



THE
EUROPEAN
LOTTERIES

FOR THE BENEFIT OF SOCIETY

EUROPEAN COMMISSION

CONSULTATION ON THE GREEN
PAPER ON ON-LINE GAMBLING
IN THE INTERNAL MARKET

**THE EUROPEAN LOTTERIES
SUBMISSION**

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The European Lotteries submission to the Green Paper on on-line gambling consultation

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1. INTRODUCTION

The European Lotteries welcome the European Commission's Green Paper on on-line gambling which represents its first-ever comprehensive policy document on an issue that has been subject to heated discussions in the EU for a decade.

EL members are very aware of the importance of this Green Paper as a means to obtain input from all stakeholders in the debate on the pertinent questions that the regulation of gambling poses today at EU-level. Through the different working groups that EL has set up during the past years, the experts from the EL members throughout the EU have contributed to the EL response to this Green Paper with a view to handing in a comprehensive submission that will provide the European Commission with the elements needed to obtain the 'best possible diagnosis' of the situation. Accordingly, EL has chosen to respond to all 51 questions of the Green Paper, aiming to provide a comprehensive overview of the association's position. While we have drawn on examples from our members in different Member States to exemplify the points made in this submission, the EL submission should be viewed as complementary to the individual positions submitted by our members.

The European Lotteries (EL) is the European umbrella organisation of national lotteries operating games of chance for the public benefit and is by far the largest representative European umbrella organisation in the field of gambling.

EL is an association representing State lotteries and lotteries licensed by the State. It therefore brings together operators which are State owned and private operators both profit and non profit, who operate on behalf of the State.

EL has members from 43 European countries including all 27 EU Member States. The association's EU members contribute more than 20 billion EUR p.a. to the State budgets and the funding of sport, culture, social projects, research and other causes of general interest. The turnover of EL's members in the EU from lottery games and sports betting in 2010 amounts to 73.8 billion EUR. Their gross gaming revenue (the stakes minus the

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prizes) amounts to 33.2 billion EUR. The EU's EL members employed more than 19 000 people in 2010. The indirect employment is estimated at more than 290 000. Per capita, and on average, each EU citizen received 44 EUR from lotteries in 2010. In 2010, on average 66 per cent of the gross gaming revenue (stakes minus the prizes) went back to society as contributions to the State budget and funds earmarked for specific public benefit causes.

EL members only offer gambling and betting services in the jurisdictions in which they are licensed by the respective national government.

Most of the EL Members in EEA are providing both offline and online gaming services. Our association is dedicated to advance the aims shared by all its members: providing a gambling offering that is safe for players in the EU, fending off risks of fraud and protecting the integrity of sport. While EL and its members are of the opinion that self-regulation should always be complementary to national regulation and can never replace it, the association has taken the initiative of adopting a Code of Conduct on Sport betting and Responsible Gaming Standards which bind its signatory members. Further details on our initiatives are shared in response to the questions of the Green Paper.

2. KEY POINTS OF EL SUBMISSION TO THE EC CONSULTATION ON THE GREEN PAPER ON ON-LINE GAMBLING

Gambling is not an ordinary economic activity, but one which entails specific risks for **consumer protection** and **public order**. Revenues from gambling, and from EL members in particular, also play an essential role in the financing of **public interest causes**.

The European Commission has chosen to dedicate a consultation to one form of distribution of gambling which is online gambling. Indeed, **on-line gambling**, due to specific characteristics such as ease of availability, anonymity or lack of social control, **poses very specific risks** for consumer protection and public order and must thus be addressed with very specific care. And indeed, it is the availability of on-line gambling across borders that poses the fundamental threats to consumers in the EU. However, we would like to point out that, from an internal market perspective, on-line gambling is not fundamentally distinct from terrestrial forms of gambling given that the games offered are the same; they are merely distributed through another channel.

EL believes that the basis for a sustainable regulatory framework for gambling must be a **national authorisation system**. We believe that a system in which games of chance are organised by, or at least strictly controlled, by the State has proven to be the best model when it comes to preventing crime and fraud and protecting consumers. In such a system, the State also ensures that the proceeds are used for the benefit of society as a whole rather than being a source of private profit. The Member States have the discretionary power to opt freely for the restrictive model which they believe is the most appropriate to achieve the general interest objectives that they pursue. This principle should apply to both terrestrial gambling and gambling distributed through the internet.

While there are considerable differences in the regulation of gambling between the EU Member States, EL and its members have unanimously adopted and act on common values and principles – **solidarity, integrity, subsidiarity** and **precaution**. We believe that these principles, which are in line with the values and principles the European Parliament and the Court of Justice of the EU, should form the **foundations of a sustainable gambling policy** in

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the EU and in the Member States in order to provide **legal certainty** for the public benefit model that EL members represent. We have detailed these principles in our ‘Istanbul’ and ‘Barcelona’ resolutions of 2009 and 2010, which are available on our website (www.european-lotteries.org). Our recent Helsinki resolution (2011) addresses our action plan to protect the integrity of sport which includes the promotion of strict legislation against money laundering through sport betting, sport fraud and conflicts of interests between betting operators and sport clubs, teams or active athletes; urging of regulators to continue to restrict/prohibit certain types of bets that pose a high risk to the integrity of sport competitions and set limits to pay-out ratios and promoting the support of measures needed to fight betting manipulations of sports events.

In line with the Council conclusions, as adopted on 10 December 2010, the sustainable contribution of lotteries to society should be taken into account in any coordinated approach at EU level.

Fundamentally, EL believes that gambling operators must comply with the legislation in the Member State where they provide their services and where consumers are resident. EL thus considers that the greatest challenge to the European legal gambling market is not that there are different regulations in the different Member States. The real challenge is that there is a **law enforcement problem** against commercial operators who do not respect national regulations, regardless of whether those regulations provide for a monopoly or a system of licenses. Accordingly, **cooperation between Member States** should be encouraged in order to **protect legal operators** against illegal competition.

3. CURRENT SITUATION

Question 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?

From an internal market perspective¹, the games offered online do not constitute a different type of games but are the same games as off-line (terrestrial) games, provided to consumers through a different distribution channel (this has for example been recognised in the WTO Dispute Settlement Report in the WTO case on cross border gambling services between the US and Antigua and Barbuda and recently, in the Court of Justice’s ruling in the French Zeturf case²). While the distribution of games through on-line communication channels does present very specific risks – which we elaborate on elsewhere in our reply to this consultation there is, in our opinion, no such thing as an ‘on-line gambling market’, merely a share of the total gambling market in which the internet or other means described in the Green Paper (m-commerce, IPTV) is used as a means of distribution.

As technology is developing, many of the lotteries united in the umbrella organisation ‘The European Lotteries’ provide parts of their offering also ‘on-line’, mostly as a distribution channel for games that they offer on a terrestrial basis.

From data collected from our members, we estimate that the **GGR** (gross gaming revenue, i.e. the stakes minus the winnings paid out to players) obtained through the internet (including mobile phones and other devices which use the Internet registration of the player) **amounted to 1.740 billion EUR** in the EU in 2010. We observed a raise of 20 per cent to the preceding year (2009). **The total GGR** for our members – across all distribution channels – in the EU in 2010 **amounted to 33.2 billion EUR**.

As EL members develop the distribution of their offering through the internet, it can be expected that the GGR collected through the internet could rise in the coming years. In 2010, EL members in 20 Member States used the internet as a distribution channel. The

¹ From a competition law perspective, this could be different.

² 2 CJEU judgment of 30 June 2011, *Zeturf*, C-212/08

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members of EL operate only in the jurisdictions within which they hold a licence – the data provided by us above therefore by definition does not include operators who do not hold a licence in the respective jurisdiction.

For detailed figures on sales of lottery products by licensed operators over the internet, we also refer to the annual reports from our members, many of whom are replying independently to the European Commission as part of the consultation on the Green Paper on on-line gambling. Further data can also be found in the LaFleur's Lottery Abstracts (which covers only operators providing their services in jurisdictions where they hold a licence).

Data on the gambling market is faced with the fundamental difficulty that a large number of gambling services are offered without a licence and is therefore not subject to the same transparency obligations as the offering by operators providing services with a licence in the respective country. EL believes it is essential that any data used as a basis for policy-making distinguishes between those operators who operate with a licence in the country in where they provide their services and those who do not, in order to adequately differentiate the regulated from the unregulated market. This is particularly important for two main reasons:

- The illegal market is by nature difficult to estimate. Furthermore, illegal and legal offerings differ substantially in their GGR (gross gaming revenue, i.e. the stakes minus the prizes paid out to winners), given that an illegal – and accordingly, untaxed – offering can afford to have a lower GGR since it does not have to use parts of its GGR to contribute to taxation as the regulated – taxed – offering does.
- For those operators that provide services in countries without holding a licence there, it is essential to understand where their revenue is generated. Often, revenue is erroneously indicated as being generated in country X, where the operator is based, whereas it was in fact generated through sales to consumers in country Y, where the operator provides services but does not hold a licence. As a result, the 'market' is overestimated for country X and underestimated for country Y.

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Having established that there is a fundamental difficulty in obtaining valid current data on the gambling sector that includes both the regulated and the illegal offering, we note that there are a number of private companies conducting market studies on the gambling sector which can be purchased at cost, based on analyses of annual reports and expert surveys. The most widely data of this type used in the gaming business are H2 Gambling Capital Consultants and Global Betting and Gaming Consultants (GBGC) (more recently, Media and Entertainment Consulting Network – MECN – have also started to provide this type of data). The data collected by these sources is sold commercially and therefore not publicly available and verifiable in a transparent manner. The European Lotteries highlights that these data should be used with caution as the reliability of these surveys is not safeguarded: they are not based (entirely) on audited data or information verified by a public body. These studies often do not distinguish between licensed and unlicensed operators which leads to a lack of transparency with regard to which operators were included and which not. The fact that these surveys often lead to very different results for the same type of game in the same national market exemplifies the lack of overall reliability. Moreover, our members have identified several inconsistencies in the data regarding their own offering. The data need to be analysed very carefully with regard to whether they distinguish adequately between the regulated offering and the provision of gambling services without holding a local licence. **Given the lack of reliability, such data can by no means be used as a basis for developing policy on (online) gambling.**

This is also applicable to the data used by the European Commission in the Green Paper, which was provided by H2Gambling Capital. This data is not publicly available, making it not possible to validate. The data, in the form used here by the European Commission, do not distinguish between licensed and unlicensed operators, a distinction which is essential for a solid understanding of on-line gambling in the Member States of the EU, as explained above. The lack of distinction between licensed and unlicensed offering also renders it very difficult to contrast with the official data provided by national regulators or data EL has obtained from its members.

An important criterion for data on on-line gambling in the EU is that it must be recent, taking account of the rapid changes in the development of technology, the multiplication

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of (unlicensed) operators offering their services and the steps taken by national government to channel on-line gambling activity. The on-line gambling legal environment in Italy and France for example has fundamentally changed since 2008 (the year of reference of the data used by the European Commission), due to the introduction/extension of licensing systems for on-line gambling.

Where available, we point to data published by regulatory authorities and state operators. The regulators in *Italy* and *France*: AAMS and ARJEL, respectively, publish data on the number of licensed operators and their activities. In *Switzerland*, the 'Schweizer Fachdirektorenkonferenz Lotteriemarkt und Lotteriegesezt' has published a study entitled 'Glücksspiel im Internet' which is a comprehensive analysis of legal and social aspects pertaining to gambling over the internet in Switzerland (though no new primary data was collected for this study).

For the Italian market, we can further commend the following study: 'Gioco online: è boom. Tra innovazione e regolamentazione'(Gaming: it's a boom. Between innovation and regulation) by the Politecnico School of Management of Milan, drafted in cooperation with the Italian regulator AAMS and its technological partner SOGEI, to which our members Lottomatica and Sisal contributed.

As the European Commission is aware, a comprehensive study on the gambling market in the EU does exist in the form of the 'Lotteries in the EU' study by London Economics commissioned by EL (2006). This study provides important information on the lottery market as a whole (the studies provided by the European Commission to date, such as the 2006 Study of Gambling services in the Internal Market of the European Union by the Swiss Institute of Comparative Law, have unfortunately proven to be neither comprehensive nor accurate. The same is the case for the Europe Economics Study commissioned by the European Parliament in 2008). Since gambling over the internet is rapidly developing, we would consider that more recent data is needed to measure the presence of on-line gambling in the EU. Therefore, it would be useful for any further discussions that the Commission provides further studies, for which EL would provide its data to the European Commission.

Question 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)

The European Lotteries, whose members operate only in the jurisdictions in which they hold a licence, do not adhere to the distinction between ‘black’ and ‘grey’ markets used by the European Commission in the Green Paper. We distinguish only between offerings that are licensed to operate in the jurisdiction in which the consumer is based, and offerings that are made available to consumers without a licence in their country, in other words the legal and the illegal market.

As noted in our answer to question 1 of the Green Paper, the illegal market is by nature difficult to estimate. The best indications of the size of the unlicensed offering probably stem from the experiences in those markets where a licensing system was recently introduced and providing a solid indication of the number of operators active in these markets before the introduction – and importantly, the enforcement – of these licensing systems:

- In *Italy*, the regulator AAMS has published data according to which it has inhibited more than 3,100 illegal sites since the entry into force of the legislation allowing it to use an IP blocking system (Law no. 296 of 2006 and decree of AAMS of 2 January 2007). Approximately 500 million access attempts have been blocked since the law entered into effect and a daily average of 2 million access attempts have been blocked (April 2011 data).
- In *France*, the President of the French online gambling regulator ARJEL has noted that before the controlled opening of the French market, the online sport betting market was estimated at 1 billion EUR, of which 96 per cent was held by illegal i.e. unlicensed sites five months after the opening, the total bets placed with legal sites amounted to 391 million EUR. Player accounts were estimated at 2 million to 2.5 million before the opening. In December 2010, ARJEL counted 2.6 million active and interim legal accounts. At that time, the ARJEL had sent 125 enforcement notices

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under section 61 of the Act of May 2010, following which these unlicensed websites can no longer be accessed from France.³

There are a limited number of studies by governments and/or regulators in the EU and EFTA Member States that provide estimates of the unlicensed offering. Again, as the unlicensed market is difficult to estimate, the data are always to be interpreted as estimates:

- *Norway*: The lottery inspection – ‘Lotteritilsynet’ – estimates that the total revenue from gambling on the internet from foreign, unlicensed operators amounted to 620 million EUR and 320 million EUR from the regulated operators
- *Germany*: In the final report of the State regulatory authorities on the evaluation of the German State Treaty (2009), the regulatory authorities of the German States point out that the illegal online gambling volume amounts to 0.378 billion EUR of the GGR (sports betting: 0.128 billion EUR of the GGR, the amount for the other online gambling segments is estimated at 0.250 billion EUR of the GGR). Due to the fragile data situation in these gambling segments, the regulatory authorities do not make a concrete assessment of the available data.
- *The Netherlands*: the studies commissioned by the Ministry of Justice and Gambling Supervisory board and the so-called ‘Jansen Commission’. Noteworthy in particular is the 2009 study commissioned by the Ministry of Justice which studies the participation in illegal gaming activities, including gambling over the internet.

Some of our members have also commissioned research on illegal gambling offering over the internet. For example, market research commissioned by the Belgian National Lottery on online gambling spending in *Belgium* in 2008 estimates that the total size of the Belgian online gambling market was 59 million EUR at that time (during which there was no licensing system in place for online betting and casino games and the national lottery did not yet offer its games online). In *Finland*, our member Veikkaus commissions research from market research firm TNS Gallup. The most recent results indicate that approximately

³ Data provided by Jean-François Vilotte in a interview with Les Echos of 3 December 2010.

four per cent of Finnish citizens have played on a gambling website operated from outside of Finland. In *Denmark*, Danske Spil A/S own KPI report estimates the Danish gambling market GGR in 2010 at DKK 7.5 billion, of which the online market accounted for DKK 1.4 billion. Of the amount of DKK 1.4 billion; an amount of DKK 938 million (or about 67%) was generated in the black market for online gambling services. The black market for online gambling services is thus quite significant in Denmark.

In some Member States, commercial operators – or private research companies commissioned by them – provide estimates of the illegal market. Examples are the Spanish Internet Gambling Association (AEDAPI), which was formed by some of the online gambling companies that operate in Spain without a Spanish licence, and the ‘Goldmedia’ study on the German market, commissioned by operators active in Germany without a licence. Given the interest of these operators to magnify their market share to support their argumentation at political level, and the fact that they are not publicly verifiable, these data are to be used with extreme caution. For example, the ‘Goldmedia’ study ‘Online betting and gambling 2010 – Marktpotentiale für Online-Glücksspiele in Deutschland, Österreich und in der Schweiz’ (market potential for online gambling in Germany, Austria and Switzerland) has been criticized in the Swiss study on on-line gambling by the ‘Schweizer Fachdirektorenkonferenz Lotteriemarkt und Lotteriegeseztz’ in its own study on online-gambling in Switzerland as “methodologically barely tenable or nearly unfeasible and whose authors pursue their own interests”.

Question 3 – What, if any, is your experience of EU-based on-line gambling operators licensed in one or more Member States 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?

Operators that provide gambling services without a licence fundamentally threaten the position of the regulated operators and make it difficult for them to fully play their role of providing a gambling offering that is responsible – with a low risk for gambling addiction – yet attractive to players. In particular, we highlight that unlicensed operators are not

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bound by substantial limits in terms of their advertising, taxation and limits on games and bets deemed to pose a particularly high risk for gambling addiction and money laundering.

Recent reports from France indicate that indeed the majority of unlicensed websites available to consumers in Member States of the EU are based in another EU Member State, as the French regulator ARJEL has confirmed that more than 80 per cent of the French market enforcement notices to operators acting without a licence in France have been sent to operators who are based in the EU. As the European Commission is aware, in the EU, most of the operators offering services illegally in another Member State are based in Malta and Gibraltar.

Advertising:

Operators without a licence literally flood consumers in many EU countries with advertisements and mailings. Often, the prohibition to advertise for gambling without a licence is not properly enforced by the national authorities. For example, unlicensed operators have been known to be able to sponsor poker shows aired on national television. Many unlicensed operators advertise with aggressive bonus offers (e.g. 1000 EUR 'gift' to player account for a new signup). Advertising for unlicensed operators is available on billboards, t-shirts of football teams and on the internet in many Member States of the EU. In *Austria*, the advertisement committee ('Werberat') has recently prohibited a campaign of an unlicensed online sportsbetting and gaming operator because of its belligerent nature.

Taxation:

The European Lotteries has analysed financial statements and annual reports of the leading listed online bookmaker firms that operate in the EU without a licence in the Member State in which they operate. From our analysis, we can conclude that these bookmakers made approximately 84 per cent of their total sales in Europe but the tax paid by these bookmakers in Europe (excluding the sales related gaming duties and taxes) only represents 0,37 per cent of the total sales and only 3 per cent of the GGR. While these bookmakers create 'social cost' in terms of gambling addiction and 'public order costs'

(various criminal offences, including potentially sports integrity and money laundering issues), their contribution to society's finances is thus less than marginal. The costs of gambling are socialised, but the winnings are privatised.

For comparison, EL members contribute, on average 66 per cent of their GGR in taxation or funding for good causes (figure for 2010). The lower de facto taxation of unlicensed operators means that they can afford higher pay-outs to consumers – leading them away from the regulated operators and substantially increasing the risk for gambling addiction (see below) and money laundering. It also allows them to provide higher odds for betting, leading to a further unfair competitive advantage with regard to licensed operators.

Games with high risk of gambling addiction and money laundering:

As a consequence of the non-existing or extremely low taxation of illegal operators, the games run by them offer significantly higher payout ratios than is the case for regulated operators. It has been indicated that high payout ratios lead to a substantially higher risk for gambling addiction and problem gambling (prizes will tend to be reinvested in more gaming, thus maintaining and exacerbating the gambling behaviour).

Indeed, the higher the payouts are, the higher the risk that this form of gambling can be used for money laundering purposes.

