

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:

Prof. Dr. Lojze Ude, Doc. Dr. Klemen Podobnik, Dr. Matija Damjan

Institute for Comparative Law at the Faculty of Law in Ljubljana

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?

Our comments to this and the following questions are given from the perspective of Slovenian law and practice in gambling regulation, which we are most familiar with. Many findings, however, seem to apply to most other Member States as well.

As far as we are aware, several online gambling operators licensed in other Member States (Bwin, Sportingbet, Bet at home) are currently actively providing their services to customers in Slovenia, e.g. by operating for this purpose a version of their website in Slovenian language. The services are being promoted to Slovenian customers mainly through advertisements on websites and through sponsorship of sports teams. Since these operators do not hold a licence to provide gambling services in Slovenia as required by the Gaming Act (and it is in fact not possible for them to obtain such a licence), the Gaming Supervision Office issued an order in 2010 requiring all major internet service providers in Slovenia to block the offending websites on the basis of their IP-addresses. This order was partially rescinded in July 2011.

The arrival of foreign online gambling providers to Slovenian market a few years ago seems to have been the main motivator for both existing licence holders for brick-and-mortar lottery and sports betting to start offering their services online as well (which they had been authorised to do by the Gaming Act since 2001). Apart from the increased competition in online gambling market (which mainly resulted in a range of new games offered to consumers) one interesting impact is greater focus on the prevention of gambling addiction and the promotion of responsible gaming. While the websites of the major foreign online gambling operators have for some time offered players advice against problem gambling, self-tests for addictions and electronic tools for self-limitation or self-exclusion from online gambling, these issues were hardly mentioned on the websites or at the premises of the licensed gambling operators in Slovenia right until the appearance of competing grey-market operators from other Member States. Nor was this required of them by the law, as the relevant provisions requiring gambling operators to warn players of the risks of gambling addiction and to offer them advice on responsible gambling, etc., were only inserted in the Gaming Act in 2010. In this respect, at least, the impact of cross-border online gambling offer on domestic gambling market may be seen as positive.

(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?

We are not aware of any non-EU gambling operators actively promoting their services to Slovenian consumers, certainly not to the same extent as the main EU-based operators. It is almost certain, however, that online gambling services of some such foreign operators are also accessible to customers from Slovenian territory. We see the impact of non-EU operators as possibly more problematic since it is not possible to rely on other Member States to exercise proper control and supervision over the activities of such operators. The risks of fraud or money laundering may be greater. The level of such risks depends, of course, on the specific non-EU country in which such operators are based, and its legislation and administrative practices concerning the control over online gambling.

(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?

Most legal and practical problems relating to online gambling stem from the fact that the legal regulation of gambling is still based on the principle of territoriality, while the Internet by its technical characteristics transcends national borders, and services provided online are by default accessible universally, regardless of the location of the customer. This creates problems not only for online gambling operators, but also for consumers and for providers of information society services.

Online gambling operators see their business as providing normal commercial services that could easily be offered to customers throughout the EU, but are hindered in exploiting the opportunities of the internal market by national legislation that prevents them from offering their services legally on cross-border basis. From the consumers' point of view, one of the problems may be difficulty in ascertaining which of online gambling services offered are legal in the consumer's country and may thus be relied upon. A source of uncertainty, for example, is the fact that popular gambling websites that appear entirely legitimate and provide gambling services to players' satisfaction may suddenly become inaccessible from a Member State's territory due to the blocking of access imposed by the national gambling supervision body. Obviously, such a position is a reason for concern for existing players who are thus unable to access their player accounts or collect their winnings.

Legislative or administrative requirements to block access to unauthorised gambling operators' websites poses legal problems for Internet service providers as well. Such requirements are not in line with the principle of the Directive 2000/31/EC on electronic commerce, according to which information society services should be supervised primarily at the source of the activity and not through internet intermediaries. Although this directive excludes gambling activities from the scope of its application, our opinion is that this principle should apply as the default rule in other issues relating to the Internet, as well, as it best corresponds to the fundamental values of free Internet, which is an indispensable condition for a free society in the information age.

