

Public consultation on the Green Paper on on-line gambling in the Internal Market

You are invited to reply to the on-line questionnaire. The questions listed in the Green Paper are reproduced in the same order hereunder. A pdf version of the [Green Paper](#) is available in all EU languages for guidance to the questions.

There are 51 questions in the consultation document. You may reply to those questions in any one of the EU languages. You may focus your contributions on the areas of most interest to you; you are not obliged to answer all the questions.

Please save this document on your computer. Once you have completed the questionnaire, come back to the on-line questionnaire. You will be able to upload your answers on page 3 of the on-line questionnaire.

The consultation will close on 31/07/2011.

We thank you for your participation.

Your name / Your organisation:

Simo Dragicevic / Bet Buddy

Questions from the Green Paper on on-line Gambling in the Internal Market

1. Regulating on-line gambling in the EU: Recent developments and current challenges from the Internal Market standpoint
 - 1.1. Purpose of the consultation
 - 1.2. On-line gambling in the EU: current situation

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

(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)

(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?

(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?

(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?

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

Other comments on issues raised in section 1

2. Key policy issues subject to the present consultation

2.1. Definition and organisation of on-line gambling services

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

(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?

(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?

(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?

Other comments on issues raised in section 2.1

Regarding the definition of online gambling services

A relevant market trend in this context is the growing use of virtual currencies which are used in conjunction with online games of skill and chance. For example, Zynga's Texas HoldEm, an online poker application accessed via Facebook, currently has c.34 million monthly active users (MAU)¹. A relevant consideration is whether or not players of games such as Zynga's Texas HoldEm poker application are actually gambling or not.

Zynga have applied to patent virtual currency². Zynga state that “in some cases, players want to play gambling-style games, but without the regulated gambling aspects” and that “one advantage of the approach described herein is that virtual currency can be used to purchase virtual items, but neither the virtual currency nor the virtual items can be transferred or redeemed in such a way that would be considered gambling proceeds.”

In this context purchasing \$10 worth of virtual poker chips with legal currency and winning virtual currency from the proceeds of playing Texas HoldEm poker is not considered gambling. There are a number of considerations:

- What if gambling and casino style games which use virtual currency were designed in such a way that their payout in virtual currency was more frequent compared with licensed online gambling sites, thus making the game more 'fun', and potentially increasing players' perceptions of their own skill. This could potentially lead to more people moving to regulated gambling sites. The concern here is whether vulnerable people, such as youth for example, are getting greater exposure to online gambling.
- What if the player places equal value to legal and virtual currency from gambling proceeds?

We therefore suggest that online games (e.g. poker, casino) in the context of virtual currency, and their implications from a consumer protection perspective, are considered further as part of this consultation i.e. should the same consumer protection requirements expected of regulated online gambling operators apply to the operators of these games too? Recent press articles are highlighting the potential dangers of social gaming/gambling e.g. see a recent Forbes³ report outlining concerns that children as young as 13 years old are gambling on Facebook games.

References

1. AppData. Retrieved from: http://www.appdata.com/leaderboard/apps?metric_select=mau
2. US Patent and Trademark Office. Retrieved from: <http://appft.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&p=1&u=/netahtml/PTO/search-bool.html&r=1&f=G&l=50&co1=AND&d=PG01&s1=zynga&OS=zynga&RS=zynga>

3. Forbes (2001). 13 Going on 21: New Facebook Game Allows Children To Gamble. Retrieved from: <http://blogs.forbes.com/jasoncollazo/2011/07/22/13-going-on-21-new-facebook-game-allows-children-to-gamble/>

2.2. Related services performed and/or used by on-line gambling services providers

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

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

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

(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?

Other comments on issues raised in section 2.2

2.3. Public interest objectives

2.3.1. Consumer protection

(15) Do you have evidence that the factors listed in the Green Paper are linked to and/or central for the development of problem gambling or excessive use of on-line gambling services? (if possible, please rank them)

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

Weaknesses/Inefficiencies in the self-exclusion process

The following is taken from the article 'Time to change: the industry's approach to self-exclusion' (Dragicevic, 2011)⁴.

It is estimated that there were no fewer than 65,000 self-exclusions in the UK in 2008/09, 45,000 in connection with remote and 20,000 with non-remote gambling⁵. A major weakness in the current self-exclusion process is that operators have no means of knowing whether their players have self-excluded from other operators. It is certainly true that it should ultimately remain the personal responsibility of individuals to stop themselves from gambling should they need to. However, gamblers can be their own worst enemy due to the nature of addiction e.g. by excluding from one betting operator and then gambling with another. Therefore the idea of providing the opportunity for a gambler to self-exclude from more than one operator is beneficial to the gambler and supports the notion of the gambling operator providing a duty of care to vulnerable customers.

