



RESPONSES TO THE GREEN PAPER
On on-line gambling in the Internal Market
Register of interest representative number: 25267322476-17

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Betfair is the world's biggest betting community having pioneered the betting exchange in 2000.

Driven by cutting-edge technology, the company now processes over seven million transactions a day from its three million registered customers around the world. In addition to sports betting, Betfair offers a portfolio of innovative products including casino, exchange games and poker.

Betfair has twice been named the UK's 'Company of the Year' by the Confederation of British Industry and has won two prestigious Queen's Awards for Enterprise, being recognised for Innovation in 2003 and most recently for International Trade in 2008. Betfair currently employs over 2,000 people worldwide. The company holds betting licences in Gibraltar, the US, Tasmania, Italy and Malta.

(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?

Betfair considers the following data and studies to be relevant in this regard:

1. *Study of Gambling Services in the Internal Market of the European Union*, Final Report, 14 June 2006, Swiss Institute of Comparative Law. Although this study contained a comprehensive list of the different types of gambling products that were regulated in each Member State at the time, what it lacked was analysis of the internal market as it relates to gambling.
2. *On-line gambling: a Report for the European Parliament*, November 2008, Europe Economics. Carried out by an external organisation on behalf of the European Parliament as part of an IMCO own initiative report, this report focussed on integrity and the possible establishment of an EU code of conduct for gambling. The observations within it were measured and well researched but unfortunately it was largely ignored when the final IMCO report came out.
3. *BITKOM report*, April 2010. This report looked into the possibility of establishing a regulated German gambling market to cater for the two million plus German citizens who currently seek to bet online despite it being illegal under German law.
4. *The European Commission Report to the Trade Barriers Regulation Committee*, June 2009, DG Trade. This report drew on data provided to the EU Commission on a confidential basis by a variety of EU based online gambling operators.
5. *Sports Betting: Legal, Commercial and Integrity Issues*, Remote Gambling Association, January 2010. This report quantified the financial benefits received by professional and grassroots sports from regulated EU sports betting operators.
6. *Betting & Gambling Market Germany 2015*, Gold Media, April 2010. This study addressed the extremely restrictive regulatory model endorsed in Germany and the shortfall in tax revenue appreciated by the German state as a result.

7. *'Estimation du cout d'obtention de l'agreement et de l'homologation des jeux en ligne en France'* Price Water House Coopers, 9th June 2010. This report looked into the administrative and technical costs involved in entering the regulated French gambling market. The results concluded that entry requirements were restrictively high and deterred new entrants. As such it is useful for other Member States to bear in mind that if they want their new licensing regimes to work and to bring tax revenues back onshore, they need to consider what is commercially viable from an operator's perspective.
8. *Study by the Research Institute of Industrial Economics*, Sweden, March 2011. This report indicates that online gambling makes up 26% of the Swedish gambling market, the highest percentage in Europe. The report also shows the benefits to the Swedish economy brought about by the online gambling market.

In addition, the following organisations provide regular analysis and data on the size of European gambling markets. This information is widely used by operators and investors to assess the potential of the online gambling market.

1. H2 Gambling Capital – H2GC has over 30,000 data points documenting online and offline gambling markets dating back to 1999 with forecasts to 2015.
2. Global Betting and Gaming Consultants – GBGC provides market research and assessment of over 250 individual gambling jurisdictions around the world.

(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)

In answering this question, it must be understood that it is very difficult to conduct effective reports into the size of any black market, which are by definition difficult to analyse.

With that in mind, Betfair considers the definition of illegal gambling proposed during the Spanish Presidency of the Council of the EU to be the most helpful: *"illegal gambling may be defined as gambling in which operators do not comply with the national laws of the country where they offer services provided those national laws are in compliance with EU Treaty principles"*.¹

Any reference to the 'black' or 'illegal' gambling market throughout the remainder of this report is based on the above definition.

We believe that a 'black market' does exist and will continue to exist, although proper regulation will certainly help to marginalise it. How substantial it is and whether it will grow is almost entirely dependent on the offerings that operators licensed within the EU are legitimately able to make. If discriminatory and disproportionate regulation prevents EU licensed operators from meeting consumer demand adequately then consumers will continue to look outside of the EU.

As an indication of the size of the problem currently facing countries that do not allow private sector operators to provide competitive products, a study this year estimated that the French market was split with 57% (circa €13.4bn) of turnover being held by companies not licensed in France.²

¹ *Legal framework for gambling and betting in the Member States of the European Union*, Presidency Progress Report, Council of the European Union, 11th May 2010.

² February 2011 MAG http://www.mag-ca.it/News_k.html

The other following examples may also be beneficial in relation to this Green Paper:

The Kiel Study³

The Kiel study is an economic analysis of the taxation of online gambling in Germany. The study concluded that effective gambling regulation and taxation would deter customers from seeking out black market gambling options.

The Christiansen Capital Advisors Study⁴

Although based specifically on the betting exchange concept pioneered by Betfair, and in relation to American Horseracing, the CCA study provided a valuable insight into the black market betting issues experienced in the United States. The report found that an effectively regulated American gambling market would reduce the size of the black market.

H2 Gambling Capital – Country Overviews onshore / offshore

As stated in question one, H2 Gambling Capital country overviews can be used as an indicator of onshore vs. offshore betting activity. Their methodology is to contrast the accumulated sizes of regulated betting operators against those known to be targeting a regulated market without a licence.

Morgan Stanley Market Report 14th May 2010⁵

This report analysed the potential for the regulated growth of online gambling markets throughout the world. In reference to the size of black market, the report cited the recent regulation in France as having failed to capture a large section of operator tax revenues by taxing the market too stringently;

“The French government has now passed laws to liberalise internet gambling. The state will tax sports-betting at 7.5% of stakes and 2% for poker, and casino games are not yet legal. Arjel, the new regulator, is drafting secondary rules and aims to introduce a formal licensing system by 1 June to allow internet betting on the football World Cup. If France follows the same path as Italy tax rates could come down in time. With such high tax rates, we think it will be difficult for operators to make profits in sports betting initially. This is likely to mean a large chunk of the industry remains offshore, not paying these gaming duties. In time, this situation is likely to lead to a change in tax structure that induces operators to move onshore.”

(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?

Cross border trade in gambling has become the norm over the past five to ten years due to the rise in internet availability, broadband, and online mobile devices. The increase in connectivity has given consumers an increased choice of products, and stimulated awareness of innovation in the online gambling space.

Due to the widespread availability of unlicensed products on the internet, consumers are unable to distinguish between legitimate operators who are regulated effectively and those that are the online equivalent of pop-up businesses which may be here today and gone tomorrow. This causes concern for consumers about the safety of their funds, and does not ensure adequate safeguards are put in place to protect against fraud and foster responsible gambling.

Many governments are alarmed about cross border online gambling services undermining their domestic operators. This is a particular concern for state lotteries which raise substantial funds for governments and for good causes. However where licenses have been made available to private online gambling operators, cannibalisation has had little or no effect on existing companies (including state lotteries) who continue to

³*The Monopoly for sporting bets in Germany: Status Quo and Reform approaches*, Maschke, M and Schmidt, U, Kiel Institute for the World Economy, 18th May 2010.

⁴*Exchange Betting and the United States Thoroughbred Racing Industry*, Christiansen Capital Advisors, LLC, January 24th 2011.

