

# **Consultation on on-line gambling in the Internal Market**

**A contribution from the Belgian Gaming Commission**

**July 2011**

### **Preliminary observations:**

#### **1. Regulator's position**

These answers of the Gaming Commission, the Belgian advisory, decision-making and regulatory body in respect of games of chance established by law (see question 46), reflect the vision of the Gaming Commission as recorded in July 2011.

#### **2. Status of Belgian gambling law in the area of online gambling**

Contrary to what is specified in the supplementary document of the European Commission (page 7, Figure 1. Member States' policy positions towards remote gambling in 2005), up until 1 January 2011 a ban was in place on the operation of games of chance by way of information society instruments in Belgium.

On Thursday 3 December 2009, the Belgian Parliament gave its final assent to 2 Acts that thoroughly modified the Games of Chance Act dated 7 May 1999. With the insertion of a new chapter IV/1 into the existing Games of Chance Act, the Belgian Parliament regulated the operation of games of chance by way of information society instruments.

Following in the footsteps of the tolerance policy of the Public Prosecution Service vis-à-vis casinos in the 20th century, again an overall ban (i.e. the ban to operate games of chance over the Internet) was transformed into a legalised market situation.

The legislation was treated by the Belgian Parliament as a matter of urgency. This was necessary, amongst other things because of the illegal operation of games of chance on the Belgian market by operators who set up their gambling activities *outside* the borders of the Belgian territory.

The Belgian Constitutional Court has expressed in a detailed judgment of 14 July 2011 that the Belgian Gaming Act respects the Belgian Constitution and that it is clear that the Belgian Gaming Act is compatible with the European legislation.

On 1 January 2011, the new legislation came into effect. Once the implementing orders have been published by way of Royal Decrees, the first supplementary licences (see question 9) for operating games of chance by way of information society instruments will be able to be issued from September 2011. Various Royal Decrees are to guide and steer this process and will be communicated to the European Commission. Two Royal Decrees which constitute the regulatory foundation for awarding supplementary licences have already been communicated to the European Commission and have been published in the Belgian Official Gazette of 15 July 2011. These Royal Decrees are set to take effect on 1 September 2011.

As such, the Belgian regulation of online games of chance is currently still in its infancy. Some (online) operators have managed to put in place online activities in Belgium, with little

or no regard for rules and regulations, largely through Europe-focused lobbying efforts and by using their (partially) illegally obtained budgets.

The Gaming Commission is in full preparation to see the Belgian Internet regulation turn into a success, but its answers to this green paper are inevitably marked by the incipient stage which the regulation of online gambling currently still finds itself in.

The Gaming Commission is requesting the European Commission to keep Belgian authorities informed when lobby groups or individual lobbyists bring up the topic of the Belgian online story in European-level contacts. As it is, this consultation round is insufficient in this respect. Effective law enforcement does not only request an (instrument-based) repressive approach, such as shutting down websites, but also a clear and unambiguous position of government and policy bodies.

In summary, the loyalty principle requires the European Commission and the Member States to work together in good faith. If the Commission feels it is unable to agree with some provisions of Belgian law, it cannot afford to leave matters undecided. If the Commission thinks that some provisions are potentially at odds with the Treaty, this needs to be resolved before the Court of Justice. As long as no ruling has been handed down in an infringement procedure, it is not for the Commission to frustrate the Member States in their regulatory efforts by allowing illegal operators to do as they please.

Member States have the duty to protect citizens and society by a national gambling policy based on the principle of subsidiarity, in the absence of a European regulatory framework for gambling activities. The European Commission should respect these efforts when they are compatible with the Treaty.

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

The Gaming Commission is convinced that other actors, such as scientists, are better placed to answer which studies are available, that might be reliable and relevant. The Gaming Commission would assume that all studies purporting to be scientific in nature and therefore acting in deference to the transparency criterion to be publicly accessible.

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

The Gaming Commission is not in possession of studies measuring the size of the black market. Recently, a new police study showed that gambling websites are used to launder money (see question 27).

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

*Preliminary observation*

Online gambling is a very diverse field. Sometimes people effectively gamble over the Internet, sometimes it is only the sales that are conducted over the Internet, with the game itself played offline (e.g., lottery draws). It holds a series of highly diverse categories, to the effect that generalist statements about online gambling, even per category (e.g., lottery services, sports bets, casino services, media games,...) are not always easy to interpret unequivocally.

Consumer psychology and consumer confidence merit a particular framework and special attention. Consumers are able to assess whether a website is legal or illegal through specific initiatives of the regulator, but it cannot be expected that they have to be aware of all aspects of gambling policy. Consumers need to be able to move freely, but good gambling policy is not devised strictly from this perspective alone. For instance, it is important that the licensed games of chance are attractive to consumers, but what is equally important is the fact that the way in which the game is operated by an operator is controlled. The sheer fact that a player is satisfied does not exclude that there may be fraud involved for example (see also the various dimensions of games of chance as specified in response to question 10).

*Answer*

A double distinction needs to be made. For one thing, in terms of the possession of the required licences and for another in terms of the manner of operation.

There are online gambling operators who, even though they hold a licence in a different Member State, are willing to comply with Belgian gaming law (item 3.1.), and operators who use the fact that they hold a licence in a different Member State (involving less obligations, fewer taxes, less inspections,...) to not have to concern themselves with Belgian gaming law (item 3.2.).

In turn, both groups can be distinguished in terms of the nature of their activities. Some operators are focused on the actual operation of gambling (item 3.3.) whereas other

operators offer only *auxiliary* activities (item 3.4.). White label operators and affiliate services too need to comply with the legislation in the country of consumption.

3.1. Operators (holding a licence in a different Member State) who comply with Belgian gambling law.

Operators from other Member States have always had access to the Belgian gaming market in the past, so much so in fact that the operators operating on the Belgian casino and betting market to a large degree hail from other EU Member States. As such, the licence system in place is a liberal, open, but regulated, system.

The Belgian Gaming Commission (BGC) has no fundamental arguments with operators who have been licensed in a different Member State, and who possess a licence in Belgium. The operators in Belgium who hold licences issued by other Member States do not use these licences for their activities in Belgium. Austrian, French and British licensed operators have already ran land-based gambling activities on the Belgian territory, with a Belgian licence.

However, this has given them a (competitive) disadvantage compared against operators who ride roughshod over Belgian legislation (see *infra*). The Belgian land-based operators who abided by the rules and consequently did not deploy online activities on Belgian soil until 1 January 2011 (up to this point in time a total ban was in place on offering online gambling), have possibly racked up less know-how in the interim. Nor have they built anything like a Belgian online clientele. After all, they were risking to lose their landbased licence had they offered online gambling in Belgium.

This explains how their willingness to conform to Belgian law has placed these operators at an economic disadvantage in terms of the online operation compared against operators who are operating illegally. In part, it has been due to the upright conduct of these operators that the Belgian land-based gambling market is appropriately regulated. The licences which these operators may hold in different Member States in no way impede an attractive and profitable operation of games of chance in Belgium and the effective protection of players on Belgian soil. Ideally, the Belgian Gaming Commission should be in a position where it is able to put in place measures to confine the competitive advantage some operators managed to derive from the illegal operation of games of chance in Belgium if the latter emerge seeking to offer their services in Belgium under the new system.

3.2. Operators (holding a licence in a different Member State) who refuse to acknowledge Belgian gambling law.

With respect to the physical Belgian gaming market, the subsidiarity principle and the licence system have produced an appealing market that can be monitored on a day-to-day basis. As far as the online market is concerned, there is question of a market-disruptive action by the

operators who refuse to acknowledge Belgian gaming law and who choose to operate illegally. The online market is difficult to control with operators who rely on foreign licences, and who are supported by regulators who protect these operators for their own profit. This kind of approach invariably results in distortion of the competition. In essence online operators targeting the Belgian market without a licence are irresponsible and it is difficult to trust their willingness to respect democratic legislation.

There is disconcerting finding that some operators who hold licences from other European Member States refuse Belgian gaming law, unjustly brandishing the EU Treaty.

Some operators and lobby machines on their payroll (such as EGBA and RGA) making play with a presumption of innocence regarding their own (illegal) operating of gambling activities (they claim that as long as scientific studies do not clearly prove a problem, their activities should be regarded as innocent), whilst they themselves are constantly invoking an unfounded presumption of guilt (which they are endeavouring to disseminate at national and European level) alleging that national gambling policy is not compliant with European law. It is of importance that the Belgian Constitutional Court has now (14 July 2011, see general observations) clearly stated that the Belgian Act is compatible with European legislation.

This attitude of some operators licensed in gambling hubs is ambiguous to say the least: even if everybody is permitted to use the legal instruments in place, it is not in any way acceptable for these operators to flout Belgian gambling law in the interim. Legally speaking, Belgian gaming law is wholly legitimate. It has not been suspended in its enforcement and therefore must be complied with. Moreover, these operators are forever anticipating European case law as ruled by the Court of Justice which more often than not fails to bring them much benefit. In brief, a legal smoke screen in arguments and actions only serves to enable them to go about their business undisturbed.

For example, it is striking to see that some operators have the technical know-how to block players from certain countries. However, if and when they do so, they only do so based on the operator's own self-serving reasons (e.g., blocking American players). If they are unlicensed, they should exclude players residing in Belgium, but they do not. The contrary is true, with some operators deliberately targeting the Belgian market.

The ramifications for the market are serious. An attractive, regulated market is disrupted by these operators because they entice consumers with means and ways regulated operators do not have. In addition, these operators are undercutting the (future) market position of the existing operators by dint of the know-how and super profits gathered which they are able to commit.

As a consequence, the effects for consumers differ greatly:

Consumers have faith in a genuinely regulated market. Here, they are able to keep their gambling behaviour in check, for instance by way of government-run and government-controlled schemes that will even allow them to have themselves excluded.

On the online market however, consumers are less protected, wittingly or unwittingly, and they may be led astray by (aggressive) marketing techniques used by some operators. The attitude of some actors who do not wish to assume an independent position (e.g., the Belgian football association which refused to act against illegal advertising on football t-shirts, or which in a number of court procedures has felt called upon to defend illegal betting operators) is often seen to play a decisive role in this respect as well.

Consumers are befuddled by these operators. In addition, these operators avail themselves of television and football as a sport on a massive scale to impose a certain image of gambling and betting.

Finally, we should not lose sight of the fact that the social cost caused by these unlicensed games of chance, falls entirely at the charge of the Member State where the players are located. Operators who wholly elude Belgian legislation do not contribute to this societal cost in any way, shape or form.

In a nutshell, the experience the Gaming Commission has had with operators who solely rely on licences issued by different Member States and who are consistently flouting Belgian law, are utterly negative. The Court of Justice has clearly stated that there is no mutual licence recognition obligation. As such, operators of this ilk have no reason to refuse to apply for a Belgian licence. Their licence awarded by a different Member State does not suffice to enable them to offer their services in Belgium.

Against that background and in absence of a harmonised regulation of gambling activities, Member States have the duty to develop an appropriate policy to protect citizens and society, e.g. by introducing a supplementary license system, an obligation to locate the server on the national territory and to impose criminal sanctions.

### 3.3. Operators who effectively operate games of chance.

Another important distinction between operators derives from the nature of their activities. On the Belgian gambling market, a principal distinction exists between the actual operational running of games of chance (item 3.3.) and offering auxiliary activities (item 3.4.). These activities are provided by operators such as those specified under items 3.1. and 3.2.

In Belgium it is prohibited to operate a game of chance or a gaming establishment, in any which form, at any which place and in any which manner, whether directly or indirectly, without a prior licence awarded by the Gaming Commission in compliance with the aforesaid Act and save for the exceptions provided for by law (art. 4, §1 Games of Chance Act).

The operation consists of putting or keeping in service, installing or maintaining one of several games of chance or gaming establishments.

