

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:

CODERE, S.A.

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?

Even in light of the fact that online gaming is no longer a purely theoretical concept and taking into account that the reported numbers of many very successful and publicly traded companies that are in the business show a tremendous growth and look forward to further increases, consolidated and reliable data are scarce in the industry.

Market studies are available upon request from specialized consultancy firms as H2 Gambling Capital, Global Betting and Gaming Consultants (GBGC) (in particular, see the Global Interactive Gambling Market Report <http://www.igamingbusiness.com/content/online-gambling-rise>) and Gambling Compliance, regarding certain jurisdictions. Unfortunately, data

is scarce and contradictory in this industry as a general feature and, to the best of our knowledge, there are no up to date EU-wide studies on the online gambling market.

Pricewaterhousecoopers (PWC) has carried out a survey named “Perspectiva Global de Medios y Entretenimiento”, 2008 – 2012 which comprises only certain Member States (Austria, France, Germany, Hungary, Ireland, Sweden and the UK) where total GGR is estimated at approximately 2,315 million USD in 2008 and 2,484 million USD in 2009. Taking into account the proportions of gaming activities within the EU, PWC estimates that another 40% should be added to the above figures.

Another additional source of market data is the American Gaming Association (AGA), which provides the following data (excluding online betting):

Gambling and betting market (GGY, \$billion)

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
EU	85.3	96.5	98.3	104.6	111.7	118.6	125.3	131.0	135.5	139.7
US	86.9	98.5	100.1	105.6	109.7	115.0	120.8	125.3	129.3	132.8
US*	72.9	78.8	84.4	90.9	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
World	253.6	283.0	295.0	310.8	335.2	351.9	363.8	375.0	383.8	391.7

Hence, as back in 2006 (“STUDY OF GAMBLING SERVICES IN THE INTERNAL MARKET OF THE EUROPEAN UNION” by the Swiss Institute of Comparative Law), we would recommend a more in-depth and cross jurisdictional ad hoc study to be entrusted by the EU Commission to a specialized consultancy or public institute.

As regards the Spanish market, there is a study by the Association of Internet Betting (AEDAPI – Asociación Española de Apostadores por Internet), which, regardless of its name, is composed by some of the leading online gaming providers like, bet24, Betfair, Ibero Bet, Botemanía, Paysafe etc., <http://www.aedapi.com/website/> on the Spanish online market that can be requested by the EU Commission.

The Spanish Ministry of Home Affairs (Ministerio del Interior) published a yearly report on gaming in Spain (Informe Annual del Juego), which has recently been published for the year 2010 under the following link:

http://www.mir.es/SGACAVT/juegosyespec/juego/memorias_de_juego/. The latest published report does not contain any information on online gambling (as, until 1 January 2012 or the date of granting of the first license in Spain, whichever the earliest, the offering of online gaming is illegal in Spain). The report only contains information regarding the so-called “internet distribution channel” of the Spanish national Lottery, which, in terms of total stakes wagered, grew 53.74% from 2009 to 2010. It must be noted that the starting figures upon which this increase is calculated were very low.

Also, the Spanish Telecommunications Commission publishes a quarterly and yearly report on e-commerce transactions http://www.cmt.es/es/publicaciones/anexos/INFORME_CE_IV-2010.pdf (link to their latest publication), is broken down by sectors, one of them being “games of chance and betting”, which has been the leader for the last quarter of 2010, making up 8.2% of the overall e-commerce transactions.

(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)

We are not aware on any specific studies on the black market, as, for obvious reasons, the sourcing and processing of data from illegal activities is not straightforward.

Online gambling has been a “grey market” for some years in many jurisdictions.

As far as Spain is concerned, it has been (and still is until 1 January 2012 or the date on which the first license is granted, whichever the earliest) a black market. Online gambling was (and still is) an illegal activity categorized as a “smuggling crime” by Spanish criminal laws (Organic Law on Smuggling, Ley Orgánica de Contrabando, and complementary regulations regarding games of chance).

To date, the regulations of the 17 Spanish Autonomous Communities (Comunidades Autónomas), which have assumed exclusive powers to regulate gaming activities within their respective territories (and some of which have developed their own online gaming regulations), coexist with Law 13/2011, of 27th May (hereinafter, “Law 13/2011”), which entered into force on the 29 May 2011 and regulates state wide online gambling. Under the transitory regime set out in Law 13/2011, the relevant criminal regulations remain in force until the earlier of 1 January 2012 or the date on which the first license to carry out online gambling activities is granted. Thereafter, the administrative sanctions regime comprised in Law 13/2011 will come into force.

Law 13/2011 establishes a two-tier licensing system, which is made up by so-called general licenses (one per category of games of chance, i.e.: raffles, betting, contests and “other games”) and specific licenses (one per each type of game carried out within each category).

The study by AEDAPI states that the market is about 315 million EUR in profits (this comprising only the main players). Other sources have established that the GGR in Spain may be between 400 and 700 million Euros.

Also, the latest quartely report from the Spanish Telecoms Commission indicated that, during Q4 2010, the total revenues from e-commerce in Spain amounted to 1,911 million Euros, from which approx. 6% are attributable to "games of chance and betting". Hence, only during Q4 2010, "games of chance and betting" generated e-commerce revenues (it should be noted that the Telecoms Commission only reports payments processed through domestic entities) of around 114.6 million Euros. Given that, as set out above, online gaming in Spain is illegal at least until 1 January 2012, 100% of such revenues may constitute a fair proxy to size the Spanish "black market" to be around 458.6 million Euros (on an annual basis).

As stated above, data is unreliable and limited.

(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?

EU licensed operators have had a notorious presence in the Spanish market over the last 5 years despite the aforementioned criminal regulations being in place.

Some of the most notorious players present in the Spanish market are: Pokerstars, Betclic, Bwin/party, bet-at-home.com, bet365, betfair, Sportingbet, Unibet, 888.com. Publicity regarding these sites is shown all over the Spanish sports press.

In particular, bwin/party has an ongoing sponsorship agreement with Real Madrid Club de Fútbol, which has been recently challenged in courts by the Spanish listed gambling company Codere, S.A. as constituting illicit publicity. Other online operators have also sponsored Spanish football teams over the past years: (a) Atlético de Madrid: www.paf.com - <http://www.clubatleticodemadrid.com/index.php?op=3> (sponsor); (b) FC Barcelona: www.betfair.com - <http://www.fcbarcelona.es/web/castellano/empresa/patrocini/patrocini.html> (official supplier); RCD Espanyol: www.interapuestas.com (main sponsor) - <http://www.rcdespanyol.com/principal.php?modulo=estatico&idcontenido=91&idmenu=932&idsubmenu=948&nombremodulo=patrocinadores> - (main sponsor); Getafe CF: www.misterapuestas.com (www.betvictor.com) - <http://www.getafecf.com/>; Levante UD: www.betvictor.com - <http://www.levanteud.com/> (sponsor); RCD Mallorca: www.bet-at-home.com (sponsor) - http://www.rcdmallorca.es/principal_new.php?idioma=1; Real Sociedad: www.reta.eu (sponsor) - <http://www.realsociedad.com/caste/home/real.asp>; Sevilla FC: www.12bet.com (sponsor) - http://www.sevillafc.es/_www/index.php; and Valencia CF: www.es.unibet.com (sponsor) - <http://www.valenciacf.com/es/Home/index.html>.

This agreements contravene general code of conduct recommendations regarding the convenience of banning sponsorship of teams, events or sportspeople over which bets are taken, branding of children's replica kits and other recommendations contained, among others, in Council of Europe, European Parliament and relevant gambling authorities (like the UK Gambling Commission) papers.

Online operators have carried out publicity campaigns, with advertisements being inserted in the sports press and radio mainly and also via banners on the internet. Data is scarce and unreliable, as the official reports from the Ministry of Home Affairs and the CMT are, as stated above, contradictory. Most online operators are publicly traded companies and, hence, are under reporting obligations. Such reports however, are not always conclusive and sometimes do not breakdown activities carried out in the Spanish market.