⁵*Online Gambling: Still a Strong Hand* Morgan Stanley sector report, 14th May 2010.

thrive in liberalised market places. A good example of this can be seen in the UK where Camelot, the National Lottery Operator, has recently announced record ticket sales of £5.8bn.⁶

A further example can be found in France, where the report on the implementation of the new French gambling laws by M. Lamour MP⁷ confirms that the development of a regulated French gambling market has not taken place to the detriment of the lottery products monopolies.

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

There are many well-known operators such as PokerStars (regulated in the Isle of Man), and PKR (regulated in Alderney) that are regulated outside of the European Union who openly market their services in Europe.

A key example can be found in France, where 57% of revenues from French bettors are accounted by offshore or black market operators who do not abide by the same standards as those currently regulated by ARJEL.⁸ In France, the unregulated sites which take euros and market themselves at the French market are not hard to find. One example is Rome Casino⁹, a Costa Rican business marketing to French customers without a licence from ARJEL. It is highly unlikely that such a site would take the same precautions in fraud protection, anti-money laundering or problem gambling as a regulated site. Nor does it pay the French government any taxes on its operations.

Betfair took the decision not to apply for a licence in France as the regime appeared commercially unviable, and as a result, the company no longer accepts customers from France. We would consider applying for a licence under more reasonable conditions.

Because of the tendency of the traditional monopolies to treat non-EU and EU regulated (e.g. Ladbrokes, Bwin.Party, William Hill, Paddy Power, Betfair, Bet365) operators as the same, there is little recognition granted to operators who are licensed in reputable jurisdictions and spend considerable time and resource on compliance, anti-fraud, anti-money laundering and responsible gambling measures. This is distorting the overall views of consumers, politicians and regulators in relation to the true picture of the EU market and the level of risk to consumers. This situation has been damaging for many successful European businesses, preventing them from investing outside of Europe and promoting European innovation and success on a wider level.

(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?

The CJEU has established three basic principles which limit the regulatory discretion of the Member States in this sector, namely: non-discrimination; consistency; and transparency. However it appears that due to the relative vagueness of these criteria their application by national judges remains inconsistent and uncertain. This gives rise to potentially avoidable litigation and corresponding costs incurred by both the authorities of the Member States and the individual operators. The establishment of a basic set of minimum common rules would ease the movement of online gambling services within the European Union whilst keeping them under strict, but fair control from the Member States.

⁶ BBC News, <http://www.bbc.co.uk/news/business-13647870>

⁷ ‘L’ouverture à la concurrence et à la régulation du secteur des jeux d’argent et de hasard en ligne’, Rapport D’Information, Treizieme Legislature, Mme Aurelie Filippetti et Jean-Francois Lamour, 25th May 2011.

⁸ MAG, February 2011, http://www.mag-ca.it/News_k.html

⁹ www.romecasino.com/fr

CJEU case law

1. Non-discrimination

The CJEU has not yet had a chance to rule on the question of whether certain licensing requirements such as the obligation to locate gambling servers within the territory of the host Member States or the obligation to exclusively use local bank accounts to process online gambling transactions are compatible with EU law. It is our view, based on the assessment of the comments made by the Commission under the 98/34 Directive¹⁰ as well as academic works, that such requirements are indirectly discriminatory as they can be more easily met by domestic operators. These and other requirements are not justifiable because they cannot contribute to the effective channelling of gambling opportunities in a Member State as requested by the case law of the CJEU. Even if they could be justified there exist less onerous means of control of the gambling markets, such as provision of operator's data using regular reporting or direct feeds, which render the above two requirements disproportionate.

2. Consistency of national regulations

The CJEU held in *Markus Stoss*¹¹ and *Carmen Media*¹² that national gambling regulations must be consistent across all gambling sectors. It remains unclear how this principle should be applied by the national courts in practice.

3. Risks related to online gambling

The CJEU has repeatedly stated that, due to its inherent nature, online gambling gives rise to more substantial risks of fraud by operators against consumers than offline gambling. Unfortunately the CJEU has not supported these statements with any evidence or references to external sources. Licensed EU online gambling operators have created and put into practice a large number of sophisticated tools such as forensic analysis of players and background checks which reduce these risks to a minimum and which are arguably more efficient than the tools used by offline operators.

4. The Webb principle

In the *Liga Portuguesa*¹³ case the CJEU stated that the principle of mutual recognition of licences should not apply to the online gambling sector. However its case law remains vague in relation to the possible application of the principle established in the *Webb*¹⁴ case. Following this decision the host Member States must take into account the requirements and level of control to which operators are subject in their home Member State. If applied to the gambling sector, the *Webb* principle would enable better and more effective communication between the national regulators and alleviate the administrative burden currently placed on the EU licensed operators, thus rendering the EU online gambling market more effective. As the *Webb* principle is a much softer measure than the full mutual recognition of licences, application would be without prejudice to the discretion of the Member States in this field.

5. Evidence

Following the decisions of the CJEU in *Lindman*¹⁵ and *Markus Stoss*¹⁶ it is clear that the Member States bear the burden of proof to show the necessity of restrictions on the free movement of the online gambling service they intend to introduce. It remains however unclear what form this evidence should take. Although a formal study is no longer required the Member State in question must provide evidence

¹⁰ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 *M1 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services*. (OJ L 24, 21.7.1998, p. 37) As amended.

¹¹ Joined cases C-316/07, C-358/07 to C-360/07 and C-409/07 to 410/07, *Markus Stoss*, [2010]. Not yet published.

¹² Case C-46/08, *Carmen Media*, [2010]. Not yet published.

¹³ Case C-42/07, *Liga Portuguesa*, ECR [2009] I-07633.

¹⁴ Case 279/80, *Webb*, ECR [1981] 03305.

¹⁵ Case C-42/02, *Lindman*, ECR [2003] I-13519.

¹⁶ Joined cases C-316/07, C-358/07 to C-360/07 and C-409/07 to 410/07, *Markus Stoss*, [2010]. Not yet published.

to the national court dealing with an online gambling matter to prove that its restrictive measures are proportionate. This indicates that a mere statement of the national authorities to this effect is not enough and that substantive evidence must be provided. Otherwise the measures at stake cannot be considered compatible with EU law.

National courts

It appears that the national courts have adopted the principle of transparency as one of the grounds of review of the national gambling legislations and decisions of the national authorities. However the lack of clear guidance on the scope and construction of the principles of non-discrimination and consistency gives rise to a lack of legal certainty both between Member States, and within individual Member States.¹⁷

(6) Do you consider that existing national and EU secondary law applicable to online gambling services adequately regulates those services? In particular, do you consider that coherence / consistency is ensured between, on one hand, the public policy objectives pursued by Member States in this field and, on the other hand, the national measures in force and/or the actual behaviour of public or private operators providing on-line gambling services?

National laws

The national laws which regulate online gambling around the EU are very divergent, both in their scope and their approach to this matter. Unfortunately a large number of these laws impose requirements which are incompatible with EU law, such as the obligations to establish local entities or to place gambling servers within the territory of the Member State in question. As a result these laws cannot ensure that most of the gambling opportunities be captured in the licensed market and that consumers be duly protected because they are liable to dissuade operators licensed in other Member States from applying for local licences.

