

## 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:

Gibraltar Gambling Commissioner, Ministry of Finance, Gibraltar. Approved by the Minister for Gambling. This document represents the views of the Government of Gibraltar.

### 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?**

The Gibraltar Gambling Commissioner is aware of numerous studies addressing online gambling within and beyond the EU which have been undertaken by a range of public and private bodies in recent years. Many of these have addressed the subject in depth, including speculative and real data, and some are descriptive rather than analytical. Most also have an overt or underlying bias either for or against the current arrangements for online gambling provision. As a consequence, there is no definitive report or analysis we could recommend to policy makers, rather, those available must be taken collectively and judged on their merits.

In general terms the online market appears to represent around 10% of the total gambling market, but this figure varies significantly from jurisdiction to jurisdiction according to the level of local 'offline' supply and the penetration of the internet.

Whilst it is frequently assumed that the online and offline markets are closely related in terms of their customer base, and there are examples of cross fertilisation, there is also strong evidence that the two markets operate separately.

As an EU jurisdiction hosting online gambling services Gibraltar remains open for EC members and officials to visit at any time to examine the operation of online gambling services and their regulation.

**(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)**

This question is an example of the bias that has been introduced into the analysis of online gambling services. International law on the status of e-commerce in general, the varied arrangements of individual jurisdictions vis-a-vis e-commerce and online gambling, and supra-national legislation and regulation including but not limited to the TFEU and the WTO Agreements, make terms such as 'black market' unhelpful, especially if this term is equated with 'unlicensed operators'.

The Government of Gibraltar has issued licences to only 21 existing, 'world class' operators, the majority of which are licensed by other Member States for offline gambling, all of whom have IT infrastructure, management and operational staff working within Gibraltar as well as management, staff and ancillary equipment in other EU jurisdictions, and in some cases elsewhere in the world. These operators serve markets within and beyond the EU and have been included in many of the studies referred to in question 1. Some are publicly listed companies whose nature and size (turnover/profit etc) are subject to public reporting, others are private companies required only to disclose what is regarded as operationally sensitive data to the regulatory and licensing authorities.

**(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?**

The Gibraltar Gambling Commissioner is, perhaps, almost uniquely positioned to comment on the implications of EU based and licensed online operators providing gambling services to consumers within the EU. It is less well placed to comment on how this impacts on local markets, save to say that a number of governments and others have made their own observations based on limited information. It is the Commissioner's experience that setting the entry criteria to be awarded a licence at a high but attainable level, taking into account corporate factors including culture, integrity and probity; financial resilience; compliance history; reputation and the value of that reputation and its associated brands; together with a commitment to open standards within the jurisdiction, as well as high technical and operating standards, the Gibraltar licensing and regulatory model has 'structured out' many of the anticipated or real regulatory issues other Governments express concerns about or have experienced, save for the fiscal implications.

Gibraltar based and licensed operators have subsequently provided one of the most resilient, high grade and competitive environments in the world for the provision of online gambling. Industries such as Gibraltar's have, we believe, suppressed the unlicensed and unregulated

providers beyond Europe or the reach of bona fide regulation. We firmly believe that if the cost base of online provision is substantially increased it will have the inevitable economic consequence of creating an under priced market elsewhere in the world, to which both vulnerable and experienced customers will be driven by better value. This is already the experience in ‘asymmetric’ markets where some operators are prepared to engage in practices others are precluded from, or their operating costs are substantially lower.

Gibraltar operators, notwithstanding the many millions of registered and active customers, generate relatively few identified or confirmed problem gambling cases, gambling system failures of statistical significance, or substantive consumer complaints. However, all such incidents are logged, investigated and responded to. This approach, of open review of every incident or customer complaint is a unique testament to the quality of the licence holders, their systems and the regulatory model. It is not asserted that no problem gamblers enter or develop within online gambling, or that mistakes or complaints are not made. Such cases do occur, but problem gamblers are created by multiple factors and their entry into online gambling is as much a bi-product of those factors as it is of the actual online gambling itself, and the error/complaint record is outstandingly low.

**(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?**

In general terms, whilst a number of non EU jurisdictions apply adequate technical standards to their licensing and regulation processes, it is our experience that non EU regulators tend to have an over strong commercial focus and ‘market’ their jurisdiction and licences with, at times, insufficient rigour applied to the examination of the corporate culture and values of the potential licensee. It is not always the case, in our experience, that the suitability of the licence holder is put before the opportunity to award a ‘licence’. As a consequence there are numerous sites that we would not licence in Gibraltar and our operators are, de facto, prohibited from doing business with.

It is also the case that some non EU licensees are permitted to manage and control the licensed operation from far beyond the licensing jurisdiction, and without a licence or regulatory relationship within that jurisdiction. This approach effectively allows some non EU operators to conduct their businesses outside the conventions, controls and protocols of the licensing authority, and diminishes the regulator’s access and powers as these have to be exercised in other states where the licensing authority has no statutory base and the licence holder is not subject to any form of regulation.

**(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?**

A substantial number of existing and proposed Member States’ gambling laws appear to be in contradiction of the TFEU, uncertain, and therefore open to challenge in the CJEU, notwithstanding the self acclaimed internal coherence of the local law. The processes of the CJEU and the failure to progress infringement cases to conclusion have added to the uncertainty and confusion as various Advocates General have made comments that gain substantial political or media attention but are not necessarily well founded or agreed by the CJEU. At present there is insufficient action by the EC to enforce the TFEU as it relates to online gambling, notwithstanding the earlier ‘landmark’ cases that set the general direction. It

is doubtful whether adequate consumer protections or commercial stability is possible without a pan European licensing framework which allows for a genuine cross border market.

**(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?**

Again, the arrangements across Member States are so varied that it is not possible to provide a generalised answer. A number of Member States have sought to adopt, or have adopted, laws relating to online gambling that will not meet declared fiscal or public policy objectives, including player protection, as they deny consumers access to adequately competitive or regulated services. In these circumstances the customers, especially experienced and higher spending online gambling customers, who are more likely to be vulnerable customers, will seek out 'better value' sites in less well regulated markets as the potential returns from such sites are manifestly better.

#### **Other comments on issues raised in section 1**

The Government of Gibraltar recognises that Member State governments have legitimate interests in controlling the integrity and ensuring the consumer protection and other aspects of online gambling. We believe these interests can be met within the parameters of the existing TFEU provisions and that the current developments of overly burdensome infrastructure requirements, taxation/duty levels and product limitations are counter productive, as they will inhibit the resilience of the existing industry trying to serve a vibrant market, whilst providing strong economic incentives for consumers to use sites beyond the reach of, and far below the standard of, EU derived regulations.

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?**

The majority of Member States which have legislation addressing online gambling have defined it as 'gambling by means of electronic communication' or words to this effect. However, it may be more useful to define online gambling services in two parts: the customer activities in interacting with the service provider (the use of electronic media to gamble), and the establishment and management of the operators' services (the establishment of servers and other communication, bet/event generation, recording equipment, management and control of the enterprise) as the two occur independently.

