



Contribution to

Green Paper

On on-line gambling in the Internal Market

26.07.2011

Introduction

The National Lottery is a Belgian public-law limited company.

Under the terms of its organic Act of 19 April 2002, the National Lottery's primary mission consists of organising, in the general interest and according to commercial methods, public lotteries, betting opportunities, competitions and games of chance. The National Lottery has the monopoly to organize lotteries.

The objective is to channel the various manifestations of gambling behaviour in Belgium, to prevent any excess, to protect vulnerable customers and to make an active and autonomous contribution to the prevention and treatment of gambling addiction.

The National Lottery endeavours in addition to help to limit the overall size of the games of chance market in Belgium by focusing its product development and marketing policies not on the enlargement of the market but on winning market share from private operators, whether they be Belgian or foreign, authorised or illegal.

The National Lottery's profit is reserved for financing programs for assistance for developing countries and for purposes of public benefit as determined by royal decree.

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

The internet or other forms of electronic communication through which gambling is made available is to be considered a distribution channel, rather than e.g. an own form of gambling. Online gambling cannot be considered distinct from gambling made available to consumers through other means. Indeed, from an internal market perspective, the games offered online do not constitute a different type of games but are the same games as off-line (terrestrial) games (this has for example been recognised in the WTO Dispute Settlement Report in the WTO case on cross border gambling services between the US and Antigua and Barbuda). Given this fact, there is, in our opinion, no such thing as an ‘online gambling market’, merely a share of the total gambling market in which the internet, or other means described in the Green Paper (m-commerce, IPTV), is used as a means of distribution.

As technology is developing, lotteries provide parts of their offering also “online”, mostly as a distribution channel for games they offer on a terrestrial basis. In 2010, the National Lottery launched its online internet platform offering all of its drawing products online. After one year 2,86 % of the global turnover of draw based lottery products (Lotto, Euromillions, ...) is made through the online channel.

Data on the gambling market is faced with the fundamental difficulty that the illegal market is by nature difficult to estimate since a large number of gambling services are offered without a licence and are therefore not subject to the same transparency obligations as the offering by operators providing services with a licence in the respective country. Hence it is difficult for anyone to make reliable assessments of the size of the Belgian online gambling market. Any data used as a basis for policy-making should distinguish between those operators who operate with a licence in Belgium and those who do not, in order to adequately differentiate the regulated from the unregulated market. This is particularly important for two main reasons:

- Commercial offerings differ substantially from non-commercial offerings in their GGR (gross gaming revenue, i.e. the stakes minus the prizes paid out to winners), given that commercial offering can afford to have a far lower GGR since it does not have to use parts of its GGR as a contribution to good causes (direct contributions or via taxation) as the non-commercial/public offering does.

Analyses and conclusions, if they are to be the basis of sound policy or regulation

at any level, should take due account of these huge differences in statutory obligations and GGR percentages.

- It is essential that one understands where the revenue of operators who provide services in countries without holding a national licence is generated. Often, revenue is erroneously indicated as being generated in country X, where the operator is based, whereas it was in fact generated through sales to consumers in country Y, where the operator provides services but does not hold a licence. As a result, the 'market' is overestimated for country X and underestimated for country Y.

There are a number of private companies conducting market studies on the gambling sector which can be purchased at cost, based on analyses of annual reports and expert surveys. The most widely used data of this type in the gaming business are H2 Gambling Capital Consultants, Global Betting and Gaming Consultants (BGBC) (more recently, Media and Entertainment Consulting Network – MECN – have also started to provide this type of data). The data collected by these sources is sold commercially and therefore not publicly available and not verifiable in a transparent manner. These data should be used with caution as the reliability of these surveys is not safeguarded: they are only partially based on audited data or information verified by a public body. These studies often do not distinguish between licensed and unlicensed operators which leads to a lack of transparency with regard to which operators were included and which are not. The fact that these surveys often lead to very different results for the same type of game in the same national market exemplifies the lack of overall reliability. The data need to be analysed very carefully with regard to whether they distinguish adequately between the regulated offering and the provision of gambling services without holding a local licence. Given the lack of reliability, it can by no means be used as a basis for developing policy on (online) gambling.

This is also applicable to the data used by the European Commission in the Green Paper, which was provided by H2Gambling Capital. This data is not publicly available, making it not possible to validate. The data, in the form used here by the European Commission, does not distinguish between licensed and unlicensed operators which is essential for a solid understanding of online gambling in the Member States of the EU, as explained above. The lack of distinction between licensed and unlicensed offering also renders it very difficult to contrast with the official data provided by national regulators or with data European Lotteries has obtained from its members.

An important criterion for data on online gambling in the EU is that it must be recent, taking account of the rapid changes in the development of technology, the multiplication of (unlicensed) operators offering their services and the steps taken by national government to channel online gambling activity. The online gambling environment in Belgium for example has changed since 2010 by creating the online internet platform of the National Lottery. And there will be more evolution as the new gaming legislation entered into force on the January 1st, 2011.

As the European Commission is aware, a comprehensive study on the gambling market in the EU does exist in the form of the 'Lotteries in the EU' study by London Economics commissioned by EL (2006). This study provides important information on the lottery market as a whole (the studies provided by the European Commission to date have unfortunately proven to be neither comprehensive nor accurate). Since gambling over the internet is rapidly developing, we consider that more recent data is needed to measure the importance of online gambling in the EU.

(2) Are you aware of any available data or studies relating to the nature and size of the black market for online gambling services? (Unlicensed operators)

The National Lottery does not adhere to the distinction between 'black' and 'grey' markets used by the European Commission in the Green Paper. We distinguish only between offerings that are licensed to operate in the jurisdiction in which the consumer is based, and offerings that are made available to consumers without a licence in their country, in other words the legal and the illegal market. Indeed the European Court of Justice (ECJ) repeatedly established that Member States are not obliged to apply the mutual recognition principle in the area of gambling.

As noted in our answer to question 1, the illegal market is by nature difficult to estimate reliably.

Market research commissioned by the Belgian National Lottery on online gambling spending in Belgium in 2008 estimates that the total size of the Belgian online gambling market was 59 million EUR at that time. Since at that time there was no licensing system in place for online betting and online casino games and since the National Lottery did not yet offer some of its games online, these 59 million EUR concern the black/illegal market.

(3) What, if any, is your experience of EU-based online gambling operators licensed in one or more Member States 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?

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(4) What, if any, is your experience of licensed non-EU online 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?

Although from a legal point different, the impact of both illegal operations emerging from other EU/EEA Member States and from third countries is the same.

Legally the external competence for granting market access for on line gambling operators is with the EU authorities and is covered by the actual GATS commitments. The EU has decided not to grant market access in the area of gambling (no cross border supply, no consumption abroad, no commercial or physical presence) so any operator licensed outside the EU cannot invoke any right to have access to any of the markets of the EU Member States. They are also excluded from invoking the EU Internal market principles. Equally a single EU Member State cannot conclude any agreement with a third country ("White list") without violating EU law.

EU based operators can in theory invoke the EU Internal market principles. It will however be clarified hereafter that, in the circumstances those operators willingly operate, they should also be excluded from invoking the EU Internal market principles:

Many gambling operators providing their games unauthorizedly in the EU are operating from tax havens, as f.e. Malta, Gibraltar and the Channel Islands. Based on an offshore license granted by the authorities of the tax haven and starting from an inapplicable "mutual recognition" approach, they deliberately circumvent the national restrictive gambling regimes and the tax laws of the other EU jurisdictions.

Offshore companies based in tax havens use the internal market rules to circumvent national gambling legislation and national tax legislation.

The operators concerned argue that the principle of mutual recognition allows them to provide their services in the whole of the EU, based on the license they have obtained in Malta and/or Gibraltar.

Firstly it needs to be emphasized that the principle of mutual recognition does not and cannot apply in the gambling sector, which is by no means harmonized. The ECJ has recognized in several judgments that the Member States have a wide margin of discretion to determine their gambling policy and the degree of protection they desire for their consumers against certain games and with regard to the fight against crime and fraud. If an operator with a foreign license could offer its gambling services on the territory of another Member State, without an additional national license, this would completely undermine this Member State's gambling policy. In the *Liga Portuguesa* ruling the Court did therefore explicitly reject the application of the mutual recognition principle to online gambling and repeated this in the *Ladbrokes* judgment.

Secondly the principle of mutual recognition could in any case never be recognized regarding offshore licenses. The mutual recognition principle is indeed based on the trust between Member States that the checks carried out for the provision of services by one Member State are sufficient for the provision of that same service in another Member State. Trust between the Member States is the centrepiece of the free movement of services and of the principle of mutual recognition. It goes without saying that a licensing authority who only grants a permission to offer gambling services abroad but not on its own territory, does not offer any trust to the Member State of destination of the service. Regardless of the fact that the principle of mutual recognition doesn't apply in the gambling sector, such an approach is in blunt contradiction with the rationale of the principle itself and the Treaty principles concerned.

The theory of abuse of the internal market implies that an operator is established in a certain Member State while offering its services mainly in another Member State, only to circumvent the national legislation of the latter Member State. If abuse is acknowledged by the Court, the operator will be deemed to be established in the Member State where it mainly offers its services and must abide by the rules applicable in that Member State.

Although the ECJ is quite reluctant to rule upon an abuse of the internal market, it is an important argument to use in a political context, especially in the light of the current debate on tax havens. Both Advocate General Mengozzi and Advocate General Bot have explicitly pointed to the abuses of respectively the Gibraltar and Maltese licenses in the *Carmen Media/Markus Stoss* and *Dickinger* cases.

The ECJ already ruled in a *case Commission v. Germany (insurance cases)*¹, in 1986, that a host state was allowed to take measures to prevent a person or company, established in one Member State, from directing its activity entirely or principally towards the territory of another Member State, simply to avoid the professional rules of conduct which would be applicable if he would be established in that Member State. The ECJ stated that such a situation would be subject to judicial control under the provisions regarding the freedom of establishment rather than on services.

Another example can be found in the Dutch media sector. As The Netherlands had rather restrictive broadcasting laws, it has been particularly affected by attempts to avoid the Dutch legislation by Dutch companies setting up commercial stations in Luxembourg and, relying on the services provisions, using the Luxembourg station to broadcast programmes back into the Netherlands. The Dutch government implemented legislation which prohibited broadcasting organisations established in the Netherlands from investing in a broadcasting company established in another Member State which provided services directed towards the Netherlands. In *Veronica*², the ECJ said that such a rule did not breach Article 49 EC (on free movement) where it had the specific effect of ensuring that those organisations could not improperly evade the obligations deriving from the national legislation concerning the pluralistic and non-commercial content of those programmes. A similar conclusion was reached in the *TV10* case³.

The EC Treaty does not require that a service provider actually offers its services in the Member State of establishment, in order to be able to invoke the free provision of services. This was recognized in the *VT4* judgment⁴, whereby the Court stated that the Treaty does not prohibit a provider from using the free movement of services, even when it does not provide services in the Member State of establishment.

The difference with an offshore licensing system is however that the services provider does not merely refrain from providing its services in the Member State of establishment, but he cannot offer these services in this Member State on the basis of the license granted.

Whether games of chance are allowed in the Member State concerned, in contradiction to a general prohibition in other member states, is irrelevant with this regard. The

¹ ECJ judgment of 4 December 1986, *Commission/Germany*, 205/84, ECR 1986, page 3755.

² ECJ judgment of 3 February 1993, *Veronica Omroep Organisatie*, C-148/91, ECR 1993, page I-487.

³ ECJ judgment of 5 October 1994, *TV10*, C-23/93, ECR 1994, page I-4795.

⁴ ECJ judgment of 5 June 1997, *VT4*, C-56/96, ECR 1997, page I-3159, paragraph 20.

question is whether the operator concerned is allowed to provide its services within the territory of that Member State, based on the license granted by the national competent authority.

The situation whereby an operator provides its services in the Member State of destination (which maintains a restrictive gambling policy) based on a license granted by the Member State of origin for the provision of certain services abroad, without the operator being allowed to provide these same services within the territory of the Member State itself, should be considered to be an abuse of the internal market rules.

Moreover, offshore licenses are motivated by fiscal reasons. Tax havens such as Malta and Gibraltar offer gambling operators a fiscal incentive to establish themselves on their territory, and to provide services from there in the other EU jurisdictions based on an offshore license. This is a way to abuse the internal market and to circumvent national legislation in order to get access to a restrictive gambling market, access which the operator normally would not have.

In that regard, the ECJ has ruled that a national measure restricting the freedom to provide services can be justified where it specifically targets wholly artificial arrangements which do not reflect economic reality and whose only purpose is to obtain a tax advantage.⁵

The impact of illegal operations in a Member State is overwhelming:

- First it undermines totally the specific gambling policy of that Member State and its rights, recognized by the jurisprudence of the CJEU, to define its own gambling policy notwithstanding an even more liberal policy of other member states;
- It does logically undermine the overall consistency of the various Member States' internal gambling policies. To the extent that a Member State can decide about the type of games, the volume of games and the number of operators as long as the restrictions are aiming at a genuine diminution of the total (legal & illegal) gambling offer and at a controlled expansion in order to cope in a consistent manner with public order and consumer protection concerns, unlimited cross border supply of illegal gambling activities do not allow for the policy to be upheld and remain consistent. Besides very often the illegal games are more dangerous (slot machine

⁵ ECJ judgment of 12 September 2006, *Cadbury Schweppes*, C-196/04, ECR 2006, page I-7995, paragraph 51 and 55; ECJ judgment of 13 March 2007, *Test claimants in the Thin Cap group Litigation*, C-524/04, ECR 2007, Page I-2107, paragraph 74 and ECJ judgment of 4 December 2008, *Jobra*, C-330/07, ECR 2008, not yet published, paragraph 35.

and casino type of games as well as live betting) than the legal games offered (lotteries, pari mutuel betting, land based casino games).

- Illegal online gambling also pushes the Member States to enhance the availability and attractiveness of legal gambling in order to maintain an acceptable and necessary level of control and transparency and to spend more resources in fighting the unfair competition and enforcing the laws. It can be seen that more Member States, even reluctantly, replace a total Internet gambling restriction and open up their on line gambling markets in order to get control over the growing flow of illegal online gambling offers while the potential impact for society is currently largely unknown. It is clear that competition in the gambling market necessarily leads to higher payout ratios and consequently to more addiction (see footnote 6).
- Consumer protection requires an ongoing monitoring of activities and the overall availability of (technical) means to assist problem gamblers and other vulnerable persons. Cross border supply of online gambling services totally and continuously undermines the governmental systems set up to (self-)exclude from gambling.
- Gambling creates a certain level of health, financial and social/family problems. Even if the problem gambling percentage varies from state to state and does on its face not have to be seen as high, the actual impact for the problem gamblers is dramatic as well as for the persons living with them or depending on them (spouses, children, parents) and does cost the Member State of consumption substantial amounts of money. In the absence of any enforceable structure obliging the foreign based operators to contribute to the harm they cause to society, any such operation should be banned.

Operators that provide gambling services without a licence fundamentally threaten the position of the regulated operators and make it difficult for them to fully play their role of providing a gambling offering that is responsible – with a low risk for gambling addiction – yet attractive to players. In particular we highlight that unlicensed operators are not bound by substantial limits in terms of their advertising, taxation, pay out ratios and limits on games deemed to pose a particularly high risk for gambling addiction⁶.

Recent estimates indicate that approximately 85 per cent of the illegal websites available to consumers in the EU are run from within the EU. As the European Commission is aware, in the EU, most of these operators are based in Malta and Gibraltar.

Advertising:

⁶ Prizes won tend to be reinvested in more gaming, thus maintaining and exacerbating the gambling behaviour.

