

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:

EMD Advocates ("EMD"), Malta

Website: www.emd.com.mt

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?

Since April 2004, when the Remote Gaming Regulations came into force in Malta, EMD has submitted numerous licence applications to the Malta Lotteries and Gaming Authority ("LGA") on behalf of remote gaming operators, including some of the world's leading companies in the industry. Such companies are licensed and run their remote gaming operations in and from Malta, and are subject to the strict regulatory regime of the LGA. However, they provide and promote their services across the EU, amongst other continents.

As with other internet based and cross border businesses, remote gaming companies based and licensed in Malta have, for the most part, been able to provide their services to customers across the EU with relative ease. However, as the number of Member States seeking to impose their own national regimes increases, so too will the difficulties faced by operators wishing to provide and promote their services across EU borders. Most Member States have either began regulating, or plan to start regulating, remote gaming. This in itself will not restrict EU-wide market access if Member States recognise other Member States' licencees, as do, for example, Malta and the United Kingdom. Some Member States' measures or proposed measures, however, include blocking gaming operators' access to their markets if such operators do not have licences in the jurisdiction, even if they are licensed in another EU Member State. Remote gaming operators will, therefore, increasingly experience entry problems in some national markets, with the obvious result that cross-border trade will be hindered. Such market access problems will also result in a restriction of competition and consumer choice in the EU remote gaming sector.

(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?

The jurisprudence of the CJEU in the field of online gambling has led to a wide, and sometimes conflicting, interpretation regarding the extent to which Member States can limit the freedom to provide remote gaming services and impose restrictions on remote gaming operators that wish to provide their services across the EU market. The fact that the normal Treaty rules on free movement and the principle of mutual recognition do not apply to remote gaming as they do to other services, coupled with the lack of harmonised regulation at EU level, has led to a lack of legal certainty in the field of EU online gambling services.

On the Maltese market, EU remote gaming operators do not face problems of legal certainty because, in addition to licences awarded by the LGA, the Regulations also recognise

"equivalent authorisation[s] by the government or competent authority of an EEA Member State".

There are, however, problems of legal certainty on the EU market for remote gaming services as a whole. As mentioned above, this is due to the lack of remote gaming regulation at EU level, the restrictions maintained by some Member States on the freedom to provide remote gaming services, and the lack of clarity from the jurisprudence of the CJEU regarding such restrictions. The continued uncertainty makes it very difficult for remote gaming operators to plan their business strategies and to ensure their continued compliance with all relevant EU and national laws and regulations.

The current active debate on online gambling services in the EU is, therefore, a welcome one and it is hoped that both operators and customers are provided with sufficient legal certainty in due course.

(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?

The main Maltese law applicable to remote gaming services is the Lotteries and Other Games Act (Chapter 438 of the Laws of Malta, Act XXIV of 2001, as amended by Act III of 2004; Legal Notices 426 of 2007 and 168 of 2008; and Act XXII of 2009) ("the Act"), and the Remote Gaming Regulations (Subsidiary Legislation 438.04, Legal Notice 176 of 2004, as amended by Legal Notices 110 of 2006, 270 and 426 of 2007, and 90 of 2011) ("the Regulations"). This legislation is considered to adequately regulate those services, which is why Malta is considered as one of the most reputable remote gaming jurisdictions in the EU as well as world-wide.

However, when considering the legal landscape across the EU, the various national laws and EU secondary law currently applicable to online gambling services in the EU do not adequately regulate those services. In order to regulate the industry more efficiently, more legal certainty is required through harmonised rules and recognition of such rules across the EU.

As regards the public policy objectives in the field of online gambling services, the main objectives of the Maltese remote gaming regime are the following:

- Protection of Minors and Vulnerable Persons;
- Prevention of Fraud and Money-Laundering in Gaming Activities; and
- Promotion of responsible gaming which is delivered fairly to the consumer.

Although the above-mentioned objectives are commonly pursued by all Member States, and the various national measures in force throughout the EU appear to be consistent with such objectives, yet such measures differ from one Member State to the other.