These operators are to be distinguished from operators who offer auxiliary activities. More so, principally one and the same natural or legal person is prohibited from cumulating a licence for operating games of chance on the one hand with a licence for auxiliary activities on the other, whether directly or indirectly, whether in person or through the mediation of a natural or legal person.

The European situation surrounding games of chance (as described under items 3.1. and 3.2.) makes it difficult to maintain this principal distinction. The illegal activities of operators relate to the operational running as well as the auxiliary activities, in which it can be extremely unclear who exactly is responsible for what. As stated (3.1), there is no problem with operators who effectively operate the game in Belgium and who fully abide with Belgian law in doing so, even if they hold a licence issued in a different Member State.

#### 3.4. Operators who offer auxiliary activities.

Natural persons or legal persons holding a Belgian E licence are allowed to operate the sale, rental, leasing, supply, provision, import, export, production of games of chance and of maintenance, repair and equipment services for games of chance. These activities are jointly encapsulated by the term 'auxiliary activities' (for the operation of games of chance as specified under item 3.3.)

This specific licence has a positive effect when it comes to regulating the market. It allows operators who are operating in other Member States of the European Union to operate or become operational in Belgium, where a supplementary licence system is in place (see question 9).

It is important for consumers that not only the licence holders who operate games of chance are duly licensed and controlled, but for this to also apply to the auxiliary services. After all, for players it is mostly neither possible, nor particularly interesting to monitor - let alone verify - the technology developments in the sector. At face value, this is not something consumers notice much of anyway, but for effective regulation this licence is particularly interesting. Especially for the purpose of online regulation where the technical expertise is concentrated with a certain number of businesses /persons.

The Belgian E licence enables operators who hold a licence in a different Member State to offer online gambling in that Member State, to also support the holders of a Belgian licence for the operation of games by way of information society instruments in Belgium. The Gaming Commission has no quarrel with these providers who have been licensed in a different Member State provided they are prepared to fully conform to Belgian law.

The situation outlined above brings us to the conclusion that consumers who are gambling by way of information society instruments need clarity and protection through a regulated market of operators who, under the supervision of a regulator who is able to do his work independently, fully comply with the law of a Member State, regardless of whether they



already hold a licence in a different Member State. In this respect, a clear distinction must be made between the various types of activities.

**(4) What, if any, is your experience of licensed non-EU on-line gambling operators providing and promoting their services in EU Member States? What are your views on their impact on the EU market and on consumers?**

At first glance, this group is not quite as problematic in the current state of affairs. After all, the most important operators for the Belgian market are situated in Belgium or one of the Member States in the European Union. However, further investigation has shown that some of these operators also hold licences outside of the European Union.

The EU should implement a joint policy against operators from third countries. An unambiguous policy and effective collaboration are indispensable in this respect. Independent regulators have an important role to play in this area. By working closely together, operators who operate outside of the European Union can be tackled more efficiently, which will see the generations who have grown up with the Internet as a worldwide phenomenon no longer feeling the need to gamble on an international level. To accomplish this aim, it is essential that regulators work together, amongst other things by making it possible for players from different Member States to play against each other in a regulated, protected environment.

The ramifications for the entire EU market are considerable since the bundling of groups of players from different countries gaming on these websites is greater. When too many EU residents start betting on these websites, this may lead the way for future players who also start turning to these sites instead of sites that have been licensed in a Member State.

The ramifications for consumers are that they are made to go without a regulatory and protective framework. For these reasons, the importance of collaboration between the Member States in facing these third country operators cannot be stressed enough. It must be made clear to consumers that this type of websites fails to provide the necessary guarantees.

Finally, one specific problem should be stressed. A highly problematic relation is found with persons who have links with operators of online bets from third countries who do not necessarily target the EU gaming market, but who are attempting to influence (sports) activities in a Member State. An important example of this arose in Belgium with the Y. case (rigged football matches).

A Chinese national, having arrived in Belgium in 2004, who had links with the mafia presented himself as a businessman seeking to invest in football and offering money to clubs who found themselves in dire financial straits. Some of these clubs accepted, others refused. In doing so, he put in place an extensive system that enabled him to rig matches, winning him significant sums of money through bets

placed over the Internet. His system was simple: he would offer money to certain players to 'go easy' during the match, which only left him to bet on the team losing.

Affairs of this ilk are emblematic of the problematic nature of bets linked to activities. So it happens that a (sports) activity is affected due to bets that are not held in the Member State and that are not even necessarily offered in the Member State where the sports event is being held.

**(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?**

With regard to the national Belgian market, with a recent amendment of the Games of Chance Act, the legislator moved to regulate the online games of chance within the confines of the case law of the ECJ. Like the Court of Justice, the Belgian legislator acknowledges the specific dangers involved in online games of chance. However, Parliament has deemed that an overall ban could have a counterproductive effect, causing players to seek out illegal games. Consequently, Belgian Parliament introduced – within the margin of discretion it has been awarded under European law – the possibility of a restricted, controlled, licensed online gambling offering. The licensing procedure is made to occur in full observance of the principle of equality of treatment, in every transparency, in compliance with the recent case law of the ECJ (C-203/08, *Sporting Exchange*, C-64/08, *Engelmann*). The Gaming Commission advocates the situation whereby the licence and the supervision of all operators, without distinction, is made to occur through one central regulator (cf. *infra*, question 46).

It has been reiterated on more than one occasion that games of chance are a special kind of service. Restrictions on the free movement of gambling services are justified in a number of cases. In what has already mushroomed into a comprehensive body of case law on games of chance, the ECJ is seen to delimit the contours of the freedoms laid down under the Treaty. The most important – and clearest – demand for online gambling is that there is no mutual recognition of licences in this field (C-42/07, *Liga Portuguesa*; C-316/07 *et al.*, *Markus Stoß*). In this respect, there is no longer any legal insecurity on the EU market. The Member States are free to put in place their own policy, setting out from their own objectives, without having to automatically admit operators licensed in different Member States. Moreover, in the absence of harmonisation and regarding the risks related to online gambling, it is the duty of a Member State to regulate gambling in order to protect society and citizens.

In general, resorting to the Treaty and the interpretation that is given thereto by the ECJ does produce for some a certain degree of uncertainty. While the subsidiarity principle is obvious, and while no mutual recognition can be accepted, operators persist in appealing to (future) jurisprudence of the Court of Justice in a refusal attempt to apply a democratic law of a Member State.

In principle, the interpretation returned by the ECJ should not be used for not accepting the will of the parliament. With operators gathering big money with illegal activities European jurisprudence can continue infinite. In fact, rulings like the Liga Portuguesa ruling, Markus Stoss ruling, etc. have clearly shown that regulation of gambling activities are necessary and of public interest.

As yet, Belgian courts have not encountered problems as a result of the ECJ's case law. The more, the Belgian Constitutional Court has clearly expressed in a principle ruling of 14 July 2011 that there is no sign of any incompatibility with EU law. In that case there is no legal uncertainty for operators without malice intentions..

**(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 or public or private operators providing on-line gambling services?**

Current secondary law which also applies to online gambling is limited in scope and impact. These are rules that are not specific to games of chance. They are general rules, largely aimed at protecting consumers. The applicability of these Directives to gambling is partially just and meaningful. The exclusion of games of chance from the scope of application of Directives that comprise the country of origin principle is equally just, but to date remains to be perfect as the Audiovisual Media Services Directive (Directive 2007/65/EC) does not expressly exclude games of chance from its scope of application. Given the considerable differences in policy on online games of chance between the Member States, the (possible) application of this principle might act to undermine the protection which a number of Member States are keen to offer their citizens.

The current secondary framework is inadequate however to tackle problems that are specific to gambling. Combined with the Treaty interpretations by the Court of Justice that fail to clarify all matters (*cf. supra, question 5*) this brings a situation where some operators are seen to seek out the confines of European law. Even though the Belgian statutory laws and regulations on online games of chance safeguard the policy objectives of protecting players and counteracting fraud and crime in a duly consistent and coherent manner, the lack of secondary law that is specific to games of chance is causing problems in a cross-border context. Improved co-ordination at EU level through independent regulators should be allowed to act in support of Member States' gaming policies.

**(7) How does the definition of on-line gambling services above differ from definitions at national level?**

*Preliminary observation*

Paragraph 2.1 of the green paper gives cause for confusion. First of all, online gambling services are considered as games of chance that are provided online, i.e. – within the normal meaning of the word - over the Internet. However, there is also immediate reference to media games. These games are not necessarily made to occur online. Moreover, an odd interpretation is given to games of chance, whose purpose ('operated by and for the benefit of recognised charities and non-profit making organisations') is said to be relevant in order to identify a gambling service.

Secondly, reference is made to interactive games, i.e. games of chance that are also offered through other media, such as mobile telephones and PDAs for instance. It is true to say that it is important not to lose track of these games and not to confine the ongoing discussion to just the Internet – as the final definition justly does.

The cited definitions in the various Directives are tautological and not very helpful little. 'Gambling services' is defined with a series of non-exhaustive examples or the very term 'gambling services' itself. In addition, it is unclear whether money needs to be staked, or whether a stake that can be value in money suffices.

The Gaming Commission understands that it may be meaningful for the purpose of this consultation to draw up a working definition, but it would seem indispensable that any such working definition clarifies what exactly is understood by 'games of chance'. Especially as different interpretations exist between the different Member States, in which it is the degree of chance that is often seen to be a moot point.

#### *Answer*

To a degree, the definition adopted does tie in with the definitions used in Belgium, amongst other things because the Belgian legislator has adopted a view that looks beyond the games of chance offered over the Internet.

The Games of Chance Act first and foremost provides a definition of 'games of chance' (art. 2, 1°):

*all games for which a stake of any which kind is placed, resulting in either the loss of the stake by at least one of the players, or the win of any which kind, benefitting at least one of the players or the organisers of the game and in which chance is an element, even in an accessory capacity, for the way in which the game unfolds, in determining the winner or determining the amount of the winnings;*

This is followed by a definition of 'information society instruments' (art. 2, 10°), based on Directive 98/34:

*electronic equipment for the processing, including the digital compression, and the storage of data, that are wholly transmitted, carried and received by wire, by radio, by optical technologies or by other electromagnetic means*

The National Lottery Act of 19 April 2002 on the rationalisation of the operation and the management of the National Lottery too uses the term 'information society instruments', without however providing a definition thereof (art. 7).

The combination of both definitions in the Games of Chance Act results in 'games of chance by way of information society instruments', to which the Act attaches a special regime. As such, online games of chance also require a stake and may relate to lotteries and bets. The individual request of the user is not emphatically underscored. The Belgian definitions provide for a wide-ranging concretisation of games that are offered by way of information society instruments.

**(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?**

*Preliminary observation*

The way in which media games are positioned as part of the issue of the definition and organisation of online gambling services is odd. Given the working definition proposed by the Commission, a large number of games of chance that are made available through the media (TV, radio) are not offered in response to the individual request of the player (with digital television being the exception). In addition, they are not necessarily conducted remotely by electronic means: games in newspapers and magazines are offered in paper version. In cases, players may be required to return the correct answer by electronic means, but the main component of the transaction (the game of chance offering) is not supplied remotely.

It is equally unclear why promotional games are involved in this question. They are not necessarily conducted by electronic means, nor are they necessarily linked to the media.

The terminology adopted in the Dutch inquiry is unclear. The Gaming Commission presumes that the question is intended to gauge the games of chance offered *through* the media, not games of media companies that are offered over the Internet for instance.

*Answer*

In Belgium, games offered through the media are not considered as 'games of chance by way of information society instruments' (*supra*, question 7). The Games of Chance Act provides a definition of 'media' (art. 2, 8):

*all radio or television stations and all newspapers or magazines whose registered office of the operator or the editor is established within the European Union*

In addition, said Act also provides a definition of 'media game' (art. 2, 9°):

*game of chance that is operated through the media*

These games are given a separate regime under the Games of Chance Act (art. 43/9 – 43/15). For television programmes by way of numbering ranges of the Belgian numbering plan and which make up a complete programme, a G1 licence is to be applied for. All other media games require a G2 licence.