As regards the impact on the market and the consumers derived from the activities carried out by the online gambling operators in Spain, it should be noted that this new part of the gambling market has flourished alongside a more individual player profile, who play in private in their homes from their private terminal and, hence, lead to a shift in the spending on betting and other games developed in tightly controlled licensed "land-based" premises to the internet, which has lesser social constraints and restrictions (at least until the full set of regulation in Spain is in place) and, on top of it, is available 24/7. As shown in some recent studies, having others watch you play has a protective effect ("Audience Influence on EGM Gambling: The Protective Effects of Having Others Watch You Play" - Matthew J. Rockloff and Nancy Greer. Journal of Gambling Studies, August 2010). At the same time, there is an unavoidable demand for online gambling.

Online operators have carried out their activities in Spain in an illegal black market, without a license in Spain (characterized as a crime), without paying gambling taxes or VAT (as opposed to the high level of taxation charged on the land based operators) and under a general attitude of tolerance from the Spanish competent authorities due to the fact, at least to some extent, that there were some doubts as to which authority (regional or central) was competent to prosecute the provision of illegal online gaming.

Law 13/2011 has not clarified under which circumstances such illegal operators will now be able to enter the newly regulated Spanish online gambling market. It does not deal with the potential payment of past overdue taxes (it only states that license applicants need to be “up to date” on their taxation liabilities, a concept which is yet to be clarified by the Spanish government) nor with the use of the data bases developed during such period or the brands used to carry out massive and aggressive publicity of the illegal activity. The “distance factor” (i.e. the fact that the operator is “far away” from where the consumer is playing) is key as it heightens the risks to which the consumer is exposed (misuse of personal data, fraud, gambling addiction etc.), something which has been widely recognized by regulators and stakeholders. This situation results in a severe unfairness from a competitive perspective for land based traditional operators who chose not to carry out forbidden online gaming activities vis-à-vis a series of operators who went down that route despite the existing prohibition.

Spanish consumers playing online up to this date have not benefited from the protection of Spanish consumer regulations (as the operators were operating outside the law and not subject to any requirements) and where under a substantial amount of legal uncertainties regarding claims (for example, competent courts and applicable law to settle) and fraudulent transactions. Also, no taxes are withheld regarding the prizes won by Spanish customers, as set out in the Spanish income tax law.

As stated in the European Parliament resolution of 10 March 2009 on the integrity of online gambling, online gambling involves a series of extra-risks due to the privacy and isolation of the player (minors, in particular), the lack of social control and the easy and 24-hour access and availability. In addition, online gambling operations can be easily set up and undone, servers may be, according to Law 13/2011, be located outside the EEA (although they need to be set up in a way that permits real time monitoring by the Spanish National Gaming Commission) and this causes additional difficulties to control operations and to enforce any sanctions or precautionary measures.

In fact, enforcement obstacles are becoming increasingly challenging as they need to be taken over a de-localized space where players from various nationalities may concur and need to overcome different approaches regarding online gambling. It is crucial that authorities and enforcement bodies cooperate effectively.

(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?

There are various non-EU operators present in Spain (mainly offshore jurisdictions like Antigua and Asian players, see list above of sport teams sponsorships). Gibraltar is also in a special situation: it is the point of access of most of the websites that offer online gaming in Spain and is not considered to be part of the VAT territory, which puts them in the same situation as non-EU operators as to the obligation to pay VAT for services rendered to Spanish consumers.

It must be noted that some of the operators sponsoring Spanish teams (see 3 above) operate under licenses from the Isle of Man (Pokerstars), Tasmania, Australia, Gibraltar etc.

The impact of their presence on the market and consumers is the same as stated under (3) above. In this case, the impact on consumers is even accentuated as the “distance factor” is increased.

(5) If any, which are the legal and/or practical problems that arise, in your view, from the jurisprudence of national courts and the CJEU in the field of online gambling? In particular, are there problems of legal certainty on your national and/or the EU market for such services?

There have been no rulings from the national courts regarding online gaming activities and/or claims from consumers related thereto, to the best of our knowledge.

No questions were ever raised regarding online gambling operators activities' in Spain apart from the lawsuit that the listed company Codere, S.A. filed against Bwin and Real Madrid C.F. earlier this year for illicit publicity and which is currently under review by the Central Mercantile Court of Madrid.

Online gambling was (and still is, see (2) above) illegal in Spain and has been tolerated by the Spanish authorities ever since and even now, during the transitory period, such tolerance persists (the presence of online gambling providers in Spain is still notorious and it is still possible to play on their websites being a Spanish resident) during the transitory period of Law 13/2011 causing a fair amount of legal uncertainty for those operators (namely, the traditional licensed land-based operators and other EU licensed operators that are not present in Spain), which chose not to pursue online activities (despite them being very lucrative), because it was illegal and may have caused serious damages to public revenue sources from the Spanish national lottery monopoly. Hence, we believe that Spain has not implemented gaming regulations in a consistent and systematic way.

Law 13/2011 does not provide for a level playing field when allegedly regulating the online gambling market for the first time in Spain as the prior black market situation is widely ignored. As a consequence, the players entering this "new" market are not starting off from the same grounds. If nothing changes, in the current regulatory landscape that is being developed by the Spanish Ministry of Economy and Finance regarding Law 13/2011, the operators that have been providing online gaming services in Spain illegally will start the "run" with at least 20 rounds of advantage.

The provision of online gambling services should be conducted within a regulated and well-monitored legal framework and, as recommended by the European Parliament, effectively controlled by the Member State of the residence of the consumer, who should be able to limit and supervise. Currently, the regime set out in Law 13/2011 regarding consumer protection and monitoring measures is very limited and are going to be developed by a further piece of legislation, a draft of which has been made available during the second week of July 2011 and which contains a series of general measures and commitments from licensed operators regarding consumer protection.

CJEU rulings have historically prompted EU Member States to open up and regulate their online gambling markets in order to provide legal certainty and protection against fraud, money laundering and manipulation. A good example for this is Italy. The challenge is to bring together the demand of consumers to play online and the need to monitor and protect such demand.

In Spain, under the newly enacted Law 13/2011, there are still a series of open issues (which may or not be tackled by developing regulations) to integrate a market where cross-border and local provision of online gambling services is prohibited without the prior issue of a license by the National Gambling Commission but where no actual measures (both personal and technological) are developed in order to assure that the rules are enforced and the consumers are successfully protected by the regulation.

Some legal and practical problems:

- Enforcement of measures against illegal provision of online gambling services: Such operators have had a presence in the Spanish market and have offered gambling services in Spain without a license, without paying taxes and without control from the Spanish authorities, which have opted for a quiet tolerance attitude up until May 2011, when Law 13/2011 was enacted by the Spanish Parliament.
- no means of controlling the activities of online operators when servers are located outside the EU and even when location is within the EU, as there are no compulsory cooperation obligations within competent authorities (by way of example, some steps have been taken in this respect like the signing of the MOU between AAMS and ARJEL).
- establishment of a level playing field among offline and online operators in a jurisdiction, such as Spain, where traditional land based operators were unable to advertise and refrained from engaging in online gambling activities (as they were illegal) whilst other operators chose to enter the Spanish market offering cross-border gambling services to Spanish residents without a license, without paying taxes and with aggressive marketing campaigns.

Uncertainties:

- State wide online gambling regulation has just been enacted (end of May 2011) and is yet to be developed. Currently, the transitory regime is in place.
- Establishment of a blackout period for operators which have carried out unregulated activities within the Spanish market. The Spanish authorities have not considered this option, which, in our opinion, would be the only way to re-establish, to some extent, the asymmetries existing between the operators that have chosen to refrain from carrying out illegal activities in Spain and those who have not.

(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?

Online gambling is particularly dangerous due to its large accessibility and immediate results and, hence, its consistent and sensible regulation should be top priority for the EU Commission.

We are no longer in the world of fragmented local regulations at Member State level, which protected historical fiscal monopolies, such as the Spanish state lottery operated by SELAE (Sociedad Estatal de Loterías y Apuestas del Estado). This may not be enough in the internet era, which is transnational and cross border by definition.