We further highlight that those operators that do hold a licence for one form of betting over the internet in a given country sometimes use their internet portal to direct players to other forms of gambling, for which they do not hold a licence – e.g. a company holding a sports betting licence in Austria which uses its website to direct the Austrian players towards their casino, bingo and poker offering, for which it does *not* have a licence to operate on-line in Austria.

ANNEX I (Question 3): Summary of EL study on bookmakers

Introduction

This study is a request from European Lotteries and has been developed with data collected on the internet. The study was prepared by Klaus Byrialsen Lohse, Denmark (former CMO at Danske Spil) with data collected from March 7th until March 16th 2011.

The study primarily includes listed publicly traded gaming providers whose financial statements and annual reports have been publicly available. These listed companies are: Bwin, PartyGaming, Betfair, Unibet, Ladbrokes (online), 888, Sportingbet, PaddyPower (online), William H (online) and Betsson. Other private companies have also been included: Betclie Everest, Pokerstars and bet365.

Assumptions

Calculations were done following some assumptions when data was not provided:

- The average estimated payback was 95% for Casino, 80% for Games, 75% for Bingo and 92% for Sport betting.
- The estimated game split is 50% for Sport, 25% for Casino, 15% for Poker and 10% for Games/Bingo.
- Poker sales are estimated to be the same as the rake.

Conclusions

- Some companies had a revenue higher than 4.000M€ like Bwin, PartyGaming, Betfair, Betclie Everest and Bet365.
- All companies included in the survey represent a total sales of 44.946M€ with a total GGR of 4.434M€. Considering only the listed companies their total sales were 34.153M€ with a GGR of 2.806M€.

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- Approximately 37% of that total GGR was generated by Sports Betting, while 33% came from Poker rake, 22% from Casino games, 3% from Bingo and 5% from other games.
- Estimated sales in Europe were 37.567M€ (approx. 84% of their total sales). For listed companies sales were 29.413M€.
- That compares with the total online sales of 4.497M€ and GGR of 1.342M€ for EU lotteries according to ELISE survey.
- Total tax amount (without sales related gaming duties and taxes) for the listed companies was 109M€ in 2010 and 107M€ in 2009.
- For listed companies gaming duties are included as a cost of sale together with other direct sales-related costs and not all companies present them clearly. Thus, it is difficult to get just the gaming duties.
- In Europe the tax (without sales related gaming duties and taxes) paid by the listed bookmakers, only represent 0,37% of total Sales and only 3% of GGR.

Question 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 refer to our answer to question 3 of the Green Paper. As we distinguish between licensed offering, on the one hand, and games that are made available to consumers without the operator holding a licence in their country on the other, we do not see a fundamental difference between unlicensed offerings being provided from within the EU and unlicensed offering being provided from outside the EU. This being said, we understand that the majority of the illegal offering available in EU countries today comes from within the EU.

Question 5 – If any, which are the legal and/or practical problems that arise, in your view, from the jurisprudence of national courts and the CJEU in the field of online gambling? In particular, are there problems of legal certainty on your national and/or the EU market for such services?

- **Legal uncertainty and practical problems following the CJEU jurisprudence:**

The jurisprudence of the Court of Justice of the EU has, since the early *Schindler* case⁴, evolved and nuanced many legal issues regarding the application of the free movement principles to gambling services. However, on the one hand several legal issues are still outstanding and on the other, the jurisprudence did not manage to create legal certainty about some important issues that have been dealt with. This is the result of the fact that a complex and highly sensitive matter such as the provision of (online) gambling services in the EU cannot be ruled upon on the basis of the main Treaty principles. In the absence of any EU sectoral framework, the Court has no other option than to apply the basic principles of free movement in the EU, which, after more than 15 years of EU litigation, do no longer allow for clear-cut jurisprudence. Consequently, there are some legal and practical problems to be found pursuant to the current CJEU jurisprudence, which lead to legal uncertainty both for governments and operators involved.

- **Enforcement of a justified restrictive gambling policy:**

The jurisprudence of the Court of Justice of the EU requires the EU Member States to establish a legislative framework suitable for ensuring that a monopoly holder will be able to pursue, in a consistent and systematic manner, the public interest objective determined by means of a supply that is quantitatively measured and qualitatively planned. At the same time, the Court acknowledges in its *Markus Stoss* judgment⁵ that illicit transactions on the internet may, particularly when they are of a transnational character, prove more difficult to control and sanction than other types of illicit conduct. According to the Court,

⁴ CJEU judgment of 24 March 1994, *Schindler*, C-275/97, ECR 1994, I-01039.

⁵ CJEU judgment of 8 September 2010, *Joined cases Markus Stoss and others*, C-316/07 and others, not yet published, paragraphs 86 and 87.

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a Member State cannot be denied the right to extend to the internet the application of the unilateral restrictive rules which it adopts for legitimate purposes in the public interest simply because that technological medium has a character that is in essence transnational. In addition, the Court states explicitly that the Member States are not deprived of legal means enabling them to ensure, as effectively as possible, compliance with the rules which they lay down in relation to actors operating on the internet and falling, for one reason or the other, within their jurisdiction.

With this ruling, the Court has essentially, on the one hand, imposed on the EU Member States to establish a suitable legislative framework according to the guidelines, and to ensure an effective enforcement of such legislative framework on the other hand. However, the governments of the EU Member States are not capable today to unilaterally enforce their legislative measures on operators who are operating on a transnational basis. As there is currently no European-wide cooperation between the national competent authorities, an efficient enforcement of the national restrictive online gambling policies cannot be ensured, given the cross-border provision of online gambling services. It is currently impossible for a Member State to unilaterally impose and enforce its restrictive legislative measures on operators who are established in another EU Member State or outside the EU. Often, so-called 'grey operators' – whom we regard as illegal operators – operate in the Member State of residence of the consumer based on a wide range of licenses obtained in different countries, and it is very unclear for the competent authorities of the Member State of residence of the consumer to understand the complexity of the licenses obtained in some countries (like Malta). Moreover, many 'grey' (i.e. in our view, illegal) operators create a very complex licensing structure around them (with subsidiaries in different countries, inside and outside the EU, and operating based on different licenses for different types of games in different EU Member States). Without any cooperation between the EU Member States, it is impossible for the Member State of residence of the consumer to track down the operator providing its games illegally within its territory, and to be able to tackle the illegal transactions by enforcing its legislative and punitive measures.

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In this respect, it has to be recalled that the Court acknowledged in the *Liga Portuguesa de Futebol* case⁶, that a Member State can take the view, in the absence of harmonization in the field of gambling services, that the national competent authorities of the Member State of residence of the consumer cannot sufficiently guarantee the professional quality and integrity of an operator established in another EU Member States, where he obtained a license and is subject to control. Consequently, the Member State of residence of the consumer can legitimately restrict or even prohibit the provision of (online) games of chance by foreign operators within its territory.

Moreover, in the Dutch *Labrokes* case⁷, the Court has recognized that there should not be made any distinction between those operators who pursue an active sales policy in the Member State of residence of the consumer and those who merely operate a passive provision of gambling services. According to the Court, the aforementioned considerations in the *Liga Portuguesa* ruling are based solely on the effects of the mere accessibility of games of chance via the internet and not on the potentially different consequences of the active or passive provision of services by that operator. Therefore, also the provision of games by foreign operators who are merely making their offer accessible through the internet without any active promotion within the territory of the Member State of residence of the consumer, can be restricted or prohibited.

This ruling allows the national competent authorities to use legislative measures such as website blocking to enforce their national legislative framework. However, as aforementioned, the authorities of the Member States are currently not able to ensure an effective enforcement of their respective legislative frameworks on a unilateral basis. Consequently, the results of this ruling, and the obligations the Court puts on the Member States, cannot be realized in practice, given the lack of cooperation between the national competent authorities of the different EU Member States.

6 CJEU judgment of 8 September 2009, *Liga Portuguesa de Futebol Profissional*, C-42/07, ECR 2009, I-07633, paragraph 69.

7 CJEU judgment of 3 June 2010, *Ladbrokes*, C-258/08, not yet published, paragraph 56.

- **Advertising and sponsoring:**

In the *Placanica* case⁸, the Court has recognized the theory of controlled expansion, by stating that authorized operators must be able to represent an attractive alternative to clandestine operators, and that this may necessitate a wide range of games, advertising to a certain extent and the use of new distribution techniques (internet). Since the *Gambelli* case⁹, the issue of advertising by monopolistic operators has been a continuous source of litigation both on national and European level. Although the *Placanica* case clarified the need for authorized operators to advertise their games to a certain extent, the litigation on this point has never stopped and still continues today.

Moreover, the Court has created a very difficult benchmark in the light of the proportionality test in the recent *Markus Stoss* case. Indeed, in this case the Court confirmed that any advertising issued by the holder of a public monopoly remains measured and strictly limited to what is necessary in order thus to channel consumers towards authorized gaming networks. The Court however added that such advertising cannot, in particular, aim to encourage consumers' natural propensity to gamble by stimulating their active participation in it, such as by trivializing 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.¹⁰ Although it is clear that informative publication of winnings and good causes that are funded with the revenues are allowed according to this ruling, the boundary between advertising and informing is not at all very black and white in the field of games of chance. Therefore this paragraph risks to create even more disputes on national level regarding the advertising approach of monopolistic operators.

⁸ CJEU judgment of 6 March 2007, *Joined cases Placanica and others*, C-338/04 and others, ECR 2007, I-01891, paragraph 55.

⁹ CJEU judgment of 6 November 2003, *Gambelli*, C-243/01, ECR 2003, I-13031.

¹⁰ CJEU judgment of 8 September 2010, *Joined cases Markus Stoss and others*, C-316/07 and others, not yet published, paragraph 103.

In addition, the issue of sponsorship is not clearly distinguished from advertising either. In the *Liga Portuguesa de Futebol Profissional* case, the Court has stated that the possibility cannot be ruled out that an operator who sponsors some of the sporting competitions on which it accepts bets and some of the teams taking part in those competitions may be in a position to influence their outcome directly or indirectly, and thus increase its profits.¹¹ There are however other issues related to sponsoring which currently create legal uncertainty, in particular regarding the boundary between sponsorship and advertising. Often sponsored sport teams are playing with advertising on their shirts, within the territory of a Member State in which the provision of the games of the operator are concerned are unauthorized but accessible to consumers.

Question 6 – Do you consider that existing national and EU secondary law applicable to online gambling services adequately regulates those services? In particular, do you consider that coherence / consistency is ensured between, on the 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?

Member States are implementing their legislation (i.e. for what concerns transnational issues such as enforcement and advertising) within the framework of the application of the subsidiarity principle. At the same time, there is the need and the will to cooperate with the EU Commission to face the cross-border impact of gambling in order to ensure the coherence and consistency of the legislation both on EU and national level. To this purpose, some EU Member States are re-considering the regulation of online gambling services.

When the EU Heads of State and Government decided in Edinburgh in 1992 that gambling services should not be regulated at EU level, the market was completely different from what it is today. The provision of online gambling services has increased exponentially.

¹¹ CJEU judgment of 8 September 2009, *Liga Portuguesa de Futebol Profissional*, C-42/07, ECR 2009, I-07633, paragraph 71.

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The provision of online gambling services is very often a transnational service, meaning that it is a means to provide remote gambling services to consumers which are resident in another (EU) Member State. Although several lottery operators provide online lottery games within their jurisdiction in accordance with the national legislation, these operators are confronted with a significant illegal provision of online gambling services, from operators established in another (Member) State and without a national authorization from the authorities of the Member State of residence of the consumer. Today many operators are providing their services with a license obtained in Malta or Gibraltar, or outside the EU, without any authorization from the authorities of the country of destination. In doing so, these operators are not abiding with the national legislation, e.g. regarding gaming rules and limitations, consumer protection, advertising, tax etc.

The national authorities can not on their own fully cope with the challenges, problems and risks caused by the cross-border provision of these services. Internet is not to be stopped at the border. Cross-border games generate several problems which cannot be efficiently dealt with merely by the national authorities of the Member State of residence of the consumer alone. Besides the aforementioned problem of so-called “grey operators”, actually illegal operators, which are providing their games unauthorized in another Member State based on the license obtained in the country of origin, there are many other cross-border issues which require cooperation among states. Several non-EU operators are providing games in the EU without any authorization whatsoever. In that case, the identification of operators established in other (Member) States providing their games without authorization, the guarantee on the integrity of the game and the guarantee on pay out becomes problematic.

According to the principle of subsidiarity, the matter should be regulated at the Member States level which is the most appropriate. Although there are several issues related to gambling which the national authorities can cope with, a cooperation among States is necessary for those issues that the national authorities of one Member State cannot deal with by themselves and need cooperation from the other Member States and involvement from the Commission, in order to ensure a coherent and consistent gambling policy.

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The fact that the Member States are not able to deal with all cross-border issues by themselves is also proven by the years of litigation, both on national and European level, which creates legal uncertainty for governments and stakeholders.

- **The existing secondary EU legislation which applies amongst others to gambling is not sufficient to ensure a coherent approach**

Gambling services are currently not subject to a sector specific harmonization at EU level, but they do fall within the scope of several EU directives, as indicated in the Commission consultation document.

There are several issues which are to be addressed in the context of a sustainable gambling policy, which are not addressed in the currently existing EU secondary legislation, such as:

- how to ensure the integrity of the games (including the integrity of the sport events on which betting is organised and the connected sport owner right issue);
- the sustainable contributions of State lotteries and lotteries licensed by the state to society;
- a coordinated approach on consumer protection including the possibility for a EU wide exclusion for problem gamblers, and the cost related to this;
- technological means and controls;
- licensing & concession rules & procedures.

Such issues nevertheless need to be tackled in order to allow the Member States to maintain and implement a consistent and coherent gambling policy in an EU context.

Moreover, where gambling services already fall within the scope of currently existing EU directives, they often do not always address all the specific issues related to gambling necessary for keeping gambling services under control:

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- The current Unfair Commercial Practices Directive leaves several important issues outstanding such as the offer of free games as a promotional services and the offer of games on credit, which are detrimental to a Member States' restrictive policy in the light of the objectives of consumer protection. An uncontrolled availability of free bonuses and so-called free games constitute a serious problem.

More generally, advertising (both national and cross-border) for gambling services remain unclear and has to be regulated.

- The current text of the Audiovisual Media Services is not sufficient in that regard, and conflicts with the CJEU case law. Indeed, the Audiovisual Media Services Directive only mentions an exemption for gambling services as such in recital 22: *'For these reasons, games of chance involving a stake representing a sum of money, including lotteries, betting and other forms of gambling services, as well as on-line games and search engines, but not broadcasts devoted to gambling or games of chance, should also be excluded from the scope of this Directive.'* The application of a country of origin principle on advertising through audiovisual media service suppliers in the field of gambling is however in blunt contradiction with the CJEU case law in the *Sjöberg* case¹², which allows for a Member State to maintain a prohibition on cross-border advertising of games which are unauthorized within its territory. Several issues related to cross-border advertising are clearly causing severe problems for the coherent implementation of a restrictive gambling policy within the territory of a Member State, such as advertising on billboards at football matches, and the broadcasting of such advertising in other Member States. The question of sponsorship, and the mentioning of names on sport shirts, also requires an answer.
- Moreover, the Third Anti-Money Laundering directive does not allow an adequate prevention of money laundering in the field of (online) gambling as it currently only applies to land based casinos (see article 10 of the Directive) and to their online

¹² CJEU judgment of 8 July 2010, *Sjöberg and Gerdin*, C-447/08 and C-448/08, not yet published.

activities (see recital 14 of the Directive). Therefore, the Directive does not even apply to remote operators (providing casino and other types of games), who do not have any land based activities. Moreover, this Directive does not apply to (sport) betting and other types of games, despite the risks of money laundering. Therefore, in order to allow for an adequate approach towards anti-money laundering, the scope of the directive should be expanded to operators of all types of games, including operators who only provide their games online and who do not have any land based activities.

- **The consistency between public interest objectives, national measures and the actual behaviour of public and private operators**

It is currently indeed not possible for a Member State to ensure a coherent approach at the national level without cooperation. National measures taken in the light of public interest objectives are currently being circumvented by the so-called grey operators and the lack of cooperation between the Member States does not allow efficient enforcement of the national restrictive legislation.

In the *Markus Stoss* judgment, the Court has ruled that a monopoly is not suitable for achieving the public interest objectives of preventing incitement to squander money on gambling and combating addiction, if the following cumulative conditions are fulfilled:

- Advertising measures emanating from the monopoly holder and relating to the other types of games of chance which it also offers are not limited to what is necessary in order to channel consumer towards the offer from the monopolistic operator by turning them away from other channels of unauthorized games, but are designed to encourage the propensity of consumers to gamble and to stimulate their active participation for purposes of maximizing the anticipated revenue from such activities.
- Other types of games of chance may be exploited by private operators holding an authorization.
- In relation to other types of games of chance and which present a higher potential

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risk of addiction than the games subject to that monopoly, the competent authorities are conducting or tolerating policies of expanding supply, of such kind as to develop and stimulate gaming activities, in particular with a view to maximizing revenues.

If those cumulative conditions are not met, a monopoly or other exclusive rights system can be perfectly consistent with EU law. To that end, the Court also gave indications, in paragraphs 83 and 87, as to the legislative framework a Member State should foresee in the light of its restrictive gambling policy. The Court found that a measure as restrictive as a monopoly, which can be justified only in order to ensure a particularly high level of consumer protection, must be accompanied by a legislative framework suitable for ensuring that the holder of the monopoly will in fact be able to pursue, in a consistent and systematic manner, the public interest objective. The Court adds that the supply should be quantitatively measured and qualitatively planned, and should be under strict control by the public authorities. The Court also stated that Member States must be able to have legal means enabling them to ensure, as effectively as possible, compliance with the rules which they lay down in relation to actors operating on the internet and falling within their jurisdiction.

With this judgment, the Court has clearly given the signal that it is up to the Member States to establish a coherent legislative framework and ensure effective enforcement of such a system.

An operator's behaviour cannot be considered to be a separate factor in the consistency assessment, as long as it abides by and operates within the legislative framework as determined by the Member State. Such a legislative framework will indeed be internally consistent when fulfilling the guidelines put forward by the Court in the *Markus Stoss* case.

Finally, the current status does deny the important role lottery operators play for society. The EU is more than just an economic entity, it is an environment in which people must be able to live and enjoy a variety of original social, human, sportive and cultural benefits in the different Member States. In the Conclusions which were adopted on 10 December

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2010, the Council has emphasized that any future debate and/or framework needs to take this specific role of state lotteries on board. The Commission should not oppose to this approach, but rather help in finding ways to re-enforce it.

4. DEFINITION AND ORGANISATION OF ONLINE GAMBLING SERVICES

Question 7 – How does the definition of on-line gambling services above differ from definitions at national level?

It is premature to use a definition for online gambling services which would embrace all the gambling activities, given that the electronic distribution channels for gambling offerings are in constant development. One should not forget that, from an internal market perspective, online gambling services are just another way of distributing and marketing gambling services.

It is in fact not possible, nor useful to set a common definition since online gambling is regulated at National level. Moreover, the definition presented in the European Commission's Green Paper does not exist in Member States. It would suffice to state for example that on-line gambling is gambling services offered through e.g. the internet, m-commerce, IPTV (the means of communication listed in the European Commission Green Paper).

Since there is no common definition among the 27 Member States, it is as such difficult to have a common definition of online gambling services at European level.

Many Member States do not yet have a definition of online gambling at national level although several of them are planning to include such a definition in their new gambling legislation.

Spain:

The national government makes in its new Gambling Regulation a distinction between games played offline or games played by electronic, computer, telematic and interactive means which employ any device, plant, equipment or system to produce, store or transmit documents, data and information, including any open or restricted communication

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network like television, Internet, mobile or fixed phones or interactive communication, in real time or recorded.

Bulgaria:

The new gambling legislation, which is currently under discussion, defines online gambling as “distant gambling games” which are games organized by means of communication equipment. Players place bets directly by means of the Internet or other electronic means of communication, i.e. electronic or electric or mechanical devices, including a central computer system. Communication equipment may include computer or electronic hardware and software.