During a series of interviews with senior industry stakeholders for a research project at Cass Business School, City University London in 2010⁶, stakeholders stressed a need for a more centralised approach to online self-exclusion. For example, Tim Phillips, then Director of European Corporate Affairs at Betfair, said that “adopting a pan-European approach makes sense [for self-exclusion], such as a common database where operators share relevant data”. However, the industry raised a number of legitimate implementation challenges that have held-up progress in adopting a centralised self-exclusion service, including data privacy, cost, trust and assurance and technology standards.

An assessment of the UK’s self-exclusion social responsibility code provisions and ordinary code provisions⁷ suggests that the pace of technology change is rendering some provisions out of date and that more could be done to strengthen self-exclusion processes. Social responsibility code provisions, which are conditions of licensing, stipulate “licensees must have and put into effect procedures for self-exclusion and take all reasonable steps to refuse service or to otherwise prevent an individual who has entered a self-exclusion agreement from participating in gambling.”

Does this provision mean that the online operator must take all reasonable steps to prevent a self-excluded gambler from gambling on any gambling website? We believe it should as online gambling operators have a duty of care to take all reasonable steps to protect vulnerable people from the negative aspects of gambling. In the UK the most high-profile self-exclusion case is *William Hill v. Calvert*⁸. The court ruled that despite Calvert running up debts of £2.1m having self-excluded from his William Hill accounts, there was no causation in this case as Calvert would have accrued the gambling loss anyway given his addiction. The judge stated “the conclusion flows in my judgment naturally from the inherently limited effectiveness of self-exclusion as a remedy for the underlying problem”.

The nature of online gambling allows for much easier data capture and sharing amongst gambling operators compared with land-based gambling. The industry is therefore well placed to support more innovative self-exclusion approaches, such as using cross-operator self-exclusion service. The data is certainly available to share as it is a UK licensing condition to maintain a register of self-excluders, including data such as appropriate records (name, address, other details), and a record of any payment cards, for example. Whilst some raise legitimate data privacy concerns to sharing player data, data encryption technology can be implemented in a manner that deters even the cleverest of hackers, and even in the unlikely event that an encrypted record could be reversed, when combined with anonymised player records, means that they cannot be linked to personal details.

Ordinary codes do not hold the same status as social responsibility codes however are still admissible as evidence in criminal or civil proceedings. They stipulate that “licensees should encourage the customer to consider extending their self exclusion to other remote gambling operators”. The code suggests that “the licensee should provide a statement to explain that software is available to prevent an individual computer from accessing gambling internet sites”. However, given the pace of technological change such approaches cannot effectively solve the problem. Not only are there different operating systems (e.g. PC, Mac, Linux), more importantly, with betting increasingly taking place via texting, smart phones, tablets and interactive TV, PC blocking solutions are fast becoming obsolete. In addition, many online operators are now offering self-exclusion via gaming vertical, an industry innovation which effectively renders PC blocking software redundant given it can only support blanket self-exclusion.

Given these weaknesses in the current self-exclusion process Bet Buddy has been consulting with charities such as GamCare and industry associations such as the remote Gambling Association to launch a pilot of VeriPlay.org, a service that has been developed that allows safe and secure exchange of operator data to better protect vulnerable gamblers. VeriPlay.org maintains a central database of self-excluded players. Operators can upload anonymised player records, meaning data always remains anonymous and meaningless to anyone except the operators sending and receiving the data. The VeriPlay.org algorithm encrypts the data and then matches player data across a number of data attributes that are uploaded daily, weekly or monthly, depending on the needs of the regulator and industry. Operators can check whether one, ten, or all of their players are on the central list of self-excluded players, which can be accessed either via secure web services or via a web portal. The solution can support both blanket self-exclusion and self-exclusion via gaming vertical. It is envisaged that the majority of operators would use web services to integrate such a service, since it enables low-touch straight through processing, like geo-filtering and age verification. A benefit of the web portal is that it allows for easy access for both land-based and online operators to share encrypted data.

Whilst credit should be given to the industry for its efforts to share data to identify suspicious sports betting transactions now is the time for operators to start sharing their data and collaborating to better protect vulnerable gamblers. In today’s digital economy one of the most important enablers of value creation is combining data from multiple sources. However market failures still exist for the sharing of data because of a lack of incentives for stakeholders⁹. Policy makers may therefore have to apply regulation to ensure that data is shared in industries where there is a clear public benefit to do so e.g. doctor or pilot errors. In such cases government has a clear interest in making this type of data available as it benefits society. It comes as no surprise that Representative Joe Barton’s recent bill to license and regulate online poker in the United States stressed the need for a centralised self-exclusion list that all operators can access¹⁰.