Over the last 7-5 years, a black market of online gambling services (mostly dominated by licensed companies from Gibraltar, Malta and the Isle of Man) has developed in Spain. The new regulation implemented by Law 13/2011 comes on a little too late and has still too many surrounding uncertainties. The Spanish government is not going to regulate the establishment of a blackout period and, as a consequence, operators that have been carrying out unlicensed business in Spain without paying taxes will not need to pay their taxes up to a certain date in

order to be suitable to apply for a license (article 9.6 of Law 13/2011 states that it is necessary for applicants to be “up to date” on their tax obligations) and will be able to benefit from publicity and marketing campaigns and utilize player data bases developed during a period where the underlying activity was illegal.

In our view, the regulation of gambling in Spain is not consistent as there are, on the one hand, the traditional land based operators that have refrained from entering the online business during the time where it was illegal in Spain and that now will have to compete in a market under disadvantageous conditions vis-à-vis online players, which will not suffer any type of penalty for having illegally provided services to Spanish customers over the past years and will be able to profit from their brands, past aggressive marketing campaigns and player databases.

On the other hand, the Spanish government has enshrined the monopoly regarding state wide lotteries for the benefit of two incumbent operators: SELAE and ONCE, the underlying motives being the ones that are usually employed to justify such monopolies under EU regulations, that is, reasons of overriding interest such as the protection of consumers against fraud, manipulation and money laundering. As it has been widely announced in the press, SELAE is due to IPO in the autumn and 30% thereof will be put in “private” hands after the flotation on the Spanish Stock Exchanges takes place.

Currently, under the regime set out in Law 13/2011, SELAE has an ex lege license regarding state wide lotteries (developing legislation will have to further specify the scope of the term lotteries, as its current definition in article 3 b) of Law 13/2011 is too wide: “gambling activities which award a prize in the event that a certain number or combination of numbers or signs, expressed in a coupon or ticket or electronic equivalents, match, in whole or in part, those determined by way of a draw or event that takes places on a certain date or in a program (in the case of instant or pre-drawn lotteries) that have been previously determined. Lotteries will be sold by way of tickets, coupons or any other form of participation whether material, electronic, telematic, telephonic or interactive”) and will be awarded a general betting license (and any related specific licenses) necessary to keep developing the games that SELAE has been offering until the date of enactment of Law 13/2011 in one year’s term, which include the so-called “quinielas” (sports and horserace betting). Also, SELAE will be able to compete in the market with private operators by way of requesting the relevant licenses under the same requirements.

Question is: how will SELAE manage to separate the public monopoly activities from the “private” activities that it will be able to develop in the future? Will they be able to use the brand “Spanish State” for such games? How will cross- subventions be avoided?

Also, SELAE is known for its massive publicity campaigns which, in light of the latest ECJ jurisprudence are not consistent with the overall purpose of the monopoly itself.

Also, the tolerance that the Spanish government has shown for the notorious presence of illegal online gambling in Spain for the last 5 years or more is not in line with the general public interest reasons that are put forward to preserve the lotteries monopoly.

Other comments on issues raised in section 1

We recommend the Commission to undertake EU-wide market studies to be able to assess the real size and implications of the online gambling market.

The Commission should support and encourage Member States to prosecute illegal provision of online gambling services and to develop rules and legislation to establish a level playing field for gaming operators who wish to enter the online market and with the aim to ensure that public interest and protection against fraud and money laundering are the objectives pursued by the relevant regulations.

The Commission should examine the privatisation of the Spanish lotteries to ensure that it is not in breach of TFEU rules.

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?

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

Law 13/2011 takes the following approach: It defines gambling as “any activity which involves wagering money or any other economically valuable object in any way over future and unknown results, which depend to a certain extent on chance and which can be transferred among the participants, regardless of whether a certain degree of player skill or just fundamentally luck or chance predominate. Prizes may be in cash or in kind, depending on the type of game” (Article 3 a)).

Furthermore, the Law defines “gambling via electronic, IT, online or interactive means” as “those where any mechanism, installation, equipment or system is used which allows to produce, store or transfer documents, data and information, including any type of communication network both open and restricted, such as TV, internet, fixed line and mobile phones or any others, or interactive communication both real time and prerecorded” (Article 3 h)).

(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?

Under the current scheme set out by Law 13/2011, only duly licensed operators may offer games of chance. Hence, if certain media wish to offer games in Spain, they will need to set up a gambling operator and obtain the relevant licenses.

Moreover, the media are under an obligation to check that a given operator holds the necessary license before inserting or disseminating any publicity related to such operator or any games offered by it.

As regards promotional games, Law 13/2011 distinguishes the so-called “random combinations with a promotional or publicity purpose”, which are not considered “gambling” (but do pay gambling taxes) as “draws that have an exclusive underlying promotional or publicity purpose regarding a certain product or service and which requires the consumption thereof as the only consideration, without any other type of payment being involved. Such

draws may award prizes in cash, kind or services and will require the participant to be a client of the entity that is the subject of the relevant publicity or promotion” (Article 3 i)).

(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, at the moment only national duly licensed operators (at regional- Autonomous Community level) offer games in licensed premises and there is no option to play online within such premises. However, we expect a convergence trend to make its way in the gambling market whereby players will be able to gamble both offline and online using the very same means (ID, credit account etc.)

(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?

Gaming has been left out of EU secondary legislation (although it is subject to the general principles of the TFEU) due to the diverging policies and historical interests that have made regulation at Member State level a more practical option (in this sense, the EU has even recognized that prohibiting gambling altogether is a valid choice).

Nonetheless, the arrival of online gaming has posed new challenges to this original model, which is now seemingly being put under stress.

The advantage of regulation at local level is firstly that, the more localized the control (i.e. at Member State level, or even at regional level within each Member State, as it happens in Spain for land base gambling where the competent authority is each Autonomous Community), the more closely monitored the market is and the more possibilities there are for a certain Member State to tackle the “overriding reasons of public interest” that enable it to regulate and control the gaming sector and restrict the activities that are carried out. This has been traditionally recognized at EU level (and also by the GREF) and this is precisely why online gambling was not included in the Services Directive as it is not an ordinary service. Lately, this has also been recognized by the Internal Market and Consumer Protection Committee of the EU Parliament in its draft Report laid out by Mr. Jürgen Creutzmann.

However, this may only be true when speaking of traditional land-based gaming. Online gaming is a “worldwide” phenomenon and, hence, may require a harmonized regulation in order to be effectively controlled and enforced, if necessary, at least at some level.

To the contrary, the main disadvantage of fragmented regulations is the lack of mutual recognition and the possibilities for cross jurisdictional arbitrage that arise as a consequence. As the regulations are so different, a given Member State cannot always assess the suitability of an operator only on the basis of the fact that it is lawfully conducting business in another Member State. If regulations are harmonized, both such problems would be solved, as the same requirements would apply in all EU jurisdictions and even permit a “passporting” system, similar to the existing regime for financial and securities services.

Also, for an operator it is not efficient, from a purely economic standpoint, to request a series of different licenses when wishing to operate at EU level in various Member States and lays out grounds for potential measures of equivalent effect (e.g. technical requirements), favoring the “domestic” players, that cannot be justified for reasons of public interest.

Internet is a worldwide phenomenon which is difficult to control on a “localized” level, in particular, where equipment and servers can be located outside the EU (as in the Spanish case).

Other comments on issues raised in section 2.1

Currently, the regulations developing Law 13/2011, as the key piece of legislation regulating the Spanish online gaming market, are in draft form. The Commission should procure that such regulations are revisited in light of the TFEU principles.

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?

A) Promotion of online gambling – Commercial Communications (TV advertising, Printed press advertising; On-line commercial communications; Sales promotions; Direct marketing (which includes direct mail, primarily by e-mails and SMS to registered customers, for example personal follow-up contacts); and Sponsorship agreements):

Law 13/2011 states in Article 7 that according to Law 34/1988 (which is the General Law on Publicity in Spain) any advertising, promotion or sponsorship, in any form, of games of chance or luck and the publicity or promotion of gaming operators is prohibited without a prior authorization to carry out such publicity, promotion or sponsorship contained in the relevant license granted to the gaming operator. Hence, until the date where the first licenses are granted in Spain, the publicity promotion and sponsorship of gambling or operators is prohibited.