It would, therefore, be preferable if the EU were to lay down a set of harmonised rules which all Member States must follow to regulate the remote gaming industry. Having harmonised regulation across the EU should mean that there will not be a reason for Member States to reject the mutual recognition principle in the field of remote gaming as each Member State will be obliged to ensure that remote gaming operators licensed in their jurisdiction are adequately regulated according to agreed EU standards. This will significantly lighten the burden imposed on EU remote gaming operators while still ensuring that they are subject to strict regulation. Consumers will also be more adequately protected across the EU, regardless of the Member State which an operator has chosen to operate from.

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?

The Maltese Regulations do not include a definition of "gambling", but adopt the term "gaming" instead. The word "gaming" promotes the idea of playing games for entertainment, rather than gambling.

According to the Regulations "gaming" means "an agreement, scheme, or arrangement between two or more parties to play together at a game of chance in which a prize or reward consisting of money or some other item of value, worth, advantage, or opportunity is offered or can be won and become the property of the winner under defined conditions established for the purpose of the game", while "remote gaming" means "any form of gaming by means of distance communications". According to the the Act, "means of distance communication" includes "any means which may be used for the communication, transmission, conveyance and receipt of information (including information in the form of data, text, images, sound or speech) or for the conclusion of a contract between two or more persons; without the simultaneous physical presence of those persons; such means may be unaddressed or addressed printed matter, a standard letter, press advertising with an order form, a catalogue, telephone with human intervention (including phone-ins during radio and television programmes) or without human intervention (such as automatic calling machine, audiotext), radio, videophone (telephone with screen), videotext (microcomputer and television screen) with keyboard or touch screen, electronic mail, facsimile machine (fax), and television (teleshopping), and any other means of communication, transmission, conveyance and receipt of information by wire, radio, optical means, electromagnetic means or by any electronic means".

(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?

In Malta, gambling services offered by the media are considered as broadcasting media games. More specifically, under the Act, a "broadcasting media game" means "any game which is organised by the owner or operator of a radio or television station, or a subcontractor thereof, where the participation of players therein takes place by or as a result of their presence during the transmission or the recording of the programme during which such game is organised or by any intervention on their part by any means of distance communication during or after the transmission or the recording of the programme during which such game is organised". A "broadcasting media game licence" granted by the LGA is required to operate a broadcasting media game.

Promotional games are distinct from gambling, and are known as commercial communications games. Under the Act, a "commercial communication game" means "a game which is organised with the purpose to promote or encourage the sale of goods or services, and which does not constitute an economic activity in its own right, and where any payments required to be made by the participant serve only to acquire the promoted goods or services and not to participate in the game, although it may be a condition that a person purchases the promoted goods or services in order to participate in the game". A "commercial communication game licence" granted by the LGA is required to operate a commercial communication game.

Both a broadcasting media game licence and a commercial communication game licence are deemed to include a condition that (a) the prize(s) which can be won in such game cannot consist of money; and (b) the aggregate retail value of all prizes which can be won in such game cannot exceed €8,234.33.

(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?

While licensed land-based casinos exist in Malta, such premises are not permitted to offer cross-border online gaming services.

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

The coexistence in the EU of differing national systems poses significant obstacles for remote gaming operators wishing to legitimately provide and market their services across what is usually thought of as the internal single market of the EU. The main operational difficulties of such a fragmented scenario include the burden of having to apply for up to 27 licences, pay taxes in as many Member States, as well as having to understand and comply with the various national rules, procedures and conditions. Operators will also incur significant expenses due to the multiple licence fees and compliance costs, as well as associated costs, such as technical and legal costs.

This fragmented approach is exacerbated by the fact that many Member States do not follow the mutual recognition principle in the field of remote gaming, despite all the Member States broadly pursuing the same public policy objectives for regulating this field.

Other comments on issues raised in section 2.1

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?

At national level, the Regulations do not distinguish between the forms of commercial communications mentioned in the Green Paper but, rather, impose limits on all forms of advertising of remote gaming services.

According to the Regulations, "[n]o licensee shall in any way engage in advertising or permit anyone involved in the licensee's operations to engage in advertising that:

- (a) implies that remote gaming promotes or is required for social acceptance, personal or financial success or the resolution of any economic, social or personal problems;
- (b) contains endorsements by well-known personalities that suggest remote gaming contributed to their success;
- (c) is specifically directed at encouraging individuals under eighteen years of age to engage in remote gaming;
- (d) exceeds the limits of decency."