**(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?**

This very much depends on the structure and content of the event offered by the media and the relevant law pertaining in the Member State. It is frequently the case that such are the

volumes of entrants, the hidden costs of entry and the simplicity of the ‘game’, that in some ‘promotional games’ there are multiple ‘winners’ leading to one or more being selected by random or qualitative means that amount to a lottery. This process may be applied to ‘paid’ or ‘unpaid’ entrants, but the presence of unpaid entrants may undermine the definition of gambling. The ‘mass access’ of the media to ‘promotional games’ is no longer limited to TV and newspapers, with social media and bespoke websites able to attract large audiences who may be exposed to such offers, which may be closely associated with, or actually amount to, unregulated (and possibly unfair) gambling. As a consequence Gibraltar discourages and has declined requests for licences/permissions to promote such ‘games’ to other jurisdictions.

**(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?**

Generally cross border services are not available in licensed premises, though some premises may offer a ‘pooled prize’ with associated premises in other places. It is assumed that ‘internet cafes’ providing access to online gambling facilities are not regarded as ‘licensed premises’ in this context. Conceptually it is possible for the servers controlling machine games in licensed premises to be located outside the jurisdiction. Any permissions for external servers should be compatible with the regulation of such facilities when provided in places other than licensed premises.

**(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?**

Online gambling services are by definition transnational services in their nature. The establishment of different technical/regulatory requirements and widely different tax/duty regimes creates an environment where unregulated or marginally regulated sites will exploit market opportunities, whilst the legally compliant sites will seek to become a viable service provider (often in uneconomic circumstances) or opt out of the market. Whilst a form of local licensing in all Member States appears inevitable in the absence of a pan European framework, the reciprocal recognition of Member State licences, as is applied in other spheres of economic activity, should be the norm.

The current arrangements in many Member States suppress the licensed market and/or the use of the licensed market and deny the State the revenues it seeks whilst pushing consumer demand towards unregulated or less well regulated gambling services.

**Other comments on issues raised in section 2.1**

An EU Directive on online gambling provides an opportunity to clarify and harmonise the existing arrangements to the benefit of consumers, the online gambling industry and, of increasing relevance, their core service providers: the telecommunications industry, banking and payment processing, IT service, supply and development. The many thousands of jobs in the online gambling industry, within the EU, are supported by many thousands more in secondary industries within and beyond the EU. The industry is far from being optimised and is increasingly under pressure to outsource functions and workstreams to cheaper jurisdictions in order to compete with less well regulated sites.

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?**

Gibraltar requires its operators to comply with relevant state level laws compatible with EU law in respect of commercial communications (marketing), as well as the principles of the Gibraltar Gambling Act.

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

Payment systems are subject to various EU and wider Financial Services regulatory requirements as well as commercial requirements (e.g PSI standards). Gibraltar does not individually approve each payment type but reserves the right to disallow any particular payment method or product based on realised or perceived market/consumer risk. The existing products are assessed in terms of their probity and contribution to player management processes such as identification, age verification and anti money laundering protections etc.

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

It is a paradox that in certain Member States there is little or limited identification required to make use of land/cash based facilities (slot arcades, bingo, betting shops), some of which permit access by children, whereas every online/e-payment account can and should have effective customer registration and screening for age verification, security, problem gambling and anti-money laundering purposes (AML).

We regard effective account registration and 'Know Your Customer' (KYC) processes as essential for all forms of online gambling (some jurisdictions have excluded betting/lotteries from their AML procedures). Whilst online accounts cannot be aggregated at the multi operator level, an individual operator can aggregate every bona fide customer's expenditure over the lifetime of the account, including when the customer opens a second or third account, typically after 'leaving' one operator for another then returning, often with different secondary identifiers (email address, bank card, even house address).

Additionally, online gambling, at registration or subsequently, allows customers to impose a range of spending controls, through to short or long term exclusion from the site. Whilst this does not prevent the customer from registering with a different operator, it does mean that the excluding operator is putting social responsibility before profit.

**(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?**

See (13) also. For age verification, security, problem gambling and AML purposes a range of inter-related, largely commercial database checks, but also 'manual' (telephone, email, Google) processes, are used by operators to screen all entrants to their facilities. This entry procedure is complemented by a risk based approach of escalating measures to further confirm the bona fides and identity of the customer.

It should be noted that the vast majority of customers are ‘casual’ gamblers spending relatively small amounts at each log in, who create a ‘zero’ risk profile. As such low activity accumulates, the customer is displaying non problematic behaviour common to the vast majority of customers, using a consistent payment method, and confirming their bona fides. However, if the spend escalates, becomes erratic or displays signs of loss chasing or other aberrant behaviour, the credible operators have automated alerts which trigger the opportunity for manual review/interventions.

All operator processes must comply with relevant Data Protection laws, this is non negotiable. A primary issue for operators is either the non availability, or the problematic/denial of access to online gambling operators of population databases in certain Member States (and further afield). The absence of accessible verification facilities means the operators must apply closer supervision/restrictions to partially verified accounts until such time that copy official documents or other means are used to confirm the account holder’s identity.

### **Other comments on issues raised in section 2.2**

As previously mentioned, online gambling uses a wide range of secondary industries. Properly structured regulation offers the opportunity to focus investment in such support industries within the EU and ensure these services are provided at EU standards.

#### 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)**

Notwithstanding the comments at question (1) about the reliability of available research, gambling prevalence studies in various Member States consistently indicate that problem gamblers use multiple facilities to gamble, but of these, online gambling is generally low in the order or frequency of use. This is also consistent with the widespread finding that there is a relatively low take up of online gambling in most States and that the cross over/cannibalisation of customers between online and offline is relatively low.

Gambling online is a related but different experience to land based gambling. Regrettably, many studies, or the interpretation of them, transpose the findings from the land based environment to the online environment without consideration of one of the driving causes behind offline gambling – the social/physical interaction, peer group pressure, other amenities and ‘free’ access to such facilities (High Street, bar, cafe etc). Whilst online gambling can replicate some of these attractions, and may have others (privacy, hours of access), online gambling also requires the player, generally, to invest in the IT equipment and maintain connectivity to play online, as well as complete the identity verification process. i.e. there are additional costs and entry barriers to online gambling that do not apply in land based environment, indeed, the offline ‘complimentaries’ arrangement may provide the land based customer with food and drink and other rewards not available online (though online may reward/recognise customers in other ways, typically controlled bonuses).

Numerous studies have identified the proliferation of street and shop based slot machines as an entry level and aggravating factor to problem gambling, particularly for young people. There is further evidence from prevalence studies and operational data of land based facilities (betting shops, arcades, bingo clubs and casinos) showing that physical slot machines are

particularly attractive to those predisposed to excessive or problem gambling. By contrast, where online gambling has been correlated with problem gambling the method of gambling has been found to be weighted towards spread betting/trading/financial services, which by definition are higher value/risk and intense operations, subject to very different considerations than recreational gambling that has grown out of control, but nevertheless 'tick the boxes' of the recognised problem gambling surveys.

**(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)**

The online gambling customer base is not a homogenous audience. It is clearly segmented and the relevance or effectiveness of certain gambling controls varies according to the product and the nature of the customer. As the industry is now more than a decade old many customers are experienced users who have become familiar with their own gambling patterns and the utility of controls for their particular circumstances. Gambling operators must, therefore, deploy and make available a range of controls to ensure problematic, vulnerable or criminal use of their websites is minimised:

i) Age limits: Age limits must not be viewed in isolation of the presentation and marketing of online gambling sites and the risk management processes adopted by operators that should make underage gambling a pointless exercise for juveniles and a profitless exercise for operators.