One example of this can be found in Belgium, where online operators are required to have an offline licence and an offline gambling business, justified on consumer protection grounds. This is despite a survey by a Belgian consumer organisation (CRIOC) which revealed that 71% of offline points of sale were found to illegally sell lottery tickets to minors.¹⁸

EU secondary legislation

Although there are a number of Directives which regulate certain aspects of the provision of the online gambling services, in particular the Anti-Money Laundering Directive, the Audio-visual Media Services Directive and the Data Protection Directive, the regulation of online gambling at EU level is not adequate. Unlike in many other sectors there is no comprehensive regulation of (online) gambling which would at least lay down minimum standards to be followed by the Member States in terms of the licensing requirements, cooperation between the national regulators and technical standards. This has led to informal sharing of information between certain countries, and in one case (France and Italy) the signing of an agreement to formalise their relationship.

Consistency of the national gambling policies

The consistency of most of the gambling policies of the Member States suffers from two essential defects. First, the policies are not evidence based and tend not to give due consideration to the most recent research in the field of gambling addiction and gambling related crime. In many instances this has led to the imposition of unnecessarily restrictive licensing requirements on online gambling providers by individual Member States. Secondly, besides the public policy objectives foreseen in the primary laws such as the suppression of crime and fraud or the reduction of gambling addiction, Member States usually pursue other objectives, in particular their financial interests. In the event that financial interests prevail over public policy objectives the national gambling policies cannot guarantee that consumers will be effectively and coherently protected from the risks related to online gambling.

¹⁷ "Decision of the Dutch Council of State of March 23, 2011, in Case No. 200700622/1/H3-A, the Minister of Justice v The Sporting Exchange Limited".

¹⁸ <http://www.crioc.be/FR/doc/communiqués/all/document-4555.html?idsmenuleft=127>

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

The definitions of online gambling foreseen in the existing laws of the Member States differ to a certain extent. However, more and more Member States have recently reviewed their existing gambling laws (or are in the process of doing so) and the definition of this term needs to be broad enough to include all the existing and future types of online gambling as well as all forms and means by which it can be provided.

In some Member States, 'online gambling' is used as a general term which covers online sports betting, casino, poker and bingo. However, this is not universal: for example in Cyprus 'gambling' refers specifically to poker and casino products only, while 'betting' refers to sports betting. In general, 'betting' refers to sports betting while 'gaming' refers to poker and casino products.

Any definition at EU level would not only need to encompass all different types of online gambling and means of delivery but also have due regard to the differences in the national laws.

(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?

It is acknowledged that there can be a grey area between these two activities which can present problems for regulators. Promotional games may not always be the sole preserve of the media and so it might be sensible to focus on the differences between the products rather than who is seeking to offer them.

In practice there tends to be specific legislation to govern the conduct of gambling, but there may be nothing comparable for promotional games. It is therefore often a question of legal interpretation about whether a promotional game is also a form of gambling. This can lead to products that are similar to gambling, such as fantasy football leagues, being unregulated in some countries.

(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?

There are two situations which need to be addressed separately in relation to this question. The first is whether the operator or those responsible for activity on the premises is able to provide online gambling. The second is whether consumers are prevented from gambling online while on those premises (for instance if they have with them a smart phone or laptop computer).

The former is usually not permissible under domestic law, but the latter does inevitably take place even though the owner of the premises may not sanction it. To that extent there would be no difference between the consumer gambling online, for instance, in a casino, a bank, a park, or their own home. It is an inevitable result of improving access to technology and wireless communication. The key consideration should be regulating the online services that are readily accessible over Wi-Fi networks in an increasing number of bars, coffee shops and other public places. If customers are betting with properly licensed gambling operators then they should be sufficiently protected.

(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?

From an operator's perspective, there is no real advantage to state by state licensing. Every new jurisdiction with a divergent set of rules creates new overheads stemming from having to tailor products and services to each jurisdiction. The additional cost in applying for and obtaining licences, the cost of data transmission, hardware and reporting to each jurisdiction can make sustainable business a difficult prospect.

From a national regulator's perspective, there are advantages in the coexistence of multiple laws because they allow the regulator to determine which operators should be permitted to operate legally in that country and accept wagers from its residents. This allows them to set technical and social responsibility standards of operation at a national level.

Several EU Member States have proposed rules that would require operators to locate their servers in their jurisdiction. This creates an unnecessary burden for the regulator and operator alike, and provides no tangible benefit or safeguard for the control of money laundering, problem gambling or sporting integrity; which are usually cited as the reasons for those requirements.

If an operator's primary gambling system is within a regulated European country, it should firstly be possible to establish the standards under which that system has been established by making reference to the rules of the jurisdiction in question but secondly it should be technically straightforward for the operator to give the regulator unfettered virtual access to the records they need to be able to adequately monitor the transactions on the gambling system in question. This is also consistent with the Webb principle referred to in question five above.

(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?

There are various rules, laws and regulations governing such commercial communications in the UK, including:

CAP and BCAP Codes

The codes set out a number of rules around the marketing of all products and services, and the marketing of gambling in particular. All gambling operators targeting UK consumers are required to comply with the rules, which cover, inter alia, misleading advertising, harm and offence, privacy, sales and prize promotions, database practice, and specific rules which pertain only to the advertising of gambling. Failure to comply with the Codes can lead to the ASA taking one or more of the following steps:

1. Ordering the advertiser to withdraw the offending advertising;
2. Requiring the pre-vetting of all advertising content;
3. Referral to the Office of Fair Trading to take legal action;
4. Revocation of UK gambling licence (as it is a condition of a gambling operator's UK licence to comply with the Codes).

Consumer Protection from Unfair Trading Regulations 2008

These laws set out rules which all businesses must follow, and set out the offences of misleading consumers (by action or omission) or employing aggressive practices.

Commercial communications

All businesses (including gambling operators) are subject to rules around data protection and privacy.

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

Firstly, it must be stated that online gambling operators are companies like any others, and are therefore already subject to all the rules and regulation which apply to any other businesses using payment systems.

It is also to be expected that all EU Member States will have specific regulations that apply to the financial services sector. Those are then applied to payment systems for online gambling in the same way as they are for any other commercial sector. In terms of combating crime these are augmented by anti-money laundering and anti-fraud requirements that apply to all companies. There is no reason why online gambling should be subject to additional measures because the existing measures are already specifically designed to address any risks.

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

Both for regulatory and commercial reasons the account opening and maintenance process is an important tool. It ensures that operators can identify and deal appropriately with any potential underage gamblers; it enables online gambling companies to satisfy statutory anti-money laundering requirements; it helps prevent fraud; and it makes it possible for consumers to put in place personal restrictions to enable them to manage their gambling responsibly.

(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?

All UK licensed companies are subject to the 3rd Money Laundering Directive via the UK regulator; however national rules related to customer verification are not streamlined between countries. A current and effective E-verification directive from the European Union, as part of the Digital Agenda, would provide a welcome boost to the Digital Single Market.

The most effective method of customer verification currently available is in the United Kingdom. In the UK, Betfair currently uses GB Group – a third party verification system with the ability to cross check customer data with a variety of public sources including credit card accounts, electoral role and place of residence. This process takes place in real time, achieves successful matching rates of around 90%, and has managed to keep children off of gambling websites.¹⁹

Less effective methods of verification can be found in France and Italy. In these markets, a customer must submit a hard copy of their identity card or passport to the operator before they can withdraw funds from their account. This has led to an average 50% loss in customers who fail to fully activate their gaming account, and is one of the main reasons why losses to the black market remain so high.²⁰

(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)

There is no reliable empirical evidence that supports the factors cited as influencing problem gambling in the context of internet gambling. Recent studies of internet sports betting²¹ have shown only account closure as a valid indicator of potential gambling related problems. No equivalent studies have been conducted on other internet gambling forms, including poker and casino games. The first five factors listed are not supported by the scientific evidence to date. The sixth factor, relating to data protection, is similarly not supported by research but is generally seen as an ethical issue which, despite lack of evidence of harm from advertising, should be treated using a precautionary approach through codes of conduct and ethical advertising policies.