Moreover, "[t]he licensee shall not engage in any activity that involves sending of unsolicited electronic mail, whether it is through its own operation or by the intervention of third parties."

The LGA gives maximum attention to all advertising of any means of gaming, including remote gaming. Licensees have to abide by the provisions of the LGA's Code of Conduct on Advertising, Promotions and Inducements. According to this Code: "[a] licensee shall not publish in any manner whatsoever, through any medium and in any place advertising that:

- (a) encourages anyone to contravene a gaming law; or
- (b) shows people under eighteen years gambling; or
- (c) encourages or targets people under eighteen years old to gamble; or
- (d) is false or untruthful, particularly about the chances of winning or the expected return to a gambler; or
- (e) suggests that gambling is a form of financial investment; or
- (f) suggests that skill can influence games that are purely games of chance; or

- (g) promotes smoking and, or the abuse of the consumption of alcohol while gambling; or
- (h) implies that gambling promotes or is required for social acceptance, personal or financial success or the resolution of any economic, social or personal problems; or
- (i) contains endorsements by well-known personalities or celebrities that suggest gambling contributes to their success; or
- (j) exceeds the limits of decency; or
- (k) tarnishes the goodwill and privilege that is associated or related in any manner whatsoever with being a licensee, or tarnishes the image or reputation of another licensee."

The Code also states that "[a] licensee shall not: (a) conduct a promotion that commits people to gamble for a minimum period of time to qualify for a player reward scheme; or (b) conduct a promotion that commits people to gamble a minimum amount to qualify for a player reward scheme" (this provision does not apply to tournaments). Moreover, a "licensee shall ensure that promotional material relating to gambling states where the rules, procedures and conditions of the promotion can be inspected".

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

Yes, according to the Regulations, a remote gaming licensee cannot accept cash from a player. Funds may be received from the player only through the following methods: (i) credit cards; (ii) debit cards; (iii) electronic transfer; (iv) wire transfer; (v) cheques; or (vi) any other method approved by the LGA.

A licensee cannot provide credit to a player or a player's account or act as an agent for a credit provider to facilitate the provision of credit to a player or a player's account. Moreover, a licensee shall not make a payment in excess of €2,329.37 out of a player's account to a player until the player's identity, age and place of residence have been verified.

The Regulations also provide that a licensee must, at the request of the registered player in whose name a player's account is established, remit the funds standing to the credit of the account to the player by no later than five working days, if practicable, after receipt of the request. An amount may only be remitted by the licensee to the player, to the same account from which the funds paid into the player's account originated.

As part of the policies and procedures which must be in place in order to be granted a remote gaming licence, the LGA requires operators to adopt Payout Management Procedures. These Procedures should state: that the identity of players will be verified on cumulative withdrawals of €2,300; and that the Licensee will only remit withdrawals to the same account from which the funds originated.

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

Yes, under the Regulations, remote gaming operators licensed in Malta are specifically required to establish and maintain a player's account in relation to each player who is registered with the licensee. Licensees cannot permit a person to participate as a player in an authorised game conducted by the licensee unless that person is registered as a player and holds an account with the licensee.

The Regulations also state that a remote gaming licensee must credit to such players' accounts all funds (a) received by the licensee from/on behalf of the player; or (b) owed by the licensee to the player.

Moreover, the licensee shall not accept a wager from a player unless: (a) a player's account has been established in the name of the player and there are adequate funds in the account to cover the amount of the wager; or (b) the funds necessary to cover the amount of the wager are provided in an approved way.

The Regulations also contain detailed rules regarding the obligation of a licensee to keep players' funds separately from the licensee's own funds in a Clients' account held with a credit institution approved by the LGA.

(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?

A licensee cannot permit a person to participate as a player in an authorised game conducted by the licensee unless that person is registered as a player and holds an account with the licensee.