Age controls in the form of age verification on entry and/or at any payout, combined with warning signs and information that further identity verification is the operator's policy, supported with regulatory sanctions for operators who knowingly permit or tolerate underage gambling, including the reimbursement of wagers, are effective mechanisms in deterring and preventing underage gambling. Whilst the 'mystique' of adult entertainment can never be totally overcome and the diligent or dishonest teenager may be able to circumvent controls through the use of another adult person's data, there is very very limited evidence of online gambling facilities being accessed by under age users, assuming those who do realise they are entitled to recover any losses by simply declaring they were under age, or their deceit is discovered at payout when the data used fails further examination.

In our experience, whilst it is possible for an under age person to falsely register as an adult on an online gambling site, this is not the measure of the effectiveness of the operators' arrangements for deterring and preventing underage gambling. A better test is the number of such incidents taking place – where the juvenile has registered knowing or subsequently discovering that he cannot withdraw winnings and that his losses will be reimbursed if he proves his (under) age. Such cases are very infrequent but are occasionally reported to us by operators.

ii) Self limitation (financial and time) and self exclusion: These are referred to within Gibraltar as 'Gambling Management' and 'Gambling Access Control' and, in our experience, as currently available and implemented by operators and customers, they are of considerable value in limiting gambling activities, but are open to misunderstanding and abuse, so would benefit from being regularised. In parallel, their utility and the way they may be implemented is both questioned and supported by different academic, 'medical' and anecdotal studies.

By definition, self limitation/exclusion is a voluntary/elective arrangement and the new or experienced customer who may benefit from using them may access a new site and choose to ignore the opportunity to use the controls. Such action would then rely on the operator's

systems detecting and reporting any 'aberrant' deposit and/or gambling patterns and initiating human intervention (analysis, monitoring and possibly contact). This is a very subjective process and a possible unwelcome interference in a legitimate customer's leisure activities.

Furthermore, the tool of 'self exclusion' has become associated with being a 'problem gambler' tool, as opposed to a more generic 'responsible gambler' tool, leaving customers who do not define themselves, or wish to define themselves as 'problem gamblers' unwilling to use the facility as it is too inflexible – a minimum exclusion period of 6 months. We advocate that a sliding scale of access controls, applied on a 'product by product' (casino/poker/bingo/betting) should be available to customers, with different and proportionate processes for triggering and removing controls, and monitoring the customer on 're-entry'. Maintaining only the 'minimum six month' rule may have the perverse incentive of 'responsible gamblers' not using the control facility as it denies them any involvement.

It is also our experience that as well as customers using 'self exclusion' and associated terminology very loosely, when they actually mean 'closing the account for any one of a wide range of reasons', 'taking a break from this site whilst I play elsewhere' etc. We have also found that a small group of customers use the self exclusion process as a means to coerce customer services staff to release bonuses – by threatening to self exclude and play elsewhere if additional bonuses are not awarded or accelerated.

Deposit limits are, generally, less problematic but are also open to misinterpretation when the player regards them as a loss limit and loses earlier winnings or bonuses.

iii) Information/warnings/self tests (more easily applied online than offline): Such facilities are easily integrated within operators' sites and are of general and specific use to some categories of customer. Their overall utility can, however, be compared to that of car speed or tobacco warnings – some players will simply ignore the material despite its accuracy/relevance, and others may be attracted by the confirmed mystique and 'challenge' around the products.

More importantly, online operators are able to monitor customer deposit and playing patterns and draw their own conclusions for security, marketing, AML and problem gambling purposes, about the nature of the customer. They can also interact with the customer and apply, in some cases, sophisticated contact and research facilities to establish the character of the customer. It is our view that whilst the adult customer is always primarily responsible for his or her own gambling decisions, responsible operators are content to be held to account for their interpretation and management of the customer's gambling pattern. We have no evidence of operators seeking to exploit problem gamblers, any more than they would want to attract security risk customers.

Finally, in terms of information pages, where they are not integrated within the site, they are 'a click away', a facility that the offline gambler or impulsive/depressed spender in most other online or offline environments is denied.

iv) Banning the use of credit: The consideration of the use of 'credit' has to be segmented:

a) There is a long and unproblematic history of 'credit sportsbetting' in the UK whereby the recognised and established customer is allowed to settle their betting account on a pre agreed cycle – weekly, monthly, quarterly or on demand. This practice had many drivers, but existed successfully when gambling debts were unenforceable. This legal situation may have put a brake on bookmakers' willingness to permit credit to certain customers. Now such debts are, generally, enforceable, different considerations may apply, but that is not to say such facilities

should not be permitted, they should, but part of the regulatory process should be the extent to which operators responsibly permit credit betting.

b) The use of credit cards is also supported by us, through experience. Credit cards are the most secure form of common financial instrument. A customer using a credit card is in the group least likely to be engaged in any form of age/identity or playing fraud. Gambling operators are not responsible for the level of credit the customer has been granted by the credit institution, or the number of cards he/she has access to, though the pattern of use of such cards is very visible to the operator and can be taken into account when assessing the suitability of the customers' playing patterns for responsible gambling and other purposes.

c) Gambling (gaming) on credit would not be supported by us. We see stark differences between a sportsbetting account and a 'casino' or poker account being run in deficit and on credit. There is a history predating current legislation which amplifies why gaming on credit is not permitted.

v) Reality Checks. At all times the online player is able to see his deposit value and balance, be aware of his gameplay/exposure, and review in detail his gambling history. Equally, the operator is able to 'see' the amount of time a player is engaged with the product and form a judgement on the plying style/activities. That consumers may get absorbed in a wide range of online activities is well recognised, equally some online gambling customers clearly express a strong desire to engage in multiple activities over extended periods,. This is often based on their previous successes and/or their interpretation of the game, event, odds or other players and the wish to build up their expertise.

vi) Diligence obligation for the online operator. We are of the view that this is one of the regulators' strongest tools, and that responsible operators show great willingness to integrate this principle into their automated and human customer management systems.