Operators without a licence literally flood consumers in many EU countries with advertisements. Often, the prohibition to advertise for gambling without a licence is not properly enforced by the national authorities. For example, unlicensed operators have been known to be able to sponsor poker shows aired on national television. Many unlicensed operators advertise with aggressive bonus offers (e.g. 100 EUR 'gift' to player account for a new signup). Advertising for unlicensed operators is available on billboards, t-shirts of football teams and on the internet (pop ups, banners, skyscrapers, affiliates) in many Member States of the EU.

Taxation:

The European Lotteries has analysed financial statements and annual reports of the leading listed online bookmaker firms that operate in the EU without a licence in the Member States in which they operate. From this analysis, we can conclude that these bookmakers made approximately 84 per cent of their total sales in Europe but the tax paid by these bookmakers in Europe (excluding the sales related gaming duties and taxes) only represents 0,37 per cent of the total sales and only 3 per cent of the GGR. While these bookmakers create 'social costs' in terms of gambling addiction, their contribution to society's finances is thus less than marginal. The costs of gambling are socialised, but the winnings are privatised. (See also answer to question 39. last paragraph.)

In 2010 77.74% of the National Lottery's GGR 2010 went back to society in the form of subsidies to good causes, taxes (see reply to question 38). To be accurate, one has to note that the Belgian National Lottery's GGR for 2010 reached an average of 45.7% of online turnover (as compared to the GGRs of commercial online operators that amount to less than 10% of their turnover).

The lower de facto taxation of unlicensed operators means that they can afford higher payouts to consumers – leading the latter away from the licensed operators and in the meantime substantially increasing the risk for gambling addiction (see below).

Games with high risk of gambling addiction

As a consequence of the non-existing or extremely low taxation of illegal operators, the games run by them offer significantly higher payout ratios than is the case for regulated operators. It has been indicated that high payout ratios lead to a substantially higher risk for gambling addiction (see footnote 6).

We further highlight that those operators that do hold a licence for one form of betting over the internet in a given country sometimes use their betting site as a portal to direct players toward other forms of gambling, for which they do not hold a licence – e.g. a company holding a sports betting licence in Austria which uses its website to direct the Austrian players towards their casino, bingo and poker offering, for which it does *not* have a licence to operate online in Austria. The sites to which consumers are directed that way offer games that are both more lucrative for the operators and more dangerous for consumers.

(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?

– Legal uncertainty and practical problems following the CJEU jurisprudence:

The jurisprudence of the Court of Justice of the EU has, since the early Schindler case, evolved and nuanced many legal issues regarding the application of the free movement principles to gambling services. However, on the one hand several legal issues are still outstanding and on the other hand the jurisprudence did not manage to create legal certainty about some important issues that have been dealt with. This is the result of the fact that a complex and highly sensitive matter such as the provision of (online) gambling services of the EU cannot be ruled upon on the basis of the main Treaty principles. In the absence of any EU sectoral frame, the Court has no other option than to apply the basic principles of free movement in the EU, which, after more than 15 years of EU litigation, do no longer allow for clear-cut jurisprudence. Consequently, there are some legal and practical problems to be found pursuant to the current CJEU jurisprudence, which lead to legal uncertainty both for governments and operators involved.

– Enforcement of a justified restrictive gambling policy:

The jurisprudence of the Court of Justice of the EU requires the EU Member States to establish a legislative framework suitable for ensuring that a monopoly holder will be able to pursue, in a consistent and systematic manner, the public interest objective determined by means of a supply that is quantitatively measured and qualitatively

planned. At the same time, the Court acknowledges in its *Markus Stoss judgment*⁷ that illicit transactions on the internet may, particularly when they are of a transnational character, prove more difficult to control and sanction than other types of illicit conduct. According to the Court, a Member State cannot be denied the right to extend to the internet the application of the unilateral restrictive rules which it adopts for legitimate purposes in the public interest simply because that technological medium has a character that is in essence transnational. In addition, the Court states explicitly that the Member States are not deprived of legal means enabling them to ensure, as effectively as possible, compliance with the rules which they lay down in relation to actors operating on the internet and falling, for one reason or another, within their jurisdiction.

With this ruling, the Court has essentially, on the one hand, imposed the EU Member States to establish a suitable legislative framework according to the guidelines, and to ensure an effective enforcement of such legislative framework on the other hand. However, the governments of the EU Member States are not capable today to unilaterally enforce their legislative measures on operators who are operating on a transnational basis. As there is currently no European wide cooperation between the national competent authorities, an efficient enforcement of the national restrictive online gambling policies cannot be ensured, given the essentially transnational nature of online gambling services. It is currently impossible for a Member State to unilaterally impose and enforce its restrictive legislative measures to operators who are established in another EU Member State or outside the EU. Often so-called grey operators operate in the Member State of residence of the consumer based on a wide range of licenses obtained in different countries, and it is very unclear for the competent authorities of the Member State of residence of the consumer to understand the complexity of the licenses obtained in some countries (like Malta). Moreover, many so-called grey operators create a very complex licensing structure around them (with subsidiaries in different countries, inside and outside the EU, and operating based on different licenses for different types of games in different EU Member States). Without any cooperation between the EU Member States, it is impossible for the Member State of residence of the consumer to track down the operator providing its games illegally within its territory, and to be able to tackle the illegal transactions by enforcing its legislative and punitive measures.

⁷ CJEU judgment of 8 September 2010, *Joined cases Markus Stoss and others*, C-316/07 and others, paragraphs 86 and 87.

In this respect, it has to be recalled that the Court acknowledged in the *Liga Portuguesa de Futebol case*⁸, that a Member State can take the view, in the absence of harmonization in the field of gambling services, that the national competent authorities of the Member State of residence of the consumer cannot sufficiently guarantee the professional quality and integrity of an operator established in another EU Member State, where he obtained a license and is subject to control. Consequently, the Member State of residence of the consumer can legitimately restrict or even prohibit the provision of (online) games of chance by foreign operators within its territory.

Moreover, in the Dutch *Ladbrokes case*⁹, the Court has recognized that there should not be any distinction made between those operators who pursue an active sales policy in the Member State of residence of the consumer and those who merely operate a passive provision of gambling services. According to the Court, the aforementioned considerations in the *Liga Portuguesa* ruling are based solely on the effects of the mere accessibility of games of chance via the internet and not on the potentially different consequences of the active or passive provision of services by that operator. Therefore, also the provision of games by foreign operators who are merely making their offer accessible through the internet without any active promotion within the territory of the Member State of residence of the consumer, can be restricted or prohibited.

This ruling allows the national competent authorities to use legislative measures such as website blocking to enforce their national legislative framework. However, as mentioned above, currently the authorities of the Member States are not able to ensure an effective enforcement of their respective legislative frameworks on a unilateral basis. Consequently, the results of this ruling, and the obligations the Court puts on the Member States, cannot be fulfilled in practice, given the lack of cooperation between the national competent authorities of the different EU Member States.

– **Advertising and sponsoring:**

In the *Placanica case*¹⁰, the Court has recognized the theory of controlled expansion, by stating that authorized operators must be able to represent an attractive alternative to clandestine operators, and that this may necessitate a wide range of games, advertising to a certain extent and the use of new distribution techniques (internet). Since the *Gambelli case*, the issue of advertising by monopolistic operators has been a continuous

⁸ CJEU judgment of 8 September 2009, *Liga Portuguesa de Futebol Profissional*, C-42/07, paragraph 69.

⁹ CJEU judgment of 3 June 2010, *Ladbrokes*, C-258/08, paragraph 56.

¹⁰ CJEU judgment of 6 March 2007, *Joined cases Placanica and others*, C-338/04 and others, paragraph 55.

source of litigation both on national and European level. Although the *Placanica case* clarified the need for authorized operators to advertise their games to a certain extent, the litigation on this point has never stopped and still continues today.

Moreover, the Court has created a very difficult benchmark in the light of the proportionality test in the recent *Markus Stoss case*. Indeed, in this case the Court confirmed that any advertising issued by the holder of a public monopoly remain measured and strictly limited to what is necessary in order thus to channel consumers towards authorized gaming networks. The Court however added that such advertising cannot, in particular, aim to encourage consumers' natural propensity to gamble by stimulating their active participation in it, such as by trivializing gambling or giving it a positive image due to the fact that revenues derived from it are used for activities in the public interest, or by increasing the attractiveness of gambling by means of enticing advertising messages depicting major winnings in glowing colours.¹¹ Although it is clear that informative publication of winnings and good causes that are funded with the revenues are allowed according to this ruling, the boundary between advertising and informing is not at all very black and white in the field of games of chance. Therefore this paragraph risks to create even more disputes on national level regarding the advertising approach of monopolistic operators.

In addition, the issue of sponsorship is not clearly distinguished from advertising either. In the *Liga Portuguesa de Futebol Profissional case*, the Court has stated that the possibility cannot be ruled out that an operator which sponsors some of the sporting competitions on which it accepts bets and some of the teams taking part in those competitions may be in a position to influence their outcome directly or indirectly, and thus increase its profits.¹² There are however other issues related to sponsoring which currently create legal uncertainty, in particular regarding the boundary between sponsorship and advertising. Often sponsored sport teams are playing with advertising on their shirts, within the territory of a Member State in which the provision of the games of the operator concerned are unauthorized but nevertheless accessible to consumers.

– **Legal uncertainty and practical problems arising from the national jurisprudence:**

In many cases regarding the fight against illegal on line gambling operators the Belgian courts have been confronted with ever raised questions regarding the consistency of the

¹¹ CJEU judgment of 8 September 2010, *Joined cases Markus Stoss and others*, C-316/07 and others, paragraph 103.

¹² CJEU judgment of 8 September 2009, *Liga Portuguesa de Futebol Profissional*, C-42/07, paragraph 71.

Belgian gambling policy. Very often operators tried to argue that there was a certain inconsistency because not all activities were subject to the same rules. Indeed the activities of the National Lottery are subject to the Law of 19 April 2002, while the other Gaming activities are regulated by the Law on Games of Chance of 1999 as amended several times. A discussion concerning the former Belgian legislation on betting activities is no longer relevant today.

Each time the various legislations needed to be defended by explaining all reasons why the legislation was strict and consistent and necessary for the aims pursued. In most cases the advertisement by the National Lottery, mostly on billboards, was put forward to claim the inconsistency. Yet it is known that billboard advertising is not the most aggressive form of advertising (and certainly less than the methods used by the illegal on line gambling operators through the bonus schemes, email marketing and free games) and that its impact is more difficult to measure. The discussion on what is permissible as advertising, just information which would not help channelling the gaming desire, or more attractive forms of advertising (Placanica ruling based) is currently the biggest threat to the sustainability of the gaming policy. The most recent judgments in Markus Stoss e.a. do not help in resolving this problem, but on the contrary add to the uncertainty created originally by the Gambelli judgment that consistency requires the legal operators to reduce their offer (which would actually only help the illegal offering to grow and not reduce the overall offer on the market).

We can also refer to our answer on question 11, where we mentioned the problems relating to the question whether certain forms of advertising by illegal on line operators needed to be considered as the promotion of the illegal offer.

(6) Do you consider that existing national and EU secondary law applicable to online 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 online gambling services?

- The existing set of different national legislations in the EU Member States is not adequate to regulate online gambling services

When the EU Heads of State and Government decided in Edinburgh in 1992 that gambling services should not be regulated at EU level, the market was completely different than it is today. As mentioned in the consultation document, the provision of online gambling services has increased exponentially. The provision of online gambling services is essentially a transnational service, meaning that it is an essential means to provide remote gambling services to consumers which are resident in another (EU) Member State. Although several lottery operators provide online lottery games within their respective jurisdictions in accordance with the respective national legislation – such as is the case for the Belgian National Lottery – these operators are confronted with a significant illegal provision of online gambling services, from operators established in another (Member) State and without a national authorization from the authorities of the Member State of residence of the consumer. In Belgium, the National Lottery is confronted with many operators providing their services with a license obtained in Malta or Gibraltar, or outside the EU, without any authorization from the Belgian authorities to provide their services on the Belgian territory. Doing so, these operators are not abiding by the national legislation, f.e. regarding gaming rules and limitations, consumer protection, advertising, tax, etc.

As this is an essential cross border service, the national authorities cannot adequately cope with the challenges, problems and risks caused by these services. Internet is not to be stopped at the border. Cross border games generate several problems which cannot be efficiently dealt with merely by the national authorities of the Member State of residence of the consumer: besides the aforementioned problem of so-called “grey operators”, actually illegal operators, which are providing their games unauthorized in another Member State based on the license obtained in the country of origin, there are many other cross border issues which require a transnational approach. Several non-EU operators are providing games in the EU without any authorization whatsoever, operators are connecting players to other players across the globe through certain types of white label platforms (to enhance the overall liquidity available under the game and consequently the attractiveness of the game concerned) and thereby creating an open ended system without any regulatory approval nor control; the problem of identification of operators established in other (Member) States providing their games without authorization, the absence of guarantee on the integrity of the game, the absence of guarantee on payout, etc.

In the Conclusions which were adopted on 10 December 2010, the Council has reiterated that the Member States are confronted with several cross border issues, an

issue which has been discussed in length during the meetings chaired by the Belgian Presidency.

According to the principle of subsidiarity, a matter should be regulated at the level (whether European, national or regional) which is the most appropriate. Although there are several issues related to gambling which the national authorities can cope with, a transnational approach is necessary for those issues the authorities of one Member State cannot deal with by themselves and need cooperation and collaboration from the other Member States in order to ensure a coherent and consistent gambling policy. Therefore, the power of the Member States in the field of gambling, as defined by the Court of Justice of the EU in its case law, needs to be supplemented by EU secondary legislation, in order to allow the Member States to ensure a coherent gambling policy and in order to implement and enforce its policy.

The fact that the Member States are not able to deal with such cross border issues by themselves is also proven by the years of litigation, both on national and European level, which creates legal uncertainty for governments and stakeholders.

- The existing secondary EU legislation which applies amongst others to gambling is not sufficient to ensure a coherent approach

Gambling services are currently not subject to a sector specific harmonization at EU level, but they do fall within the scope of several EU directives, as indicated in the Commission consultation document.

According to the Belgian National Lottery, these directives do not suffice to ensure a coherent and sustainable approach to gambling services in the EU, and a partial sector specific regulation is required. There are indeed several other issues which are to be addressed in the context of a sustainable gambling policy, which are not addressed in the currently existing EU secondary legislation, such as:

- how to ensure the integrity of the games (including the integrity of the sport events on which betting is organised and the connected sport owner right issue);
- the sustainable contributions of lotteries to society;
- coordinated rules on consumer protection including the possibility for a EU wide exclusion for problem gamblers, and the cost related to this;
- rules on liquidity driven, fully controlled interconnection of operators across the EU/EEA (but limited to the EU/EEA);
- technological means and controls;

- licensing & concession rules and procedures where applicable, etc.

Such issues nevertheless need to be tackled in order to allow the Member States to maintain and implement a consistent and coherent gambling policy in an EU context.

Moreover, where gambling services already fall within the scope of currently existing EU directives, they often do not adequately address the specific issues related to gambling:

- The current Unfair Commercial Practices Directive leaves several important issues outstanding such as the offer of free games as a promotional services and the offer of games on credit, which are detrimental to a Member States' restrictive policy in the light of the objectives of consumer protection. The large availability of free bonuses and so-called free games constitute a serious problem.

More in general, advertising (both national and cross border) for gambling services remains unclear and is to be regulated on European level.