Besides that, the attempts to enforce national gambling legislation in the online environment have been relatively unsuccessful. Even when online gambling operators comply with the prohibition on offering their services in certain Member States, consumers tend to find ways to bypass technical measures to block foreign gambling services, when the winnings or the odds offered by these operators are better than what is available in licensed gambling services in the relevant Member State.

In Slovenian gambling market, a still unresolved legal issue was raised by amendments to the Gaming Act enacted in 2010, which gave the Gaming Supervision Office the competence to order providers of information society services to restrict the access to websites or other telecommunications connections, through which unlicensed online gambling services are offered (this competence was transferred to the Administrative Court by subsequent changes of legislation). These provisions of gambling legislation constitute a regulation of technical issues which should have been notified to the European Commission in accordance with the procedure under the Directive 98/48/ES, but was not. This opens the question to what extent the orders issued by the Gaming Supervision Office under this competence are binding, taking into account the ECJ's position in case C-194/94 CIE Security that a national provision which

was not notified according to the '83/189 procedure' (now 98/34 procedure) while it should have been, cannot be held applicable to individuals. Several legal proceedings are currently pending before national courts on the legality of such orders issued by the Gaming Supervision Office. In one instance, the Administrative Court repealed such order.

(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?

In principle, it should be left to individual Member States to decide whether and to what extent to allow online gambling in their territory, taking into account various public policy choices. Nevertheless, it is hard not to notice that in reality, most Member States primarily follow their fiscal or other financial interests in regulating online gambling, rather than other public policy objectives: either through liberal gambling legislation intended to attract new gambling operators to establish their seat in the relevant Member State and thus create additional tax revenues; or by protecting existing national operators through restrictive rules limiting the entrance to the national market to competitors. This is contrary to the position held by the ECJ, according to which the reduction of tax revenue does not constitute a matter of overriding general interest justifying limitations to the free movement of services.

It is also worth noting that in reality, most Member States refer in their gambling legislation to a more or less identical set of public policy reasons, such as the objectives of consumer protection, the prevention of fraud and of gambling addiction, i.e. the reasons already explicitly recognised in the ECJ's case law. This indicates that public policy choices do not vary that much between Member States and that the principle of mutual recognition might therefore sufficiently protect these common objectives. However, one characteristic of gambling regulation that also seems common to most Member States (if judging only from the cases lodged before the ECJ) is the inconsistency between the declared objective of protecting consumers from excessive spending and gambling addiction on one hand and the heavy advertising of licensed or state-owned gambling operators' services on the other (such is certainly the case in Slovenia). This is not in line with the position taken by the Court in case C 316/07 Markus Stoß, that any advertising issued by the holder of a public monopoly should remain measured and strictly limited to what is necessary in order to channel consumers towards authorised gaming networks.

In the case of Slovenian gambling legislation, it is apparent that the conditions for obtaining online gaming licence have been tailored to the needs of existing gambling operators, since only a company that already holds a licence for brick-and-mortar gambling services may be licensed to offer the same type of games online. As the number of licences that may be granted is limited (two for sports betting and lotteries, and 15 for casinos) and has already been exhausted, this effectively prevents operators from other Member States even from applying for a gambling licence until the existing licences expire. Apart from that, according to Article 30 of the Gaming Act, only public limited companies with registered office in the territory of Slovenia may obtain a licence to provide on a permanent basis classic games of chance (i.e. lottery and sports betting). This is not in line with the position taken by ECJ in case C-64/08 Engelmann, according to which the categorical exclusion of operators whose seat is in another Member State, is disproportionate, as it goes beyond what is necessary to combat crime.

The Slovenian Gambling Act declares as its objective the prevention of money laundering, fraud and other criminal activity or conduct contrary to public policy, the protection of minors and of other vulnerable persons from the harmful effects of excessive gambling and the protection of participants in games of chance. However, it should be pointed out that at the time when the law first granted exclusive rights for online gambling to existing licence holders (in 2001) none of these noble purposes were even mentioned in the Gambling Act. As already mentioned, specific provisions requiring online gambling operators to provide certain measures for the protection of players from gambling addiction were only inserted in the Act in 2010. It is therefore doubtful whether the declared objectives were indeed the main motive leading the legislators in laying down rather restrictive rules on online gambling. It is also not clear in what way the requirement that the operator of online gambling services also provides such services in brick-and-mortar premises is supposed to serve the objectives of the law.