It is our experience that where problem cases are identified, including problem gambling or criminal activities by players, the audit trail of customer actions, how these were recognised or responded to by the operators' staff, is a strong indicator of the operators' real sense of social responsibility. Regulators should have the resources and commitment to hold operators to account for not having systems that detect known aberrant behaviours in online gambling, or the resources to analyse and respond in a timely and proportionate manner. The online operator cannot be expected to set such monitoring at such a low level that customer choice is unjustifiably disrupted, but in the same way that operators successfully 'risk manage' security and AML threats, operators and senior management can be held accountable for wider customer welfare issues, if these are set within a properly defined framework.

vii) Restricting certain forms of games or bets that are considered to be the most risky (e.g. casino games or in sports betting restricting bets to final results only): Such statements are invariably motivated by specific self interests or a lack of awareness of the product and/or its wider availability in the online and offline market. A more reasoned principle would be that the regulatory community should be able to prohibit gambling on or by methods that are known, or can properly be expected, to create an unacceptable risk to the customers participating. Certain proposed casino games have been disallowed by regulators, certain betting events are not listed by operators. The current proposition of disallowing or restricting gambling facilities that are in fact commonly available across the world, and that are extremely popular and non-problematic and will still be provided offline and online if EU regulators seek to prohibit them online, is evidence of a failure to properly research the subject.

viii) Other (e.g. limits on commercial communications – restrictions on the use of certain media, sales promotions and sign up bonuses or free practice games): Online gambling is a dynamic, electronic and modern industry, a pure form of e-commerce, that appeals to a broad customer base spread across the world. Equally, it competes with an increasing number of suppliers from across the globe. Many aspects of online gambling are simple economic or statistical products – they have been ‘commodified’ and informed consumers do already seek out best value unless there are reasons to go to and stay loyal to a preferred supplier. EU operators must be permitted to properly compete with each other (and create an efficient market) as well as with the rest of the world (and create a safe market). To unreasonably restrict their marketing tools, as opposed to holding them to account for any misuse of marketing tools, will permit the less diligently regulated and non EU suppliers to draw away their more valuable and, in some cases, more vulnerable customers. Imposing unjustified restrictions on EU operators will be counter productive as the costs this creates and opportunities it denies drive customers elsewhere as has been demonstrated in the poker market and is already occurring in ‘over-regulated’ Member States.

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

The Gibraltar Gambling Commissioner monitors the publication and comment of national and academic studies of problem gambling. These are widely available and provide some consistent and reliable results, but also some irregularity in methodology and conclusions. It is inarguable that problem gambling is generally infrequently occurring, and where it does occur, it has very limited association with online gambling as a cause, especially when compared to other forms of offline gambling. Where problem gambling has been associated with online gambling, this is frequently due to either a) the specialist and intensive nature of the online product – financial spread betting and betting exchange ‘trading’, both being atypical examples of online gambling that are widely undertaken ‘professionally’ and will invariably trigger conventional ‘problem gambling’ signals such as high time and risk values; or b), as problem gamblers are both frequent and ‘multi source’ gamblers, they are more likely to use online facilities than the casual and infrequent offline gambler.

We think uniquely, we provide a facility to all online consumers to contact the Gambling Commissioner if they conclude they have been mistreated by an operator. Such contacts are remarkably rare. What is more common (a handful of cases each year) is a customer who overtly displays problem gambling behaviour in the course of making what turns out to be an unjustifiable complaint against an operator (eg an excluded player who re-enters using false or distorted details; a player with a mental illness/medical condition undetectable to the operator).

It is our presumption that if there was a strong association between problem gambling and online gambling the existing online regulators would be presented with far more complaint cases than is actually occurring. We also see this relatively low level of reporting in the annual reports of gambling support charities, and are intrigued by the apparent mismatch in, this case in the UK, of an estimated 400,000 clinically defined ‘problem gamblers’ by way of the DSM or PGSI assessment tools, and a contact rate with the charities of only around 2000 persons per year. As a secondary source, it seems that problem gamblers are also infrequently represented in insolvency cases, with a handful of referrals to us each year to confirm gambling accounts associated with insolvency cases.

It is also recognised that ‘problem gambling’ is not only a relatively rare disorder, it is frequently a lesser and later symptom of multiple disordered personalities and whilst

evidencing it is highly problematic, the impact of disordered personalities is likely to be very substantial and a level of resource and commitment must be targeted to the area. It is paradoxical that many of the measures proposed by member States, and implicit/explicit in their disposition towards existing online gambling arrangements within the EU, that they are more likely to drive potential problem gamblers beyond EU regulation to sites operating within a less well defined 'moral code' or consumer protection culture.

**(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?**

Our reading of many studies over an extended period is that the opposite is the case. The most frequently identified trigger of problem gambling is land based 'slot machines' of various types, and in recent years a number of Member States have taken radical or substantial measures to limit access to such machines. Similarly, numerous studies show that problem gamblers are drawn by the social element of gambling to betting shops, arcades and dog tracks, and whilst the image of the isolated online player developing a gambling problem is an occasional reality, a properly and proportionately regulated online industry does have the tools to minimise this eventuality. Additionally, were there to be evidence that an online operator was exploiting vulnerable gamblers the audit trail available would give the regulator enormous leverage. It is the general absence of audit trails offline that leave the cause of problem gambling so poorly defined, whilst their presence online may leave the reckless operator exposed.

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

It is widely reported through national prevalence studies that the growth of online gambling has not corresponded with an increase in problem gambling, and that problem gambling is not correlated with the growth of online gambling.

Anecdotally, it is our limited experience (a handful of cases each year) that problem gamblers who have self excluded can be keen users of any online product – poker, sports betting, slots or other casino games. A higher proportion of unfounded complaints (as a possible symptom of problem gambling and uncomfortable losses) are associated with casino games ('my favourite number never came up', 'the RNG is not random', 'the results do not reflect my ability as a poker player', 'the game is rigged' etc), than are associated with sports betting.

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

Gibraltar based operators are obliged by their licence arrangements to operate in a socially responsible and 'accountable' way with regard to all customers. Licences, licence agreements, legislation, codes of practice, guidance and interactions with the regulator ensure that social responsibility standards are understood, developed and adhered to, and if failures occur, are identified and addressed.

All customers of Gibraltar licensed sites may complain about their treatment by an operator and all such complaints may be referred to the Gibraltar Gambling Commissioner for further investigation if the customer is not satisfied with the operator's treatment or response. This process itself creates a strong incentive for the operator to behave responsibly in all cases, whilst recognising the rights of consumers to spend their money in the way they choose (and in some cases win money on a regular basis).

All Gibraltar operators carry gambling awareness information and/or access to such information, indicating the importance of using gambling as an entertainment and not allowing it to escalate and provide support training to customer facing as well as other key staff.

There is continued debate about causality in problem gambling and the effectiveness of operator warnings and interventions; nevertheless, the weight of experience is that some cases can, eventually, be detected by operators due to the 'signals' the customer displays. This still leaves the dilemma of what the most appropriate response and responsibility of the operator is – to provide no services or a moderated service, or simply direct the customer to a support agency? It is important that consumers are retained within an environment that recognises its responsibilities to its audience.

**(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?**

Gibraltar operators typically are part of multi-national companies providing gambling services through offline as well as online services to a range of member states (e.g. Ladbrokes, Partouche, Digibet) as well as solely online companies (bwin.party, 888, Betfair) with an equally wide reach. Consequently, the different corporate 'footprints' create different vehicles for contributing to national prevention and treatment regimes.

The absence of a regularised internal market has not assisted in the development of a common contributory model and operators have developed their own arrangements, supporting various institutions in the UK (GREaT), France (Addictel), gamblingtherapy.org, as well as substantial research programmes (the Harvard studies). The majority of operators will have in house advisors to assist identified problem gamblers in obtaining professional support.