The Games of Chance Act does not distinguish between promotional and other games of chance (the term 'gokken' has no legal meaning in Belgium). As soon as the definition of a game of chance is met, the Games of Chance Act applies, unless the game comes under one of the exceptions that do not relate to promotional games as such, but – amongst other things - relate to games that involve a limited stake and profit. Some 'promotional' games with a very small stake could conceivably benefit from this exception.

A 'promotional' game that does not require a stake does not come under the scope of application of the Games of Chance Act as a game, because the stake is a key requirement of the game of chance under Belgian law. However, it may be that the promotional game serves as a form of publicity for game involving a stake (game of chance) (e.g., a free game offered by a casino operator). In said case, the promotional game is considered a form of publicity for a game of chance and as such is subject to the Games of Chance Act and other statutory provisions on publicity. If the promotional game of chance promotes unlicensed online games of chance, the provider moreover runs the risk of criminal prosecution pursuant to art. 4, §2 of the Games of Chance Act. The promotional game of chance can also be considered as the facilitation of the operation of unlicensed games of chance, which may also prejudice the operator's criminal liability pursuant to art. 4, §2.

In Belgium, promotional games are partly regulated by the Act on Market Practices and Consumer Protection (art. 72, §2, 3° and 94, 8° AMPC), which is the transposition of Directive 2005/29/EC.

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

The question sets out from the premise that Belgium has licensed gaming establishments, which is the case. The Games of Chance Act makes a distinction between casinos (class I gambling establishment), gaming machine halls (class II), drinking establishments (class III) and betting shops (fixed or mobile) (class IV). Each of these classes comes with a restriction of the number of establishments permitted to be set up and of the number of games they are allowed to offer. The licences are awarded by the central regulator, the Gaming

Commission (*infra question 46*). In the physical establishments themselves no online games of chance are offered. However, players can place bets on international sports games and events inside class IV gaming establishments, but in all cases this is made to occur through the operator of the gaming establishment – the player does not directly place his bet online.

However, the Belgian legislator has chosen to make the offering of games of chance by way of information society instruments contingent on the possession of a licence for a casino, a gaming arcade or the running of bets. Only operators who hold a licence for a physical establishment in Belgium are eligible for a licence to offer games of chance by way of information society instruments (art. 43/8, §1 Games of Chance Act). The supplementary licence can relate only to the games of chance that are also operated inside the physical establishment (art. 43/8, §1).

The Internet sites or other games of chance that are operated through the electronic communications network are not a separate gaming establishment. The Internet is merely the means through which the games of chance and bets are offered. Gambling over the Internet is an « equal service » to gambling in the physical world. In order to be able to conduct a coherent and correct policy, including an efficient control of the operational running of these games of chance over the Internet, the online operation of games of chance must be reserved to those who also operate the games of chance in the physical world.

The Belgian Constitutional Court (14 July 2011) has clearly expressed that requirements like operating landbased games of chance in a landbased establishment before having the right to operate gambling via information society instruments and the obligation of locating the gambling server in the country can be regarded as a necessary and proportionate element of a general gambling policy that must protect citizens and society.

**(10) What are the main advantages/difficulties associated with the coexistence in the EU of differing national systems of, and practices for, the licensing of on-line gambling services?**

No more than a gaming policy should be constricted to the perspective of the consumer, a qualitative gambling policy should be constricted to the perspective of operators. Both approaches are communicating vessels that need to be co-determined by the perspective of society through the regulator.

In the current state of affairs, it is logical for an operator who is seeking to offer his services in several Member States to be required to hold different licences if the Member States so require. After all, the substance of a licence is not necessarily similar, there are the differences in national gaming policies between Member States, an independent regulator may or may not be in place... This type of licence requirement held out by a Member State is not a problem as long as it is aimed at the implementation of a gambling policy and does not serve any other (protectionist) purposes (for instance by sealing off the gaming market to operators from other Member States).

The biggest benefit is that the authorities of a national Member State that has its own licence system are able to get a grip over the gambling sector at a pace that is best suited and most expedient to their situation. It is a moral obligation to regulate a sector which, if left unregulated, constitutes a threat to public order.

The operation of games of chance without regulation under the supervision of an independent regulator is quick to lead to illegal money flows, money laundering and a meaningless protection of the player.

The biggest drawback is that a strictly national policy does not provide a sufficient response when the gambling sector makes use of information society instruments, which are more often than not transnational by their very nature. Some regulators – of course quickly found by certain operators – abuse this fact to award licences which in essence are not geared towards their own national market, with the exception of the revenues from the activities of the operators. These regulators and operators (deliberately) ignore the situation in a different Member State (see also experiences with Gibraltar, a European regulator who declines all co-operation, *infra* question 48). In addition it is almost impossible to identify those responsible for the online activities and their facilitation. Either, such persons say they are not responsible (for example the Belgian body that assigns domain names claims that it is only responsible for technical matters, and is unable to get involved in a substantive appraisal), or those responsible are very difficult to contact (summons), because they are not associated with a physical gambling establishment and the operation has no servers in Belgium.

Regarding secondary service providers - who can be held criminally liable (for operating illegal gambling or facilitating the illegal offering (art. 4) - the Belgian Gaming Commission is intent on working with these service providers (such as ISPs) so that they know which gambling sites are legal and which are not and are able to put in place useful measures against these gambling sites. The Belgian authorities cannot predict whether this collaboration will yield the necessary results. A problem in this respect is that some secondary service providers might be foreign companies that are not necessarily greatly impressed by Belgian regulations or even the threat of Belgian criminal sanctions. The inherent cross-border aspect of commercial communications in modern day information society necessitates cross-border collaboration. The Belgian Gaming Commission insists that the proper means are put in place in support of such collaboration, at least between regulators, to guarantee that the legislation does not remain dead letter.

By strictly following the vision of certain operators, the various dimensions of (online) gambling are failed to be taken into consideration. A channelling policy aimed at maintaining public order and ensuring the protection of consumers factors in these different dimensions, such as the economic dimension (particular economic activities), the legislative dimension (involvement of the legislative branch), the political dimension (involvement of the executive power), the financial dimension (proceeds from gambling), the technological dimension (technology for the operational running of the games of chance), the game dimension (entertainment and appeal), social dimension (protection of players) and the criminal dimension (criminality associated with games of chance).



In themselves, the information society instruments bring a major degree of freedom that makes it difficult to crack down on criminal activities through a lack of control. However, an unregulated market soon leads to excesses and the disruption of the markets in the Member States.

There is also a major drawback for operators who abide by the regulations of a Member State against operators who disregard the regulations of a Member State. Annual reports published by such operators teach us that a great deal of money is being made that is available to be re-invested to tap into new markets with operators who have not managed to build such budgets. In the awareness that the money that was made by flouting a legitimate statutory law, there is question of an unlawful advantage that is capable of pushing operators that do comply with the Act decreed by Parliament from the market.

Same as with the downright negative experiences with certain operators (see question 3), it is clear that the Belgian supplementary licence system also serves a corrective purpose vis-à-vis operators who have circumvented Belgian gaming law. It enables operators who are experienced in offering games of chance in the physical world to opt to offer these games of chance in the virtual realm as well. It is clear that certain operators will do everything it takes not to get checked or inspected. This is not the kind of attitude operators who hold a licence in the physical world can afford to adopt. A supplementary licence is available to the operators whose activities are in keeping with a regulated framework. The operators who comply with Belgian law are reward for their attitude. Yet the know-how of the operators that have mostly developed this know-how illegally, is deployed in a way that is acceptable to the Belgian gambling policy. With an E licence (see item 3.4.), they are able to offer their services through the involvement of the supplementary licence holder (A+, B+ and F1+). The physical activities and the online activities of operators are mutually associated. It has been amply demonstrated that an unregulated gambling industry constitutes a problem to man and society. Under a licensing system, licensed operators must be given the opportunity to operate offline and online within the confines of the law.

Currently, not a single Member State is capable of completely curbing the illegal operation of games of chance over the Internet by strictly technological means. A set of measures has to be developed.

A specific focus area is the identification of the player, which is crucial in the Internet story, both from the perspective of the player, the operator, as well as for the purpose of safeguarding public order (see question 14). Operators check and identify players without it being clear whether this identification is conclusive and full-proof. As a rule, Member States that identify residents have a good database that can be used for this purpose, even though the scale on which this is used remains limited. Yet, in the regulation of online gambling it is very important that all players taking part in gambling activities are correctly identified. The various co-existing systems should be better mutually aligned in this respect. Money laundering and the security of the money flows too are transnational issues that do not benefit from the solely isolated co-existence of different national regimes.

In summary, several conclusions may be drawn from the co-existence of different systems. Firstly, Europe appears to have two models to keep a rein on the online operation of games

of chance. Secondly, there is the finding that the policy of a Member State, and all the more so the policy of a regulator, must be coherent. Thirdly, in absence of a European framework Member States have a duty to regulate themselves. And last but not least, the current coexistence of national regulations does not deal in a satisfactory way with gamblers playing against each other from their different countries. To really protect these players, now acting at illegal websites, a European regulatory framework should be put in place. Member States try to do what they can but they cannot to do it on their own given the transnational nature of online gambling.

The two models with respect to the online operation of gambling set out from a different vision. There is the school of thought that says that the online operation of games of chance can be regulated separately without the necessary association with the physical world being required. On the other hand there is the model that says that per force an association must exist with the physical world in order to be able to channel games of chance. In Belgium, the second model takes centre stage, amongst other things with the supplementary licence system and the requirement that the server where the data and the website are administered is located in a permanent establishment on Belgian soil. It is the Gaming Commission's strong belief that this is currently the only way to control online gambling effectively, given the absence of a European regulatory framework.

In addition, it is necessary for the policy of a Member State to be coherent. The policy of a Member State should not only be internally coherent, it should also be externally coherent, i.e. vis-à-vis other Member States. The intention cannot be for the policy of one Member State to undermine the gaming policy of another Member State. Member States need to duly observe the policy of other Member States and prohibit their licence holders for instance from targeting other Member States' markets, where they are not licensed. For instance, it is entirely within the powers of authority of Member States to impose a minimum age for players to play (online) games of chance. It is unacceptable for the policy of a different Member State to act in such a way that this minimum age fails to be observed. For example, Belgium is currently made to find that youths in Belgium from 18 years of age play online casino games, whereas this is prohibited under Belgian law. When an authority in another Member State allows operators it licensed to target these Belgian youths, not only the online objective of the Belgian legislator is undermined, this also constitutes an attack on a properly working practice of many years' standing in the physical world. Youths under 21 years of age are not admitted into physical gaming establishments. If a Member State is aware that such external effects exist, it must put in place efficacious steps for reasons of external coherence. Such external coherence must be able to be efficiently enforced in the short term through a swift collaboration procedure. However, by being coherent and acknowledging other Member States' policies, a Member State may not deny the problem that players of different Member States are willing to play against each other and it must take measures to protect them.

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

### *Answer*

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 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 publicity 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 publicity, misleading information, unsolicited direct communications etc.

Notwithstanding the above, in practice many illegal gambling operators make publicity for their activities. Sometimes, this publicity is even very high profile such as sponsoring of Belgian premier league football clubs. Illegal operators will often try to masquerade the fact that they are promoting illegal gambling, however. Under the old law on games of chance, it was very easy to legally offer (online) bookmaker sports betting. Publicity 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/is illegal without a licence). It should be stressed that these kind of tactics are not acceptable. A comparison can be made with tobacco companies who used to try and make publicity for their cigarettes by advertising other products (e.g. clothes) with the same brand name. Such brand association publicity is strictly limited under Belgian law. The same should apply to gambling operators.

