

**Written submission to the green
paper on online gambling in the
Internal Market**

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Policy statement

EGBA is pleased to submit its contribution to the consultation on online gambling in the Internal Market.

The launch of the Green Paper represents a bold and at the same time inevitable step for online gambling in the EU. Whereas others have shirked their responsibilities, Commissioner Barnier has taken a first step towards a European approach in a sector characterised at present by unsustainable legal uncertainty and fragmentation. Initial reactions at the European Parliament confirm that there indeed is political momentum to move forward at EU level. The true test for the Commission will be to ensure that the consultation phase is followed by concrete proposals that will effectively address market fragmentation and legal uncertainty.

EGBA supports the development of an EU regulatory framework for online gambling, a sector which is – by its very nature – cross-border. With 45% of the global online gambling market Europe has a leadership position in a growing segment of the burgeoning online economy. For the first time Europe has produced a number of global Internet champions, something which has up to now been the preserve of US-based corporations. Without a proper European policy response, this leadership will almost certainly be threatened.

Current situation

Consumer demand for online gambling in the EU continues to grow. In the absence of a competitive regulated offer that provides a safe and crime-free environment to answer that demand, consumers will continue to be forced onto the black market and left unprotected.

Gambling is an activity that is subject to strict statutory regulation – a position that we wholeheartedly endorse. But while ever more Member States are regulating the sector and introducing licensing systems, a significant part of these national regulations are contrary to the fundamental principles laid down in the EU Treaties, not least because they are based on purely national approaches and duplicate requirements that already have been fulfilled in other Member States.

With the costs for a single EU operator to obtain and maintain just one French license being € 8.7 million, even if the operator is already licensed in other Member States, it is unrealistic to assume that such an operator can compete with unlicensed operators that do not have to meet this burden. Unnecessarily high regulatory costs act as a barrier to an attractive legal offer that can channel the consumer away from the black market and to the regulated operators.

The proper application of basic EU Treaty rules would go a long way to address this issue. Whilst Member States are rightly entitled to have restrictions in place to achieve certain public policy objectives like consumer protection, these must be consistent, proportionate and non-discriminatory. Recent jurisprudence of the European Court of Justice reconfirmed that Member States are obliged to take into account requirements already fulfilled elsewhere in the EU (see *Neukirchinger* Case C-382/08).

Here the Commission is failing in its role as Guardian of the Treaties and has arguably aggravated the problem. Despite issuing numerous formal warnings on recent draft legislation for failing to comply with EU law, the Commission has not opened any infringement proceedings since early 2008. Indeed, even existing gambling infringement procedures have been on hold since that date and no Member State has ever been taken to Court for failing to comply with EU law regarding its gambling legislation.

The Commission must act now and pursue infringement cases in a systematic way to correct existing legislative flaws and to prevent new national rule-making from breaching EU law. If the Commission continues to turn a blind eye to breaches of EU law, it is hard to see how any agreement will be reached on meaningful next steps after this consultation.

The Green Paper and its follow up

The Green Paper provides the opportunity to examine thoroughly the state of the EU gambling market. The questions relating to responsible gambling, such as problem gambling and fraud prevention, the protection of minors and sports integrity cover the key societal issues that need to be addressed when deciding next steps at EU level. For EGBA's position on these topics, we refer to our detailed answers which we hope will contribute to an informed debate. We trust that the Commission in its follow-up will also address the economic aspects of the sector, the *raison d'être* of the Internal Market freedoms enshrined in the Treaty.

Market figures of Member States that have recently regulated the online market confirm that the regulation of the online market is not to the detriment of the existing offline market. Whilst the online market grows, the traditional offline market continues to grow in real terms as well, as do the revenues of most of the traditional land-based operators. The regulation of the online market has positive spill-over effects on the

European economy and there is no cannibalisation of existing revenues and funding streams (see in particular the economic data provided in answer 1).


Regulation of the online gambling sector is a solution rather than a problem regarding societal issues. It is the only way to eradicate the black market and benefit from the high transparency and traceability features of the internet that have allowed the regulated industry to develop new and more effective means of protection and prevention than those traditionally available in the offline gambling environment. As a result, the advent of internet gambling has not led to an increase in problem gambling and the internet provides better tools for instance to protect minors (see in particular the evidence provided in answer 15 et seq.).

We share the Commission's assessment that currently there is significant legal uncertainty in the gambling sector due to the friction between national and EU law requirements. It is also important to point out that, although Member States' attitudes towards gambling may vary due to moral, religious and cultural differences, the actual regulation that is being put in place by many Member States shows a degree of convergence (and duplication) in their objectives and implementing measures.

It is in this context, that EGBA concludes that there is a sufficient basis and indeed need to develop an EU regulatory framework for online gambling, including by;

- Targeted harmonisation of, *inter alia*, consumer protection, anti-money laundering, prevention of fraud and other crime, assessment of personal integrity, mutual recognition of licensing procedures, IT infrastructure, advertising and sponsoring, customer identification, protection of minors and sports integrity
- Creation of a European authority whose main responsibilities would be to coordinate regulatory cooperation and enforcement and to monitor sports integrity.

Through this contribution and in the ensuing discussion EGBA will actively engage to achieve these objectives.



Sigrid Ligné
Secretary General of the European Gaming and Betting Association

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On-line gambling in the EU: current situation

Question	Answer
<p>(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?</p>	<p>Yes, there are data and studies on the EU online gambling market (see Part II below). They show that online gambling is a reality and it is subject to consumer demand in all Member States.</p> <p>Today, the size of the online gambling market is around 10% of the total gambling market and it is expected to increase up to 12% in 2012. At the same time, the offline gambling sector continues growing, too (see H2 Gambling Capital figures in Annex 1, April 2010). The online sector's growth is not taking place at the detriment of the land-based sector as reflected by the following figures:</p> <p>Part I. Figures in Member States</p> <p>The development in these 4 following countries (UK, France, Italy and Sweden) proves that the offline and online sectors can live and grow together without cannibalisation taking place.</p> <p>1) France</p> <p>In France, the report on the implementation of the new French gambling laws by MP Lamour on 25 May 2011 (see link, page 90) concluded one year after, that <i>“the opening in France has not taken place to the detriment of the monopolies”, “Française des Jeux (FDJ) continues to grow steadily”</i> and <i>“land based casino acknowledged that online gambling had not increased their structural difficulties”</i>. In fact <i>“no category of game has developed to the detriment of another as confirmed by the following figures”</i>:</p>

- **2008**

Pari Mutuel Urbain (PMU): EUR 9.3 billion turnover

Française des Jeux: EUR 9.203 billion turnover

Casinos (200 in France): EUR 2.5 billion gross gaming revenues

TOTAL: EUR 21.003 billion

- **2009**

PMU: EUR 9.3 billion turnover

Française des Jeux: EUR 9.997 billion turnover

Casinos (200 in France): EUR 2.3 billion gross gaming revenues

TOTAL: EUR 21.597 billion

- **2010**

PMU: EUR 9.54 billion turnover

Française des Jeux: EUR 10.551 billion turnover

Casinos (200 in France): EUR 2.29 billion gross gaming revenues

Online sports betting and poker: EUR 5.02 billion turnover, of which 3.7 billion on poker cash-games

TOTAL: EUR 27.401 billion

2) Italy

- **2007**

Lotteries: EUR 15.8 billion turnover

Online sports betting: EUR 1.1 billion turnover

Total gaming market: EUR 41.6 billion (+17.4% on 2006)

- **2008**

Lotteries: EUR 17.5 billion turnover

Online sports betting + poker: EUR 1.4 billion turnover

Total gaming market: EUR 47.5 billion

- **2009**

Lotteries: EUR 18.7 billion turnover

Online sports betting + poker: EUR 3.7 billion turnover

Total gaming market: EUR 54.4 billion

- **2010**

Lotteries: EUR 19.5 billion turnover

Online sports betting + poker: EUR 4.8 billion turnover

Total gaming market: EUR 61.4 billion

3) Sweden

“Despite the competition from the private sector, the country's gambling monopoly Svenska Spel said it has seen revenues rise in the first quarter of 2011. The betting monopolist saw net revenues for the period from January to March rise 1.5% to SEK 1.93 billion (EUR 0.209 billion) compared to the same period in 2010. Net income rose 4.4% year-on-year to SEK 1.23 million (EUR 0.133 million), up from SEK 1.17 million (EUR 0.126 million) recorded in the first quarter of 2010.” (source: Gambling Compliance article on 27 April 2011, see [link](#)).

4) The U.K.

- In the UK, which is arguably the most competitive gambling market in the EU, the state lottery operator is actually doing better than ever. The National Lottery operator, Camelot, has recently announced record ticket sales of £5.8bn in the year to March 2011. That marked a 6.8% increase on a year ago and beat the previous record of £5.5bn set in 1997-98. Please refer to the press release ([link](#)) issued by Camelot, the UK lottery, on its record sales.
- Please also refer to the attached excel file (Annex 2) indicating the tax revenues generated by different sectors in the UK since 2007 (figures marked in red represent highly interesting results for the lotteries).

Part II. Studies and data

1) A study by the **Research Institute of Industrial Economics** on Sweden's gambling market, March 2011, (see [link](#) to the press release; full study in English attached in Annex 3) shows that the online share of Sweden's gambling market stands at 26%, the highest in Europe. The study addresses the massive potential of online gambling which already has a large footprint in the economy through spill-over effects into ancillary businesses. There also was an increase of 23% in employment in the Swedish gaming industry since 2009.

2) A study by **Price Waterhouse Coopers** (see attached in Annex 4, page 17), June 2010, shows that an EU operator, who is already licensed in one or several other Member States, needs to invest for France only, EUR 8.7 million in order to cover administrative and technical costs for obtaining and maintaining the national license to operate on the French market. The costs of this fragmentation and duplication of national requirements are particularly high.

3) The **Gold Media** study "*Betting & Gambling Market Germany 2015*" (see [link](#) to the press release), April 2010, shows the effects of the restrictive German reform. Amongst the law's negative effects are sharp revenue declines, the predominant use of online gambling offers from abroad, and high fiscal slumps for the German state – totalling EUR 2.4 billion since 2005.

4) A study conducted by **Sports business** on the Contribution of the Gambling Industry to the Funding of Sports in Two Member States - the UK and France - in November 2008 (see [link](#)). This work demonstrated that sport (excluding horseracing) did better out of the UK commercial market than the French model at the time.

5) A study conducted by the **Remote Gambling Association** on sports betting: Legal, Commercial and Integrity issues (see [link](#)), January 2010, demonstrates that the concept of a '*fair return*' as presented by sports is a misnomer. It proves that sports are receiving the appropriate level of fiscal benefits from the gambling industry as they provide EUR 3.4 billion per annum to EU sports, whereby EUR 2.1 billion (62%) are contributed by private companies. The false assumption that gambling operators exploit the sporting product does not consider that many other products also seek to associate with sports without being pursued for additional non-commercial revenues.

6) The MAG study, Overview of the Italian Regulatory Framework for Online Gaming, Evolution of the Italian Online Gaming Regulation 2002-2009 (see [link](#), page 5), March 2010, shows that by optimizing the taxation system, the government effectively managed to curtail the so-called *'black market'* and consequently increased the level of consumer protection as well as the state income (240% increase of the state budget, from EUR 3.5 billion in 2003 to EUR 8.8 billion in 2009). It remains a fact that between 2003 and 2009 the total income from games has more than doubled, boosting from EUR 15 billion in 2003 to over EUR 52 billion at the end of 2009. This growth is certainly due to the progressive erosion of the market share of *'black market'* whose size exceeded any previous estimate by large.

7) The MAG study, "Jeux en ligne in the French Market, Key features, strengths and weaknesses of the French legal gaming offer" (see [link](#)), February 2011, shows how restrictions and high taxation are only beneficial to the so-called *'black market'* which represents 57% of the entire online gambling market in France (page 17 of the study).

8) The French Competition Authority opinion on the online gambling sector dated 20 January 2011 (see [link](#)) expressed numerous concerns related to the controversial modalities of the opening of the online gaming and betting market in France (sports betting right and high price, use of FDJ and PMU customer base, risks of cross-subsidization, specific risks related to the horse-race betting sector, ceiling on pay back ratio for horse race betting and sports betting, etc).

9) BITKOM report, April 2010 (see attached in Annex 5). A survey of this association of software providers, IT and telecommunications service providers (see [link](#) to the website) concluded that at least 2 million of German people are gambling although gambling is forbidden in Germany (page 6). It is calling for the opening of the German market including online offers as well as a harmonisation at EU level.

10) UK Gambling Commission - Industry statistics 2009/10 (see [link](#)), December 2010. The information and figures contained in this document cover betting, bingo, casinos, arcades and gaming machines, lotteries and remote gambling.

