

## **EU PUBLIC CONSULTATION ON THE GREEN PAPER ON ON-LINE GAMBLING IN THE INTERNAL MARKET (COM 2011/128)**

PayPal welcomes the opportunity to share its experience gained from 13 years of successful activity in various areas of e-commerce and online business. PayPal is committed to the integration of the European market, and considers the internet to be a useful tool to achieve this goal, as it inherently transcends national boundaries. PayPal would therefore like to contribute to a better understanding of the particular environment of online gambling, and of the opportunities and challenges for users and providers of online gambling services.

Online gambling does not constitute a principal emphasis of PayPal's current activity or future strategy but PayPal co-operates with a number of gambling providers in those European markets where the business environment is adequately regulated. While certain principles – competitiveness, safety and consumer protection, clear regulation – do and must apply to online gambling as much as to any other online business, PayPal also recognises that all member states have specific concerns about the impact of gambling on society, which are variously reflected in their regulatory policies. PayPal does not wish to express an opinion on gambling as an activity, nor express a preference for any form of restriction or promotion of gambling, online or otherwise.

Please find below the responses to a selection of the questions posed by the European Commission most relevant from the specific perspective of an online payments services provider.

### **Introductory Remarks**

Online activity depends on mutual trust to conduct problem-free internet transactions. Even though data suggests that actual fraud remains relatively limited, the fear of fraud itself may lead customers, merchants and service providers to hesitate using the internet for commercial transactions.

Safe online payment methods may help to increase trust and to protect the users and providers of all types of online services, and allow especially smaller businesses and consumers to benefit from the possibilities of the internet. PayPal believes that the availability of secure and user-friendly payments options for online transactions in any area of business contributes greatly to building this mutual trust necessary to overcome the currently existing reservations and to unblocking the potential still untapped in various areas.

To this end, all custodians of personal financial information should be held to strict standards of information protection. PayPal supports public policy which sets high standards and which makes the stealing and misuse of personal information a significant crime.

**Questions 3&4:** 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? / What, if any, is your experience of licensed non-EU on-line gambling operators providing and promoting their services in EU Member States? What are your views on their impact on the EU market and on consumers?

In Europe PayPal requires its customers who are gambling operators to hold a license acceptable to a national gambling regulator within the EU.

Given the differences between the legal regimes applicable to gambling, most EU regulators recognise only the licences (or concessions, etc.) that they each issue themselves. The UK recognises not only its own licences but also those from 'white listed' jurisdictions: Gibraltar, Alderney, Isle of Man, Tasmania, Antigua and all EU member states.

As long as the regulatory framework is clear, PayPal can provide services within different regimes and to operators licensed in different EU countries. The mere fact that licences and regulatory regimes differ does not in itself constitute a significant obstacle to the provision of services, but should be understood as part of the European diversity also present in other market segments.

PayPal assigns a specially trained cadre of account managers and risk managers to oversee the ongoing relationships with licensed operators. With adequate and dedicated attention, the online gambling market is not more loss-producing or higher-risk than other markets.

**Question 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?

PayPal has developed measures to manage the applicability of varying national laws by differentiating between operators according to the country where they are licensed, and by maintaining information about the residency of players.

Legal uncertainty has been a problem for PayPal only in situations where national statutes are outdated or unclear:

- Some national statutes do not take account of online gambling as distinct from terrestrial gambling, so it may be unclear whether a law that makes terrestrial assumptions applies to online gambling at all, or whether it regulates online gambling in a coherent and systematic way in line with its underlying policies.
- Some national statutes also predate the nation's accession to the European Union, and, particularly because of the state monopolies and national preferences in the gambling area, pre-accession laws may not align well with European law.

National courts and especially the CJEU have done much to resolve the legal uncertainties of outdated gambling laws. Some member states (e.g. Italy, France, Spain) have revised their gambling laws, achieved greater clarity, and removed areas of doubt under CJEU case law. In other member states (e.g. Germany, Denmark) review processes are underway. Uncertainty, however, has prevailed until the courts have resolved the issues, and uncertainty continues for some laws not reviewed yet. Such uncertainty indeed can and does limit the development and improvement of legally available services in the online gambling market.

While problematic for service providers, the remaining legal ambivalence in much of the EU, also results in limited choice and quality of services for customers of online gambling compared to other online activities.

**Question 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?

A regulatory environment that aims to sustain economic activity and services must facilitate and stimulate business as well as protect consumers. Safe online activity for business and consumers alike includes elements such as safe payments, anti-fraud measures, anti-money laundering policies, an effective recourse system, and collaboration with public authorities. An adequately regulated, competitive environment is conducive to choice and quality of services.