During the registration process, a new player is required to submit a number of details. According to the Regulations, an application for registration must at least include the following details:

- (i) that the player is over 18 years of age;
- (ii) the player's identity;
- (iii) the player's place of residence;
- (iv) the player's valid e-mail address.

In practice, remote gaming operators also request the following information at the registration stage: telephone number; secret question with answer; and currency.

If a licensee becomes aware that a person has provided false information in this respect, then according to the Regulations, a licensee must not register such person and where that person has already been registered, the licensee must immediately cancel that person's registration as a player with the licensee. In practice, when remote gaming operators become aware that a person has provided incorrect information, they will close that person's account and request such person to send ID documents, a copy of a recent bank statement or utility bill which clearly shows the registered name and address; and a copy of a registered credit card. The player's account will remain closed until the licensee receives the required information.

The Regulations also lay down the following rules in respect of customer verification:

- The licensee must, at all times, keep a secure online list of all registered players.
- Any one player can only register a single account with the licensee.
- A licensee shall not make a payment in excess of €2,329.37 out of a player's account to a player until the player's identity, age and place of residence have been verified.

Moreover, according to the technical requirements stipulated in the Regulations, the gaming system must maintain information about all games played. Such information must also include the identity of the player.

The LGA requires all licensees to maintain Internal Procedures, which should include Know Your Client (KYC) Information. In this respect, the identity verification status of each player should be stored in a Players' Database.

The above rules and practices are consistent with data protection rules. Remote gaming licensees must adhere to the Maltese Data Protection Act (ACT XXVI of 2001, as amended by Acts XXXI of 2002 and IX of 2003; Legal Notices 181 and 186 of 2006, 426 of 2007; and Act XVI of 2008), and they must annually notify the commissioner of Data Protection on the nature of the data they process.

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)

(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)?

Under the Regulations, a remote gaming operator licensed in Malta must display at all times, in a prominent place, on the entry screen of the website, a warning of the addiction possibilities of gaming and information and links to other websites assisting compulsive gamblers.

The LGA monitors licensees to ensure that the licensees' homepages contain hyperlinks to the websites of organisations specialised in helping problem gamblers and which are approved by the LGA.

In addition, the Regulations contain provisions on self-limitation and self-exclusion. A registered player may by written or electronic notice to the licensee:

- (a) set a limit on the amount the player may wager within a specified period of time;
- (b) set a limit on the losses the player may incur within a specified period of time;
- (c) set a limit on the amount of time the player may play in any one session;
- (d) exclude the player from playing for a definite or indefinite period of time.

A licensee cannot accept a wager from a player contrary to any such limits or exclusions set by the player.

The LGA aims to put in place the necessary checks and balances to prevent the abuse of gambling and the proliferation of compulsive gambling. The LGA monitors licensees to ensure that the Terms and Conditions explain, and the licensees' gaming systems provide for, the above-mentioned player self protection mechanisms stipulated by the Regulations. In addition, the LGA requires that the licensees' gaming systems exclude from marketing mailing lists any players that have opted to self-impose limit/exclusions, until such limits/exclusions apply.

The LGA also supports agencies and organisations which engage in research and programs for prevention and education. The LGA strives to ensure awareness of pathological gambling to the general public.

A national government agency called 'Agenzija Sedqa' also strives to prevent problem gambling and provides education and awareness of the issue.

(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?

In Malta, a national government agency called 'Agenzija Sedqa' offers counselling and self-help groups to help people suffering from gambling addiction understand and deal with the effects of problem gambling in their life, as well as providing social contact with other people with similar experiences. Agenzija Sedqa offers a free and confidential Helpline 151. More information is available at: www.sedqa.gov.mt

In addition, Supportline 179 is a 24-hour free telephone service run by a team of professionally trained volunteers offered by 'Agenzija Appogg'. It provides immediate, confidential support to callers experiencing gambling problems, as well as other problems and addictions. All calls received on the EU-Wide Emotional Support Helpline 116 123, are also dealt with by the Supportline 179 Team. More information is available at: www.appogg.gov.mt

Remote gaming operators licensed in Malta are not obliged to directly contribute to the funding of gambling addiction preventative action and treatment. However, many operators voluntarily contribute to research and development in the field of problem gambling prevention 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?).