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?

Slovenian Gaming Act defines gambling in general as games in which participants, in exchange for payment of a certain sum, have equal opportunities of winning, provided that the outcome of the game is solely or mainly dependent on chance or on some uncertain event (Art. 2). The law distinguishes between two categories of gambling services: "classic games of chance" that include lottery, lottery quizzes, sports betting, bingo, etc., and "special games of chance" that players play against the casino or against each other at gaming tables with cards, dice, ball, on playing panels or on slot machines, and betting and other similar casino games.

Online gambling is simply defined as gambling on the Internet or through other telecommunications media (Art. 3.a). This definition does not expressly include elements of distance and of the use of electronic means, although they are somehow implied by the terms 'Internet' and 'telecommunications media'. The main difference in comparison to the definition from the Green Paper is therefore the absence of a specific limitation of gaming services to those that are provided 'at the individual request of a recipient of services'.

(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?

Under Article 5 of the Slovenian Gaming Act, prize calls for advertising purposes, organised by companies or other legal persons and sole proprietors, are not considered gambling services. Also, the definition of gambling services requires that a player should make a

monetary payment in order to participate in the game. Therefore, consumer sales promotions (sweepstakes) are not considered gambling under Slovenian law, as long as no payment is required to enter the game.

(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?

The Gaming Act does not allow for organising cross-border gambling, even if offered in 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?

The advantage of the existing regulatory situation is that each Member State may make its own public policy choices as to whether gambling is to be allowed on its territory, and regulate autonomously the types of gambling allowed and the conditions for providing gambling services, taking into account specific cultural, historical, religious, social, moral political and other similar reasons and objectives.

The disadvantage of the co-existence of various national systems is that they fragment (legally, at least) both the Internet and the internal market of the EU. Such fragmentation decreases the efficiency of gambling regulation as each Member State tries to enforce its own specific rules, which often require preventing any cross-border gambling services, rather than apply a common set of rules to all gambling operators in the internal market. Neither players nor gambling operators do willingly comply with the rules limiting gaming services to the territory of each Member State. Consumers tend to choose online services of foreign gambling operators if they believe that they are more favourable to players than those of domestic operators. Therefore, these players have to be prevented from accessing cross-border online gambling services by technical measures, which can still often be easily bypassed, e.g. through proxy servers.

Difficulties in the enforcement of gambling legislation online blur the boundaries between legal gambling services and black/grey market services, thus often creating confusion. This not only decreases legal certainty for all persons involved, but also reduces the efficiency of achieving public policy goals set out in gambling legislation, as there is little or no control over the activities of black market gambling operators based outside the EU. Instead of focusing on issues that are actually most threatening to players, national gambling authorities have to deal with unnecessary legal problems arising out of the fragmented gambling legislation.

Other comments on issues raised in section 2.1

Since most Member States choose to protect a very similar set of public policy objectives in their gambling legislation (prevention of fraud, gambling addiction, money laundering, etc.), we believe that it would be possible to create common EU-wide rules, that would appropriately secure these common objectives. Ideally, a common licensing system should be applied as well, enabling licensed operators to offer their services in any Member State that allows online gambling. Such a system would eliminate the difficulties arising out of the existing fragmented gambling regulation and would enable national authorities to exert more efficient control over online gaming operators, and to mutually support each other in their supervisory role. Member States should still retain the option to prohibit all online gambling in their territory and thus exclude themselves from the application of the common online gambling rules and licences.

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?

The Slovenian Gaming Act prohibits any kind of advertising of gambling services for which a concession by the Government of the Republic of Slovenia has not been obtained. No specific rules are laid down concerning the advertising of permitted gambling service, therefore only general rules of the Consumer Protection Act apply, which provide i.a. that advertising must not be contrary to law and should not be indecent or misleading. Advertising must be in a language that consumers in the Republic of Slovenia can understand.