Denmark:

The current gambling legislation contains no definition of online gambling services. According to the upcoming gambling legislation (section 5. para 8, of the Danish Gambling Act), the definition of online gambling reads as follows: “games concluded between a player and a gambling operator by means of remote communication”. This definition comprises lotteries, Combination games and bets. Cf. section 5, para 1.

Switzerland:

“Remote” gambling comprises games of chance in which the players participate by means of interactive manipulations of end devices via publicly accessible electronic communication networks.

Slovenia:

Online gambling is defined as a game of chance, partly or wholly organized through the licensee’s information system that can be played on the internet or via other telecommunication means.

Slovakia:

Internet gambling means providing a playing system, where one or more players through a connection to the internet, can play the games on the server of the gambling provider, alone or against each other.

Question 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?

Promotional games pose high risks if not regulated appropriately. In order to clearly distinguish them from games of chance, promotional games need to be available at no cost – i.e. include no stakes – and prizes need to be kept to a strict minimum. Promotional games that do not abide by these criteria should be considered games of chance.

Notwithstanding the communication channel, gambling services offered by the media present the same risks as games of chance and should therefore be regulated appropriately. We here point out to recent steps that have been taken in some Member States.

Many Member States do not consider games offered by the media as games of chance and apply a distinction between promotional games and gambling (e.g. *Austria, Slovakia, Lithuania, Hungary, Spain, Germany, Bulgaria*), apart from some Member States who treat them alike (e.g. *Poland, Slovenia*). This difference in treatment is often linked to the lack of relevant regulation or definition, as is the case in *Bulgaria*.

In *Finland*, lotteries and competitions provided by the media and lotteries arranged for promotional purposes only do not constitute gambling according to the Finnish Lotteries Act.

Member States such as *Italy, Portugal, Germany* and *Hungary* have foreseen a separate legislation for media and promotional games.

Germany, for example, has foreseen separate legislation for media games, which fall under the Interstate Treaty on Broadcasting, and promotional games, which fall under the Law against unfair competition. Others, however, apply no distinction at all whether between games of chance and media games or between games of chance and promotional games or both.

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In *Spain*, online gambling services offered by the media are considered to be games of chance. They are distinguished from the merely promotional games because they require some kind of economic contribution to participate, while participation in promotional games only requires the purchase of the good or service that is promoted.

In *Latvia*, a distinction is applied between media games based on skill, for which no gambling licence is required, and media games based on chance, for which operators must have a licence. Promotional games require a separate product lottery licence.

Hungary makes a distinction between promotional games and gambling, in a way that no licence is required to operate promotional games, only a formal registration, and has foreseen a separate regulation. Media games are not categorized as gambling and do not require a licence.

Gambling services offered by the media are considered in the same way as gambling services offered by any other operator. This means that the gambling services are considered gambling if they correspond to the definition in the Danish Criminal Code. Gambling legislation does not distinguish between promotional games and gambling.

Question 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?

It is within the discretionary power of every Member State to oppose the cross-border supply of online gambling services when it considers that these cross-border services undermine its own legislative framework and the consistency of its national policy. Cross-border supply of online gambling services through dedicated gambling premises do actually undermine the consistency of the gambling policy and opens the door to unlimited supply of (illegal) gambling services.

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The majority of the Member States does not allow the cross-border provision of online gambling services on its territory at all, let alone in licensed premises dedicated to gambling, and considers that these services are illegal. The provision of online gambling services is, in case it is allowed under national law, mostly conferred on one or several authorized national operators, thereby supporting and confirming the principle of subsidiarity.

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

Member States have a discretionary power to determine how to organise their gambling policy and to determine what is necessary to achieve the desired level of protection:

The discretionary power of the Member States is limited by the need to maintain a coherent policy. Such coherence requires a Member States' policy to be in line with the objectives pursued (the so-called internal coherence), but also to respect the policy choices made by other EU Member States and to take all the necessary measures to avoid interference with another Member States' policy (external coherence and loyalty principle).

Notwithstanding, it is clear today that there is a need of a certain coordinated approach at EU level in order to reinforce the consistency of the policy defined by each State.

The internal coherence of a national/regional restrictive policy is a matter to be defined at national/regional level. Consequently, different models can coexist for different types of games of chance within one jurisdiction. A restrictive gambling policy needs however to be aimed to reduce the gambling opportunities in a consistent and systematic manner, but – in order to channel the gaming demand towards the authorized and regulated gambling offer – authorized operators must be an attractive alternative for the illegal market.

In order to reach that level of protection, Member States apply various measures in the fields of customer identification, law enforcement, advertising, prevention of fraud and money laundering, etc.

This protection is all the more necessary in the field of online gambling. The Court of Justice of the EU has already confirmed many times the more dangerous nature of online gambling due to the lack of direct contact between consumer and operator, the easy and permanent access to online games and the potentially high volume and frequency of the offer, in an environment which is moreover characterized by isolation of the player, anonymity and an absence of social control. Besides these risks for the players, it is more difficult for the national authorities to supervise and help players who participate in online activities.

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Due to the higher risks for consumers and the public order linked to online gambling, Member States have to be more careful and strict in applying their policy as it is much more difficult, sometimes even impossible, to carry out verifications and controls due to the virtual and cross-border element of online gambling. The Court of Justice of the EU explicitly stated that a Member State is entitled to take the view that the mere fact that an operator lawfully offers gambling services via the internet in another Member State, in which it is established and where it is in principle already subject to statutory conditions and controls on the part of the competent authorities in that State, cannot be regarded as amounting to a sufficient assurance that national consumers will be protected against the risks of fraud and crime, in the light of the difficulties liable to be encountered in such a context by the authorities of the Member State of establishment in assessing the professional qualities and integrity of operators.

Online gambling services are an integrated part of the Member States' policy and need only to be permitted in order to improve the channelling policy and aim at further enhancing the internal consistency of the policy choices. There is thus logically no disadvantage from a policy perspective in different national regimes. From a technical point of view, however, one could think about exchanging information among Member States with regard to the approach of IT requirements and standards.

5. RELATED SERVICES

Question 11 – With focus on the categories mentioned above, how are commercial communications for (on-line) gambling services regulated for at national level? Are there specific problem with such cross-border commercial communications?

While Member States regulate commercial communications differently, we believe that the regulation and effective control of all forms of commercial communication for gambling should be a fundamental part of the gambling policy in a given jurisdiction. Certainly, the advertising policy should not go against the overall gambling policy e.g. by allowing commercial communications for certain games of chance in a given jurisdiction while this offering is in fact not licensed in that jurisdiction.

As the cross-border provision of online gambling services is prohibited in many Member States, the commercial communications for such services are prohibited as well (e.g. *Finland, France, Norway, Austria, Hungary, Spain, Germany, Portugal, Italy*, etc.). In general, only licensed and authorized operators are allowed to communicate, advertise and market the (online) games.

However, other Member States apply a stricter system. For example, *Germany* prohibits all forms of advertising for online gambling while *Bulgaria* prohibits all forms of direct advertising of gambling services and plans to implement an absolute prohibition of all commercial communications related to gambling in its draft Gambling Act.

Some Member States admit that there are problems of enforcement and that certain operators succeed in advertising, for example by sponsoring national football teams or through the media, despite the legal prohibition (e.g. *Bulgaria, Slovenia, Poland, Latvia*).

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

In general, we would strive for a payment system that is secure and controls age appropriately. The control on the payment system needs to be in proportion with the type of game (i.e. the games with the highest risks should also be the ones where there is the highest level of control on the payment system). Payment systems must be left to the discretion of the Member States insofar as compliance with an enhanced money laundering policy (including all online gambling activities) is not affected. All payments must be traceable and connected to the identified customer (by preference winnings should be paid on the same account as where the money of the stakes came from).

With a few exceptions, Member States generally do not have specific national regulations on payment systems for online gambling services but apply other relevant regulations such as the Payment Services Act (*Spain*) or general legal principles retracted from other relevant legislation such as the prohibition for banks to facilitate payments from its customers in the light of foreign gambling services (*Norway*).

The Court in the *Ladbrokes* case, C-258/08 (pr. 43-50) ruled that the measure of the IP blocking implemented by the Dutch State was not disproportionate. Indeed, a measure which implements the national legislation such as the injunction imposed by the judge on the Ladbrokes companies in order to block access to their internet site for Dutch residents is a necessary measure for protecting the integrity of the games. Therefore, it cannot be regarded as an additional restriction.

Some Member States have implemented specific provisions in their relevant gambling legislation, e.g. *Finland* has implemented the prohibition on credit card payments in its Lotteries Act and *Latvia* has included relevant provisions in its Gambling and Lotteries Act. Italy has also foreseen a specific regulation.

Question 13 – Are players’ accounts a necessary requirement for enforcement and player protection reasons?

A crucial element of any national regulatory framework is the effective enforcement of that framework as it allows Member States to attack and prosecute the operators who provide their services unauthorized on their territory. Today, many Member States are implementing strict and effective enforcement measures to tackle the offer of gambling services by illegal operators on their territory from other Member States and/or third countries. These measures include ISP blocking, payment blocking, geo-location technology, etc.

Player protection and public order can be best achieved by consumer identification measures, ensuring secure payments by means of online payment services and pay-outs, responsible gaming measures, etc.

In that regard, a “verified” player account is an essential element to ensure both enforcement and player protection as it allows the verification of the player’s identity (player account requires data such as identity, age, location, etc.) as well as an overview of and follow-up on the financial transaction as such and gives certain guarantees as to the compatibility with responsible gaming measures.

Several Member States already implemented the obligation of registration via a player account. Italy even applies an actual gaming account policy which has proven to be very effective.

Reference can be made to the third Anti-money Laundering Directive (Directive 2005/60/EC) which foresees the need for stricter control and consumer identification which can be achieved by setting up player accounts for land-based casinos and the casino games they provide through the Internet. One of the customer due diligence measures proposed in the Directive suggests the establishment of player accounts for identification purposes.

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The need for stricter controls and verifications was most recently confirmed by Advocate-general Bot in the *Dickinger* case¹³ who stated that in case of online gambling, national authorities can require the execution of on-site inspections to ensure the protection of consumers against fraud and gambling addiction. According to Bot, Member States have the right to require a strict control of compliance with their rules and to apply the necessary policy measures to resist the infringements of these rules.

Also from a responsible gaming perspective, the obligation to have a player account is of high importance. EL has been extremely conscious of the importance of having a set of Responsible Gaming Standards available for its 78 Members to ensure that protective measures were put in place to mitigate, if not eliminate, the risk of problem gaming.

The EL Responsible Gaming Working Group has been responsible for developing the EL Responsible Gaming Standards and Certification Process over the past five years. This process involved extensive international consultation with clinical and operational experts in the field of CSR and Responsible Gaming, both in the gaming/gambling sector and beyond.

EL believes that a verified player's account is a necessary requirement for enforcement and player protection reasons. In fact, it is a sine qua non for EL members' on-line systems.

The player account will provide the only reliable and verifiable method of providing the operator with the means of monitoring, regulating and controlling the players parameters and environment, and providing the player with the means to monitor and control his/her own gambling behaviour.

As described in the EL Responsible Gaming Standards, (section V – "Remote Gaming Channels"), a player's account should be created only when the gaming operator has received:

¹³ Opinion of Advocate-general Bot of 31 March 2011 in the *Dickinger* case, C-347/09, not yet published.

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- Proof of address
- Age verification (i.e. check against a passport or ID card)

Moreover, in order to help them play responsibly, several facilities and options are provided to players as a part of their player account:

- Customer-defined and/or system default limits on play, spend and/or losses
- Self-exclusion options for players
- Reality check on the game screen (e.g. session clock, warning relating to limits, cool-offs/breaks between periods of play)
- Data protection controls
- Values of amounts wagered shall be displayed
- Self-assessment opportunities

Question 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 to assess them? Are there specific problems associated with customer verification in a cross-border context?

The system of verification in each State depends on whether there exists in that State a national identification number with a supporting automated system. EL supports a government controlled system whereby the identity is verified through official databases, documents as ID card or passport and not just left to third parties.

Where this is available, it forms the basis for the verification of the identity of on-line players. Otherwise it is necessary for the players to provide proof of identity and age, such as providing a copy of a passport or identity card.

Each country has its own national rules regarding customer verification, depending on domestic regulations and laws. Data protection is also a national concern, but there are

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means to take this into consideration without reducing the strict compliance with ID verification.

EL has, in addition to the strict government rules that exist in the various EU States, included very strong principles in the EL Responsible Gaming Standards to ensure that the interests of players and vulnerable groups are protected.

The issue of cross-border problems does not arise for EL members as they operate on the basis of all registered players being residents of their own jurisdiction. Registration processes in place for on-line players are specifically designed to block non-residents from registering in the on-line system.

These principles are strictly adhered to and are regularly reviewed by independent agencies and regulators (like the UK National Lottery Commission with regard to Camelot) to ensure that they continue to form an integral part of operational systems and daily practices of EL lottery operating companies. The outcome of all such reviews is rigorously documented and any follow-up action is included in an action plan with specific owners and target dates.

As mentioned before, customer verification should not only include proof of address and age verification but also provide the customer with access to a variety of tools such as:

- Customer-defined and/or system default limits on play, spend and/or losses
- Self-exclusion options for players
- Reality check on the game screen (e.g. session clock, warnings relating to limits, cool offs/breaks between periods of play)
- Data protection controls
- Value of wagers shall be displayed
- Self-assessment opportunities to help people to evaluate whether they are playing responsibly.

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- Links on every webpage to information about responsible gambling, the EL member's policies on responsible gaming, and sources of advice and support (e.g. helpline numbers, referral to treatment providers).

The more verified tools provided for the customer, the more s/he will be protected.

A number of our members also control banking data.

Several examples of specific national practices for responsible play and for self-management of play by players can be detected in the Member States.

Finland:

In order to be able to play online games, players have to register themselves in the system after which their identity is verified with the Population Register Centre database. People below the age of majority or those living outside mainland Finland cannot register in the gaming service. Verifying player identity is based on both the Lotteries Act and the Act on Preventing and Clearing Money Laundering and Terrorist Financing (503/2008). The Money Laundering Act obliges Veikkaus to identify the players and verify their identity if the stake they place amounts to EUR 3,000 or more, whether the transaction is carried out in a single operation or in several operations which are linked to each other. This procedure complies with the general data protection regulations. Veikkaus does not sell games across national borders.

Spain:

Under the new Gambling Regulation Act, players are identified using their national identity card, passport or equivalent document or through an electronic signature system. The national identity card has an electronic chip that, through a card reader connected to a computer, can provide user data online (including age). The new Gambling Regulation Act establishes a customer verification system for online gambling activities respectful of the rules on data protection. Furthermore, it is expected that the National Gaming Commission will create a General Register of the Game Bans Access and a Register of Persons Connected with Gambling Operations to improve the verification process.

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Portugal:

A player has to be registered if he wants to play online. To do so, he has to provide, amongst other information, his full name, birth date, address and email.

France:

Operators are not only required to check the age of the player, but they also have to check whether the player is registered on the formal national list of self-excluded players, controlled by the government. This national list formerly applied only to self-exclusion from casinos. Recently, the new law of self-exclusion has been extended to online gaming.

The Netherlands:

Customer verification is achieved by the compulsory registration of certain personal data of the customer, in line with the data protection rules. No anonymous gaming is possible. Given that customers from other jurisdictions are not allowed to participate in online games of chance, there is no actual verification in a cross-border context.

Switzerland:

Online gambling is offered by the two main lotteries who apply customer verification and accept only players from *Switzerland*. The new gambling regulation will include specific verification rules.

Czech Republic:

Customer verification is achieved by requiring personal registration as well the verification of the age and identity.

Slovakia:

The player has to provide all necessary information to proof his age and payment data in order to be able to play.

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Hungary:

Online players have to provide their bank account details and their name and address in the course of the registration, as well as a declaration that he/she is of legal age (18+). The control of the identification documents takes place when the prizes are claimed. When the data are not correct, the player will not be able to claim the prize.

UK:

The applicable system foresees that claimed prizes under £500 are automatically loaded into the players online wallet. Over this amount, players must claim the prize in person and present valid identity forms such as a passport and proof of address (e.g. utility bill within previous 90 days).

Austria:

Each user must register with a username, password and email address as well as his/her personal data (name, address, date of birth) and an Austrian bank account; all data are checked via a private database as well as the central population register to prove that the user is over 18 years old and has his residence in *Austria*. Furthermore, the users have to define their personal daily/weekly/monthly time and deposit limits. Users can reduce their defined limits at any time. However, any increases do not become effective for 72 hours (“cool-down” period). Furthermore, players can self-exclude. Special agreements are in place with gambling addiction counselling and treatment centres. Users whose gambling intensity raises cause for concern are actively contacted by Austrian Lotteries. In case of an emergency, a meeting can also be arranged with an in-house Clinical Psychologist.

Italy:

For the proper conduct of the online gaming account, the operator must: before signing a contract, check the player’s age through an identity proof and to acquire the fiscal code, which is verified through the regulator central system. After entering into a contract with each customer the operator has to take all appropriate measures to preserve and protect the confidentiality of player data.

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Under the current regulations regarding data privacy, AAMS is entitled to handle the customer's personal information, through the operator which is appointed as the data processor. The processing of personal data of the customer is carried out exclusively for purposes related to the conduct of gaming activities.

Belgium:

The Belgian legislation regarding the implementation of the EPIS system established by the Department of Justice (the government-owned self-exclusion system for problem gamblers and addicted people) obliges all licensed operators (off-line and on-line) to check every customer's ID upon entry into a gaming premise (including access to an online site) online in the EPIS database and to deny him/her access when they are in the EPIS "excluded persons list".

6. CONSUMER PROTECTION

Question 15 – Do you have evidence that the factors listed [above] 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)

- (1) Event frequency
- (2) Payout interval
- (3) Accessibility and social environment
- (4) Chasing losses or being close to winning
- (5) Perceived skills and “involvement”
- (6) Commercial communications that could trigger vulnerable groups

These factors are very difficult to rank on an individual basis as, in reality, they occur in combinations and it is the particular combination that can be problematic.

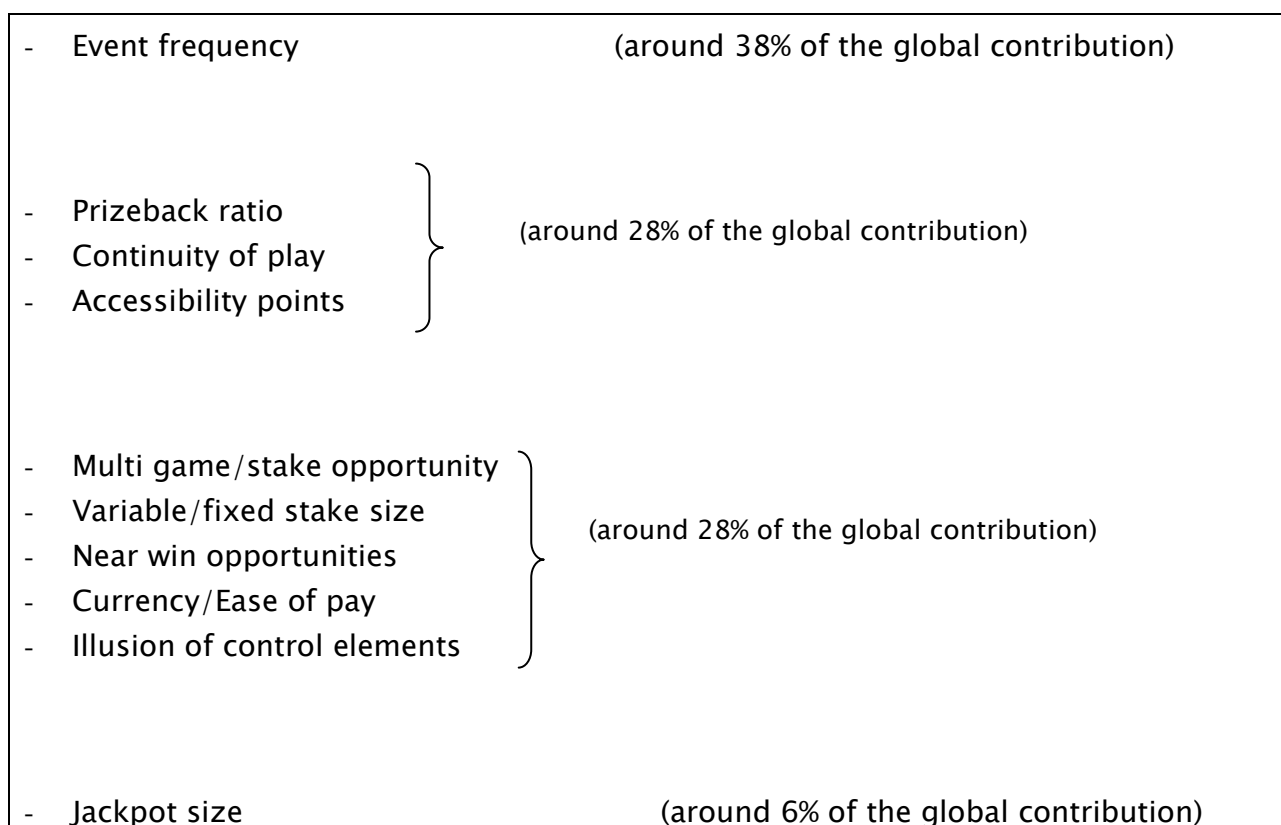
Factors (1) to (4) are objective as they refer to specific characteristics of a game, and relatively easy to measure. Factors (5) and (6) are subjective as they refer to the wider play environment, and are very difficult to assess when analysing a game.