The Belgian authorities have taken several initiatives to halt illegal gambling operators and sometimes more specifically their commercial communications, with variable 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 publicity 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 operator since it only advertised for a website and the judge found a website could not be considered a proper 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. Since the new law is even more clear about the illegality of commercial communications, the Belgian gaming commission 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. Up until now, this argument has never succeeded.

Nevertheless, it is not unlikely that the Belgian Gaming Commission, as well as the other competent 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 Gaming Commission finds it disturbing that illegal gambling operators sometimes disregard all regulations and make all sorts of publicity. It is problematic that these operators invoke European law to dodge basic and essential rules of the Belgian legal framework such as the need for a licence in order to legally offer games of chance and make publicity for it. It is only logical that commercial communications by those who do not abide by this framework, are prohibited.

Regarding secondary service providers, the same provision in the new law on games of chance applies, being the general prohibition to make publicity for 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 Belgian authorities 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 Belgian gaming commission insists that the proper means are put in place for such cooperation, at least between regulators, to guarantee that legislation will not remain dead letter.

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

*Preliminary observation*

In its figures, the Commission does not distinguish between credit cards and (online transfers using) debit cards (including Maestro). Nonetheless, this is an important distinction to make. In the case of credit cards, players are seen to gamble on credit, without limits or within the limits tied to the card. With debit cards, it is either impossible for player to gamble over their means, or only to a more restricted degree. Which is why it would be

expedient to break down available figures along those lines. In addition, credit cards are no longer necessarily the only or the most rewarding alternative for online payments – bringing figures together however serves to perpetuate this perception.

The matter-of-factness by which it is stated that online operators impose limits on the amount of the deposits that can be made is misleading. Quite a few operators either do not set limits or if they do, these limits are so high that they do not offer the players any protection. Moreover the limits on withdrawals from the player's account pose a problem in their own right. In doing so, the operator makes money from the player's money whilst equally enforcing loyalty. The player's account creates a certain durable relation, a loyalty that may yield a financial gain for the online operator. As long as the player is not paid out in full, the real money stays with the operator, who can use the money to yield a profit. Even if there are no limits on the amount that players are allowed to withdraw again, players will not be very inclined to collect their winnings after each game, which sees the sums held in the player's account re-used as stakes in the game. Since winnings are not automatically paid out and some operators could be inclined to hamper players in withdrawing sums from the player's account by throwing up all manner of obstacles, which has been known to occur on the illegal market, specific measures are needed. It should be clear that the player should be able to dispose of his money swiftly and easily as and when he chooses.

#### *Answer*

In essence, the payments for online gambling are to guarantee two things. On the one hand payments must be able to be easily transacted, which is in the interest of consumers. On the other hand the transaction must be transparent for the operator and the authorities, which is in the interest of counteracting fraud and crime (including money laundering). At all times, it should be possible to identify the transaction and the link to an individual person. The sector of online payments is strongly evolving and it will be quite a challenge to regulate this aspect of online gambling.

The Games of Chance Act and its implementing decrees contain a number of provisions that are relevant for payments made as part of online gambling services. It is prohibited to use credit cards to pay for taking part in online games of chance (art. 58 Games of Chance Act). Banks and credit card companies that enable payment transactions with such cards are complicit to a criminal offence. If, moreover, they aid and abet the payment transactions of unlicensed online operators, they are principal perpetrator of the criminal offence specified under art. 4, §2 ("It is prohibited to take part in a game of chance, to facilitate the operation of a game of chance or a gaming establishment, to run publicity for a game of chance or a gaming establishment or to recruit players for a game of chance or a gaming establishment when the person concerned is aware that he is dealing with the operation of a game of chance or a gaming establishment that is not licensed pursuant to the present Act."). This regulation is important to tackle the illegal offering of online games of chance, which serves to benefit the safe and legal offering.

Furthermore, the Games of Chance Act specifies that one of the quality requirements which providers of online gambling are to comply with in order to be awarded a licence is the guaranteed security of payment transactions between players and the operator (art. 43/8, §2, 1°, b). This provision is specified further by Royal Decree, which requests the licence applicant to submit a detailed plan that shows how the security of the payments between the operator and the players will be guaranteed. At a minimum, this plan is to include the technical specification of the current plans and the permanent security checks that will be performed in the future. To do so, operators can use e-wallets, provided the supervisory authority at all times has access to the history of the transactions during a 5-year time span. The verification of the data on the server in place on Belgian territory, as required under the Games of Chance Act, offers this possibility.

In Belgium, it is prohibited to grant the players any kind of loans or credits, or to enter into any kind of material or financial transaction with said persons with a view to pay for a stake or a loss (art. 58 Games of Chance Act).

For the remainder, no specific regulations exist that govern payment systems for *online gambling services*. Obviously Belgian law has the necessary regulations in place for online and other payment systems in general. All that is required is for the operator to be required to comply with some supplementary principles by way of the licence requirements. Permissible and regulated methods of payment in the EU in principle must be possible, to the extent that they meet the policy objectives of the legislator.

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

When we refer to players' accounts, these need to be seen in a wider perspective than strictly the means whereby the payment transactions between players and operators are made to occur. In principle, the player's account is linked to the registration of the player. In this sense, it also plays a part in the identification of the player. In addition, a player's account can be made to contain information about the game and a history of the player concerned. In doing so, the player is also enabled to keep up to date with his gambling behaviour. This information can be of interest to the player as a consumer. There needs to be transparency at all times. For instance, no opacity should be created by having many different players' accounts. There needs to be transparency in terms of the game, the financial transaction and the individual player who is responsible for the payment. It is for the regulatory body to lay down the requirements that govern the player's account for operators who have been licensed pursuant to the Act. This cannot be left to the operators themselves.

With regard to the payment transactions, it is true to say that an intermediate step is needed between the money of the player and the stage of obtaining game value. This link is the player's account. The legislator can force operators it is awarding licences to, to adopt certain deposit or stake limits on those player's accounts. For example, the Belgian National Lottery has a deposit limit (art. 10, §1, 2°, 3° and 4° KB of 24 November 2009) and a stake

limit. Players can transfer a maximum amount of 300 Euros per transaction into their player's account. Additionally, they can only bring in 300 Euros in total every 168 hours (7 days). Players can reduce this maximum amount. If they wish to raise this amount again at a later stage, they are given 336 hours (14 days) to consider their decision, before the National Lottery implements the change requested. The maximum amount that may be held in a player's account is 500 Euros. All sums over and above said limit are automatically transferred to the player's bank account. With regard to the stake, the stake is rejected if the player has lost over 100 Euros over the past 24 hours (art. 10, §1, 6°). The player is able to reduce this ceiling amount. For most other games of chance, with the exception of bets, the Belgian legislator prefers to ensure the financial protection of the player through the average hourly loss. Players are allowed to lose a certain amount per hour on average, depending on the online game of chance that is offered. If so desired, additionally a Royal Decree can impose stake and deposit limits (art. 43/8, §2, 2° and 6° Games of Chance Act).

As such, a player's account with pertaining deposit limits can be used as a way of protecting the player against unduly great financial losses, but this is not the only means of protection, as proven by the average hourly loss system. The player's account and the way this is designed is just part of the enforcement of the rules. In any event, the operator would need to be required to set mechanisms to prevent money laundering.

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

Both in the physical and the virtual world the identification of the player is an element of major importance. Not only to verify the player's age, but also to spot problem gamblers, to prevent embezzlements and to uncover gaming fraud. All of which means accurate identification is in the interests of the operator, the player and the authorities alike.

For the physical gaming establishments in Belgium (casinos and gaming arcades), identification is made to occur by way of an identity card check. As of 1 July 2011, bingo machines in cafés too (class III) need to have a reader that is able to read the electronic identity card which all Belgian citizens are issued with, so as to check due compliance with the mandatory minimum age. The operators of a class I or II gaming establishment are to record the player's full name, first name, date and place of birth, occupation and address in a separate register (art. 62 Games of Chance Act). The operators are to keep a copy of the identity cards on file for five years. In addition, on the basis of the details provided they are to check if the person concerned has not been excluded from taking part in the game. The Gaming Commission has a central database (EPIS – Excluded Persons Information System) that holds the names of all persons who have been barred from class I and II gaming establishments for legal reasons or who have requested to be barred therefrom at their own request (art. 55 Games of Chance Act). The operator is under obligation to consult this electronic system before admitting the player to the gaming room. This central system provides a high level of protection to the problem gamblers whose names have been

included in the system. In future, third party stakeholders too will be able to request to have a player included in the EPIS database, which will see the protection of problem gamblers stepped up even further.

For physical bets there is no duty of identification upon entering the betting shop. However, there is a registration duty for certain bets as such. These are to be recorded in an IT system, in which the data stored are to be kept on file for five years (art. 43/4, §3).

Since the intention of the Belgian legislator is to transpose the protection of players available in the physical world as widely as possible to the games of chance by way of information society instruments, the online world too needs to conduct an identification procedure of the player, including age verification. Ideally this is to be made to occur through an official database, such as the Belgian National Register, which is the most reliable form of personal identification. All Belgian residents have a unique National Register number which their personal details are linked to. This government database can be accessed only subject to very strict conditions and only the data that are required for the stated purposes (e.g., age) are allowed to be consulted. Checks performed through this system guarantee compliance with all requirements relating to the protection of personal privacy in such way that the player is protected. The required details can also be checked by way of the electronic identity card, if the player has a card reader that is connected to his computer.

The National Lottery is already using a combination of both systems. If the player does not use his electronic identity card, he is to communicate his name, first name, title of address, the address of principal place of residence, his date of birth, identification number with the National Register and his bank details. If he is using his electronic identity card, he is not required to communicate his National Register number. The Federal Public Service for Information and Communication Technology (Fedict) verifies certain data in the National Register to ascertain whether the player complies with all admission requirements.

This kind of system guarantees the utmost correctness of the checks as well as privacy protection. The drawback (and a general disadvantage of online checks) is that this is a national system, only capable of certifying Belgian players. Leaving these checks strictly to third parties or conducting checks through payment cards however appears to be of lower value. Which is why it is important to devise a joint identification system for the Member States, if they allow their citizens to also gamble on websites from other Member States. At a minimum there should be an exchange of the details of problem gamblers, to the effect that Belgian operators for instance are able to duly identify French players who have been excluded from gaming, and deny these players access.

It is wholly unclear how operators actually manage to adequately identify players.

**(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 on-line gambling services? (If possible, please rank them)**



It is impossible for the Gaming Commission to answer the question to rank any such factors. Other bodies are probably better placed to rank the factors indicated on the basis of solid scientific research.

As far as the Gaming Commission is aware, no studies into additional or lesser risk factors involved in online gaming have been conducted in Belgium. Griffiths (2003) identified certain risk factors specific to playing online games of chance (G. MEYER, T. HAYER and M. GRIFFITHS, "Problem gambling in Europe: challenges, prevention, and interventions", Springer 2009): the anonymity (the absence of social control), the mental and emotional escapism on offer, the fact that is likely to involve dissociative disorders, the uninhibited environment offered by the Internet, its interactive and unsocial nature as well as the comfort it offers. These elements overlap the elements identified by T. Hayer, M. Bachmann and G. Meyer (T. HAYER, M. BACHMANN and G. MEYER "Pathologisches Spielverhalten bei Glücksspielen im Internet (Pathological Internet gambling)", in *Wiener Zeitschrift für Suchtforschung*, Jg. 28 2005, Nr. 1/2, p. 29-41).

The importance of the role of the structural characteristics of games of chance and particularly the distinction that is made between the "short odd" and "long odd" games (depending on the frequency of the events or on the time interval between the game and the time when the result is known), in the emergence of gambling addiction was highlighted in several research studies: Cornish en 1978, Griffiths in 1993, 1995 and 1997 and Griffiths and Delfabbro in 2001.

