine (EGM, slot machines) players. Other studies have also found similar results with adolescents reporting that the main type of problem gambling among adolescents is related to EGM play (e.g. Great Britain, Iceland and Lithuania). (Source: Professor Mark Griffiths’ report, Problem gambling in Europe: An overview, April 2009).

(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.

Licenseses 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.

Interwetten is also committed 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?

This question tackles actually two distinctive issues:

a) preventive action taken by gaming operators and

b) gambling operators' contribution to the treatment for gambling addiction

As regards a) preventive action, the Maltese Remote Gaming Regulations 2004 stipulate a number of effective means for player protection in Part IX as outlined above. The LGA oversees and, if necessary, enforces, the proper implementation of these regulations.

In addition to the legal requirements, many operators licensed in Malta commit themselves to self-regulatory systems (e.g. the EGBA Code of Conduct, CEN workshop agreement) and cooperate with commercial and/or non-profit organizations specialized on Responsible Gaming (e.g. GamCare, Gambling Therapy and Gaming Trust in the U.K., Adictel and SOS Joueurs in France, Stoedlinjen in Sweden). These organization provide regular support to operators, sometimes even certifications, but most importantly qualified training for staff members in order to identify potential problem gamblers.

The cooperation with national non-profit organizations - whose links have to be displayed by law on the entry screen of the gaming site - is also the basis for b) gambling operators' contribution to the treatment for gambling addiction.

Many operators contribute through training, other advisory services or simply voluntary donations to the funding of counselling services at national level.

Unfortunately, however, these co-operations do not take place in every EU-country due to legal restrictions. In some countries, specialized support agencies are either reluctant or, due to public funding pressures, unable to work with "illegal operators".

In Malta the National Agency "Sedqa" offers health promotion, prevention, treatment, and rehabilitation services to persons with drug, alcohol, and/or gambling problems, and to their families. The Agency also carries out research and houses a documentation centre. Set up in June 1994, Sedqa is made up of two divisions, namely Care and Prevention.

(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 in made to the reply to question 20 (above).

Furthermore, one must take note of the monitoring which is undertaken by the LGA seeking 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 stipulate in Part VII, par. 32 (3): "No person under eighteen years of age may be registered as a player and any funds deposited or any money won by any such persons shall be forfeited to the Authority. "

In addition, national age limitations apply as long as they foresee an age-limit higher than 18 years. Players from Estonia, for instance, who reach legal age at 21, are not authorized to

register with operators licensed in Malta unless they are 21 years old. The age-limit of 18 years, however, cannot be undercut by national legislations.

As an operator, Interwetten agrees that the age-limit of 18 years is adequate. Most jurisdictions in the EU relate legal capacity to the age of 18 years.

On the other hand, we strongly support that the participation of minors in (online) gaming should be prohibited by law, and that operators should be obliged to ensure by all means that underage customers have no access to online gaming services.

Under the current licensing conditions in Malta, and subject to the applicable Anti-Money Laundering regulations, operators identify underage customers by implementing strict “KYC” (Know Your Customer) measures.

Upon the receipt of any pay-out request, operators licensed in Malta are obliged to demand a copy of the customer’s passport or ID-card, a copy of a bank statement and/or a utility bill. However, a risk-based approach has to be taken: In suspicious cases operators are to perform a thorough ID-check as early as upon customer registration. The documents submitted by the customer are then double-checked against ID-verification data provided by independent third party-providers whenever available.

With such refined systems and procedures in place, minors attempting to obtain access to online gaming services have no chances on success.

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

As outlined above, the Maltese licensing regime does enforce age controls for online gaming vigorously. To our knowledge, there are also controls in all member states that have regulated online gambling.

However, in some jurisdictions like the UK, Italy or Denmark, operators may use, in addition to their own “KYC”-measures, e-age and ID verification solutions provided by third parties. In other countries, such as Germany, these third party services are not available due to a lack of regulation of cross-border online gaming services and the applicable laws for data protection.

Interwetten advocates that, in order to provide the best possible protection for underage customers, all members states of the EU should cooperate. The efficiency of e-age and ID verification systems is dependent on the public data available for cross-check purposes. Ultimately, European harmonisation would lead to a regulatory environment adapted to the cross border dimension of the internet ensuring better protection for minors.