Law 13/2011 is a general law which is currently being developed by at least three sets of regulations, one of them being specifically aimed at regulating, among others, the sending of publicity communications by email or equivalent electronic means (which will only be permitted when previously allowed by the receiver), the inclusion of ads, commercials and other publicity communications of games in the media and other publicity channels, the sponsorship of sports events over which bets will be taken, the insertion of publicity of games in locations where events over which bets will be taken are taking place, the structuring of TV contests and the information to be provided on the essential requirements of games and any others that may be set out in the developing legislation.

B) On-line commercial communications

See A) above

C) Sales promotions

Law 13/2011 does not contain any express regulations on sale promotions. Hence, they shall be deemed to constitute a category within “promotions”.

D) Direct marketing

See A) above

E) Sponsorship

The authorization regarding sponsorship agreements will be contained in the terms of the license.

This notwithstanding, Law 13/2011 sets out a transitory regime regarding the sponsorship agreements that were entered into before 1 January 2011 and which may continue in force until the earlier of 1 January 2012 or the date where the first license is granted under the provisions of the law. This gives rise to a difficult situation where some online gambling operators (e.g. Bwin), that have been illegally carrying out business in Spain, may continue to sponsor sports teams (Real Madrid in this case) but are not allowed to take any bets in Spain without a license.

Cross- border commercial communications are in principle not allowed as, to carry out publicity, promotion or sponsorship of gambling activities in Spain, the relevant operator will need to obtain the relevant Spanish license (as it is prohibited without such license and constitutes a serious infringement of the law) which, in turn, will set out the terms of any such publicity, promotion or sponsorship.

The National Gambling Commission is entitled to require the media to stop the dissemination of any publicity within a term of two days.

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

The financial services sector is subject to usual KYC and AML regulations contained in the Spanish pieces of legislation that have implemented the AML Directives.

Also, Law 16/2009, of 13 November on Payment Services (Ley de Servicios de Pago) regulates the status requirements and conduct of business rules applicable to payment services providers. The only mention contained in Law 13/2011 relates to the fact that the National Gambling Commission may require payment services providers to provide information on transactions carried out by unlicensed operators or request them to cease in the processing of payments.

In our view, specific regulations should be in place, as the role of payment services providers (a good example is the UIGEA regulations) is key to the tracking of transactions, the authentication of players and the overall monitoring of the online gambling activity.

In this respect, the draft Royal Decree developing Law 13/2011 regarding Technical Systems (which is expected to be enacted in early autumn this year) sets out a series of rules concerning monitoring of payment channels and means connected to online gaming activities. The operator is required to set up mechanisms and systems which allow the NGC to access payment channels employed for the transfer of funds and payout of prizes by participants. This draft Royal Decree further empowers the NGC to establish the technical and access conditions that may be necessary and proportionate to control payment transactions (thus, further requirements may be put in place at a later stage).

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

From our point of view, this is key to be able to carry out a thorough customer ID and authentication procedure to protect minors and other risk groups and to adequately monitor fraud and money laundering activities. In this respect, related privacy and data base protections should be duly in place in order to avoid misuse of personal and account details.

The “distance factor” makes it necessary for customers to be able to enjoy an extra level of protection (as opposed to customers who play in licensed premises). This said, customer accounts and deposits should be subject to strict regulations setting out what type of data may be requested, how they will be stored and backed up and, in particular and most importantly how the accounts may be seized and relevant measures for protection of client money.

Law 13/2011 does not impose limits on the amounts that can be wagered online, but the current drafts of basic regulation of each type of game that are currently being dealt with by the Spanish Ministry of Economy, do contain specific limits regarding maximum amounts that can be wagered online (on a daily, weekly and monthly basis) for some types of games such as poker, bingo, roulette, blackjack and fixed odds bets (not for pool betting).

Transactions will need to be monitored closely to prevent problem gambling and money laundering (in particular, linked to the use of prepaid cards and other forms of credit that are left outside the control of the financial system).

Again, harmonization at EU level would help to solve problems when dealing with accounts and data stored and set up by cross-border operators for Spanish customers. A detailed regulation of potential controversial situations should be in place to deal with conflicts between competent authorities and jurisdiction.

(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 financial services sector is subject to KYC rules laid out in banking regulations and circulars of the Bank of Spain, which is the competent authority. EU financial entities acting cross-border in Spain are subject to the conduct of business rules of their home member state and can be, in certain circumstances, also be subject to the supervisory powers of the Bank of Spain.

As regards regulation on customer ID and verification, the current draft of the Royal Decree developing Law 13/2011 as regards technical systems (which has been submitted to the TRIS), sets out a series of requirements for operators (article 26) to establish systems and mechanisms that facilitate the identification of participants in the games. It should be noted that the draft currently remains subject to comments and re-drafting as some of its provisions are unclear. Hence, the following text may suffer amendments. By way of exception and in light of the means employed for the marketing and development of the games, the National Gaming Commission may authorize the participation without prior identification attending to proportionality criteria, if so requested by the operator on reasonable grounds.

In any event, the identification of the participant and the check regarding the fact that such participant is not (i) a minor; (ii) a person declared incapable by law or judicial ruling or sentence; (iii) a person that has voluntarily requested to be banned access to gaming by way of inscription in the National Gaming Interdictions Register; or (iv) a significant shareholder, employee (or other type of related person) of the gaming operator in question, will be a condition precedent to the payment of prices.

The ID process regarding participants will be carried out via a single user account that will contain, as a minimum, the necessary data to check that the participant is not a person that is subject to the individual prohibitions laid out above, tax identification and residence data and any others that will enable economic and operational transactions to take place, as may be determined by the NGC.

The operator will put in place any necessary procedures to ensure that a player has no more than one user account.

A given participant will need to provide the aforementioned data and such data will need to be authenticated before the opening of a user account.

Once the relevant data has been gathered, the operator will send them to the NGC for authentication and, once this is completed, the user account may be activated.

The authentication and checking of participant data will have to be carried out by the operator within one month following the activation of the account and will be a condition precedent to the payment of any type of prizes. If neither the operator nor the NGC have verified the data within such term, the account will be cancelled.

It must be noted that the draft RD assigns wide powers to the NGC to further establish requirements and criteria applicable to operators regarding customer ID and verification (for which purposes the NGC will provide them with access to the National Gaming Interdictions Registry) both at registration and periodically thereafter. Also, the NGC is empowered to establish the requirements and procedures regarding AML and age verification checks.

Spanish rules on storage of personal data apply to the data gathered by gaming operators. However, the storage and processing of personal data contained in the specific gaming registers created by Law 13/2011 (the General Register of Gaming Licenses, the Register for Related Persons and the National Gaming Interdictions Register) for the purposes laid out in such law (i.e. customer ID) will not require the consent of the owner of the relevant data (on the basis that the relevant ID check is necessary for compliance with a legal obligation).

Other comments on issues raised in section 2.2

Related services are usually key to the development of online gaming activities and, hence, they should be subject to compliance with regulations and monitorization by competent authority in as much as operators are.

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)

1. Accessibility and social environment
2. Perceived skills and “involvement”
3. Event frequency
4. Payout interval

5. Chasing losses or being close to winning

From our point of view, an important driver is missing, which is the actual SIZE OF THE PRICE, the bigger the price, the more incentives to gamble.

Online gambling poses additional risks when compared with land based gambling due to the isolation of the player, the lack of “social control”, the round the clock availability and the “distance factor”, which increases the possibilities for cheating on both sides of the transaction, the operator and the player. The risk of overspending and the potential for gambling addiction are increased due to the “distance factor” (See, for example, “Die Prävention Problematischen Spielverhaltens”(2004) – Journal of Public Health (Springer) and M. Atherton “The ultimate gamble” – New Statesman 24 July 2006.).

(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)

Evidence:

All of the instruments listed are efficient to limit problem gambling relating to online gambling services. The problem lays more with effective enforcement and cooperation of operators and regulators (even on a cross border basis).