11) MP Jean-François Lamour report in France (see [link](#)) on the 25 May 2011 on the enforcement of the new French law and its potential review. See notably the statement that “*the offline gaming sector causes more troubles*” (p.61) and the illegal offer remains. This report is a political admission that the French legislator “*ignored*” the intrinsic dynamics of e-commerce and the global internet market, and that regulations should be aligned to that reality. The highly criticized new French system has pushed consumers underground by imposing excessively high burdens on licensed gambling websites, notably with respect to taxes and technical requirements, and due to the limited product scope. And finally the report concludes (page 90) that after one year of opening in France and contrary to what was expected “*no cannibalization phenomenon has been identified*”.

12) ESSA integrity report for 2010 (see attached in Annex 6). This report highlights the number of incidences of suspicious betting that ESSA uncovered last year and puts these into context with other forms of corruption in sport. ESSA’s members are among Europe’s largest licensed, regulated, betting operators. On average, each member offers around 10,000 separate sports books across Europe each week, with millions of separate bets taken. Out of all these bets, ESSA identified 58 incidences across its membership in 2010 that were deemed to be irregular. Upon thorough investigation by ESSA’s bookmaking team, ESSA was able to establish that four of these 58 alerts were suspicious and their case files were sent to the relevant sports governing bodies.

13) Swedish study on Swedish Gaming Monopoly from the Swedish retail Institute (HUI) in November 2008 (see attached in Annex 7 – English translation included in the document) showing that consumers would enjoy significant welfare gains when the market is regulated. It would also lead to considerable job creation. Online gambling is also **part of a wider sector** of the European economy, **the e-commerce industry**. The development of e-commerce forms part of the Commission’s flagship Digital Agenda strategy. In this context, EGBA would like to stress that the contribution of the online gambling industry to the wider e-commerce sector in Europe is significant as demonstrated by the 2 following studies:

14) The online gambling sector is part of a wider industry which is the e-commerce. In relation to that, the **European Policy Centre (EPC)** studies (see [link](#)) show the need of a Digital Single Market in the EU. This would lead to significant economic, social and environmental benefits:

- **Addition of at least 4% to EU GDP** by 2020.
- **Solution for key European challenges:** economic recovery, better labour markets and public services and a smarter, greener economy.
- **Key driver for productivity** and competitiveness, promoting growth and innovation.
- **Benefit for consumers** through low prices, better quality and more choices.

15) Online single market: Digital Agenda – European Commission report (see [link](#)):

“Apart from playing a significant role in the growth of the European economy, the internet has a huge potential to strengthen the single market. However, the level of e-commerce and e-business varies across Member States and cross-border transactions are limited. Although 54% of internet users buy or sell goods via the internet, only 22% of them do so from other EU countries. By contrast, in the US ecommerce is more common place with 75% of internet users buying or selling online. This shows that Europe lacks a genuine digital single market, which is essential to stimulate the growth of European small and medium sized enterprises and to provide consumers with more choice at competitive prices”.

On-line gambling in the EU: current situation

Question	Answer
<p>(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)</p>	<p>Yes, there is data available on the 'black market'. However as the Commission is aware, there are different definitions of the so-called 'black market' or to what stakeholders also refer to as 'unregulated', 'unlicensed' or 'illegal' often by reference to national rather than to EC law.</p> <p>There is a need to regulate properly the online gambling market in order to reduce the legal uncertainty surrounding the provision and the consumption of online gambling services across the EU. Online gambling has become a market reality in every Member State, so if it is prohibited or unnecessarily restrictive, players will simply turn to alternative and more competitive providers.</p> <p>1) Germany:</p> <ul style="list-style-type: none">• The Gold Media study (study 3 above) identified a gross gaming revenue of EUR 1 billion for the online gaming market in Germany in 2009 (with a 30% annual growth rate since 2005). As online gambling is forbidden in Germany, these revenues are part of the so-called 'unregulated' market.• BITKOM report (study 9 above): at least 2 million of people are gambling in Germany. As a result, these gamblers form part of the 'unregulated' market. <p>2) France:</p> <ul style="list-style-type: none">• MAG study on France (study 7 above, table page 17) demonstrates that France does not manage to curtail so-called 'black market' operators. The 'black market' still accounts for 57% of the French online gambling market (5% - poker, 75% - sports betting and 100% - online casino).

3) Italy:

- A letter from the European Commission dated 8 June 2008 states that the Italian authorities admitted that use of 'illegal' websites increased due to the poor legal offer at that time (see attached in Annex 8).
- Subsequently, the MAG study on Italy (study 6 above) evidences that a proper regulation managed to curtail the 'black market' and effectively channelled consumer demand to the Italian-licensed gambling offers.

On-line gambling in the EU: current situation

Question	Answer
<p>(3) What, if any, is your experience of EU-based on-line gambling operators licensed in one or more Member State and providing and promoting their services in other EU Member States? What are your views on their impact on the corresponding markets and their consumers?</p>	<p>The current legal and commercial situation for EU-licensed online service providers and their customers is unsustainable. The prevailing legal uncertainty leaves customers without legal protection from unscrupulous and unlicensed websites whilst EU-licensed operators are not able to provide their services throughout the Internal Market.</p> <p>Online gambling exists, citizens of all Member States participate in it and the demand for it is continuously growing. It is important not to forget that online gambling is a pleasant pastime for the overwhelming majority of consumers. It is their entertainment of choice. Many Member States are now acknowledging this reality and regulating the online gambling market.</p> <p>Although regulation of the market is the objective, the past few years have seen the emergence of many national regulations aiming at regulating an inherently cross-border service along purely national borders. This kind of regulation inevitably lead to markets that are inherently inadequate; they fail to provide an offer that matches consumer demand and they also fail to be compatible with the basic freedoms of the EU Treaty.</p> <p>With geography playing no role in the Internet Market, the <i>'black market'</i> is only one mouse click away. Measures like blockings, designed to force consumers on the national market, are not effective and easy to circumvent. The data provided in response to earlier questions shows that consumers play online, regardless of the distinct legal situation in their jurisdiction.</p> <p>Legislators need to choose between citizens gambling on the <i>'black market'</i> without legal protection, or to ensure that citizens have access to competitive services offered by EU-licensed and regulated operators based on clear rules and a high level of consumer protection. There are new and technologically improved possibilities of online controls (as the CJEU laid down in the ruling <i>Ker Optica</i>, C-108/09) which cater for a higher degree of</p>

consumer protection in the online world, provided these regulations and the fight against the *'black market'* and uncontrolled offers are taken seriously. With a serious, consistent and responsible approach, Member States would be less hesitant in recognizing already proven and controlled license requirements of other Member States (see to this CJEU case *Neukirchinger* C-382/08), ensuring the non-duplication of administrative requirements and the principle of mutual trust between Member States enshrined in the Treaties.

Regarding the impact of EU licensed operators, EGBA considers that they have a major positive impact on the market and consumers, across many EU Member States:

Firstly, online gambling sector contributes to job creation in the EU. Moreover, the online gambling sector creates *"smart jobs"*, e.g. jobs that create highly skilled individuals. Many operators in online gambling specialize in areas such as digital technologies, which use cutting-edge know-how to provide live streaming and other live offers for customers.

Secondly, the sector is a driver of digital technologies and has contributed to the spread of broadband usage in Europe. Online gambling is one of the most innovative industries in Europe, contributing to the objectives of the Commission's Digital Agenda.

Thirdly, the online gambling industry has contributed to the development of e-commerce in the EU by strengthening trust of consumers in e-commerce. The high level of online security and cutting-edge technology provided by the sector is a key factor here. This development has created, and will continue to create, positive spill-over effects for the rest of the European e-commerce, where consumer trust is a mayor issue.

Fourth, the online gambling industry has contributed to the development of safer payment systems such as e-wallets.

Last but not least, the online gambling sector has promoted the development of standards, especially in the context of the CEN Workshop on *'Responsible Remote Gambling Measures'* (see full text attached in Annex 9).

On-line gambling in the EU: current situation

Question	Answer
<p>(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?</p>	<p>The difficulty in answering this question also reflects the main issue at stake: <i>‘licensed non-EU online gambling operators’</i> is not a coherent grouping of operators. Their license could have been issued anywhere in the world outside the EU. The mere fact of having a gambling license does not necessarily imply compliance with certain quality standards or high levels of consumer protection outside the legal framework of the EU. In addition, there is no EU jurisdiction enforcing non-EU license requirements when the services are provided on the EU market.</p> <p>As a result EU consumers playing have less information about their rights and are left with little legal protection and means of redress in case they would be victims of unscrupulous non-EU on-line gambling operators.</p> <p>The lack of transparency in general, the lack of knowledge about the quality of the license and its requirements, and the lack of enforcement by an EU jurisdiction vis-à-vis a non-EU issued license are risks for EU consumers and authorities alike, in particular compared to EU-licensed operators. A possible way of mitigating this risk is the so-called <i>‘white listing’</i> of licensing jurisdictions outside the EU on the basis of strict and transparent criteria.</p>

On-line gambling in the EU: current situation

Question	Answer
<p>(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?</p>	<p>Online gambling in the EU is characterized by high legal uncertainty (e.g. seven preliminary rulings since June 2010, endless litigation in Member States). The legal uncertainty has a direct impact on the daily commercial operations of operators. The effects of legal insecurity also extend to consumers, including criminal sanctions imposed on consumers for accessing cross-border services.</p> <p>This legal insecurity is due to:</p> <ul style="list-style-type: none"> • Extreme fragmentation (see e.g. the critics by Advocate General Mengozzi in C-46/08, <i>Carmen Media</i>): very different systems (a) state monopolies, (b) single-license systems and (c) multiple license-systems with c.1 limited or c.2 unlimited number of licenses. • Lack of EU harmonized law (also criticized by Advocate General Mengozzi in C-46/08, <i>Carmen Media</i>), leaving Member States to regulate an inherently cross-border service sector covered by the EU Treaty freedoms • Lack of a genuine desire of Member States to comply with EU law when it comes to gambling • Lack of Commission direct referrals of Member States to the CJEU resulting in no judgments on substance by the CJEU to date <p>The legal insecurity is widely acknowledged, notably also by those Member States that are responsible for national regulations. Under the Spanish Presidency a common definition of legal gambling was developed that serves as an illustration rather than solution of the inherent tension between strictly national regulations and EU Treaty requirements: <i>Operators should adhere to the national laws of the countries where services are offered,</i></p>

and those national laws must be compliant with Treaty principles` (Spanish Presidency Progress Report 25 May 2010, (doc 9495/10)).

Legal uncertainty will not disappear by magic over time. It requires the European Commission and European legislator to take up their responsibility and ensure that legal clarity is offered in the interest of consumers, operators and ultimately Member States.

The European Commission is asked to ensure the fulfilment of the requirements for legal certainty and establish a first standard as part of a **European Regulatory Framework** (see above, question 1 study 10, e-center) in order to establish a secure and well-regulated Online Common Market.

On-line gambling in the EU: current situation

Question	Answer
<p>(6) Do you consider that existing national and EU secondary law applicable to on-line gambling services adequately regulates those services? In particular, do you consider that coherence / consistency is ensured between, on one hand, the public policy objectives pursued by Member States in this field and, on the other hand, the national measures in force and/or the actual behaviour of public or private operators providing on-line gambling services?</p>	<p>No, EGBA considers that EU secondary law does not adequately regulate online gambling services. Although importantly a number of EU directives cover gambling in their scope, they harmonize only specific aspects of online gambling. As a result, and despite consumers being able to access online gambling services throughout the EU, they are not protected at an equally high level, and in certain Member States not at all.</p> <p>The CJEU jurisprudence is not a call for the maintenance of the status-quo. On the contrary, the Commission is called to put material effect to the words of the CJEU (in the Stoss and Carmen Media rulings, C-316/07 et al and C-64/08) regarding: (i) internal consistency of all gambling offers, (ii) external consistency of all gambling offers and (iii) obligation of Member States to comply with the obligation to <i>"quantitatively measure"</i> and <i>"qualitatively plan"</i> their intended gambling offer while obliging Member States to (iv) provide for prevalence studies to verify the efficiency of their current gambling system.</p> <p>Online gambling is not adequately regulated in most Member States. The objectives pursued by Member States that form the basis of their market regulation are often not considered as acceptable by the CJEU. With the recent Stoss and Carmen Media rulings the CJEU has clarified that Member States need to have consistent gambling policies. The Court has also set clear criteria what consistency in the area of gambling implies. On the basis of this clarification, it is highly doubtful that the gambling legislation of most Member States can be considered consistent and therefore EU compliant.</p>

Below are a few examples to illustrate the inconsistent gambling legislation of Member States.