- The current text of the Audiovisual Media Services is not sufficient in that regard, and it is conflicting with the CJEU case law. Indeed, the Audiovisual Media Services Directive only mentions an exemption for gambling services as such in recital 22: *'For these reasons, games of chance involving a stake representing a sum of money, including lotteries, betting and other forms of gambling services, as well as online games and search engines, but not broadcasts devoted to gambling or games of chance, should also be excluded from the scope of this Directive.'* It leaves the door open for audiovisual media service suppliers offering advertising space. The application of a country of origin principle on advertising through audiovisual media service suppliers in the field of gambling is however in blunt contradiction with the CJEU case law in the *Sjoberg case*, which allows for a Member State to maintain a prohibition on cross border advertising of games which are unauthorized within its territory. Several issues related to cross border advertising are clearly causing severe problems for the coherent implementation of a restrictive gambling policy within the territory of a Member State, such as advertising on billboards at football matches, and the broadcasting of such advertising in other Member States. The question of sponsorship, and the mentioning of names on sport shirts, also requires a European answer.

Regarding advertising by an exclusive operator in general, the CJEU has ruled in the *Markus Stoss case* (paragraph 103) that *"any advertising issued by the holder*

of a public monopoly remain measured and strictly limited to what is necessary in order thus to channel consumers towards authorized gaming networks. Such advertising cannot, in particular, aim to encourage consumers' natural propensity to gamble by stimulating their active participation in it, such as by trivializing gambling or giving it a positive image due to the fact that revenues derived from it are used for activities in the public interest, or by increasing the attractiveness of gambling by means of enticing advertising messages depicting major winnings in glowing colours."

According to the Belgian National Lottery, these findings certainly allow for a gambling operator to refer to the good causes that are funded by its revenues and to inform the public on big winnings, as long as this is not done in a way to encourage consumers' propensity to play. However, these findings will be interpreted in different ways and are a ground for endless litigation, if not clarified in an EU sector specific framework. The terminology of "encouraging the consumers' propensity" to gamble is a vague and very subjective standard.

- Moreover, the Third Anti-Money Laundering directive does not allow an adequate prevention of money laundering in the field of (online) gambling as it currently only applies to land based casinos (see article 10 of the Directive) and to their online activities (see recital 14 of the Directive). Therefore, the Directive does not even apply to remote operators (providing casino and other types of games), who do not have any land based activities. Moreover, this Directive does not apply to (sport) betting and other types of games, despite the risks of money laundering. Regarding lottery games, the risk seems to be much lower. Therefore, in order to allow an adequate approach towards anti-money laundering, the scope of the directive should be expanded to operators of all types of games, including operators who only provide their games online and who do not have any land based activities.

– **The consistency between public interest objectives, national measures and the actual behaviour of public and private operators**

On this part of the question, the Belgian National Lottery wants to reiterate, following its comments on the first part of this question, as well as its reply to questions 3 and 4, that it is currently indeed not possible for a Member State to ensure a coherent approach on national level. National measures taken in the light of public interest objectives are currently being circumvented by the so-called grey operators and a lack

of EU frame and cooperation between the Member States does not allow efficient enforcement of the national restrictive legislation.

On the question whether national restrictive measures and the actual behaviour of operators are to be considered consistent, the findings of the Court in the *Markus Stoss judgment* are to be considered to be a benchmark. In this case, the Court has given guidelines as to when a restrictive gambling policy, and the actual behaviour of an operator, can be considered to be consistent and thus in conformity with EU law. Although the Belgian National Lottery believes that these elements should in any case be codified in an EU approach, these are the main principles to be followed as any EU sector specific regulation cannot deviate from the existing CJEU case law.

In the *Markus Stoss judgment*, the Court has ruled that a monopoly is not suitable for achieving the public interest objectives of preventing incitement to squander money on gambling and combating addiction, if the following cumulative conditions are fulfilled:

- Advertising measures emanating from the monopoly holder and relating to the other types of games of chance which it also offers are not limited to what is necessary in order to channel consumer towards the offer from the monopolistic operator by turning them away from other channels of unauthorized games, but are designed to encourage the propensity of consumers to gamble and to stimulate their active participation for purposes of maximizing the anticipated revenue from such activities.
- Other types of games of chance may be exploited by private operators holding an authorization
- In relation to other types of games of chance and which present a higher potential risk of addiction than the games subject to that monopoly, the competent authorities are conducting or tolerating policies of expanding supply, of such kind as to develop and stimulate gaming activities, in particular with a view to maximizing revenues.

If those cumulative conditions are not met, a monopoly or other exclusive rights system can be perfectly consistent with EU law. To that end, the Court also gave indications, in paragraphs 83 and 87, as to the legislative framework a Member State should foresee in the light of its restrictive gambling policy. The Court found that a measure as restrictive as a monopoly, which can be justified only in order to ensure a particularly high level of consumer protection, must be accompanied by a legislative framework suitable for ensuring that the holder of the monopoly will in fact be able to pursue, in a consistent and systematic manner, the public interest objective. The Court adds that the

supply should be quantitatively measured and qualitatively planned, and should be under strict control by the public authorities. The Court also stated that Member States must be able to have legal means enabling them to ensure, as effectively as possible, compliance with the rules which they lay down in relation to actors operating on the internet and falling within their jurisdiction.

With this judgment, the Court has clearly given the signal that it is up to the Member States to establish a coherent legislative framework and ensure effective enforcement of such a system.

According to the Belgian National Lottery, an operator's behaviour cannot be considered to be a separate factor in the consistency assessment, as long as it abides by and operates within the legislative framework as determined by the Member State. Such a legislative framework will indeed be internally consistent when fulfilling the guidelines put forward by the court in the Markus Stoss case.

This however does not mean that the overall approach on gambling services in the EU will be coherent. To that end, and in line with the aforementioned comments, an EU chapeau is needed, according to which the EU Member States can shape their restrictive gambling policies in a coherent manner. In a way, one could mention the internal consistency of a Member State's policy on the one hand, which can be ensured by the Member State if it is in line with the current jurisprudence, and on the other hand, an overall EU frame on gambling which captures all gambling related elements and allows for a EU wide coherent approach. Given the principle of subsidiarity and the discretionary power of the Member States in this field, a (partial) minimum harmonization at EU level would be required to ensure a consistent national restrictive policy within an overall coherent EU approach.

Finally the current framework does deny the important role state lottery operators, like the Belgian National Lottery, play for society. The EU is more than just an economic entity, it is an environment in which people must be able to live and enjoy a variety of original social, human, sportive and cultural benefits in the different Member States. The Belgian National Lottery, as are the other state lottery operators in the 27 Member states, do substantially fund the non-economic environment of the EU. In the Conclusions which were adopted on 10 December 2010, the Council has emphasized that any future debate and/or framework needs to take this specific role of state lotteries on board.

(7) How does the definition of online gambling services above differ from definitions at national level?

It is premature to use a definition for online gambling services which would embrace all the gambling activities, given that the electronic distribution channels for gambling offerings are in constant development. One should not forget that online gambling services are just another way of distributing and marketing gambling services.

It is in fact not possible, nor useful to set a common definition since online gambling is regulated at national level. Moreover, the definition presented here does not exist in Belgium. It would suffice to state for example that online gambling is gambling services offered through e.g. the internet, m-commerce, IPTV (the means of communication listed in the European Commission Green Paper). Furthermore, the definition presented in the Green Paper suggests that online gambling is inherently different from terrestrial gambling, whereas in fact the internet in many cases is only an alternative distribution channel (with indeed very specific risks) for existing games. Either way the definition does not make a clear distinction between terrestrial and online gambling and the footnote does not provide sufficient clarification. Anyway, the information provided in the footnote should be integrated in the definition itself.

The Law of 19 April 2002 regulating lottery products in Belgium does not include a definition for online lottery products as such. Article 7 of that law lays down that the National Lottery has the right to use “information society instruments” to organise, in the public interest and using commercial methods, public lotteries, games of chance and wagers. This wording clearly indicates that the National Lottery considers the information society instruments as just one of the possible ways to distribute and market gambling services.

(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?

Promotional games pose high risks if not regulated appropriately. In order to clearly distinguish them from games of chance, promotional games need to be available at no cost – i.e. include no stakes – and prizes need to be kept to a strict minimum.

Promotional games that do not abide by these criteria should be considered games of chance and be regulated accordingly.

(9) Are cross-border online gambling services offered in licensed premises dedicated to gambling (e.g. casinos, gambling halls or a bookmaker's shop) at national level?

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(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 online gambling services?

Member States have a large discretionary power to determine how to organise their gambling policy and to determine what is necessary to achieve the desired level of protection. In order to reach that level of protection, Member States apply various measures in the fields of customer identification, law enforcement, advertising, prevention of fraud and money laundering, etc.

This protection is all the more necessary in the field of online gambling. The Court of Justice of the EU has already many times confirmed the more dangerous nature of online gambling due to the lack of direct contact between consumer and operator, the easy and permanent access to online games and the potentially high volume and frequency of the offer, in an environment which is moreover characterized by isolation of the player, anonymity and an absence of social control. Besides these risks for the players, it is more difficult for the national authorities to supervise and help players who participate in online activities.

Due to the higher risks for consumers and the public order linked to online gambling, Member States have to be more careful and strict in applying their policy as it is much more difficult, sometimes even impossible, to carry out verifications and controls due to the virtual element and the cross-border element of online gambling. The Court of Justice of the EU explicitly stated that a Member State is entitled to take the view that the mere fact that an operator lawfully offers gambling services via the internet in another Member State, in which it is established and where it is in principle already subject to statutory conditions and controls on the part of the competent authorities in that State, cannot be regarded as amounting to a sufficient assurance that national

consumers will be protected against the risks of fraud and crime, in the light of the difficulties liable to be encountered in such a context by the authorities of the Member State of establishment in assessing the professional qualities and integrity of operators.

Online gambling services are an integrated part of the Member States' policy and need only to be permitted in order to improve the channelling policy and aim at further enhancing the internal consistency of the policy choices. There is thus logically no disadvantage from a policy perspective in different national regimes. From a technical point of view, however, one could think about coordinating the approach of the various Member States with regard to the approach of IT requirements and standards and government control and security systems to create more transparency and efficiency for legal operators. Also from a responsibility perspective, both from the Regulator and operators, more cooperation to respect the various policy choices could be useful.

(11) With focus on the categories mentioned above, how are commercial communications for (online) gambling services regulated for at national level? Are there specific problems with such cross-border commercial communications?

Regulations regarding commercial communications are directed towards a) gambling providers themselves; and b) secondary service providers.

As regards the regulations for the gambling providers themselves, the Belgian law on games of chance of May 7, 1999 states that commercial communications are illegal when they promote unlawful gambling (Art. 4 §2). Violation of these rules can even lead to penal sanctions. The law is very clear in this regard, and was already clear before it was recently amended (new law in force since 01/01/2011).

Besides the pertinent regulations in the law on games of chance, which are most relevant in this respect, there are also general rules regarding commercial communications that can be found in the law regarding market practices. These too apply to commercial communications for (online) gambling services. It concerns issues such as comparative advertising, misleading information, unsolicited direct communications, etc.

Notwithstanding the above, in practice many illegal gambling operators advertise their activities. Sometimes, this publicity is even very high profile such as sponsoring of Belgian premier league football clubs. Illegal operators will however often try to mask

the fact that they are promoting illegal gambling. Under the old law on games of chance, it was very easy to legally offer (online) bookmaker sports betting. Advertising for this was not regulated. Gambling operators would then advertise for their sports betting website, but these websites would contain immediate links to other gambling offers such as online poker (which was and still is illegal without a licence). It should be stressed that these kinds of tactics are not acceptable. A comparison can be made with tobacco companies who used to try and advertise their cigarettes by advertising other products (e.g. clothes) with the same brand name. Such brand association advertising is strictly limited under Belgian law. The same should apply to gambling operators.

The National Lottery as well as the Belgian gaming authorities have taken several initiatives to halt illegal gambling operators and sometimes more specifically their commercial communications, with varying success.

A number of civil procedures were initiated against the gambling operators in question as well as the football clubs they sponsored and even the Belgian football association, with the objective to have a judgment stating that the commercial communications in question had to stop immediately. The legal basis for such civil actions were both the law on games of chance and the law regarding market practices. These procedures made it clear that sanctioning illicit commercial communications is not always a straightforward action. Courts sometimes interpret the rules and the facts at hand in an incoherent manner. For instance, as the (old) law on games of chance stated that no publicity could be made for illegal "gambling venues", a judge refused to condemn an illegal online operator since it only advertised for a website and the judge found a website could not be considered as a venue. Another judge found he could indeed make a parallel interpretation and stated that a gambling website is to be considered a gambling venue. However, he found that the publicity made by the illegal operator did not clearly mention the website at hand (only the operator's trademark name) so that it could not be considered illegal publicity for a gambling venue after all. As a result, civil procedures did not always have the desired effect.

Penal procedures have also been initiated. These too were not always a success, even though the gambling operators at hand clearly violated the law. Recently however, Unibet was indeed convicted in Belgium by a penal court for its illegal online gambling offer and for the publicity it made. This shows that, even though often problematic, the national rules on commercial communications from (illegal) gambling operators can indeed be upheld. All previous procedures were still based on the old law on games of chance (and on the law regarding the National Lottery). Since the new law is even more

clear about the illegality of commercial communications, the National Lottery dares to hope that procedures against illegal gambling operators will be concluded more easily in the future.

However, when brought before a judge, illegal gambling operators have almost always invoked the argument that the Belgian gambling policy would be inconsistent. The National Lottery has even had to continue legal proceedings up to the highest competent Belgian court (“Cour de Cassation” or “Hof van Cassatie”) in this regard. This case did not specifically address the issue of commercial communications, but the Cour de Cassation / Hof van Cassatie did not follow the illegal gambling operator’s view that the Belgian gambling policy is inconsistent when comparing the regulations regarding the National Lottery with those regarding other sectors in industry of gambling as a whole.

Nevertheless, it is not unlikely that the National Lottery, or the Belgian authorities for that matter, could find themselves wrapped up again in legal proceedings with illegal gambling operators still maintaining their point of view that the Belgian legislation is not in conformity with European law. The National Lottery finds it disturbing that illegal gambling operators disregard all regulations and can often make all sorts of commercial communications. It is problematic that these operators invoke European law to dodge basic and essential rules and it cannot be put in question that the National Lottery has a valid monopoly within a coherent gambling framework. It is only logical that commercial communications by those who do not abide by this framework, are prohibited.

As for the National Lottery itself, commercial communications are regulated by virtue of the “management contract” between the National Lottery and the Belgian State. In the light of its mission to channel the gaming desire, the National Lottery must ensure adequate publicity of its products. Part of its publicity is acquired by sponsoring. The National Lottery must undertake that its sponsoring is in conformity with its social and societal objectives and that its sponsoring budgets are spent in a balanced manner.

Regarding secondary service providers, the same provision in the new law on games of chance applies, being the general prohibition to advertise unlawful games of chance or to facilitate their exploitation (art. 4 §2). In practice, it remains to be seen how this will be put to practice. The Belgian gaming commission will work together with secondary service providers (such as ISP’s) so that they know which gambling sites are legal and which are not. The National Lottery cannot predict whether this cooperation will yield the necessary results. A problem in this respect is that certain secondary service

providers might be foreign companies that are not necessarily much impressed by Belgian regulations or even the threat of Belgian penal sanctions. The inherent cross-border aspect of commercial communications in the modern day information society, necessitates cross-border cooperation. The National Lottery insists that the proper means are put in place for such cooperation, at least between regulators, to guarantee that legislation will not indeed be enforced.