When it comes to a comparison between online and offline identification, it is obvious that the internet provides much more sophisticated possibilities based on the online registration process. A UK Gambling Commission mystery shopping exercise conducted in 2009 revealed that while 95% of online players had registered with operators that had no weaknesses in their underage gambling procedure, 98% of betting land based shops allowed underage individuals to place a bet at the counter. A mystery shopping exercise conducted in 2009 by the Belgian consumer organisation (CRIOC) also revealed the lack of enforcement of age restrictions in the offline gambling market with an impressive rate of 71% of offline point of sale which were found selling illegally lottery tickets to minors.

Having said all that, we would like to emphasize that the most effective solution to the problem of underage gaming is education and parental control. After all, it is the responsibility of parents to prevent their children from using their ID, banking or credit cards details. It is also the parents' responsibility to use the various parental control or filtering devices available to prevent their children from accessing age restricted services or products online. For this reason, Interwetten welcomes more awareness-raising measures for this important issue on an EU-wide basis.

(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 LGA 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?

Yes, there are studies and data available.

These studies and data show that the EU-licensed online gambling industry (being compliant with 3rd Anti-money laundering Directive and licensing requirements) is an unattractive environment for fraudsters.

This is because in a regulated environment the Internet offers unique traceability and transparency opportunities that deter fraudsters from abusing the websites of EU-licensed operators.

STUDIES

Match-fixing: Interwetten is, like other EGBA members, also a member of the European Sports Security Association. According to ESSA, “with 10,000 separate sports books across Europe each week, and millions of separate bets taken in 2010, ESSA identified 58 incidences across its membership that were deemed to be irregular. Upon thorough investigation by ESSA’s bookmaking team, ESSA was able to establish that four of these 58 alerts were suspicious and their case files were sent to the relevant sports governing bodies”.

Card fraud: The Professor Levi study of September 2009 on Money-laundering risks and online gaming: time to dispel the myth? states as follows “Looking at Internet fraud alone, £181.7 million of card fraud took place over the Internet in 2008, an increase of 2% since 2007. The vast majority of this type of fraud involves the use of card details that have been fraudulently obtained through methods such as skimming, data hacking, or through unsolicited e-mails or telephone calls”. Levi goes on to add: “no information is available on the extent of such card fraud usage in the online gambling sector, but industry sources confirm that this sector does not account for a significant part of fraud losses”.

An additional study produced by Europe Economics for the European Parliament in 2009 was said to “estimate the total detriment to EU consumers at current levels of EU-based online gambling to be about €20 million per annum “ before adding “that is was a very approximate figure. We cannot estimate how much of it damages consumers rather than operators, nor can we break it down by Member State”.

Most importantly, the online gambling industry has invested greatly in developing safe payment systems and e-authentication and anti-ID-theft practices that help keep the online gambling environment fraud-free and secure for consumers to enjoy. Since cash does not change hands in online transactions, there is very little opportunity for money laundering or other fraud in this regard.

(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 and the CEN workshop agreement..

(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?

There is no single practice to prevent various types of fraud, but several ones that operators apply on a risk based approach.

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.

Operators against players

We assume that this type of practice may exist, but only amongst unlicensed Non-EU operators. Our licensing conditions in Malta prevent such types of practices and any attempts to contravene would appear counterproductive as they would damage any operator's reputation. In this respect, Interwetten shares the assessment and conclusion of the Europe Economics 2009 report for the European Parliament in which it stressed that it "found limited hard evidence of gambling operators defrauding consumers. We do not say that it does not happen, but there is little evidence in the public domain and prima facie it happens on a very small scale' ..

Players against players

Player against player fraud is limited to peer-game operations such as poker. However, the respective risk-and-fraud departments of player network and single operators monitor and restrict customer behaviour in line with the principles outlined above.

The Handling of Customer Complaints, finally, is regulated by Part XIV of the Maltese Remote Gaming Regulations 2004. In line with this provision, licensees are obliged by law to inquire immediately into any complaint made to themselves or the licensing authority by registered players. It is also important to note that licensees are to highlight a dedicated, official email-address in their terms and conditions so that customers may refer directly to the licensing authority if not satisfied with the licensee's feedback. Upon receipt of such a complaint, the regulatory authority may either investigate the complaint itself, or else refer the complaint back to the licensee and monitor the handling of this complaint.

(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. 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?