A special case is provided by those gambling laws which allow gambling only by state or state-sanctioned monopoly operators. While monopolies within national boundaries were feasible for terrestrial gambling, they are less feasible for online gambling. Although PayPal enforces national monopoly restrictions where they apply, observations show that a terrestrial monopoly does not function adequately in the online environment.

The resulting *de jure* absence of competition weakens the incentive to improve and update services. This can tempt some players to move to other (legally grey area but *de facto* available) online services, undermining the monopoly. The lack of regulated competition may then offer unwelcome opportunities those providers who exploit the situation, rather than seeking to improve it for the benefit of consumers.

While this argument relates to monopolies and competition in general, the focus on online markets renders it more acute. Ultimately, the consumer should have the same choice and quality of services in the area of online gambling as in other areas of online activity.

Some countries (e.g. France, Italy, Spain) occupy a practicable middle ground, avoiding the above mentioned unwelcome consequences, by allowing a measure of competition in a regulated

environment. This reduces the need for restrictive measures (e.g. ISP and bank sanctions), while leaving ample room for social control and taxation.

A number of member states are reviewing their legislation of gambling services at present, several of them considering in particular the online perspective. This indicates that the existing laws do not provide an adequate and comprehensive framework. A meaningful assessment of the coherence between public policy objectives and the actual legislative measures and their effect on market and consumer behaviour is premature where these national processes have not yet been completed. Following from this, it is too early to assess the need for an EU-level initiative, while individual member states are still undergoing legal reviews.

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

The different systems reflect the existing national levels of tolerance towards gambling, various aspects of consumer protection, and also a heterogeneous understanding of the borderlines between the public and private sectors. Such national differences also exist in many other areas and express themselves in a variety of ways. Although this requires close attention to understanding the particularities of legal frameworks or customer expectations in each European market, these differences also render the European markets so dynamic and encourage innovation.

From a pragmatic, business point of view, the purpose of the Single Market is not to negate national differences, but to enable economic activity in a co-operative and open manner. This is the great achievement of the European Union for business its region. Hence, the co-existence of different national and systems and practices for the licensing of services does not need to pose a problem, as long as each of them is clear, up to date i.e. adapted to the online environment, and coherent.

PayPal itself is able to provide services effectively in a legal framework with varying national laws, or in a more harmonised framework, and we do not see serious disadvantages in either. PayPal supports the integration of the European markets, which can lead to harmonisation, but which can also accommodate national differences. It is more important to ensure a legal framework which is clear and adapted to the specific characteristics of online services.

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

Many online gambling operators locate themselves beyond the reach of the conventional means of asserting jurisdiction employed by member states with restrictive regulatory policies or state monopolies. Payment systems are generally within reach, so many member states have followed a trend toward reaching the online gambling operator by means of the payment system.

This practice of making banks enforce gambling regulatory laws can have two sorts of flaws:

(1) The law may be unclear about whether a bank is required to enforce gambling laws. This is particularly true where bank enforcement is not set out by explicit statutes, but where banks are simply treated as facilitators or accomplices to violations by gambling operators by extending general laws on facilitating crime, and often without any concrete case law authority. While handling payments usually does not provide a basis for accomplice liability, the high degree of uncertainty about whether and how far accomplice liability will extend to banks, leaves banks unable to assess risk or know whether mitigation is necessary.

(2) Enforcement through banks is less transparent than enforcement through open, public channels. Banks are not required to disclose the reasons for their decisions, and their decisions are not subject to any sort of judicial review. Requiring banks to enforce regulatory laws tends to obscure enforcement decisions from public scrutiny and accountability. In contrast, enforcement by a government body is subject to parliamentary oversight, ministerial control, and enforcement action through the courts allows the affected party to be heard before action is taken.

If a lack of other effective jurisdictional means dictates a role for banks as enforcers, the scope of this role should be carefully limited, and justified by necessity not by convenience.

Nevertheless, online financial services should on their part demonstrate commitment to law enforcement, crime prevention and co-operation with judicial authorities. Effective collaboration with law enforcement agencies throughout the world, contributes to successful crime prevention and prosecution, and hence to increasing trust and confidence in e-commerce generally, and online gambling in particular.

PayPal collaborates very actively with law enforcement and government agencies across the EU and globally to ensure the safety of our users, the integrity of our systems, and to prosecute offenders who attempt to take advantage of the anonymity which they falsely believe is provided by the internet.