It is likely that the same risk factors that were identified for physical games also apply to online games. The study conducted by Minet et al. (2004), '*Le Jeu dans tous ses états. Un état des lieux en matière de jeux en Belgique*' adopts these factors: the *frequency of events*, the *gain*, the *time between the placing of the bet and being apprised of one's winnings*, the phenomenon of *near wins*, the *illusion of control* induced by certain games that make the player believe that he can feather his nest or exert influence on the outcome of the game. The study underscores that the danger of games needs to be assessed in light of these different factors and their potential concomitance. Environmental or situational factors (as those specified by Griffiths) also contribute to the risk of addiction: the *atmosphere*, the *accessibility* (opening hours, minimum age), the *publicity* (misleading or targeted on persons at risk such as minors).

Sytze Kingma (S. KINGMA, *Risico-analyse kansspelen. Onderzoek naar de aard en omvang van gokverslaving in Nederland*. Tilburg: KUB Tilburg, 1993) has established a risk profile on the basis of 9 games of chance characteristics: the time of decision, the stake, the loss rate, the atmosphere, the game duration, the appeal of winnings, the skilfulness, the control over the game and accessibility.

With regard to online games in Belgium, a telephone survey that was conducted by Druine et al. (2006)(G. MEYER, T. HAYER and M. GRIFFITHS, "Problem gambling in Europe: challenges, prevention, and interventions", Springer (2009), p. 9) among 3,002 people aged 16 to 99 shows that just 1.5% of respondents had already paid for online gambling and 0.4% gamble on a regular basis, i.e. at least once a week. The sample group was expanded and questions were put across using an online questionnaire to 282 online players. This showed that 94%

of this sample group also gamble offline, playing a greater variety of different games of chance. These players gamble more frequently (36.5% play at least once a week) whilst spending more than players gambling in the physical world. 13.3 % of this number can be qualified as problem players whereas this can be said of just 3.1 % of offline players. As to the preferred games of choice, men prefer bets whilst women are more attracted to online slot machines, lotteries and the scratch cards.

**(16) Do you have evidence that the instruments listed above are central and/or efficient to prevent or limit problem gambling relating to on-line gambling services? (If possible, please rank them)**

The emergence of gambling addiction, as with other addictions, is the result of the interaction of several factors described by Olievenstein as: man, product and environment. Below, the risk factors specified are ranked according to relative importance without scientific validation. Reference to the Belgian situation is made.

- (1) Accessibility to the games or the minimum age is one of the most important factors. Belgium is conducting a policy aimed at channelling the game offering. Access to casino games and gaming machines, including their online version, is prohibited to under-21s (*infra*, question 23). Access to the other games, including online bets, is permitted to people of legal age, i.e. as of 18. Clients will be required to be identified on online gambling sites (*supra*, question 14).
- (2) The possibility of self-exclusion, together with rigorous access checks, is certainly one of the most efficient measures (see also question 14). Infringements against this provision must be penalised. The list of persons who have requested to be excluded must be duly complied with by all operators, offline and online alike. With regard to cross-border gaming, a European list of excluded players needs to be set up. In Belgium, applications to this effect can be made by third party stakeholders since 1 January 2011.
- (3) Self-limitation is insufficient. The legislator should set limits on the game. In Belgium, an average hourly loss is determined for each game type (cf. answer to question 20). In principle, the online hourly loss will be linked to the offline hourly loss for the same game type and will be calculated in consideration of the player. The game will be discontinued when the preset limit has been reached.

The Belgian National Lottery too has set daily ceiling amounts for these online games (100 €) (*supra*, question 13).

- (4) Information. For gambling to remain entertainment, the players as well as the professionals and the general public need to be informed about the dangers involved, about the exclusion possibilities and the availability of welfare services, or a free hotline number. The player should be able to learn the actual probability of

winning. Folders setting out the above information as well as a self-diagnosis test are to be made available in all gaming establishments, including on the Internet.

(5) Credit ban. Operators are not permitted to give players credit in Belgium (supra, question 12). This measure can help players to avoid financial difficulties.

(6) Publicity. A certain degree of reserve seems necessary for advertising a safe legal offer. In Belgium, operators are to stop any publicity campaign, at the simple request of the Gaming Commission. A code of ethics, which shall be imposed by Royal Decree, will lay down further specific regulations regarding this topic for online games.

The protective measures can only be efficient if they are put in place at the initiative of the game operators. These measures must be included in the regulation and all infringements duly penalised.

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

At national level:

- Telephone survey by Druine et al. (2006) taking in 3002 respondents aged between 16 and 99:
  - 59.7% have already gambled.
  - 25.8% gamble on a regular basis (at least once a week)
  - 2% may be considered as problem players (1.6% as players at risk and 0.4% as pathological players).
  - For online gambling (out of 282 players queried online):
  - 94% of online players also play physical games of chance.
  - 36.5% gamble at least once a week.
  - 13.3% may be considered as problem players.
- The study by Minet et al. (2004), *'Le Jeu dans tous ses états. Un état des lieux en matière de jeux en Belgique'* (Gambling in all its forms. A round-up of gambling in Belgium) involved 662 players and shows that:
  - 14% may be considered as pathological players (5 positive answers on the SOGS).
  - 42.3% as players at risk or problem players (1 to 4 positive answers on the SOGS).
  - The proportion of pathological players per establishment type is as follows: 23.2% in amusement arcades, 19.3 in casinos, 20% in cafés (bingo machines), 5.1% in betting shops and 3.3% in National Lottery outlets.

- In addition, the study provides a wealth of details regarding the profiles of players, their expenditures and the consequences of excessive gambling.
- The Willemen report, entitled “Dossier Gokken” (*Gambling File*) (2007, Vereniging voor Alcohol- en andere Drugproblemen) (*Association for Alcohol and other Drug Problems*), puts forward an estimate of the number of problem players in Belgium, based on the figures from other countries. It is estimated there are 100,000 problem players, 20,000 of whom are said to be pathological players.
- The *Centre de recherche et d'information des organisations de consommateurs* (CRIOC) (*Consumer Organisation's Research and Information Centre*) publishes a barometer of the consumption of games of chance by young people aged 10 to 17. The last published barometer (April 2011) sets out from 2,687 interviews to conclude that: over 1 young person in 7 plays for money, on average twice a week (3 times every two weeks for poker games and bets). On average they spend 32 €/month and start gambling around the age of 14 even though the gambling activity frequency rises among the 16 to 17 year-olds. Youngsters in vocational and art education are the group that is most seen to play for money. Differences are found depending on the genre and between the regions, save for young people who live in the country.

50% of youths who gamble for money have already taken part in lotteries or have already bought scratch cards. 40% play poker or a different card game for money. 30% have already placed a bet in a betting shop or at a newsagent and 24% have already played the bingo machine in a café. 16% have already taken part in online betting games without actually committing a stake, 15% have already entered competitions by text message or by phone on the TV and 12% have already placed online casino games or placed online bets on sports events. 10% have already taken part in non-televised text message or phone competitions, 6% in online lotteries. Just under 10% of youngsters who gamble admit they struggle staying concentrated when they are unable to gamble.

- Another CRIOC barometer assesses the way in which consumers aged 18 and above gamble. The last issued barometer (September 2010) is based on 688 interviews and arrives at the following conclusions: 80% of consumers play various lotteries, 52% buy scratch cards, 11% play poker for money, 10% bet on animal races, 9% on sports events in betting shops, 8% play card games for money, online games of chance and inside amusement arcades, 6% play the bingo machines inside cafés, 5% bet on the Internet, 4% play online lotteries or scratch cards, 3% take part in bets or competitions by text message or by telephone on TV, online casino games and non-televised text message or phone competitions. The top five favourite games in Belgium are: 80% prefer lotteries, 38% prefer scratch cards, 8% enjoy poker, 5% prefer playing the bingo machines in cafés. Less than 1 consumer in 5 (17%) has played for money in the last few weeks leading up to the interview and on average spends 40.6 € a month.
- The requests for assistance recorded by the Matt Talbot Institute in Antwerp from 1988 to 2006 for problems relating to gambling totalling 662 players show that 60%

of applications relate to bingo machines, 27.8 % to National Lottery games and 25.8% to gaming machines.

The cultural dimension certainly needs to be taken into consideration in the consumption patterns of games of chance (cf. the study of the InfoStat working group on the money spent according to type of game in the various Member States of the Gaming Regulators European Forum: <http://www.gref.net/> (limited access to members)).

In 2009 the National Lottery conducted a study into online gambling. The Gaming Commission does not have the results of this study as it was never made public.

On an international level, according to the collective expertise (p. 237) of the INSERM '*Jeux de hasard et d'argent. Contextes et addictions.*' (*Games of chance and money. Contexts and addictions*) of 2008, the prevalence of problem players (or at risk players) is between 1 and 2% of the general population. This figure was derived from a census of 200 surveys conducted across the globe.

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

Cf. answer to question 15. Even if no increased risk of online gambling addiction has presently been born out, online games remain games of chance that offer unrestricted and permanent access to certain sites, without social control. So problem gambling is possible and is something the legislator should turn his attention to.

The Court of Justice has also indicated that '*because of the lack of direct contact between consumer and operator, games of chance accessible via the internet involve different and more substantial risks of fraud by operators against consumers compared with the traditional markets for such games.*' (C-42/07, Liga Portuguesa de Futebol Profissional and Bwin International, para 70).

Advocate General Bot goes on to add: '*It must be pointed out that the characteristics inherent to the games of chance offered over the Internet may, in the same way, prove to be a source of risks of a different nature and of a heightened scale in terms of the protection of consumers, and especially of young people and people with a particular proclivity for gambling or who susceptible to develop such a proclivity, compared to the traditional markets of such games. Beyond the lack of direct contact direct between the consumer and the operator, as mentioned above, the very great ease of access and the permanent nature of this access to the games made available over the Internet as well as the fact that the potentially high volume and frequency of this offering on an international scale, within an environment that is moreover typified the isolation of the player, the anonymity and the lack of social control, are factors that are likely to bolster the onset of gambling addiction and excessive spending on games as well as to aggravate the negative social and moral*

*ramifications attached thereto, in the way these are highlighted by a constant flow of case law’ (conclusions, C-347/09, Dickinger, para 103).*

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

Belgium has not conducted any studies into this particular subject. However, the risk factors involved in physical games of chance need to be taken into account in this assessment (frequency, profit, skill, etc.). The cultural dimension too needs to be factored in (cf. answer to question 17).

See also question 44. In social sciences, proof is not quite a matter of fact. As long as no reliable studies exist, that are based on in-depth, verifiable scientific research, it is imperative that we go by the precautionary principle. Contrary to what is claimed by some operators (‘as long as there is no unambiguous proof, there is no problem’), it is necessary to set out from the view that games of chance are dangerous.

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

- Strict access age control: 21 for casinos and gaming arcades, including online; 18 for the other games, including online betting. Registration duty, EPIS checks of excluded players (Excluded Persons Information System is a database that holds the details of all persons who have been barred from gambling, cf. question 14). Bingo machines will be required to have built-in electronic ID card readers, which will enable improved checks of the statutory minimum age (18).
- The EPIS database contains the following excluded categories:
  - People who asked to be banned on a voluntary basis;
  - Those excluded on the basis of judicial decisions: persons who have been placed under extended nonage, persons placed under provisional guardianship or placed under observation, persons for whom a collective debt settlement application was recently admitted;
  - Legal categories: specific occupations such as judges, notaries public, police officers;
  - To which was recently added the category of persons for whom a ban application was submitted by third party stakeholders.

The EPIS must be systematically consulted (for each person requesting entry) by the casinos, gaming arcades, including online, and the betting sites.