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

In general, the National Lottery considers that it is necessary to strive for a system that is secure and controls age appropriately. The control on the payment system needs to be in proportion with the type of game (i.e. the games with the highest risks should also be the ones where there is the highest level of control on the payment system). Payment systems must be left to the discretion of the Member States provided that compliance with an enhanced money laundering policy (including all online gambling activities) is not affected. All payments must be traceable and connected to the identified customer (by preference winnings should be paid on the same account as where the money of the stakes came from).

It is absolutely necessary to prohibit gaming on credit, the use of credit cards and other post-paid systems. To possibly prevent people from re-staking all their winnings there should also be a system of overflow whereby all amounts above a certain limit are transferred automatically from the player's gaming account to his bank account, which is the system applied by the National Lottery (see reply to question 13 on the moderators applied on the National Lottery's online gaming platform).

For identity and age verification, the National Lottery uses a government controlled system whereby the identity is verified through ID card or passport and whereby verification is not left to private third parties. The National Lottery verifies age and nationality of a player through a direct link (online, real-time) to the 'National Population Register' on the basis of the name of the player and his national register number.

Each individual can only have one gaming account and all transactions and money flows are centralised, which enables the player to have a unified and consolidated view on the complete record of his gaming behaviour.

Credit and the use of credit cards are prohibited. The only possibilities to top up a gaming account are payments by debit card, bank transfer (both through a highly secured connection) and e-vouchers (which can be purchased in the National Lottery's points of sale).

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

A crucial element of any national regulatory framework is the effective enforcement of that framework as it allows Member States to attack and prosecute the operators who provide their services unauthorized on their territory. Today, many Member States are implementing strict and effective enforcement measures to tackle the offer of gambling services by illegal operators on their territory from other Member States and/or third countries. These measures include ISP blocking, payment blocking, geo-location technology, etc.

Player protection and public order can be best achieved by consumer identification measures, ensuring secure payments by means of online payment services and payouts, responsible gaming measures, etc.

In that regard, a "verified" player account is an essential element to ensure both enforcement and player protection as it allows the verification of the player's identity (player account requires data such as identity, age, location, etc.) as well as an overview of and follow-up on the financial transaction as such and gives certain guarantees as to the compatibility with responsible gaming measures.

Reference can be made to the third Anti-money Laundering Directive (Directive 2005/60/EC) which foresees the need for stricter control and consumer identification which can be achieved by setting up player accounts for land-based casinos and the casino games they provide through the Internet. One of the customer due diligence measures proposed in the Directive suggests the establishment of player accounts for identification purposes.

The need for stricter controls and verifications was most recently confirmed by Advocate-general Bot in the *Dickinger* case¹³ who stated that in case of online gambling, national authorities can require the execution of on-site inspections to

¹³ Opinion of Advocate-general Bot of 31 March 2011 in the *Dickinger* case, C-347/09, not yet published.

ensure the protection of consumers against fraud and gambling addiction. According to Advocate General Bot, Member States have the right to require a strict control of compliance with their rules and to apply the necessary policy measures to resist the infringements of these rules.

Also from a responsible gaming perspective the obligation to have a player account is of high importance and has been integrated in the European Lotteries Responsible Gaming Standards and Certification Process after extensive international consultation with clinical and operational experts in the field of CSR and Responsible Gaming, both in the gaming/gambling sector and beyond.

The EL RGWG is strongly convinced that a verified player's account is a necessary requirement for enforcement and player protection reasons. In fact, it is a sine qua non for State Lottery online systems.

The player account will provide the only reliable and verifiable method of providing the operator with the means of monitoring, regulating and controlling the players parameters and environment, and providing the player with the means to monitor and control his/her own gambling behaviour.

As described in the EL Responsible Gaming Standards, (section V – “Remote Gaming Channels”), a player's account should be created only when the gaming operator has received:

- Proof of address
- Age verification (i.e. check against a passport or ID card)

Moreover, in order to help them play responsibly, several facilities and options are provided to players as an integral part of their player account:

- Customer-defined and/or system default limits on play, spend and/or losses (called gaming moderators in Belgium)
- Self-exclusion options for players
- Reality check on the game screen (e.g. session clock, warning relating to limits, cool-offs/breaks between periods of play)
- Data protection controls
- Values of amounts wagered shall be displayed
- Self-assessment opportunities

Unless the vast majority of these elements are implemented, a player account cannot be considered as a verified player account; neither can it be considered effective for the purposes of player protection.

For the National Lottery, that obtained this certification in December 2010 after an external audit, players' accounts are necessary to have a clear view on and legal guarantees about the identity of the player, for the protection of minors and to apply gaming moderators.

The particularly rigorous moderators applied by the National Lottery's online platform are the following:

Financial moderators:

- Maximum weekly deposit limit on the gaming account: €300 (exceeding deposits/transfers are automatically refused).
- Maximum daily balance of winnings: €50¹⁴ (overflow of the surplus to the player's bank account)
- Maximum balance of unspent stake deposits/transfers to avoid accumulation of money on the gaming account: €450 (this limit cannot be changed by the player)¹⁵.
(If a gaming account contains the maximum of €50 in winnings, the maximum gaming account balance is €500.)
- Maximum daily loss: €100.

The first and third moderator are applied on the basis of an "evolving timeframe", which means that it is always the last period of 7 days or the last 24 hours that are considered. (Hence a week is not necessarily the period from Monday to Sunday and a day is not necessarily the period from midnight to 11.59pm. Otherwise a person could, f.e. in the case of the maximum daily loss, lose double of what is allowed if he loses €100 5' before midnight and the same amount again 5' after midnight.)

Players can change certain limits downward. Upward changes are only possible after a cool-off period and it is impossible to raise them above the initial default limits. The cool-off period is 2 weeks for the maximum weekly deposit moderator, which means that the selected higher limit is applicable after 2 weeks only. For the maximum daily balance of winnings moderator the cool-off period is 2 days (this balance can even be

¹⁴At the end of the day, the system adds all the day's winnings and the amount of winnings that exceeds €50 is automatically transferred to the player's bank account. This system only concerns the small winnings, i.e. winnings of less than €50. Winnings of €50 and more are directly transferred to the player's bank account)

¹⁵ Difference with the first moderator: the moderator on unspent stake deposits moderates on a permanent basis and not only on a weekly basis.

sunk to €0, causing all winnings of the day to be transferred to the bank account). For the daily loss moderator the cool-off period is 2 days as well.

Stakes are first withdrawn from the amount deposited by the player on his gaming account and only from the winnings at the stage where the deposited amount is exhausted. This is a kind of daily moderator as well since the winnings are skimmed at the end of each day, hence they cannot be re-staked the following day.

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

The National Lottery uses a government controlled system whereby the identity is verified through ID card or passport and whereby verification is not left to private third parties. The National Lottery verifies age and nationality of a player through a direct link (online, real-time) to the 'National Population Register' on the basis of the name of the player and his national register number.

The National Lottery also respects very strong principles in the European Lotteries Responsible Gaming Standards to ensure that the interests of players and vulnerable groups are protected.

Like for all the other State Lotteries, the issue of cross-border problems does not arise for the Belgian National Lottery as all registered players are residents of their own jurisdiction. Registration processes in place for online players are specifically designed to block non-residents from registering in the online system (through the system using the National Population Register).

As mentioned before, customer verification should not only include proof of address and age but also provide the customer with access to a variety of tools such as :

- Customer-defined and/or system default limits on play, spend and/or losses
- Self-exclusion options for players
- Reality check on the game screen (e.g. session clock, warnings relating to limits, cool offs/breaks between periods of play)
- Data protection controls

- Display of value of wagers
- Self-assessment opportunities to help people to evaluate whether they are playing responsibly.

The more verified tools provided to the customer, the more he or she will be protected.

MES LIMITES DE JEU

Jouer est un plaisir ! Toutefois, certaines personnes ne parviennent pas à contrôler leurs comportements de jeu. C'est pourquoi la Loterie Nationale impose des limites à chaque joueur. Vous pouvez décider de vous imposer des limites plus strictes encore. Pour cela, cliquez sur « Modifier » et fixez vos propres limites. Elles seront immédiatement d'application. Ensuite, vous pourrez assouplir à nouveau vos limites. Vous devrez alors attendre un certain laps de temps, variable suivant les limites, avant que vos nouvelles limites prennent cours.

Si vous le souhaitez, vous pouvez vous exclure volontairement de tout jeu en ligne sur ce site durant une période déterminée. Pendant cette période, vous pourrez encore vous connecter à votre compte joueur mais ne pourrez ni créditer votre compte ni participer à aucun jeu.

Limites de jeu	Période de la limite	Limite actuelle	Modérateurs de jeux	Limites en attente	Date et heure
Versements par semaine	7 jours	300,00€	300,00€		Modifier
Perte journalière	24 heures	100,00€	100,00€		Modifier
Gains réutilisables		50,00€	40,60€		Modifier
Dépôts non utilisés		450,00€	445,00€		Détails

In Belgium the National Lottery gives the opportunity to players to close their accounts temporarily (during this period, accounts cannot be used to play or transfer money) or permanently (3 temporary closures in one year = permanent closure). Players can also set their own personal financial limits but only if the preferred limits are lower than the standard limits. Full information about the games and game rules is accessible for the players, and warnings about specific risks are given. There is also a reality check available for players (money spent and the time spent playing is shown).

The Belgian legislation regarding the implementation of the EPIS system established by the Department of Justice (the public database of the different categories of persons

excluded from gambling, including the self-excluded gamblers and gambling addicts, excluding the persons excluded because of their profession¹⁶) obliges all licensed operators (off-line and online) to check every customer ID upon entry into a gaming premise (including access to an online site) online in the EPIS database and to deny him/her access when he/she is included on the EPIS “excluded persons list”.

(15) Do you have evidence that the factors listed [above] are linked to and/or central for the development of problem gambling or excessive use of online gambling services? (If possible, please rank them)

- (1) Event frequency
- (2) Payout interval
- (3) Accessibility and social environment
- (4) Chasing losses or being close to winning
- (5) Perceived skills and “involvement”
- (6) Commercial communications that could trigger vulnerable groups

These factors are very difficult to rank on an individual basis as, in reality, they occur in combinations and it is the particular combination that can be problematic.

Factors (1) to (4) are objective as they refer to specific characteristics of a game, and relatively easy to measure. Factors (5) and (6) are subjective as they refer to the wider play environment, and are very difficult to assess when analysing a game.

Furthermore, the researches of Dr Alex Blaszczynski, Dr Henry Lesieur, Dr Robert Ladouceur, Dr Jeffrey Derevensky, and Dr Gerhard Meyer, rated all these relevant factors for different games and obtained a total risk rating for games being evaluated:

¹⁶ E.g. magistrates.

GAM-GaRD. www.gamgard.com is an example of a widely used tool for determining the potential addictive nature of games.

GAM-Gard analysis shows :

- Event frequency	}	(around 38% of the global contribution)
- Prizeback ratio		
- Continuity of play	}	(around 28% of the global)
- Accessibility points		
- Multi game/stake opportunity	}	(around 28% of the global contribution)
- Variable/fixed stake size		
- Near win opportunities		
- Currency/Ease of pay		
- Illusion of control elements	}	(around 6% of the global contribution)
- Jackpot size		

Concerning commercial communications, several countries' Associations have put in place best practices standards at national levels, in order to protect vulnerable groups such as underage people. The National Lottery is bound by the Ethical & Responsible Advertising Code which defines a frame of reference for the creation of advertising campaigns and sales promotion activities in relation to lottery games.

For more information we refer to the book "Midbrain Mutiny: The Picoeconomics and Neuroeconomics of Disordered Gambling"(2008).

(16) Do you have evidence that the instruments listed [above] are central and/or efficient to prevent or limit problem gambling relating to online gambling services? (if possible, please rank them)

The Green Paper lists the following instruments for reducing the risk of problem gambling:

- Age limits
- Self-limitation (financial and time) and self exclusion
- Information/warnings/self tests
- No credit

- Reality checks
- Diligence obligation for the online operator
- Restricting certain forms of games or bets that are considered to be more risky.
- Others (limits on commercial communication, restriction of the use of certain media, sales promotions and sign-up bonuses or free practice games).

All of the above instruments are of great importance to limit problem gambling. They have all been included in the elements of the European Lotteries Responsible Gaming Standards, for which several eminent specialists were engaged to share their knowledge and experience of the best CSR and Responsible Gaming principles and practices. With their help, a list of central instruments to help prevent excessive gambling was developed. The list developed for the EL RG Standards shows a remarkable level of foresight in anticipating the instruments in the above list. The European Lotteries list was developed and extensively “reality checked” by external and independent experts to ensure that it was relevant, implementable and verifiable.

The National Lottery would recommend adding to the above list “Links to help lines or help centres”.

The National Lottery uses all of the cited instruments but especially regarding self-limitation (financial and time), it has to be stressed that the so-called gaming moderators applied on the online gaming platform of the National Lottery are among the most strict in the EU. For the Belgian National Lottery there are 4 moderators. There are no countries where more moderators are used, very few use as many. Comparing the moderators one by one only 1 other state lottery is more strict on 1 moderator¹⁷.

The National Lottery considers that a due precautionary policy approach requires that all these limits (and all the other responsible gaming measures applied by the different kinds of operators) be compared and that due attention is given to the actual implementation of stated responsible gaming measures.

The particularly rigorous moderators applied by the National Lottery’s online platform are the following:

Financial moderators:

- Maximum weekly deposit limit on the gaming account: €300 (exceeding deposits/transfers are automatically refused).

¹⁷ Maximum stake per week : 300€ in Belgium, 250€ in Luxembourg.

- Maximum daily balance of winnings: €50¹⁸ (overflow of the surplus to the player's bank account)
- Maximum balance of unspent stake deposits/transfers to avoid accumulation of money on the gaming account: €450 (this limit cannot be changed by the player)¹⁹. (If a gaming account contains the maximum of €50 in winnings, the maximum gaming account balance is €500.)
- Maximum daily loss: €100.

The first and third moderator are applied on the basis of an “evolving timeframe”, which means that it is always the last period of 7 days or the last 24 hours that are considered. (Hence a week is not necessarily the period from Monday to Sunday and a day is not necessarily the period from midnight to 11.59pm. Otherwise a person could, f.e. in the case of the maximum daily loss, lose double of what is allowed if he loses €100 5' before midnight and the same amount again 5' after midnight.)

Players can change certain limits downward. Upward changes are only possible after a cool-off period and it is impossible to raise them above the initial default limits. The cool-off period is 2 weeks for the maximum weekly deposit moderator, which means that the selected higher limit is applicable after 2 weeks only. For the maximum daily balance of winnings moderator the cool-off period is 2 days (this balance can even be sunk to €0, causing all winnings of the day to be transferred to the bank account). For the daily loss moderator the cool-off period is 2 days as well.

Stakes are first withdrawn from the amount deposited by the player on his gaming account and only from the winnings at the stage where the deposited amount is exhausted. This is a kind of daily moderator as well since the winnings are skimmed at the end of each day, hence they cannot be re-staked the following day.

Time moderators:

Since the National Lottery only sells its draw lotteries (Lotto, EuroMillions, ...) online there is at this stage no need for time moderators. Time moderators will be applied by the National Lottery when offering instant lotteries (e.g. scratch tickets), sports betting, poker, etc.

¹⁸ At the end of the day, the system adds all the day's winnings and the amount of winnings that exceeds €50 is automatically transferred to the player's bank account. This system only concerns the small winnings, i.e. winnings of less than €50. Winnings of €50 and more are directly transferred to the player's bank account)

¹⁹ Difference with the first moderator: the moderator on unspent stake deposits moderates on a permanent basis and not only on a weekly basis.