The Gaming Act does not differentiate between various types of commercial communications mentioned in the Green Paper, so it remains unclear if all types of such communications are covered by this blanket prohibition on advertising of unauthorised gambling. In practice, certain unlicensed foreign online gambling providers have acted as sponsors to Slovenian sports clubs, which then i.a. featured the provider's logo on their team's jerseys.

In our opinion, the current regulation is not adequately balanced, since it features an absolute ban on advertising of foreign gambling providers on one hand, and on the other hand sets no specific limitations on the advertising of licensed domestic gambling providers. If one of the main motives for the strict regulation of gambling services is to protect consumers from the risks of excessive expenditure and of gambling addiction, then the purpose of allowed advertising should be to channel the consumers' demand into the legal gambling system and not to encourage the amount of licensed gambling. Since licensed gambling providers do not operate on a free market, but enjoy a legal monopoly due to the specific nature of their services, the general rules of consumer protection law on advertising do not suffice. Special rules should be in place to ensure that, as the ECJ stated in *Stoß* (C 316/07), the advertising of authorised gambling services does not aim to encourage consumers' natural propensity to gamble by stimulating their active participation in it, such as by trivialising gambling or giving it a positive image due to the fact that revenues derived from it are used for activities in the public interest, or by increasing the attractiveness of gambling by means of enticing advertising messages depicting major winnings in glowing colours (which are typical characteristics of some of the advertising of licensed gambling service providers in Slovenia).

What may be seen as problematic from the aspect of compliance with the ban on advertising of unauthorised gambling services is the fact that foreign online gambling providers' advertisements can still reach Slovenian consumers on websites and, typically, through TV broadcasts of various international sports events where gambling providers act as sponsors of sports teams. However, since advertising alone can hardly be said to put consumers at risk, we see this as a minor inconsistency that does not merit regulatory interference with electronic media that would be necessary in order to enforce strict compliance with the advertising ban.

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

The Slovenian Gaming Act does not regulate payment systems for on-line gaming. One of its implementing regulations, the "Rules on games of chance via the internet or other telecommunication means" only require the organizer of online gaming to provide documented procedures for secure financial transactions; it does not specify, however, in what way such transactions should be made.

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

Yes, the Rules on games of chance via the internet or other telecommunication means require that each player opens a gaming account with the organiser, through which the player's payments into the game and the payments of winnings to the player take place. In connection with gaming accounts, the online gaming system must provide: the storing of data on financial transactions, a safe list gambling accounts, protection against unauthorized access or deleting gaming account, backup copies of all financial transactions, keeping of gaming account information in encrypted form and limited access to the gaming account information only to authorized persons.

(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?

The Gaming Act requires that organisers of special games of chance, held at casinos, keep records of basic information for personal identification of all players who have entered the casino. The records must be kept secret and may not be communicated to other persons unless required by law (Art. 78). This basic rule applies, mutatis mutandis, also to online games. The Rules on games of chance via the internet or other telecommunication means specify that a player may participate in games once he has registered with the provider and opened a gaming account. The player must provide the following information for registration: name, address of permanent or temporary residence and date of birth. The player is responsible for the authenticity of the information. On the basis of registration the player is assigned a personal identification number.

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?

Problem Gambling in Europe: Challenges, Prevention and Interventions. Eds. Gerhard Meyer, Tobias Hayer, Mark Griffiths. - New York : Springer, cop. 2009.

(18) Are there recognised studies or evidence demonstrating that on-line gambling is likely to be more or less harmful than other forms of gambling for individuals susceptible to develop a pathological gaming pattern?

-

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

-

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

-

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

-

(22) What is the required level of due diligence in national regulation in this field? (e.g. recording on-line players' behaviour to determine a probable pathological gambler?).