France, the pay back ratio;

- On the one hand, the French slot machine industry is by decree required to have a payback ratio (PBR, the percentage of the stake to be paid out to consumers) of **at least 85%** to protect the consumers interest (Article 4 of the decree dated 22 December 1959).
- On another hand, online betting operators are required by law **not to exceed** a PBR of 85% due an alleged correlation between the payback ratio and problem gambling.
- The effect of the capped payback ratio is that players are betting 25% more than they did before the opening of the French market but they are getting around 8% less paid back (Source: BetClic internal analysis). While a **minimum** pay-out ratio would indeed mean a protection for players as operators would have to offer better pay-outs, a maximum pay-out ratio would have the contrary effect, exclude competition and therefore preclude better returns for players. As shown by the study of Professor Jonathan Parke (see [link](#)) there is no evidence of an effect of the payback ratio on the level of problem gambling. A Member State could therefore not justify such measures with the objective of player protection. On the contrary, it seems evident that a Member State like France (a) seeks to protect its own incumbents with unattractive pay-out ratios and (b) tries to secure a higher pay-out ratio as (higher) tax basis to the detriment of the players. Both objectives can be classified as "*economic objectives*" under EU Law, and renders this measure as incompatible with EU freedoms as it is inconsistent to secure player protection. However, it is still in place in France.

Belgium, consumer protection;

- Online operators are required to have an offline license and an offline gambling offer in Belgium, justified inter alia with the aim of consumer protection. However, a mystery shopping exercise conducted by the Belgian consumer organisation (CRIOC) revealed that 71% of offline points of sale were found illegally selling lottery tickets to minors.
- Although the Court does not require the gambling legislation between Member States to be consistent, the manner in which a popular game like poker is regulated illustrates the divergence of regulations for consumer protection within the EU.

Definition and organisation of on-line gambling services

Question	Answer
<p>(7) How does the definition of on-line gambling services above differ from definitions at national level?</p>	<p>EGBA considers the definition of online gambling as set out on page 14 of the Green Paper (<i>On-line gambling services are any service which involves wagering a stake with monetary value in games of chance, including lotteries and betting transactions that are provided at a distance, by electronic means and at the individual request of a recipient of services</i>) as adequate for the purpose of the Green Paper consultation.</p> <p>Although not specifically mentioned in the definition, EGBA assumes that poker falls within this definition. To ensure legal certainty and consistency with practical rules, this definition shall exclude Video Lottery Terminals and (offline) Betting Terminals. Although VLTs are also based on "internet technology" they are from a regulatory and public policy point of view significantly closer to amusement halls and slot machines than to <i>"On-line gambling"</i> in a strict sense.</p>

Definition and organisation of on-line gambling services

Question	Answer
<p>(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?</p>	<p>EGBA considers the definition of online gambling as set out on page 14 of the Green Paper adequate for the purpose of the Green Paper consultation. By mentioning "<i>involves wagering a stake with monetary value</i>" the wording excludes <i>per definitionem</i> promotional games which are typically carried out without players paying in stakes.</p> <p>Nevertheless, we would endorse to exclude promotional games from the scope of the definition of online gambling.</p>

Definition and organisation of on-line gambling services

Question	Answer
(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?	EGBA would endorse to exclude these services from the scope of the definition of online gambling.

Definition and organisation of on-line gambling services

Question	Answer
<p>(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?</p>	<p>The <i>‘coexistence’</i> of differing national systems is unsustainable as it causes challenges for consumers, economic stakeholders and Member States that can only be resolved through a harmonized approach.</p> <p>Keeping national rules on online gambling fragmented does not address the challenges of the current technological developments. It also puts the EU online gambling market at risk of being outcompeted by other markets such as the US. In addition, since online gambling promotes the development of the European IT industry, different national rules and protectionist measures could have a negative effect not only on the online gambling industry as such, but could also have a negative spill-over effect onto the IT sector.</p> <p>Why would the current situation be continued? An often used justification is the argument that Member States' attitudes towards gambling varies significantly due to moral, religious and cultural differences.</p> <p>Although there are doubtlessly different attitudes towards gambling in different Member States, this holds similarly true for many other services and goods that circulate on the Internal Market. Also, when looking at the regulations that are currently being developed by many Member States, the objectives and measures show considerable convergence and duplication despite these differences.</p> <p>Indeed, all Member States pursue objectives aiming to achieve <i>‘responsible gambling’</i> through specific measures. In the CEN Workshop Agreement on Responsible Remote Gambling Measures, responsible gambling is defined by 9 specific objectives, such as the protection of vulnerable customers, the prevention of underage gambling and the fight against fraud. Notwithstanding the precise wording of these definitions, it would be hard to envisage any legislator having different objectives. Differences might exist in the precise measures taken to</p>

ensure the desired level of consumer protection. However, this is common in many other sectors, and it is precisely the objective of EU harmonisation to find the right level of protection through negotiations.

What difficulties result from the current situation?

For consumers in the EU, the current situation leads to:

- Sharply varying levels of protection between and sometimes within Member States (e.g. in Belgium age limits for certain games 18+, for other games 21+) and in some Member States no protection at all
- Inability to play with consumers from other EU Member States (e.g. a French poker player can only play with other French players)
- Impossibility to play anywhere else than in the Member State they reside in
- A loss of consumer welfare due to an uncompetitive offer that forces consumers to play on the so-called 'black market'

For Member States a closed national market leads to:

- A loss of tax revenue
- Economic growth and job creation foregone
- Continuous legal and enforcement action to sustain a national approach
- In practice: channelling is not effective, population drifting into the 'black market' (see Germany), circumvention of prohibitions by users, high costs to maintain national system.

For operators the current situation leads to:

- A loss of economies of scale
- High compliance costs (license, product limitations, server requirements, compliance with different age limits etc.)
- Legal uncertainty
- Risk of losing the competitive advantage
- Discrimination in relation to former monopolies and local operators

For other economic stakeholders:

- Due to varying advertising regulations, competing sports federations and clubs in the EU have unequal access to sponsoring and marketing agreements with the online service providers
- Differing rules for sponsorship means that for instance football clubs cannot wear jerseys anywhere in the EU; for example a Lithuanian football club is sponsored by a gambling company but this club may only wear its sponsored jerseys during matches outside Lithuania
- Loss of advertising revenue for media companies; for example the Swedish paper Aftonbladet was considering leaving Sweden as the advertising restrictions threaten the existence of the paper

On a national level, the local re-regulation and increasing local license opportunities will increase the burden of continued compliance in a multi-jurisdiction set-up. If rigid and inconsistent operational requirements will impede or even reduce customer experience, local customers will continue to gamble outside the scope of a local license regime.

In view of this, the following should be considered:

- **Requirements should be objective and risk-based. They should recognize the proper characteristics of any e-commerce operation and allow adaptation to the technological evolution. Requirements in other industries, e.g., financial services, could be used as a benchmark (e.g. SAS No. 70);**
- **Strict technical requirements to ensure that the game is fair and meets required quality standards. Defining high-end technical requirements and duplication of IT infrastructure are two separate issues. Duplication should be avoided as – in most cases – it is based upon a misunderstanding of relevant technical issues;**
- **Pragmatic operational processes allowing the platform to be run in an appropriate and diligent manner. Processes should be aligned with the needs of a complex and dynamic IT-driven industry;**

- **Sensible, pragmatic and KPI reporting based auditing and enforcement, instead of devising a local server solution which will be unstable at best, damaging the user experience at worst.**

In 2011, local servers add little to the security of the customer, notably as services are provided by so-called “*server clouds*” i.e. network of servers. Access to information can be ensured in other ways than by duplication of hardware and local IT architecture.

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

Question	Answer
<p>(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 problems with such cross-border commercial communications?</p>	<p>Commercial communications are differently regulated depending on the Member State in caption. It is often problematic as online gambling commercial communications are cross-border by nature, all the more so when national legislation is not EU compliant.</p> <p>Part I. Examples of regulation</p> <ul style="list-style-type: none"> • In Malta: LGA directive on advertising, promotions and inducements (see attached in Annex 10) • Self-regulation at EU level: CEN Workshop Agreement on Workshop on ‘Responsible Remote Gambling Measures’ (part 7) <p>Part II. Specific cross-border problems</p> <ul style="list-style-type: none"> • Example in Sweden with the Aftonbladet (Swedish newspaper) case (C-448/07): <p>While Swedish gaming law currently allows operators licensed in other Member States to offer Internet gaming services in Sweden, it prohibits the promotion of these services through Swedish media. Under this law the chief editors of two leading Swedish newspapers “Expressen” and “Aftonbladet” were subject to criminal sanctions for publishing advertisements for gaming operators licensed in other Member States, but would only face lighter administrative fines for publishing advertisements for unlicensed Swedish operators.</p>

The ECJ held on 8 July 2010 that *'Article 49 EC must be interpreted as precluding legislation of a Member State subjecting gambling to a system of exclusive rights, according to which the promotion of gambling organised in another Member State is subject to stricter penalties than the promotion of gambling operated on national territory without a license'*.

In May 2011, the problem was still not solved and Aftonbladet threatened to move abroad if the newspaper was prohibited to publish advertisements for foreign gambling companies. The announcement was made at a seminar to convince Members of Parliament and other opinion leaders of the absurdity of Swedish television channels based abroad being in a position to fill airwaves with advertising games, while the government actively tries to stop the Swedish daily newspapers from doing so.

On 22 June the Swedish Appeal Court acquitted the two former national newspaper editors of charges that they allowed the unlawful advertising of foreign betting sites. It stated that Swedish Media are free to advertise games organised in other EU Member States based on the discriminatory part of the sanction regime.

"Those who promote such games as the ads (in this case) and which are organised in another EU Member State may be subject to increased penalties than those who promote such games organised in Sweden without a permit. This means that the penal provision in this respect is in breach of the EU law discrimination ban. This provision cannot be applied against Otto Sjöberg and Anders Gerdin".

State prosecutors have three weeks to go on to appeal at the High Court and it is to be expected that the long-running case will not end by this decision.

This is only one example of the absurdity of discriminatory and over-restrictive national advertising rules which lead to (i) circumventions and/or (ii) loss of revenues of all involved stakeholders:

- A Lithuanian football club is sponsored by the gambling company and EGBA member Unibet. However, this club may only wear the jerseys with sponsoring advertisement at football matches outside Lithuania.
- Real Madrid, sponsored by the gambling company and EGBA member bwin.party, may play with bwin-branded jerseys in Spain, but not in Germany. However, German football fans would watch the Spanish "*Primera Liga*" on German TV where a Real Madrid football match is broadcast with bwin-branded jerseys. Also private foreign TV channels broadcast from one country into other territories.
- Ski jumping Zakopane in Poland: The Polish court decided to stay the proceedings in the case regarding illegal advertising of EGBA member bet-at-home at the ski-jumping Grand Prix in Zakopane until the court will know whether the act of gambling is consistent with European Union legislation. The judge also decided to ask the Ministry of Finance to clarify if/why the main gaming law has never been notified to the EC as required under directive 98/34/EC.
- Also see the BBC global poll where four in five adults regard Internet access as a fundamental right (see [link](#)).