- Gambling limitations: channelling of the offering, limitations according to the accessibility level of the games: the game duration (casinos: 3' – gaming rooms: 3'-6' – cafés: 2-3 min), the stakes and profits, a set permissible hourly loss, limitations relating to certain characteristics ('mystery jackpots', 'machine-gunning' games, etc...);
- Credit ban for operators (to lend money to players) and a ban on the use of credit cards, including on the Internet (except for the physical casinos);
- Ban on keeping automated teller machines in the casinos, gaming machine halls and betting shops;
- Obligation to make available information folders carrying the contact details of care centres, including on the Internet. These folders must be available in French, Dutch, German, English, Turkish, and Mandarin;
- Publicity restrictions. Ban on publicity goading consumers to gamble such as free offers of game tokens;
- A restriction of free offers: free travel, free meals, free drinks or free presents or offered below the market prices of comparable goods and services, may be offered up to a maximum amount of 400 euros every two months in casinos;
- Alcohol ban in gaming machine halls and betting shops;
- Compulsory training for gambling establishment staff (part of which must be dedicated to gambling addiction);
- Funding of a free SOS Gambling hotline number;
- Information campaigns: dissemination of folders at social welfare centres and GP cabinets for the detection of problems, production of 'BLUFF!' a medium-length educational film aimed at 14 to 18 year-olds: <http://www.bluffonline.be/>;
- Collaboration with the other levels of authority (municipalities, Communities and Regions) and other ministries on specific projects such as the fight against poverty (Federal Public Service for Social Integration).
- Underway: the creation of an information, self-treatment and self-help website. This site will be referenced on all online gambling sites.

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

All individual therapists, mental health centres and mental health departments of hospitals take in persons suffering from gambling problems. Some organisations specialise in this particular field:

- The Dostoyevsky Gambling Addiction Clinic was set up as part of the Brugmann University Hospital;
- The Centrum voor Alcohol- en andere Drug-problemen Limburg;
- The Matt Talbot Institute
- Le Pélican non-profit organisation.

There are also self-help groups (Gamblers Anonymous) around the country (Werkgroep Tegen Gokverslaving) and on the French-speaking side of the country (<http://users.skynet.be/players/index.htm>).

In Flanders, the CAWs (General Welfare Centres, i.e. services run by the provincial authorities specialising in addiction) also tend to gambling addiction.

There are no legal obligations in place for licensed gaming operators to fund these welfare services. Nor does the industry voluntarily subsidise these welfare services as far as the Gaming Commission is aware. The industry pays contributions to the Gaming Commission which enables the GC to be self-supporting and in a position to fund certain projects focused on gambling addiction (educational film, the information, self-treatment and self-help website which is currently being set up). Each year, the Commission pays 200,000 € to the Fund to Counteract Excessive Debt. To date however, sadly the Commission is unable to dispose of the available budget in its entirety. The National Lottery provides financial support to the Gambling Addiction Clinic.

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

Operators are not under any legal obligation to detect problematic behaviour in players. As specified in response to question 16, self-regulation does not work. The rules need to be imposed by law and policed by an independent regulator.

A Code of ethics is aimed at formalising the duty of transparency that is incumbent on the operators vis-à-vis the Gaming Commission.



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

Given the fact that currently every Member State determines the level of protection of its citizens with regard to games of chance, it is not for one Member State to appraise whether the age limits in a different Member State are 'adequate'. However, it is striking to see how Member States in certain cases maintain very different age limits. In a cross-border context, this serves to produce complex situations. For instance, for certain games Belgian operators are required to deny access to all persons under the age of 21, whereas other Member States may have an age limit of 18 for those games. Nonetheless, pursuant to the Games of Chance Act the Belgian operator will refuse a foreign player over 18 but under the age of 21. Conversely, Belgian players under the age of 21 could be admitted to take part in gaming activities on foreign websites because these sites have a different age limit, if these Belgian players find themselves abroad. Age limits are important as part of a channelling policy and to ensure the protection of players and society. It is very important that violations of these age limits are penalised under criminal law.

The Belgian Games of Chance Act has adopted strict age limits to offer young players the highest possible level of protection (see question 16). Casino games and gaming machines and their virtual counterparts are reserved for players over the age of 21. In principal, bets (physical and virtual alike) and playing bingo machines are open to players from the age of 18. The products of the National Lottery too are only available to persons over the age of 18. These age limits have existed for a long time and have been tried and tested, proving their reliability. The legislator is of the opinion that, in light of the social dangers that are invariably involved in certain games of chance, it is advisable to set the minimum age at 21 so that youths are not faced with games of chance immediately following their nonage. Moreover, it is plausible to assume that the financial independence of a young person is greater at 21 years of age than at age 18. Similarly, the same applies to his awareness of the value of money and the (financial) dangers of gaming and gambling. The Belgian legislator is currently not launching any initiatives to reduce the minimum age of 21.

Based on its findings from daily monitoring operations however, the Gaming Commission has found that a considerable number of people under the age of 21 are playing or are leaning to play poker. Each Member State should continue to have the necessary discretionary powers in this matter. This should not stand in the way of Member States putting in place mutual arrangements on the access of young players from other Member States that have different age limits.

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

Online age verification is wholly tied in with the identity checks, as referenced above (see question 14). It should merely be reiterated that the same age limits apply online as they do offline and they need to be checked with the same degree of rigour.

The supplementary licence system moreover allows for prospective players to turn up at the doorstep of a physical gaming establishment in person in order to be registered if desirable.

**(25) How are commercial communications for gambling services regulated to protect minors at national or EU level? (E.g. limits on promotional games that are designed as on-line casino games, sports sponsorship, merchandising (e.g. replica jerseys, computer games etc) and use of social on-line networks or videosharing for marketing purposes.**

*Preliminary observation*

It is not strictly a matter of minors as such but of young people. The age of legal majority is different in some Member States. Plus there is the fact that in Belgium legal majority in itself is not a general determining yardstick. For instance, a person of legal age is allowed to place a bet, but he is not allowed to gamble in a casino.

Some operators are trying to make people forget for instance that the chances of a 20 year-old in society may be severely compromised by his gambling behaviour whilst society precisely provides a protective framework to protect him against this.

In a broader sense, these are persons in a vulnerable position. As such, the answer to question 25 also largely applies to question 26.

*Answer*

The Audiovisual Media Services Directive that sets out the country of origin principle with regard to commercial communications is problematic in the area of the marketing of gambling activities. It is hardly coherent to suddenly admit the country of origin principle here whilst not doing likewise for the operation of gambling activities. In doing so, a Member State is constantly overtaken by development which may see the coherence of the gambling policy that is conducted undermined.

Publicity and sponsoring are subjected to more specific rules under national legislation. It is both positive and necessary for more specific rules to be imposed to protect the channelling policy. A legal game of chance offering needs to be appealing, but it is not the intention for a society to develop on the basis of a gambling model as though good fortune (chance) could be controlled as long as people believe it enough.

Excessive commercial communications may be general, but are certain to also hit the vulnerable groups of people in particular in that case.

Which is why regulations need to set the goalposts and why independent regulators need to be able to act with vigour. Regulatory actions can be preventive (having the option to issue a negative opinion about a certain publicity campaign), as well as repressive (putting in place an overall ban on gambling publicity that is targeting persons who are not permitted to engage in gaming and gambling under the law for instance).

Legislation also provides for a code of ethics to be devised and for the general public to be educated on the dangers that are inherent to games of chance. Said code of ethics is all the more important given the development in the online events (see also question 16).

Applicants for a supplementary licence to operate online gambling moreover need to put in place a policy regarding the accessibility of games of chance to socially vulnerable groups.

Even traditional marketing specialists (advertising in magazines and on television) say that marketing is facing serious challenges ahead. The fast changing online events are partly to blame for this. Which is why regulators need to be able to devise a policy containing preventive and penalising instruments to steer matters in the right direction.

Publicity for games of chance needs to fit in with the objectives of the gambling policy.

The fact that illegal operators are sometimes given greater exposure in the media than legally licensed operators is certainly a problem.

In doing so, an illegal market has developed in Europe that is seeking to acquire legitimacy through huge (illegal) profits. As a result, the Belgian legislator found himself compelled to reform the ban on the online operation of games of chance into a channelled offering. Society and citizens have to be protected against shabby and irresponsible operators. Because of the appeal of the illegal market, very specific measures will be needed for online operations in support of legal markets. For instance, it showed that the use of bonuses is integrated to such a degree in online gambling that legal markets will need to adopt this practice as well.

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

*Preliminary observation*

We need to be careful not to stigmatise certain persons. Gambling addiction problems cannot be predicted. A risk of gambling addiction does not mean to say that the person in

question actually has an addiction. Saying that a dependence on narcotic drugs for instance constitutes a risk for problematic gambling behaviour appears unfounded.

#### *Answer*

The (supplementary) licence system is essential in protecting citizens and society. The Gaming Commission has the powers of authority to take disciplinary action. The essential licence principle needs to be further elaborated however by way of a regulatory framework and a day-to-day policy in light of the fast-paced developments in the sector and the major impact on society.

Taking part in games of chance by way of information society instruments, with the exception of bets, is prohibited to persons under the age of 21. Taking part in bets by way of information society instruments is prohibited to minors (-18).

Taking part in games of chance within the meaning of this Act for which a registration duty exists, with the exception of bets, is prohibited to magistrates, notaries-public, bailiffs and members of the police services outside of their duties.

The Commission denies access to the games of chance for which a registration duty exists, to those persons who have asked to be banned therefrom on a voluntary basis; the persons who have been placed under extended nonage, the persons under judicial disability, at the request of their legal representative or by their legal counsel and the persons who have been banned from exercising specific posts, occupations or activities, further to notification by the Public Prosecutor's Office; *persons suffering from gambling addiction at the request of any which third party stakeholder further to a decision by the GC*; persons for whom a request for collective debt settlement has been admitted.

As a preventive measure, the Commission denies access to the games of chance for which a registration duty exists, to: the persons to be protected for whom a request has been submitted in compliance with article 487ter of the Civil Code; the persons to be protected for whom a request has been submitted in compliance with article 488bis, b) of the Civil Code; the persons to be protected for whom a request has been submitted in compliance with article 5 of the Act dated 26 June 1990 on the protection of the mentally ill.

To this end, the GC administers a system holding the details of excluded players that are consulted before they are permitted to enter gaming establishments (with the exclusion of bets). This centrally administered system is unique in Europe and is operating highly satisfactorily. By way of electronic communications, the operators check whether the player who is presenting himself at the doorstep of the gaming establishment has not been excluded according to the database. This kind of system can also be perfectly implemented online.

It is prohibited to take part in any game of chance if the person concerned is able to exert a direct influence over the game's outcome. This is a criminal provision that may be penalised with a fine or custodial sentence.

As stated previously, a channelling policy comes with a variety of different dimensions (supra question 10). One important dimension is the social dimension for the protection of (future) players. It is important that efficacious protection is organised through very concrete and targeted initiatives. The clearest example is the system of excluded players which also needs to be applied to online games of chance in order not to diminish the forceful impact of this successful measure.

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

The OCTA has mentioned that money laundering is facilitated by using online banking and the creation of gambling websites as 'covers'. They noticed "Online gambling is used for the laundry of criminal proceeds, as are the in-game currencies of virtual worlds. The reported establishment of gambling websites by Italian organized crime groups may serve the dual purpose of profit generation and money laundering. Virtual payment systems have also been used by groups for laundering and monetarisation."

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

All equipment or machines models that are imported or manufactured within the confines and under the terms set by an E class licence with a view to being used by a licence holder, must – in order to be sold or set up on Belgian soil, be approved by the Gaming Commission on the basis of checks and inspections performed by one of the bodies specified under the second paragraph of article 51 Games of Chance Act. A certificate of approval is delivered in corroboration thereof.