Remote gaming operators licensed in Malta are required to maintain gaming records, i.e. records directly or indirectly related to remote gaming and to bets provided by a licensee and to player account information, wagers placed and to the outcomes of games played.

The Regulations stipulate that the gaming system must maintain information about all games played, including:

- (a) the identity of the player;
- (b) the time the game began as recorded on the games server;
- (c) the balance on the player's account at the start of the game;
- (d) the stakes placed in the game (time stamped by the games server);
- (e) the game status (in progress, complete, etc.);
- (f) the result of the game (time stamped by the games server);
- (g) the time the game ended as recorded by the games server;
- (h) the amount won or lost by the player; and
- (i) the balance on the player's account at the end of the game.

The gaming system must also maintain information about significant events as follows:

- (a) large wins;
- (b) transfers of funds in excess of such amount as the LGA may direct to the operator;

(c) changes made by the operator to game parameters.

The Regulations also contain provisions allowing players to make use of self-limitation and self-exclusion tools. A licensee cannot accept a wager from a player contrary to any such limits or exclusions set by the player.

Remote gaming operators are also required to make available to players an automatic reality check, following the rules below:

1. An automatic reality should suspend play, at intervals of one hour;
2. The automatic reality check should clearly indicate for how long the player has been playing;
3. The automatic reality check should clearly display the player's winning/losses during such period of time;
4. The automatic reality check should require the player to confirm that the reality check message was read;
5. The automatic reality check should give the option to a player to either end the session or resume playing.

In practice, remote gaming operators' customer support staff are trained to identify probable pathological gamblers and to manage the limitation and exclusion processes and tools.

(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 statutory age limit for having access to on-line gambling services in Malta is eighteen. The Regulations state that "[n]o person under eighteen years of age may be registered as a player and any funds deposited or any money won by any such persons shall be forfeited to the [LGA]", while according to LGA guidance, "[p]layers below the age of eighteen should not be registered (Estonian players below the age of 21 should not be registered)".

The existing age limit is considered adequate to protect minors.

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

Yes, remote gaming operators licensed in Malta must impose on-line age controls to prevent minors from registering as players. According to LGA guidance, licensees should have KYC Procedures in place which detail how the gaming system will prevent minors from registering as players.

In practice, operators require a person to deliver the following documents as part of the authorisation procedure for player registration: copy of the person's identity card, driver's license or passport; and a copy of a recent bank statement or utility bill.

The on-line age controls are comparable to off-line identification, with the exception that remote gaming operators are obviously unable to verify a player's physical appearance against photographic identification documents.

(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.

At national level, commercial communications for gambling services cannot be targeted towards minors. The Regulations stipulate that "[n]o licensee shall in any way engage in advertising or permit anyone involved in the licensee's operations to engage in advertising that...is specifically directed at encouraging individuals under eighteen years of age to engage in remote gaming..." Moreover, "[t]he licensee shall not engage in any activity that involves sending of unsolicited electronic mail, whether it is through its own operation or by the intervention of third parties."

In addition, the LGA's Code of Conduct on Advertising, Promotions and Inducements provides that: "[a] licensee shall not publish in any manner whatsoever, through any medium and in any place advertising that...shows people under eighteen years gambling; or...encourages or targets people under eighteen years old to gamble..."

(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 rules on advertising contained in the Regulations account for risks described in the Green Paper and seek to protect vulnerable consumers. The Regulations state:

"No licensee shall in any way engage in advertising or permit anyone involved in the licensee's operations to engage in advertising that:

- (a) implies that remote gaming promotes or is required for social acceptance, personal or financial success or the resolution of any economic, social or personal problems;
- (b) contains endorsements by well-known personalities that suggest remote gaming contributed to their success;
- (c) is specifically directed at encouraging individuals under eighteen years of age to engage in remote gaming;
- (d) exceeds the limits of decency."

In addition, according to LGA guidance, gaming systems should exclude from marketing mailing lists any players that have opted to self-impose limit/exclusions, until such limits/exclusions apply.

The above rules are considered to be effective in Malta and remote gaming operators' compliance in this area is strictly monitored.

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?