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

Question	Answer
<p>(12) Are there specific national regulations pertaining to payment systems for on-line gambling services? How do you assess them?</p>	<p>EU-licensed operators refer to mainstream payment systems commonly used by other companies in the e-commerce sector. Roughly 60% of these online gambling payments come from credit cards. All payment systems (including e-wallets and pre-paid cards) used by EU-licensed operators are authorized and regulated within the EU. They also comply with a number of EU regulations such as the electronic money, electronic commerce, distance selling and money laundering directives.</p> <p>These payment services, which are not exclusively reserved for online gambling, are valid in other EU countries if the local financial regulator allows this. In some cases, national regulators will, however, prevent e.g. ban the provision of these services specifically for online gambling services.</p> <p>As indicated in the response to Question 3, the online gambling sector has invested greatly in the development of safe payment systems and has also been funding research into this area, which benefits not only the online gambling operators but also the e-commerce industry in the EU in general. The industry does not use cash payments and, thus, has had to work towards making the digital environment for payments as safe and reliable as possible.</p> <p>According to the Commission’s Digital Agenda Communication, more than half of all attempted cross-border purchases do not materialize because credit cards issued in one country are not being accepted for payment in other countries. Moreover, the Commission’s data shows that people avoid engaging in e-commerce primarily due to the lack of trust in payment security. Using e-money - which is an area where the online gambling industry is at the forefront - allows consumers to make payments over the Internet without using credit or debit cards and thus solves some of the problems of refusals to accept credit cards from other EU Member States.</p> <p>See answer 50 and 51 for further details on the blocking of certain payment methods.</p>

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

Question	Answer
<p>(13) Are players' accounts a necessary requirement for enforcement and player protection reasons?</p>	<p>Yes, the opening of an account is necessary for several reasons:</p> <ul style="list-style-type: none"> • Know Your Customer purposes • Consumer protection • Anti-money laundering <p>Due to online payment methods and responsible gaming requirements, customers need to be registered and have to prove their identity before the first pay-out at the latest. Thanks to this process, online gambling is safer and more traceable than offline gambling. Every customer leaves a specific footprint.</p> <p>Contrary to offline, in an online environment every step a customer takes is traceable thanks to the registration process. As already stated in the EC Green Paper itself '<i>on-line gambling provides operators with more sophisticated possibilities to track the transactions of each player compared to off-line gambling formats</i>'.</p> <p>That is why the opening of an account is a necessary requirement for gambling either under national regulations or in line with best practices (for example: CEN Workshop Agreement on '<i>Responsible Remote Gambling Measures</i>').</p>

Part I. Know Your Customer purposes

The registration process forms the basis of the commercial and contractual relationship between the customer and the operator as it requires the player to:

- Declare that he/she is over 18 years of age
- Read and accept the operator's General Terms & Conditions
- Provide information including name, surname, date of birth, e-mail address, contact phone number, residential address, country (this information is then used to enable identification of the player)
- Create a username
- Create a password
- Opt in of receiving marketing material

Part II. Consumer protection

Player accounts enable players to avail themselves of the player protection tools (also known in the industry as responsible gaming tools) made available by the operator to all registered players. These tools include:

- Setting of deposit limits (enabling a player to set a limit on the amount he/she may wager over a specified period of time);
- Temporary and permanent self-exclusion (enabling a player to block access to his account for a pre-determined time-frame or permanently).
- Identification of players and a player's history enables operators to identify changes in a player's gaming pattern, some of which may signify that a player has a potential gambling problem.

Part III- Anti-money laundering

Player accounts are also essential in ensuring that a player is accountable to the operator in cases of fraud and other abuse (credit card fraud being one such example). The operator's ability to access the entire history of a player (player footprint including, transaction history, gaming patterns, deposit and withdrawal patterns, etc) is crucial in enabling the operator to detect and identify potential or actual money laundering and hence to abide by applicable anti-money laundering legislation.

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

Question	Answer
<p>(14) What are the existing national rules and practices relating to customer verification, their application to on-line gambling services and their consistency with data protection rules? How do you assess them? Are there specific problems associated with customer verification in a cross-border context?</p>	<p>Existing national rules in terms of customer verification vary a lot from one country to another. This is clearly one area that requires a European approach. E-verification is an important factor to boost the Digital Single Market and it is a clear priority of the Digital Agenda which EGBA supports. One important aspect that tends to be ignored by some national regulators is the specifics of the distribution channel Internet. Hence, any e-verification must be user-friendly so as to meet customers' expectations and prevent them from turning to the <i>'black market'</i>.</p> <p>Examples:</p> <ul style="list-style-type: none"> • In the UK, for instance, companies like GB Group (a leading third party verification system) will cross-check the customer's data with a number of public data sources (credit card, directory inquiries, electoral lists) to confirm that the registered customer is the right person. This process takes place real time and has achieved successful matching rates in the order of 90%. <p>The UK model is of particular interest because it has proved particularly successful in keeping children off gambling websites as confirmed by a study carried out by the Children Charities Coalition on Internet Safety report in 2010 (see page 6 of report, see link).</p> <ul style="list-style-type: none"> • In France, for instance, the customer verification process is much more cumbersome and not adapted to the reality of the Internet. EU-licensed operators cannot work with third party verification providers like the GB Group. Instead, a customer upon registration must submit a hard copy version of his identity card to the operator. His account will then be opened on a temporary basis (he will be able to deposit money but not withdraw) until the verification of his identity is completed and confirmed via postal

letter within a specified time period. The study carried out by the Italian consultancy MAG in February 2011 confirms that *“on average, gaming operators lose 50% of the customers who fail to turn their gaming account from “compte joueur provisoire” to “compte joueur definitif”* (page 36 of report, see [link](#)). This is one of the listed reasons explaining why the so-called ‘black market’ rate remains so high.

- **The situation in Italy** is very similar to the situation in France. Upon entering into the gaming account contract, the customer has to send in his tax number and a passport copy. If he does not do so within 60 days, the contract is considered to be terminated. No payment of winnings will be effected unless customers have identified themselves. However, documents may be e-mailed or uploaded; hardcopies on paper sent by post are also considered.
- In other countries such as **Germany** where online gambling services are prohibited, EU-licensed operators’ collaboration with the likes of GB Group does not reach the same matching rates as in the UK. This is because EU-licensed companies are not able to verify their data with public data sources.

EGBA believes that customer verification in online transactions requires a common approach at EU level in order to address the difficulties associated with consumer verification in cross-border cases and nationally. This is in line with the Commission’s commitment to revise the e-Signature Directive in order to strengthen the legal framework for cross-border recognition and interoperability of e-identification systems and to issue a separate initiative on the mutual recognition of electronic identification and authentication. The Commission believes that difficulties in verifying citizens’ identities and signatures are holding back the development of the digital economy in the EU.

Consumer protection

Question	Answer
<p>(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)</p>	<p>A ranking of the factors listed below would contradict basic theoretical models of epidemiology. Due to the fact that problems emerge if properties of the game match with vulnerabilities of the gambler, a risk factor that is highly dangerous for one player would be harmless for another player and vice versa.</p> <p>For a player, who is severely discontent with his life, who feels out of control and who's dreaming of a big change, a huge jackpot might be the most important risk factor of all, while the involvement into the game might not affect the player at all. For a challenge-seeker, however, who wants to prove he's better than others, the proposed winnings might be a completely negligible factor, but the involvement might lead this player to invest more time into gambling than originally intended.</p> <p>Therefore ranking risk factors by a speculated order of importance will not serve preventive goals but rather expose those players who are vulnerable to properties of games that are speculated to be less dangerous.</p> <p>It is difficult to exactly determine factors as shown by the British Gambling Prevalence Survey 2010 (see link) and other studies:</p> <ul style="list-style-type: none">• Recent research revealed that neither the type of game nor the location (if the person plays it online or offline) has an effect on their risk of developing a disordered gaming behaviour (LaBrie, R. A., & Shaffer, H. J., Identifying behavioral markers of disordered Internet sports gambling. Addiction Research & Theory, see attached in Annex 11). However, the risk seems to increase for players who are unselectively playing a great number of different types of games.

- Science also revealed that a larger variety of different gaming opportunities does not necessarily result in a higher number of problematic gamers, e.g. Las Vegas and the State of Nevada. (LaPlante, D. A.; & Shaffer, H. J. (2007). Understanding the Influence of Gambling Opportunities: Expanding Exposure Models to Include Adaptation. American Journal of Orthopsychiatry, 77, 616-623, see [link](#)).
- Harvard publication, '*Parameters for Safer Gambling Behavior: Examining the Empirical Research*' by J. Peller, 2007, (see attached in Annex 12).

1) Event frequency / 2) Pay-out interval

Event frequency and pay-out interval generally refer to theoretically possible behaviour. In many cases actual usage strongly differs. The Division on Addictions of Harvard Medical School compared actual gambling behaviour of sport bettors that places both classic pre-match and live bets. This setting allowed to investigate whether the faster type of betting (live betting) holds higher risks than the slower paced form of betting (pre-match fixed-odds sports book).

For both types of sports betting a small group (~ 1%) of distinct gamblers was found that was more involved into gambling and therefore more at risk of developing related problems. Not only is the group of at-risk gamblers not larger for live betting, live bettors also display a very similar behaviour like fixed-odds bettors, incurring roughly the same weekly costs.

Behavior of online bettors. (LaBrie et al., 2007)

Moderate Bettors	Fixed-odds betting (99 %)	Live betting (99 %)
Bets per week	4	5
Stake per bet	4 €	4 €
Cost per week	2 €	2 €

Involved Bettors	Fixed-odds betting (top 1 %)	Live betting (top 1 %)
Bets per week	16	42
Stake per bet	44 €	53 €
Cost per week	50 €	66 €

Although live betting has a higher event frequency than the slower paced discontinuous pre-match fixed-odds betting, the risk of excessive behaviour is not increased in practice. One plausible explanation could be that the effects of event frequency and pay-out interval restrict themselves to the range of a few seconds. However, at larger time intervals (minutes or even days), the suspected neuropsychological effects strongly diminish.

3) Accessibility and social environment

As stated in the Green Paper, the United Kingdom is (by far) Europe's largest gambling market. By means of its competitive approach towards gambling, there is – on top of a high number of land-based gambling offers – a regulated online gambling offer. Based on the speculation that physical accessibility is a risk factor, the UK should be facing considerable gambling-related social problems. But instead, the prevalence rate of problem gambling in the UK is one of the lowest in Europe.

Much more realistic is the assumption that consumer/player protection is a moderator for the effects of accessibility. This means that accessibility of unlicensed gambling offers – void of protective measures – can be a driver for gambling-related problems. However, this effect can be fully compensated (or even overcompensated as some researchers point out) by responsible gaming measures and player protection tools.

Study on early detection of gambling problems based on customer communication by Prof. Haefeli, November 2010, page 3 - 4 (see attached in Annex 13):

'Whether greater availability has an influence on the prevalence rate is therefore questionable. Based on the available evidence, the proposition could be put forward here that the relationship between availability and prevalence of pathological and problem gambling depends on the nature and availability of adequate player-protection mechanisms'.

4) Chasing losses / pay-out / probability of winning

While there is some evidence that especially large jackpots are the primary attractor for lottery-type games, the payback ratio (how much of the deposits are paid out as winnings) has been well researched and found to have **no influence on problem gambling behaviour** (Parke, 2009, see [link](#)). *"The review concluded that there is no credible evidence to claim that the payback percentage has an impact on problem gambling. As a result, there is currently no evidence to suggest that placing a maximum limit on payback percentage would be an effective means to prevent or reduce levels of problem gambling."* This implies that games with a higher payback ratio might be more attractive to the customer, but do not bear an increased addiction risk.

A cap on return doesn't result in punters playing less money:

- In France, players are betting 25% more than they did before the opening but they are getting in effect around 8% less¹.
- Average return on .com is 93% (vs. 85% in France)

On the other hand, the financial impact of gambling is more severe if the payback ratio is low. This is because the same gambling behaviour leads to fewer winnings and thereby higher costs with a low payback ratio. This is also the reason why several European regulations have imposed minimum payback ratios for slot machines as a measure of consumer protection.

5) Perceived skills and “involvement”

The perception of an influence of skill – taken alone – does not constitute a risk factor. If this was the case, many skill games (like chess) would be highly addictive. However, if this perception of skill is an erroneous one, e.g. based on manipulative game design, the player is tempted to overestimate the influence of skill and might more easily take irrational decisions.

Examples for manipulative game design are “*stop buttons*” that do not actually influence the outcome of the game. Another one is the malpractice of exchanging one losing outcome with another, conveying the impression that the player has only barely missed a large win.

However, as far as an inherent element of skill is actually part of the game (which has been successfully demonstrated for poker or sports betting), this is not a risk factor, because it does not constitute a foundation for irrational decisions as long as the gambling operator does not unduly overemphasise this element of skill.

¹ Source: BetClic internal analysis.




This underlines the importance of player protection measures, safeguarding the informed choice of the customer. The CEN Workshop Agreement on Responsible Remote Gambling Measures CWA 16259 contains several control measures to make sure that the player is given complete, factual and unbiased information about the games and the chances of winning.

6) Commercial communications that could trigger vulnerable groups

Commercial communication should be controlled by regulatory and self-regulatory frameworks. Nevertheless, this control should not aim at restricting commercial communication as a whole, but instead regulating the way commercial communication is conducted. The standard CEN Workshop Agreement on *'Responsible Remote Gambling Measures'* offers a list of control measures that can be applied to prevent exploitation of vulnerable groups. The UK advertising standards offer a best practice example of how a regulatory regime can successfully enforce responsible advertising in practice. Also the code of conduct on advertising, promotions and inducements of the Maltese regulator (LGA) is included in the Maltese gambling Act (see LGA directive attached in Annex 10).