(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?

The instruments cited in question fifteen are all important means of preventing play by vulnerable or underage people and are applied by responsible gambling operators. Items 7 and 8 are not supported by any scientific evidence as contributing to responsible play. In particular there is no evidence suggesting that some forms of games are more risky than others. Shaffer and Martin²² have found no evidence to support this view in a

¹⁹ *Children Charities Coalition on Internet Safety* report, 6th September 2010.

²⁰ *'Jeux en ligne' in the French Market: Key Features, strengths and weaknesses of the French legal gaming offer* MAG, 03.02.2011.

²¹ *Identifying behavioural markers of disordered Internet sports gambling. Addiction Research & Theory* LaBrie, R. A., & Shaffer, H. J. 2011. 19(1), 56-65.

²² *Disordered gambling: etiology, trajectory and clinical considerations* Shaffer and Martin, Annual Review of Clinical Psychology 2011

comprehensive review of the extant literature, and point to gambling involvement as a better predictor of problem gambling.

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

Statistical data is at its most up to date in the United Kingdom, with the recent British Gambling Prevalence Survey.²³ This study is generally regarded by international researchers and academics as the gold standard for measuring gambling and problem gambling prevalence in national populations. In order to make consistent and informed policy decisions EU jurisdictions should agree to adopt similar studies which should be conducted at least every three years as in UK. This would also allow appropriate EU institutions to monitor trends in gambling behaviour across Europe and make appropriate policy responses to problem gambling once it is quantified as a social and medical issue.

(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?

Empirical studies, conducted on online gambling in general, have shown that gambling addicts gamble on a range of terrestrial products as well as online channels.²⁴ The propensity for problem gamblers to use many modes of gambling is further corroborated in the most recent British Gambling Prevalence survey.

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

No causal link has been established between types of gambling and gambling addiction although strong associations between frequent use of gambling machines (slot machines) as a mode of preference for gambling addicts has been noted by treatment agencies that deal with problem gamblers.

Most recently the British Gambling Prevalence Survey failed to discover any links between types of gambling and causes of gambling addiction. The findings of this survey are consistent with other studies that have shown that it is intensity of gambling participation itself, not the mode of gambling, that presents risks for addiction.²⁵ The typical demographic profile of gambling addicts is that they come from lower socio economic groups with low educational attainment and typically suffer from other problems related to substance abuse or mental health.²⁶

A series of studies conducted using large internet gambling data sets (n=> 43,000) by the Harvard University Division on Addictions have confirmed that gambling on the internet results in very small levels of disordered or addictive play. These findings are consistent with international prevalence surveys which over thirty years of international population research have revealed addiction rates at around 1% of populations.²⁷

²³ ²³ *British Gambling Prevalence Survey* Wardle et al: available at

<http://www.gamblingcommission.gov.uk/PDF/British%20Gambling%20Prevalence%20Survey%202010.pdf>

²⁴ *Prevalence, Patterns, Problems, and Policy Options* Williams and Wood 2009. Internet Gambling: Final Report prepared for the Ontario Problem Gambling Research Centre; Guelph, Ontario January 5, 2009

²⁵ *Disordered Gambling, type of gambling and gambling involvement in the British gambling prevalence survey* La Plante et al 2007. *European Journal of Public Health Advance access* 2009 and *Identifying behavioural markers of disordered Internet sports gambling. Addiction Research & Theory* LaBrie. R. A., & Shaffer, H. J. 2011 19(1), 56-65.

²⁶ *DSM-iv Pathological Gambling in the national co-morbidity study survey replication* Kessler et al *Psychological Medicine* 2008, 38:1351-60

²⁷ *Problem gambling Prevalence Research: a critical overview* Wiebe and Volberg 2007, a report to the Canadian Gaming Association.

(20) What is done at national level to prevent problem gambling?

Generally, very little is done in Europe at national level to prevent problem gambling. The early detection of possible gambling problems is very much in the hands of operators. As far as we know, only Svenska Spel, Bwin and Betfair have begun, in different ways, to investigate the early detection of problem gamblers online. Betfair is midway through an extensive study with the National Centre for Social Research²⁸ of players who self-exclude and is developing a predictive model which will enable detection of those whose playing behaviour means they are likely to use this protection tool. This predictive ability will enable early intervention before early stage problems develop in to full addictions.

Much can be done to educate primary healthcare workers, mental health professionals and addiction specialists on the nature and incidence of gambling related problems. The national co-morbidity study cited above from the USA and data from the UK's National Problem Gambling Clinic indicate that between 50-60% of problem gamblers will be known to healthcare agencies for mental health or substance abuse problems. Screening for gambling related disorders amongst these populations would enable targeted treatment and do much to prevent the spread of gambling problems in jurisdictions.

In the UK the gambling industry has committed to donate a minimum of £5m per year between 2009 and 2012 to help fund problem gambling related research, education and treatment. These donations are made to the charity, The GREaT Foundation, which then channels them through to support research, education and treatment related to problem gambling. Whilst the above is very much UK focused, online operators have also had to work with partners that can provide help and support to the growing international market. This is perhaps best illustrated through Gambling Therapy²⁹, which is funded by the online gambling industry, operates in over 30 languages, and provides online advice and practical and emotional support for individuals through a helpline facility. It has a telephone helpline in addition to an online facility which connects to an advisor where the individual can, in confidence, start typing and an advisor will respond with useful support, advice and understanding. The advisor is able to signpost them towards the various options of help and support that are available via a large database of external resources alongside other methods of support offered on the Gambling Therapy website. The helpline is available to anyone with a gambling problem or those affected by gambling. It also provides group therapy and there are additional support groups running at various times of the day over a seven day period. Once in the group, individuals can have live typed chat with others who are problem gamblers or someone affected by gambling.

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

All responsible operators contribute to the funding of research education and treatment of problem gambling in the UK. Only in Britain is there a national problem gambling clinic which is linked to an NGO (Gamcare) providing counselling support in most areas of the country, in addition to a national telephone helpline and online support. All of these measures are vital and should be replicated in all EU jurisdictions and paid for through voluntary industry contributions. Betfair has made a commitment to make available relevant contributions in any jurisdiction where it has a licence to operate.

It is also important to recognise when looking at the issue that most problem gamblers have a multitude of addiction issues in their lives. They should not be recognised simply as 'problem gamblers' but as individuals with multiple dependencies all of which they need support and help with. Only by doing this will individuals receive the multi-agency help via charitable organisations, health services and other agencies that they require in order to overcome their problems. Isolating 'problem gambling' and treating it as if it is the only issue an individual may have is to deal with a single symptom and leads to the overall cause potentially being overlooked with does not help the person themselves and is an inefficient allocation of resources.

²⁸ <http://www.natcen.ac.uk/>

²⁹ www.gamblingtherapy.org

(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?)