Ranking:

- (1) Diligence obligation for the on-line operator: crucial for closely monitoring and prevention of problem gambling.
- (2) Banning the use of credit
- (3) Age limits
- (4) Other (e.g. limits on commercial communication – restrictions on the use of certain media, sales promotions and sign-up bonuses or free practice games)
- (5) Reality checks
- (6) Self-limitation (financial and time) and self-exclusion
- (7) Information/warnings/self-tests (more easily applied on-line than off-line)
- (8) 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)

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

Dr. Jesús Ramos Brieva, in charge of the Problem Gambling Unit of the Ramón y Cajal Hospital of Madrid and a recognized professor of psychiatrics issued a study in 2006 called “Problem Gambling: The other side of the game” (“Ludopatía: el otro lado del juego”. Índice Magazine, pg. 9, November 2006) where he concluded that “And, last but not least (leaving the most striking facts for the ending) we need to analyze the flourishing and controversial development of online casinos, that is, the casino games that may be accessed via the internet. If we take into account the availability of access and the proximity of the point of entry to the

game, such factors constitute multiplier of the prevalence of problem gambling around the world. From this perspective, having the point of entry to the game as close as possible, that is, at home, could have unthinkable consequences. Currently 34% of Spanish homes have an internet connection (that is more than 10 million people) and this rate is expected to increase steadily, the scale of the potential problem gambling has an unknown and potentially very harmful dimension”.

Furthermore, on the national level, the book called “Games of chance on the internet” (Juegos de Azar en internet) published by the Office for the defense of minors of Balears (Oficina de Defensa de los Derechos del Menor de Baleares) in April 2011 comprises a survey carried out on 22 online betting websites. The director of the Office, Mr. Antoni Bennàsar and the co-author Mrs. Rosa Martorell have explained the content of such survey, which concludes that the filters regarding minor access to the websites are not secure and that persons using such websites are becoming younger each time.

According to the authors, “it is unthinkable for a minor to be able to enter a casino, but, from his or her room, such access is easily granted” as, consistent with their findings, many websites only require the entering of a name and date of birth for registration.

The study on Integrity of Online Gambling carried out by Robert Young and Jonathan Todd upon request of the European Parliament's committee on Internal Market and Consumer Protection (IMCO) contains a series of very relevant conclusions regarding online gambling and refers to a series of other sources of information, such as the one carried out in the UK by Griffiths and Barnes (Internet Gambling: An Online Empirical Study Among Student Gamblers, Mark Griffiths & Andrew Barnes, Springer Science + Business Media, LLC 2007) or the one carried out by the charity NCH in July 2008 which revealed that only 7 out of 37 gambling sites tested stopped a 16-year-old girl from registering her details online (http://www.gamcare.org.uk/news.php/29/underage_internet_gambling_study_report) and many others. Another important source of information is the report on Integrity of online gambling (European Parliament resolution of 10 March 2009 on the integrity of online gambling (2008/2215(INI)), which comprises studies on the integrity of operators, the problematic regarding addiction to certain types of games and which stresses the need to introduce effective age control means etc. and also the Conclusions of the Advocate General, Mr. Yves Le Bot presented in October 2008 regarding case C-42/07 (in line with TJEU jurisprudence regarding online betting services, such as the Bwin – Santa Casa da Misericordia judgment).

(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?

To the best of our knowledge, only very few studies have been specifically targeted at analysing this particular issue:

Among others, the 2006 UK report on remote gambling (http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/images/publications/RemoteGambling_RSeReport.pdf) found that the majority of online gamblers are college-educated single men under 40, and although not everyone develops a problem, the numbers are growing. The report found that 75 percent of people who gamble online are problem

gamblers compared to just 20 percent of people who visit casinos in person. In addition, online gamblers are more likely to have a more serious gambling problem.

Furthermore, we have extracted some of the most relevant findings of the very recent study "Gambling disorders" by David C Hodgins, Jonathan N Stea and, Jon E Grant (published in The Lancet, May 2011), which revealed that investigators had made some advances in assessing the problems that arise in the field of online gaming, but that further steps were to be taking due to the tremendous potential of the internet.

In this respect, "prevalence rates for pathological and problem gambling from national surveys vary worldwide. For example, past 12-month rates of problem gambling range from 0.2% in Norway to 5.3% in Hong Kong. Reported rates of pathological gambling in the USA range from 0.4% to 1.1% of adults, with an additional 1–2% identified as problem gamblers. Data from prevalence surveys indicate variability in rates of gambling disorders not only from differences in survey methods—such as the use of different screening techniques, timeframes (eg, reported past year problems, lifetime problems), administration format, and response rates—but also as a result of variability associated with the availability and accessibility of gambling opportunities. However, in some cases, national prevalence rates are stable over time despite an increase in gambling opportunities, suggesting that some type of social adaptation might take place as gambling becomes less novel in a local environment."

"Although many genes confer vulnerability, several environmental factors also contribute to develop mental pathways of gambling disorders. The structural and situational characteristics of gambling activities (eg, accessibility to gambling, location and type of gambling establishment, size and number of prizes, and near-miss opportunities) are important factors involved in the maintenance of gambling behavior".

"Most of our progress in recognising and understanding gambling disorders has been made in the past 25 years.

Our knowledge continues to evolve in parallel with a burgeoning availability of gambling opportunities.

Internet gambling, for example, is providing around-the-clock home access to several types of gambling activities to an increasing number of people around the world. Thus, although substantial progress has been made, this evolution warrants, and is likely to encourage, more innovative research into gambling disorders and its translation into clinical progress".

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

Data is scarce and, when available, contradictory. For example, the British Gambling Prevalence Survey 2007 found that spread betting was the activity that attracted more problem gamblers, followed by fixed odds betting terminals and betting exchanges.

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

Law 13/2011 allows for self-banning and creates a specific register to which online operators will be granted access for the purposes of customer ID and transaction monitoring.

Also, operators will have to elaborate a so-called Measures Plan (Plan de Medidas) that will set out additional commitments for the socially responsible management of the provision of

gambling services, their participation to repair damages caused by problem gambling and their contribution to social plans, measures and projects. In this respect, Law 13/2011 imposes further obligations on operators regarding consumer protection, namely: to pay particular attention to risk groups, provide any necessary information in order for players to be able to make a conscious selection of their gambling activities, to promote a moderate, non-compulsive and responsible gambling attitude and to provide information on the prohibition to participate in gambling activities imposed on minors and other excluded individuals.

Operators may not provide credit support or assistance to players. Applications for a license in Spain will comprise an operational plan that will need to take into account the principles of responsible gambling.

There are a series of specialized medical groups that have been created in some of Spain's most prestigious hospitals, such as the Ramón y Cajal or the 12 de Octubre in Madrid, which have special units dedicated to problem gambling.

(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?

Some operators in Spain develop socially engaged activities and have even set up specific charity entities (such as, for example, the Fundación CODERE) to carry out studies, conferences and social action regarding responsible gaming.

Treatment of gambling addiction is available in public and private hospitals.

(22) What is the required level of due diligence in national regulation in this field? (e.g. recording on-line players' behaviour to determine a probable pathological gambler?).

The current draft of Royal Decree developing Law 13/2011 as regarding the Licensing System, sets out that operators, in addition to the relevant requirements regarding customer ID and verification, are allowed to suspend player accounts when under suspicion of collusive or fraudulent behavior. Nothing is specifically mentioned concerning pathological or compulsive gaming patterns.

(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?

In Spain, 18 years is the age limit. In terms of adequacy of such limit, in our opinion it is difficult to assess where an individual is mature enough to understand the potential consequences and risks attached to gambling online.

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

Please refer to question 14 above regarding age control checks that are necessary to activate user accounts and pay out prizes. This regulation is, in our view, not yet completely clear and seems to leave out of the regulation (if the draft RD is not further amended and clarified) a case where a player account is activated and there are no prizes to be paid (i.e. if the player only has losses) then the age check will not be carried out (as it is a CP to the payment of prizes).

Compared to offline “face to face” ID procedures, online checks are, for obvious reasons, less reliable, since a land based operator can always “look the player in the face”. There are little means to prevent a child/ unauthorized person from holding itself out as an adult on an online gaming site, in particular, if multiple registration is not forbidden, as this makes the tracking of funds even more difficult (the current draft regulations in Spain require that the user account is unique).