Consumer protection

Question	Answer
<p>(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)</p>	<p>We are aware of only very few academic pieces of research investigating the effectiveness of these tools. One reason could be that the rate of problem gaming (offline and online) in Europe lies at around 0.5 to 3%. This means that the vast majority of people experience no problems from gambling. Online gambling is not treated separately from the broader gambling industry as both sectors are considered to be interrelated in this respect.</p> <p>EU-licensed online operators are not complacent and acknowledge that it is their clear responsibility to take the appropriate measures to protect consumers. There are indeed very successful tools that exist to reach this goal (e.g. CEN Workshop Agreement on <i>‘Responsible Remote Gambling Measures’</i>). Responsible gambling policies act here as important mitigators. All these instruments are necessary and complementary to achieve different purposes. We do not advise to rank these measures as none of them is more or less important than any other. Ranking could support the misleading idea of a pick-and-choose-concept whereas in fact all instruments complement each other.</p> <p>1) Age limits</p> <ul style="list-style-type: none">• It is not in the interest of responsible online gambling operators to target a minor audience. Hence, European online gambling operators have developed sophisticated measures and tools in order to prevent underage individuals from accessing online gambling and to verify the age and identity of individuals:

- Display on homepage linking to clear  message
- Advertising not to target or portray children
- Links to recognized filtering programme, e.g. , 
- Confirmation of age during the registration process
- Training to all employees involved in age verification
- Additional routine checks of users to ensure compliance with age restrictions
- Account closed and refunded immediately if underage gambling is identified or suspected

- These measures and tools have proved efficient wherever they are put in place as confirmed by UK Children’s Charities’ Coalition on Internet Safety report 2010 (see [link](#)). It quotes online gambling as an example that should be followed by other e-commerce industries.

“The fact that the gambling industry has been able to introduce successfully a system which keeps children off their sites proves that, at least so far as the sale of products and services rated 18 and above are concerned, scalable working solutions are available now. They are simply not being taken up. They should be.”

- These measures are also efficient in particular when compared to offline products (see Question 24).

2) Self-limitation (financial and time) and self-exclusion

- Study on early detection of gambling problems based on customer communication by Prof. Haefeli, November 2010, page 6 et seq (see attached in Annex 13).

The study states that *‘in online gambling self-exclusion or exclusion by the providers is – in combination with other protective measures – an effective means of gambler protection’*.

Nevertheless there is a remaining problem: *‘Despite the wide acceptance of the measure, exclusion programmes always entail the risk that a blocked gambler moves from one operator to*

another and then continues gambling without protection (Nelson et al., 2009). One way to solve this would be to use a common database for all providers.'

Regarding gambling limits the study shows that *'in the land-based sector, this measure is fraught with difficulties'* while *'in the online sector, however, all aspects of gambling behaviour (deposits, bets, losses, duration of play ...) can generally be observed in real time and can thus also be limited'*.

'In summary, it can be said that online gambling generally offers optimal conditions for the implementation of protective measures for gamblers (Parke et al., 2007). As mentioned above, the gambling activities of each customer are recorded with the utmost precision.'

- Harvard study on effects of imposed limits on actual Internet sports gambling behavior, August 2008 (see attached in Annex 14).

This study indicates that imposed deposit limits affect only a very small minority of internet sports bettors and – in contrast to self-committed deposit limits – do not lead to a sustainable change in gambling behaviour. However, the vast majority of internet bettors seem to be able to regulate themselves and require little additional safeguards.

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

Study on early detection of gambling problems based on customer communication by Prof. Haefeli, November 2010, table 1 page 9. This study demonstrates that there are more and better tools for detecting and controlling problem gamers online than in offline gaming.

4) Banning the use of credit

EGBA operators do not allow their customers to be given credit nor are they allowed a negative balance.

5) Reality checks

It is important to provide tools that allow players to have access to their gambling information and support control through the use of a set of self-control procedures:

- A clearly visible clock shall be available for use by the player at all times.
- The denomination of each credit shall be clearly displayed on the games screen.
- Customers shall be provided with remote access to their account history dating back for a minimum period of 60 days, and offline access dating back for a minimum period of 6 months, including all deposits, withdrawals and wagers.

6) Diligence obligation for the on-line operator

No evidence.

7) Restricting certain forms of games or bets that are considered to be the most risky (e.g. casino games or in sports betting restricting bets to final results only)

The product is not the problem. It is rather the player's behaviour which can be problematic. Even if there is a prohibition or a restriction in place, players will be encouraged to go elsewhere (and will most likely end up with non-responsible operators).

Rather than banning certain products and encouraging players to use the *'black market'* or making exceptions for one provider, regulators need to establish a clear set of stringent licensing requirements, granting all operators that fulfil those requirements a license. By doing so, policy makers would indeed channel the demand from unlicensed *'black market'* operators that comply with no rules whatsoever to licensed, regulated and responsible operators (irrespective of their ownership structure), thereby protecting public health and welfare.

MAG study, *"Jeux en ligne in the French Market, Key features, strengths and weaknesses of the French legal gaming offer"* (see [link](#)), February 2011, shows how restrictions and high taxation are only beneficial to the *'black market'*.

8) Other (e.g. limits on commercial communication – restrictions on the use of certain media, sales promotions and sign-up bonuses or free practice games).

Rather than banning commercial communications it would be more useful to put in place responsible measures which regulate them (e.g. CEN Workshop Agreement on *'Responsible Remote Gambling Measures'*).

Other references: British gambling prevalence survey 2010 (see [link](#)); British gambling prevalence survey 2007 (see [link](#)); Harvard analysis, Disordered gambling, type of gambling and gambling involvement in the British Gambling Prevalence Survey 2007, Debi A. LaPlante, Sarah E. Nelson, Richard A. LaBrie, Howard J. Shaffer, 2009 (see [link](#)).

Consumer protection

Question	Answer
<p>(17) Do you have evidence (e.g. studies, statistical data) on the scale of problem gambling at national or EU level?</p>	<p>The different studies available show that the scale of problem gambling online and offline are the same. Typically, the rate of problem gambling in Europe lies at around 0.5 to 3%. This means that the vast majority of people experience no problems from gambling. The growth of the availability of online gambling has not led to an increase in the incidence of problem gambling.</p> <p>Nevertheless data is not available in every Member State.</p> <p>There is a need of evidence-based legislation in Member States. See report by Professor Mark Griffiths on problem gambling in Europe: An overview (see link), April 2009.</p> <p>As already shown in the EC working paper, the UK is the largest market and it has a very low rate of problem gambling (see below the British Gambling Prevalence Survey) which proves that opened and regulated systems do not lead to more problem gambling:</p> <ul style="list-style-type: none">• The British Gambling Prevalence Survey 2007 (see link) used a sample of 9,000 people and concluded that the rate of problem gaming in 2007 was almost identical to that in 1999 (0.6% of population) even though internet gambling was not included in the 1999 study.• In the British Gambling Prevalence Survey 2010 (see link) the “<i>problem gambling prevalence rates did not increase significantly as measured by PGSP</i>”, from 0, 5% in 2007 to 0.7% in 2010. It also affirms that “<i>rates observed in the UK were similar to rates in other European Countries, notably Germany and Norway and lower than in the US, Australia and South Africa</i>”.

Also the Norwegian SINTEF study of December 2007, using a sample of 10,000 people, reveals that in Norway (monopoly model) the prevalence of problem gaming for both online and traditional games was 0.7% and therefore the same percentage as in 2002.

The report prepared for the Swedish Presidency in 2009 mentions as well that although some research suggests existence of a positive link between accessibility and gambling addiction, the available empirical data do not always confirm it (ref: Svenska Spel, The cost of gambling - An analysis of the socio-economic costs resulting from problem gambling in Sweden. Council of the European Union. DS 406/09. Brussels, 2009).

The 2007 empirical study carried out by the Division on Addictions, Cambridge Health Alliance, a Harvard Medical School teaching affiliate, monitored and analysed the behaviour of 40,000 sports betting customers over eight months. The findings revealed that 99 % of these customers exhibited moderate gaming behaviour. Only 1 % is considered highly involved bettors, of whom a certain percentage may exhibit problematic gaming behaviour.

Other sources: Harvard analysis on Disordered gambling, type of gambling and gambling involvement in the British Gambling Prevalence Survey 2007, Debi A. LaPlante, Sarah E. Nelson, Richard A. LaBrie, Howard J. Shaffer, 2009 (see [link](#)).

Consumer protection

Question	Answer
<p>(18) Are there recognised studies or evidence demonstrating that on-line gambling is likely to be more or less harmful than other forms of gambling for individuals susceptible to develop a pathological gaming pattern?</p>	<p>While Internet accessibility has multiplied during the past few years, prevalence studies across the world and Europe did not find any increase in disordered gaming (see above question 17).</p> <p>Peer-reviewed studies on the potential harm of online gambling do exist. As opposed to opinion-based studies, peer-reviewed studies allow for a more objective assessment of the potential harm of online gambling as they are scrutinized by a community of experts in the same field before being published. In addition the raw data used as a fundament for the research of Harvard Medical School Faculty is published in the Framework of the Transparency Project (see link) for other researchers to verify the findings or conduct their own research based on this data</p> <p>With the expanding access to the internet providing a 24/7 offer, researchers speculated that online gaming could be riskier and might even lead to a loss of control. Factual data, however, proves this assumption wrong.</p> <p>A research conducted by Harvard Medical School Faculty underscores the fact that gaming behaviour is determined by the interaction between the individual and environmental conditions. This means that a person’s gaming behaviour and any symptoms of a disorder that might appear can be modified in the course of a lifetime. Recent research increasingly disclaims early speculations that online gambling might be more dangerous. Effects that were interpreted in this way are now corrected by acknowledging that problem gamblers typically use all types of games and therefore also use online gaming. However, online gaming is no longer considered to be a source of increased risk.</p> <p><i>“In summary, it is not to say that these potential risk factors do not exist for Internet gambling, rather the case has not been made that they pose a significantly greater risk for people gambling on the Internet compared to those who gamble in more traditional ways.” (Wood, 2010 p.4).</i></p>

Online versus offline offered possibilities: “*On-line gambling provides operators with more sophisticated possibilities to track the transactions of each player compared to off-line gambling formats*” (EC Green Paper statement). This is the case both in terms of detection and prevention:

Detection: In an online environment, every step a customer takes is traceable. Other businesses cannot claim to know when a customer came for the first time, how long he or she stayed, when he or she came to visit again, what he or she did exactly while using the “*premises*” etc This information can be used to detect changes in a player’s gambling behaviour that could potentially indicate the emergence of gambling related problems, giving operators the opportunity to intervene proactively. Detection of emerging problems is also possible through customer communication. A study carried out by Joerg Haefeli in 2010 showed that communication between customers and the operators exists online. Based on roughly 150,000 customer services contacts per month per operator, the study showed that there are powerful indicators for at-risk gambling. The model applied in the study proved that it was able to identify roughly one third of all potential problem gamblers solely based on the analysis of their correspondence. The impact of moderate gamblers falsely assumed to be at risk was minimal – 93.2% of all customers would be classified correctly.

Prevention: This takes place through measures such as cooling-off and self-exclusion, or the lack of credit given to customers. All measures, typically provided in online gambling are also common practice in land-based gambling with the exception of the limitation of gambling expenses. The CEN Workshop Agreement on ‘*Responsible Remote Gambling Measures*’ is an evidence of all the measures put in place guaranteeing a safe online gambling environment.

Mystery shopping exercises show as well that land-based shops tend to be more dangerous in term of minor protection as they reveal the lack of enforcement of age restrictions in the offline gambling market with an impressive rate of 71% of offline points of sale which were found selling illegally lottery tickets to minors (see below question 24).