Furthermore, the researches of Dr Alex Blaszczynski, Dr Henry Lesieur, Dr Robert Ladouceur, Dr Jeffrey Derevensky, and Dr Gerhard Meyer, rated all these relevant factors for different games and obtained a total risk rating for games being evaluated:

GAM-GaRD. www.gamgard.com is an example of a widely used tool for determining the potential addictive nature of games.

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GAM-Gard analysis shows:



GAM-GARD is the risk assessment tool developed by a team of international researchers and psychologists, whose operation is based on the analysis of structural features of the game. The tool allows to associate uniquely a score to each element. The final sum will result in the index's overall risk of the game, by indicating any potentially problematic elements on which the company can develop the most effective strategies for protecting the player with particular reference to the most vulnerable. The objective is to define the elements and security policies to protect players and adopt strategies to avoid risks."

To quote Griffiths and Woods in "Lottery gambling and addiction: An overview of European research":

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“It can therefore be argued that games, which offer a fast, arousing, span of play, frequent wins and the opportunity for rapid replay, are associated with problem gambling. This observation has been made in relation to slot machines by researchers all over the world (e.g. *Australia, US, UK, Canada, Spain, Holland, Germany*). There is no doubt that frequency of opportunities to gamble (i.e., event frequency) is a major contributory factor in the development of gambling problems.”¹⁴.

Concerning commercial communications, several countries’ Associations have put in place best practices standards at national levels, in order to protect vulnerable groups such as underage people. The European Lotteries is working to gather all best practices and share them with all EL members.

We consider it to be in the interests of players in all EU countries if all licensed gaming operators in the various states shared the EL view of the importance of exercising responsibility when dealing with commercial communications.

Question 16 – Do you have evidence that the instruments listed [above] are central and/or efficient to prevent or limit problem gambling relating to on-line gambling services? (If possible, please rank them)

The Green Paper lists the following instruments for reducing the risk of problem gambling:

- Age limits
- Self-limitation (financial and time) and self exclusion
- Information/warnings/self tests
- No credit
- Reality checks
- Diligence obligation for the on-line operator
- Restricting certain forms of games or bets that are considered to be more risky.

¹⁴ Griffiths, The National Lottery and instant scratch cards: A psychological perspective. *The Psychologist: The Bulletin of the British Psychological Society*, 10, 26-29. 1997

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- Others (limits on commercial communication, restriction of the use of certain media, sales promotions and sign-up bonuses or free practice games).

EL confirms that we indeed consider all of the above instruments to be of great importance to limit problem gambling. We highlight that they have all been included in the elements of the EL Responsible Gaming Standards.

While drafting the EL Responsible Gaming Standards, several eminent specialists were engaged to share their knowledge and experience of the best CSR and Responsible Gaming principles and practices. With their help, a list of central instruments to help prevent excessive gambling was developed. The list developed for the EL Responsible Gaming Standards shows a remarkable level of foresight in anticipating the instruments in the above list. The EL list was developed and extensively “reality checked” by external and independent experts to ensure that it was relevant, implementable and verifiable.

We would recommend adding to the above list:

- Links to help lines or help centres
- Behavioural tracking tools

Behavioural tracking tools are regarded as very important by EL members, and perhaps require some explanation.

Based on information in the player database, and on continuing monitoring of customer behaviour, players are dynamically identified who may be at risk of developing problem gaming. These are offered continuous and interactive help in good time to change their behaviour, sending discrete messages and suggestions.

For example, in *Sweden*, Svenska Spel operates a player tracking system, “Playscan” which has been developed with the Ministry of Public Health. This is a tool that aims to make the gambler aware of his or her gambling behaviour. By registering the gambler’s gambling behaviour, Playscan identifies changes in the gambler’s behaviour that indicate that he or

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she is at risk of developing or has developed problem gambling. In order for Playscan to be able to monitor the gambler's behaviour, the gambler must play on svenskaspel.se. Playscan uses a traffic light to signal what behaviour the gambler has: green means that the gambling is probably under control, yellow indicates tendencies of unhealthy gambling behaviour, red means that the gambler (in most cases) has unhealthy gambling behaviour. Another way of inspiring insight among gamblers regarding their gambling behaviour is through self-testing with the same signal colours.

As a sample of the evidence that exists for the effectiveness of factors such as “financial self-limitation”, the following survey results from *Sweden* are interesting.

Of the respondents to a Svenska Spel survey, 63 per cent said that when they had reached the limit they had set themselves – and accordingly were no longer able to play on the Svenska Spel website – they did not begin gambling with another company. Risk gamblers tend, however, to continue playing on other gambling sites and change their limit when they have reached it to a greater extent than non-risk gamblers. This would indicate that financial self-limitation, in order to effectively protect risk gamblers, would have to apply across the different online gambling offerings.

The compulsory weekly budget initially led gamblers to spend less money, which indicates that the measure has the function of counteracting and reducing problem gambling. Gamblers appreciate the compulsory gambling budget. The foremost reason given was that the gambling budget helps them keep track of how much they have spent so that they do not spend more than they intended.”

The Green Paper asks to rank, if possible, the instruments to limit problem gambling listed on page 16 of the Green Paper. We believe it would not be a useful exercise and note that EL members use a combination of these factors. We note that many independent studies confirm that the above elements are central and relevant for the implementation of effective and efficient Responsible Gaming standards and practices (see Annex II).

ANNEX II (Question 16): Studies about responsible gaming and on-line gambling (non-exhaustive list)

- Allcock, C. (2002). Current issues related to identifying the problem gambler in the gaming venue. Australian Gaming Council: Current issues. Australian Gaming Council, Melbourne.
- Blaszczynski, A.; Ladouceur, R; Shaffer, H. J. (2004). A Science-Based Framework for Responsible Gambling: The Reno Model. *Journal of Gambling Studies*, 20, 301–317.
- Braverman, J.; & Shaffer, H. J. (2010). How do gamblers start gambling: identifying behaviour markers for high-risk internet gambling. *European Journal of Public Health*.
- Delfabbro, P.; Osborn, A.; Nevile, M.; Skelt, L.; & McMillen, J. (2007). Identifying Problem gamblers in gambling venues. *Gambling Research Australia*, Melbourne.
- Grinols, Earl (2004): *Gambling in America. Costs and Benefits*. Cambridge University Press.
- Griffiths, M. (1999). Gambling Technologies: Prospects for Problem Gambling. *Journal of Gambling Studies*, 15, 265–283.
- Griffiths, M. D. (2008). Problem Gambling and European Lotteries. In: *Gaming in the New Market Environment* (edited by Matti Viren)
- Griffiths, M.; Parke, A.; Wood, R.; & Parke, J. (2006). Internet gambling: An overview of psychosocial impacts. *UNLV Gambling Research & Review Journal*, 10, 13.
- Häfeli, J.; & Schneider, C. (2005). Identifikation von Problemspielern im Kasino – ein Screeninginstrument (ID-PS). Luzern.
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- LaPlante, D. A.; Nelson, S. E.; LaBrie, R. A.; & Shaffer, H. J. (2009). Disordered gambling, type of gambling and gambling involvement in the British Gambling Prevalence Survey 2007. *European Journal of Public Health*.
- Meyer, G.; & Hayer, T.; Griffiths, M. (2009). *Problem Gambling in Europe*, ISBN 978-0-387-09485-4
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- Productivity Commission (2010). *Gambling*, Report Nr. 50. Canberra.

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- Schellinck, T.; & Schrans, T. (2004). Identifying Problem Gamblers at the Gambling Venue: Finding Combinations of High Confidence Indicators. *Gambling Research: Journal of the National Association for Gambling Studies (Australia)*; 16, 8– 24.
- Welte, J. W.; Barnes, G. M.; Tidwell, M. C.; & Hoffman, J. H. (2009). The association of form of gambling with problem gambling among American youth. *Psychology of Addictive Behavior*, 23, 105–112.
- Williams, R. J.; West, B. L.; & Simpson, R. I. (2007). Prevention of Problem Gambling: A Comprehensive Review of the Evidence. Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, CANADA.
- Wood, R.; & Williams, R. J. (2007). Problem gambling on the Internet: Implications for Internet gambling policy in North America. *New Media & Society*, 9, 520–542.

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

At the EU-level there is no available data of the scale of the problem, but there are many relevant studies at national level. The lack of global data at EU-level results partially from the fact that there are significant differences in the forms of gaming, the kind of commercial communication, the different cultural backgrounds and the mentalities present in the different Member States. As a result researchers seem not to have been looking very much at a broader European perspective.

Although several Member States cannot provide any evidence or studies, many Member States have already carried out or are in the process of carrying out such studies in order to get a better view of their national gambling markets.

The Green Paper mentions one of those studies of comparative data from different national levels by Meyer/Hayer/Griffith (2009): Problem Gambling in Europe with data and reports from 17 different nations within the EU (21 nations from Europe in total).

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As an example of national studies, there are two German studies by the Federal Centre for Health Education (BZgA). In 2007 and 2009, the BZgA conducted two population-wide representative surveys on gambling behavior and gambling-related attitudes and problems. A total sample size of 10,001 (2007) and 10,000 (2009) persons between the ages of 16 and 65 years took part in the surveys. The 12-month prevalence of pathological gambling was estimated there at 0.4 per cent for the population as a whole.

Similar cooperative studies were carried out by research institutes in Italy where there has been a collaboration with the La Sapienza University and Eurisko to research and monitor the phenomenon of problem gambling in Italy since 2008 as well as a collaboration with the “Istituto per gli studi sulla pubblica opinione” in Milan and with the consumer group Codacons and the AAMS since 2010 to conduct a series of studies to assess and quantify the phenomenon of *ludopatia* in Italy.

In *Switzerland*, the Conference of directors charged with the lottery market and the Lottery Act carried out a study on online gambling in 2009.¹⁵

In the *Netherlands*, a study on the problematic nature and scope of the Dutch gambling policy was carried out in 2006 providing statistical data on the number of problem gamblers in the Dutch gambling market.¹⁶

In *Norway*, relevant statistics are collected via a free hotline for all matters concerning gambling problems/issues. The 2010 statistics show, amongst others, which games are the most problematic for players. Furthermore, MMI/Synnovate has carried out a series of polls concerning money games/gambling, funded by the National Lottery, which are being monitored by a centre for addiction.¹⁷

¹⁵ Available at http://www.fdkl.ch/images/stories/file/Gluecksspiel_im_%20Inernet_Schlussbericht.pdf.

¹⁶ Available at <http://www.drugresearch.nl/media/79865-Verslinderd.pdf>.

¹⁷ Available at <http://www.spillevelt.no/forside/fakta+om+spill/unders%C3%B8kelsen>.

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In *Finland*, the Ministry of Social Affairs and Health ordered a survey in 2007 which was carried out by a Finnish marketing bureau. Another survey is currently being carried out and the results will be available by the end of the year.¹⁸

In the *UK*, the British Gambling Prevalence Survey (BGPS) 2010, conducted by the National Centre for Social Research with gambling experts Dr Rachel Volberg, Professor Mark Griffiths and Professor Jim Orford, was published in February 2011.

The key findings of the report are:

- 73% of population (c35.5 million) had gambled within the past year (cf 68% 2007)
- Problem gambling prevalence using DSM IV was higher in 2010 (0.9%) than in 2007 and 1999 (0.6% for both years). This equates to around 451,000 adults aged 16 and over in Britain (1).
- Problem gambling is more prevalent among men and younger age groups; and significantly associated with being of Asian/Asian British or Black/Black British origin.

Other research carried out in *Hungary* by Ipsos in 2009 demonstrated that gambling causes problems for 11% of the Hungarian adult population and provided information on the participation rate of the affected groups as well as the intensity of the passion for games and the spending behavior of the players.

In a recent study by Shaffer et al. 2010, which investigates the gambling patterns of customers of Bwin, one of Europe's largest online gambling companies, the authors claim, after interpreting the survey data, that on-line gambling is largely risk-free.

In contrast to Shaffer et al., Meyer et al. (2011) argue that the findings of Shaffer have the disadvantage of a non-representativeness of the sample and behaviour plus a lack of validity of the data.

¹⁸ Available at <http://info.stakes.fi/pelihaitat/FI/huolipeliongelmistalisaantyy.htm>.

Furthermore Meyer et al. (2011) conclude that:

“All in all, against this background of inadequate representativeness, lack of contextual information and missing combination of individual behaviour data with other data sets (e.g. from self-assessments), the findings suggest that pure behaviour data is not per se methodologically superior to self-assessment data. It is the intelligent (appropriate) combination of multiple data collection forms that leads to a deeper understanding of internet gambling.

Given the available evidence, Bwin’s over-interpretation of the findings to suggest that the use of online gambling is largely risk-free is inappropriate and would seem to be driven primarily by economic interests. “

Given the claims of the Shaffer et al. study, in addition to the above contrasting view held by Meyer, EL decided to carry out an original research survey/questionnaire which was completed by a sample of respected clinicians specialising in treatment of problem gambling in different European States.

A summary of the results is attached as Annex III.

This survey supported the Meyer et al. findings and, according to their clinical experience, led the clinicians to conclude that low social control, the chance of entering a gaming site without monetary input (try before you buy), and the risk of becoming addicted is much more dangerous in on-line gambling than in “brick and mortar” real-world locations.

In conclusion, more research is required.

But one thing is clear: gambling addiction is primarily a matter of opportunity. One operator may check and control player data for undesirable behaviour. The more operators you have, the more play opportunities you have as a customer and the more difficult it is for any one operator to become aware of at-risk behaviour.

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The main difficulty for operators is to have an offer which is attractive enough to “catch” players (in order not to lead some of them towards illegal forms of gambling), but controlled enough to minimize the potential for development of addictive behaviours. This theory clearly supports the upholding of a restrictive approach as also endorsed by the CJEU.

The European Lotteries (EL) is so convinced of the importance of Research in the on-going evolution of this sector that it has incorporated it as one of the 10 elements of the Responsible Gaming Standards (2007):

Category I “Research” requires EL Members to “... initiate/engage and communicate the results of research and/or studies in order to contribute to society’s understanding of problem gambling”.

This may also include the funding of research as well as participating in seminars, conferences and other Responsible Gaming initiatives.

In 2009 the EL adopted a Certification Framework (CF) for those Standards, where Members must commit to Research initiatives to be eligible for Certification.

Annex III (Question 17) – Summary of the responses to a European Lotteries questionnaire distributed to various European clinicians who specialise in the treatment of problem gambling, March 2011

The clinicians were asked to respond to the 5 Questions as follows – “Based on your practical experience and professional/clinical experience of treating patients/clients who present with gambling or gambling related problems” ...

Question A

In your opinion, is on-line gaming dangerous or not? Compared with gaming through traditional retail channels, is there an increased risk of developing problem players?

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- Yes – key factors include: 24 hour accessibility in the home, privacy and anonymity, no interruptions, cashless play means money isn't seen as 'real', underage players not as visible (and there are ways of getting round registration, e.g. can use parents card), ability to smoke and drink at the same time.
- Low social control – 'At risk' players tend to enjoy faster play and the lack of natural limits provided by the presence of others speeds up the pace of play.
- The possibility of entering a gambling site without any monetary input (try before you buy) can tempt adolescents and children.
- Many companies offer bonuses and tempting offers via email and pop-ups.
- It is seen as an escape from every day life.
- One respondent felt that it depended on whether the game is low or high risk – if low risk (e.g. draw based games), it doesn't make much difference as to what the channel is.

Question B

In your opinion, is on-line gaming providing a growing danger for players and, if it continues to grow at this rate, could it become even more dangerous?

- Many respondents had seen a considerable increase in requests for help from online gamblers and expect the problem to increase.
- On the other hand, online gaming was seen as allowing a greater opportunity for intervention due to the range of facilities to restrict play such as self-exclusion and play limits which are hard to control in retail.
- There are still many unknowns due to it being a relatively 'new' channel.
- Players, in general, begin gambling 5 years before they become pathological players so determining the link is difficult.

Question C

In your opinion what are the classes of, or characteristics of, people who are more likely to develop on-line gambling problems?

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- Those who seek the ‘thrill’ factor are likely to become more addicted to online gambling.
- Young males, single, educated and in professional/managerial employment are more likely to begin gambling online. "Impulsive" players have a traditional profile, which, according to early descriptions of pathological gamblers, are more likely to be male than female, young, and attracted by the sensations, risk and the ‘thrill’ factor that online gambling offers: it is currently among them that we see young online poker players.
- However, an increasing numbers of women are gambling on-line and adolescents are also attracted to the on-line gaming world.
- This profile could change as the internet becomes more part of everyone’s lives.
- Understandably tends towards habitual internet users.
- There is a link between depression and pathological Internet use but it is unclear whether depression is the cause or the effect of excessive computer use.
- Likely to have other addictions e.g. alcohol
- The first wins, even if they are not important, can affect the fate of a player: all dependent players report these first gains as having an impact on their subsequent conduct towards the game.
- Isolation, loneliness may also affect the fate of a player (e.g. women at home).

Question D

In your opinion, is it more difficult to rehabilitate someone with an on-line gambling problem than someone with a gambling problem arising from playing through traditional (terrestrial) channels, like retail outlets?

- No, they face the same problems that all gamblers have – treatment however must be tailored as online gaming is just a ‘click away’ and work on reducing temptation will take longer.

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- No – treatment involves first helping them to draw a line under their gambling and then help them understand and work through the deeper underlying issues that have driven their gambling.
- Online gamblers benefit from online help over physical treatment.

Question E

Do you have any other general comments on the relative effects of on-line gambling on players and society in general?

- The more accessible something is, the greater the problems and control needs to be taken on a national level.
- The rapid evolution of internet and computers, tablets and other mobile devices makes it difficult to assess the scale of the problem in the future.
- Self exclusion should be made much easier.
- Technological intervention needs to reduce the impact not only on money waged but also the time spent and other social factors.
- Online poker is of particular concern to one treatment provider.
- Advertising is changing the place of gaming in society – e.g. announcing odds more frequently in sports matches etc.
- Online gaming poses real challenges for regulation when needing to keep in line with technological advances.