Due diligence in national regulation should include the following as a minimum:

1. A strong set of regulations should be developed that apply to all operators in all EU jurisdictions which are enforceable with sanctions such as the loss of licence, or if required and deemed suitable, relevant criminal codes.
2. Contributions to problem gambling research, education, and treatment should be made mandatory for operators in jurisdictions where there is reluctance to contribute voluntarily and where little treatment or prevention infrastructure exists, so that such services can be planned and developed.
3. Because gamblers who self-exclude are likely to be those with gambling problems it is important that databases of gamblers who exclude themselves from gambling websites are maintained by gambling regulators and allow gamblers the option of excluding from all online and terrestrial operators. The studies referred to in answers to the preceding questions have made clear the wide range of products and operators likely to be used by those who have (or are developing) gambling problems. A central data base would allow regulators to aid the gambler in taking a break or abstaining altogether from all possible licensed gambling opportunities.

(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?

Yes. Betfair believes that the age limit for online gambling in any form should be 18 years old. It should also be noted that there is not total consistency throughout the EU on this issue.

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

As part of its licensing conditions to protect the vulnerable, Betfair verifies that all of its customers are over-18. If a customer uses a payment method that is widely available to under-18's the customer's account is automatically locked, preventing all types of transactions until age verification has been completed. Under Betfair's Gibraltar licensing conditions, UK customers have a 72 hour window in which to positively verify they are over-18, in which time, they are unable to withdraw. If the customer cannot be age-verified in the required window their account is locked, preventing all types of transactions.

Age-verification can be done in one of the following ways:

1. Electronically – using third-party databases such as GB Group;
2. Using third party relationships to certify customer documentation – through existing relationships with UK and Australian Post Office, customers are able to have documents certified at their local post office. Customers could provide a copy of their passport or driving licence;
3. Supplying hard-copy identity documentation – e.g. passport, driving licence.

If a customer is found to be under-18 the amount they deposited is returned to them (any effects on their funds from betting activity are excluded).

(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)

United Kingdom

1. Advertising Standards: the CAP (Committee of Advertising Practice) and BCAP (Broadcast Committee of Advertising Practice) Codes (the “Codes”) govern all advertising, sales promotion and direct marketing targeting UK consumers. The Advertising Standards Authority (the “ASA”) endorses and administers the Codes.

The scope of the Codes is such that all marketing communications made by businesses are under the jurisdiction of the ASA. This includes all marketing communications made on the websites of gambling operators, together with all marketing communications in non-paid-for space under the control of such companies. Primarily, this affects social networking space controlled by gambling advertisers. The Codes cover marketing communications made directly by the advertiser and user-generated content which is ‘adopted and incorporated’ by the advertiser.

The Codes both have specific sections which relate to the advertising of gambling products and services. The principle is that gambling advertisements should be socially responsible, with particular regard to the need to protect minors from being harmed or exploited. The rules apply not only to traditional betting and gaming products, but also “play for money” gambling products, and “play for free” gambling products that offer the chance to win a prize or that (either explicitly or implicitly) direct the consumer to a “play for money” gambling product, whether on-shore or off-shore.

The main rules intended to protect minors in the Codes state that gambling marketing communications must not:

- (i) Exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young persons or other vulnerable persons;
- (ii) Be likely to be of particular appeal to children (aged 15 or under) or young persons (16-17 year olds), especially by reflecting or being associated with youth culture;
- (iii) Be directed at those aged below 18; or (iv) include a child or young person, and no one who is or appears to be under 25 may be featured gambling or playing a significant role in an advertisement, nor should any person behave in a juvenile, adolescent or loutish way.

In addition, there are specific rules relating to the scheduling of broadcast advertising of gambling and use in such advertising of betting tipsters. Such advertising may not be advertised in or adjacent to programmes commissioned for, principally directed at, or likely to appeal to, audiences below the age of 18.

2. Gambling Industry Code for Socially Responsible Advertising (the “Industry Code”): the Industry Code has provided social responsibility standards for gambling operators since September 2007. It is a voluntary code but is supported by the industry. The Industry Code states that, in advertising gambling services, care must be taken not to exploit children in relation to gambling activity. It also reminds operators that section 46 of the Gambling Act 2005 already prohibits the invitation of a child or young person to gamble.

The Industry Code also refers to sports sponsorship, and states that the advertising of adult-only gambling products or product suppliers should never be targeted at children. Gambling operators should ensure that they do not allow their logos or other promotional material to appear on any commercial merchandising which is designed for use by children.

3. Social networking sites: Gambling operators are using social networking sites such as Facebook and Twitter increasingly to communicate with consumers. Facebook recently removed its blanket ban on gambling advertising, and now allows this, provided the advertiser obtains prior authorisation from

them. However, all our advertising is pre-vetted by Facebook, and we only advertise on pages accessible by users who have confirmed they are at least 18 years of age.

(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?

The ASA and BCAP system in the United Kingdom works well. As stated above, the main rules intended to protect minors in the Codes state that gambling marketing communications must not: (i) exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young persons or other vulnerable persons; (ii) be likely to be of particular appeal to children (aged 15 or under) or young persons (16-17 year olds), especially by reflecting or being associated with youth culture; (iii) be directed at those aged below 18; or (iv) include a child or young person, and no one who is or appears to be under 25 may be featured gambling or playing a significant role in an advertisement, nor should any person behave in a juvenile, adolescent or loutish way.

In addition, there are specific rules relating to the scheduling of broadcast advertising of gambling and use in such advertising of betting tipsters. Such advertising may not be advertised in or adjacent to programmes commissioned for, principally directed at, or likely to appeal to, audiences below the age of 18.

The above rules are actively enforced against gambling operators, in the past 12 months; the ASA has upheld 8 complaints against gambling operators advertising in the United Kingdom.

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

Remote gambling, when offered by well-regulated and licensed operators, is no more susceptible to fraud and crime than any other e-commerce industry. In fact, due to the stringent licensing requirements of regulators in Europe, remote gambling operators are subject to more scrutiny and safeguards than most e-commerce service providers. The following studies are relevant here:

'Can Internet Gambling Be Effectively Regulated? Managing the Risks' Malcolm K. Sparrow, John F. Kennedy School of Government, Harvard University.

'Money Laundering Risks and E-Gaming: A European Overview and Assessment' Michael Levi, Ph.D., D.Sc. (Econ.) Professor of Criminology, Cardiff School of Social Sciences.

'The threat of money laundering and terrorist financing through the online gambling industry' MHA Consulting, June 2009.

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

In the UK, Malta, Italy and Denmark there are technical requirements for the equipment and processes and for the testing and certification of software. Gibraltar is currently considering implementing standards following a consultation exercise, and Spain is also about to implement technical standards. It would be to the advantage of the industry as a whole, if independent certification laboratories could be approved by all Member States (or certainly as many as want to have a liberalised gambling regime), along with certain common standards so that re-testing and certification, with associated costs, need not be required.

(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 most common fraud is by players against operators in the form of chargeback fraud. This occurs when an individual claims that a transaction is fraudulent in some way and the credit card issuer then debits the money from the merchant's account. This facility is designed to protect consumers from fraudulent use of their credit

card, but can also be used to try to get back any losses they may have occurred while gambling. Whilst a number of claims are genuine, the majority are fraudulent.

The most common fraud solely involving players occurs in online poker when two or more persons agree to limit open competition by chip dumping (intentionally losing chips to other players). In this way they can pass funds between players without having to use normal banking channels.