The Gaming Act requires licensed gambling service operators to warn players of the risks associated with gambling, especially of the possibility of gambling addiction, and to provide guidance on responsible gaming and information on where to get help with addiction. Gambling operators must prepare procedures and measures designed to protect players from addiction to gambling, which include informing the player about the consequences of excessive gaming and training the staff for the implementation of responsible gaming. Neither the Gaming Act nor the Rules on games of chance via the internet or other telecommunication means require gambling operators to take active measures to identify problematic gamblers, e.g. through the monitoring of their online playing habits. Both online gambling operators for classic games of chance (Loterija Slovenije and Športna loterija) are members of European Lotteries association and follow their European Responsible Gaming Standards.

(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?

Both the Gambling Act and the Rules on games of chance via the internet or other telecommunication means provide that only persons who have reached the age of 18 years may participate in online games. This limit seems appropriate since 18 is the general age of majority.

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

Both online and off-line age control are based on identification of players with their personal identity documents. Gambling operators require for example, that players submit a photocopy of their identity document via regular mail as a condition for opening a player's account.

(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 Gambling Act contains no special rules regulating of commercial communications aimed at minors. General rules of consumer protection law apply.

(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?

There are no specific provision accounting for the protection of other vulnerable types of players (i.e. concerning risks other than the risks of gambling addiction).

Other comments on issues raised in section 2.3.1

We see the protection of players from risks described in the Green Paper as the main legitimate reason justifying strict regulation and supervision of online gambling. However, the risks associated with online gambling are not specific for each Member State, but remain the same regardless of physical location of the players or operators. Therefore, the measures for the protection against such risks could be more effectively designed and enforced on a common European level.

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?

Yes, such rules are specified in the Regulation on technical requirements for gaming devices and conformity assessment procedure, which also applies to online gambling.

(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?

The Gambling Act contains no specific rules preventing such conflict of interest, which is curious since one of the declared objectives of the said Act is to prevent fraud and other criminal activity or conduct contrary to public policy.

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

-

(32) What risks are there that a (on-line) sports betting operator, which has entered into a sponsorship agreement with a sports club or an association, will seek to influence the outcome of a sports event directly or indirectly for profitable gain?

-

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

-

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

-

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

-

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

-

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

-

Other comments on issues raised in section 2.3.2

Again, the objectives of public order relating to online gambling are fairly similar among Member States, although there may be differences as to the types of criminal activity that may be seen as most threatening. Nevertheless, we believe that the prevention of such risks could be better achieved through implementation and enforcement of a clear set of common European rules on online gambling in the internal market, as this would increase the transparency of gambling operators activity and simplify its supervision by the authorities.

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 are in fact two channels through which gambling revenue is directed to public interest activities. First, on the basis of the Gambling Act, gambling licence fees are used for funding the activities of organisations of disabled persons, of humanitarian organisations and of sports organisations. Two foundations are set up for this purpose: Foundation for Funding Disability and Humanitarian Organizations in the Republic of Slovenia (FIHO) and Foundation for Financing Sport Organisations in Slovenia (FŠ). Second, both foundations are among the owners of the state lottery (Loterija Slovenije) and thus also participate on its profits.

(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?

Yes, two foundations are set up for this purpose: Foundation for Funding Disability and Humanitarian Organizations in the Republic of Slovenia (FIHO) and Foundation for Financing Sport Organisations in Slovenia (FŠ).

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

No.

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

80% of licence fees for sports betting and 20% of licence fees from lottery are used for financing the activities of sports organisations (through the relevant foundation).

(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?

All sports disciplines may benefit from gambling revenues, which are allocated by the Foundation for Financing Sport Organisations. The foundation generally finances 4 sport fields: sports activities, construction of sports facilities, sports research and development, and sports publishing.

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

No.

(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?

The licensed online gambling operators claim so.

(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?

Since the channeling of licence fees into public interest activities is required by law and is implemented by two public foundations, the data on the amounts thus distributed is public and it is available on the foundations' websites.