Across all industries regulators have always struggled to keep pace with technological innovation and the gambling industry is no different. Whilst challenges exist to implementing collaborative industry technology solutions the use of secure data encryption algorithms, anonymised player records, and cloud hosted architectures make not only such solutions now incredibly secure but also on demand and affordable. The recent Sony Playstation customer data failure¹¹ demonstrates that whilst it is right that the industry is focused on protecting customer data the focus should now shift to using data to better protect the customer. The experience of the UK in 2007 following the implementation of age verification and self-exclusion protection demonstrates that online operators can and will quickly implement new

safety features when required to do so. Importantly the implementation of these necessary features has not negatively impacted industry growth.

At a recent industry debate¹² in Westminster in London on the future of gambling leading industry figures from the business-to-consumer and business-to-business online gambling sectors stressed the importance of innovation in developing richer and more varied gambling experiences across multiple channels. Whilst innovation cannot be halted and should be encouraged it must also focus on leveraging advances in academic and scientific research and technology to better protect vulnerable customers.

References

4. Dragicevic, S. (2011). It's time to change: the industry's approach to self-exclusion. *World Online Gambling Law Report*, 10, (7), p6-8
5. Orford, J. (2011). *An Unsafe Bet – The Dangerous Rise of Gambling and the Debate We Should Be Having*. Chichester: Wiley and Sons
6. Dragicevic, S. & Tsogas, G. (2010). Can the online gambling industry continue to grow profits whilst protecting players? Cass Business School. Retrieved from: <http://www.cassknowledge.com/article.php?id=471&title=Can+the+online+gambling+industry+continue+to+grow+profits+whilst+protecting+players%3F> [20 July 2010]
7. UK Gambling Commission (2011). Licence conditions and codes of practice (consolidated version). Retrieved from: <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf>
8. The Lawyer (2008). High Court backs William Hill in gambling debt claim. Retrieved from: <http://www.thelawyer.com/high-court-backs-william-hill-in-gambling-debt-claim/131687.article>
9. McKinsey & Company (2011). Big data: The next frontier for innovation, competition and productivity [Adobe Digital Editions version]. Retrieved from: http://www.mckinsey.com/mgi/publications/big_data/pdfs/MGI_big_data_full_report.pdf
10. Barton, J. (2011). Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2011. Retrieved from: http://www.subjectpoker.com/files/barton_bill_june_2011.pdf
11. Menn, J. (2011). Data breach hits 70m Sony customers. *Financial Times*. Retrieved from: <http://www.ft.com/cms/s/2/f4026292-7053-11e0-bea7-00144feabdc0.html#axzz1RyQYqucF>
12. Westminster eForum (2011). The future of gambling - technology, international markets and regulation. Retrieved from: http://www.westminsterforumprojects.co.uk/forums/sample/Gambling_May11examplepages.pdf

Information/warnings/self tests (more easily applied on-line than off-line)

Self-Tests/Assessments

We believe that all online gambling operators should offer an appropriate self-test which can provide tailored feedback based on the answers that the gambler submits as to whether they could be at risk of problem gambling. Advanced self-tests are now available which provide detailed player feedback rather than simply providing an overall score or number to the player. The advanced self-test can inform the player whether, based on their responses, they are potentially suffering social or temporal consequences as a result of their gambling (rather than simply that they are at risk of problem gambling), for example.

Online Timers/Clocks

We agree that if a player is spending an increasing amount of time online then they are possibly showing signs of a growing gambling habit, therefore providing player feedback should be encouraged. However, the effectiveness of such warnings is questionable due to the generic nature of them e.g. the interpretation and relevance of a pop-up message warning a player that he or she has played for 30 minutes after he or she has spent \$50 is dependent on the player. A non-problem gambler could interpret this as a useful cue to stop gambling whilst a problem gambler could interpret this as a sign that they only have 30 minutes (for example) to win back what they have lost.

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

(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?

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

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

(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?

(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?).

Use of Behavioural Analytics Technology

Online gambling allows for many effective preventive measures that are arguably more difficult to implement in land-based gambling. Forms of pre-commitment and self-limitation are easier to implement online. The internet allows for data analytics and behavioural analysis, which not only helps academics and scientists to better understand gambling issues, but also helps the industry to identify at-risk players. Segmentation of customers based on the analysis customer behaviour and data has long been a practice for online marketing and risk management. However, the use of technology to segment players based on gambling patterns relative to problem gambling risk factors is not, unfortunately, a widespread practice. Such segmentation would provide new opportunities for gambling operators to provide feedback to their players that could potentially help at-risk players to regulate their game play.