The Green Paper asks to, if possible, rank the instruments to limit problem gambling. We believe it would not be a useful exercise and note that lotteries use a combination of these factors. We note that many independent studies confirm that the above elements are central and relevant for the implementation of effective and efficient Responsible Gaming standards and practices. (see Annex 1)

Annex 1

Studies about responsible gaming and online gambling (non-exhaustive list)

- Allcock, C. (2002). Current issues related to identifying the problem gambler in the gaming venue. Australian Gaming Council: Current issues. Australian Gaming Council, Melbourne.
- Blaszczynski, A.; Ladouceur, R; Shaffer, H. J. (2004). A Science-Based Framework for Responsible Gambling: The Reno Model. *Journal of Gambling Studies*, 20, 301–317.
- Braverman, J.; & Shaffer, H. J. (2010). How do gamblers start gambling: identifying behaviour markers for high-risk internet gambling. *European Journal of Public Health*.
- Delfabbro, P.; Osborn, A.; Nevile, M.; Skelt, L.; & McMillen, J. (2007). Identifying Problem gamblers in gambling venues. *Gambling Research Australia*, Melbourne.
- Griffiths, M. (1999). Gambling Technologies: Prospects for Problem Gambling. *Journal of Gambling Studies*, 15, 265–283.
- Griffiths, M. D. (2001) "Internet gambling: Preliminary results of the first UK prevalence study". *Journal of Gambling Issues*, 5. Located at: http://www.camh.net/egambling/issue5/research/Griffiths_article.html
- Griffiths, M. D. (2003) "Internet gambling: Issues, concerns and recommendations". *CyberPsychology and Behavior*, 6: 557–568.
- Griffiths, M. D. (2005) "Remote gambling: Psychosocial aspects". In: *Remote Gambling (Westminster eForum Seminar Series)*, 11–20. London: Westminster Forum Projects Ltd.
- Griffiths, M. D. (2008). Problem Gambling and European Lotteries. In: *Gaming in the New Market Environment* (edited by Matti Viren) .
- Griffiths, M. D., and Barnes, A. (2008) "Internet gambling: An online empirical study among student gamblers". In: *International Journal of Mental Health and Addiction*
- Griffiths, M. D. and Parke, J. (2002) "The social impact of internet gambling", *Social Science Computer Review*, 20: 312–320.
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- Häfeli, J.; & Schneider, C. (2005). Identifikation von Problemspielern im Kasino – ein Screeninginstrument (ID-PS). Luzern.
- Hayer, T.; & Meyer, G. (2004). Sportwetten im Internet – Eine Herausforderung für suchtpräventive Handlungsstrategien. Suchtmagazin, 1, 33–41.
- LaPlante, D. A.; Nelson, S. E.; LaBrie, R. A.; & Shaffer, H. J. (2009). Disordered gambling, type of gambling and gambling involvement in the British Gambling Prevalence Survey 2007. *European Journal of Public Health*.
- Meyer, G.; & Hayer, T.; Griffith (2009). *Problem Gambling in Europe*, ISBN 978-0-387-09485-4
- Orford, J. (2002) “A nation of gamblers?” *The Psychologist*, 15: 278–279
- Peller, A. J.; LaPlante, D. A.; & Shaffer, H. J. (2008). Parameters for Safer Gambling Behavior: Examining the Empirical Research. *Journal of Gambling Studies*, 24, 519–534.
- Productivity Commission (2010). *Gambling*, Report Nr. 50. Canberra.
- Schellinck, T.; & Schrans, T. (2004). Identifying Problem Gamblers at the Gambling Venue: Finding Combinations of High Confidence Indicators. *Gambling Research: Journal of the National Association for Gambling Studies (Australia)*; 16, 8– 24.
- Sevigny, S., Cloutier, M., Pelletier, M. and Ladouceur, R. (2005) « Internet gambling : Misleading payout rates during the « demo » period ». *Computers in Human Behaviour*, 21: 153–158
- Smeaton, M. and Griffiths, M. D. (2004) “Internet gambling and social responsibility: An exploratory study”. *CyberPsychology and Behaviour*, 7: 49–57
- Welte, J. W.; Barnes, G. M.; Tidwell, M. C.; & Hoffman, J. H. (2009). The association of form of gambling with problem gambling among American youth. *Psychology of Addictive Behavior*, 23, 105–112.
- Williams, R. J.; West, B. L.; & Simpson, R. I. (2007). *Prevention of Problem Gambling: A Comprehensive Review of the Evidence*. Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, CANADA.
- Wood, R. T. A., Griffiths, M. D. and Parke, J. (2007) “The acquisition, development and maintenance of online poker playing in a student sample”. *CyberPsychology and Behaviour*, 10: 354–361
- Wood, R.; & Williams, R. J. (2007). Problem gambling on the Internet: Implications for Internet gambling policy in North America. *New Media & Society*, 9, 520–542.

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

We refer to the national study: « SYNOVATE – Kansspelen : Verantwoord spelgedrag » February 2011, and the studies made by INSERM (available on its website).

(18) Are there recognized studies or evidence demonstrating that online gambling is likely to be more or less harmful than other forms of gambling for individuals susceptible to develop a pathological gaming pattern?

See list in reply to question 16.

Since the early 2000's several studies have demonstrated that online gambling is likely to be more harmful than other forms of gambling for individuals susceptible to develop a pathological gambling pattern, in particular for adolescents²⁰. Based on the fact that online gambling is not a new form of gambling per se but a new and highly effective low-threshold distribution channel for any kind of games of chance, scientific research could prove that:

- Adolescents generally are particularly at risk of developing gambling related problems.
- The nature and form of internet gambling appeals particularly to young, technically aware people ("digital natives" / Generation Z).
- With the increasing spread of technology and rising attraction of online gambling, adolescent participation rates are growing rapidly. As a side effect of this trend the average age of initiation in gambling is expected to fall.
- Gambling-like options (e.g. demo games and training sites, games on social network sites) are very popular among adolescents. Adolescents will probably comparatively often have their first encounter with gambling or experience its appeal via such products.
- There are a relatively high number of problem gamblers among adolescents with online gambling experience (this applies both for adolescents and adults). However, the specific role played by online gambling in gambling related maladjustments (primary or secondary effect, upstream or downstream problem, etc.) remains unclear.
- There is a primary need for research to map established initiation scenarios into the world of online gambling during the adolescent development phase. This should give

²⁰ Meyer, Internet Gambling: A Challenge for the Prevention of Addiction, Suchtreport Nr.3, May/June 2001.

specific and appropriate consideration to the various forms of online gambling (including the popular gambling-like games) and investigate their relevance for the subsequent course of adolescent development. To date, the overall state of knowledge regarding the effects of online gambling in adolescence can be described at best as fragmented.

- An opening up of the gambling markets with its accompanying expansion of the available gambling options would initially stimulate demand among adults and adolescents. From a global perspective, and independently of regulatory requirements, the measures implemented to date to protect minors on the internet reveal clear shortcomings. If a future mandatory exclusion of minors from online gaming sites is not possible, the magnitude of adolescent gambling problems should continue to rise. As standard practice, minors should also not be allowed to gamble online for “virtual money”²¹. Furthermore a secondary analysis of findings from the 2007 British Gambling Prevalence Survey prepared by Griffiths et al. showed that “internet gamblers were more likely to be male, relatively young adults, single, well educated, and in professional/managerial employment. Further analysis of DSM-IV scores showed that the problem gambling prevalence rate was significantly higher among internet gamblers than non-internet gamblers. It was also found that some items on the DSM-IV were more heavily endorsed by internet gamblers including gambling preoccupation and gambling to escape”²².

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

/

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

The programs elaborated by the National Lottery involve Research, Information Training, and Treatment Referral:

- Research is funded and carried out so that there is a better understanding of the issues involved. For example since 2007 research by the Belgian *Clinique du Jeu*

²¹ Meyer, Analysis of the Risk Potential of Online Gambling for Adolescents, 2011.

²² Griffiths et al., 2008.

Pathologique is financed by the National Lottery. For 2011 the National Lottery will sponsor new research initiatives for a total budget of € 315.000.

- Information is disseminated to players and to the general public about the chances of winning (/odds), self-exclusion possibilities, helpline numbers, self-tests, behaviour modification possibilities. At every point of sale there is treatment referral information (+helpline phone number). In May 2011 a new information campaign has started. The point of sales receive a specific bonus when they actively support the campaign.
- Training is provided for retailers and employees. They receive training about game characteristics, problematic behaviour and responsible gaming. Retailers are also taught how to enforce the age-limit requirements (compliance by retailers is controlled by means of mystery shopping actions)
- Treatment Referral: The National Lottery refers to the *Clinique du Jeu Pathologique* and other institutions.

The data of the prevention centres are the following:

Toll-free Helpline: 0800 35 777

National Lottery's Prevention site: www.ken-uw-limieten.be
www.fixez-vos-limités.be

Prevention site of the *Clinique du Jeu Pathologique* : www.blogtonjeu.be
www.blogjespel.be

Clinique du jeu : +32-2/477 37 70

Joueurs Anonymes Bruxelles : +32-477 59 96 75

Joueurs Anonymes Liège : +32-486 18 40 90

Joueurs Anonymes Asbl Marche-en-Famenne : +32-496 27 65 96

CGGZ Matt Talbot (Centre for mental health): Tel : +32-3 235 88 02 or
Toll-free: 0800 304 03

CAD Limburg (Centre for addictions): Tel : +32-11 27 42 98

Werkgroep tegen gokverslaving en de VHAGEO-zelfhulpgroepen (working party against gambling addiction + self-help groups): Tel : +32-2 532 58 26 or

Mobile: +32-495 69 00 24

(21) Is treatment for gambling addiction available at national level? If so, to what extent do online gambling operators contribute to the funding of such preventive actions and treatment?

The National Lottery funds research dealing with gambling addiction and its prevention. In 2008–2009, the National Lottery devoted € 399,500 to this type of research. For 2009–2010 the amount was increased to € 499.500 and for 2011 (one year) the National Lottery has budgeted € 315.000 for new research initiatives. The grants are paid mainly to the Dostoïevski Clinic for Gambling and Internet Addiction at the Université Libre de Bruxelles (*Clinique du Jeu Pathologique*). The National Lottery also contributes to the dissemination of the results of the gambling addiction research, including the complete financing of the setting up of the toll-free helpline for problem gamblers, gambling addicts and those close to them. The setting up of this helpline in 2008 was totally funded by the National Lottery although the helpline was going to and actually is mainly used by and for the benefit of victims of forms of gambling other than those offered by the National Lottery. The National Lottery also funded the complete operating costs in 2008 and 2009. Since 2010 the financing of the helpline has been taken over by the Gambling Commission (Belgian regulator).

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

For the National Lottery the management agreement concluded between the Belgian State and the National Lottery²³ can be considered to be its license conditions according to national regulation.

It requires from the National Lottery a very high degree of diligence and prescribes in particular that the National Lottery:

- has the mission to channel in a targeted way the gaming behaviour in Belgium and to provide the largest possible group of people with gaming pleasure by offering entertaining games. This channelling policy has to be assessed once a year by an independent body and the assessment report along with a report on the actions undertaken to improve quality has to be submitted to the Minister having the National Lottery in his attributions.
- has to take care that its product policy doesn't create addiction risks. To achieve this the National Lottery has to submit to the board of administrators a yearly assessment of its product strategy concerning its channelling capacity and its responsibility. Furthermore each time a new game type is considered (the characteristics of which are determined in the management agreement, art. 48, §1) an assessment has to be carried out by the Responsible Gaming Committee of the impact the considered new game type

²³ The most recent one ratified by the Royal Decree of July 30, 2010, *Moniteur Belge* of September 9, 2010

could have on the gambling behaviour. If the considered new game type is a game of chance (not a lottery of some kind), the advice of the Belgian Gaming Commission has to be sought. The responsible gaming policy has to be assessed once a year by an independent body and the assessment report along with a report on the actions undertaken to improve the results has to be submitted to the Minister having the National Lottery in his attributions.

- has to contribute actively and autonomously to prevention and treatment of gambling addiction by supporting initiatives in that field.
- has to contribute, through all aspects of its activities and of those of its retailers, to the implementation of a responsible gaming strategy.
- has to put in place a Responsible Gaming Committee composed of scientific and clinical experts and of lottery experts. This Committee
 - examines whether the National Lottery's policies comply with the European Lotteries' Responsible Gaming standards and advises the governing board of the National Lottery about that;
 - advises the governing board and the Minister in charge of the National Lottery on the funding, by the National Lottery, of permanent scientific research and other initiatives in the field of responsible gaming, esp. in the field of prevention of compulsive gambling;
 - examines each new type of lottery product and of each change in game regulations to verify to what extent that product could be addictive. If so, this Committee will formulate an advice allowing the National Lottery to adapt the characteristics of the product.
- has to regularly amend its Ethical & Responsible Advertising Code, to apply it and to require its subcontractors to apply it as well.

The Belgian Ethical & Responsible Advertising Code for Lotteries (see attachment in French and Dutch) defines a frame of reference for the creation of advertising campaigns and sales promotion activities in relation to lottery games. Among the basic principles of this code there is compliance with relevant legislation, with the self-regulatory code of the International Chamber of Commerce (to be found at www.iccwbo.org) and with the codes of conduct of the sectors of Direct Marketing and Direct e-mail Marketing. The code is a sectoral code for all lotteries in Belgium and has been approved by the Belgian Advertising Council. Compliance with the code is being supervised by JEP (*Jury d'Ethique Publicitaire*), created by the Advertising Council. The National Lottery imposes the observance of the code on all its direct contractors (i.e. advertising agencies, media agencies, sponsoring beneficiaries).

According to this Advertising code and somehow connected with problem gambling, advertising may NOT:

- exaggerate the chances of winning;
- create or maintain gambling addiction or incite to gamble excessively;
- display data about winnings or chances of winning that are not verifiable and that are not in accordance with the prize distribution scheme of the game concerned;
- suggest that winning depends on anything other than chance;
- suggest that knowledge of the features of the game concerned would enable to influence its outcome;
- Praise people who buy lottery games and criticise those who don't;
- Imply that all participants will win large sums of money;
- Imply that gambling is a way out of financial or personal problems and exploit the vulnerability of people with financial difficulties;
- Imply that gambling constitutes an alternative to work and saving;
- Imply that gambling constitutes a way to pay bills or pay back debts;
- Encourage gambling to an extent that could endanger the consumers' professional situation or their domestic and social relations;
- encourage minors to gamble or make minors believe that they are allowed to gamble, nor target minors;
- target minors and depict people who are or appear to be minors playing a lottery game;
- Appear in media or on other advertising materials known for being exclusively directed toward minors;
- Depict people who are playing a lottery while consuming alcoholic beverages and/or smoking;
- Depict prohibited forms of gambling, betting, lottery or competitions.

The management agreement also required the National Lottery to obtain the European Lotteries Responsible Gaming Certification. The National Lottery obtained this certification in December 2010 after an external audit.

The European Lotteries' Responsible Gaming Standards include requirements in the fields of research, employee training, sales agents' programmes, game design, remote gaming channels, advertising and marketing, treatment referral, player education, stakeholder engagement and reporting, measurement and certification.

The European Lotteries' Responsible Gaming Standards are the following:

i. Research

Members shall, working with appropriate stakeholders, promote (e.g. initiate / engage in / communicate the results of) research and/or studies, including from independent sources in order to contribute to society's understanding of problem gambling. These results shall also be used for the formulation of future responsible gaming measures and measures.

This may include the funding of research and/or studies as well as arranging or participating in seminars, conferences and the support of the EL's work on responsible gaming initiatives.

The responsibility for prevalence studies usually rests with the state. However, members shall co-operate with these studies where required.

ii. Employee training

Members shall provide all employees with information on their Responsible Gaming programmes through appropriate communication channels at a minimum on an annual basis.