Participating Professional Clinicians

“b.a.s.” Outpatient–Clinic Graz, Austria

“De–la–Tour” Outpatient–Clinic for Pathological Gambling , Villach, Austria

Dr.Peter Berger, Medical University of Vienna, Department of Psychiatry and Psychotherapy, Vienna Austria

Therapists at Spielsuchthilfe, Austria

Wagner Jauregg Hospital, Inpatient Unit for Pathological Gambling, Linz, Austria

Mari Pajula, Development Manager, Peluuri Helpline, Finland

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Tapio Jaakkola, Finnish Gambling Clinic

Armelle Achour, Psychologist and founder of SOS Players, France

Dr Valleur, France

J.L.Venisse, France

Addiction Aid Centre, West in Ham, Germany

Anke Quack M.A, Department of Psychosomatic Medicine and Psychotherapy, Medical University Centre Mainz, Germany

Centre of Health Promotion RheinlandPfalz, Germany

German Centre for Health Education (BZgA)

Kerstin Jüngling, Specialist, Department for prevention of addiction in Berlin, Germany

Maurizio Fea, Psychiatrist, Project Manager Giocaresponsabile by FeDerSerD, Italy

Magnus Eidem, Project coordinator/ therapist, Distanced based therapy, Norway

Kim Grahn, Chairman of Spelberoendets riksförbund. 2011-02-13, Sweden

Thomas Nilsson, Spelinstitutet, Sweden

Centre Jeu Excessif, Lausanne, Switzerland

Adrian Scarfe, Clinical Training & Development Director, GamCare, United Kingdom

Dr. rer. nat. Dipl.-Psych. Ulrike Albrecht, addiction therapist in the "Café Beispiellos", Berlin.

Question 18 – Are there recognized 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?

Since the early 2000's several studies have indicated that on-line gambling is likely to be more harmful than other forms of gambling for individuals susceptible to develop a pathological gambling pattern, in particular for adolescents.¹⁹ On-line gambling is not a new form of gambling per se but a **new and highly effective low-threshold distribution channel** for any kind of games of chance. The report commissioned by EL from problem gambling experts Gerhard Meyer, Tim Brosowski & Tobias Hayer (University of Bremen),

¹⁹ Meyer, Internet Gambling: A Challenge for the Prevention of Addiction, Suchtreport Nr.3, May/June 2001.

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submitted to to the European Commission along with our submission, provides a literature review on the matter, pointing out that the following characteristics of games provided through online distribution channels in particular speak for a comparatively high risk of addiction: ease of availability, high concentration, anonymity or lack of social control, cashless options and extensive marketing as a result of the large number of internet gambling providers. While the same findings apply for the hazardousness of the different types of games provided on-line as they do off-online, Meyer et al. summarized the current state of research as indicating that:

- Adolescents generally are particularly at risk of developing gambling related problems.
- The nature and form of internet gambling appeals particularly to young, technically aware people (“digital natives”).
- With the increasing spread of technology and rising attraction of online gambling, adolescent participation rates are growing rapidly. The average initiation age is expected to fall as a side effect of this trend.
- Gambling-like options (e.g. demo games and training sites, games on social network sites) are very popular among adolescents. Adolescents will probably comparatively often have their first encounter with gambling or experience its appeal via such products.
- There are a relatively high number of problem gamblers among adolescents with online gambling experience (this applies both for adolescents and adults). However, the specific role played by online gambling in gambling related maladjustments (primary or secondary effect, upstream or downstream problem, etc.) remains unclear.
- There is a primary need for research to map established initiation scenarios into the world of online gambling during the adolescent development phase. This should give specific and appropriate consideration to the various forms of online gambling (including the popular gambling-like games) and investigate their relevance for the subsequent course of adolescent development. To date, the overall state of knowledge regarding the effects of online gambling in adolescence can be described at best as fragmented.

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- An opening up of the gambling markets with its accompanying expansion of the available gambling options would initially stimulate demand among adults and adolescents. From a global perspective, and independently of regulatory requirements, the measures implemented to date to protect minors on the internet reveal clear shortcomings. If a future mandatory exclusion of minors from online gaming sites is not possible, the magnitude of adolescent gambling problems should continue to rise. As standard practice, minors should also not be allowed to gamble online for “virtual money”.²⁰

Furthermore a secondary analysis of findings from the 2007 British Gambling Prevalence Survey prepared by Griffiths et al. showed that “internet gamblers were more likely to be male, relatively young adults, single, well educated, and in professional/managerial employment. Further analysis of DSM-IV scores showed that the problem gambling prevalence rate was significantly higher among internet gamblers than non-internet gamblers. It was also found that some items on the DSM-IV were more heavily endorsed by internet gamblers including gambling preoccupation and gambling to escape”.²¹

A written survey recently conducted with (inpatient and outpatient) treatment organisations for pathological gambling in *Italy, Sweden, UK, France, Finland, Switzerland, Germany, Norway and Austria* showed that the experience of treatment and counselling meets the findings of scientific research in this field.

In his presentation given during the 8th Responsible Gaming Academy of the Casinos Austria-Austrian Lotteries-Group, May 4th-5th, 2011 in Vienna, problem gambling expert Mark Griffiths stated that:

- “the medium of the internet could be a less protective environment for vulnerable gamblers...”
- “It may mean that it (the internet as a distribution channel) causes more problems for those who are more vulnerable.”

²⁰ Meyer, Analysis of the Risk Potential of Online Gambling for Adolescents, 2011.

²¹ Griffiths et al., 2008.

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We point out that the main body of research used to claim that online gambling is *not* more dangerous than games provided off-line uses *behavioural data* which are deemed by leading researchers to be inappropriate to answer this fundamental questions. Indeed the Division on Addictions, The Cambridge Health Alliance, a teaching affiliate of Harvard Medical School, has published a number of studies commissioned by a commercial gambling operator (Bwin). The results of the various studies are used to make the case that online gambling is not more dangerous than terrestrial gambling. However, influential experts in the field of problem gambling have criticised these studies and the conclusions drawn from them, arguing that these studies do not answer the question whether internet gambling is more dangerous or not. Indeed, as leading researcher Griffiths argues (cf. above), this question can only be answered if actual gambling behaviour is studied across different forms of gambling (e.g. internet gambling, land-based casinos gambling, video lottery terminals). However, the ‘Harvard Bwin studies’ do not examine overall gambling behaviour, but only examine a single game (e.g. sports betting, casino games, poker) and one group of people, i.e. online gamblers.

Regarding the prevalence of problem gambling for online gamblers, as an example of a very recent study we present here a summary of a study carried out in Italy. Claudio Barbaranelli, Ph.D. from Department of Psychology of “Sapienza” University of Rome recently (2010) carried out a study on the prevalence of Problem Gambling, with a focus on online gamblers. Players were sampled to examine the distinctive characteristics of online problem gamblers and the most significant risk factors for problem gambling. A sample of 1000 representative players was set out (18–74 years, who gambled online for money at least once in the last 3 months (population = around 1,340,000). The quota sampling was balanced by geographic area, size of the city, age, gender and the so confidence level was laid down at 95.46%.

The method to carry out interviews was the so-called CAWI method.

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Two different validated instruments were been used to assess the prevalence of Problem Gambling:

- South Oaks Gambling Screen (SOGS)
- Problem Gambling Severity Index (PGSI)

They overlap only partially, thus evidencing different aspects of Problem Gambling and two instruments may reduce the risk of misclassification.

As per the results: the percentage of online problem gamblers on the sub-population of around 1,340,000 adult Italian gamblers was 9.7 per cent; that is higher than the percentage of problem gamblers based on the total population of Italian adult gamblers which was 1.71 per cent.

The identity-kit of the Problem Gamblers looks as follows:

- play multiple games in lifetime and in past year;
- not interested in only one game;
- play more frequently, dedicate more time to gambling (about 1 hour per day);
- spend more money on gambling;
- have higher erroneous beliefs in their chances of winning, and in controlling the outcome of the game;
- are more prone to take risk and to appreciate risk;
- have one or both parents with gambling problems.

There is a need for a global European prevalence study, since methodologies and questionnaires vary from one prevalence study to another in the European States where such studies have been carried out.

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

We refer to our answer to Question 18 regarding the specific risks presented by the distribution of games online– Regarding the question which types of games are most problematic if offered on-line, as on-line gambling is not a new form of gambling per se, but a new and highly effective low-threshold distribution channel for any kind of games of chance, the same findings would apply for the hazardousness of the different types of games provided on-line as non-online. However we again stress that distribution over the internet presents specific risks.

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

Different approaches to prevent problem gambling are adopted by governments and state lottery operators at a national level. These differences arise from differing cultural backgrounds, differing legal and jurisdictional systems, differing environmental and social systems, the volume of legal and illegal gambling opportunities, and many more reasons. The corporate image and corporate values of the different EL members also play an important role.

The primary approach by lottery companies is based on the principle of keeping people out of a notional “red zone” from which it is very difficult to rehabilitate problem gamblers. EL members work very hard to prevent the problem arising in the first place. By channelling the desire to gamble and by regularly feeding back real-time information to players about their behaviour and providing them with sophisticated facilities to monitor and test their “danger level” (on a spectrum from green to red) an early warning or early detection system is clearly available and promoted. Many EU Member States implement such a system, with Svenska Spel in *Sweden* being one of the pioneers and best in the field.

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It is important to stress that activity in this area of prevention is not solely a matter for state lottery companies. A full coordinated program can only be implemented by EL members in conjunction with national governments, the regulatory authorities and by organisations with responsibility for addiction treatment.

Essentially all of these programs involve Research, Information Training, and Treatment Referral.

A particularly good example of a coordinated approach, involving these four characteristics is one adopted at a federal level in *Germany*. There is extensive cooperation between the German Lottobloc and the German Center for Health Education (BZgA). The BZgA and the Lottobloc developed a program for early recognition, and prevention of problem gambling which includes the following stages:

- National survey to determine the actual level of gambling in the population (first 2007, second 2009, third 2011 planned). At the moment the national research study (n > 15,000) from the Universities of Greifswald and Lübeck is designed to learn more about prevalence and reasons for Gambling problems to be published in Summer 2011. This study was financed by the 16 German federal states together.
- Allocation of funds for different population groups including the choice to test one's own gambling behaviour.
- Media strategies (for media skills) (papers, advertising, poster) with prevention messages of gambling addiction for different population groups.
- Consulting and information service in the internet.
- National gambling consulting helpline (Hotline).

The general situation in European States is covered by the following categories:

- Research is funded and carried out so that there is a better understanding of the issues involved. For example, prevalence studies are conducted in *Germany, UK, Sweden* and *France*.

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- Information is disseminated to:
 - Players and General Public—Odds of winning, Self-exclusion facilities, Helpline numbers, Self-tests, behaviour-modification facilities.
 - At every point-of-sale there should be information about treatment referrals (+ Number of helpline). In *Belgium*, the points of sale receive a specific bonus from the National Lottery when they actively support the awareness campaign directed at the public.
- Code of conduct on commercial communications.
 - Stakeholders (political, beneficiaries) via Annual Reports and special reports
 - Regulator – for example, in the *UK*, Camelot provide the Regulator with the broad results of game parameter testing with GamGard as an essential component of their application for individual game approval.
 - In *Italy*, every licensed online operator must provide auto-limit tools and auto-exclusion features. They have also to forbid minors from participating in online games and bets and highlight this ban on their websites. Recent legislation includes an action plan of AAMS (Italian Regulator) in concert with Ministry of Health to prevent, foil and rehabilitate compulsive play.
- Training is provided for:
 - Retailers—Game characteristics, as well as how to enforce the Age-limit requirement (controlled by Mystery Shopper programs).
 - Employees.
- Promotional communications to explain products
- Treatment Referral
 - In *France*, there is state funding for associations helping pathological gamblers or acting to minimize issues of vulnerable groups (e.g. child protection).
 - In *Germany*, in all retailer premises the relevant information on treatment is clearly visible and easily available. It is also available on lottery websites. In

addition, at a federal state level, Centers for Health Education are available, some of which are run by the federal states, some work within the churches, financed by the state. They all have local programs for early recognition and avoidance of problem gambling.

- In *Belgium*, the National Lottery refers to the Clinique du Jeu Pathologique and other institutions.

Question 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?

Every Member State has a different organization related to treatment referrals, but the majority of them have a National Helpline and local treatment services spread throughout the territory. There isn't a general policy for Treatment centres/helpline funding: some, organized by the government are funded by the operators through a mandatory support; others are supported in a voluntary way by operators according to their own Responsible Gaming policies and their alignment to the EL Responsible Gaming Standards.

Examples:

United Kingdom:

The *UK* has a free service called GamCare which operates national telephone and online help lines for anyone affected by a gambling problem and provides both face-to-face and online counselling, free to clients. Their provision of face-to-face counselling reaches many parts of the *UK* and they are constantly developing the service to ensure that it is available locally. Most of their funding is raised voluntarily by the gambling industry and channelled through the Gambling Research Education and Treatment Foundation.

Norway:

Norway provides nationwide treatment for gambling addiction carried out by standard addiction clinics and a resource centre for gambling addiction ("KoRus Øst"). Furthermore,

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“remote assistance” is provided which is an internet option for treatment. Also, interest and support groups such as Gamblers Anonymous and a telephone helpline are provided and administered by the Norwegian Health Care.

Poland:

The Ministry of Health has dedicated a fund to prevent and treat gambling addictions

Finland:

Problem gamblers can seek help and support by contacting social and health care services, as well as certain special services directed at problem gamblers. A person suffering from a gambling problem can seek help at the A-Clinics, at mental health care offices, crisis centres, social service centres, health care centres, and diaconal workers of parishes, psychiatric polyclinics, institutional treatment, and peer support groups. The gaming operators assume part of the expenses of the preventive measures but the treatment of gambling problems belongs to society's health care system. The Ministry of Social Affairs and Health is in charge of the monitoring of and research into the problems caused by the operation of lotteries and the development of their prevention and treatment. The gaming organizations compensate the state for the expenses incurred from these activities. Veikkaus' share of the gaming detriment study conducted by the Ministry of Social Affairs and Health is 45%. The Ministry of Social Affairs and Health has announced that it will be spending €2.4 million on research starting from the beginning of 2012. One example of the preventive activities financed by the gaming organizations is Peluuri, the Finnish problem gambling helpline. Peluuri is a nation-wide service to people with gambling problems. Peluuri was launched on 1 September 2004 and it offers information and support in the treatment of gambling problems. At the core of Peluuri's activities is the Problem Gambling helpline. Peluuri Helpline is funded by the Finnish state-licensed gaming organizations: Fintoto Oy/Horse Betting company, RAY/The Finnish Slot Machine Association and Veikkaus Oy/The Finnish National Lottery (covers 45% of the expenses).²²

²² <http://www.peluuri.fi/peluuri-info/>.

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Italy:

Treatment for gambling addiction is available at national level throughout “SERT”s (public local agencies where counselling and treatment for addiction –including pathological gambling – are available). On the other hand, there is neither a mandatory contribution (by law) for operators (only voluntary), nor a national helpline organized by the National Public Health Department. Operators support different helplines, among these, the most known has been organized by Federserd (Federation representing addiction treatment local services) and voluntarily supported by Lottomatica: “Giocaresponsabile”. This service, free and anonymous, supports people who have problems connected to gaming and also friends and relatives through the assistance of an adviser group (psychiatrist, psychotherapist, lawyer). The service provides immediately by telephone or in chat rooms and, in 24 hours, by email, answers to questions, guidelines on problems, and eventually addresses of competent local services, virtually accompanying the petitioner to the suggested service.

Since 2010, Sisal has formalized its commitment to the Department of Psychiatry “Fatebenefratelli” Hospital in Milan, in order to make an effective contribution to the action and aid in prevention of pathological gambling. The operators of the Call Center Sisal, made up of medical specialists, operate a first aid and guidance on the issues derived from responsible gaming. Through its operators, Sisal offers a Help Desk service, called "a genuine help." Moreover, Sisal provides problem gamblers or at risk of a telephone support service, "the expert responds", directly connected to Fatebenefratelli Hospital or available online.

France:

In France the “SOS Joueurs” helpline is available for the cost of a local call. SOS Joueurs is an association which helps players and relatives who have problem with gambling. It gives psychological, social and legal advice. The French National Lottery, FdJ, funds this public service partially. Besides, the lottery also gave funds to start and support a Reference Center about excessive gambling in charge of training regional or small associations dealing with the treatment of problem gamblers. In addition, the government put in place a national helpline in 2010, ruled par INPES (national body in charge of the Education and Prevention in the Health Area).

Switzerland:

There is a free and anonymous national helpline “SOS-Jeu” 0800 801 381 available for players & family by phone 24h/24h, in German and in French. There are also local treatment services spread throughout the territory, some specialized in excessive gambling, others specialized in general addictions. The helpline and the centres are mostly financed by a “gaming tax” whereby each lottery (Swisslos and Loterie Romande) must pay 0.5% of their GGR a year for actions related to excessive gaming prevention (training, research, communication, helpline, etc.). Approx total per year CHF 6 million.

Germany:

There is a free national helpline at the “BZgA” (Federal Centre for Health Education) for all kind of gambling problems. As on-line gambling is illegal since 2008/2009 there are no legal operators. There are many illegal, but they do not finance the helpline.

Austria:

In *Austria*, there is a national helpline and local treatment services which are partially funded by Austrian Lotteries.

Hungary:

A cooperation agreement has been concluded with the National Institute for Strategic Health Research in the framework of which they provide the operation of a specialized Internet portal. Through this portal gambling addicts can receive help from a psychologist specialized in gambling addiction, and they are also given advice about the further steps to be taken and the institutions they can receive help from.

Spain:

The National Health System of the Ministry of Health, Social Policy and Equality and the Departments of Health of the Autonomous Regions are responsible for treating addictions in general. Licensed gambling operators in Spain contribute indirectly to financing these measures through high gambling taxes that go to the Public Treasury and hence the health

systems. ONCE also finances the largest organization in Spain to help problem gamblers (FEJAR) through a cooperation agreement signed in 2010.

Portugal:

Treatment for gambling addiction is available through the national public health service and with help from the institute for drugs and addictive substances treatment. There is also treatment available in specialized clinics and other private practice facilities. Part of the national lottery profits are channelled to the national health system, to the institute for drugs and addictive substances treatment and addiction prevention projects.

Greece:

A help line, financed by the CSR department of OPAP and designed in cooperation with KETHEA (acronym for Therapy Center for Dependent Individuals), a non-profit, private organization specialized in the field of dependent individuals for the support of the addicted gamblers, is available since the summer 2011.

Question 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?).

There is no a common approach to the issue of due diligence in national regulation. This arises from the different legal and regulatory frameworks existing in each State. The following provides a short summary of the situation in a number of European States.

When it comes to protection measures, in most states the lottery operator sets overall global play parameters and limits. Within these global limits, the player has the facility to set periodic (daily, weekly, monthly) limits on the funds deposited or played in general or for specific classes of games; limits on the time spent on-line, and a facility for self-exclusion (irrevocable or partial).

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With regard to the checks on the registration process, in order to open a gaming account with a licensed operator, the customer has to be at least 18 years old, reside in the jurisdiction and must be cross-checked against a national register, Tax data, or some equivalent data base. In some jurisdictions, a verification system is in place where copy ID must be provided.

The play account details, including details about deposits and stakes, and the times of the playing sessions, are clearly displayed on the personal gaming account to the player.

Many Member States have installed a Responsible Gaming Section which is a section of the website that contains important information for the player, such as:

- The warning that gaming could be harmful if not controlled and kept in moderation;
- The self-assessment test to determine risk potential;
- Advice on Responsible Gaming and references of sources of help on problem gambling;
- Information regarding the self-exclusion policy and process available on the site (self-exclusion and limits).

France:

The national regulation is assumed by the ARJEL (Autorité de Regulation des Jeux en Ligne or online gaming regulation authority) for the online games offering open to competition and by the CCJ (Comité Consultatif des Jeux or consultative gaming committee) for the off-line activities and the online lottery activity. Since 2006, the French national lottery has sent to the approval by the regulatory bodies annual plans and reports about their marketing strategy and their responsible gaming action plan.