**(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?).**

The monitoring of customer behaviour for problem gambling is one element of the Gibraltar regulatory requirements and operators' customer management arrangements, in parallel to identification for fraud prevention/security and AML measures. Given the relatively low level of problem gambling associated with online activities, and the absence of defined characteristics of probable (or existing) problem gamblers, operators are obliged to screen all customers against existing customer records, monitor their spending patterns, and take into account other communications and actions of players. Online gambling creates a 'perfect audit trail' of the customer's actions and decisions, far superior to any mechanisms employed by off line gambling. Operators may be held to account for ignoring 'distress' or 'warning' signals from customers. Whilst there is no facility for shared databases across operators, specific cases may be referred to the regulator for limited 'cross checking' in certain circumstances.

**(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?**

The common age of majority within the EU and beyond is 18, though there is some variation within the EU (e.g. Belgium) and across products (lottery at 16/17). Gibraltar operators apply the 18+ age limit, with some variation upwards of this.

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

As previously mentioned, age verification is an element of identity verification and the wider marketing and presentation of the products, as well as the security arrangements around the 'payment in' and 'payment out' processes. Age verification should not be viewed in isolation, as an end in itself, or as the sole tool for the effective deterrence and prevention of under age gambling. The range of measures Gibraltar operators are obliged to use include:

Marketing and design of products not to appeal to children;

'No Under 18' warning signs on web pages;

Requirement and confirmation of age and date of birth on registration;

Use of wide range of commercially available tools and bespoke systems to verify age;

Risk based approach to higher 'age risk' payment methods;

Further confirmation of age and identity before payout (making this explicit at registration);

Promotion of 'netnanny' and other blocking software;

Training of customer service staff to be 'age aware';

Freezing/suspension of suspicious account and reporting to regulator of any confirmed cases;

Reimbursement of stakes to discovered or declared under age customers.

In terms of comparisons to 'face to face' gambling facilities it can be argued that juveniles close to the age of majority, or who can physically present themselves as of the age of majority, can make use of 'open access' offline gaming machines in bars, arcades, shops, airports etc with no challenge from staff. Indeed, many such facilities are effectively unsupervised. Conversely, the underage online gambler has to commit to deliberately deceive the operator (possibly a criminal offence) in the knowledge that if the deception is successful, he has to succeed in a further deception at payout, when the identity information provided will be subject to further scrutiny.

Anecdotally, there is a history of underage persons winning substantial prizes on offline premises and those winnings being denied. We are unaware of any parallel cases online. Added to this, that underage gamblers will be reimbursed their losses when discovered or declared provides any unsuccessful juvenile with an incentive to 'claim back' his losses. This too is a remarkably infrequent occurrence.

**(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.**

The absence of agreed internal market controls for gambling services means there are variations on what is permissible across Member States, and certain policies by governments/regulators are subjectively based. As a general rule, the principle that gambling services should not be targeted at or promoted to/by under age players applies, with those appearing in

advertises to be substantially older (typically 25). Any operator found to be in breach of this principle would be open to sanction.

The absence of common standards again reinforces the need for member states to ensure that online gambling services are competitively provided to consumers from within the EU/EEA.

**(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?**

The Gibraltar Gambling Act 2005, the licence agreement issued to each operator and the Generic Code of Practice for all gambling operators provide the framework for advertising/marketing limitations. Additionally, operators must comply with EU compliant legislation in any state in which they advertise.

Responsible operators have proved willing to work well within these guidelines and other relevant national guidelines/codes, but the ‘creativity’ of marketing departments, who are often contracted external suppliers (based in the target jurisdiction), has tested the technical and semantic limits of the guidelines in certain countries (notably the UK).

Analysis of the complaints and adjudications indicates it is often frustrated individual competitor organisations who challenge these adverts rather than being reflections of broader public concerns. We have on few occasions added our own concerns at the lack of foresight of operators in permitting certain novel or challenging marketing actions to be undertaken.

### **Other comments on issues raised in section 2.3.1**

The links between problem gambling and under age gambling and the online gambling industry are real but tenuous. It is inevitable that many problem gamblers will seek out alternate ways of meeting their gambling needs and revert to online gambling; likewise, it is inevitable that some young persons will be drawn to online gambling facilities. Our collective concerns about these cases are best addressed by ensuring, as far as is possible, such consumers are faced with EU licenced and regulated sites, vigilant and accountable for the management of such cases, rather than reverting to unregulated or less well regulated sites based further afield. An uncompetitive EU environment for online gambling will both diminish the size of the internal supply of online gambling services and enhance the scale and influence of externally based brands.

### 2.3.2. Public order

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

There are various studies addressing crime/fraud and e-commerce or gambling. These are covered by the same caveat as at question 1. The studies are often useful, but frequently have an a priori position.

It is the Gibraltar Gambling Commissioner’s experience that online gambling companies are a target for fraud rather than a vehicle for fraud. Criminals across Europe and beyond seek to exploit all e-commerce facilities in an effort to extract cash value from electronic payment

systems. The tactics used range from simple card cloning through to sophisticated interference with payment communications. Online gambling is probably more resilient to fraud than many other forms of e-commerce due to its access control policies and the fact it retains payments until security processes are cleared.

The general policy and practice of Gibraltar operators is that the company will stand any losses caused by fraud, ie not the consumer (nor the payment service provider), thus there is a strong incentive for well regulated operators to bear down on fraud.

All operators are able to provide information on the level of 'chargeback' and other losses they are exposed to. As per other e-commerce industries they apply risk thresholds to their management of these losses. We are able to monitor the general pattern of fraud and losses through such measures (including regular fraud reports) and advise operators accordingly.

See also questions 29 and 33 re the unreliability of consumer 'fraud' reports and the disincentives for any money laundering activities.

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

All operators are required to demonstrate the resilience and integrity of their gambling systems prior to licensing and throughout the lifetime of the product, as and when requested by the regulator, using approved independent testing facilities as well as in house systems and reports.

It must be recognised that it is the integrity of the operator and the visibility/transparency of his management systems that is paramount in maintaining system integrity. An operator with a weak or corrupt corporate culture will be able to manipulate certain game outcomes or ignore game/bet/customer anomalies. Internal rigour and transparency is as important as external testing. It is incumbent on the licensing authority to ensure that the operator has a strong corporate culture, committed to overt compliance. There are well reported cases where this has not been the case.

For this reason Gibraltar requires its operators to locate key managers, equipment and staff within Gibraltar or be licensed elsewhere within the EU, making them highly visible and accessible to regulatory activities and powers.

**(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?**

Unlike offline gambling where there are many reported cases of fraud by staff against players, we are not aware of any cases of online operators in Gibraltar engaging in, or even being suspected of engaging in, fraud against customers. Whilst there are theoretical possibilities through which online staff/management could defraud customers, there is no discernible history of such cases being alleged or found to have occurred. All licence holders are subject to rigorous due diligence on application for a licence and then throughout the lifetime of the licence. Additionally, operators must use internal audit and control measures consistent with other e-commerce industries, as well as specific to online gambling (e.g. dormant accounts) to limit known risk areas.

In contrast, there are regular cases of customers at the individual and organised level seeking to commit fraud against operators. The inherent security processes, added to the time delay in payment processes, provide a strong disincentive to fraud, as even a successful fraud still leaves the money with the operator, with the customer having to pass further security to complete the withdrawal and invariably creating a permanent audit trail.