Members shall ensure that an appropriate level of awareness relating to Responsible Gaming is maintained throughout the organisation, so that Responsible Gaming is made an integral part of daily operations.

Relevant employees (including temporary staff and contract staff) shall, based on job demands and customer interaction, receive training on Responsible Gaming, including (where applicable) training on treatment referral for potential problem gamblers (see (2) vii). Preference should be given to specialist training providers for the provision of this training.

Where a legal age of play exists in any jurisdiction, all employees that sell lottery products shall receive training that enables them to request validation of a person's age through appropriate means (i.e. ID or secondary forms of identification).

iii. Sales agents' programmes

All sales agents shall be provided with information materials (e.g. brochures, leaflets, posters etc.) in order to raise their awareness of Responsible Gaming and to educate them on issues relating to problem play.

Before new sales agents are allowed to sell members products they shall be provided with training on Responsible Gaming. Tailored training may be provided to retailers depending on the range of products they sell on behalf of members. Preference should be given to specialist training providers for the provision of this training.

Members shall ensure that sales agents are informed (in writing) that they are prohibited from offering credit facilities to players, excluding (in some jurisdictions) the acceptance of credit cards.

Members shall, where applicable, regularly assess the feasibility of providing training to sales agents in respect of treatment referral and the subject of problem gambling.

Where members offer self-exclusion facilities, such as a player card, sales agents shall be informed (in writing) how the schemes operate and can be activated/removed by or for players.

Members shall review the adequacy and effectiveness of sales agents Responsible Gaming programmes at least annually.

iv. Game design

Before launching every new type of product/service, members shall conduct a social impact assessment using a structured assessment tool to examine relevant risk factors. Members shall implement effective strategies to minimize the negative impact of these risk factors. The risk factors shall be documented and any harm-minimization strategies clearly recorded so that the assessment can be reviewed as necessary.

Thus, members need to be aware of the risk factors related to problem gambling at product level (e.g. event-frequency, win probability, near-miss), at situational level (e.g. location and number of gaming venues) and at organizational level (e.g. marketing and advertisements).

Members shall only operate new types of products/services that are assessed (during the social impact assessment) to be 'high-risk' if doing so will enable an existing risk in the marketplace (i.e. if a product or service operated by someone other than the lottery member) to be reduced or regulated more effectively by the lottery member.

Members shall consider whether any social impact assessment, but particularly those that indicate a 'high risk' product/service, should be supported by verification from an independent third party, and document the decision /outcome as part of the social impact assessment. Self-exclusion options should be built in wherever operationally possible.

v. Remote gaming channels

Members shall, where applicable, assess the feasibility of arranging a periodic independent review of these platforms, in respect of their adequacy from a Responsible Gaming perspective, if this leads to a recognised accreditation from the independent third party (such as GamCare, G4 etc.). The outcome of any review should be documented and any action should be included in an action plan with specific owners and target dates. The outcome of such reviews shall be made available to the EL during the EL certification process (see xi.).

Where applicable and depending on the products offered, members shall ensure that their remote gaming platforms (internet, TV, mobile devices) include e.g.:

- Proof of address
- Age verification systems
- Customer-led and/or system default limits on play, spend and/or losses
- Self-exclusion options for players
- Reality check on the game screen (e.g. session clock, warnings relating to limits, cool offs/breaks between periods of play)
- Data protection controls
- Value of wagers shall be displayed
- Self-assessment opportunities to help people to evaluate whether they are playing responsibly.
- Links on every webpage to information about responsible gambling, the member's policies on responsible gaming, and sources of advice and support (e.g. helpline numbers, referral to treatment providers²⁴). Members shall ensure that contact centre staff are able to refer to these sources of advice and support.

Where applicable, members shall also assess, at least annually, the extent that the above arrangements can be implemented in respect of ITVM and/or VLT products/services, for example through the use of player card or other registration schemes. Members shall document the content and results from the review, where applicable.

²⁴ See (2) vii

vi. Advertising and marketing

Members shall not direct advertising at vulnerable groups (in respect of age, social status, or gambling habits).

Members shall adopt an 'advertising and marketing code which ensures that advertising and sales promotion activities do not encourage underage or problem play and do not provide the player with misleading information such as a false impression of the chances of winning. Members shall also comply with relevant voluntary and/or mandatory codes relating to the provision of their services. Members' own code shall specify which mandatory and/or voluntary codes are applicable to their span of operations.

The code shall ensure that advertising and marketing campaigns:

- do not offer unreasonable incentives for loyalty that are linked to winning more based on gambling more
- only ever accurately portray winning as a matter of pure chance
- only ever accurately represent the chances of winning, prizes and chances of winning etc.
- exclude any content that is designed to exploit an individual's financial anxieties
- do not state or suggest that playing²⁵ is an alternative to work or a way out of financial difficulties
- do not encourage discrimination on the basis of ethnicity, nationality, religion, gender or age
- exclude any content that includes or encourages violence, sexually exploitative themes or illegal behaviour
- do not cooperate and support links or other commercials that are offering quick loans that can be drawn upon immediately for the purpose of playing

vii. Treatment referral

Members shall actively engage with problem gambling organisations, treatment centres and/or health professionals in order to understand the problem gambler's perspectives on the impact of lottery products and related advertising on their situation.

²⁵ Members are free to use the winning experience as a positive aspect of advertising and marketing. The risk is that the act of playing may be presented as an alternative to work, rather than playing for fun with the hope of winning.

Where treatment services exist in a jurisdiction, members shall (unless an alternative organisation has been selected for this purpose in a jurisdiction) provide relevant information to players and sales agents and cooperate with providers regarding services available for problem gamblers. Such information (contact details/helpline numbers) shall be available in printed form and should be clearly visible in gaming venues, as well as being available on members' websites.

The applicability, adequacy and effectiveness of these arrangements shall be reviewed at least annually by members.

viii. Player education

Members shall include these features in information designed for players (including on remote channels):

- detailed information on the chances of winning on each game which allows people to assess the risks and benefits of playing
- age restriction measures (if applicable)
- Responsible Gaming information and information on where to get help in cases of problem play (see (2) vii)

If the above information is not available in printed form in gaming venues (e.g. retail stores) members shall ensure that details of how to obtain such information is clearly available to players/retailers (agents). Where material is available in printed form it shall be placed where it can be taken discreetly. If ATMs are located in the location, leaflets shall be placed near to those.

ix. Stakeholder engagement

Members shall regularly engage with their stakeholders formally and informally and include this in their reporting mechanisms. Engagement shall cover issues that are material to the stakeholders and the individual member. In the breadth of stakeholders that are being invited members shall be inclusive.

The engagement shall provide an opportunity for stakeholders to voice relevant concerns or questions.

Members shall integrate the results of stakeholder engagement into their strategic-decision-making processes and shall feedback to relevant stakeholder(s) on the outcomes from engagement processes.

x. Reporting, Measurement & Certification

Members shall report (or have agreed to begin reporting from a specified date) on the impact and breadth of their Responsible Gaming programmes to their stakeholders. The reporting shall include policies for responsible gaming, targets, commitments and indicators and shall occur periodically.

Reporting shall be transparent using channels which are most appropriate and accessible for the targeted stakeholder audience.

Members shall arrange independent verification of their Responsible Gaming activities against these standards as specified in separate guidance relating to the EL certification process.

More specifically about its online gaming platform the National Lottery sets global playing limits (default settings called “moderators”). Within these global limits, the player has the possibility to set specific limits (lower than the standard ones) on the funds deposited or played in general or for specific classes of games; limits on the time spent online, and a facility for self-exclusion as explained above (see reply to question 16).

As is the case for non-online games, the player has to be at least 18 years old. The age of people connecting to open a gaming account to play online is cross-checked against the National Population Register (online and in real-time).

The play account details, including details about deposits and stakes, and the duration of the playing sessions, are clearly displayed on the player’s personal gaming account.

The gaming website contains important information for the player, such as:

- the warning that gaming could be harmful if not controlled and kept in moderation;
- the self-assessment test to determine risk potential
- advice on Responsible Gaming and references of sources of help on problem gambling
- information regarding the self-exclusion policy & process (self-exclusion).

Each time a player hits his playing limit he receives an email with the following message: “Playing must remain fun and responsible. That’s why the National Lottery caps the amounts you are able to stake on its online games. At one of your last games

you've hit one or more of your playing limits. If you wish, you can tighten your playing limits. Read more about that possibility on following link: "View and/or adjust your playing limits". This creates the possibility to check how many times such a mail has been sent to a particular person and to contact the person for further guidance.

(23) Are the age limits for having access to online gambling services in your or any other Member State in your view adequate to attain the objective sought?

The National Lottery considers its age limit for its lottery games (18 years both for online and off-line games) as reasonable and adequate.

Moreover strong measures are taken to protect minors from exposure to inappropriate commercial communication as defined in the Ethical & Responsible Advertising Code, which defines a frame of reference for the creation of advertising campaigns and sales promotion activities in relation to lottery games. For example: It is forbidden to encourage minors to gamble or make minors believe that they can gamble, to target minors or put forward advertisements with people who are or appear to be minors playing a lottery game;

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

The following is imposed by the management agreement between the Belgian State and the National Lottery²⁶, which can be considered as its license conditions according to national regulation.

Upon opening of any player account, the National Lottery verifies age and nationality of a player through a direct online link (real time) with the National Population Register, on the basis of the name of the player and his national register number. It is the human/parental responsibility of adults to make sure that minors cannot get hold of their ID documents and pass words.

Retailers are not allowed to sell lottery products to minors. When retailers suspect a prospective player of being a minor, they are obliged to ask the player to exhibit an identification document. If this document is not exhibited, the retailer is not allowed to

²⁶ The most recent one ratified by the Royal Decree of July 30, 2010, *Moniteur Belge* of September 9, 2010.

sell. Retailers and their staff have to attend a professional training for this task and responsible gaming in general, as a prerequisite for the conclusion of a lottery retailer agreement, in order to ensure that they are thoroughly aware of the importance and of all useful aspects of responsible gaming so that this becomes an integral part of their daily commercial routine. They receive regularly all kinds of useful information on responsible gaming.

The National Lottery monitors the potential selling to underage players by means of “Mystery Shopping” carried out with minors, accompanied by an adult, who have to try and buy a lottery ticket (e.g. Lotto) or scratch card without exhibiting any identification. If the retailer sells to the test purchaser he receives a warning and receives no bonuses for the current year. At the second infringement within a period of five years from the first infringement the license for selling lottery products is suspended during 2 weeks and the retailer is denied any bonus for the current year. At the third infringement within a period of five years from the second finding, the retailer loses his license permanently.

(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 online casino games, sports sponsorship, merchandising (e.g. replica jerseys, computer games etc.) and use of social online networks or video-sharing for marketing purposes.

For the National Lottery the management agreement concluded between the Belgian State and the National Lottery²⁷ can be considered to be its license conditions.

This management agreement prohibits the National Lottery from developing or marketing games that target minors and from using advertising that would target minors (see below: Ethical & Responsible Advertising Code).

It also requires the National Lottery to obtain the European Lotteries Responsible Gaming Certification. The National Lottery obtained this certification in December 2010 after a thorough and independent audit.

In relation to the protection of minors, these European Lotteries’ standards require:

²⁷ The most recent one ratified by the Royal Decree of July 30, 2010, *Moniteur Belge* of September 9, 2010.

- to ensure that an appropriate level of awareness relating to Responsible Gaming is maintained throughout the organisation, so that Responsible Gaming is made an integral part of daily operations.
- Relevant employees (including temporary staff and contract staff) to receive training on Responsible Gaming (based on job demands and customer interaction), including (where applicable) training on treatment referral for potential problem gamblers.
- all employees that sell lottery products to receive training that enables them to request validation of a person's age through appropriate means (i.e. ID or secondary forms of identification).
- All sales agents to be provided with information materials (e.g. brochures, leaflets, posters, etc.) in order to raise their awareness of Responsible Gaming and to educate them on issues relating to problem play.
- to provide with training on Responsible Gaming to all new sales agents before they are allowed to sell lottery products.
- to conduct, before launching every new type of product/service, a social impact assessment using a structured assessment tool to examine relevant risk factors. Members shall implement effective strategies to minimize the negative impact of these risk factors. The risk factors shall be documented and any harm-minimization strategies clearly recorded so that the assessment can be reviewed as necessary.
- to ensure that their remote gaming platforms (internet, TV, mobile devices) include (...) age verification systems, (...)
- to abstain from directing advertising at vulnerable groups (in respect of age, social status, or gambling habits).
- to adopt an 'advertising and marketing code which ensures that advertising and sales promotion activities do not encourage underage or problem play and (...).
- to include these features in information designed for players (including on remote channels): (...) age restriction measures, (...)

The National Lottery is furthermore bound by the Ethical & Responsible Advertising Code defining a frame of reference for the creation of advertising campaigns and sales promotion activities in relation to lottery games. Among the basic principles of this code there is compliance with relevant legislation, with the self-regulatory code of the International Chamber of Commerce (to be found at www.iccwbo.org) and with the codes of conduct of the sectors of Direct Marketing and Direct e-mail Marketing. The code is a sectoral code for all lotteries in Belgium and has been approved by the Belgian Advertising Council. Compliance with the code is being supervised by JEP (*Jury d'Ethique Publicitaire*), created by the Advertising Council.

The National Lottery imposes the observance of the code on all its direct contractors (i.e. advertising agencies, media agencies, sponsoring beneficiaries).

According to this Advertising code, advertising may not

- encourage minors to gamble or make minors believe that they are allowed to gamble, nor target minors;
- depict people who are or appear to be minors playing a lottery game;
- appear in media or on other advertising materials exclusively directed toward minors.

Standards are however not always sufficient. Clearly the jurisprudence of the Court of Justice has given rise to a number of questions in relation to various means of commercial communication used by exclusive right holders as most Lottery operators are. Especially the rulings in Markus Stoss and Carmen Media create confusion and uncertainty, while opposite views are expressed regarding online gambling communication in the Dickinger case by AG Bot. It is clear that further guidelines at EU level could help to put an end to the confusion (see reply to question 5).

Sponsoring of mainly sport activities gives rise to a number of additional problems of cross-border communication. Here a clear distinction has to be made between commercial online operators and non-commercial operators like the National Lottery : Both the Belgian National Lottery and La Française des Jeux are sponsors of a cycling team that participate in international events. BWIN and other remote gambling operators are large scale sponsors of important European football teams that of course appear with their sponsored shirts on tv screens everywhere in Europe²⁸. The difference between the first and the latter is that, due to the unfailing customer identification systems applied by the National Lottery (see reply to question 12) and by LFDJ (age and residence), minors cannot place bets on cycling competitions (or other competitions for that matter), in whichever member state they are living, whereas random checks reveal that minors from anywhere in the EU succeed in opening gaming accounts and placing bets on the sites of the commercial online operators sponsoring the teams²⁹. Commercial online operators use sponsoring to willingly and illegally target (young) customers, even in member states where they have no license (whereas the sites of

²⁸ As such sponsoring should not be permitted if bets are taken on the sport concerned. This does already distinguish FDJ and the Belgian National Lottery from the remote gambling operators who do not really care about such conflicts of interest.

²⁹ A copy of an ID document is requested only at the stage where a player wants to withdraw winnings. Random checks performed at the site of BWin.

public operators like the Belgian National Lottery and La Française des Jeux can only be played on by adult players in Belgium or France respectively).

There is research to support the fact that minors are more strongly influenced by marketing activities, however, more research is needed in this area to substantiate evidence of the extent to which different forms of commercial communications as specified above appeal to minors and therefore contribute to problem play.