The inspections on the basis of which this approval is delivered are conducted:

- either by the Metrology Service of the Federal Public Service for the Economy;
- or by a body accredited for this purpose under the Act dated 20 July 1990 on the accreditation of the bodies for conformity assessment or that is accredited in a different Member State of the European Communities or in a different country that is a party to the Agreement on the European Economic Area, under the supervision of the Belgian Metrology Service;
- or by a body of a different Member State of the European Union that is recognised for the aforesaid activity by the authorities of said Member State for this type of activity.

The inspections upon the commissioning and during the further course of usage are also conducted by one of the bodies intended under the second paragraph.

In Belgium, technical rules have been laid down by Royal Decree for gaming machines intended to be used in casinos, gaming arcades, betting shops and cafés. Amongst other things, these rules lay down the requirements relating to the quality of the random number generator, the payout ratio, the maximum permissible hourly loss, the certification of the software used through signature software...

These technical rules have been transposed into "Protocols of inspection" that describe the technical trials and tests to be performed in order to guarantee due compliance with the requirements set out under the Royal Decrees.

If the results of the technical assessment of the prototype are positive, a model approval is delivered.

The machines that are built are subsequently subjected to (primitive) checks so as to guarantee that all machines built are identical to the prototype that was assessed during the model approval stage.

The casino machines too are subjected to periodic checks so as to guarantee that the machines continue to be in conformity with these requirements.

As to the online games, the Decrees laying down the technical rules have not yet been published. However, the draft decrees are in the process of being elaborated. The Modus Operandi will be similar to the method outlined above. The supervision of the maximum hourly loss will be guaranteed by a set of counters that are specific to the player and that are unique for the whole of Belgium. The gambling sites will communicate with the servers of the Gaming Commission through dedicated Web Services.

It should be signaled that the schemes set up by the CEN on standardisation projects in the field of games of chance. Sadly these projects are being elaborated without any form of collaboration with the Gaming Commission or the "regulators". As such, the Gaming Commission will not be backing these efforts as they fail to take into account the requirements set out in national regulations.

It should also be noted that the evolution from "classic" gaming machines (AWP) towards network games (VLT: terminals connected to a central server) is moving at an increasingly faster pace across Europe. Technically speaking, soon there will no longer be any differences between the VLT system and the online games as such (Internet...) as it will "suffice" to connect the VLT servers to the network that is the Internet.

**(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 registration of the bets and other online games of chance through a full-proof identification of the players (*supra*, question 14) is an essential practice to prevent various types of fraud. Where the Belgian offline betting regulations only provide for the registration of bets for bets in excess of 1,000 Euros, the amended Belgian Games of Chance Act has instituted a duty of registration for all online bets and all other online games of chance, involving the identification of the player as a result. The underlying principle behind this distinction between offline and online is the greater vulnerability of online games of chance.

The linking of the player who has been conclusively identified to one specific “player’s account” or to a specific bank account number too is a practice that effectively counteracts fraud on the Internet, and money laundering offences in particular.

In addition, the Gaming Commission believes that the institution of a single, independent central authority per Member State that awards all games of chance licences and supervises due compliance with national gambling regulations is also a practice that significantly raises the efficiency and the success of the protection of public order.

This kind of central authority serves as single point of entry for complaints regarding games of chance. Since the amended Games of Chance Act, the Belgian Gaming Commission has been serving as a complaints centre for all games of chance, with the exception of the National Lottery products. Complaints relating to National Lottery products are to be addressed to the public operator itself.

**(30) As regards sports betting and outcome fixing - what national regulations are imposed on on-line gambling operators and persons involved in sport events/games to address these issues, in particular to prevent 'conflicts of interest'? Are you aware of any available data or studies relating to the magnitude of this problem?**

At European level it is particularly important that the Liga Portuguesa ruling of the ECJ already established in clear terms that there is a conflict of interest between the sponsors of certain activities and the organisation of bets on these bets. It is clear that inside information and influencing are problematic.

Article 4, § 3 of the Belgian Games of Chance Act specifies: “It is prohibited to take part in any game of chance if the person concerned is able to exert a direct influence over the game’s outcome.” This provision was introduced in the Belgian legal order to prevent a trainer for instance from placing bets on his own football team or a jockey betting on his own horse.

The identification of the player and the registration of all online bets too are key ways to establish fraud and competition manipulation post factum. In the offline world too, the compulsory registration of bets in excess of 1,000 Euros in Belgium is a tool to counteract this kind of fraud.

Although we know of no specific Belgian studies on this topic, the many recent football fraud cases have served to show that match fixing effectively constitutes a major problem.

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

It goes without saying that in a regulated system, the fairness of the game is paramount. For bets, this fairness is largely tied in with the activity on which the bet is placed. Although the Gaming Commission is competent only for the game and its operation as such, when it comes to bets the associated events are crucial.

The monitoring of bets is new for the Gaming Commission and raises questions as to the exact power of a gambling authority. The regulator is competent for bets, but through an extensive interpretation it may be assumed that the associated events can also be checked, as there are no bets without said events.

It seems logical that the events need to be checked, even if they are organised by competent bodies that are not directly competent for bets. UEFA for example is responsible for the organisation of its competition, the regions in Belgium are responsible for sports, the football club for its football match, the organiser for his Miss competition... Based on its powers of authority to police the gaming industry, the Gaming Commission is responsible, but from a good governance perspective collaborative associations may be concluded with third parties.

The scandals that have been brought to light by definition carried an international dimension. The question is also how the checks are to be organised and how fast regulators can step in.

The above makes it clear that collaboration between regulators and (sports) federations is a matter of priority to efficiently address this crucial problem.

**(32) What risks are there that a (on-line) sports betting operator, which has entered into a sponsorship agreement with a sports club or an association, will seek to influence the outcome of a sports event directly or indirectly for profitable gain?**

In this respect, a distinction needs to be made between pari-mutuel bets and bookmaker bets, both of which are admitted by the Belgian Games of Chance Act.



Where operators of pari-mutuel bets do not take any risks themselves and their role is confined to collecting or placing in order to build the biggest possible pool (comparable to lottery-type products), for pari-mutuel bets this kind of fraud risk is negligible. All the more so since the Royal Decree on the rules of operation of bets specifies that at least 60% of the total stakes in pari-mutuel bets is to be paid out to the winners. As such, the duty to pay out winnings is completely separate from the result of the underlying sports event.

For bookmaker bets where the operators are seen to take a risk themselves, playing against the other wagerers as it were, there is a potential economic mainspring that may encourage operators of bookmaker bets to influence (or order to influence) the results of a sports event, thereby manipulating their own turnover and the sums they are required to pay out. Same as on the financial markets, insider knowledge (amongst other things by acting as a main sponsor of a sports team) also constitutes a risk.

To counteract this type of fraud, Belgium set up a specialist cell as part of the federal police and a complaints desk for football fraud. Restricting this institution to just one specific sport would appear to defeat the purpose of the exercise, as this will only cause fraud activities to shift to other spots, if football fraud is tackled successfully.

Even more fraud-sensitive is the so-called "Betting Exchange" where the gamblers themselves are seen to buy odds from each other as non-professional operators, thereby effectively creating an exchange with all the odds, causing "Betting Exchanges" to be banned in most Member States. An overall ban throughout Europe would certainly be recommended.

Special attention in this regard is also required for live-betting, a type of betting that is a typical example of a short odd game. Even the more sports betting operators should not intended to do nothing with information they require, they can have an influence on certain actions of players, certainly when that does not really have an influence on the result of a game (e.g. a minor offence against the player, allowing a corner instead of a throw-out, etc.)

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

No Belgian websites have been reported that are used for the purpose of money laundering. As stated, up until 1 January 2011 a ban was in place on the online operation of games of chance in Belgium (see general observations).

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

Especially the ban on credit cards needs to be enforced. Prepaid cards may be admitted, provided the amounts are kept low. This makes the gaming market less appealing to fraudsters. The monitoring of financial behaviour is important in this respect (the repeated payment of sums into player's accounts that are withdrawn again without taking part in bets or games could be an indication of money laundering). As stated previously (*supra*, question 12), transparency is key.

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

The fight against money laundering is co-ordinated by the CTIF-CFI (Belgian Financial Intelligence Processing Unit), an independent administrative authority. The computerised international collaboration against fraud & money laundering is conducted within this cell. The Gaming Commission itself is also competent for money laundering (see question 46). The Gaming Commission is to immediately inform the Minister of Finance when it has established concrete elements that warrant the presumption of the existence or the preparation of a tax fraud mechanism at a body over which it has supervision.

Member States need to be able to conduct "on-site" inspections within the context of a more rigorous supervisory regime as imposed by the Money Laundering Directive (Article 37.3 of the Directive 2005/60). This is emphatically acknowledged by Advocate General Bot for that matter in his conclusion in the *Dickinger* case - Opinion of Advocate General Bot of 31 March 2011 in the *Dickinger* affair, C-347/09, paragraph 133.

In this context, it is paramount that the duty to maintain servers in this country continues to exist in Belgium (see question 10).

**(36) Is there evidence to demonstrate that the risk of money laundering through online gambling is particularly high in the context of such operations set up on social web-sites?**

There are no indications of this in the current state of affairs in Belgium, in view of the fact that the Gaming Commission was only recently assigned with this power of authority. The server obligation too is fairly recent, to the effect that little to no checks have been conducted to date.

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

The Belgian licence system is essentially geared towards transparency vis-à-vis operators who run online games of chance. This was successfully made to occur in the physical gambling industry and is also applied to the online services with respect to the operators who effectively run online games of chance (see item 3.3.) through the supplementary licence system. Transparency helps maintain public order.

The transparency rules merit particular attention for the operators who come to provide auxiliary online activities because a new legal market needs to be built in Belgium in the presence of severely market-disruptive elements (see supra, 3.1.).

The specific rules listed below take centre stage:

- Transparency in terms of those responsible for the operational running
  - Clear identification of the licence holder
  - Transparency in terms of shareholdership
  - Have full civil and political rights
  - Furnish evidence of one's solvency and financial standing
  - Produce a statement issued by the Federal Public Service of Finance attesting to the fact that he has duly discharged himself of his certain and undisputed tax debts
- Transparency in terms of operation
  - Conduct oneself in a manner that is befitting of the post – have a clean criminal record
  - Ban on the combination of licences for E licence operators
  - Furnish the BGC with all necessary information regarding the operation
  - The requirement to have the servers on which the data and the website structure are administered located inside a permanent establishment on Belgian soil

Collaboration between willing operators could act in further support of this story. These rules may be maintained for operators who are prepared to act in compliance with Belgian law. For operators as specified in response to question 3.2 this is not the case and there is very little in the way of transparency.

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

*Preliminary observation*

Attention should not only be made to go out to this mechanism, but also to the parties who derive benefit therefrom. These parties (e.g., organisers...) must be discouraged and cannot be placed in such a position that they have an interest from goading consumers to gamble in order to acquire greater revenues by doing so. This serves to create schizophrenic situations whereby welfare assistance in the area of drugs for instance benefits from the gambling behaviour of Belgians.

*Answer*

The way in which the gaming industry was organised in Belgium initially was not geared towards generating revenue for the State or charities. This is strictly a side effect, which moreover is comparatively limited. The revenues from games of chance licensed by the Gaming Commission are not directly allocated to charities or other activities. Every Belgian licence holder pays tax which is used to serve the general good. As it is, the revenues from taxation on games are not allocated: they are pooled with all other revenues of the State for the benefit of the general good before being allocated.

However, there is one contribution of the operators – the so-called retribution – which is directly used to serve a clearly specified purpose, i.e. the operation of the Gaming Commission. To this end it was decreed that the operation of the Gaming Commission and its secretariat shall be financed through a supplementary contribution to be paid by the licence holders operating in the gambling industry.

The BGC also noticed that some media games are voluntary offering a part of the incoming revenues to a good cause (e.g. to participate in a media game a player pays 2 euros by sending a text message, and 1 euro is given at a charity organisation). Sometimes media bodies (e.g. radio stations) organise a media game just for charity reasons, meanwhile their brand name is regarded positively.