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 Office for Gaming Supervision supervises all processes directly or indirectly related with gaming organisation, supervises and analyses the implementation of applicable regulations, supervises the ownership structures of concessionaires, and checks and analyses data required for the conclusion of concession agreements and the issuing of licences. The tasks of the supervisory body are:

- discussion and analysis of plans and financial plans and reports on the work of the concessionaire or organiser,
- the supervision of accounting statements and reviewed financial reports,
- the supervision of the ownership structure, organisation, internal acts and operations of the concessionaire or organiser,
- the supervision of the implementation of concession contracts or conditions proceeding from the licence of the organiser,
- the implementation of direct supervision of the performance of all processes that are directly or indirectly linked to the organisation of gaming,
- reports to the government on the operation of the concessionaire or organiser,
- the organisation of making gaming standards,
- the keeping of a register of concessionaires, organisers of classical games, managers of casinos, croupiers, games leaders, people performing internal control in casinos and gaming halls and the chief and assistant cashiers,
- cooperation with the office authorised for the prevention of money laundering,
- establishment of the supervisory information system of gaming devices,
- the implementation of supervision through the supervisory information system of gaming devices.

(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?

Yes, such register is kept by the Office for Gaming Supervision. The basic information from the register with the list of all gambling licence holders is available online.

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

-

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

-

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

As already mentioned, amendments to the Gaming Act enacted in 2010 gave the Gaming Supervision Office the competence to order providers of information society services to restrict the access to websites or other telecommunications connections, through which unlicensed online gambling services are offered. Accordingly, the Gaming Supervision Office issued an order requiring all major Internet service providers in Slovenia to block the offending websites on the basis of their IP-addresses.

The new competence of the Gaming Supervision Office, however, was subject to severe criticism as being incompatible with the constitutional principle of separation of powers, since it gave an administrative body the power to interfere with fundamental rights relating to Internet access, such as the freedom of expression and the free economic initiative, without proper judicial control. Accordingly, the relevant provisions of the Gaming Act were changed again in the same year, so that the competence to order website blocking was transferred to the Administrative Court. The court may order such a measure upon request from the Gaming Supervision Office. What may be contentious is that neither of these new rules has been notified to the European Commission in accordance with the procedure under the Directive 98/48/ES.

(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?

Experience with the measures ordered by the Slovenian Gaming Supervision Office has shown that such methods are relatively inefficient in the long term, as both the players and the gambling operators soon find ways of bypassing the blocking imposed, either through the use of proxy servers or by changing IP-addresses or/and Internet domain names. According to one of the grey market gambling operators, whose websites were blocked by the Gaming Supervision Office, this eventually even increased the amount of traffic from Slovenian customers, due to the increased publicity caused by the measures ordered by the Office.

We do not believe that any of the measures discussed in the Green Paper, namely DNS-filtering, IP-blocking or payment blocking, can be sustainable in the long term, as they would require Internet service providers and payment providers to maintain ever-increasing black lists of websites, IP-addresses and bank accounts that they are required to block. This would partition the Internet and would be inconsistent with the role of Internet service providers as technically neutral intermediaries in the electronic transfer of data. Due to the growing constitutional importance of the Internet as a global democratic forum, the free flow of information should not be tampered with. Internet content should only be regulated at the source, especially when the source is located within one of the Member States and is thus accessible to the competent authorities that may be relied upon by other Member States.

Other comments on issues raised in section 2.4

Other comments on issues raised in the Green Paper

It is undisputable that gambling services are a specific type of economic activity that is associated with certain additional or increased risks, such as fraud, gambling addiction or money laundering. Therefore, special rules are necessary to counter these risks, and gambling operators must be subject to strict control by the authorities. Traditionally, it has been left to Member States to decide whether and to what extent to allow gambling in their territories, and in what way to protect important public interest objectives in their gambling legislation. Member States have granted a limited number of exclusive licences to selected gambling operators under strict terms. Such a regulatory approach is not problematic as long as gambling services are provided only in brick-and-mortar premises. In online environment, however, the co-existence of 27 (or more) national legal gambling regimes causes confusion as to which gambling services are legal when accessed from a certain location. Due to the technical characteristics of the Internet, gambling services provided online are accessible everywhere in the internal market, regardless of the physical location of the operator or of the player. Consumers often prefer gambling services offered from another Member State and do not deal with the issues of legality of such services in their respective territories.