(26) Which national regulatory provisions on license conditions and commercial communications for online gambling services account for these risks and seek to protect vulnerable consumers? How do you assess them?

Vulnerable consumers of gaming comprise a number of groups including minors, people with compulsive behaviour personalities or impulse control problems, people who are experiencing financial difficulties, people who do not fully understand the chances of winning and, in general, people who are not gaming literate.

It is normal for recent lottery operator licences to have specific conditions to protect vulnerable players.

For the National Lottery the management agreement concluded between the Belgian State and the National Lottery³⁰ can be considered as its license conditions.

That management agreement between the Belgian National Lottery and the Belgian State prescribes that:

It is the National Lottery's mission to channel in a targeted way the gaming behaviour in Belgium and to provide the largest possible group of people with gaming pleasure by offering entertaining games, while protecting vulnerable groups.

The National Lottery has to take care that its product policy doesn't create addiction risks.

The National Lottery has to contribute actively and autonomously to prevention and treatment of gambling addiction by supporting initiatives in that field.

Through its activities the National Lottery has to contribute to the implementation of a responsible gaming strategy. F.e. the management agreement prohibits the National Lottery's advertising from targeting vulnerable people.

The management agreement also requires the National Lottery

³⁰ The most recent one ratified by the Royal Decree of July 30, 2010, *Moniteur Belge* of September 9, 2010.

- to obtain the European Lotteries Responsible Gaming Certification. The National Lottery obtained this certification in December 2010 after a thorough and independent audit.
- to put in place a Responsible Gaming Committee composed of scientific and clinical experts and of lottery experts. This Committee has to:
 - examine whether the National Lottery's policies comply with the European Lotteries' Responsible Gaming standards and to advise the governing board of the National Lottery about that;
 - advise the governing board and the Minister in charge of the National Lottery on the funding, by the National Lottery, of permanent scientific research and other initiatives in the field of responsible gaming, esp. in the field of prevention of compulsive gambling;
 - examine each new type of lottery product and of each change in game regulations to verify to what extent that product could be addictive. If so, this Committee will formulate an advice allowing the National Lottery to adapt the characteristics of the product.
- to have an Ethical & Responsible Advertising Code, to regularly amend it, to apply it and to require all its contractors (i.e. advertising agencies, media agencies, sponsoring beneficiaries) to apply it as well.

This Ethical & Responsible Advertising Code defines a frame of reference for the creation of advertising campaigns and sales promotion activities in relation to lottery games. Among the basic principles of this code there is compliance with relevant legislation, with the self-regulatory code of the International Chamber of Commerce (see www.iccwbo.org) and with the codes of conduct of the sectors of Direct Marketing and Direct e-mail Marketing. The code is a sectoral code for all lotteries in Belgium and has been approved by the Belgian Advertising Council. Compliance with the code is being supervised by JEP (Jury d'Ethique Publicitaire), created by the Advertising Council.

According to this code advertising may not:

- Exaggerate the chances of winning;
- Create or maintain addiction to gambling, nor incite to excessive gaming;
- Imply that the fact of winning depends on factors other than chance, nor that knowledge of the game can influence its outcome;
- Praises people who buy lottery games nor criticise those who don't.
- Influence the behaviour of the player or of the non-player that would induce a feeling of exclusion;
- Imply that all participants will win large sums of money;

- Imply that gambling is a way out of financial or personal problems and exploit the vulnerability of people with financial difficulties;
 - Imply that gambling constitutes an alternative to work and saving;
 - Encourage gambling to an extent that could endanger the consumers' professional situation or their domestic and social relations;
 - Encourage minors to gamble or make minors believe that they are allowed to gamble, nor target minors;
 - Depict people playing a lottery game who are or appear to be minors;
 - Appear in media or on other advertising materials exclusively directed toward minors;
 - Promote loans that can be obtained to gamble or endorse advertising for such loans;
 - Depict people consuming alcoholic beverages and/or smoking while participating in a lottery game.
- to financially support initiatives that combat gambling addiction, especially permanent scientific research both on prevention and treatment level, to ensure the implementation of the findings;
 - to ensure that responsible gaming conduct is promoted in all aspects of its activities and in those of its retailers;
 - to ensure that an appropriate level of awareness relating to Responsible Gaming is maintained throughout the organisation and retailer network, by providing all necessary information on Responsible Gaming so that it is made an integral part of their daily activities.
 - to have its retailers and their staff attend a professional training in responsible gaming in general, as a prerequisite for the conclusion of a lottery retailer agreement, and to provide them regularly with all kinds of useful information on responsible gaming in order to ensure that they are thoroughly aware of the importance and of all useful aspects of responsible gaming so that this becomes an integral part of their daily commercial routine.
 - to report, in view of transparency, on the responsible gaming policy in the annual business report and in a yearly detailed report to the Minister who has the National Lottery in his attributions

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

We refer to the reply given by European Lotteries.

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

Yes there are extensive controls and standards for such gambling equipment, both for traditional (terrestrial) games and for online games.

All State lotteries operate standard Draw procedures for traditional Draw Games (such as Lotto, EuroMillions and Number Games). These procedures include regular testing of the calibration and settings for draw machines, as well as extensive statistical tests carried out on historical Draw results, usually carried out by a University Statistical Department or Statistical Consultants.

For online games there are a number of specialised companies in Europe who offer services related to Random Number Generators (RNG).

These controls vary from lottery to lottery and are applied as appropriate to the range of games being offered by each lottery. Gaming Regulators are aware of the controls being operated by lotteries and in some cases request to see relevant control reports.

(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?

The scope for fraud varies by Game, by the percentage prize return, and by the prize structure (or, table of prizes). The “faster” the game and the higher the percentage prize return, the more likely the game is to be subject to manipulation or fraud.

The key to preventing fraud is to encourage Operators to implement extensive monitoring systems to detect abnormal patterns or behaviour.

To help keep sport competitions free from betting manipulations, EL has implemented its own Monitoring System (ELMS). As the foremost European Association of betting operators, EL has been sharing information about suspicious bets on football matches with UEFA since early 2005. EL and the World Lottery Association (WLA) are working on extending ELMS to a global sport betting monitoring system to help address match-fixing, which clearly has an international dimension, as many recent incidents of match-fixing have shown.

While there is no common system in place, all State Lottery companies offering online games in Europe regularly monitor individual player behaviour and general play patterns to detect any abnormal activities or patterns. For example in Poker Games, player

histories would be tracked to monitor size of winnings and any potential relationship or connections between sets of regular players.

While the risk of fraud is high for player-to-player games, casino-type games and sports betting, it is important to note that similar vigilance is needed for the traditional “terrestrial” games such as Lotto and EuroMillions. In these games it is possible to find Retail Agents who are officially appointed by State Lotteries, but who operate in an illegal fashion. For example, players validating a winning ticket might be offered a cash “bonus” by an Agent to sell the winning ticket to an Agent who will then “legitimately” cash the ticket and have a *bone fide* justification for a large sum of money.

The implementation of controls on potential fraud related to player v player or operator v players or players v operators depend on the type of games on offer. Each Lottery will operate a control appropriate for its own games and regulatory framework. The enforcement regimes in place for State Lotteries operating these types of game are consistent with the controls implemented for terrestrial games and are of the highest industry standards.

(30) As regards sports betting and outcome fixing – what national regulations are imposed on online 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?

As a general principle to prevent conflicts of interest the National Lottery considers that sponsoring should not be permitted if bets are taken on the sport concerned.

(31) In your view what issues should be addressed as a priority?

In broad terms, priorities for gaming operators are ...

A. Enforcement of National Laws

The essential requirement is that the suitability and credentials of each gaming operator in Europe should be checked and verified to ensure that, ultimately, the rights of the players are as fully protected as possible. This can best be done by enforcement of National laws.

A number of EU States have started to enforce existing gaming laws, but the EU should encourage the practice in a more proactive way. For example, heavy fines for media advertising for unlicensed operators (as in France); taxation of

winnings from gambling with unlicensed operators, i.e. targeting not only operators but also players (Italy); forfeiture of revenue made from illegal operations (US, Belgium).

EU should introduce regulation that operators which illegally operate in one EU Member State are not eligible to apply for a gaming licence in any other Member State

B. Know your customer

Check the player's identity against the following sources (often cross-referencing several of them):

- ID card (or equivalent, e.g driver's licence)
- Bank account, if relevant
- Residential registers
- Address check (by sending PIN code)
- Credit score agencies (e.g. Experian, Schufa)
- Utility bills

The theoretical long-term solution to this issue is the introduction of a pan-European electronic ID card. However, this should only be implemented on a gradual basis. Some EU States would have difficulties with such a system and would be careful about how it should be implemented.

A Player card has been implemented in Norway for all lottery games apart from scratch cards. The system is helpful in monitoring and controlling gaming behaviour, but it is not a perfect solution.

C. IP and Payment Blocking

Internet Service Providers (ISP's) should be involved in discussions to implement a solution for this issue. Technical problems with the implementation of a workable solution can only be resolved with the active cooperation of ISP's.

D. Know your Retailer

For non- online systems, it is essential that Operators should regularly check that authorised retail agents are operating in accordance with their contracts, particularly for underage-playing. Mystery shopper checks should be carried out on a regular basis.

(32) What risks are there that a (online) 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 National Lottery sees a clear conflict of interests when a sports betting operator accepts bets on the outcome of sports event involving a sports club that is sponsored (in a significant manner) by the operator itself.

The EL Code of Conduct on Sports betting therefore explicitly stipulates that when an operator has any influence on the sports decisions taken by a club or team, it must make sure that it never includes the club, team or sportsperson in its sports betting offer.

There is the risk that the sponsoring operator (or individuals working for it that hold a leading role in deciding on the allocation of sponsoring) could use the financing through sponsorship to exert pressure on the team ahead of a sports competition.

Sponsors are – legitimately – closely involved in the decisions pertaining to the team they sponsor and dispose of confidential information on the team/club, the current physical and mental fitness of individual players, which players are scheduled to participate in a specific match etc. Any involvement by the sponsor in betting on this team therefore means that they would hold a concrete advantage in knowledge as regards to the likely performance of the team in a given sporting competition. When an operator accepts bets on a match for which he funds one of the participating teams, there is the concrete risk that the operator may use his ‘insider knowledge’ to adapt the odds he sets accordingly in order to maximise profit for himself.

(33) What cases have demonstrated how online gambling could be used for money laundering purposes?

/

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

The payment card industry’s standards (known as PCI-DSS) cover the general security and integrity of credit/debit/laser card payments.

Apart from this payment method, the use of prepaid cards (as for prepayment of mobile phone charges) for gaming is a sensitive area and requires specific regulatory control, as this payment method enables cash to be channelled directly into the online gambling network.

Prepaid cards (purchased in a “controlled” outlet, such as a lottery retailer) can be a useful means of implementing a primary control on the age of potential gamblers. However, the main parameter for controlling the use of prepaid cards is the maximum amount of credit that may be purchased in a single card transaction.

Apart from the top-up possibilities with debit cards and bank transfers, the National Lottery has also a system with e-vouchers that players can purchase in the National Lottery’s points of sale, where the retailers and their staff have received responsible gaming training. The value of the vouchers ranges from €10 to €50.

As for the Answer to Question (29), there are a number of systems/procedures that can be implemented to protect against abuse of such systems.

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

/

(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?

/

(37) Are there national online gambling transparency requirements? Do they apply to cross-border supply of online gambling services and are these rules enforced effectively in your view?

/

(38) Are there other gambling revenue channelling schemes for the public interest activities at national or EU level?

First of all, the Belgian National Lottery would like to stress that, contrary to what seems to be implied in the introductory text of question 38, policy reasons for restrictions on gambling services at national level are nowhere in the EU the financing of public interest activities alone or even not in the first place. Everywhere in the EU, the imposed

restrictions have a moral basis and are intended in the first place to protect vulnerable consumers against gambling addiction and against fraud and to protect society at large against gambling related criminality. The same wrong presupposition lies in the choice of the word “reliance”³¹, which implies that the authorities depend on the gambling revenues for the funding of the public interest activities, which can lead easily to assume that the main aim of the organization or licensing of gambling is a financial one, *quod non*.

Second, the Belgian National Lottery wants to point out that the CJEU jurisprudence indeed states that the funding of social activities may only be a ancillary beneficial consequence for a restrictive policy, but that the same jurisprudence also acknowledged the fact that the general tendency of the national legislations is to prevent the practice of gambling from being a source of private profit (Schindler, §60; Läära, §13; Zenatti, §14). The rationale for this is that, gambling having different kinds of undisputable negative effects on society, it is only natural that the proceeds of gambling that is offered in a responsible way in order to prevent the activity from going underground, return to society to counterbalance the negative effects.

Third, it would be wrong to place all the kinds of income sources at the same level, an impression that is created by the mere enumeration of the gambling revenue channelling schemes. There are however huge differences between the contributions from state operators on the one hand and those, where applicable, of commercial operators both in terms of the amounts involved as in terms of the nature of activities that are funded. Moreover a distinction has to be made between fiscal and non fiscal contributions and, in the latter category, between economic and non-economic or public interest causes.

In the field of non-fiscal contributions state operators and other types of non-commercial operators support non-economic or public interest causes. Commercial operators at best support causes that do serve their commercial interests, such as the sponsoring of high level professional sports teams on the competitions of which they organise betting. Because of the economic nature of the recipients and of the return for the funders, these kinds of funding they cannot be considered as good causes in the proper sense.

³¹ “The reliance on gambling revenues to fund public interest activities is organised in various ways.”

In Belgium, commercial operators in the field of online gambling don't contribute at all to public interest causes, not even to the financing of gambling addiction prevention and treatment facilities or the operation of the counselling free-phone (the setup costs of which all have been financed by the Belgian National Lottery in 2008). In 2010, the National Lottery contributed 280.403 € on measures to prevent problem gambling.

When it comes to the fiscal contributions that are being paid by both commercial and by non commercial operators like the National Lottery, the differences are even huger. First of all, commercial operators establish themselves in tax havens like Malta, Gibraltar and the Channel Islands, where they are granted off shore licenses. This means that they pay minimal taxes in the country of origin (where they are not allowed to offer their services and thus cause no harm) and that they pay no taxes at all in the countries of destination (where they do create social costs).

Talking about the amounts of taxes actually paid by operators, one has to take care to pay attention to the basis of the taxes. If not turnover but gross gaming revenue or GGR (turnover minus winnings paid out) is the basis, one is faced once again with a huge difference due to the huge differences between the reimbursement rates in the form of winnings paid to winners (also called payout ratios) of commercial and non-commercial operators. If a level playing is to be implemented, Member States will experience that any tax rate calculated on less than 10% of turnover or on almost 50% yields very different amounts of tax income. The difference would even be bigger if the level of the playing field would be lifted to reach the tax plus quasi-tax rate actually paid by the National Lottery (77,74 % in the case of the Belgian National Lottery, see below).

The National Lottery on the other hand channels all of its proceeds back into society in one form or another.

Answering question 38 there are indeed other gambling revenue channelling schemes for the public interest activities at national level than the ones enumerated in the introductory text.

Possibilities 4, 5 and 6 do not exist in Belgium.

Possibilities 2 and 3 concern the National Lottery's direct and indirect grants (the latter via the budgets of the 3 Communities of the federal state, these represent 27,44% of the total amount of the grants financed with lottery funds). Each year 225,3 millions euro is allotted to good causes, i.e. 49% of the National Lottery's GGR in 2010 (20,5% of turnover). The government can adjust that amount each year by royal decree and can increase that amount in the course of the current year within the financial limits laid

down in the management agreement between the Belgian State and the National Lottery. In the past this has been the case when 2 million euro have additionally been paid for disaster relief after 2004 tsunami and also when 2 million euro have additionally been paid in 2009 for additional poverty reduction projects. It is rather obvious that a private company, with private shareholders, could never be forced to do similar efforts.