The most commonly noted frauds against operators involve some form of identity theft or customers who seek to deny their losses and falsely claim identity theft or account 'interference' (chargebacks). Analysis of many chargeback claims strongly indicates that these are the customer seeking to avoid losses and whilst operators do resist such claims where the evidence is strong that the customer has made the claim 'in error', there are no cases of operators pursuing such cases to the courts.

Fraud may also occur through customer collusion or misrepresentation in peer to peer gaming (poker) but the system analytics together with electronic/telecommunications mapping that operators use can quickly identify such arrangements and facilitate their investigation and disruption. As collusion will weaken the integrity and appeal of an operator's facility (poker) there are strong incentives for operators to prevent and disrupt collusion. There have been cases of unlicensed 'associates' (affiliate sites) seeking to exploit the operator's customer base being excluded from licensed sites.

Our conclusion is that whilst operators are incentivised, they must be required to have available a full suite of integrated and third party tools and the ability to adapt those tools as well as adopt new tools as the fraudsters change their own methods and as new financial products are permitted into the market. Regulators should be able to prohibit the use of high risk financial instruments which attract disproportionate fraud as the industry should not be perceived as a 'soft touch', but the opposite – an unwelcome environment for fraudsters.

Security communications between operators may be compromised by data protection laws and commercial sensitivities which disallow direct communication about suspicious players or payments/deposits. In these cases regulators must be able to act as conduits/assessors of pooled information.

Gibraltar has an 'open' complaints system through which any consumer can challenge the actions of an operator. Every such complaint is thoroughly reviewed and responded to. This provides added reassurance to consumers, whilst making operators aware that any operational decision they make may be subject to scrutiny.

**(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?**

Whilst this subject is immensely complex and multi-faceted, a gambling licence holder engaged in or condoning the corruption of a sport event would be implicated in criminal conduct of such a nature that their licensed status would be undermined. There are a range of criminal and regulatory penalties available to deal with those within the licensed and regulated gambling industry who may be associated with the corruption of sport.

In recent years the 'sports integrity/sports betting' debate appears to have been dominated and driven by the commercial interests of certain sports' governing bodies seeking to extract revenues from sports betting service providers, on the basis that the betting facility is the primary cause of the corruption of sport, and they are entitled to share all revenues in order to combat this corruption. Whilst there may be some merit in some form of revenue contribution to, for example a national sports betting integrity unit similar to that established in the UK, the debate to date has been based on poor, if not unfounded, argument.

A prominent feature of many sports is 'gamesmanship' during the game/event that amounts to unpunished and often rewarded 'cheating'. Sports bodies are notoriously reluctant to deal with such issues. There are many examples of such conduct being rewarded rather than punished. There are also many historic cases of match/event fixing/not trying/underperformance, that were not undertaken for betting purposes, but for other commercial rewards or outcomes associated with the sport ('dead rubbers' etc). The match/event fixing or interferences associated with betting that have been identified in recent years have tended to be events in low value leagues/events and/or bets placed in unregulated markets. These isolated incidents, some of which have never even been established as true, but were just extensively reported media rumours, have been used to fuel and perpetuate the myth of a strong or dynamic link between the regulated betting service sector and sports events.

In our experience the regulated betting sector has no interest in match/event/stage fixing as it is the betting company that must meet the losses from a distorted market, and deal with the reactions of a dissatisfied and suspicious customer base. This is not the healthy and confident business environment needed. There are no known reports to us from customers who have suspected match/event/incident fixing, though we regularly receive reports of players/official' suspected misconduct.

The regulated betting industry is very well placed to monitor and report on suspicious betting patterns as all events have a predictable range of bets, all betting accounts are transparent to the operator, and anomalous betting accounts/patterns are quickly apparent. We believe this knowledge could be better co-ordinated and used. A further weakness in the reporting system is that sports bodies advised of suspicious betting activities are frequently unequipped or unwilling to deal with such reports as their regulations do not adequately control players' and their associates' conduct, even repeated suspicions, or permit or encourage effective disciplinary investigation and action. The sports body may have no rules concerning sports betting by participants, or the body may even regard certain types of 'corrupt betting' by participants as acceptable behaviour. Consequently the matter then reverts to criminal investigation, where the burden of proof is so high and the evidential trail so thin, that successful criminal investigation and prosecution is virtually impossible.

It is also the case that information available to certain parties, such as those present at a live event, may be far superior than form guides or recent performances in assessing the progress or outcome of the event, and this allows those parties to take advantage of odds or assessments derived from historic sources. There is a fine and difficult to define line between the customer who is able to access the very best information about a sports event, possibly by seeing or even speaking to the participant, and the customer/player who has compromised the integrity of the event.

It is our view and experience that licensed sports betting operators have no interest in the corruption of sports events, but the exact opposite. They want customers to add to their entertainment by confidently testing their own abilities to analyse performances and predict outcomes, not to be frustrated by aberrant developments in the event or the result.

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

Sports bodies, which generally are subject to some form of State support or influence/funding, should be required to have rules governing the conduct of players, participants and associates, precluding them from betting on the outcome of or incidents in their respective events and associated events. It should not be possible for any person with 'inside information' about the likely performance of his 'team', 'colleague', 'family member' or other close associate to profit by gambling on his performance. Where such gambling is permitted, typically in the horse and dog racing sectors, it should be subject to even clearer controls in terms of what is permissible and how the public without access to inside information will be protected in their related bets.

Sports bodies must adopt a more constructive dialogue with the betting industry. At present the relationship is being defined by competing commercial interests of limited legal certainty. The betting industry is able to identify anomalous bets and customer accounts, but sports bodies are highly inconsistent, and at times self interested, in how they deal with such information.

Sports bodies must undertake to properly inform and train their members and constituencies about the limitations on betting, how they may be drawn into corrupt practices, and the consequences.

Regulators should also take steps to develop a better understanding of the bi-lateral processes for the production and release of information connected with suspicious betting. At present the landscape is inconsistent and ranges from regulators proving very willing to obtain and release information (Gibraltar), whilst others feel compelled to shelter behind the rigid interpretation of local data protection laws.

**(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?**

Given the antecedents and probity of the companies we are prepared to licence there is no risk that an online gambling operator would seek to influence, directly or indirectly, the outcome of an event. We note with alarm that a recent sponsor from a leading financial sector sought to promote the selection of certain players in a football team in an effort to increase his company's exposure in distant markets. Such conduct, influencing team selection, would be unconscionable within the gambling industry.

Moreover, we do not see any evidence that the public believe that sponsorship arrangements with gambling companies a risk. A number of Gibraltar operators sponsor high profile football teams which occasionally suffer unexpected adverse results. These are never followed by claims of 'match fixing' for the benefit of the sponsor.

Some sports, notably horse and dog racing, do permit owners, trainers and other parties directly associated with the immediate performance of a horse/dog to bet on that performance. That such a relationship is acceptable whilst corporate sponsorship may not be is irreconcilable.

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

The Gibraltar Gambling Commissioner has issued substantive guidance to the online (and offline) gambling sectors on the management of the AML/CTF risk, consistent with the EU Third Money Laundering Directive and local legislation. Like all commercial sectors it is theoretically possible for criminal consumers to use online gambling for ML purposes, but as regulator we are of the view that such is the detail and transparency of the audit trail for both customer and operator, the integrity and lack of influence over the licence holder by any such customers, that the ML risk has been minimised by the existing regulatory arrangements.