Interwetten looks at the following issues as a priority:

- The role of regulation: There needs to be clear and consistent rules both in terms of prevention and sanctions. All national regulations must have clear penal sanctions against match fixing and provide for effective, proportionate and dissuasive sanctions. Member States should regulate, not operate.
- Education: Greater focus towards education is of paramount importance. This applies to athletes as the first gatekeepers to integrity and the whole sports chain. The necessity and usefulness of the EU Athletes campaign seems to have been realized by other stakeholders as Sport Accord and EU/World Lotteries decided to launch their own education campaign in April 2011, a year after EGBA had already launched its initiative. EGBA members like Interwetten encourage governments to support such initiatives and launch education campaigns
- Greater responsibility and collaboration: Match fixing in sports has many roots and cannot be solely addressed from a sports betting perspective. A failure to recognise this fact would draw the attention away from a wider range of threats to sports integrity as non-betting scandals (Formula One with team Renault, Rugby Union in the UK, cricket in India) has shown. Hence the need for all stakeholders (public authorities, betting operators, sports organizations, players' unions, etc) to accept their responsibilities to prevent those risks and work together (through education programmes or improved exchange of information).

(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?

Sports betting companies and sports organisations are important economic partners in the sports chain (through audiovisual, advertising and sponsorship agreements) and they both have an interest in keeping sports clean.

We are not aware of any evidence that would allow the conclusion that there is any risk in this area.

Our terms and conditions state that employees and their families are not allowed to place bets with their companies. This applies also to the owner and the board of directors.

Sports clubs that have entered into agreements with sports betting companies also have similar rules. If there were any conflicts of interests, EU-licensed operators would lose credibility and trust with their customers and the sports club with their fans. In addition, fraud and manipulation have a material adverse effect on the commercial activities of sports betting operators and leading sports clubs cannot afford to put at risk their reputation. Neither can properly licensed and regulated operators.

This view is shared by the European Sponsorship Association, which said in a recent article that "the European sponsorship market is largely closed to unregulated and illegal gambling operators due to national regulations...and the very purpose of a sponsorship arrangement is to create a positive association between the sponsors and the sponsored party".

Where there may be threats, such threats are likely to come from organised crime and unlicensed operators from outside the EU.

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

Interwetten shares the Commission's views that there is very limited evidence to suggest that EU-licensed operators are exposed to money laundering.

The regulation of the sector combined with the transparency of the internet implies that all transactions are traceable and can be traced back from when a customer signs up, up to when s/he cashes out. All in all, this makes it a highly unattractive environment for fraudsters and money launderers.

EU-licensed operators conduct their business in a regulated environment subject to strict requirements in this area. Strictly speaking, the Third Anti Money Laundering (AML) Directive applies only to casinos within the gaming sector, but like all other EGBA members, Interwetten ensures that all their operations are compliant with the AML, i.e. also products such as sports betting and poker.

We are also aware of a few studies which indicate that the risk of money laundering is modest in comparison to other e-commerce sectors. This includes:

- Professor Levi's study on Money laundering Risk in e-gaming: A European overview and assessment which stated: "In the UK in 2007-2008, out of a total of 210,052 SARs (suspicious activity reports), the gaming sector made 403 SARs (up from 299 in 2006-07), of which 24 involved requests for consent to permit dealing with a person whose transactions they suspected of being proceeds of crime: however there is no breakdown for e-gaming compared with land-based gaming. By way of comparison, there were 33 reports direct from credit card companies, and 280 reports from spread betting firms; 7,299 reports from money transmission firms, and 3,553 from bureaux de change. One SAR from the gaming sector was considered sufficiently indicative to be transmitted to the National Terrorist Finance Unit for further investigation."

In Malta, an article in Maltatoday (16 May 2010) reported that "seven SAR had been received (by the Maltese FIU) since 2008 from casinos and remote gambling companies". The article stresses that "banks and financial institutions remain the top originators of SARs with 76%".

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

As described in Question 12, payment systems used in the gaming sector are commonly used by other sectors such as e-commerce, utilities and telecoms. Therefore the majority of regulations are generic rather than being specific to the gaming sector. For example, e-wallets and pre-paid cards (the basis for most micropayment technologies) are used by the wider e-commerce industry and are as such, authorised and regulated, for instance, by the Financial Services Authority (FSA) of the United Kingdom. Hence they are subject to the regulatory and AML controls already applicable to the financial sector.

For e-wallets Interwetten will only pay out money to financial institution accounts in the customer's name. For all types of payments, Interwetten implements multiple playing pattern checks in order to manage the risk of fraud and money laundering.