The use of electronic signature as an alternative ID procedure is not common in Spain, as the specific technology that needs to be developed for its use has not been widely implemented. A good example for this is the German “Lotto”, which uses a system whereby players register with a local physical agency and receive a token and a PIN number that allows them to register online. Although, for obvious reasons, this system is not bulletproof, it does provide for an additional level of security and the wide network of the Spanish lotteries (more than 10,000 shops across Spain) would provide a good supporting ground for such a system to be developed in Spain.

(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.

The developing legislation regarding publicity and sponsorship of gambling activities (which is not yet in place) will need to be in line with recommendations issued by the European Council, the European Parliament, the ESSA and the ESA regarding branding of children’s replica kits.

Children are particularly inclined to and interested in sports and will, hence, naturally fall for online betting quite easily. Thus, special attention should be paid to the protection of minors in this particular field as they are more suggestible and defenseless.

There are no rules for the time being, although the principle of protection of minors is clearly endorsed by Law 13/2011 and by the General Law on Publicity, which is based on the principles stating that publicity shall be fair, transparent and not misleading and will respect, at any time, the fundamental rights laid out in the Spanish Constitution such as the protection of integrity and equality etc.

The involvement and liability of parents and adults in monitoring and guarding minors from misuse of computers is key to prevent them from accessing online gambling. A useful tool in this respect is the implementation of browser level filtering.

(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?

As stated above both Law 13/2011 and the existing regulations regarding land-based gaming from the Autonomous Regions fully endorse the protection of minors and other vulnerable consumers as a principle of general policy regarding the regulation of gaming activities. In this respect, it must be noted that Law 13/2011, which specifically deals with online gaming at state wide level is yet to be developed. The developing legislation will need to be further analyzed to identify particular measures.

Other comments on issues raised in section 2.3.1

It seems that, for the time being, the Spanish government is not undertaking specific regulations regarding publicity, advertising and sponsorship by gambling operators, which, in our view, is not an adequate approach given the "power" of advertising in the current economic environment.

2.3.2. Public order

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

According to Global Betting and Gaming Consultants (GBGC), around 370,000 million USD are wagered of which only 17,000 USD can be tracked down to legitimate sources, which are the licensed (including offshore) operators (according to Warwick Bartlett from GBGC), but the real figure is much higher. According to GBGC, they have been able to track down online operators with an even higher turnover and have detected that most US and China transactions are redirected to offshore locations where they cannot be traced.

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

The current draft Royal Decree developing Law 13/2011 on Technical Systems sets out a series of rules regarding the certification, homologation and audit of equipment, random generator etc. to be used by licensed operators in Spain and the supervision and monitoring of gaming activities.

The draft RD lays out the conditions to be met by the so-called Technical Gaming System (Sistema Técnico de Juego) (TGS), which comprises any equipment, system, terminal, instrument, hardware and software used by the operator to develop and provide online gaming services. The TGS supports any operations related to the provision of such services and related payment transactions and registers any operations regarding the participation of players in the games. The TGS is made up by the so-called Central Gaming Unit (CGU), which is made up by the technical means, software and platform, that allow the processing and operation of the transactions carried out by participants, and the Internal Control System (ICS), which is made up by a capturer registers any transactions and operations that take place during the development of the games and which has the purpose to allow the NGC to exercise a tight control over the gaming activities carried out by a certain operator.

The draft RD provides the NGC with wide powers to further develop the requirements on technical systems and other requirements laid out therein. In general terms, the TGS needs to sufficiently ensure that operators comply with the obligations laid out in Law 13/2011 regarding integrity and protection of players, fair conducting of gaming transactions, transparency and prevention of fraud and AML. The TGS will provide sufficient evidence of any transactions carried out by the operators and the participants in the gaming services offered by such operators and will guarantee the authenticity, counting, confidentiality, control, compliance and effectiveness requirements set out in applicable legislation. Access to TGS components is granted to the NGC and other competent authorities at any time.

Furthermore, the CGU will permit the registration of any actions and operations carried out from equipment and by participants connected to it, results and transactions regarding bets and draws, payout of prizes, user and player accounts and any events connected to the functioning of the online gaming platform as well as to guarantee the fair development the accurate functioning of the gaming activities.

Access and control of the CGU and its replica will be restricted and monitored at all times and the NGC shall be allowed to enter the relevant premises and carry out checks regardless of their location (it should be noted that they may be located outside the Spanish territory and, hence, additional difficulties associated to enforcement measures may arise).

The NGC is the competent authority to further develop the Royal Decree in terms of the requirements concerning homologation and certification (and also the list of entities that are authorized to issue the certifications) of gambling equipment (under the superseding principle that no barriers of equivalent effect are in place as a consequence).

The application for a gaming license will have to enclose a technical plan setting out the details of the TGS and a report issued by an authorized entity on the homologation and certification of the TGS which will set out a description of the platform and related processes, contingency plans, quality of the random generator, adequacy of the software as compared with the specific regulations of the games, soundness of the internal control system, a list of any components, hardware, software and location of the TGS etc.

The NGC is empowered to lay out the criteria as to recognition of homologations and certifications issued by authorities of other states of the EEA or by competent authorities of the Spanish Autonomous Regions.

An audit of the TGS will have to be carried out every two years (the cost to be assumed by the operator) by either the NGC or another authorized entity (different from the one that originally issued the homologation report).

(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?

Fraud involving operators against players should be prevented by implementing regulations and setting up authorities that audit each and every internal process of the operator, when necessary, by real time access to its gaming platform and guaranteeing its transparency. Also a log of all the actions taken by operator's administrators must be created, and it must be accessible as well by the relevant authorities. Finally, an efficient platform must be created in order for the players to be able to report any suspicious activity from operator's end, having powers to investigate it directly with the operator when necessary.

Fraud committed by players towards operators could be prevented by:

1. Identifying effectively every gaming account owner: All accounts must be verified before allowing any gaming activity, by means of documentation sending or similar processes.
2. Avoiding duplicate accounts: To do so, it would be highly convenient to be able to identify, not only IP address used to connect, but also the physical device used to perform the connection.

3. Guaranteeing legal use of every deposit method: All CC deposits should be processed through 3dsecure, so that ownership of CC will be guaranteed (no stolen or lost cards could be used), and also chargebacks avoided;

4. Ensuring the use of all necessary security elements to guarantee software's integrity

Fraud among players can only appear in those situations in which they interact (multi-player games). In that cases, a continuous general checking must be performed (by means of alerts that should trigger in certain situations), to spot any suspicious gaming pattern which objective may not be related to fair gaming (Eg: A player that folds pocket aces in poker, with no bets), but to collaborate with other players (collusion), or to transfer money to another player (chipdumping). These situations would constantly be reviewed (24/7) by fraud analysts that will be aware of all fraudulent patterns, and that after reviewing the case will take the appropriate action in order to prevent other honest players from being affected.

In sum, best practices as regards protection against fraud and money laundering are, among others (see above), proof of address, payment/ credit card details and IP address checks at registration to ensure non-prohibited jurisdictions address and compliance with applicable laws: validation of postal address, use of digital signatures and electronic ID processing, checking of ID number against official registries or, alternatively, identification in a physical location (the player registers in local, physical premises of the operator and receives a token/ PIN to play online). As regards IP address checks, www.ip2location.com provides reliable geolocation services. Upon registration, either the ip2location or an analogous app will check the location from where a user is attempting registration and, if such location is identified as a prohibited jurisdiction, then the user will be re-directed to an error message. Such process should take place before each registration and also prior to each login attempt of the user to avoid both registration from a prohibited jurisdiction and also playing from a prohibited jurisdiction (with an account that was registered from a non-prohibited jurisdiction, e.g., a US citizen who registers from Spain, while on holidays, and then attempts to play online from the US, where it is prohibited, with such account). In fact, where possible, geolocation should be ongoing (i.e. regarding every single bet or action) to ensure that gaming from prohibited jurisdictions does not take place.

The regulations regarding the characteristics of each type of game that are currently being drafted by the Spanish Ministry of Economy require the relevant operator to set up a conflict resolution and claim processing system.

Fraud analysts should regularly report to the BoD/ compliance committee of the operator for evaluation and updating of policies, where necessary.

(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?