Gambling equipment, random generators and other software fall within the definitions of "remote gaming equipment" and "gaming system". Under the regulations, "remote gaming equipment" means "a machine or other device whether electronic, electrical or mechanical, computer software, or any other mechanism, device or item, used or suitable for use, in the operation of an authorised game and which is situated in Malta", while a "gaming system" means "a computer system or systems of computers by means of which remote gaming is conducted, and shall include all its associated components, its operating systems and applications software".

The Regulations lay down a number of rules regarding the control, standardisation and certifications of remote gaming equipment and gaming systems. These are detailed below:

- Conformity of gaming system:

An applicant for a licence or a licensee shall, in respect of a new gaming system, and before any such system becomes operational, provide adequate certification to the LGA. The certification must show that gaming system has been found within the previous 6 months to comply with the technical specifications detailed below.

- Technical requirements for gaming system:

A remote gaming system must adhere to the following specifications.

1) The gaming system must: (a) faithfully follow the game rules published by the operator; and (b) provide over time no more than the expected house advantage to the operator.

2) Both the gaming and financial transactions must be congruent and secure.

3) The gaming system must satisfy the following criteria for randomness (following Schneier):

(a) the data must be randomly generated, passing appropriate statistical tests of randomness;

(b) the data must be unpredictable, i.e. it must be computationally infeasible to predict what the next number will be, given complete knowledge of the algorithm or hardware generating the sequence, and all previously generated numbers;

(c) the series cannot be reliably reproduced, i.e. if the sequence generator is activated again with the same input (as exactly as is reasonably possible) it will produce two completely unrelated random sequences.

4) The outcome of any game event, and the return to the player, must be independent of the CPU, memory, disk or other components used in the playing device used by the player.

5) The game or any game event outcome must not be affected by the effective bandwidth, link utilisation, bit error rate or other characteristic of the communication channel between the gaming system and the playing device used by the player.

6) The gaming system must be able to display for each game the following information on the current page or on a page directly accessible from the current page via a hyperlink: (a) the name of the game; (b) restrictions on play; (c) instructions on how to play, including a pay-table for all prizes and special features; (d) the player's current account balance; (e) unit and total bets permitted; and (f) the rules of the game.

7) All financial reports produced by the gaming system must be congruent with gaming transaction reports and conversely. All such reports shall be readily and freely available to the LGA.

8) The gaming system must: (a) be capable of producing monthly auditable and aggregate financial statements of gaming transactions, and (b) calculate accurately all taxation and other monies due to the LGA.

9) The gaming system must maintain information about all games played, including:

(a) the identity of the player;

(b) the time the game began as recorded on the games server;

(c) the balance on the player's account at the start of the game;

(d) the stakes placed in the game (time stamped by the games server);

(e) the game status (in progress, complete, etc.);

(f) the result of the game (time stamped by the games server);

(g) the time the game ended as recorded by the games server;

(h) the amount won or lost by the player; and

(i) the balance on the player's account at the end of the game.

10) The gaming system must maintain information about the following significant events: (a) large wins; (b) transfers of funds in excess of such amount as the LGA may from time to time direct by notice in writing to the operator; and (c) changes made by the operator to game parameters.

11) Any variations to any of the requirements specified above must be submitted to the LGA for its approval.

- Certification of gaming system:

The certification submitted to the LGA for approval must, where the system is based on computer software, include the following information:

- (a) the name of the owner of the software;
- (b) the name of the organisation which did the testing required by the LGA;
- (c) all companies and organisations involved in the process and their credentials;
- (d) all individuals involved in the process and their professional credentials;
- (e) the processes, rules and parameters of the games;
- (f) the server protocols, communication protocols and other specifications which are part of the gaming system architecture;
- (g) information about the security of the system;
- (h) which modules affect processes, rules and parameters of the game if the source-code is changed;
- (i) any other information that is of material importance to the specific software;
- (j) a detailed description of the setup and functionality of the application architecture and system architecture.

- Changes to gaming system require approval:

No changes to the gaming system can be made without the prior approval of the LGA and additional certification of compliance.

- Further testing of gaming system:

Notwithstanding that the system has been approved for operation, the LGA may at any time direct the licensee to submit the system's software for further testing, checking or verification.