It is in the operators' interest to combat all types of fraud as it potentially has a serious financial and reputational impact on individual companies and the online gambling sector as a whole.

One well reported example of where fraud has been committed by operators on players involved Absolute Poker ("Absolute") in October 2007³⁰. This began during a US\$1,000 buy-in tournament hosted by Absolute on September 12, 2007. One of the players in the tournament, using the alias "Potripper", conducted some highly irregular plays, folding on goods hands and creating unusual winning patterns. Alerted by this behaviour, regular players who were at the table requested what is known as "hand histories" from Absolute, a regular practice in the industry usually done to demonstrate to players that their losses are legitimate. What the players received was much more than regular hand histories. They were given the full information that Absolute possessed about this tournament, including the IP address of participants. An analysis of this data revealed that someone at Absolute was monitoring the game and passing data to the player Potripper. To prevent such a situation occurring at Betfair all employees are prohibited from playing Betfair Poker (except 'play for fun') whether during working hours or otherwise.

The Betfair Fraud Team is responsible for the detection and prevention of fraud on the Betfair site. The department consists of two teams, one based in the UK and one based in Malta providing monitoring and investigation capabilities 24/7, 365 days a year. The department has 31 employees:

1. 25 Fraud Analysts, all of whom hold an ICA Certificate in Anti-Money Laundering (AML);
2. 2 Analysts responsible for Fraud Projects & Reporting;
3. A Management Team of 4 people with over 10 years of gaming specific experience and almost 60 years combined in fraud prevention and detection.

Betfair also has a fraud management system which is the primary tool used to identify fraud:

1. The system has neural learning capabilities and the ability to profile customer behaviour. The neural capability is supported with additional configurable rules and thresholds;
2. Customer profiling looks at a number of variables including customer information, login data, player activity, and deposit patterns in order to identify anomalous behaviour;
3. On-going analysis of fraud trends and patterns is carried out ensuring that rules, thresholds and the profiling models within the system are providing the most meaningful outputs;
4. Betfair is an active member of Gamshield which enables companies to share information regarding fraudsters and potential fraud trends that have been identified.

If fraud is detected, the Betfair Fraud Team alerts banks and law enforcement agencies in order for them to stop and prosecute fraudsters.

³⁰ Absolute Poker is licensed in Kahnawake in Canada, they are not in possession of a licence in the EU.

(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?

Gambling operators who are licensed in the UK have to provide the Gambling Commission, under Licence Condition 15.1 of the UK Gambling Act, with information they suspect may lead the commission to order the voiding of a bet for integrity reasons. Licensees must also provide sports governing bodies and the Commission with information they suspect relates to a breach of a rule on betting applied by a sporting body.

Certain operators, such as Betfair, have entered into Memoranda of Understanding (see question 31 below) with sporting bodies to enable them to share data on suspicious betting patterns and help authorities to identify attempts to fix the outcomes of sporting events.

Betfair is unaware of any regulations to prevent 'conflicts of interest'. In relation to analysis around sporting integrity, the International Tennis Federation published an independent review into integrity in 2008. That report recommended the investigation of 45 matches that were identified as suspicious. As a result of the report a global tennis integrity unit has been set up.³¹ Betfair works closely with that unit under a Memoranda of Understanding.

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

In relation to the prevention of sports betting and outcome fixing, gambling operators and sport governing bodies should proactively seek to enter into information sharing agreements (so-called Memoranda of Understanding or MOUs). This would assist in the exchange of information in relation to betting integrity related matters. Gambling operators should also proactively report suspect betting activity to sports governing bodies and share names of suspect customers, under MOUs, to assist sporting bodies with related investigations.

Betfair also supports the inclusion of requirements such as the 15.1 Licensing Condition in the UK Gambling Act which makes it a statutory requirement for licensees to share unusual or suspicious betting information with the national regulator.

Gambling regulation and legislation that encourages competition between betting operators and offers the consumer choice should also be promoted. This will discourage customers from betting with unregulated and illegal operators where bets are not tracked and traced and where it is more difficult for sports and regulators to investigate betting integrity related matters.

(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?

There is no evidence to suggest that a betting sponsor has ever sought to influence the outcome of a sporting event which it has sponsored. Betting companies often invest large sums in sponsorship and commercial agreements with sports clubs, organisations and leagues and it is very difficult to imagine why a betting operator would put that agreement in jeopardy or wish to undermine the integrity of their business as a whole in the eyes of customers.

In the case of properly licensed operators within the EU, Betfair would be very surprised if any other stakeholder could produce evidence to the contrary.

³¹ Environmental Review of Integrity in Professional Tennis, 2008.

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

We are not aware of any criminal prosecutions within the EU that demonstrate how online gambling could be used for money laundering purposes by customers of online gambling sites. This could be interpreted in two ways: firstly, that online gambling does not present an opportunity for money laundering, consequently criminals or organised crime are not targeting this industry as a vehicle to launder funds; or secondly, the online industry is still in its relative infancy and such cases have not been identified.

Outside of the EU, examples from the USA could potentially be cited as alleged money laundering, particularly since the Unlawful Internet Gambling Enforcement Act took effect in 2006.

In 2010, Douglas Rennick, who allegedly controlled multiple Internet gambling payment processing businesses in the United States, pleaded guilty to violating the Wire Act after federal prosecutors in the Southern District of New York accused him of perpetrating money laundering.

More recently and again in the United States, federal prosecutors in Manhattan accused eleven individuals at PokerStars³², Full Tilt Poker³³, and Absolute Poker³⁴ of operating an illegal gambling business, carrying out money laundering, bank fraud, conspiracy and other crimes.

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

This paper refers to use of e-cash and stored value cards as presenting a potential money laundering risk. We agree with this view, but this is certainly not an exclusive risk to the online gambling industry. Any payment method which is cash based and has lower standards of customer due diligence must be considered a higher risk than those which come through the more traditional and financially regulated banking system.

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

Betfair has developed a comprehensive 'risk based approach' to anti-money laundering and counter terrorist funding ("AML/CTF"). This methodology ensures that the customers representing the greatest risk of money laundering or terrorist financing meet the most stringent customer due diligence (CDD) processes and AML/CTF monitoring at the earliest opportunity. Using a scorecard system points are allocated to clients based on their behaviour throughout the business relationship and can be weighted according to risk. The AML Scorecard ("the Scorecard") is broken down into five different behaviours from which there are a total of twenty-nine attributes which are scored against. The behaviours are:

1. Customer Attributes;
2. Financial;
3. Geographical;
4. Customer Behaviour;
5. Products Used.

Particular advantages of this methodology are:

1. A customer is not just identified on account registration as being high risk but is consistently monitored throughout their business relationship with Betfair. If an existing customer that has not previously been flagged as high risk has a change in behaviour (for example increased deposits versus discount rate, possible collusion, attempts to avoid closed loop etc.) that will still be identified. Effectively the Scorecard aims to monitor all accounts from initial funding to closure.

³² Licensed in the Isle of Man.

³³ Licensed in Alderney.

³⁴ Licensed in Kahnawake, Canada.

2. Secondly Betfair needs to be mindful of the current risks of terrorist financing and the relatively small sums of funds involved. If we only monitored accounts that had deposited more than a set threshold for example, we would leave the company open as a vehicle for processing such funds.
3. As Betfair develops new products, enters new jurisdictions and introduces new factors (for example payment methods) we are able to ensure that new measures (reports and alerts) are implemented and fed into the Scorecard.