Research from The Division of Addictions using bwin data was undertaken by Braverman and Shaffer (2010)¹³ who studied the betting patterns displayed during the first month of internet gambling. They analysed betting patterns relative to behavioural markers, in an attempt to predict the development of gambling-related problems. The study was particularly noteworthy as it was the first to analyse actual online gambling behaviour during the first month of gambling activity in order to predict problem gambling behaviours. The study revealed that players characterized by high intensity and frequency of gambling and also by high variability of wager (bet) sizes during their first month of gambling were at higher risk than others to report gambling-related problems upon closing their accounts.

This study has been replicated by research undertaken by City University London in partnership with Bet Buddy and GTECH G2 (note: the research is currently undergoing peer review)¹⁴. The results were consistent with Harvard's findings. The research identified groups of players who exhibited different gambling patterns. Some gamblers showed signs of potentially risky gambling behaviour when assessed using problem gambling risk factors and could potentially benefit from targeted intervention to help them to better manage their game play.

Therefore it would be highly beneficial for online gambling operators to proactively provide feedback to gamblers on their game play relative to problem gambling risk factors outlined in section 2.3.1. Behavioural analytics technology can therefore help detect the early signs of problem gambling behaviours and provide feedback to players and offer choices to help them to better regulate their game play if they are showing signs of risk e.g. set a betting limit. Harvard also support these recommendations, with Shaffer and Martin (2011)¹⁵ suggesting in a recent paper "the next step toward the development of sensitive, specific and reliable markers that can predict the emergence of gambling disorders is to utilize probable markers as building blocks to create an algorithm to predict, within the context of longitudinal studies, the development of PG".

McKinsey & Company (2011)¹⁶ also draw attention to the further opportunities that data analytics can offer, beyond traditional applications in marketing and risk management. They state that applying advanced data analytics in new contexts (e.g. healthcare) can identify individuals who would benefit from proactive intervention or lifestyle changes. Some European and North American lotteries are already making use of such technologies.

References

13. Braverman, J. & Shaffer, H. J. (2010). How do gamblers start gambling: Identifying behavioural markers for high-risk internet gambling. *European Journal of Public Health: Advance Access*. DOI:10.1093/eurpub/ckp232.

14. From Complexity to Opportunity - Software Accelerates, From Online Virtual Worlds to Behavioural Analytics Responsible Gambling Council Discovery Conference Ottawa, Canada, 7th April 2011. Retrieved from:

http://www.responsiblegambling.org/articles/Simo_Dragicevic_2011.pdf

15. Shaffer, H. J. & Martin, R. (2011). Disordered Gambling: Etiology, Trajectory and Clinical Considerations. Retrieved from:

http://thescholarship.ecu.edu/bitstream/handle/10342/2974/Shaffer%2520&%2520Martin%2520%2528in%2520press%2529_Annual%2520Review%2520of%2520Clin.%2520Psy.%5B1%5D.pdf?sequence=1

16. McKinsey & Company (2011). Big data: The next frontier for innovation, competition and productivity [Adobe Digital Editions version]. Retrieved from:

http://www.mckinsey.com/mgi/publications/big_data/pdfs/MGI_big_data_full_report.pdf

(23) What is the statutory age limit for having access to on-line gambling services in your Member State? Are existing limits adequate to protect minors?

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

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

(26) Which national regulatory provisions on license conditions and commercial communications for on-line gambling services account for the risks described in the Green Paper and seek to protect vulnerable consumers? How do you assess them?

Other comments on issues raised in section 2.3.1

2.3.2. Public order

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

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

(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?

(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?

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

(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?

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

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

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

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

(37) Are national e-commerce transparency requirements enforced to allow for illegally operated services to be tracked and closed? How do you assess this situation?

Other comments on issues raised in section 2.3.2

2.3.3. Financing of benevolent and public interest activities as well as events on which on-line sports betting relies

(38) Are there other gambling revenue channeling schemes than those described in the Green Paper for the public interest activities at national or EU level?

(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?

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

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

(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?

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

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

(45) Do there exist transparency obligations that allow for gamblers to be made aware of whether and how much gambling service providers are channelling revenues back into public interest activities?

Other comments on issues raised in section 2.3.3

2.4. Enforcement and related matters

(46) Which form of regulatory body exists in your Member State and what are its competences, its scope of action across the on-line gambling services as defined in the Green Paper?

(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?

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

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

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

(51) What are your views on the relative merits [in terms of suitability and efficiency] of the methods mentioned in the Green Paper as well as any other technical means to limit access to gambling services or payment services?

Other comments on issues raised in section 2.4

Other comments on issues raised in the Green Paper