In light of current Spanish criminal regulations, outcome fixing may be regarded as a fraud under certain circumstances and gambling operators and any persons involved could be faced with fines and/or prison, if found liable.

The current project of the ECON to set up an EU wide agency in charge of the integrity and fair play in sports will certainly help to address this type of issues where cross-border cooperation of competent authorities is key.

According to Jacques Rogge, president of the IOC (International Olympic Committee), who issued a statement on 1 March 2011 in his respect within the First Summit on Illegal Betting in Lausanne, the volume of illegal sports betting around the world can be estimated around 140,000 million USD (approx. 101,000 million EUR).

Law 13/2011 (article 6.2.c)) lays out the prohibition to participate, whether directly or indirectly, in games developed or organised by a certain operator that applies to shareholders, owners or holders of significant participations of such gaming operator, its executives and board members and employees who are directly involved in the development of the games, as well as their partners or spouses, persons who live with them, their ancestors and descendants on first degree.

Article 6.2.d) further established the prohibition to participate in the relevant games that applies to sportsmen, trainers or other direct participants in a sports event or activity over which bets are taken and paragraphs e) and f) apply the same restrictions to judges, arbitrators, directors of sports entities or entities organizing sports events over which bets are taken.

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

As a matter of priority, the following matters need to be addressed:

- Measures to establish a level playing field among the more “traditional”, land-based operators and the online operators.
- Control of state monopolies: check on the “consistent and systematic” approach.
- Protection against fraud.
- Fair and open treatment of players: ban and prosecute unlicensed gambling, provision of transparent and honest information about payouts, risks and odds at stake and ensure that consumers are not misled.

(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?

The risk of match fixing has always been a particularly hot topic of discussion. As it happens, the recent example of Italy has demonstrated how a close monitoring needs to be in place to protect the integrity of sports. Besides, in light of the recent Written Declaration (0007/2011) by MEPs on combating corruption in European Sport, the White Paper on Sport (COM(2007)0391) and the provisions of Article 165(2) of the TFEU, which states that Union action shall be aimed at developing the European dimension in sport, by promoting fairness and openness in sporting competitions, the importance of sports for individuals and businesses across Europe should be taken into account and tackled at European level, in particular, as regards online betting.

Football, in particular, is a very powerful marketing tool due to the tremendous social impact it currently has in Spain. Hence, due to this high profitability and exposure to the general public (with specific attention to minors), it should be closely monitored and regulated. As stated above, Law 13/2011 has not followed (developing legislation still pending) the recommendations regarding branding of equipment.

Law 13/2011 has established an unprecedented transitory regime regarding sponsorship and publicity agreements without providing further justification. According to Transitory Disposition 8, any sponsorship or publicity agreements that were entered into before 1 January 2011 will remain in place until 1 January 2012 or the date on which the first license is granted, whichever is earlier. As a consequence:

- Such agreements, to content of which, as a matter of fact, is unknown to the public remain in force without further control;
- Publicity/ sponsorship activities under such agreements may still be developed out but no bets/ gaming activities can be carried out without a license. Hence, publicity of operators/ games can continue, but such games/ operators cannot do business in Spain, weirdly enough, until they get a license. Hence, unless a warning is inserted, consumers will be exposed to misleading publicity.
- This regime effectively recognizes the validity of agreements regarding a subject (the publicity of unlicensed gaming) that was unlawful at the time they were entered into.

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

The ubiquitous nature of the internet (it can be accessed from almost everywhere) and the rising of the so-called “intelligent” mobile phones enable an increasingly global accessibility to online gaming activities. In principle, it is more feasible to monitor online transactions (as they are effected via electronic transfers of funds) than gaming activities carried out in a physical casino, although a series of factors such as the global reach, speed and volume of online transactions and, more importantly, the offshore location of some online gaming operators, suggest that there is a potential for money laundering, which could be addressed by the authorities by setting standards regarding ID checks, payment processing etc. in licensing conditions. States need to be able to actually enforce their laws, if an effective prosecution of money laundering carried out via online gaming transactions is sought on a global basis.

A couple of cases regarding money laundering in the on-line gambling world are set out below:

- Player A deposits through a pre-paid card or an automated clearing house (ACH) a big amount of money (normally by accumulating several small deposits). After very few gaming activity (enough to avoid suspicions, and not too much to avoid big losses) player requests several small withdrawals during a period of time (to avoid attracting attention), using a different payment method (usually bank transfer).
- Player A deposits through a pre-paid card or an automated clearing house a big amount of money (normally via accumulation of small deposits). In this case, to avoid money laundering suspicions, player A plays against his accomplice, player B, on a multi-player game, loosing on purpose (chipdumping), until his money has been transferred to player B. After that, player B, who didn't deposit any big amounts and hasn't got any suspicions on him, can withdraw using the method he will prefer (usually bank transfer).

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

In particular, pre-paid cards and other payment systems that are out of the scope of the traditional banking sector offer more possibilities for fraud and money laundering, due to the

fact that, for obvious reasons, such payment systems are not subject to KYC rules and other types of control which do apply to the use of banking products.

The most conflictive payment systems in online gambling, mainly with regards to money laundering, are the Automated Clearing Houses (ACH), also known as e-wallets (such as Neteller, Moneybookers, etc...). Due to the fact that these payment methods operate outside the banking system, and provided that most of them are based and therefore regulated offshore (paraisos fiscales), they become systems with a complete lack of transparency. In this scenario, black capitals can be easily stored by anyone without any further KYC checks or other methods of authentication of the source of income. Besides, these payment methods are accepted in almost all e-gambling sites, and taking into account that, due to its characteristics, gambling has always been an industry frequently used for money laundering (mainly due to historical reasons and lack of regulation), they become a big potential entrance for black capitals to the e-gambling services (they can accept and process big amounts of money).

Since, as explained, ACH act in most cases as banks, and some of them even offer cards that can be used to retrieve money from ATMs, a specialized entity/authority in charge of controlling and regulating their activity should be set up with sufficient surveillance and enforcement powers, exactly as it happens with banks.

Pre-paid cards (such as Ukash, Paysafecard, etc...) also entail conflicts with regards to money laundering, even though they represent a minor problem considering the small amounts that can be transferred with them. On the one hand side, the fact that pre-paid cards are purchased anonymously, and on the other, the fact that they do not support withdrawals, creates a situation in which “black money” enters the e-gaming system quite effortlessly and makes it very easy to be transferred to a bank account (since money cannot be transferred back to the original deposit method).

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

The participation of players in any games offered online should be subject to completion of a prior registration process, whereby personal and fiscal ID data (KYC) should be verified. Such process and the technical means used for clearance of data will, in turn, also be subject to homologation and certification by a specialized entity.

The inter-connection of this system to the banking system and to secure and identified payment processing entities provides an additional level of security for avoidance of money laundering transactions.

Moreover, the establishment of general policies regarding reporting of suspicious activities, “tipping off” (same as for banking transactions), investigation of deposits and user accounts that show unusual activity and quick and precise payment processing including the registration, tracking and control and verification of any transfer of funds, which should always be carried out via authorized legal means. Cash should be avoided.

Registration of any changes to client ID data and request of documentation to support the verification of all such changes and establishment of a link to the national authority of financial investigation (SEPBLAC in Spain) and international institutions, if applicable, will provide additional means of ensuring that the transfer of funds that take place as a result of the provision of online gambling services does not constitute grounds for money laundering.

Other further means of fraud control are:

- Setting up of an internal fraud control department in charge of continuous tracking of transactions and application of anti money laundering processes and policies and surveillance of player conduct patterns prior to the approval of fund withdrawals, which is the most delicate time as regards potential for fraud and money laundering and also at other key moments such as registration, making of the first deposit etc. and cross-checking of data.
- Withdrawals of funds should always take place via the same means used to make the relevant deposit. Players should be obliged to carry out a minimum gaming activity before being able to withdraw funds to avoid clear grounds for money laundering.
- Any unusual or complex transaction or conduct pattern (in particular those which lack an evident economic or licit purpose) should be closely monitored by fraud analysts on a daily basis. For such purposes, conduct patterns and gaming profiles will be identified, described and listed (such list to be regularly updated) by the transactions department to allow cross-checking and compliance in the context of the due diligence process to be carried out regarding anti money laundering legislation.
- The information on individual or group transactions should be captured in a centralized manner to allow risk analysis to be run efficiently. Any supporting documentation regarding client ID, reporting of suspicious transactions etc. should be safely stored.
- Any third party service providers should provide the operator of the relevant online gaming platform with sufficient evidence and supporting documentation regarding compliance with anti money laundering regulations and KYC procedures (also, a specific representation and liability statement should be requested from the relevant service provider in this respect). The operator should run periodic tests (and also test each update or modification) on the payment support system or software provided by third parties to ensure ongoing compliance with security measures.