Consumer protection

Question	Answer
<p>(19) Is there evidence to suggest which forms of on-line gambling (types of games) are most problematic in this respect?</p>	<p>No, there is no evidence of a causal link between problem gambling and certain forms of online gambling.</p> <p>Studies produced by the Harvard Medical School (which monitors the gaming behaviour of bwin.party customers) identify between 1% (for sports betting, see link to 2007) and 5% (for poker and casino (see link 1 and link 2 to 2008 and 2009 studies) of involved players among the playerbase. However, being an involved player is not equal to experiencing gambling-related problems. Nevertheless, involved players have an increased need for protection and should take additional protective measures (e.g. self-limitation of gambling expenses) to prevent the emergence of problems.</p> <p>Other studies such as the British Prevalence Study of 2010, which is based on self-reporting, (see link) estimated that the rate of problem gambling among online sports bettors was 3% (horse, dog and other sports and non-sports related bets), the same as for other online gambling products (including national lotteries, football pools, casino and slot machines) and lower than for most other types of gambling.</p> <p>In terms of problem gambling by type of gambling, there appear to be some consistent trends across European jurisdictions that conducted research. Prevalence studies in Europe (e.g. Estonia, Germany, Holland, Norway, Sweden and Switzerland) tend to report that problem gamblers are most likely to be electronic gaming machine (EGM, slot machines) players. Other studies have also found similar results with adolescents reporting that the main type of problem gambling among adolescents is related to EGM play (e.g. Great Britain, Iceland and Lithuania).</p> <p>Source: Professor Mark Griffiths' report, Problem gambling in Europe: An overview, April 2009, see link.</p>

Consumer protection

Question	Answer
<p>(20) What is done at national level to prevent problem gambling? (E.g. to ensure early detection)?</p>	<p>EGBA would like to use the opportunity to highlight once again that the majority of consumers enjoy online gambling as a positive experience, and that problem gamers constitute, on average, less than 3% of the total number of players.</p> <p>It is important to clearly separate first between prevention and detection of problem gambling. Although both concepts are complementary, they pursue different objectives.</p> <p>Prevention of problem gambling is of course the priority. A great number of measures/instruments have been developed and are enforced today throughout the EU to curb or prevent online problem gambling risks. The objective of these instruments is to ensure that players stay in control of their gambling, which should remain an entertainment – as is the case for a vast majority of players –and not become a problem (e.g. by setting their own financial limits, accessing their account details, activating cool-off or exclusion tools – for more detail see our answer to question 16). Online gambling generally offers optimal conditions for the implementation of protective measures for gamblers.</p> <p>Some of these instruments are legally binding as they are part of existing national licensing requirements; others have been developed by the industry itself and are enforced through complementary self-regulatory initiatives. One recent example is the CEN Workshop Agreement on ‘Responsible Remote Gambling Measures’ published in February 2011 which defines 134 concrete instruments and contains a whole chapter dedicated to problem gambling prevention measures. EGBA has formally decided in February 2011 to request its members to implement all CEN measures and to submit members before the end of this year to a compliance audit performed by an independent certification body.</p> <p>It is important to stress that the CEN measures are designed to benefit all EU players irrespective of the Member States in which they are based.</p>

Secondly, it is of course important to be able to detect problem gamblers at an early stage and to be in a position to provide them with adequate assistance. Online gambling offers in that respect detection tools and opportunities that go beyond those traditionally available in an offline environment. Modern behavioural tracking devices allow for easy and fast identification. While indicators of gaming behaviour are more accessible on the Internet, it was assumed that in the land-based sector indicators of customer communication are more readily available due to the physical proximity of the gamer. Contrary to this assumption, communication also takes place in online gaming although mostly in electronic form which provides, in fact, additional opportunities to detect problem gambling.

A study carried out by Joerg Haefeli from Lucerne University in 2010 (Annex 13) on the *“Early Detection Items and Responsible Gaming Features for Online Gaming”* confirmed the high volume of customer communications (150,000 customer services contacts per month per online gambling operator) which are powerful indicators for at-risk gambling.

The study showed that it was possible to identify one third of all potential problem gamblers solely based on the analysis of their correspondence.

Results demonstrate that on the internet it is not only possible to detect future gambling problems based on actual gambling behaviour but also based on communication behaviour. The frequently speculated risk of lacking contact between gambler and operator associated with online gambling is more a theoretical one. When adapting the methods of monitoring the properties of the new medium of communication, the alleged disadvantage vanishes. Quite to the contrary, the internet offers a very effective framework for consistent monitoring, reviewable over years, and highly objective analysis of risk-indicators, based on communication behaviour.

Finally, the industry cooperates with and funds leading problem gambling consultants across the EU (such as the Responsibility in Gambling Trust and GamCare in the UK or Adictel and SOS Joueurs in France) in order to support the treatment of problem gamblers.

Consumer protection

Question	Answer
<p>(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?</p>	<p>Yes, treatment for gambling addiction is available at national level. Most Member States offer treatment for gambling addiction at national level. However, the key issue here is one of prevention rather than treatment.</p> <p>EGBA members invest heavily in understanding and preventing problem gambling behaviour through studies, self-regulatory initiatives and staff training. Moreover, they fund counselling services at national level, where allowed. In regulated markets, there is the possibility for the state to direct license fees and taxes as the state deems fit to national treatment centers or the research of problem gambling prevention.</p> <p>It is useful to differentiate between treatment and prevention:</p> <p>Part I. Prevention</p> <p>EGBA members invest a lot into prevention through studies, self-regulatory initiatives and staff training. This allows them to better understand the gaming patterns of their customers so as to ensure that customers play in a safe environment and stay in control.</p> <p>EGBA members are leading the way through numerous research projects in order to understand problem gambling. EGBA and its members funded studies in recent years by leading academics in this area such as Professor Howard Shaffer, Jonathan Parke, Joerg Haefeli and David Forrest. A full list of their research work can be found on the EGBA website (see link).</p> <p>EGBA members also employ dedicated, well-trained staff in their customer service departments capable of identifying potential problem gamblers (see link to Haefeli study).</p>

Last but not least, EGBA members also contribute via other means:

- EGBA members apply, through self-regulatory initiatives, such as the CEN Workshop Agreement on *'Responsible Remote Gambling Measures'*, already a wide range of tools to prevent customers from developing problematic gambling behaviour.
- EGBA members undergo regular compliance audits (for national regulatory and licensing requirements as well for self-regulation like the EGBA Standards). These audits ensure that the operator has provided players with all those tools that have been identified as effective in assisting players controlling their gambling (deposit limits, self-exclusion, etc). These compliance audits also verify that the operator has in turn abided by its responsible gaming processes, policies and procedures.
- All expenses associated with these audits are paid for exclusively by the operator. They include training of staff, i.e. entire teams of full-time personnel dedicated to constantly reviewing and monitoring the implementation and compliance with responsible gaming measures.

Part II. Treatment

EGBA members cooperate with and funds leading problem gambling consultants across the EU (such as the [Responsibility in Gambling Trust](#) and [GamCare](#) in the UK, [Adictel](#) and [SOS Joueurs](#) in France and [Stödlinjen](#) in Sweden) to assist potential problem gamblers.

These help tools are, however, not available in every country because EU-licensed operators do not have access to these markets.

Consumer protection

Question	Answer
(22) What is the required level of due diligence in national regulation in this field? (E.g. recording on-line players' behaviour to determine a probable pathological gambler?)	The level of diligence required would be to apply all evidenced-based policy measures (for example the CEN Workshop Agreement on <i>'Responsible Remote Gambling Measures'</i>).

Consumer protection

Question	Answer
<p>(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?</p>	<p>Yes, the EGBA agrees that the underaged should not have access to online gambling services and strongly advocates that the protection of minors should be regulated by law. EGBA members adhere to the CEN Workshop Agreement on <i>'Responsible Remote Gambling Measures'</i> that prohibits offering and marketing services to underaged persons.</p> <p>For most jurisdictions in the EU, the limit for underage playing is set at 18 years, for some it is 21 years. An effective prohibition of underage playing requires consistent rules and effective enforcement of those rules. We are not aware of any scientific evidence that suggests that the minimum age for certain services should be set lower than for others services (as the Belgian law currently does).</p>

Consumer protection

Question	Answer
<p>(24) Are on-line age controls imposed and how do these compare to off-line 'face-to-face' identification?</p>	<p>Part I. Existence of online age control</p> <p>When it comes to online, there are controls in place in all Member States that regulated online gambling.</p> <p>If workable, e-age and ID verification solutions are available in a number of jurisdictions such as the UK, Italy or Denmark. For the time being, they are not accepted in all jurisdictions; a fact that leads to inconsistencies. France, for instance, decided to enforce a paper age and ID verification system which is not adapted to the internet and the cross-border dimension of online gambling. Instead of channelling customers towards licensed websites, this practice tends to drive them away to the 'black market'.</p> <p>Full cooperation of all Member States is of essence. The efficiency of e-age and ID verification systems is dependent on the public data available for cross-check purposes. Ultimately, European harmonisation would lead to a regulatory environment adapted to the cross-border dimension of the internet and therefore ensuring better protection for children.</p> <p>There are also tools implemented through self-regulation (see CEN Workshop Agreement on 'Responsible Remote Gambling Measures').</p> <p>Part II. Comparison between online and offline identification</p> <p>Compared to offline face-to-face identification, the internet provides more sophisticated possibilities for age-controls based on the online registration process:</p> <ul style="list-style-type: none">• The UK Children's Charities' Coalition on Internet Safety report 2010 (see link) often quotes the online gambling sector as a successful sector managing to keep children off their sites, and as an example that should be followed by other e-commerce industries.

- Mystery shopping exercises show as well that online age controls are more efficient than offline *'face-to-face'* identification:
 - A UK Gambling Commission mystery shopping exercise conducted in 2009 revealed that while 95% of online players had registered with operators that had no weaknesses in their underage gambling procedures, 98% of betting land-based shops allowed underage individuals to place a bet at the counter (see [link](#)).
 - A mystery shopping exercise conducted in 2009 by the Belgian consumer organisation (CRIOC) also revealed the lack of enforcement of age restrictions in the offline gambling market with an impressive rate of 71% of offline points of sale which were found selling illegally lottery tickets to minors (see [link](#))
 - See also other studies from CRIOC in October 2009 ([link](#)) and in April 2011 ([link](#))
 - British survey of children, the national lottery & gambling 2009 by Ipsos MORI (see [link](#))

- In certain Member States, there are unsupervised automatic vending machines (for instance scratch cards) that are freely accessible.

- Parental tools are available online:

Education and parental control is key. It is the responsibility of parents to prevent their children from using their ID, banking or credit cards details. It is also their responsibility to use the various parental control or filtering devices available to prevent their children from accessing age-restricted services or products online. However, studies from the European Commission found out that only one quarter of EU parents use parental control softwares (sources: Safer Internet Programme report on *"Benchmarking of parental control tools for the online protection of children"* January 2011 (see [link](#)) and EUKidsOnline report (see [link](#)). For more details, see [link](#) to the EC press release).

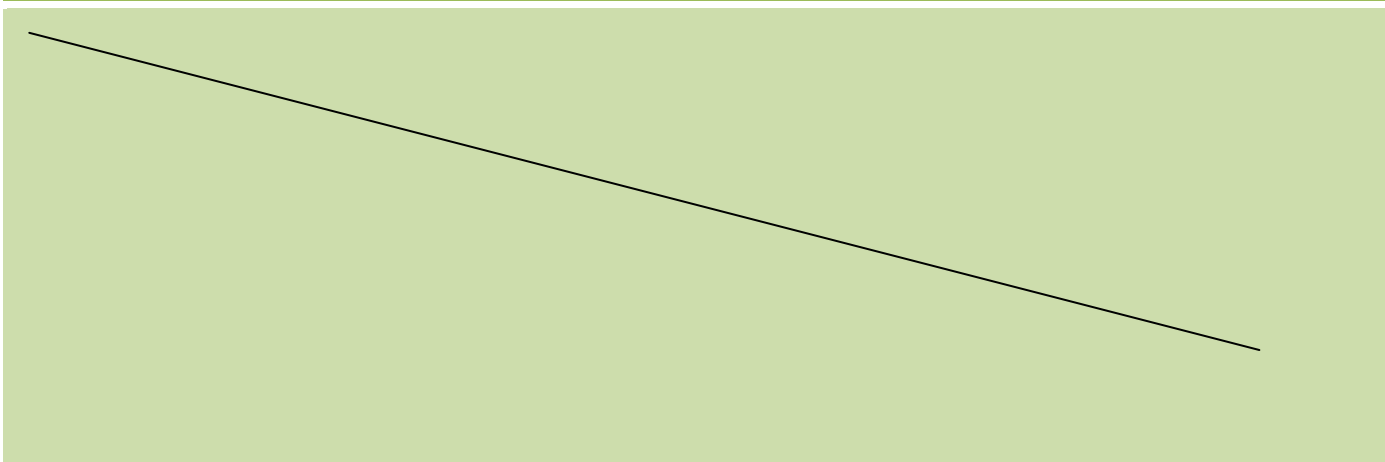
- Example of age and identity verification in the UK of GB group (see [link](#) to the website).

As a concluding remark, we would like to stress that, if the market is not regulated properly, it will turn down players to the *'black market'* where all these checks and controls are not always applied.