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

Interwetten conducts its business in a regulated environment implying that all online gambling transactions are fully traceable.

This furthermore means that all deposit and withdrawal transactions are made via regulated financial institutions, which are subject to regulatory and AML controls in their area and hence perform also Know Your Customer (KYC) checks. The risk of placement of illicit funds into the system does, in other words, strictly speaking not apply to the online gaming environment as no Malta-licensed operator deals directly in cash with their clients.

The inherent traceability of the online sector provides perhaps the biggest deterrent, as it allows Malta-licensed operators to monitor all transactions from when a customer signs up, up to when s/he cashes out in a systematic and holistic manner. Licensed operators' commitment is further proven by the deployment of advanced systems in this area, as well as by the fact that all operators have dedicated staff investigating any suspicious patterns to the fullest extent.

The operators' advanced systems provide a unique possibility to trace and alert of any suspicious activity in real time. Furthermore, in case of suspicious activities, Malta-licensed operators have solid information to provide to the relevant authorities not only about the identity of the client, but also regarding each and every transaction carried out on this particular account.

(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?

There is no evidence of such risk.

There are mostly free-play games on social web-sites (like Zynga Poker for instance). The real question should be to what extent is there a confusion between real-money gambling and free-play games.

(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?

In line with their licensing requirements, Malta-licensed operators have to file suspicious activity reports (SAR) to their local financial investigation units (FIU). The multi-licensing regimes mean, however, that it is not always clear to whom to report (i.e. to which jurisdiction) and what to report.

EU-licensed operators have to report SAR in their jurisdiction of origin. With the advent of multi-licensing regimes, some of the transparency requirements are being duplicated in multiple jurisdictions.

For instance, one operator licensed originally in Malta that has an additional license in Italy will be asked by both the Maltese and Italian regulators to report SAR. The same issue arises with the appointment of a money laundering reporting officer (MLRO) as required by the Third Anti Money Laundering Directive. .

That's one of the reasons why Interwetten believes that a review of the Third Anti Money Laundering Directive is necessary. A revised Directive should take the realities of the online gambling sector at large (the original Directive was drafted for land-based casinos) better into

account and address, among others, issues as mentioned above, i.e. potentially overlapping/contradicting reporting duties between different jurisdictions. This applies, in particular, to tipping-off issues and the risk of parallel investigations.

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?

No, as far as we are aware there are no other schemes in addition to those enumerated in the Green Paper. When discussing the issue of the funding of public interest activities (questions 38 to 45 of the Green Paper), it is helpful to put the matter into proper context. Two questions frequently dominate the public discussion and appear also in the course of this Green Paper Consultation:

1) Does regulating the online gambling market threaten the current funding of ‘good causes’ (see answer to question 44), and;

2) Should online gambling revenues be used to fund ‘good causes’?

The idea of funding ‘good causes’ by gambling revenues instead of taxes or other funds originates in the offline lottery environment. The particular characteristics of monopolistic markets allow for the possibility of certain funding, but this cannot be transposed to online gambling market which is subject to an inherently high competitive environment where international competition is only a click away.

There is an essential difference in the distribution of income and welfare in a monopolistic market compared to a competitive market. In a monopolistic market there is one operator that can set the prices and provides the demand for the product. Not only does that lead to a welfare surplus for the producer to the detriment of the welfare of the consumer (due to higher prices and less choice), but it also creates excess profit. These are profits above the normal return on investment.

In a competitive market, an undertaking can make large (so-called excess) profits in the short run but this will inevitably attract competitors who can freely enter the market. Competition will drive down prices, eventually reducing excess profits to normal profit. However, a monopoly can preserve excess profits because barriers of entry prevent competitors from entering the market.

As the market functions in a very different way, it is impossible to transpose the system of funding of good causes based on a monopolistic market to a highly competitive market. For a competitive market like the online gambling market, the contribution to the funding of public interest activities is best ensured through the taxation system of the respective jurisdictions.

(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?

The figures on the proportion of online gambling revenues redirected to sports are incomplete because of the current regulatory situation and restrictions across the EU.

In order to solve this problem, the European Commission should enforce the rules of the Internal Market in a consistent and systematic way. This will allow EU-licensed operators to have access to national markets and optimize funding opportunities for sports.

Instead, EU-licensed operators have limited opportunities to generate revenue for sports because of the sponsorship and advertising restrictions in place in most Member States.

In Italy and the UK, some figures are, however, available.