- Gaming equipment:

No gaming equipment may be used in the operation of an authorised game pursuant to an online betting or online gaming licence, without the prior approval of the LGA. The LGA may, by written notice, require that gaming equipment be submitted for certification by an approved company or organisation.

Before the "Go-live" date of the particular operation, the LGA has to seal the approved equipment.

(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?

The Maltese Prevention of Money Laundering & Funding of Terrorism Regulations (Legal Notice 180 of 2008, as amended by Legal Notice 328 of 2009) apply solely to land based casinos. However, through the application of the Remote Gaming Regulations, remote gaming licensees are made subject to AML/CFT duties and obligations. To date it is only general AML Guidance that has been issued locally, namely the FIAU Implementing Measures (20th May 2011) and the Institute of Financial Services Providers (IFSP) Guidance Notes on the Prevention of Money Laundering & the Funding of Terrorism.

The LGA does, however, require at licensing stage as well as on an ongoing basis thereafter, that licensees set up adequate AML/CFT internal policies, procedures and controls. The Remote Gaming Regulations furthermore oblige remote gaming licensees to:

- Report suspicious transactions;
- Carry out customer due diligence procedures prior to accepting any wager;

- Perform enhanced due diligence where applicable;
- Not perform payments to a player's account until the player's identity, age and place of residence have been verified, and
- Not to accept cash from players.

In setting out their policies and procedures, remote gaming licensees take into account internationally accepted recommendations and best practice such as that issued by the Financial Action Task Force (FATF).

(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?

There is no specific mechanism in Malta to directly redistribute revenue from remote gaming services to the benefit of society.

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

While the LGA supports programmes for the prevention and treatment of gambling addiction, and national agencies (Agenzija Seqda and Agenzija Appogg) provide prevention and

treatment services, funds generated from the remote gaming industry in Malta are not directly returned or re-attributed to such causes.

(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?

In Malta, there are no such obligations in this regard.

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?

The relevant regulatory body in Malta is the Lotteries and Gaming Authority ("LGA"), which was established by the Lotteries and Other Games Act in 2001. The LGA is a single regulatory body that is responsible for licensing and regulating both land-based operators such as Casinos, providers of National Lottery games, Gaming Devices operators and Bingo Halls, as well as remote gaming operators (including on-line gambling services).

The LGA aims to be technology and game neutral, which allows it to keep up with developments in the remote gaming industry. Any game on any remote medium which can be effectively monitored by the LGA will therefore be considered for licensing.

The LGA's mission statement is: "To regulate competently the various sectors of the lotteries and gaming industry that fall under the Authority by ensuring gaming is fair and transparent to the players, preventing crime, corruption and money laundering and by protecting minor and vulnerable players."

The LGA aims to put in place the necessary checks and balances to prevent the abuse of gambling and the proliferation of compulsive gambling. It also supports agencies and organisations which engage in research and programs for prevention and education. Where possible the LGA ensures:

- Awareness of pathological gambling to the general public;
- Adequate protection for minors and vulnerable persons;
- That gambling is conducted in accordance with regulation to prevent crime and prevent players from being exploited.

More information on the LGA's activities is available at: www.lga.org.mt

It is also worth mentioning the Malta Remote Gaming Council ("MRGC"). The MRGC, which was launched in March 2005, is an initiative of the LGA as part of its strategic plan to create a dynamic regulatory environment for remote gaming in Malta. The MRGC is made up of all stakeholders in the remote gaming industry including licensed operators, data carriers, internet service providers, lawyers and professional services providers. The MRGC's main objective is to serve as an ongoing discussion forum giving valuable feedback to the LGA to be able to keep abreast with the latest developments in the remote gaming industry.

(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 Malta there is a national register of remote gaming licensed operators which are licensed by the LGA. A list of all such licence holders is publicly accessible on the LGA's website (www.lga.org.mt). The LGA is responsible for keeping the register of licensed operators 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?

[Empty box]

(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?

[Empty box]

(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?

[Empty box]

Other comments on issues raised in section 2.4

[Empty box]

Other comments on issues raised in the Green Paper

[Empty box]