Consumer protection

Question	Answer
<p>(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.</p>	<p>The online gambling industry is conscious of the potential dangers deriving from access to gambling services, and the exposure to commercial communications for gambling services, for minors and it has invested heavily in developing sophisticated tools to prevent minors from using online gambling services (please see the response to Question 16). The effectiveness of these measures has been confirmed by independent observers, for example the UK Children’s Charities’ Coalition on Internet Safety report in 2010. The report states specifically that other e-commerce actors should follow the lead of the online gambling industry in developing comprehensive solutions for keeping minors off the gambling sites.</p> <p>The unfair commercial practices Directive, which includes gambling in its scope, only partially harmonizes regulation for commercial communications.</p> <p>The Maltese licensing standards for online gaming include a Code of Conduct on Advertising, Promotions and Inducements (Annex 10) that focuses on the protection of minors and the principles of responsible gaming on an EU-wide level.</p> <p>Most other regulations on commercial communications for gambling services are national and the differences between these national regulations are substantial.</p> <p>As this area is not fully harmonised, minors in the EU are not protected in a similar manner and at an equally high level in all Member States. From a consumer protection point of view, a harmonised approach to commercial communications to protect minors would be desirable. The CEN Workshop Agreement on <i>‘Responsible Remote Gambling Measures’</i> that contains specific measures addressing commercial communications and marketing, could help forming a harmonised approach through EU legislation.</p>

Consumer protection

Question	Answer
<p>(26) Which national regulatory provisions on licence conditions and commercial communications for on-line gambling services account for these risks and seek to protect vulnerable consumers? How do you assess them?</p>	

Public order

Question	Answer
<p>(27) Are you aware of studies and/or statistical data relating to fraud and on-line gambling?</p>	<p>Yes, there are studies and data available.</p> <p>These studies and data show that the EU-licensed online gambling industry (being compliant with 3rd Anti-money laundering Directive and licensing requirements) is an unattractive environment for fraudsters.</p> <p>This is because in a regulated environment the Internet offers unique traceability and transparency opportunities that deter fraudsters from abusing the websites of EU-licensed operators.</p> <p>STUDIES</p> <p>The EGBA is aware of the following studies:</p> <p>Match-fixing: EGBA members are all members of the European Sports Security Association. According to ESSA, <i>“with 10,000 separate sports books across Europe each week, and millions of separate bets taken in 2010, ESSA identified 58 incidences across its membership that were deemed to be irregular. Upon thorough investigation by ESSA’s bookmaking team, ESSA was able to establish that four of these 58 alerts were suspicious and their case files were sent to the relevant sports governing bodies”</i>. See link to ESSA website.</p>

Card fraud: The Professor Levi study of September 2009 on *Money-laundering risks and online gaming: time to dispel the myth?* reads “*Looking at Internet fraud alone, £181.7 million of card fraud took place over the Internet in 2008, an increase of 2% since 2007. The vast majority of this type of fraud involves the use of card details that have been fraudulently obtained through methods such as skimming, data hacking, or through unsolicited e-mails or telephone calls*”. Levi goes on to add: “*no information is available on the extent of such card fraud usage in the online gambling sector, but industry sources confirm that this sector does not account for a significant part of fraud losses*”. For further info, see [study](#) by Professor Michael Levi.

An additional study produced by Europe Economics for the European Parliament in 2009 was said to “*estimate the total detriment to EU consumers at current levels of EU-based online gambling to be about €20 million per annum* “ before adding “*that is was a very approximate figure. We cannot estimate how much of it damages consumers rather than operators, nor can we break it down by Member State*”. See [link](#) to study.

Most importantly, the online gambling industry has invested greatly in developing safe payment systems and e-authentication and anti-ID-theft practices that help keep the online gambling environment fraud-free and secure for consumers to enjoy. Since cash does not change hands in online transactions, there is very little opportunity for money laundering or other fraud in this regard.

Public order

Question	Answer
<p>(28) Are there rules regarding the control, standardisation and certification of gambling equipment, random generators or other software in your Member State?</p>	<p>Yes, there are indeed rules. These form part of the licensing requirements that are imposed on all EGBA members. A number of them are also part of the CEN <i>'Responsible Remote Gambling Measures'</i> (principle 9 on secure, safe and reliable operating environment).</p> <p>The majority of B2C online gambling operators purchase software from B2B software suppliers. These suppliers own the software, and are good, direct partners for discussing security and changes to these products. Software accredited and certified by one country (Member State) should – in principle not have to undergo a full review in another Member State.</p> <p>Examples:</p> <ul style="list-style-type: none">• The UK Gambling Commission issues so-called software supplier licenses.• In Malta: See technical requirement of the Remote Gaming Regulations (Schedule 3 attached in Annex 15). This has also been reflected by offering certain suppliers a Class 4 license, so securing compliance and auditing on a product level, i.e., at the source.• The Gaming Laboratories International LLC ("GLI" - http://www.gaminglabs.com): GLI is the largest network of global companies dedicated to providing independent testing and evaluation of all types of gaming technology. GLI are experts in providing functional and compliance evaluations of a vast array of gaming machines, software, systems, and peripheral equipment including online gambling. In addition, GLI offers inspection, certification, consulting, forensics and training services. GLI's business is to test, review and report on gaming devices and systems against the standards established by relevant gaming jurisdictions worldwide. Each jurisdiction has the authority to set their own standards, however, many jurisdictions use the GLI standards as a starting point in developing their regulations. GLI is official testing and certifying entity e.g. mandated by AAMS (Italy).

Public order

Question	Answer
<p>(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?</p>	<p>Part I. Prevention of fraud</p> <p>There is no single practice to prevent various types of fraud, but several ones that EU-licensed operators apply on a risk-based approach.</p> <p>EU-licensed operators have their own dedicated anti-fraud and risk teams whose daily tasks include monitoring player practices to detect and curb fraud and minimize the risk to the operator and other players. Operators have also established documented processes, policies and procedures as well as custom-made anti-fraud tools which enable them to monitor, flag and track potential or actual fraud.</p> <p>Players against operators</p> <p>There is not a single type of practice to prevent fraud in general. EU-licensed operators take a risk-based approach, meaning that they will perform due diligence depending on the profile and type of customer. The practices put in place by EU-licensed operators come directly from the requirements of the Third Anti-Money Laundering Directive and are complemented by additional practices specific to the online gambling industry (see principle 3 of CEN Workshop Agreement on <i>'Responsible Remote Gambling Measures'</i>). As a consequence, EU-licensed operators employ a variety of anti-fraud measures which include the following, and can be used at different stages of a player's account life:</p>

Registration process: Upon registration, EU-licensed operators will identify customers, check and save their details. To prevent fraud, our members will, for instance, look at a number of characteristics such as:

- Initial deposits of substantial sums
- Deposits not immediately used as stakes in betting
- Deposits and withdrawals made without placing any bets

If two or more characteristics of suspicious behaviour are detected and the company's representatives conclude that there are grounds for suspicion, the user's account is closed and deposits are returned.

Using third party data:

- Age verification lists sourced from firms in the market (see question 12)
- Use official international watch lists for suspected members of terrorist organisations and Political Exposed Persons
- Monitor payments from countries that are not the same as a customer's registered home country

Rule-based mechanisms: EU-licensed operators will also use pre-defined rules based on business knowledge and past experience. For example, is the same credit card being used by more than one customer? Is one customer using several credit cards or payment accounts? All of this information can be used to build up a pattern against which the risks posed by particular customers and/or transactions can be assessed. EU-licensed operators employ highly skilled and trained staff who may intervene on ad-hoc basis to ensure that fraud does not take place. A more detailed outline of the anti-fraud measures put in place by EU-licensed operators against players can be found on page 20 of the Professor Levi study (see [link](#)).

Players against players

EU-licensed operators who provide their players with the opportunity to play on reputable poker networks have entered into contractual arrangements with the poker network. In other words, the network takes on certain obligations vis-à-vis the operator with reference to the monitoring of suspicious gambling behaviour. Besides poker experts monitoring customers' gaming behaviour on the operator's side, operators may also rely on additional or equivalent checks. Monitoring is carried out by the poker network experts, whose checks are aimed at identifying various types of fraud, cheating, use of robots etc, all of which is in clear contravention of the network rules agreed to by the player as well as the operator's terms and conditions.

Other types of fraud between players include credit card fraud: for example one of EGBA members prevents this risk through **collaboration with authorities**. For instance, in France, this member of the EGBA provided 10 alerts in 2006 and 180 in 2008 as the collaboration became more intense. See also cooperation with British government and for instance the letter from Scotland Yard to Unibet MLRO officer (see attached in Annex 16) after bomb attack in London 2005.

See also the study on regulatory and self-commitment options in online gaming, by TÜV Rheinland Secure IT GmbH, June 2009 (see [link](#)).

Operators against players

While this type of practice may exist, EGBA believes it is confined to non-EU-licensed operators. Licensing conditions prevent such types of practices and any attempts to break the rules appear counter-productive as they would put the licensee's reputation at risk. In this respect, EGBA shares the assessment and conclusion of the Europe Economics 2009 report for the European Parliament stressing that it "*found limited hard evidence of gambling operators defrauding consumers. We do not say that it does not happen, but there is little evidence in the public domain and prima facie it happens on a very small scale*' (page 7).

Part II. Process to assist in complaint procedures

Assisting in customer complaints is part of the licensing requirements and terms and conditions of EU-licensed operators.

Players who play on sites of EU-licensed operators have access to a variety of complaint procedures. Normally, this would commence with access to a dedicated and knowledgeable customer service department to assist players with their initial queries and complaints. If the matter cannot be resolved by the customer services operator, the customer services operator escalates the matter to his/her superior. Consequently there is an entire escalation process which ends with the customer services team informing the player of his right for redress and complaint to the competent regulatory authority, if no satisfactory solution is found. The operator is obliged to provide specific contact details to the competent regulatory authority which are also included in the operator's general terms and conditions.

Once a player has filed a complaint with the competent regulatory authority, the authority will analyse the complaint and contact the operator demanding satisfactory responses and explanations within a pre-stipulated time-frame (normally no later than 7 working days).

In addition to the handling of complaints by the competent regulatory authority (where EU operators are licensed), complaints may also be managed by independent third parties.

The EGBA standards oblige all EGBA members to inform their customers on how and who to contact if they have a complaint. EGBA members use eCOGRA, an independent third party for mediation or resolution of disputes. In 2010, eCOGRA reported that it had dealt over the first half of 2010 with a total of 376 complaints submitted to eCOGRA, 33 of which were at non-accredited operations over which eCOGRA has no influence, and therefore cannot mediate. A further 56 of the complaints were declared invalid due to insufficient details, irrelevance, abuse or anonymous origin.

The remaining 287 disputes – 76% of the total received – were resolved by the Fair Gaming Advocate normally within 48 hours, with 47% settled in favour of the player (see [link](#)).

Public order

Question	Answer
<p>(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?</p>	<p>Part I. Match-fixing</p> <p>The prevention of match fixing is a priority for EGBA members through self-regulatory initiatives like the European Sports Security Association (ESSA). This is, though, one area where an EU approach is required as there is still great inconsistency between national regulations both in terms of prevention and sanctions.</p> <p>The licensing requirements of EU operators impose to report suspicious activity to the regulator and/or the relevant sport governing body. Members of the EGBA have also put in place strong anti-fraud measures since 2005 through self-regulatory initiatives like ESSA.</p> <p>So far, ESSA has established close cooperation with UEFA, FIFA, EPFL, ATP, ITF, WTA, DFB and many other sports regulators through memorandums of understanding, not only for the purpose of preventing fraud but also with the aim of assisting in the investigation of past events which are still under review.</p> <p>Preserving sports integrity requires involvement and vigilance of all stakeholders (players, sports bodies, regulators, operators, etc). ESSA seeks to establish such cooperation between sports bodies and operators in order to prevent fraud.</p> <p>The prevention of conflicts of interest forms part of the licensing requirements of EU-licensed operators. For instance, the Italian regulations (Annex 17, i) page 4) foresee that a company that has a) a direct or indirect influence on the administration of sports events, or b) that holds shares in sports associations may not apply for a license (if the above mentioned events or teams are related to betting business).</p>

National regulations dealing with match fixing should deal with both prevention and sanctions. Most national regulations apply penal sanctions against match fixing, but national rules on preventing match fixing seem to vary greatly from one country to another. This is particularly true of national rules and rules by sport federations applicable to athletes and sports betting.

This is why EGBA members were approached by EU Athletes in 2010, the leading association in Europe representing over 25,000 athletes, to assist them to educate players about sports betting.

A year into the campaign, the main lessons learnt from the programme were:

- There is a real lack of information at the grass-roots level of sport
- Some countries and sports federations have no rules on sports betting
- Where there may be rules by sports federations, there are sometimes too opaque to understand and not communicated clearly and effectively

The added value of this programme lies in the fact that players' associations are best placed to provide guidance to athletes through direct locker-room contact. This programme is in its second year and has now been combined with the Remote Gambling Association (RGA) and the Professional Players Federation (PPF) and will target over 8,500 athletes across 4 countries and 7 sports. Through the code of conduct, professional athletes are taught about the fundamental principles to respect when it comes to sports betting. This includes knowing the rules of the game, never betting on yourself or the opponent, never betting on other events within your sport, being careful about sensitive information, not seeking to fix an event or part of it, and reporting any approaches for match fixing.

Part II. Data and studies

The studies (or data) that EGBA is aware of indicate the following:

- The risk of match fixing with EU-licensed operators is very low (see answer 27 – ESSA)
- The risk comes mostly from the 'black market' and outside of Europe (e.g. South-Eastern Asia whose funds came from other unregulated sources)

- The risk of match fixing has many origins and is not only related to betting. The study by Oxford research identified 10 sources for match fixing, but only one of them is betting-related. When looking at betting-related risks, the study made a clear distinction between licensed and unlicensed operators (see link to Oxford Research study, page 19 and 20).