**Question 13:** Are players' accounts a necessary requirement for enforcement and player protection reasons?

Yes. An operator is not able to implement effective player exclusions based on age, vulnerability, prior misconduct, or other important policy criteria, unless the operator can differentiate between its players/customers. PayPal consider this the only way to keep adequate oversight of a player's activities, which is a precondition for excluding the young, those who wish exclusion because of gambling problems, those with a recent history of fraud or criminal offences, and other persons unsuitable for reasons that coincide with the public policies underlying gambling laws. PayPal therefore only co-operates with such providers of online-gambling who have player accounts.

As a payments provider, PayPal controls payments to prevent money laundering and terrorist financing. While this is important in all kinds of payment transactions, the third EU AML Directive

(2005/60/EC) regulates the specific responsibilities and requires 'casinos' to carry out certain anti-money laundering measures. Implementing those measures is not possible without player accounts that enable the operator to trace the flow of funds from one identified player to another.

**Question 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?

PayPal generally requires a "closed loop"; i.e. we generally require an operator to pay out funds using PayPal where the outgoing funds are attributable to funds paid in via PayPal. A closed loop enables a more effective control of suspicious flows of funds. In some EU member states, the law does not foresee or even precludes a closed loop. There may be other means of fraud prevention in these cases, but the lack of a closed loop puts limits to a payment processor's ability to trace or recover funds, where they are proven to be the proceeds of unlawful activity.

Effective complaint procedures and ready access to dispute resolution mechanisms are of key importance to all parties involved in online economic activity. This holds for online gambling as much as for any other online activity. Service providers and consumers must know that any problems with their transactions will be addressed quickly and fairly. In PayPal's experience, however, most payment transaction issues are the result of honest mistakes or poor communication, not fraud.

Traditional redress processes (such as courts) are not useful in resolving most online disputes because the cost is prohibitive. As a result, PayPal emphasises the importance of developing global systems to enable rapid resolution of transaction issues, given the frequency of cross-border implications in the online environment.

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

Online gambling can present an opportunity to receive cash out, besides paying cash in, and hence can be said to have a higher than average risk of money laundering. All payment systems used for online gambling should therefore be subject to adequate regulatory controls such as regulatory authorisation by a member state.

PayPal is not aware of any published cases, and cannot comment on unpublished cases due to the disclosure restrictions imposed by bank secrecy, customer privacy and data protection.

Referring to the list of practices regarded by the European Commission as potentially used for money laundering, PayPal would like to call for a careful distinction between stored value cards and account-based e-money systems. Legislation in this area (EU E-Money Directive, EU Anti-Money Laundering Directive) clearly reflects the differences in type and legal treatment.

Stored value cards present a much higher money laundering risk because:

(1) The holders of stored value cards are sometimes insufficiently identified. Generally, E-money issuers are not required to conduct 'Know Your Customer' (KYC) due diligence until the customer reaches certain sending and receiving limits. However, repeated card issuance allows the same customer to evade identification by obtaining multiple cards, all of which have limits under the thresholds. Hence, no controls exist, either practically or in law, to prevent this abuse of the AML limits on e-money.

PayPal, on the other hand, employs such limits, linking multiple accounts that appear to come from the same source and limiting the number of accounts that any one user can have. PayPal also enforces satisfactory and reliable KYC.

(2) Stored value cards cannot track who receives the money, but account based systems require accounts for both senders and receivers. Account-based systems are much better able to trace the flow of funds, which is the key to detecting money laundering. When money laundering or fraud is detected, funds can be more easily recovered from an existing receiver account than if the funds have passed outside the system.

PayPal emphasises that there are several types of e-money which can be used for online economic activity. An assessment of these types must be differentiated and take their specific characteristics and purposes into account. Various financial institutions can issue e-money, and they can do so in a number of ways. PayPal, for instance, is more extensively regulated than most e-money issuers because it is licensed as a bank. Also, PayPal's business model is based on customer accounts, identification processes, know-your-customer practice (KYC), a durable customer relationship, transaction tracking and control, in addition to dedicated anti-money laundering practices and co-operation with judicial authorities.

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

Micro-payments are typically used for games, not for gambling. Nevertheless, micro-payments are not principally or necessarily any more or less safe than payments of larger sums, given the potential velocity and cumulative volume possible in online transactions which blurs any significant distinction between micro-payments and regular payments in relation to regulatory control. Overall, however, micro-payments cannot be said to constitute a greater risk as regards anti-money laundering.

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

Customers in all areas of online economic activity generally benefit from licensed and regulated payments services which apply anti-money laundering controls.