- Protection measures – In order to get a licence to operate, ARJEL asked operators for a range of behaviour-moderating tools as described above.
- Checks on registration process – as above;

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- Reporting to the ARJEL: licensed interactive gaming operators must provide ARJEL with regular reports and data records regarding players' transactions or players' behaviour. The French lottery also offers to the player a service called Playscan®, based on voluntary decision by the player, which analyses his gaming behaviour and gives him an idea of his potential level of risk towards pathological gaming. Commercials are not sent anymore to players registered on Playscan who are detected as probable pathological gamblers.
- Play account details: as above;
- Responsible Gaming Section: As above.

Italy:

The existing regulation includes the law of 7 July 2009 n. 88 (Community Law 2008) which defines some fundamental criteria to protect online players and to promote balanced gaming behaviours and implement responsible gaming practices. These criteria entail:

- Protection measures – As above.
- Checks on registration process – as above.
- Integration with SOGEI (the regulator's IT arm which keeps all data for governance and tax settlement purposes): licensed interactive gaming operators must provide SOGEI with all data records regarding players' transactions to comply with anti-money laundering law prescriptions.
- Play account details – As above.
- Responsible Gaming Section – As above.
- The “Carta dei Servizi” (“Services Charter”) is an information and communication tool regarding the relationship between the player and the regulator (in *Italy*, AAMS – Amministrazione Autonoma dei Monopoli di Stato) and it establishes a type of informal agreement.

The “Carta dei servizi” involves AAMS, the online player and the lottery and is aimed to protect the player, to allow him to directly control the quality of the service and to ensure the lottery service is in accordance with the law. In case of serious breaches of the Charter's provisions the regulator can decide to suspend or withdraw the concession.

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UK:

The National Lottery Commission is responsible for licensing and regulating the National Lottery. Under the licence to operate the Lottery, Camelot is required to adopt, maintain and implement strategies to prevent excessive and underage play on the National Lottery. Such strategies are approved by the Commission and deal with game research and design, marketing, public information and education, accessibility, staff and distributor training, monitoring and support for the treatment of problem gamblers. Camelot is also required to adopt a code of corporate social responsibility.

The following types of controls have been implemented to protect players from excessive play:

- customer-led and system default limits on spend;
- regular email content about player protection sent to registered players;
- self-exclusion options for players;
- reality checks on the gaming screens;
- self-assessment opportunities to help people evaluate whether they are playing responsibly;
- A limit of 75 Interactive Instant Win Games (IIWGs) that can be played in a day and a wallet load limit of £350 a week.
- Checks on registration process – As above, except that the age limit is 16.
- Play account details – As above.
- Responsible Gaming Section – As above.

Question 23 – Are the age limits for having access to on-line gambling services in your or any other Member State in your view adequate to attain the objective sought?

Most Member States impose statutory age limits in offline and online gaming environments in order to minimize the risk for society that is likely to arise from addiction to gambling formed at an early age. That is why it is vital that stringent measures are in

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place across all platforms to prevent occurrences of underage players 'slipping through the net'.

In some States (e.g. Switzerland and Belgium) the National Lottery operator has imposed even more stringent age limits than the ones prescribed by law as an additional method of ensuring that adequate protection is provided for minors.

The fact that early onset increase the risk of addiction is supported by several researchers.

Furthermore, studies have been conducted which determine the critical ages at which gambling can lead to problem gambling later in life.

In a study by Volberg et al. (2001), age of onset was shown to be a risk factor for gambling problems.²³

Other relevant studies include:

- Bondolfi et al. (2000), Bondolfi, G., Osiek, C., & Ferrero, F. (2000). Prevalence estimates of pathological gambling in Switzerland.
- Gambling Among Young people, Frida Fröberg (2006).

In *France*, all forms of gambling, through any channel are for over 18 years (on and off-line). Existing limits seem to be adequate to protect minors against online gaming on legal operators' website thanks to mandatory ID check.

Strong measures have been taken to protect minors from exposure to inappropriate commercial communication (i.e. national code of conduct about advertising, which includes such measures as prohibiting TV advertising for gaming around broadcasts for children).

In *Italy* the age limit for both online and offline games has been fixed at 18 years old.

²³ Study by Volberg et al. (2001).

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In *Finland* the age limit for all money games is 18 years – both on the Internet and at points-of-sale (according to Finnish Lotteries Act, valid on October 1st, 2010). Veikkaus verifies customer information via Finnish Population Register Centre. To register a Veikkaus customer you need to have a Finnish social security number (age verification), permanent address in Finland and a Finnish bank account. In Veikkaus, for example, a retailer training program consists of information how to ensure age restrictions.

It is generally believed by EL that the age limits imposed are appropriate and adequate to limit the early onset of addictive gaming behaviour among players. However, the implementation of controls and checks to ensure that the age limits are actually enforced is of equal importance to the existence of such age limits. This issue is covered in detail in reply to Question 24.

EL would encourage all gaming operators, both online and traditional outlets to implement stringent age limits control mechanisms and to ensure that such limits are being respected by means of regular monitoring and testing.

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

EL believes that again this is an important regulatory question. However, in excess of the legislation, the European Lotteries Responsible Gaming standards promote a range of both online and offline measures to prevent underage play. Online age verification systems should be sophisticated and strong enough to ensure that minors are blocked from registering and therefore cannot play games – this is missing from many private operators' systems. Even though many Member States apply some form of online age controls, these controls remain mostly limited to the data provided by the player at the moment of registration with regard to his age. However, several Member States are imposing additional measures to prevent "age-fraud" by minors.

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In *Norway* for example, players have to be in possession of a personal “game card” before they can play which contains information about the player’s identity and age and which functions as a security measure for both face-to-face and for online gambling.

In *Austria*, online players have to provide all required personal data as well as the details of their Austrian bank account, which then, with the player’s formal consent, will be forwarded to a third party for the sole purpose of verifying the personal registration data provided, thereby ensuring that participants are aged 18 or over and only one account per person is created.

In *Portugal*, online players need to provide amongst others their full name, age, address and email and birth day verification using the national voting registrations is carried out.

In *Italy*, online players have to send a fax of their ID card and sign a contract and they have to open an account and enter their fiscal code which is verified by the Regulator. If the fiscal code belongs to a minor, the account is automatically blocked.

Germany, whose online market was briefly opened in 2008 and is expected to be reopened in 2012, applies several online age control measures including verification of the age and address by cross-reference with the so call “SCHUFA”-data, which is a credit enquiry agency, holding data for almost all people aged 18+ in *Germany*. If this cross-check fails a verification process is carried out by means of a cross-check with the National Post Office’s database. If neither of these checks verifies the data, then an account is not opened for the customer.

Other Member States such as *Slovenia* and *Lithuania* combine their online controls with offline personal identification and require their players to go and identify themselves at physical points of sale before they can play online.

In the offline environment, a number of different measures can be implemented in combination including training of, and communications to, retail sales agents and staff,

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providing necessary sanctions to sales agents who sell to minors and mystery shopping to ensure sales agents remain vigilant.

In *Sweden*, The Swedish National Lottery, Svenska Spel has, for example, a training program for retailers on how to ensure age restrictions. ‘Mystery Shopping’ (where an ‘actor’ who looks underage attempts to purchase a lottery ticket to see whether the retail agent will sell to an underage purchaser) is conducted regularly and anyone who is shown to be in breach of the rules is no longer allowed to sell lottery products.

In the *United Kingdom*, Camelot (operator of the National Lottery) also monitors potential selling to underage players by means of a “Mystery Shopper” recruiting young people aged 16 or over to try and buy a lottery ticket or Scratchcard without identification. If a retailer refuses the ticket sale on the first visit, the company sends them a letter of congratulation. If the retailer sells to a test purchaser, they arrange a second and, where necessary, third test purchase. If they sell three times, Camelot will remove their lottery terminal.

Several member States, including *France, Finland, Germany, Belgium* and *Italy*, also apply the system of the “Mystery shopper”.

In addition to these offline control measures, many Member States require normal face-to-face identification and age verification in the gambling premises or in the points of sale.

Question 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.

There are national rules, and sometimes also codes, in place in all EU member States to regulate the reach and effect of commercial communication. These standards are respected by EL members. However the standards are not always sufficient. Clearly the

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jurisprudence of the Court of Justice has given rise to a number of questions in relation to various means of commercial communication used by exclusive right holders as most Lottery operators are. Especially the rulings in Markus Stoss and Carmen Media create confusion and uncertainty, while opposite views are expressed regarding on line gambling communication in the Dickinger case by Advocate General Bot. It is clear that further guidelines at EU level could help to put an end to the confusion. The EL responsible gaming standards mandate that members shall not direct lottery and sports betting advertising at vulnerable groups, including minors.

The EL Responsible Gaming standards specify that members shall adopt an advertising and marketing code which ensures that advertising and sales promotion activities do not encourage underage or problem play and do not provide the player with misleading information such as a false impression of the odds of winning. Notwithstanding this the case law has created doubts whether this is enough.

Sponsoring of mainly sport activities give rise to a number of additional problems of cross-border communication. FDJ and the Belgian National Lottery are both sponsors of a cycling team. Remote gambling operators are large scale sponsors of important European football teams. The European Lotteries address this issue in its EL Sports betting Code of Conduct.

There is research to support the fact that minors are more strongly influenced by marketing activities, however, **more research is needed in this area to substantiate evidence of the extent to which different forms of commercial communications as specified above appeal to minors and therefore contribute to problem play.**

Question 26 – Which national regulatory provisions on license conditions and commercial communications for on-line gambling services account for these risks and seek to protect vulnerable consumers? How do you assess them?

Vulnerable consumers of gaming comprise a number of groups including minors, people with compulsive behaviour personalities, people who do not fully understand the odds of winning, and people who are not, in general, gaming literate.

It is normal for recent lottery operator licences to have specific conditions to protect vulnerable players. For example, the following is a text from the *UK* National Lottery web site which conforms with the terms of the current licence to operate the National Lottery held by Camelot.

“We work constantly to ensure that lottery games do not encourage excessive play. Here are some of the ways we do this:

- *Every game we wish to introduce has to be approved and licensed. Once a game has been designed, we must ensure that our advertising strategies do not target under 16s or low-income players, and that marketing of all lottery games complies with the relevant codes of practice.*
- *Since September 2010 the marketing of all lottery games must comply with section 17 (Lotteries) in both The UK Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) Advertising Codes– which not only covers activity in print media and on broadcast channels but also extended channels such as video-on-demand and in non paid-for space which includes companies’ marketing communications on their own websites. This means games must adhere to an extensive range of measures to take player protection into account. For more information on these codes, please visit the Important notice page on this site.”*

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It could be useful to find out to what extent licence conditions and commercial communications for online gambling services in the different EU member states account for risks to vulnerable players.

Since there are both researches that early game debut may lead to problem gambling and that advertising affects young people more easily, it is important that all marketing must be carried out in a way that is responsible and ethical. (See our answer to Question 25).

In *Switzerland*, there is an external assessment made on whether Loterie Romande is protecting vulnerable players by the regulator (Commission des loteries et paris (COMLOT)).

Italy.

At the national level, every licensed online operator must provide auto-limit tools and auto-exclusion features. Minors must be prohibited from participating in online games and betting. This prohibition must be highlighted on their websites.

In 2008, the operator Lottomatica voluntarily adopted a code of self-discipline for advertising of gaming aimed at guaranteeing the comprehensiveness and transparency of everything it communicates to players. The monitoring and the checks dealing with adherence to this code are contained in the company's quality control system.

Sisal has chosen to adopt a policy of commercial communications to make immediate and practical application of the rules contained in the Code of Conduct of Business Communication, 50th edition, in force since January 18, 2010 (www.iap.it) – issued by the Institute of Advertising (IPA) – of which Sisal is a member. The aim of the policy is the respect for fundamental principles and rules of the Code, contained in Sisal Guidelines. The conduct of Sisal is based on the concessionaire's responsibility and his professional ethic. For this purpose, the company adopted the Guidelines which are applied to the contents of its communications business and which transpose the standards set by the Certification Framework, published in May 2009 by the European Lotteries.

It is very difficult, if not impossible, to systematically assess the effects of licence conditions to protect vulnerable players. There are too many variables and contributory

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factors in play and it is not possible to be specific. The general, and best approach has been adopted in regulatory regimes such as the UK where, among other Principles of Regulating with Excellence are the following:

- “Outcome-based regulation: We aim take our focus away from the processes Camelot should follow, to the outcomes that we want it to achieve.
- Earned autonomy/proportionality: We look to take into account Camelot’s past performance and expertise over their 15 years of operating the Lottery.”

As a final comment on this question, it is interesting to note that there is no standard or agreed approach to the matter of terms and provisions of licences and commercial communications across Member States. This situation is entirely consistent with the subsidiarity principle for lottery game and operator licensing. If each State is entitled to license and operate gaming within its own jurisdiction in accordance with its own requirements, then it would be inconsistent to have a system where all States had a common and standard approach to the issue of commercial communication, which can have a relatively important effect on the take up and prevalence of gaming in a jurisdiction.

7. PUBLIC ORDER

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

EL is aware of a number of studies and data relating to fraud and on-line gambling and the risk of corruption in sport, e.g.:

- ‘Preserving the integrity and the sincerity of sporting competitions in light of the development of on-line sports betting. Prevention and the fight against the threat to integrity and sincerity of sporting competitions related to the development of sports betting’, (‘Préserver l’intégrité et la sincérité des compétitions sportives face au développement des paris sportifs en ligne. Prévention et lutte contre l’atteinte à l’intégrité et à la sincérité des compétitions sportives en relation avec le développement des paris sportifs’) – Report of President of the French regulator for on-line gambling Jean-François VILOTTE (March 2011) – *The Vilotte report alerts to the rise of fraud in the field of sport and suggests that France should put in place electronic tools shared between the different sports to detect suspect movements and that arbiters be changed at the last moment. The Vilotte report proposes to make fraud in sport a criminal offence.*
- ‘Online crime and internet gambling’, article by John McMULLAN and Aunshul REGE published in the Journal of Gambling Issues (July 2010) – *The article defines forms of fraud, the techniques used and the organisational dynamics of the offenders.*
- ‘On-line gambling and criminal threats’ (‘Jeux en ligne et menaces criminelles’): Report to the minister of the Budget by Alain BAUER (2009) – *Criminologist Alain Bauer considers that ‘the liberalisation of the gambling market, desired by the European Commission and the European governments, is a source of organised crime’. BAUER also addresses the relationship of the mafias with gambling.*

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- Tracfin (Traitement du renseignement et action contre les circuits financiers clandestins) 2009 activity report – *This Tracfin report presents the fight against money laundering within EL-member La Française des jeux.*
- Article on fraud in sports betting in Lettre 46 de Transparency International France – *The report proposes different categories for corruption in sport*
- ‘Crime and gambling: A brief overview of gambling fraud on the Internet’, article by Mark GRIFFITHS published in Internet Journal of Criminology (January 2010) – *The article addresses different types of fraud linked to gambling on the internet such as fake lotteries, fraudulent on-line gambling websites. It concludes that empirical research is needed in order to advance the research on criminality in the sector.*
- ‘Can Internet Gambling Be Effectively Regulated? Managing the Risks’, report by Malcolm SPARROW (Harvard) (December 2009) – *The study examines the potential risks associated with online gambling as well as the means to combat them: underage gambling, fraud by operators, fraud by players, organised crime, money laundering by players or by operators, leaking of personal data, problem gambling.*
- ‘Money Laundering through the Football Sector’, FATF report (July 2009) – *In this report, the Financial Action Task Force considers illegal betting and observes an ‘ambiguous relationship’ between sport and sports betting operators: the latter participate in the financing of sport while being associated with corruption affairs threatening the integrity of sport. The FATF highlights that the rise of gambling over the internet heightens the risk of money laundering.*
- ‘White collars and dirty hands’ (Cols blancs et Mains sales), book by Noel Pons (detached public servant with the French ‘Service Central de Prévention de la Corruption’) (2006) – *The book is dedicated to the risks of fraud, corruption and money laundering and addresses the problem of on-line gambling in this context.*
- Rapport d’information n° 3463 Lamour Filippetti sur la mise en application de la loi n° 2010-476 du 12 mai 2010 relative à l’ouverture à la concurrence et à la régulation du secteur des jeux d’argent et de hasard en ligne (May 2011)

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

Yes, there are extensive controls and standards for such gambling equipment, both for traditional (terrestrial) games and for on-line games.

All EL members operate standard Draw procedures for traditional Draw Games (such as Lotto, EuroMillions and Number Games). These procedures include regular testing of the calibration and settings for draw machines, as well as extensive statistical tests carried out on historical Draw results, usually carried out by a University Statistical Department or Statistical Consultants.

For on-line games there are a number of specialised companies in Europe who offer services related to Random Number Generators (RNG). For example in France, the services offered by Probanse and the Bureau Veritas Group are used to verify and certify equipment such as RNG for games offered by la Française des Jeux.

These controls vary from lottery to lottery and are applied as appropriate to the range of games being offered by each lottery.

Italy:

The Italian Regulator has adopted rules about the certification of the online gaming platforms, in order to:

- guarantee security and availability of the random number generator;
- have correct identification of the running software version;
- have online notification to the regulator's central systems of the main events related to the gaming activities;
- have standard policy to manage personal data in the data access and store phases

All concessionaires operating online gaming, must abide to the requirement of certification of their gaming platform, the random number generator and gaming

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applications, which are issued by a certification body accredited by a national accreditation body in accordance with provisions of AAMS.

Operators must observe a strict procedure defined by AAMS, which involves sending a special instance accompanied by documentation that analytically describes the features of the gaming platform, as well as the certification with the successful verification of conformity. Subsequent modifications of the essential features of the platform shall be subject to prior approval of AAMS, as specified in the stated guidelines.

AAMS authorizes operators which comply with the established requirements following the successful verification of conformity of:

- the document that describes the gaming platform;
- the modalities of the connection between the operator computer system with the central system, with respect to communications protocols established by AAMS.

Question 29 – What, in your opinion, are the best practices to prevent various types of fraud (by operators against players, players against operators and players against players) and to assist complaint procedures?

The scope for fraud varies by game, by the percentage prize return, and by the prize structure (or, table of prizes). The “faster” the game and the higher the percentage prize return, the more likely the game is to be subject to manipulation or fraud.

The key to preventing fraud is to encourage operators to implement extensive monitoring systems to detect abnormal patterns or behaviour.

To help keep sport competitions free from betting manipulations, EL has implemented its own Monitoring System (ELMS). As the foremost European Association of betting operators, EL has been sharing information about suspicious bets on football matches with UEFA

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since early 2005. EL and the World Lottery Association (WLA) are working on extending ELMS to a global sport betting monitoring system to help address match-fixing, which clearly has an international dimension, as many recent incidents of match-fixing have shown.

While there is no common system in place, all state lottery companies offering on-line games in Europe regularly monitor individual player behaviour and general play patterns to detect any abnormal activities or patterns. For example, in Poker Games, player histories would be tracked to monitor size of winnings and any potential relationship or connections between sets of regular players.

While the risk of fraud is high for player-to-player games, casino-type games and sports betting, it is important to note that similar vigilance is needed for the traditional “terrestrial” games such as Lotto and EuroMillions. In these games it is possible to find retail agents who are officially appointed by EL members, but who operate in an illegal fashion. For example, in the surroundings of a point of sale, players validating a winning ticket might be offered a cash “bonus” to sell the winning ticket to another person who will then “legitimately” cash the ticket and have a *bone fide* justification for a large sum of money.

The implementation of controls on potential fraud related to player v player or operator v players or players v operators depend on the type of games on offer. Each Lottery will operate a control appropriate for its own games and regulatory framework. The enforcement regimes in place for EL members operating these types of game are consistent with the controls implemented for terrestrial games and are of the highest industry standards. The WLA has set security standards (*ISO/IEC 2700*).

Question 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?