Independent studies have endorsed this view, though populist comment often contradicts it.

The Gibraltar gambling Commissioner is mindful that online (and offline) gambling may be used as a means to spend illicit wealth, as a form of money laundering, and has made plain that operators ‘innocently’ in receipt of any such funds cannot expect to be supported in any efforts to retain them. Thus there is no incentive for operators to accept suspicious funds and severe sanctions if they are found to have done so knowingly or carelessly.

Operators are aware that they must exercise strict AML controls, submit Suspicious Activity Reports to the Gambling Commissioner and all relevant FIU’s in all relevant cases, produce consolidate fraud reports of ‘minor frauds’ (chip dumping’), and will be held to account if money laundering occurs through their facilities.

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

Different deposit/ payment/withdrawal methods have corresponding security and reliability profiles. Not all methods are available in all markets.

As previously mentioned, the most reliable method tends to be credit cards issued by recognised banks. At the other extreme, ‘virtual pre-payment cards’ are relatively problematic and are proving more prone to fraud in their source of funding (ie the payment provider to the virtual card issuer is the victim). All electronic payment methods require regulatory oversight, with the capability of disproportionately problematic methods being prohibited. Such measures should also be set against the risks associated with the use of cash in offline venues.

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

The Government of Gibraltar took the view that the application of the Third ML Directive to online gambling should include online sports betting as well as gaming, using a wide definition of ‘casino activities’ to include sports betting, and acknowledging that the risks around these two products are, in many parts of the transactions, identical, creating identical risks. Other jurisdictions have not taken this view and do not subject betting to the same controls as gaming. We find this highly anomalous.

We are confident that the Gibraltar AML arrangements are effective. They rely on the diligence of operators and their payment processor partners, but their implementation is closely scrutinised by the regulator. Responsible operators are content to apply proportionate and evidence based AML controls and incorporate necessary controls and internal reporting/supervision arrangements, including board level accountability.

The fact that at any time a 'money laundering customer's' activities may be subject to an investigation and scrutiny by external law enforcement agencies, and the customer's properly licensed and regulated betting/gaming accounts subject to similar scrutiny by that agency and the Gibraltar regulator, creates a strong incentive for regulated operators to properly apply AML controls.

**(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?**

Social websites, including chat rooms and external dialogue facilities between online poker players (email), provide the opportunity for users to transfer monies to each other outside any commercial or gaming transaction (paypal, neteller etc). We are not aware of an enhanced risk arising from gambling in the context of social websites.

**(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?**

(Note this question is phrased differently in the Green Paper)

In terms of the issues raised in the Green paper, all gambling provided by Gibraltar licensed and regulated operators must be fair and be demonstrably fair. Transparency is required from the start of the licence application process through to the settlement of accounts, the retention of player records and in the wider conduct of licensed operations.

In terms of the enforcement of such rules, we are at times surprised that some jurisdictions are prepared to grant licences to companies/owners with track records that are far from transparent, sometimes clouded by way of legal 'vehicles' that separate unethical or illegal practices from the new licensee. We see little room for flexibility in the accommodation of bad practices by operators using complex corporate structures to isolate bad behaviour in one jurisdiction from a new licence in a separate jurisdiction.

We have not found any evidence across Gibraltar operators of the illegal activities referred to in the Green Paper but are aware that some of these matters are associated with certain offline jurisdictions/operators, and that theft in order to finance online/offline gambling is occasionally reported in the media. Where relevant, these latter cases are reviewed by us and in appropriate cases are investigated in order to establish any operator culpability.

The Gibraltar Gambling Commissioner has the capability to stop any licensed operator from providing unlawful online gambling services from within Gibraltar. It remains the case that illegal and unlicensed operators can create 'webspace' from jurisdictions anywhere in the world, and it requires the diligence of the local gambling regulator and telecommunications authorities to identify and prevent such actions. In our experience there are operators in the EU and elsewhere who are able to undertake online gambling operations without licences or the relevant authorities being aware (or possibly uninterested).

#### **Other comments on issues raised in section 2.3.2**

No additional comments.

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?**

There is some voluntary channelling arising from the commercial gambling sector (gaming/betting) outside and in addition to any compulsory or statutory schemes the operator is exposed to in relevant jurisdictions where he may also be licensed (e.g. Ladbrokes, Betfair et al make voluntary 'online' payments of the horse racing levy in the UK). Many companies have very significant Corporate Social Responsibility programmes and are associated with charities and charitable events.

**(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?**

The question appears to be seeking to compare State controlled and monopolistic lotteries and gambling facilities, often established with the specific intent of generating public funds for good causes, and which may be given other commercial protections, with commercial gambling (betting/gaming) that has to compete with unencumbered industries in the same and different sectors, as well as pay tax/duties at premium rates. Unless such requirements are applied to all operators in economic sectors (e.g. 'the leisure industry') then they will place a loading on the regulated gambling industry that will undermine its ability to compete with external providers and retain its audience/revenues.

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

As previously mentioned, in the absence of a coherent internal market there are no statutory or regulatory obligations on operators to make such contributions, but a number make substantial investments in charities and research programmes, as well as operate their sites in a socially responsible way, including the employment and training of staff in harm prevention.

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

Again, in the absence of a coherent internal market there are no statutory or regulatory obligations on operators to make such contributions, though a series of individual sport/club sponsorship deals exist and certain Member State arrangements have encouraged/permitted the diversion of revenues into specific sports events. As discussed at question 30, the commercial motives of sports bodies in pursuing the 'right to bet' on what will often be a very limited number of fixtures involving the highest profile teams or players, has not been properly or logically made out and, generally, has not been supported by the courts.

**(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?**

The question assumes the relationship between horse racing and betting is uni-directional, when the reality is that the industries are symbiotic. Whilst sports betting can exist without horse racing, albeit as a much reduced product, horse racing cannot exist without the subsidies it is provided by the betting industries. These payments are 'rights' only insofar that they

were given statutory footing before current rules governing State aid/subsidies and competition existed, and have been subject to legal challenge.

Whilst it is possible to be neutral about such issues as regulator, one has to be mindful again of the consequences of loading the operating costs of the licensed and regulated sector to such a degree that the licensed operator cannot compete with the unlicensed sector, which the experienced and higher value customer, in particular the sports betting customer, will seek out for better odds.

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

As previously stated, the Gibraltar Gambling Commissioner is aware of the ongoing debate promoted by sports bodies, of obtaining revenues from betting companies to 'protect the integrity of the sport'. Whilst this concept is not without some merit, the proposition that licensed and regulated betting companies should pay for this facility appears weak.

We note also that the proven and demonstrable threats to the integrity of sport rest well beyond betting. The accepted levels of gamesmanship and drug abuse, through to blatant cheating and deception, for financial advantages, are well documented. Likewise, the most substantial reported gains from betting, with one possible exception, rest in the unregulated markets and largely involve sports teams or personalities beyond the reach of the sports bodies seeking the funds. Events generating distorted markets indicating corruption are quickly spotted by bona fide online operators.