While PayPal offers e-money services, PayPal is regulated in Europe as a bank and as such subject to legal restrictions as regards confidential customer information. PayPal reports as and when required to the relevant authorities and financial intelligence unit, but cannot disclose information on cases or actions taken in this consultation response.

The special dedication to account management in online gambling helps PayPal to focus attention also with a view to money laundering and to better mitigate potential risks.

A business decision for PayPal to enter in co-operation with an online gambling merchant always includes an assessment of the merchant's anti-money laundering policies and practices. This substantially reduces the risk involved. For co-operation with PayPal, an online gambling merchant must apply similar AML processes as a financial institution, including

- Customer due diligence / know your customer (KYC)
- Transaction monitoring and examining certain transactions with special care
- Monitoring customers, i.e. PEP monitoring and sanction list scanning
- Retention of AML documentation & information
- Internal control procedures, incl. training
- Co-operation with the authorities

**Question 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?

PayPal is not aware of a significant correlation between money laundering, gambling, and social networking. Typically the games available on social websites, (e.g. Facebook) are purchased with credits designed specifically for use only on the social network, and also pay out (if at all) in the same bespoke credits or game goods. Although such credits can be purchased for cash or a cash-equivalent, for example by using PayPal, they are not a cash-equivalent themselves, nor can they readily be converted back into cash or a cash-equivalent. Such credits therefore do not form a stake or prize in real money. Because of the difficulty of converting winnings back into cash on social networking sites, the potential utility of social-network gambling for money laundering is low.

**Question 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?

PayPal does not have any special expertise to share about DNS filtering or IP blocking, and does not use either method as a means of controlling against unlawful or undesirable gambling transactions. Some member states apply those techniques at the national level, but PayPal is not

in a position to judge their effectiveness. PayPal is not aware of any cross-border initiatives involving the use of DNS filtering or IP blocking.

PayPal does not rely on MCC codes to block unlawful gambling.

PayPal acknowledges that certain applicable restrictions require the blocking of gambling payments that would violate national law. PayPal uses a customer's current IP address together with other information in our records to indicate the customer's nationality, and we block payments according to the sender's nationality when the receiver is a gambling operator.

**Question 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?

PayPal uses a single worldwide system for senders and receivers of payments, and is therefore better placed than most financial institutions to control against unlawful gambling payments.

PayPal's system requires that both sender and receiver are PayPal customers, so information is available about each party involved. This facilitates effective filtering across PayPal's entire payment system.

PayPal relies on the verified and recorded information to indicate a customer's nationality and blocks gambling payments according to the payer's nationality. For some countries, PayPal also checks the payer's IP address at the time of payment as an additional precaution. All gambling operators are identified as such in the PayPal system, and a payment is considered to be for gambling if it goes to a gambling operator.

In contrast, card schemes have two separate institutions serving payer and payee. The flow of information between those two is sparse, and practically limited to MCC codes, which banks themselves consider an ineffective means of controlling gambling payments mainly because they fail to distinguish between lawful and unlawful gambling. Many payments to gambling operators are directly from bank accounts via national payments systems, so no MCC or similar code is used to identify the recipient as gambling operator or otherwise. Furthermore, neither the sending bank nor the national payment system employ screening functionality to filter payments based on the nature of the recipient's business.

PayPal accepts online registrations, but the Acceptable Use Policy prohibits usage of PayPal for gambling without first receiving approval. PayPal only approves operators that complete a special enrolment process with due diligence about AML policies and compliance with gambling regulatory laws. PayPal usage is constantly screened to detect violations of the Acceptable Use Policy and accounts get restricted when violations are confirmed. (A copy of PayPal's Acceptable Use Policy is attached as annex, and can be accessed at

[https://cms.paypal.com/uk/cgi-bin/?cmd=render-content&content\\_ID=ua/AcceptableUse\\_full&locale.x=en\\_GB](https://cms.paypal.com/uk/cgi-bin/?cmd=render-content&content_ID=ua/AcceptableUse_full&locale.x=en_GB)

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**About PayPal**

PayPal was founded in 1998 in San Jose, CA and acquired by eBay Inc. in 2002.

PayPal is the global leader in online payment solutions with 100 million active accounts worldwide. Available in 190 markets around the world, users can transact and hold balances in 25 currencies.

In Europe, PayPal has more than 35 million active accounts. PayPal acquired a banking license in 2007 under the regulation of Luxembourg.

PayPal enables any individual or business with an email address to securely, easily and quickly send and receive payments online. PayPal's service builds on the existing financial infrastructure of bank accounts and credit cards and utilises the world's most advanced proprietary fraud prevention systems to create a safe, global, real-time payment solution.

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