- In Italy, grassroots sports and sports organizations benefit from the involvement of the gambling industry which is illustrated through the Italian regulatory model. The Italian fiscal system for the whole gambling market (offline and online) generated in December 2010 EUR 470 million which were redistributed to the Italian Olympic Committee. Of these EUR 470 million, EUR 250 million are redistributed to all federations while the other EUR 220million are redirected to the Italian Olympic Committee and activities such as anti-doping controls, education, etc.

- Figures for Italy provided by MAG in 2008 estimated that the total gambling market contributed EUR 118 million in advertising and sponsorship.
 - In the UK, a study produced by the Remote Gambling Association (RGA) entitled “Sports betting: legal, commercial and integrity issues” in January 2010 concluded that EUR 3.4 billion per year goes to EU sport alone, with EUR 2.1 billion (62%) contributed by private gambling companies. This figure according to the RGA, however, “does not include the considerable amounts directed from lottery funds to Olympic sports, as the “amount of gambling support to Olympic sports (which comes almost exclusively from lottery operators) fluctuates so widely from year to year that [Europe Economics] concluded that it could be misleading to include them.”
 - This very comprehensive study provides extremely useful statistics on sponsorship and advertising opportunities offered by the UK market. Some key figures include:
 - Football sponsorship in England: Figure 5.12 showed that in 2009/10 “seven (or 35%) of the twenty Premiership teams were sponsored by a licensed gambling operator at a cost approaching EUR 20 million”
 - Football sponsorship across Europe and United States: According to Sports Pro Magazine in April 2009, for the top leagues in England, Germany, Spain, Italy, France and the USA, the statistics show that “sponsorship from gambling companies with football clubs in those leagues equated to more than EUR 72 million”, or nearly 15% of the total global sponsorship deals.
 - Sponsorship across other sports: Figure 5.13 of the same study shows that licensed gambling companies also invest in so-called secondary sports like handball with the sponsoring of various teams and tournaments in several European countries.
- Finally, the question of redistribution should be put into perspective and also consider the proportion of offline gambling revenues redirected to sports. After all, the offline gambling market (both lotteries and casinos) represents almost 90% of the total gambling market.
- When it comes to grassroots funding, it is to be said that there is no direct link between private gambling operators and grassroots sports, except for an historical use of gambling income in some countries. The principal funder of grassroots and mass participation in most countries appears, therefore, to be the public sector.

(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 instance for sports.

Currently, a number of Member States fund selected public interest activities through revenues from offline gambling activities. The schemes referred to here are schemes linked to the offline gambling market. Based on the current and projected market figures, the offline market in Europe has grown and will continue to grow in real terms. Thus, (the growth of) the online market does not jeopardize the offline market and therefore neither the revenue generated by schemes based on the offline market.

On the contrary, the regulation of the market creates other and new sources of revenue that can be to the benefit of (public interest) activities like in Italy where grassroots sports and sports organizations benefit from the involvement of the gaming industry. By allowing sports sponsoring and common advertising with a reasonable gaming taxation, Italy doubled the revenues for the Italian Olympic Committee from EUR 255 million in 2003 to EUR 450 million per year between 2005 and 2008 (MAG Study, page 31).

A note of caution is warranted on the use of the term “free-riding”. “Free riding” is derived from the economic and public policy theory of public goods. The use of this term suggests that there are public goods being used but not paid for. As far as we are aware, there are no online gambling service providers making use of public goods without paying for it in any Member State. The use of the term “free riding” in the context of the Green Paper on online gambling, whether in quotation marks or not, could therefore be read as suggestive and misleading.

Likewise, the term “national public interest activity” is not defined and might be open to misunderstanding and misinterpretation. For instance, the French government argues that a horse-racing levy is legitimate as horse husbandry is a service of general economic interest. Although this argument is likely to be settled as the levy is subject of a State Aid investigation (C 34/10), it does evidence that such terms need to be used with caution.

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

We are not aware of such obligations. Moreover, the CJEU seems to say that such practices would not be acceptable for monopolies in its “Stoss” ruling on 8 September 2010, C-316/07 (points 100 – 106).

According to the Court, when a Member State chooses to have a monopoly, its advertising must be ‘strictly limited to what is necessary in order thus to channel consumers towards authorised gaming networks. Such advertising cannot, however, in particular, aim to encourage consumers’ natural propensity to gamble by stimulating their active participation in it, such as by trivialising gambling or giving it a positive image due to the fact that revenues derived from it are used for activities in the public interest, or by increasing the attractiveness of gambling by means of enticing advertising messages depicting major winnings in glowing colours.’