**(39) Is there a specific mechanism, such as a fund, for redistributing revenue from public and commercial on-line gambling services to the benefit or society?**

Some gambling establishments are legally bound to pay an annual contribution to the Fund to Counteract Excessive Debt. Other than this, no specific distribution mechanism for the revenues deriving from licensed games of chance exists, bar for the National Lottery.

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

The Gaming Commission supports scientific research or initiatives against gambling addiction and for the prevention of it. Licensed operators have to contribute annually in the functioning of the Gaming Commission (see question 38). Recently the film *Bluff* was developed with these contributions to make young people aware of the dangers of gambling. Besides this a gambling leaflet has been drafted, a facebook page has been created, and also a 0800 telephone line.

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

For online bets on horse races conventionally around a 3 % return goes to the sector.

More specifically, the pre-agreements between the French PMU and the Belgian horse racing federation provide for a 2.2% return for single bets and a 5.2% for multiple bets, which represents an average of 3.7 % on the stakes for pari-mutuel bets on foreign horse races.

It should be underscored that such a return is provided for only for pari-mutuel bets and solely for bets on horse races, not on other sports (see *infra*, question 42).

With regard to online pari-mutuel bets on Belgian horse races, today there is an indirect return through a conventionally determined amount per horse racing in the race.

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

Under the current legislation, this is not provided for any sports disciplines other than horse racing. However, this kind of return follows from the very nature of pari-mutuel bets. It is not in any way restricted by the Games of Chance Act or its implementing decrees. More so, the Royal Decree on the rules of operation of bets specifies: “In response to the simple request from the Gaming Commission, the F1 licence holder is to furnish evidence that the levies or advance withholdings to the benefit of the horse racing and sports sector are being conducted in compliance with regional regulations.”

However, to date, no regional regulations have been decreed and this return exists only for pari-mutuel bets on horse races, on a conventional and consequently self-regulating basis.

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

The assignation of any such rights can be conducted only under a regulatory framework. After all, the gambling policy needs to be coherent vis-à-vis the various games of chance, including the online and offline games. In addition, the game of chance is the perspective - not the activity – that people bet on. If a return is expected from the game of chance this cannot solely apply to sports activities involving significant European interests. Fraud in the field of games of chance and activities associated therewith is equally prevalent (possibly even more so) in amateur sports.

In addition, these activities are very easily shifted (e.g., if football is efficiently and effectively regulated, bets could just as readily hone in on cycle racing...).

This question should most certainly not conduct to private regulation. It is not for a private body to develop the gambling policy or to award licences for instance without any lawful foundation.

Nor is it advisable, for reasons of coherence, for bodies that hold operating rights to stir people's gambling behaviour which may see the channelling policy undermined.

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

*Preliminary observation*

Asking for 'evidence' is on a par with the request from operators to only use the term 'risk' if the risk has been defined by science, disregarding the fact that social sciences are not exact science. This may point to a cynical attitude, drawing on every means available to elude the democratic rule of law.

*Answer*

Again, it should be remarked that a strictly consumer-driven approach does not do a quality-focused gaming policy any good. Like operators, players serve their own interest, which is not necessarily reconcilable with the general interest or the law. A European gaming policy needs to be devised to enable players to engage in games of chance on a transnational basis, but it should be clear that certain rules are crucial: the protection of players, the identification of players and financial transactions and the enforcement of public order. If the gaming policy is reduced to an issue that is strictly about what is economically the most

profitable stake, the gaming policy is reduced to a strictly economic affair. Only operators who are unfavourably disposed to laws stand to gain from this.

It is just and fair for a return from people's gambling behaviour to be channelled back to society in the shape of tax or other charges. Through the regulator, society as a whole has a perception of all facets of the gaming policy, not the individual player or operator.

Moreover, the question is to what extent this phenomenon actually exists. People's gambling behaviour does not seem to be much driven by "free riding", although this may obviously be used in justification after the event.

**(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?**

In light of the fact that the Belgian gambling system was not established for the purpose of generating revenues, and that operators only pay taxes and contributions to finance the operation of the Belgian Gaming Commission (BGC), there is no need to make players aware of the revenue flow. However, each year the BGC is required to submit a written report about its activities with Parliament and the Ministers of Economic Affairs, Home Affairs, Finance, Justice and Public Health. These reports clearly specify which resources the Gaming Commission has received. The annual report is available to be consulted by the general public, amongst other outlet sources through the Gaming Commission's website.

The distribution of the subsidies of the National Lottery is published each year in the Belgian Official Gazette and as such is equally available to be consulted by all players.

**(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 on-line gambling services as defined in this Green Paper?**

The Belgian Gaming Commission is an advisory body that puts forward recommendations on relevant regulations. In a society with a democratic rule of law it is essential that the most important regulatory function rests with the legislative and executive powers.

The BGC awards the licences for the operation of games of chance on Belgian soil.

Through its daily monitoring of the gambling policy, the GC also has a number of regulatory powers, such as:

- It polices the due application of and compliance with this Act and its implementing decrees;

- For the purpose of the due application of the Act dated 11 January 1993 on the prevention of the use of the financial system for the laundering of money, the Gaming Commission acts as the controlling and supervisory body, as intended under Articles 21 and 22 of said Act;
- The BGC installs and supervises a working group that specifically monitors and guides online initiatives;
- The BGC has the power to compile a black list of websites that are no longer permitted to operate in Belgium.
- The sector is informed of decisions (and the activities) of the GC through the publication of information notices;

In addition, the GC also has powers of inspection:

- The BGC is authorised to draw up formal reports relating to infringements of all penalty clauses set out in the Games of Chance Act and in particular against those who, whilst being disqualified therefrom, take part in games of chance, facilitate the operation of games of chance or gambling establishments, run publicity for games of chance or gambling establishments or recruit players for games of chance or gambling establishments when the persons concerned are duly aware that this involve the operation of games of chance or gaming establishments that are not licensed pursuant to the Games of Chance Act;
- The BGC is authorised to enter the establishments, spaces, places where elements of the information technology system are in place that are used for the operation of games of chance;
- To conduct all investigations, checks and interviews as well as make all useful findings and demand to be provided with all documents that may be serviceable to its investigation;
- To obtain all supplementary intelligence they deem useful from the operators and their staff, as well as from the police services and the administrative services of the State;
- The BGC has a wide-ranging powers of authority with respect to seizures that may serve in evidence of infringements of Games of Chance Act or that are needed to identify co-perpetrators or accomplices.

Finally, the BGC has a number of punitive powers:

- sanctions against licence holders (e.g., suspension of activities, of licences, licence withdrawal,...);



- sanctions against offenders in cases where the Public Prosecution Services does not wish to take action (administrative fines).

**(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?**

The Gaming Commission keeps a list of the supplementary licences that have been awarded, which is available to be consulted by anyone requesting this. This list will be available at the website of the Gaming Commission ([www.gamingcommission.be](http://www.gamingcommission.be)).

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

The administrative collaboration between regulators is presently conducted on an ad hoc basis (the GREF puts certain regulators in touch with each other) or is entirely non-committal. In part, any such collaboration is also impeded by the fact that not every Member State has a single, central and independent gaming regulator. In light of the increasing scope of cross-border gaming services, this situation is no longer tenable. The Belgian Gaming Commission advocates the exchange of information under a formal framework relating to the items listed by the European Commission.

Nonetheless, the Gaming Commission entertains excellent contacts with regulators in other Member States, but no cross-border collaborative platforms as such are in place. In addition, any such co-operation is hardly worthwhile when it is made to occur on a bilateral basis. Ideally, this needs to involve a multilateral collaboration that is carried by as many Member States as possible. Within the framework of the Treaty, formal collaboration between all 27 Member States is possible on sundry aspects. However, cross-border problems are seen to be on the rise and, until a solution is found within the framework of the Treaty, should be tackled through collaborative efforts. The exchange of information needs to be viewed in a very broad sense in this context.

Belgium has taken the step to contact regulators that issued licences to operators responsible for illegal gambling in Belgium. The initiative was met with the gnashing of teeth. It is striking that the regulator of a European Member State refused to co-operate (Gibraltar), whilst an overseas regulator took a concrete initiative (Alderney). This also shows that some regulators play a key role in illegal gambling in other Member States.

During the Belgian Presidency of the EU (2nd half of 2010), the Council adopted conclusions in which the crucial role of the gaming regulators is stressed and collaboration between these regulators is encouraged. The Gaming Commission believes that the current state of affairs in gaming law calls for these conclusions to be put into practice as quickly as possible.

Within this context, the Gaming Commission organised a first informal panel discussion in collaboration with a partner from the world of academia in the Catholic University of Leuven. During this event on 8 July 2011 a think tank, the European Regulatory Platform (ERP) was created. The think tank is composed by experts from regulators across Europe. Experts from the Netherlands, Germany, Poland, Finland and Norway are in, and a positive answer from experts from France, Italy and Hungary can be expected. ERP can take up position in the European gambling debate. The aim is to form a counterpart against lobbying organisations like European Lotteries & EGBA. The think tank is going to communicate about the most important events, like e.g. a report of the European Parliament, an important ruling of the ECJ, etc. It is of importance that the voice of regulators is heard in Europe.

**(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?**

*Preliminary observation*

The way in which the question is phrased is strangely limited. Instead of gauging into collaborative efforts with stakeholders in general, the question merely addresses co-operation in connection with sports and the bets placed thereon. The questionnaire nowhere endeavours to assess the collaboration of regulators with other stakeholders and with the world of academia. However, the Gaming Commission feels it is very important to set up programmes for instance that educate youths as to the risks involved in games of chance. In collaboration with care workers, the Gaming Commission produced an integrated educational pack (the 'Bluff' project). All Belgian schools were sent a film plus accompanying teaching package with matching educational materials aimed at third-degree pupils. In addition, the Belgian Gaming Commission deems it to be indispensable that scientific research continues to be conducted into a variety of related fields, including gambling addiction, criminal aspects and legal issues. Regulators can play a pioneering role in this respect by issuing public procurement contracts for projects or by keeping the attention for the importance of scientific research alive among the authorities.

*Answer*

The Gaming Commission is not planning to put in place specific programmes or collaborative associations in connection with sports or the integrity of sports. Since the thorough amendment of the Games of Chance Act in 2010, it is now prohibited to bet on activities where the wagerer himself is able to influence the outcome (art. 4, §3; see *supra*, question

30). This adds to the integrity of the sports games people bet on. There are no specific early-warning systems in place to enhance enforcement or to prevent match rigging, with the exception of the football fraud cell (*supra*, question 32).

**(50) Are any of the methods mentioned above, or any other technical means, applied at national level to limit access to on-line gambling services or to restrict payment services? Are you aware of any cross-border initiative(s) aimed at enforcing such methods? How do you assess their effectiveness in the field or online gambling?**

The competences are important to monitor the gambling policy on a daily basis within the objectives imposed by the legislator.

A black list is a necessary and efficient tool as - alongside the list of licensed operators – it makes it clear to players and facilitators such as banks, Internet providers, credit card companies... which operators are illegally operating games of chance. This is an important element in their liability.

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

They constitute an important sign to counteract a culture of impunity. It is unacceptable for the decisions adopted by Parliament to be flouted by private persons without any contrariety with EU law being established. Which is why it is important for operators who have private interests to be unsuccessful in creating a free haven on the Internet if this goes against the wishes of democratically elected institutions. The democratic rule of law may not go undermined by the sheer profit seeking motives of operators by way of information society instruments.

However, given the advanced technological nature of information society instruments, technical means in themselves, however necessary, will be insufficient. An attractive, legal and regulated online offering is needed to knock the wind out of the sails of the illegal markets. Therefore there is need for a European regulatory framework, but in the absence of such framework, Member State have to take action themselves .