We also have the ability to look at a particular attribute in isolation should the circumstances warrant this, for example, where a customer scores particularly high in a specific area such as a very high deposit which has not been seen before and is behaviour outside of the norm that we would expect for that customer.

It is worth noting that by looking at the wider range of behaviours we are able to better determine risk. For example taking into account regional variations; what may be a low monetary transaction in one region may a high monetary transaction in another. A flat threshold approach would not identify this.

(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 is no evidence to suggest that this is the case, the registration process and subsequent monitoring is exactly the same no matter which portal a customer uses to open and maintain a business relationship. In this sense regulated online gambling companies present no greater risk of being susceptible to money-laundering than any other e-commerce industry.

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

All licensing regimes include transparency requirements that cover operators' rules, the rules of games, terms and conditions, advertising and marketing. These apply irrespective of whether the service is being offered solely within the jurisdiction or across borders. We believe this is an important area of consumer protection and most regulators of multi-licence jurisdictions in the EU (e.g. UK, Italy, Malta, Gibraltar and France) enforce it diligently and effectively.

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

Many national monopolies' revenues are taxed with a percentage going to good causes such as sport or charities. As an individual operator, Betfair donated £550,000 to charitable causes around the world in 2011/12. This includes the highly successful Cash-4-Clubs programme³⁵ to provide community sports clubs with much needed funds. This is linked to Betfair's vision to be a champion of regional and community sport, which evolved from its successful partnership with SportAid.

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

This question applies to all forms of gambling not just the internet. Betfair considers it important (see answer to Q20 and Q21) to contribute a proportion of its profits voluntarily to the prevention of problem gambling through the funding of research, education, and treatment programmes in any jurisdiction that it holds a licence.

³⁵ www.cash-4-clubs.com

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

In the UK Betfair, along with numerous other operators active on the market, makes annual voluntary contributions to the GREaT Foundation (Fundraising for Gambling Research, Education and Treatment of problem gambling, formally known as the Responsibility in Gambling Trust).³⁶The GREaT Foundation exists to tackle problem gambling in Britain through the funding of treatment, research and education programmes. In 2010, Betfair was awarded “Gold Donor of the Year” by the GREaT Foundation. Betfair also works closely with the UK’s National Problem Gambling Clinic.

In Sweden, a Svenska Spel subsidiary has developed Playscan (Spelkoll), a play analysis tool designed to help players keep control over their gaming, increase awareness, and allow them to determine if they are at risk of becoming problem gamblers. The program requires players to have an account with Svenska Spel, and is based on statistics from the company’s database and on player behaviour. Based on previous gaming patterns the service will determine if the playing is normal, or at risk of becoming a serious problem gambler.

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

Revenues from the online gambling sector are redistributed to sport through a variety of means, including general taxation, statutory levies, commercial partnership, sponsorship and voluntary donations. Over the last ten years, as a leading regulated online gambling operator, Betfair has demonstrated a commitment to sport in many different ways. Betfair currently undertakes the following commitments in the UK and other territories in which it is licensed:

British Horseracing Levy

Prior to March 2011, like all other UK licensed betting operators, Betfair paid a statutory 10% of its gross profits made on bets made by UK residents on British horseracing. Betfair now pays the Levy on a voluntary basis and on 14th June 2011 donated £6 million to the Horserace Betting Levy Board as a sign of its commitment to UK racing. This figure is equal to the money that the company would have been required to pay in the terms set out for the 50th Levy Scheme for 2011/12 (10.75% of its gross profits made on bets made by UK residents on British horseracing).

Voluntary Levies to sports

Betfair makes annual voluntary levy donations to UK greyhound racing and numerous sporting bodies in Australia including, amongst others, Cricket Australia, Football Federation Australia, Tennis Australia and the PGA Tour of Australasia. Betfair is currently the only gambling operator in Australia to make these voluntary product fee payments.

Commercial deals

Betfair has made numerous commercial deals with sports. These have recently included, among others:

1. Being the official betting partner of Manchester United and FC Barcelona;
2. Establishing a five-year £1m sponsorship deal with Ascot Racecourse and being the second biggest bookmaking sponsor of racing behind the Tote.

Voluntary donations, sponsorships and charity work in the United Kingdom

Betfair makes a series of voluntary donations to sport. This has included, in the last few years:

1. Establishing three year partnerships with the Professional Players Federation (PPF) and the British Athletes Commission (BAC);
2. Establishing 'Cash for Clubs'³⁷ which funds grass roots sports clubs around the UK;
3. Organising 'The Pride of Racing', an event in aid of Racing Welfare which recognises the unsung heroes of the UK horseracing industry and significant other commitments to racing charities.

³⁶ Along with Ladbrokes, William Hill, Rank, and Gala Coral, Betfair underwrites the £5m that the industry guarantees to raise on an annual basis for the research and treatment of problem gambling.

³⁷ See response to question 38.

(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?

No. However, through a variety of means the online gambling industry in the EU already invests €3.4bn per annum in EU sport, with €2.1bn (62%) contributed by private companies.³⁸ Most observers would consider this a fair return. Whether or not this income is currently being distributed in a fair manner is an issue for each sport to determine.

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

In the UK the statutory arrangement which ensures a transfer of funds from the gambling industry (both online and offline) to the horseracing industry is not linked to ensuring integrity exists but relates to the evolution of the gambling industry and its close relationship with horseracing. When betting shops were legalised in the UK in 1963, the horseracing Levy was put in place to compensate British horseracing for the reduction in racecourse attendances it was envisaged this would cause. Today all UK licensed betting operators are required by law to pay a defined percentage of their gross profits derived from British horseracing to the Levy Board, for distribution towards prize money, equine research and other related issues which help support the horseracing industry.

In France the '*code du sport*' was amended in May 2010 introducing a 'sports right' granting sports federations and sporting event organisers the right to consent to the organisation of betting on events they organise.³⁹ The code requires any agreements entered into with betting operators to set out obligations on the betting operator relating to the detection and prevention of fraud, in particular relating to the exchange of information. It also entitles the sports federations and event organisers to payment which takes into account their costs relating to the detection and prevention of fraud.⁴⁰ The code does not require money received from betting operators to be used exclusively for this purpose.

(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 of gambling revenues?

Many Member States have established National Lotteries which are largely responsible for channelling funds into national public interest activities.

The UK has a well-regulated online gambling sector and there is no evidence that this has impacted on the UK National Lottery revenues which have continued to grow since its establishment in 1994. The UK National Lottery recently announced record sales for 2010/11 to £5.822.4m, an increase of £370.6m (6.8%) on the previous year.⁴¹

The reduction in revenues to certain state-run gambling businesses tends to stem from a lack of open competition and customers seeking the product they want online from operators based outside of the jurisdiction.

³⁸ The RGA: Sports Betting: Legal, Commercial and Integrity issues, January 2010.

³⁹ code du sport Art. L. 333-1-1.

⁴⁰ code du sport Art. L. 333-1-2.

⁴¹ <http://www.camelotgroup.co.uk/news/corporate/CamelotsetsnewNationalLotterysalesrecord030611>

(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 the UK this is the case for the national lottery, but not for other licensed gambling operators. With regards to gambling monopolies, the CJEU appears to say that such practices would not be acceptable in its Markus Stoss ruling of the 8th September 2010.⁴²

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

(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?