The Court prohibits monopolies from using image campaigns based on the financing of so called ‘good causes’ to entice consumers to gamble.

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?

Interwetten clearly supports multilateral cross-border cooperation (while bilateral agreements are by definition selective) and in particular a European approach in the light of the clear fragmentation of the market.

The existence of GREF and some bilateral agreements have yielded very little results so far and it is unclear what the practical effects of these agreements are going to be.

With European markets gradually opening up, there is a strong possibility that the EU-licensed operators will be subject to 27 mini licensing requirements. This will clearly lead to duplications which are both excessive in terms of administrative and financial requirements. Some suggestions for areas of cross-border cooperation include:

- The taking into account of certain licensing requirements
- Consumer protection
- Licensing procedures
- Exchange of scientific data

Fraud and money laundering: This is one area where there is already obligation between financial investigation units to cooperate with one another. However, reporting procedures and duties often vary from one country to another, hence the need for better cooperation.

In this context, we would like to emphasise once again that the online gambling industry is facing major administrative and other difficulties due to fragmented national regulatory systems and practices for the licensing of online gambling services. Thus, we encourage the Commission to work towards establishing a pan-European legal framework for the online gambling industry - a significant part of the European e-commerce sector.

(49) Are you aware of enhanced cooperation, educational programmes or early warning systems as described in the Green Paper that are aimed at strengthening integrity in sport and/or increase awareness among other stakeholders?

Education programmes

As an EGBA member, Interwetten is aware of such cooperation and has actually been working for over a year with the European Sports Security Association (ESSA) and EU Athletes, the European umbrella organisation representing players unions across Europe, to educate players on the reality of sports betting.

This programme is particularly noteworthy since it is actually EU Athletes that approached EGBA in the first place because there was 1) a real information problem on the ground and 2) because their sports federations had no rules on sports betting (or failed to communicate them effectively to athletes).

A unique feature of this campaign is the employment of ex-players and top athletes to go into the dressing rooms and have face-to-face discussions with their peers about how to behave properly in relation to sports and betting.

This programme is in its second year and has now been combined with the Remote Gambling Association (RGA) and the Professional Players Federation (PPF) in the UK and will target over 8,500 athletes across 4 countries and 7 sports. Through a common code of conduct, professional athletes are taught about the fundamental principles to respect when it comes to sports betting. This includes:

- Knowing the rules of the game
- Never betting on yourself or the opponent
- Never betting on other events within your sport
- Being careful about sensitive information
- Not seeking to fix an event or part of it
- Reporting any approaches for match fixing

There seems to be a growing awareness among federations and regulators that education is crucial in this area as athletes are the first gatekeepers to integrity. This is illustrated by the recently announced Sport Accord and EU/World Lotteries, FIFA and Interpol education programmes which were both launched in April 2011, a year after EGBA had already launched its initiative. EGBA members encourage governments to 1) have clear rules on betting and 2) support such initiatives through education campaigns.

Part II. Early warning systems

EGBA members have been working since 2005 with ESSA to detect suspicious betting patterns and alerts sports regulators by providing their disciplinary and legal departments with an electronic trail of data. ESSA has signed Memorandums of Understanding with leading sports bodies such as FIFA, UEFA and has established close cooperation with the IOC. The costs related to the ESSA system are entirely borne by the betting operators and are provided free of charge to the leading sports federations.

(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 this stage, we are not aware of any cross-border initiative in this field. A safe and secure online gambling market can be best achieved through attractive and competitive regulation in line with EU law. Restrictions such as financial and ISP blockings of online gaming services are inefficient, easily to circumvent and drive consumers away to the 'black market'. The current reform in France is an excellent example, where 57% of the market is still in the hands of the 'black market'.

ISP blockings or any similar measures would contradict the principle of net neutrality, i.e. the principle that the Internet should remain open for all users and no content or content providers

should be prioritised or downgraded. The Commission has recently held a consultation on this issue and the majority of respondents to the consultation have confirmed their commitment to an open and neutral Internet. Similar polls confirm that outcome.