In order to enforce national gambling legislation that prohibits unlicensed operators from offering their services in a specific Member State, technical measures such as DNS filtering or IP-blocking must be used to prevent local consumers from accessing foreign gambling operators' websites. Nevertheless, such attempts to limit the consumers' behaviour have not proven to be very effective in practice, regardless of whether implemented by providers voluntarily or imposed by the authorities, since a significant share of increasingly Internet-savvy players will always find ways to bypass such measures. Because of the decentralised architecture of the Internet, effective control could only be achieved by massive intrusions in

electronic communications through deep-packet inspection and filtering, combined with the control of payment transactions. We posit that in a modern democratic society, such intrusions in the freedom of the Internet should be held unacceptable, as the Internet has become the basic information infrastructure essential for the exercise of fundamental rights, such as the right to freedom of expression. As Advocate General Cruz Villalón stated in his opinion in *Scarlet Extended v. Sabam*, a system for filtering and blocking electronic communications may infringe upon the privacy of communications, the right to protection of personal data and the freedom of information, which are all protected by the Charter of Fundamental Rights.

Website blocking does not interfere only with the rights of website owners (online gambling operators in the situation at hand), but also limits every Internet user's freedom of information as it limits his liberty to access any part of the Internet. It is an established position in international human rights law that the freedom of expression also includes the freedom to receive and impart information and ideas without interference by public authority and regardless of frontiers (Art. 11 of the Charter of Fundamental Rights). The European Court of Human Rights has confirmed in *Times Newspapers v. UK* that website censorship interferes with the right of the public to receive information and ideas. The Court further recalled that particularly strong reasons must be provided for any measure limiting access to information which the public has the right to receive. Solely financial interests of Member States cannot justify intrusions in the freedom of the Internet.

The existing fragmented regulation of online gambling in the EU may in many respects actually hinder the protection of public interests objectives referred to by Member States in their respective legislation. The competent gambling supervision authorities cannot act effectively against grey market gambling operators when their activities are legal in another Member State where they are based. The absence of licences for providing cross-border gambling services needlessly obfuscates the difference between grey market- and black market gambling operators. This is confusing for consumers and presents distraction for gambling authorities that should really focus on fight black market gambling operators whose activities present the gravest threat to consumers. Another negative result is loss of tax revenue that could be obtained by legalising cross-border gambling services provided within the internal market.

For these reasons, it should be acknowledged that effective regulation of online gambling cannot succeed on the national level, and should instead be regulated at the EU-level through a directive laying down certain common rules that Member States should follow in licensing online gambling. As is evident from the ECJ's case law, the public interest objectives protected by Member States in their gambling legislation are not very divergent and typically include the prevention of fraud, of gambling addiction, and of money laundering, etc., which could easily be enacted in a common legislative framework. We propose that online gambling operators should have the option to obtain a European licence that would entitle them to offer their services in any Member State that allows online gambling. Such licences could be issued by Member States under certain common rules and subject to mutual recognition. Member States should still retain the option to prohibit all online gambling in their territory and thus exclude themselves from the application of the common online gambling rules and licences.

As fiscal reasons are in fact among the main motives why Member States wish to retain exclusive control over online gambling, we propose that the licence fees paid by European gambling licence holders should be distributed among Member States based on the location of active players, which should be easily determinable, either through players' IP-addresses or based on the data provided by the player upon registration. Online gambling operators could be required to keep records of players' location in various Member States, and to allocate the license fee payments accordingly (e.g. in monthly payments). The decision on channelling of

revenues thus collected into the funding public interests activities should be left to Member States.

The proposed system would eliminate the difficulties arising out of the existing fragmented gambling regulation and would enable national authorities to exert more efficient control over online gaming operators, and to mutually support each other in their supervisory role. It would increase Member States' revenues from licence fees and hinder both gambling operators and players in tax evasion. It would also create a level playing field for all legal online gambling operators in the internal market and offer a clear and reliable choice to players.