In the UK, there is the Gambling Commission, in Malta, the Lotteries and Gaming Authority, in Gibraltar the Gambling Regulatory Authority/Gambling Licensing Authority and in Italy, AAMS (the Autorita Autonoma Dei Monopoli Di Stato). These bodies are independent regulatory authorities with scope to issue and amend regulations and technical standards under the authority granted to them by enactment and with the powers to licence, inspect, and penalise licensees. The types of licences able to be issued by each regulatory authority are generally approved by the governing Act. There is however one key difference in that whilst the UK, Gibraltar and Malta seek to regulate operators regardless of where their consumers are located, in the case of Italy the regulator is only seeking to license operators to accept bets from people who are Italian or who live in Italy.

(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?

Each regulator maintains a list of licensed operators and these lists are available on the regulators websites for public viewing.

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

We are aware of a formal information sharing agreement being signed between the regulators in France (ARJEL) and Italy (AAMS). Undoubtedly through bodies like the Gambling Regulators European Forum (known as 'GREF') and through the working party in the European Council, many regulators around Europe exchange information on a regular basis. Notwithstanding this, from an industry perspective, we would suggest that there is greater scope for administrative co-operation than presently exists.

(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?

In relation to educational programmes, EU Athletes, European Sports Security Association (ESSA), the European Gaming and Betting Association (EGBA) and the Remote Gambling Association (RGA) (along with three of its members bet365, Betfair, and Ladbrokes) have collaborated to produce the Code of Conduct on Sports Betting for Players in order to help and advise them about betting rules, regulations and best practice.⁴³

⁴² Joined cases C-316/07, C-358/07 to C-360/07 and C-409/07 to 410/07, Markus Stoss, [2010]. Not yet published.

⁴³ http://www.egba.eu/pdf/Athletes_COE_A5_EN_v08.pdf

In terms of early warning systems, licensed regulated online gambling operators such as Betfair invest resource and money in developing their own internal early warning systems. They are used to monitor betting transactions on their websites for anomalies and then suspect activity is proactively reported to sport governing bodies under Memoranda of Understanding (MOU) agreements. Betfair also provide MOU partners with an early warning tool that allows them to monitor all bets on Betfair under their jurisdiction in real time. They can also access data retrospectively in order to help investigations as well as working closely with Betfair's own Integrity Team.

When evaluating procedures for preventing sporting corruption, Betfair would also like to highlight the following:

Who has the ability to corrupt?

The only people who can corrupt the outcome of a match are the participants in it – you have to be either playing or officiating. It is sport's responsibility to invest in educating players and adjudicators to ensure that they are not tempted to involve themselves in any corrupt activity by understanding what the risks and penalties are. The responsibility for upholding integrity in sport ultimately rests with sport itself.

Who causes the corruption?

Corruption in sport is related to the illegal betting market, not the legal transparent market. Where betting takes place transparently, it presents no problems. Where it happens 'below the line', or cannot be tracked, it can cause huge problems for sport.

Why not prohibit betting entirely?

It is a proven fact that any statutory prohibition on betting activity will never eradicate sports betting. If the legal betting market ceased to exist, the situation regarding sporting corruption would inevitably get worse. All betting activity would be forced to migrate to the black markets, where there would be no hope of detecting corrupt activity.

What examples of corruption have occurred?

The majority of the high-profile betting scandals of the past 20 years were facilitated by the illegal betting markets. Take, for example, Hansie Cronje, the South African Cricketer who was banned for life in 2000 after a series of betting scandals in the 1990s, before the advent of betting exchanges or internet gambling. The ICC acknowledged that the problems in that case came from the Indian sub-continent, where bookmaking is illegal. Additionally, the football-ground floodlight failures in 1997 which took place during English Premier League football games were eventually traced to Far Eastern illegal betting syndicates.

Shouldn't the polluter pay?

It would be wrong to impose a statutory Levy on the betting industry to pay for policing the corruption it does not cause and is not responsible for. The call for a Levy on betting companies to pay for integrity services would be akin to asking pharmaceutical companies to pay for drug-testing of sportsmen and athletes.

The role of transparency

The only means by which corruption-free sport can be achieved is if we secure a completely transparent global betting market. The growth in the transparency of betting, in which Betfair has played a major part, has brought to light problems which already existed within sports.

The impact of transparency

An improvement in the ability to detect and report instances of corruption is often confused with an increased frequency of corrupt activity in sport. Worse still, some within sport place the blame for this 'increase' in corruption squarely with the bookmaking industry, and frequently with Betfair.

The commitment to sharing

The information-sharing MoUs and increased transparency pioneered by Betfair provide sports regulators with the best available means of identifying any fraudulent betting on their sports. If every bet placed in the world were visible, there would be no issue. Betfair's betting exchange is the most transparent wagering system in the world.

The reality of sport's co-dependence with gambling

The call for levies or sports-rights is no doubt cited in sports' claim that they are entitled to a share of gambling companies' profits. However, there exist in the EU hundreds of co-dependent industries with no financial link whatsoever.

The role of Betfair

Betfair's name has only ever been associated with corruption in so far as it works actively, diligently and successfully to identify and report to sports governing bodies suspect betting activity. Having the capacity and resolve to report indicators of corruption in no way makes Betfair responsible for threats to sporting integrity. Any apparent endorsement of a link between Betfair and corruption would severely compromise Betfair's political position across Europe and in the USA.

(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 of online gambling?

The three most common enforcement mechanisms that come under consideration are: a ban on advertising; financial transaction blocking; and ISP blocking. Either on their own or in combination they have been tried with varying degrees of failure both inside and outside of Europe.

One of the fundamental points that the licensed online gambling sector has to make repeatedly is that it is part of a competitive global market. The RGA's collective experience is that if operators in a particular jurisdiction cannot meet the needs of consumers (this might be in relation to value, range of products, or quality of service) then those consumers will seek out operators who do and they are largely unconcerned about where those operators are based or licensed.

An ability to advertise might go some way to offset the competitive advantages of an operator outside of the jurisdiction, but consumers know if they are receiving poor value or a poor gambling experience they can readily seek out alternatives on the internet.

Financial transaction blocking and ISP blocking can provide barriers to make it more difficult for the consumer to access alternative suppliers of online gambling, but the greater the incentive for the consumer and the operators in other jurisdictions then the more likely they are to seek ways around these restrictions.

In reality such barriers do not work effectively. If they did then operators in certain licensed jurisdictions, such as France, would not be so concerned about the levels of competition from operators in other jurisdictions.

One example of this is Norway. The Norwegian government legislated to introduce financial transaction blocking and sought to implement it. Although some of the online gambling companies involved changed, the size of the market and the amount of funds flowing out of Norway appears to have barely changed at all after an initial readjustment.⁴⁴

The position of the Internet Service Providers and the financial institutions should also be taken into account. Measures of this kind force a policing role on them that they are not equipped or resourced for and they run the risk of having penalties imposed on them if they fail. This is neither fair nor appropriate.

⁴⁴ <http://www.gamblingcompliance.com/node/46229/hl/search/norway%3B>

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

The various methods mentioned above tend to be partially successful for some players who are not inclined to try and find a way around them. However, many players do not wish to have their gambling opportunities artificially restricted by government. Consequently given the borderless nature of the internet, such players will always be able to find a way around the blocking methods used by governments.