It seems that many Member States have not yet implemented any relevant legislation or can provide data or studies on the topic. However, there are a few exceptions. In the *UK* and in *Spain*, the Gambling Regulations Act deals with the issue of sport betting and outcome fixing and determines that, amongst others, athletes, coaches and other direct participants in the event or sporting activity that is related to the bet, the management of participating sports companies or organizers of the event or sports activity that is related to the bet and judges or referees serving on the event or sport activity on which the bet is made and people to resolve appeals against those decisions are prohibited to participate in gambling activities. In *Germany*, it is determined in the (current) Glücksspielstaatsvertrag that the organization and arrangement of sports betting needs to be organizationally, legally, economically and regarding the human resources separated from the organisation of sports events and from the operation of facilities in which sporting events take place. In *Italy* and soon in *France* the relevant legislation defines the crime of sporting fraud and lays down a related system of criminal penalties.

In *Switzerland*, the sports minister is evaluating possible measures/regulations. In addition, the Swiss Lotteries have internal guidelines and an internal monitoring system.

Notwithstanding that many Member States have not yet implemented relevant legislation on this topic, several other measures have already been laid down on national level to deal with this phenomenon.

In the *Netherlands*, a special commission is created to monitor this issue.

In *Norway*, several measures have been implemented to prevent a so-called conflict of interest. Both the Ice hockey League and the Handball League have implemented rules that ensure that no participant (player, coach, referee etc.) in a game is allowed to gamble on

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the outcome of the game. FIFA and UEFA rules on this subject are also applicable in *Norway*. Furthermore, the “law concerning the Norwegian Sports Association, the Olympic and Paralympic Committee” strictly forbids any improper gambling on the outcome of any match or game if the gambler is associated with the game in any way as a player, coach, referee, organizer, etc.

In *Finland*, the Ministry of Education and Culture is in the process of revising the terms of state grants to the sports associations. These new terms will include requirements to actively operate against match fixing and other fraud risks. Veikkaus has agreed with the Finnish sports associations on restrictions concerning sportspeople’s right to bet on matches where they are involved as players themselves. It is the sports associations’ task to take care of this matter together with the teams and the referees. Furthermore, Veikkaus applies a model of fraud prevention which reacts to the possible cases of manipulation and fraud in domestic sports events and defines the different possible forms of fraud, the ways to detect and prevent fraud and the distribution of responsibilities, together with guidelines on offering information. To increase awareness, sports organizations are trained and informed about the possible risks of match fixing in *Finland*. Veikkaus is also in active dialogue with the International Olympic Committee on the establishment of an international working group on sports integrity.

Besides these national measures, the national gaming organizations have established a joint warning system, the European Lotteries Monitoring System (ELMS). In addition, FIFA (FIFA Early Warning System) and UEFA (UEFA Betting Fraud Detection System) carry out similar activities. These different organizations work in close cooperation. In case of suspicion, the organization in question contacts the police officials whose task it is to investigate the actual suspected cases of crime. The global endeavours in this field include the development of a training program initiated by three organizations working in the field of sports: Sport Accord, EL (European Lotteries and Toto Association), and WLA (World Lottery Association), with the working title APSI (Awareness Program for Sports Integrity). The objective of this training program is to increase, as widely and comprehensively as possible, the awareness of people working within sports (sportspeople, coaches, referees, team owners etc.) of the risks related to sports betting and match fixing. One of the

purposes of the program is to create appropriate ethical codes of conduct for the different sports organizations at the international level.

Question 31 – In your view what issues should be addressed as a priority?

In broad terms, priorities for gaming operators are:

A. Enforcement of National Laws

The essential requirement is that the suitability and credentials of each gaming operator in Europe should be checked and verified to ensure that, ultimately, the rights of the players are as fully protected as possible. This can best be done by enforcement of national laws.

A number of EU States have started to enforce existing gaming laws, but the EU should encourage the practice in a more proactive way. For example, heavy fines for media advertising for unlicensed operators (as in *France*); taxation of winnings from gambling with unlicensed operators, i.e. targeting not only operators but also players (*Italy*); forfeiture of revenue made from illegal operations (*US, Belgium*).

All EU Member States should introduce regulation that foresees that operators which illegally operate in another EU Member State are not deemed eligible to apply for a gaming licence and/or to keep it in any other Member State.

B. Preserving the integrity of sport

The European Lotteries adopted in June 2011 resolution on public order and the integrity of sport the so-called ‘Helsinki resolution’ which point to the priority actions to be undertaken in this area.

In the resolution, EL commits to a large number of concrete actions in this area such as:

- Expand the EL Monitoring System (ELMS) to a global monitoring system for sport bets which includes members of the World Lottery Association (WLA) from Asia and other parts of the world
- Promote the idea of establishing an international sport integrity agency

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- Promote strict legislation against money laundering through sport betting, sport fraud and conflicts of interests between betting operators and sport clubs, teams or active athletes, as it already exists in some European countries
- Urge regulators to continue to restrict/prohibit certain types of bets that pose a high risk to the integrity of sport competitions and set limits to pay-out ratios

C. Know your customer

Check the player's identity against the following sources (often cross-referencing several of them):

- ID card (or equivalent, e.g. driver's licence)
- Bank account, if relevant
- Residential registers
- Address check (by sending PIN code)
- Credit score agencies (e.g. Experian, Schufa)
- Utility bills

The theoretical long-term solution to this issue is the introduction of a pan-European electronic ID card. However, this should only be implemented on a gradual basis. Some EU States would have difficulties with such a system and would be careful about how it should be implemented.

A player card has been implemented in *Norway* for all lottery games apart from scratch cards. The system is helpful in monitoring and controlling gaming behaviour, but it is not a perfect solution.

D. IP and Payment Blocking

Internet Service Providers (ISPs) and financial institutions should be involved in discussions to implement a solution for this issue. Technical problems with the implementation of a workable solution can only be resolved with the active cooperation of ISPs and financial institutions.

E. Know your Retailer

For non- online systems, it is essential that operators should regularly check that authorised retail agents are operating in accordance with their contracts, particularly for underage-playing. Mystery shopper checks should be carried out on a regular basis.

Question 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?

EL has adopted a Sports betting Code of Conduct which addresses this matter.

EL Sports betting Code of Conduct:

(III – FIGHTING AGAINST GAMBLING RISKS– 3.1.2 Conflicts of interest)

The global development of sports betting, linked to the increased popularity of the internet, is creating additional risks that must be taken into account. Financial means and interests involved in gaming are often so great that they sometimes exceed the sporting issues. In these circumstances, rules must be put in place to prevent partners from stepping out of line in this area. For the EL sports betting members having signed this code, this means:

- abstaining from acquiring a majority share in a sports club or links with a sportsperson;
- not being a significant (i.e. that may be able to influence) partner of a sports team (or of a sportsperson) that might be involved in sports used for the purpose of organising betting. More particularly, this means that an official operator mainly sponsoring a professional football club or other sports club (or team) must never have any influence on the sports decisions taken by the club (or team).
- should this in fact be the case, it must make sure that it never includes the club (or sportsperson) in its sports betting offer;

EL Sports betting Code of Conduct:

(III – FIGHTING AGAINST GAMBLING RISKS– 3.1.2 Conflicts of interest)

- an operator which is a signatory of this code must not acquire a sportsperson on behalf of a professional team, or hire a sportsperson at its expense in a competition in which it organises wagers (for example an athletics meeting or a professional tennis tournament). However the signatories are entitled to use advertising with athletes or sportspersons, when there is no way to influence them in their sport activities;
- unless they exclude the sport in question from their sports betting offer, all official operators' sponsorship contracts must state that the official operator plays absolutely no role and has no direct influence on the sports relations and decisions taken by the team or the event. In regards to the employees of EL sports betting members in contact with sports betting:
 - employees working for an official operator and acting in the sports world must avoid ethical conflicts;
 - sports betting personnel cannot be involved in the management of sports teams included in their betting offer. This means ownership, daily management, board members. If this is the case, the team cannot be offered for bets
 - sports betting personnel involved in odds compiling of a particular league or an event cannot be present in the team squads. This means players, managers, trainers. If this is the case, the team cannot be offered for bets
 - sports betting personnel cannot act as referees. If this is the case, the event cannot be offered for bets;
 - sports betting personnel cannot bet on their fixed odds betting product.

Signatories will support action from football organisers to prevent players, coaches or club managers from betting on their own teams (or any other team in the same championship), in line with the agreement signed by the European Lotteries and UEFA. Those signing are willing to help and advise sports organisations in issues related to betting and possible scenarios that undermine the integrity of sports due to betting.

This already distinguishes FDJ and the Belgian National Lottery from the remote gambling operators who do not really care about such conflict of interest. Furthermore, both FDJ and the Belgian National Lottery sponsor cycling teams participating in international events, but do not permit people who are not resident in the jurisdiction where they are licensed to play, while the remote gambling operators use the sponsoring to target willingly and illegally customers in territories for which they did not obtain any authorization.

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

The procedures for reporting and investigation on money laundering are highly confidential. Operators that detect fraud have the obligation to report it, but also to guard the information as confidential. It is hence difficult to give examples of publicly known cases of money laundering through gambling over the internet. We recommend that the European Commission turn to the financial supervisory or regulatory services of each national administration for further information.

This being said, some money laundering actions through on-line gambling are publicly known. In *Finland*, for example, cases of intentional losing on poker sites (so-called chip dumping), transferring funds from one gaming account, bank, payment service or country to another, leaving large sums of money to lie on unlimited gaming accounts, from which funds are drawn, played or transferred as smaller sums and using illegal funds initially acquired by crime to play legally operated games have occurred.

Highly publicized cases of money laundering through on-line sports betting are the ‘La Louvière’ (*Belgium*) and ‘Bochum’ (*Germany*) cases.

The same cases of chip dumping have also already occurred in *Austria*. In *Estonia*, money laundering has taken place via SMS payments where money is deposited on a bank account via SMS after which the money is transferred to other bank accounts. In *Spain*, actions of money laundering include using the details of stolen credit cards to play online with false

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user accounts and purchasing winning betting and lottery tickets for a higher amount than the prize obtained. In *Portugal*, selling online prizes with a superior value using certain payment methods has been qualified as a case of money laundering.

Areas of risk of money laundering via online gambling activities include the credit by e-gaming firms of winnings or unused funds back to an account other than the one on which the original bet was made, in a card account other than those used in the original gaming transactions, in cash or with check, and in all situations in which the reimbursement or the credit winnings are paid in names other than that of the original gamer (these situations are prohibited by e.g. Italian legislation). Money laundering can also occur in the context of peer to peer games where value transfers take place between players as a result of deliberate losses (risk of collusion). Furthermore, unregistered and unlicensed operators may offer facilities for their customers to transfer funds to another customer, commonly known as player-to-player transfers. Money laundering can also be committed by using pre-paid cards to place payments on the game account.

If a large number of bets is submitted, even with limited sports knowledge, winnings will tend towards the theoretical payout (with small gains or losses). If the total sums and frequency of play are also not monitored, then a large number of bets clean up money in one jurisdiction (declare winnings) and then export the clean money to a bank within EU. Unregulated operators tend to offer payouts in the high 90% range (95–98%) because they pay little if any taxes.

In Annex IV we describe some examples of money laundering activities detected and reported to the relevant authorities by our Members but they remain unreported in case of illegal operators which do not have to comply with these rules.

ANNEX IV (Question 33): Detail of techniques through which money laundering can take place

Scenario 1:

- Step 1: A criminal pays cash “black” money into his bank account – particularly outside the EU in a “suspect” country with very slack controls.
- Step 2: This criminal transfers that money to his user-account of an online-betting-company in the EU.
- Step 3: The criminal bets on the favourite – and win.
- Step 4: The online-bookmaker pays out the “clean” prize money on the criminal’s user-account and issues a correct receipt document (clean and documented history).
- Step 5: The criminal transfers the “clean” prize money from his user-account to his bank-account.

Scenario 2: Surebets

- Step 1: The criminal bets 100 EUR on the winner of the tennis match between *A. C.* and *F. S.* and searches for **surebets** (if you can combine odds for an event at different bookmakers with different odds with the impossibility of losing your money):

Winner *A. C.*: factor 2,27 at bookmaker A

Winner *F. S.*: factor 1,82 at bookmaker B

Solve mathematically for

Amount bet on *A.C.* * 2,27 = amount bet on *F.S.** 1,82

and

Sum of bet on *A.C.* and bet on *F. S* = 100 EUR

The solution is

Bet 44,50 EUR for *A.C.* to win

Bet 55,50 EUR for *F. S.* to win

If *A.C* wins, the payout is $2,27 * 44,50 = 101$ EUR and

if *F.S.* wins, the payout is $1,82 * 55,50 = 101$ EUR.

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Step 2: The online-bookmaker pays out the “clean” prize money of 101 EUR to the criminal’s user-account and issues a correct receipt document (clean and documented history about 101 EUR).

Step 3: The criminal transfers the “clean” prize money (101 EUR) from his user-account to his EU-bank-account. The money laundering “ratio” was 101%.

In the case above, the punter made a 1% profit. In general, surebets may be used to way clean money, even if the payout is less than 100%, considering losses of few percentage points as acceptable cost to clean-up dirty money.

Scenario 3: Large number of bets tend to theoretical payout

Step 1: The criminal bets a large number of bets in a market that is neither regulated nor monitored. Because of the large number of bets, the criminal expects an average payout close the theoretical offered by the gaming operator. One of more operators offering high payouts (for example 92–95%) are selected. These operators do not investigate the source of the money placed on wagers nor monitor frequency and total wagers placed.

Step 2: The criminal deposits the legal winnings with a local bank, effectively converting dirty money to clean money with a controllable cost.

Step 3: The criminal exports money from the local bank to a bank within EU.

Variation to scenario 1: fraudulent online-bookmaker

If a fraudulent online-bookmaker is involved the payouts (clean money) can be easily boosted and money laundering is highly efficient (money laundering “ratio” better than 100%).

Step 1: The criminal bets EUR 100 on the favourite (Team A).

Step 2: After a match the fraudulent online-bookmaker look for the most attractive payout-ratio (for example the win of the underdog, team B, payout-ratio is 5.0) and then changes and backdates the digital betting history of the criminal: now it looks the criminal has not bet on the favourite (team A) but on the underdog (team B) - and has won $5 \times 100 \text{ EUR} = 500 \text{ EUR}$.

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Step 3 The fraudulent online-bookmaker pays out the “clean” prize money on the criminal’s user-account and issues a correct receipt document (clean and documented history about 500 EUR).

Step 4: The criminal transfers the “clean” prize money (500 EUR) from his user-account to his EU-bank-account. The money laundering “ratio” was 500%.

Variation to scenario 1: using money-equivalents instead of “real” money

Instead of pay cash the criminal can change “black” money into a form of micro-payment or monetary equivalent:

Step 1: A criminal converts cash “black” money into a form of micro-payment or monetary equivalent particularly outside the EU (in a “suspect” country with very slack controls and low awareness).

Step 2: This criminal transfers this monetary equivalent to his user-account of an online-betting-company in the EU.

Step 3–6: see step 3–6 in scenario 1 above.

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

The payment card industry’s standards (known as PCI-DSS) cover the general security and integrity of credit/debit/laser card payments.

Apart from this payment method, the use of prepaid cards (as for prepayment of mobile phone charges) for gaming is a sensitive area and requires specific regulatory control, as this payment method enables cash to be channelled directly into the online gambling network.

Prepaid cards (purchased in a “controlled” outlet, such as a lottery retailer) can be a useful means of implementing a primary control on the age of potential gamblers.

However, the main parameter for controlling the use of prepaid cards is the maximum amount of credit that may be purchased in a single card transaction. While this affords a

certain level of control, there is no effective way of making such a procedure completely foolproof.

As for the answer to Question 29, there are a number of systems/procedures that can be implemented to protect against abuse of such systems.

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

Several EL Member States have implemented practices for preventing and detecting Money Laundering which will be included in the relative responses of EL Members.

Best practice is comprised of the systems/procedures described in the Answers to Questions 29 and 31.

Question 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?

At this point in time, the games offered on, for example, Facebook are solely concerned with playing for points or “credits”. In fact, it was only in May 2011 that Facebook dropped its site-wide restrictions on gambling advertisements.

However, Facebook offers a very effective medium for communication between players of on-line games who may wish to collude in implementing fraud or “scams”.

Security specialists, Kaspersky Lab, warned in June 2010, that money laundering activities have been carried out through social networks. As a platform, Facebook, but also other social networks are set to become increasingly affected by this problem.

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Both social networks and community forums can be used to recruit accomplices (e.g. for "chip dumping"). Chip-dumping is more successful, when the perpetrators are not related to each other but come into contact through social networks.

8. FINANCING OF PUBLIC INTEREST OBJECTIVES

Question 37 – Are there national on-line gambling transparency requirements? Do they apply to cross-border supply of on-line gambling services and are these rules enforced effectively in your view?

For the national transparency requirements to protect against the risk of money-laundering, we refer to the individual answers that our members and national regulators may provide individually in response to this consultation.

Given that operators may only provide their services in a Member States if they hold a licence in that Member States, the requirements of that Member State also apply to them and should be a condition for granting a licence to provide their services. For example, in France, there are specific vigilance requirements for licensed operators, e.g. all gaming transactions must be stored in a secure vault and made available to the regulator. The French online gambling authority ARJEL is responsible for monitoring these aspects and also implements the regulations that apply to the sector open to competition. As a result of its controls, ARJEL may impose penalties, including the potential withdrawal of an operator's licence.

Question 38 – Are there other gambling revenue channelling schemes for the public interest activities at national or EU level?

EL welcomes the fact that the Green Paper on on-line gambling also addresses the important contributions from gambling to the benefit of society. However, preceding our comments below, EL would like to stress that, contrary to what seems to be implied in the introductory text of question 38, restrictions on gambling services are nowhere in the EU “at times justified by policy reasons such as the financing of benevolent or public interest activities”, as the text of the Green Paper suggests. Everywhere in the EU, the imposed restrictions have a moral basis and are intended in the first place to protect vulnerable consumers against gambling addiction and against fraud and to protect society at large

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against gambling related criminality. The same wrong presupposition lies in the choice of the word “reliance”²⁴, which implies that the authorities depend on the gambling revenues for the funding of the public interest activities, which can lead easily to assume that the main aim of the organization or licensing of gambling is a financial one, *quod non*.

Second, we point out that the CJEU jurisprudence indeed states that the funding of social activities may only be a ancillary beneficial consequence for a restrictive policy, but that the same jurisprudence also acknowledged the fact that the general tendency of the national legislations is to prevent the practice of gambling from being a source of private profit (Schindler, §60; Läära, §13; Zenatti, §14). The rationale for this is that, gambling having different kinds of undisputable negative effects on society, it is only natural that the proceeds of gambling that is offered in a responsible way in order to prevent the activity from going underground, return to society to counterbalance the negative effects.

We believe there are two schemes of revenue channelling, both operated by EL Members, for the public benefit in the gambling sector, as opposed to the six types of schemes mentioned in the Green Paper:

- A state-owned or permanent concession model, whereby a large part of the lottery revenue is returned to society in form of taxation or direct allocation to specific good causes.
- A private gambling operator licensed by the state under strict conditions, where the conditions of the licence or legislation specify that parts of the revenue must be returned to society in form of taxation or direct allocation to specific good causes.

²⁴ “The reliance on gambling revenues to fund public interest activities is organised in various ways.”

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For the lottery sector, in 2010, total money for society from The European Lotteries' members in the EU amounted to 21.97 billion EUR. Measured per capita, and on average, each EU citizen received 44 EUR from lotteries in 2010. On average, 66 per cent of the gross gaming revenue (stakes minus the prizes) goes back to society as contributions to the state budget and funds earmarked for sports and other good causes such as arts and culture, charity/social projects, science/health/research, education/youth, environment/climate change and development. For comparison, the leading listed online bookmakers that operate in the EU without a licence in the Member State of the consumer paid a meagre 109 million EUR in taxation in 2010 (see our answer to question 3 of the Green Paper).

Any types of 'voluntary contributions' by gambling operators, which are also addressed in the Green Paper as a means of revenue channelling for public interest activities should be considered like corporate social responsibility policy in other sectors and are not specific to the gambling sector. In financial terms, these 'voluntary contributions' are by no means comparable to the contribution from the operators falling under one of the two categories described above. This being said, many of our members do indeed have a sponsorship policy in which they make funds available to specific good causes, acknowledging the important role they play in their communities. Very often the sponsoring made available through the Members of EL are given without a strict definition of the required return as this would be the case by purely commercial operators.