(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?

Social websites such as Facebook, Twitter, LinkedIn etc. are not currently subject to specific regulations regarding money laundering. Due to their increasing level of popularity and use by a huge array of people (including minors) at a global scale, they certainly may constitute grounds for money laundering that will need to be addressed by a closer monitoring of the relevant sites. Also, it must be noted that, pursuant to Law 13/2011, online gaming activities offered in Spain may only be carried out by duly licensed operators. Hence, any social networks or similar sites offering games in the Spanish territory will have to go through a licensing process.

(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?

The developing legislation of Law 13/2011 is now in draft form and does not contain specific requirements in this respect. The rules will, in any event, apply to cross border supply of on line gambling services (as they will need to get a license in Spain).

Other comments on issues raised in section 2.3.2

The surveillance and de minimis regulation by the EU Commission would be particularly important in this field. Cross border cooperation among Member States is also crucial to ensure consumer protection is effectively pursued and the relevant measures enforced.

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?

Taxes paid by gaming operators will be used, as any taxes, for public interest and social purposes. Law 13/2011 creates a new tax applicable to online gaming operators specifically, which is applicable as of 29 May 2011.

(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?

There is no such thing as a fund for the redistribution of revenue or other specific mechanisms. Some private operators (like Codere, for example) do carry out social actions via specific entities of their group that study and deal with social issues.

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

See 38 above.

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

Law 13/2011 states (Additional Disposition Three) that the Ministry of Economy and Finance (with a prior report from the Sports Council) will establish a list of entities that will be able to benefit from a share (and the relevant percentage) from sports betting.

(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?

The Ministry of Economy and Finance is currently in the process of setting up and developing the so-called basic regulation of the different types of games that may be carried out online. In this respect and, to date, only pool and fixed odds betting have been regulated for sports and horse-racing. Such draft basic regulation empowers the NGC to develop a catalog of disciplines and events within such disciplines that may be subject to betting. There is no specific timeframe for the NGC to set up such catalog (which is a requirement for the operator to be able to provide the games online).

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

No such rights are exclusively dedicated to ensuring integrity at the moment.

(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?

As a matter of fact, unlicensed online gaming undermines offline gaming activities that are subject to both a tight control by local authorities and taxation. Such competition from unregulated business reduces tax revenue.

There is no express evidence as there are no conclusive studies on the impact of the provision of online gambling services in Spain on traditional land based gaming and on the public lottery monopoly in Spain (the provision of online gaming was, and is until the first license is granted, prohibited in Spain). As a general fact, revenues to national public interest activities have been reduced de facto as the online gaming operators that were illegally present in Spain have not paid any taxes that could have been redistributed to social and other public interest causes.

(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?

Law 13/2011 provides general guidelines on information and transparency obligations applicable to gambling services providers, but there are no concrete guidelines regarding channeling of revenues back into public interest activities.

Other comments on issues raised in section 2.3.3

In Spain this particular issue remains a point of discussion among the government and the Professional Football league and other relevant institutions. Sports receive massive funding from online gaming operators and should be closely monitored due to their exposure to the public.

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?

Law 13/2011 sets a term of six months following the entry into force of the law (i.e. until 29 November 2011) to set up the National Gaming Commission (NGC) as a so-called Regulating Entity (Organismo Regulador), with fully legal capacity, by way of a Royal Decree to be approved by the Council of Ministers that will approve its by-laws. The NGC will be independent of the central government and, for organizational purposes only, part of the Ministry of Economy and Finance.

The general purpose of the NGC is to watch over the adequate development and integrity of the gaming sector in order to guarantee a competitive and transparent market and compliance with applicable laws.

The NGC will have, among others, the following functions: (i) authorize, supervise and control the provision and commercialization of gaming services and other activities (i.e. publicity and promotion) comprised within the scope of Law 13/2011, (ii) contribute to the

prevention of fraud and protection of minors and other vulnerable groups, (iii) develop the basic regulation of games, (iv) a proposal to the Minister of Economy and Finance regarding the application form to obtain a license in Spain, (v) issue general instructions to operators, (vi) establish the technical and functional requirements of the games, the technological and quality certifications of procedures, processes, disaster recovery and business continuity plans, information security etc., (vii) certification and homologation of equipment and related standards, (viii) control, inspection and surveillance of activities related to the provision of gaming services, (ix) pursuit of illegal gambling, whether provided in Spain or cross border, (x) deal with claims from participants in the games, (xi) promote and carry out studies and investigation reports regarding the gaming sector in general and its social impact, (xii) collaborate with AML authorities, (xiii) act as arbitral authority and any others conferred by applicable legislation etc.

The Board of Directors of the NGC will be its ultimate decision body and will be made up by the President of the NGC and six other members to be appointed by the government by way of a Royal Decree among experienced and distinguished professionals and who will have a non-renewable mandate of six years. The relevant candidates will have to appear before a parliamentary Commission that will assess their capacity before their appointment.

(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?

Law 13/2011 creates a General Register of Gaming Licenses (Article 22), which will be kept by the NGC and will not be publicly accessible (the data will only be communicated for the purposes stated in the law).

The content, organization and structure of the Register is comprised in the Royal Decree developing Law 13/2011 (which is, as stated above, currently in draft form). Such Royal Decree provides, among others, that the Register will be divided in two ordinary and two specific sections. When a general license is granted following the application process, the relevant contestant that has been awarded with such license will be registered in the first ordinary section as a definitive holder of a Spanish online gaming general license. The second ordinary section will contain the names of the operators that have been awarded definitive specific licenses pursuant to the relevant general licenses.

The first specific section will contain the registration of the so called “potential contestants” since, in order to apply for a license, applicants need to register themselves in this section of the Register. The second specific section will comprise the names of the operators that have been awarded authorizations regarding the national lottery (which, as a reserved activity, has been awarded ex lege to two incumbent monopolistic operators, SELAE and ONCE).

It must be noted that, again, the NGC has been awarded wide powers to establish the particular content and any further requirements regarding the Register.

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

The French (ARJEL) and Italian (AAMS) gaming authorities have very recently set a good precedent in the area of cross border cooperation by signing an MOU for the exchange of information and collaboration regarding fraud and AML prevention and other public policy objectives. The Spanish authorities have announced the intention to cooperate with other EU authorities but no official steps have been taken at this time.

(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?

To the best of our knowledge, there are no such cooperation or educational programmes aimed at strengthening integrity.

(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?

Due to the very recent development of online gaming legislation in Spain, we have no solid grounds to assess the effectiveness of any methods undertaken in this respect.

To the best of our knowledge, the Spanish authorities have not initiated cross-border initiatives yet.

(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?

Even if it is true that over the Internet there is never a guarantee for a specific technical restriction to be 100% successful, it is true that all methods mentioned above (DNS filtering, IP blocking and payment blocking) can be considered as effective, as long as they keep being updated often to avoid security breaches (as it is widely known that hackers and other groups keep monitoring these systems to detect any leaks that they can take advantage of).

Other comments on issues raised in section 2.4

Other comments on issues raised in the Green Paper

Codere, S.A. considers the present consultation as a first important step towards a very necessary regulation at EU level of online gaming activities.

The Spanish experience in this particular field has been quite unfortunate, due to the regulation coming in far too late in the process, the many uncertainties that such regulation raises as it is still being developed in various aspects and the de facto tolerance of the Spanish authorities over the past years that have enabled the flourishing of a very profitable black market, the effects of which will not be eradicated with the new regulation, but, to the contrary, will favour those operators who have contravened the laws over the last years.