In any case, such restrictions are highly questionable from many perspectives:

- First, under EU law, these restrictions have already been addressed by the European Commission in a number of Member State notifications (Belgium, Poland, Denmark, Cyprus, France, and Italy) as well as an infringement case (Germany).
- Second, such restrictions must be the subject of a clear legal basis that does not infringe the basic principles (i.e. right of information and privacy) of the EU Charter of Fundamental Rights (see Advocate General's Opinion in Case C-70/10).
- Third, from a practical perspective, consumers and operators can easily circumvent these blockings either by the use of changed IP addresses, proxy websites, alternative payment mechanisms (e-wallets, pre-paid cards), foreign bank accounts or altered MCC codes.
- Last but not least, there are strong doubts as to how effective these measures are:
 - In Norway, the Norwegian Gaming Authority's preliminary evaluation six months after the introduction of a payment blocking ban showed that 52% of Norwegian online gambling players still managed to use credit or debit cards with foreign websites.
 - In France, the new regulator has requested the ban of 125 'black market' websites. However, the application of the law continues to be difficult due to the lack of agreement between the French regulator and ISPs concerning the liabilities for the costs of banning a website. One of the consequences is that the 'black market' in France is still greater than the official licensed market (57% versus 43%)..
 - In Belgium, Belgian banks members of Febelfin (Belgian federation of financial sector) told the Belgian gambling commission that they would not participate in tracking illegal online gambling website.

Finally, Interwetten would like to stress that such restrictions are simply not in line with the goals of SEPA (Single European Payment Area), which aims to establish a true single market for financial and other banking services

(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?

Regarding ISP (Internet Service Providers) blocking, on 14 April 2011, the Advocate-General Cruz Villalón considered in the Belgium CJEU Scarlet case (C-70/10 Scarlet/Sabam) that a measure ordering an internet service provider to install a system for filtering and blocking electronic communications in order to protect intellectual property rights, in principle, infringes fundamental rights. The Advocate-General's recent opinion insists on the need to ensure that the legal basis for imposing restrictions on internet access is sufficiently precise and predictable. A legal provision which provides that persons facilitating illegal gambling commit a criminal offence does not meet these requirements. The final ruling is to follow by October 2011.

The role of Belgian ISPs with respect to their subscribers' access to online gambling websites is limited to the mere transmission of information over their network i.e. "mere conduit". By virtue of article 18 of the e-commerce Act, these mere conduit ISPs cannot be held liable for the content transmitted. Accordingly, they cannot be held liable by the Gambling Commission or a criminal court for alleged infringement consisting in a refusal to implement domain name server (DNS) blocking with respect to gambling sites without a specific legislative intervention. References to the explanatory memorandum of the Gambling Act suggesting the opposite do not change this analysis. Article 18 of the e-commerce Act, which implements article 12 of the e-Commerce Directive, should clearly prevail on the basis of the primacy of EU law.

The fact that gambling is excluded from the scope of the e-commerce Directive does not affect this conclusion either. This exclusion only implies that gambling providers cannot benefit from the mutual recognition principle laid down in article 3 of the e-commerce Directive. However, it does not affect the provisions determining the liability of online intermediaries. The latter are not offering gambling services and, hence, are not covered by the exclusion. They benefit from the liability provisions of the e-commerce Directive regardless of the nature of the content transmitted, stored or hosted.

ISPs cannot be made subject to a general obligation to monitor traffic transmitted over their network (article 15, 1° of the e-commerce Directive, 21, 1° of the e-commerce Act).

It should also be emphasized that the access to and usage of the internet is increasingly considered to be a necessary component of the exercise of fundamental rights and freedoms.

The new article 1.3.a of the Framework Directive for electronic communications (Directive 2002/21/EC modified by Directive 2009/140/EC) provides the following :

"3a. Measures taken by Member States regarding end users access' to, or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law.

Any of these measures regarding end-users' access to, or use of, services and applications through electronic communications networks liable to restrict those fundamental rights or freedoms may only be imposed if they are appropriate, proportionate and necessary within a democratic society, and their implementation shall be subject to adequate procedural safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with general principles of Community law, including effective judicial protection and due process. Accordingly, these measures may only be taken with due respect for the principle of the presumption of innocence and the right to privacy. A prior, fair and impartial procedure shall be guaranteed, including the right to be heard of the person or persons concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms. The right to effective and timely judicial review shall be guaranteed."

This provision confirms the status of consumers' access and usage of the internet as narrowly linked with fundamental rights and freedoms.

Other comments on issues raised in section 2.4

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Other comments on issues raised in the Green Paper

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