The current legal framework does not take into account the important role that EL members play for society. The EU is more than just an economic entity, it is an environment in which people must be able to live and enjoy a variety of original social, human, sportive and cultural benefits in the different Member States. EL members substantially fund the non-economic fields of the EU. In the Conclusions which were adopted on 10 December 2010, the Council has emphasised that any future debate and/or framework needs to take this specific role of EL members on board.

Question 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?

To our best knowledge, there is no fund that would redistribute revenue from both ‘public’ and ‘commercial’ on-line gambling services.

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

There are different practices and rules in every country in this regard but, in addition under the EL Responsible Gaming Standards, EL Members are required to actively engage with problem gambling organisations, treatment centres and/or health professionals in order to understand the problem gambler’s perspectives on the impact of lottery products and related advertising on their situation.

In many Member States, State operators assign a proportion of their profits to bodies that support research, education and treatment of problem gambling. In some cases the contribution is voluntary and in others it is embodied in law or in the terms of the licence to operate the lottery. In some cases the state itself funds such treatment centres. And, in others there is a mixture of the two.

Poland:

A dedicated fund to prevent and treat gambling addictions at the disposal of the Polish Ministry of Health has been established by the Polish Act on Gambling. The fund is set up from a dedicated surcharge. All number games are taxed with an additional 25% surcharge, all cash lotteries (instants) are taxed with an additional 10% surcharge. 3% of the collected surcharges is transferred to the fund to prevent and treat gambling addictions.

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Finland:

The gaming organizations compensate the state for the expenses incurred for monitoring of and research into the problems caused by the operation of lotteries and the development of their prevention and treatment from these activities. Veikkaus' share of the gaming detriment study conducted by the Ministry of Social Affairs and Health is 45%. Furthermore, Veikkaus returns the total of its proceeds to the Ministry of Education and Culture which is in charge of the funds distribution and the monitoring of the use of the funds. The beneficiaries are arts, science, sports and youth work.

Portugal:

The profits are distributed in accordance with the law among others Ministry of Health what also includes the prevention and treatment of gambling addiction in accordance with the law.

Austria:

The contribution to funds to prevent and treat gambling addiction is not a legal obligation but is done on a voluntary basis by the licensed operator.

Spain:

Licensed gambling operators contribute indirectly to the financing of these measures through high gambling taxes that go to the Public Treasury and the health system. ONCE also voluntarily supports the largest organization in Spain to help former players (FEJAR).

Germany:

There is an extensive cooperation between the German Lottobloc and the German Center for Health Education (BZgA). The BZgA and the Lottobloc developed a program for early recognition and prevention of problem gambling. Some universities in *Germany* (Bremen, Hohenheim, Greifswald) use surveys to check the risks for problem gambling. At the moment there is a major national research study (n > 15.000) by the Universities of Greifswald and Lübeck to learn more about prevalence and reasons for Gambling problems, to be published in Summer 2011. This study was financed by the 16 federal states together. In addition to the measures at national level, there are different measures

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within the federal states and their lotteries. Every federal State has a Center for Health Education. These centres and the respective lotteries cooperate in a broad range of topics such as scientific research to prevent and avoid the dangers of gambling addiction. These centres are differently organized. Some are run by the federal States, some work within the churches, financed by the state. They all have local programs for early recognition and avoidance of problem gambling. In each state the research, prevention and treatment of gambling addiction is financed directly or indirectly from the taxes, charges and profit transfers made by the state operators. In addition, there are different forms of direct cooperation between state providers and consulting and research institutions. In *Italy*, the gambling sector provides a significant contribution to the national economy, also in terms of donations to sport, horse racing and other social and cultural and educational activities through taxation. A specific return to prevention and treatment of gambling addiction is not set by law but may be included in an overall cultural and education activity to be carried out by the State. Moreover, operators can voluntarily decide to fund treatment centres, problematic players help lines and informative campaigns for prevention.

UK:

In the *United Kingdom*, The GREaT (Gambling Research Education and Treatment) Foundation raises funds through voluntary donations to support research, education and treatment of problem gambling. Gambling organisations are encouraged to donate a proportion of their annual pre-tax profit to the Foundation every year.

Switzerland:

Furthermore, in *Switzerland*, both lotteries (Swisslos + Loterie Romande) pay annually a tax of 0.5% of their GGR to the State which is exclusively devoted to protect and prevent excessive gaming through training, research, communications, giving info to the general public etc. To date, Swiss Casinos don't have to pay such a tax. In addition to paying this tax, Loterie Romande has hired one person exclusively devoted to responsible gaming duties. In *Norway*, funds are received directly from the national lottery according to a rate fixed by the licence or legislation regulating that operator as well as indirectly via the State budget into which that State operator has contributed.

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

Regarding the revenue from gambling to sport, we stress that:

- **The revenue from EL members provides essential funding for sport organisations**

The importance of the contributions from EL members has been recognised not only by the sports movement but also by the European Commission in its 2008 White Paper on Sport (White Paper) as well as the Communication on Sport published in January 2011, formally recognizes the indispensable contribution made to the financing of sport by inter alia state-run lotteries and licensed gambling bodies.

- **The bulk of this revenue is not generated from sports betting, but from other games:**

The EL members' contribution to sport, which is mandatory, amounts to **more than 2 billion per year**. These 2 billion are in part generated from sports betting, *but mainly from number and instant games*: 85 per cent of the gross gaming revenue EL members generate comes from lottery games, and only 6 per cent comes from sport betting, with EL members offering sport betting in 23 of the 27 EU Member States.

Question 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?

Only in France, sports other than horse racing benefit directly from betting/exploitation rights: the mandatory contribution based on turnover – 1 per cent on average – derived from the French sports betting market through the 'droit au pari'.

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

Not in the EU. While the issue of protecting integrity in sport is relevant, there are no such rights.

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

EL takes a different view on what should be considered 'free-riding' in the gambling sector than the two types noted in the Green Paper. We consider that it is the operator who does not hold a licence in the Member State of the consumer (and accordingly does not pay taxation in that Member State and is not subject to control) that is 'free-riding', not the consumer who often is not even aware that the website he is gambling on is illegal in his country. For this type of free-riding, there is indeed evidence that the growing presence of unlicensed operators on the market is unfair competition for the regulated operators, who see their revenue reduced as a consequence of the aggressive marketing practices and higher payout ratios that unregulated and low-taxed operators can offer.

We are not aware of any evidence that would point to the fact that consumers would choose to gamble primarily out of the desire to finance a public interest activity. Indeed, we would believe that those interested in contributing financially to a good cause, but not really to participate in a gambling activity, would rather make a direct payment to the specific cause, such as the Red Cross.

Question 45 – Are there 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 accordance to the applicable transparency rules, our members publish the data that is returned as taxation/levy to the state or directly to good causes in their annual reports. Regarding the allocation of the contribution to the state to good causes, this is available for public scrutiny through the state budget or the funds that administer the distribution of lottery revenue (as is the case in the *UK* and in *Portugal* for example).

How the payments from lotteries to society are distributed differs from one Member State to another. The characteristics in most Member States are:

- Part of the lottery revenue is earmarked for good causes in specific fields, for example sports, culture, education or health. This earmarking can be enshrined in legislation or be decided on an annual basis, together with the national budget. In some Member States, part of the payments to society from the lottery goes to a specific ministry or foundation.
- Legislation ensures that the lottery hands over part of the mandatory payments to the state budget/treasury. Allocations are subsequently made in accordance with the provisions of the annual national fiscal budget, submitted by the national governments and amended and approved by the national parliaments.

Further details may be provided in submissions of our members.

9. ENFORCEMENT AND RELATED MATTERS

Question 46 – Is there a regulatory body in your Member State, what is its status, what are its competences and its scope of action across the on-line gambling services as defined in this Green Paper?

Different models exist across the Member States of the EU, e.g. supervision by the relevant Ministry or by a Gambling Commission especially established to carry out regulatory functions. It can be argued that a regulator is only needed in a competitive environment, for those forms of gambling for which there is competition. If there is a single operator, it could suffice to have a contact person, a responsible officer in charge of the gambling policy.

In several Member States, a Ministry will act as the regulatory body such as in *Poland* and the *Czech Republic* where the Ministry of Finance is responsible (in *Poland*, they work in cooperation with local custom offices), or in *Portugal* where the regulator for online gambling is the Ministry for Social Security or in Italy where the Ministry of the Economy and Finance was given the responsibility to manage gambling, bets and lotteries through the AAMS.

Austria:

The regulation and supervision of games of chance is done by a special department of the Ministry of Finance which deals with all the questions concerning games of chance. This department is in charge of the licensing, the decrees concerning gaming regulations and the fulfilment of all other supervisory measures, the control of the draws, etc.

The Netherlands:

The Ministry of Security and Justice is responsible for the policy, regulations and licenses concerning online gambling. There is also a Supervisory Board with a monitoring and advisory function.

Finland:

The responsibilities related to the surveillance of gambling are assumed by the Ministry of the Interior and the National Police Board, together with the Official Supervisors. The Ministry of the Interior approves the rules of the games and makes proposals on the gaming licenses to the Council of State. The National Police Board is responsible for the national surveillance of gambling operations. It appoints the official supervisors whose task it is to monitor the gambling operations. The Official Supervisors shall ensure that the games are operated in compliance with the approved gambling rules and confirm the results of the pools, betting and Toto games, together with the number of prizes on each round. They shall also monitor the lottery draws and the randomization of the tickets, and confirm the draw results. All the equipment used in the draws together with the software they contain, are held by the Lottery Unit of the National Police Board which monitors gambling in *Finland*. The equipment is also tested by the National Police Board. The National Police Board may prohibit the operation and marketing of a game in accordance with certain cases laid down by law and impose a conditional fine to reinforce the prohibition.

In other Member States, a State Commission or State Office is appointed for the supervision of gambling activities.

In *Bulgaria*, for example, land based gambling activities are supervised by the State Gambling Commission which falls under the Ministry of Finance. The Gambling Commission is responsible for, amongst others, granting, refusing to grant and revoking permits for organizing gambling games to and from persons who have the right to organize them; granting, refusing to grant and revoking permits of manufacturers of gambling equipment for gambling games, of importers and distributors and of the service organizations for repair and maintenance of this equipment and adopting general obligatory gaming conditions for the types of gambling games for which a permit is issued, as well as the rules for organizing and holding the individual gambling games.

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Lithuania:

A state Gaming Control Commission is appointed for the supervision of both land based and online gambling while in *Slovenia*, a State Office for Gaming Supervision is established and in *Hungary* the Gambling Board of Supervision is responsible for the public supervision and licensing.

Latvia:

The national gambling regulatory body is the Lotteries and Gambling Supervisory Inspection which supervise the legal market and issues licenses and controls the legal operators.

Spain:

The new Gambling Regulation Act has created a new regulatory body called the National Gambling Commission, which ensures the proper functioning of the gambling sector and the effective availability and competitiveness of services for the benefit of the users. The Commission develops the basic rules of the games, proposes to the Ministry of Economy and Finance the bidding terms for the licensing procedures, grants licenses for the practice of gambling activities, monitors, controls, inspects and, if appropriate, punishes the activities related to the games, etc.

Germany:

Each federal state has its own competent regulatory authority that can prohibit the organization, operation and arrangement of unauthorized gambling and the advertising for this, prohibit credit and financial services institutions to participate in payments for and payments from illicit gambling and prohibit services providers the participation in the access to illegal gambling sites.

Question 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?

A number of Member States maintain registers of licensed operators of gambling services. Indeed such a register of licensed operators is a useful tool for effective control. **Both the list of licensed operators and the licence conditions should be available in a transparent manner.**

In several Member States, a national register of licensed gambling operators is held. In *Poland, Slovakia* and the *Czech Republic* for example, such a national register is administered by the Ministry of Finance and publicly accessible. In *Bulgaria*, the register that is not publicly accessible is maintained by the State Gambling Commission.

In *Finland* there is no separate register of the licensed operators of gambling services but the information is accessible with the Ministry of the Interior and the National Police Board.

In *Lithuania*, such a register is held by the State Gaming Control Commission and in Latvia such a register is maintained by the Lotteries and Gambling Supervisory Inspection.

In *Spain*, there is a General Gambling License Registry in which the entities that have been licensed to provide gaming services in Spain have to enter.

In *Italy*, a public register of the gaming concessionaires is held by AAMS and is publicly available.

Question 48 – Which forms of cross-border administrative cooperation are you aware of in this domain and which specific issues are covered?

Both under the Belgian and Hungarian Presidencies of the EU and, the cross-border administrative cooperation between regulatory authorities for the different Member States has been recognized and identified as the main tool for sharing information on gambling

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operators, protecting consumers and minors and ensuring the integrity of the games, minimizing administrative burdens, identifying and sharing best practices on player protection and technology.

The Council Working Group (Services& Establishment) helps in foster a constructive dialogue at European level to find proper dimension connected to the offering of on line gambling services.

Since online gambling services issues have a cross-border impact, a **cross-border cooperation** is needed to tackle them.

The Council Conclusions on the framework for gambling and betting in the EU Member States have prospected a closer cooperation among national authorities. In fact, they highlight the need and possible tasks of a national public authority, the essential cross-border problems generated by online gambling and the sustainable contribution of Lotteries to society. Moreover, the Council conclusions explicitly mention the Internal Market Information System (IMI) as a potentially useful tool to facilitate administrative cooperation in the field of gambling services. The Council conclusions constitute the first common position of the Council in the field of gambling.

The Hungarian Presidency has continued the debate on the cross-border cooperation by issuing a questionnaire to the Member States on:

- Existing forms of cooperation
- GREF (Gaming Regulators European Forum)
- Content and form of a possible enhanced cooperation
- The possible use of IMI (Internal Market Information System)

GREF is a very loose organization with no authority to take decisions. Therefore, a structured form of cooperation would constitute the only real forum where the EU

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Commission and the Member States can share and solve questions which require an international cooperation and approach which is not the case with GREF.

While IMI could become an initial form of cooperation and require a horizontal approach, it could be useful considering setting up an institutionalized cooperation conceived in the context of the new comitology rules and general principles for the control of the implementing powers of the Commission by the Member States.

In the Report from the Hungarian Presidency on the regulatory cooperation between Member States in the field of gambling, which is the results of the replies from the Member States on the current forms of multilateral, bilateral and internal regulatory cooperation, reveals that at national level every Member State has one or more authorities responsible for the regulation of gambling activities. Most Member States have specialized authorities controlling gambling. This is not an essential element but constitutes a contact point at the Member States level. In some circumstances the participation of State owned companies should be considered.

In some Member States, a Ministry is in charge for the regulation of gambling activities. The report focus also about the following issues:

1. Possible elements of an enhanced regulatory cooperation

a) Information sharing

The use of Information sharing tools has been recognized as relevant for the implementation of national gambling policies, for legal certainty purposes and for simplification of the national authorization process, in particular, to avoid unnecessary duplication. Other relevant information have been identified in:

- information on operators applying for authorization and information on national rules on offering online gambling services
- Anti Money Laundering customer identification;
- Sport integrity

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- Fraud
- b) Exchange of best practices on what concerns:
 - i. Administrative information on licensing
 - ii. Controls for player protection or money laundering
 - iii. Player complaints
 - iv. Impact of CJEU ruling on National legislation
- c) Sport integrity: it requires cooperation between regulators and international sport federations to monitor sport betting and deviation of it and to monitor sport events.
- d) ARJEL and AAMS have signed a cooperation agreement at the end of June to set up an extensive cooperation between the two regulatory authorities whereby they committed themselves to exchange information before and after granting a licence to an operator. This cooperation is by no means intended to be a licence recognition agreement. The two authorities will also exchange employees for training.

Question 49 – Are you aware of such enhanced cooperation, educational programmes or early warning systems that are aimed at strengthening integrity in sport and/or increase awareness among other stakeholders?

The European Lotteries today apply an effective European Lotteries Monitoring System (ELMS). Through ELMS, its members are co-operating with FIFA (FIFA Early Warning System) and UEFA (UEFA Betting Fraud Detection System) as well as National football authorities and authorities to prevent any wrong doing in sport with the ultimate task of protecting sports integrity.

Through this co-operation we are able to identify and minimise the risks associated with fraud in sports and sports betting. If through our monitoring system and/or co-operation

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with national and international FA's any suspicion of fraud arises, the body in question shall be in direct contact with the local as well as international police force if needed. It is then a task for these police authorities to investigate, interrogate and set charges against the criminals in case reasonable doubt arises.

Furthermore, the association has extended the national educational work of its members in Europe and through World Lottery Association (WLA) in the world. The educational program carries the working name APSI (Awareness Program for Sports Integrity) with the aim to raise awareness, to educate and to inform all sports related bodies starting from players to referees and club owners i.e. the so called inner circle over the dangers of match fixing. This educational co-operation has already been put into practice in partnership with SportAccord, the association of international sports federations and AIPS, the association of international sports journalists.

As a latest innovation EL is in discussions with the IOC (International Olympic Committee) over setting up a separate working group to protect sports integrity. This group should have representatives from governments, sports as well as lotteries.

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

In principle, the offering of gambling in other jurisdictions of the EU, without a licence, is prohibited in all European States. Sometimes illegal operators (who operate without holding a valid licence) are subject to having their websites blocked. The methods described, so-called "Internet filters", at the national level, are currently not used. The effectiveness of the filtering options for DNS and IP blocking is largely dependent upon the combination with other technical and non technical enforcement methods.

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In many countries, the disbursements of the winnings are only allowed to a local bank account.

Furthermore, we think that administrative and judicial cooperation could be put in place in order to collect fines and forfeited stakes imposed by a national authority to illegal operators.

Cross-border issues and problems can only be tackled and solved by cross-border initiatives. Given that the problem is trans-frontier there is a need for National Gaming Regulators to co-operate in enforcing their laws to protect the players, and guard against fraud and money laundering and to “crowd out” the illegal operators.

The regulatory solution should follow common principles regarding licensing, whereby a company can only operate (or bid for operating or game licences) if it can prove that it does not currently operate in contravention of the law in any EU Member State.

Question 51 – What are your views on the relative merits of the methods mentioned above as well as any other technical means to limit access to gambling services or payment services?

It is very difficult, if not impossible, to implement systems that are completely effective in limiting access to gambling services or payment services. The existing regulatory regime in EU States prohibits the promotion or offer of games that are not authorised in each State, and yet States have not been able to enforce their national laws and prevent unauthorised operators from outside their jurisdictions from making “illegal” gaming available to their citizens.

- a) The first, immediate, and most effective step is for each State to enhance the enforcement of its own national laws.
- b) The second step is to enhance the cooperation between States to make the law enforcement more effective

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- c) The third step, embodied in the principle “Know your Player”, is to put in place systems and procedures to ensure that all Gaming Operators only accept registered players who are resident in their jurisdictions and who satisfy banking/financing and legal age requirements.
The theoretical long-term solution to this issue is the introduction of a pan-European electronic ID card.
- d) The fourth step of attempting to block IP/DNS and Payments is of limited use without the full cooperation of Internet Service Providers.
- e) Blocking of IP/DNS requires proper authority (for example by a gaming commission or courts) capable to decide swiftly when and which sites to block.
- f) Gaming operations may be combined truly or artificially with other activities to obfuscate their industry affiliation (MCC). For example, under “entertainment” or “recreation”. Such cases may be easier in jurisdictions with less scrutiny and control.
- g) Smaller gaming operators may change their internet name (as registered in DNS) and/or IP addresses frequently, thus bypassing blocking controls. Admittedly this would affect a smaller portion of the market but perhaps the most vulnerable, i.e. those addicted and blocked from participating with major operators.

Any action by States or the EU to limit or restrict the activities of illegal on-line gaming operators will have an effect on their illegal activities. While a 100 per cent success rate is not achievable, it is possible to reduce the penetration of illegal operators and their customer bases to a point where it becomes of marginal interest for them to continue to operate in Europe.