Although the amounts spent annually by the Belgian National Lottery on sponsoring are not “non fiscal levies” in the narrow sense of the term, it is important, in order to have a good overall picture, to mention them. To mention them here is all the more justified because, in the case of the public business undertaking that the Belgian National Lottery is, the sponsorships are not always granted to beneficiaries or events yielding a promotional return that is proportionate to the funds that they receive. For certain beneficiaries it is not exaggerated to say that they owe their mere survival solely to the aids of the National Lottery of Belgium. Furthermore, for most of the events receiving substantial amounts from the National Lottery, this aid makes it possible to keep prices for the public at an affordable level and, in this sense, these aids contribute to the obvious social role played by the National Lottery of Belgium. To illustrate: for 2010, we’re talking about an amount of 19.755.449,21€.

But the Lottery’s proceeds also return to Society in less visible forms: the annual monopoly levy of 95 million euro (20.62% of GGR, 8% of turnover) and the 7.867.000€ of dividends (1.7% of GGR) paid to the public shareholders, namely the State and a public institution dealing with public holdings and public investments.

To those must further be added:

- Corporate tax: estimated at € 7.690.721,4 million on financial year 2010 (1,67% of GGR);
- Non-deductible VAT³² estimated at €24.3 million for financial year 2010 (5,27% of GGR);
- Employer Social Security contributions: € 5.783.518,54 (1,25% of GGR).

Which brings us, in all, to a tax plus quasi-tax rate of 77,74% on GGR of 2010; 69,62% on GGR if only the support to non-economic or public interest causes and the monopoly levy are considered.

³² The National Lottery is liable to VAT but its core activities are exonerated. The National Lottery of course pays 21% VAT and duties on the goods and services it purchases (including on the commissions paid to the intermediaries of the commercial network). Not being liable itself, the Belgian National Lottery is unable to recover this tax.

The above figures and percentages do not include the positive impact on the State budget of the creation by the National Lottery of direct (380 people) and indirect employment (e.g. the people employed in over 5000 points of sale) through income tax and the social security contributions paid by the direct and indirect employees and through the saving of unemployment allowances. The income tax on the commissions on sales³³ paid to the points of sale has not been taken into account either. Although all of these contributions would not have accrued to the State budget without the National Lottery's activities, they have not been included in the calculation since they are not paid by the National Lottery itself. Given the fact that direct and indirect employment is much higher with operators that also have physical retail facilities than with remote gaming operators (cf. their significantly higher turnover per employee) and given the scientifically proven substitution towards remote gambling and away from lotteries, greatest caution is required to avoid significant employment losses and related lost state income and increased social costs.

The current legal framework denies the important role state lottery operators, like the Belgian National Lottery, play for society. The EU is more than just an economic entity, it is an environment in which people must be able to live and enjoy a variety of original social, human, sportive and cultural benefits in the different Member States. The Belgian National Lottery, as are the other state lottery operators in the 27 Member States, do substantially fund the non-economic fields of the EU. In the Conclusions which were adopted on 10 December 2010, the Council has emphasized that any future debate and/or framework needs to take this specific role of state lotteries on board.

(39) Is there a specific mechanism, such as a fund, for redistributing revenue from public and commercial online gambling services to the benefit of society?

Making reference to the answer to above question 38, it is repeated that in Belgium commercial online gambling operators, operating in Belgium, do not contribute at all to public interest causes. Even once they will be licensed under the new gambling law, they will only be required to pay corporate tax to the region where they will have their server (Flanders, Wallonia or the Brussels Capital Region).

As stated in the reply to question 38, the grants to good causes financed with National Lottery's proceeds are either paid directly to the non-profit organisation according to the legal provisions (law of April 19, 2002) and to the annual apportionment program

³³ 83.928.409,18€ in 2010.

(established by Royal Decree) or indirectly via the budget of one of a Belgian (geopolitical) Regions or (linguistic) Communities.

In Belgium there is a so-called *Fonds de Traitement du Surendettement* (Fund for the settlement of over-indebtedness). This fund pays the fees and the expenses incurred by the debt mediators that the debtors were unable to settle. It is only when these costs remain unsettled that the judge can decide to charge them to the Fund. The judge has to state the reasons justifying an intervention from the Fund. Other actors besides loan companies have also to pay an annual fee to the fund: mobile phone operators, insurers and the Gambling Commission. These payments however cannot be considered to be contributions to a good cause since they constitute a compensation of society for a damage that has been caused, i.e. the fact of having increased the number of people in a situation of over-indebtedness.

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

In addition the EL RG Standards, the National Lottery is required to actively engage with problem gambling organisations, treatment centres and/or health professionals in order to understand the problem gambler's perspectives on the impact of lottery products and related advertising on their situation.

The National Lottery funds research dealing with gambling addiction and its prevention since 2007. In 2008–2009, the National Lottery devoted € 399,500 to this type of research. For 2009–2010 the amount was increased to € 499.500 and for 2011 (one year) the National Lottery has budgeted a € 315.000 for new research initiatives. The grants are paid mainly to the Dostoïevski Clinic for Gambling and Internet Addiction at the Université Libre de Bruxelles (*Clinique du Jeu Pathologique*), which carries out scientific research both on prevention and treatment level. The National Lottery also contributes to the dissemination of the results of the gambling addiction research, including the complete financing of the setting up of the toll-free helpline for problem gamblers, gambling addicts and those close to them. The setting up of this helpline in 2008 was totally funded by the National Lottery although the number was going to and actually is mainly used by and for victims of forms of gambling other than those offered by the National Lottery. The National Lottery also funded the complete operating costs in 2008 and 2009. Since 2010 the financing of the helpline has been taken over by the Gambling Commission.

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

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(42) Do all sports disciplines benefit from online gambling exploitation rights in a similar manner to horse-racing and, if so, are those rights exploited?

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

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(44) Is there evidence to suggest that the cross-border "free-riding" risk noted above for online gambling services is reducing revenues to national public interest activities that depend on channelling of gambling revenues?

The National Lottery takes a different view on what should be considered 'free-riding' in the gambling sector than the two types noted in the Green Paper. We consider that it is the operator who does not hold a licence in the Member State of the consumer (and accordingly does not pay taxation in that Member State and is not subject to control) that is 'free-riding', not the consumer who often is not even aware that the website he is gambling on is illegal in his country. For this type of free-riding, there is indeed evidence that the growing presence of unlicensed operators on the market is unfair competition for the regulated operators, who see their revenue reduced as a consequence of the aggressive marketing practices and higher payout ratios that unregulated and low-taxed operators can offer.

We are not aware of any evidence that would point to the fact that consumers would choose to gamble primarily out of the desire to finance a public interest activity. Indeed, we would believe that those interested in contributing financially to a good cause, but not really to participate in a gambling activity, would rather make a direct payment to the specific cause, such as the Red Cross.

(45) Are there 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?

The allocation of the profits of the National Lottery is highly transparent. The main beneficiaries of the grants funded with proceeds from the National Lottery are publicly known since they are mentioned in the law on the Belgian National Lottery (law of April 19, 2002, Chapter VII, *Moniteur Belge* of May 4, 2002) and in the Royal Decrees establishing the annual apportionment programmes. All these legislative texts are published in the Official Journal (*Moniteur Belge*), which is also accessible online. Subsidies to the individual institutions and organisations are laid down in Ministerial Decrees.

The aforementioned law lists some big beneficiaries (the Belgian Regions and Communities (the so-called “federated entities”, which in turn use the funds to finance scientific research, grass roots sports, culture, care of the elderly and disabled, etc.) , development cooperation aid, Belgian Fund for Food Security, Disaster Fund, King Baudouin Foundation) and determines that all the rest is laid down in annual Royal Decrees (published in the Official Journal, *Moniteur Belge*) and in the management agreement between the Belgian State and the National Lottery (the most recent one ratified by the Royal Decree of July 30, 2010, *Moniteur Belge* of September 9, 2010).

These annual Royal Decrees establish the annual apportionment programs, that on the one hand lists certain big beneficiaries with the respective amounts allocated (Disaster Fund, Belgian Fund for Food Security, Belgian Development Cooperation administration, the “federated entities”, Red Cross, Child Focus, Centre for Equal Opportunities and Opposition to Racism, etc.), and on the other hand determines the categories of good causes eligible to receive lottery subsidies, each with the total amount allocated (most recent apportionment program in the Royal Decree of June 25, 2010, published in the *Moniteur Belge* of July 6, 2010).

The procedures concerning the funding by the National Lottery are contained in the aforementioned law and in the aforementioned management agreement between the Belgian State and the National Lottery. They are largely made public on the internet site of the National Lottery (<http://www.nationale-loterij.be/FR/Subsidies/default.aspx>) and in printed brochures (*Charte des Subsidies*).

(46) Is there a regulatory body in your Member State, what is its status, what are its competences and its scope of action across the online gambling services as defined in this Green Paper?

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(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?

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

During the Belgian presidency of the EU and, currently, under the Hungarian one, the cross-border administrative cooperation between regulatory authorities for the different Member States has been recognized and identified as the main tool for sharing information on gambling operators, protecting consumers and minors and ensuring the integrity of the games, minimizing administrative burdens, identifying and sharing best practices on player protection and technology.

The Council Working Group (Services& Establishment) helps in foster a constructive dialogue at European level to find proper dimension connected to the offering of on line gambling services.

Since online gambling services issues have a cross-border impact, a **cross-border cooperation** is needed to tackle them.

The Council Conclusions on the framework for gambling and betting in the EU Member States have prospected a closer cooperation among national authorities. In fact, they highlight the need and possible tasks of a national public authority, the essential cross-border problems generated by online gambling and the sustainable contribution of Lotteries to society. Moreover, the Council conclusions explicitly mention the Internal Market Information System (IMI) as a useful tool to facilitate administrative cooperation in the field of gambling services. The Council conclusions constitute the first common position of the Council in the field of gambling.

The Hungarian Presidency is continuing to pursue the debate on the cross-border cooperation by issuing a questionnaire to the Member States on:

- Existing forms of cooperation
- GREF (Gaming Regulators European Forum)
- Content and form of a possible enhanced cooperation
- The use of IMI (Internal Market Information System)

GREF is a very loose organization with no authority to take decisions. Therefore, a structured form of cooperation would constitute the only real forum where the EU Commission and the Member States can share and solve questions which require an international cooperation and approach.

While IMI would be an initial form of cooperation and require an horizontal approach, it could be useful considering to set up an institutionalized cooperation conceived in the context of the new comitology rules and general principles for the control of the implementing powers of the Commission by the Member States.

In the Report from the Hungarian Presidency on the regulatory cooperation between Member States in the field of gambling, which is the results of the replies from the Member States on the current forms of multilateral, bilateral and internal regulatory cooperation, reveals that at national level every Member State has one or more authorities responsible for the regulation of gambling activities. Most Member States have specialized authorities controlling gambling. This is not an essential element but constitutes a contact point at the Member States level. In some circumstances the participation of State owned companies should be considered.

In some Member States a ministry is in charge for the regulation of gambling activities. The report focus also about the following issues:

1. Possible elements of an enhanced regulatory cooperation
 - a) Information sharing

The use of Information sharing tools has been recognized as relevant for the implementation of national gambling policies, for legal certainty purposes and for simplification of the national authorization process, in particular, to avoid unnecessary duplication. Other relevant information have been identified in:

- information on operators applying for authorization and information on national rules on offering online gambling services
 - Anti Money Laundering customer identification;
 - Sport integrity
 - Fraud
- b) Exchange of best practices on what concerns:
- i. Administrative information on licensing
 - ii. Controls for player protection or money laundering
 - iii. Player complaints
 - iv. Impact of CJEU ruling on National legislation
- c) Sport integrity: it requires cooperation between regulators and international sport federations to monitor sport betting and deviation of it and to monitor sport events.

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

The state lotteries united in The European Lotteries today apply an effective European Lotteries Monitoring System (ELMS). Through ELMS, its members are co-operating with FIFA (FIFA Early Warning System) and UEFA (UEFA Betting Fraud Detection System) as well as National football authorities and authorities to prevent any wrong doing in sport with the ultimate task of protecting sports integrity.

Through this co-operation we are able to identify and minimise the risks associated with fraud in sports and sports betting. If through our monitoring system and/or co-operation with national and international FA's any suspicion of fraud arises, the body in question shall be in direct contact with the local as well as international police force if needed. It is then a task for these police authorities to investigate, interrogate and set charges against the criminals in case reasonable doubt arises.

Furthermore, the association has extended the national educational work of its members in Europe and through World Lottery Association (WLA) in the world. The educational program carries the working name APSI (Awareness Program for Sports Integrity) with the aim to raise awareness, to educate and to inform all sports related bodies starting from players to referees and club owners i.e. the so called inner circle over the dangers of match fixing. This educational co-operation has already been put into practice in partnership with Sport Accord, the association of international sports federations and AIPS, the association of international sports journalists.

As a latest innovation EL is in discussions with the IOC (International Olympic Committee) over setting up a separate working group to protect sports integrity. This group should have representatives from governments, sports as well as lotteries.

(50) Are any of the methods mentioned above, or any other technical means, applied at national level to limit access to online 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?

In principle, the participation of foreign gambling is prohibited in all European States. Sometimes illegal operators (who operate without holding a valid licence) are subject to having their websites blocked. The methods described, so-called "Internet filters", at the national level, are currently not used. The effectiveness of the filtering options for DNS and IP blocking could, however, deal with a certain effort by the user. Only a nationally deployed firewall would ensure that these methods of filtering were completely effective.

In many countries, the disbursements of the winnings are only allowed to a local bank account.

Cross-border issues and problems can only be tackled and solved by cross-border initiatives. Given that the problem is trans-frontier there is a need for National Gaming Regulators to co-operate in enforcing their laws to protect the players, and guard against fraud and money laundering and to "crowd out" the illegal operators.

The Regulatory solution should follow a Pan-European Licensing Principle, whereby a company can only operate (or bid for operating or game licences) if it can prove that it does not currently operate in contravention of the law in any EU Member State.

(51) What are your views on the relative merits of the methods mentioned above as well as any other technical means to limit access to gambling services or payment services?

It is very difficult, if not impossible to implement systems that are completely effective in limiting access to gambling services or payment services. The existing regulatory regime in EU States prohibits the promotion or offer of games that are not authorised in each State, and yet States have not been able to enforce their national laws and prevent unauthorised operators from outside their jurisdictions from making “illegal” gaming available to their citizens.

As set out in the answer to Question 31,

- a) the first, immediate, and most effective step would be for each State to enforce its own national laws.
- b) the second step, embodied in the principle “Know your Player”, is to put in place systems and procedures to ensure that all Gaming Operators only accept registered players who are resident in their jurisdictions and who satisfy banking/financing and legal age requirements.

The theoretical long-term solution to this issue is the introduction of a pan-European electronic ID card.

- c) The third step, of attempting to block IP / DNS and Payments is of limited use without the full cooperation of Internet Service Providers.

Any action by States or the EU to limit or restrict the activities of illegal online gaming operators will have an effect on their illegal activities. While 100% success rate is not achievable, it is possible to reduce the penetration of illegal operators and their customer bases to a point where it becomes of marginal interest for them to continue to operate in Europe.

Coupled with a regulatory policy for State-authorised operators, which would permit them to offer all possible games to players, there could be a significant effect on the illegal operations, resulting in the very best and regulated gaming environment for the players in Europe.