A more problematic area is that of one UK sport that permits the participants to bet on themselves, where questionable betting activities have been uncovered in terms of fairness to other customers unaware that they are 'betting against the knowledge of owners/trainers', and even the possible manipulation of sporting events and odds. In this case the relevant regulatory body has declined to investigate these concerns on the basis they are 'custom and practice'. This raises a second serious issue, of Governments diverting one set of private companies' revenues (the betting operators) to other private companies (the sports bodies) with minimal accountability as to how those funds are then deployed. At best we are of the view that betting operators could be required to support an independent or national sports betting integrity unit of a similar nature to the UK SBIU (looking across all sports), but such arrangements need much further and detailed consideration.

Whilst the Gibraltar Gambling Commissioner would support more resources or effort being invested by sports bodies into preventing corrupt practices by sportsmen and their associates, this cannot be at the sole expense of the regulated betting community, or through mechanisms over which the sports bodies then have unilateral control and may squander such funds. In general terms, the sports bodies have not shown themselves to be as determined or able as the regulated betting sector to address corruption in their sports. This is a much wider debate than that addressed by this Green Paper.

**(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?**

We do not see the parallel between lotteries where the declared intent is to provide income streams for good causes, and which forms part of the marketing offer and the lighter regulatory model (e.g. lower age limits and wider access and advertising), and commercial betting, which must compete with other commercial gambling offers and has no additional

marketing concessions. The concept of ‘free-riding’ is both unjustifiably pejorative and a misnomer.

There is no exclusivity in the use of a sports fixture for betting purposes. If the regulated sector is obliged to pay for this ability, it will merely amplify the commercial advantage of the unregulated sector, which will offer the same fixture at better odds. Moreover, that unregulated sector will become increasingly difficult to define, as the enforcement of ‘betting rights’ will be highly problematic and fiercely challenged beyond the EU.

There are also substantial misconceptions about the use of ‘fixture lists’, with the vast majority of bets being on only a handful of high profile and most popular fixtures. The notion that all named clubs or players will benefit equally, or that the revenues will ‘trickle down’ to the lower leagues has been dispelled by the pattern of payment for other ‘rights’ around sport, with the wealthy few becoming ever wealthier and there being no evidence of ‘grass roots support’ proportionate to the overall commercial position of ‘star players’ or ‘star clubs’. A betting right, if established, will gravitate towards the named party, for that party’s exclusive benefit.

**(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?**

Where a product is established to contribute to good causes it is essential that such outcomes are totally transparent, are taken into account before any licence or approval is granted, and are proportionate to the overall costs/benefits of the arrangement. The Gibraltar Gambling Commissioner is concerned that some jurisdictions are not effectively limiting the use of lotteries which propose to generate relatively trivial sums for ‘good causes’ whilst allowing substantial gains (in ‘costs’ or profits) for the organisers. This is an area that is open to wider exploitation online. In general terms we will not permit the licensing of online lotteries.

### **Other comments on issues raised in section 2.3.3**

No additional comments.

## 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?**

The Government of Gibraltar is the authority which grants and amends gambling licences, whilst delegating the regulatory responsibilities for the conduct of those licences to the Gibraltar Gambling Commissioner. Both have the necessary powers to ensure that public policy objectives are met, including limitations, investigations, variations and sanctions/withdrawal, consistent with the Green Paper.

The Gambling Commissioner has full powers to require or obtain data and information, enter premises, inspect or remove equipment, require operational or process changes, or initiate court proceedings independently or in conjunction with the police, including where appropriate communication service providers. The Commissioner also provides information to Government, the public and operators.

**(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?**

In common with other online regulators, a full list of licence holders is published online by the Gambling Commissioner.

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

The Gibraltar Gambling Commissioner is an active participant of both the GREF and IAGR forums, through which certain separate bilateral and multilateral work streams have developed. The Gambling Commissioner has expressed overt efforts to engage with and provide mutual support to other Member States' regulators, with some success, but also has examples of where such efforts have not been reciprocated.

There remains a strong 'regulatory unilateralism' in some jurisdictions that impedes collective efforts to ensure consumer protection and a competitive market.

Areas of co-operation that have been successful to date include sharing information about licence holders arrangements, ownership and personnel; fraud and cheating investigations; the development and enforcement of technical, investigatory and operational standards; effective complaints management; the development of customer 'Gambling management' tools.

The Gibraltar Gambling Commissioner is committed to an open and co-operative relationship with all other bona fide regulators.

**(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?**

The Gambling Commissioner has actively co-operated with various individual sports bodies, regulatory bodies and law enforcement agencies in providing access to or explaining locally based 'gambling data/information' relevant to suspicious or criminal practices.

In general terms, within the EU, there are no impediments to such communications that warrant the establishment of multiple 'MOU's' that have been proposed elsewhere (and tend to set out the limits of co-operation as much as the processes for co-operation). Where an MOU may be justified (e.g. with an agency beyond the EU), then we have expressed a willingness to agree one, but to date this has not been necessary and relevant communications have taken place within the parameters of existing legislation or data sharing protocols.

Jurisdictions which have sought to establish gambling specific MOU's have been advised that these will be given positive support, though to date none have proved necessary.

Gibraltar operators were the founding members of the ESSA (European Sports Security Association) which has, as a private body, established a series of MOU's with national and international sports bodies to provide information about suspicious betting activities. The membership of ESSA now transcends Gibraltar.

Gibraltar operators have also voluntarily contributed to separate and collective sports player education programmes aimed at improving player awareness of corruption in sport.

**(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?**

Whilst Governments have a legitimate concerns about consumer protection and their citizens access to gambling facilities, the measures to date used to 'protect' their consumers vary from being marginally effective to being counter productive.

Whilst advertising controls are marginally effective in terms of brand awareness and promotion, such 'controlled' advertising is competing with 'relatively uncontrolled' internet and 'soft media' advertising methods that range from passive adwords through to aggressive spamming and other 'grey' advertising mechanisms. This paradox in advertising is even more stark in ISP blocking and payment processing controls, as it is the experienced and higher spending online consumer, who is by definition more vulnerable to overspending/over committing to online gambling, who will quickly become aware of the methods of circumventing ISP or payment controls, whilst being exposed to 'unapproved' adverts on the internet and through soft media, and will use less secure websites and less secure payment methods.

The experience of Governments and operators is that attempts to control access to online gambling facilities have limited success, and then for relatively short periods. Moreover, the higher value and higher risk players, and those with modest experience, will actively seek to step outside this framework unless the regulated market is as competitive, appealing and as good value as the unregulated 'grey' or 'black' markets, which are increasing in number and strength. We suggest that Governments' efforts would be better focussed on protecting consumers from the extreme ends of the gambling markets, rather than depressing the 'soft centre' that is manageable through proportionate regulation (and taxation).

**(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?**

Where these methods are used in a focussed way, on a small number of websites, and are justified by law as a proportionate and necessary measure, we would expect them to have some degree of success. On this basis they should also be cost effective and manageable by the relevant communication, payment and advertising providers. Where they become 'mass market' controls then their efficacy and legality is questionable and their administration and effectiveness becomes untenable and they create systemic failures as well promote a level of 'dysfunctional creativity' that brings the systems into discredit.

#### **Other comments on issues raised in section 2.4**

No additional comments.

#### **Other comments on issues raised in the Green Paper**

No additional comments.