As private EU-licensed online operators do not benefit from fraud, but on the contrary, become one of the first victims of match-fixing, they have taken actions to minimize the risks.

EU-licensed operators have tools in place to monitor incoming bets, to adhere to the highest Know-Your-Customer (KYC) requirements, to assess risks for potential fixing and they do not allow individual customers to place high stakes without one-to-one approval.

Interestingly, the Liege Tribunal de Première Instance (28 April 2008) has dismissed an attempt by the Fédération Française de Tennis (FFT) to block bets taken from Belgium by Betfair, bwin and Ladbrokes on its Roland Garros and Paris Masters tournaments in three rulings, as it could find no evidence that the operators had not been *'careful and diligent'* in protecting players. The judge underlined that these operators were able to *"prevent all anonymous bets, ensure perfect traceability"* and to protect minors. Moreover, the judge mentioned the role of ESSA as a safeguard of integrity, *"which aims to guarantee the integrity of sports betting offers and to keep sports honest and free from fraud."*

Public order

Question	Answer
(31) In your view what issues should be addressed as a priority?	<p>EGBA looks at the following issues as a priority:</p> <ul style="list-style-type: none">• <u>The role of regulation:</u> There needs to be clear and consistent rules both in terms of prevention and sanctions. All national regulations must have clear penal sanctions against match fixing and provide for effective, proportionate and dissuasive sanctions. Member States should regulate, not operate.• <u>Education:</u> Greater focus towards education is of paramount importance. This applies to athletes as the first gatekeepers to integrity and the whole sports chain. The necessity and usefulness of the EU Athletes campaign seems to have been realized by other stakeholders as Sport Accord and EU/World Lotteries decided to launch their own education campaign in April 2011, a year after EGBA had already launched its initiative. EGBA members encourage governments to support such initiatives and launch education campaigns• <u>Greater responsibility and collaboration:</u> Match fixing in sports has many roots and cannot be solely addressed from a sports betting perspective (see Oxford Research study). A failure to recognise this fact would draw the attention away from a wider range of threats to sports integrity as non-betting scandals (Formula One with team Renault, Rugby Union in the UK, cricket in India) has shown. Hence the need for all stakeholders (public authorities, betting operators, sports organizations, players' unions, etc) to accept their responsibilities to prevent those risks and work together (through education programmes or improved exchange of information).

Public order

Question	Answer
<p>(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?</p>	<p>Sports betting companies and sports organisations are important economic partners in the sports chain (through audiovisual, advertising and sponsorship agreements) and they both have an interest in keeping sports clean.</p> <p>EGBA is not aware of any evidence that would allow the conclusion that there is any risk in this area.</p> <p>The terms and conditions of EGBA members state that employees and their families are not allowed to place bets with their companies. This applies also to the owner and the board of directors.</p> <p>Sports clubs that have entered into agreements with sports betting companies also have similar rules. For instance, players, executives as well as employees at Real Madrid are excluded from the bwin sports betting offer to prevent conflicts of interest.</p> <p>If there were any conflicts of interests, EU-licensed operators would lose credibility and trust with their customers and the sports club with their fans. In addition, fraud and manipulation have a material adverse effect on the commercial activities of sports betting operators and leading sports clubs cannot afford to put at risk their reputation. Neither can properly licensed and regulated operators.</p> <p>This view is shared by the European Sponsorship Association, which said in a recent article that <i>"the European sponsorship market is largely closed to unregulated and illegal gambling operators due to national regulations...and the very purpose of a sponsorship arrangement is to create a positive association between the sponsors and the sponsored party"</i> (see link).</p> <p>Where there may be threats, such threats are likely to come from organised crime and unlicensed operators from outside the EU.</p>

Public order

Question	Answer
<p>(33) What cases have demonstrated how on-line gambling could be used for money laundering purposes?</p>	<p>EGBA shares the Commission's views that there is very limited evidence to suggest that EU-licensed operators are exposed to money laundering.</p> <p>The regulation of the sector combined with the transparency of the internet implies that all transactions are traceable and can be traced back from when a customer signs up, up to when s/he cashes out. All in all, this makes it a highly unattractive environment for fraudsters and money launderers.</p> <p>EU-licensed operators conduct their business in a regulated environment subject to strict requirements in this area. Strictly speaking, the Third Anti Money Laundering (AML) Directive applies only to casinos within the gaming sector, but all EGBA members ensure that all their operations are compliant with the AML, i.e. also products such as sports betting and poker. EGBA has expressed its willingness to formally make all gaming products subject to the new AML Directive that is currently drafted by the Commission. The regulated industry's commitment in this area is further demonstrated by self-regulatory frameworks such as the CEN Workshop Agreement on <i>'Responsible Remote Gambling Measures'</i>.</p>

EGBA is aware of a few studies which indicate that the risk of money laundering is modest in comparison to other e-commerce sectors. This includes:

- Professor Levi's study on *Money laundering Risk in e-gaming: A European overview and assessment* which stated: *"In the UK in 2007-2008, out of a total of 210,052 SARs (suspicious activity reports), the gaming sector made 403 SARs (up from 299 in 2006-07), of which 24 involved requests for consent to permit dealing with a person whose transactions they suspected of being proceeds of crime: however there is no breakdown for e-gaming compared with land-based gaming. By way of comparison, there were 33 reports direct from credit card companies, and 280 reports from spread betting firms; 7,299 reports from money transmission firms, and 3,553 from bureaux de change. One SAR from the gaming sector was considered sufficiently indicative to be transmitted to the National Terrorist Finance Unit for further investigation."* (see [link](#))

In Malta, where a number of EU companies are licensed, an article in Maltatoday (16 May 2010) reported that *"seven SAR had been received (by the Maltese FIU) since 2008 from casinos and remote gambling companies"*. The article stresses that *"banks and financial institutions remain the top originators of SARs with 76%"*.

Public order

Question	Answer
<p>(34) Which micro-payments systems require specific regulatory control in view of their use for on-line gambling services?</p>	<p>As described in Question 12, payment systems used in the gaming sector are commonly used by other sectors such as e-commerce, utilities and telecoms. Therefore the majority of regulations are generic rather than being specific to the gaming sector. For example, e-wallets and pre-paid cards (the basis for most micropayment technologies) are used by the wider e-commerce industry and are as such, authorised and regulated, for instance, by the Financial Services Authority (FSA) of the United Kingdom. Hence they are subject to the regulatory and AML controls already applicable to the financial sector.</p> <p>For e-wallets EGBA members will only pay out money to financial institution accounts in the customer's name. The Italian law regulates in particular in the gaming account contract that pre-paid cards may be only used by customers that have identified themselves with a passport copy and tax number.</p> <p>For reloadable pre-paid cards from banks in the UK, the banks require Know Your Customer (KYC) checks as is required for opening a UK Basic Bank Account without a credit facility (see Professor Levi study, page 17 and 18).</p> <p>For both types of payments, in addition to these regulations, EGBA members will use multiple playing pattern checks, in order to manage the risk of fraud and money laundering.</p>

Public order

Question	Answer
<p>(35) Do you have experience and/or evidence of best practice to detect and prevent money laundering?</p>	<p>EU-licensed operators conduct their business in a regulated environment, which means that online gambling transactions are fully traceable.</p> <p>This furthermore means that all deposit and withdrawal transactions are made via regulated financial institutions, which are subject to regulatory and AML controls in their area and hence perform also Know Your Customer (KYC) checks. The risk of placement of illicit funds into the system does, in other words, strictly speaking not apply to the online gaming environment as no EU-licensed operator deals directly in cash with their clients.</p> <p>The inherent traceability of the online sector provides perhaps the biggest deterrent, as it allows EU-licensed operators to monitor all transactions from when a customer signs up, up to when s/he cashes out in a systematic and holistic manner. The commitment of EU-licensed operators are further proven by the deployment of advanced systems in this area, as well as by the fact that all operators have dedicated staff investigating any suspicious patterns to the fullest extent.</p> <p>The operators' advanced systems provide a unique possibility to trace and alert of any suspicious activity in real time. Furthermore, in case of suspicious activities, EU-licensed operators have solid information to provide to the relevant authorities not only about the identity of the client, but also regarding each and every transaction carried out on this particular account. For an example of the assistance EU-licensed operators provide to law enforcement, please find attached a letter from Scotland Yard addressed to Unibet's money laundering reporting office officer (Annex 16).</p> <p>For a more exhaustive list of examples to detect fraud – money laundering, please see questions 27 and 29.</p>

Public order

Question	Answer
<p>(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? (members)</p>	<p>There is no evidence of such risk.</p> <p>There are mostly free-play games on social web-sites (like Zynga Poker for instance). The real question should be to what extend is there a confusion between real-money gambling and free-play games.</p>

Public order

Question	Answer
<p>(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?</p>	<p>In line with their licensing requirements, EU-licensed operators have to file suspicious activity reports (SAR) to their local financial investigation units (FIU). The multi-licensing regimes mean, however, that it is not always clear to whom to report (i.e. to which jurisdiction) and what to report.</p> <p>EU-licensed operators have to report SAR in their jurisdiction of origin. With the advent of multi-licensing regimes, some of the transparency requirements are being duplicated in multiple jurisdictions.</p> <p>For instance, one operator licensed originally in Malta that has an additional license in Italy will be asked by both the Maltese and Italian regulators to report SAR. The same issue arises with the appointment of a money laundering reporting officer (MLRO) as required by the Third Anti Money Laundering Directive. .</p> <p>That's one of the reasons why EGBA believes that a review of the Third Anti Money Laundering Directive is necessary. A revised Directive should take the realities of the online gambling sector at large (the original Directive was drafted for land-based casinos) better into account and address, among others, issues as mentioned above, i.e. potentially overlapping/contradicting reporting duties between different jurisdictions. This applies, in particular, to tipping-off issues and the risk of parallel investigations.</p>

Financing of benevolent and public interest activities as well as events on which online sports betting relies

Question	Answer
<p>(38) Are there other gambling revenue channelling schemes for the public interest activities at national or EU level?</p>	<p>No, as far as we are aware there are no other schemes in addition to those enumerated in the Green Paper. When discussing the issue of the funding of public interest activities (questions 38 to 45 of the Green Paper), it is helpful to put the matter into proper context. Two questions frequently dominate the public discussion and appear also in the course of this Green Paper Consultation:</p> <ol style="list-style-type: none"> 1) Does regulating the online gambling market threaten the current funding of ‘good causes’ (see answer to question 44), and; 2) Should online gambling revenues be used to fund ‘<i>good causes</i>’? <p>The idea of funding ‘<i>good causes</i>’ by gambling revenues instead of taxes or other funds originates in the offline lottery environment. The particular characteristics of monopolistic markets allow for the possibility of certain funding, but this cannot be transposed to online gambling market which is subject to an inherently high competitive environment where international competition is only a click away.</p> <p>There is an essential difference in the distribution of income and welfare in a monopolistic market compared to a competitive market. In a monopolistic market there is one operator that can set the prices and provides the demand for the product. Not only does that lead to a welfare surplus for the producer to the detriment of the welfare of the consumer (due to higher prices and less choice), but is also creates excess profit. These are profits above the normal return on investment.</p>

In a competitive market, an undertaking can make large (so-called excess) profits in the short run but this will inevitably attract competitors who can freely enter the market. Competition will drive down prices, eventually reducing excess profits to normal profit. However, a monopoly can preserve excess profits because barriers of entry prevent competitors from entering the market.

As the market functions in a very different way, it is impossible to transpose the system of funding of good causes based of a monopolistic market to a highly competitive market. For a competitive market like the online gambling market, the contribution to the funding of public interest activities is best ensured through the taxation system of the respective jurisdictions.

Financing of benevolent and public interest activities as well as events on which online sports betting relies

Question	Answer
(39) Is there a specific mechanism, such as a fund, for redistributing revenue from public and commercial on-line gambling services to the benefit of society?	Yes, all operators are required to pay taxation to the public purse. The legislator decides how state income is allocated within society. Some legislators, such as Italy, already earmark tax income from gambling activities to fund Olympic and grassroots sports.

Financing of benevolent and public interest activities as well as events on which online sports betting relies

Question	Answer
<p>(40) Are funds returned or re-attributed to prevention and treatment of gambling addiction?</p>	<p>Yes, online gambling service providers contribute (financially) in several ways to the prevention and treatment of gambling addiction.</p> <p>EGBA members face compliance costs by implementing the CEN measures that include measures aimed at the prevention of problem gambling. The members are also subject to a compulsory yearly audit at their own expense to verify compliance with these measures.</p> <p>In addition to these measures, the industry also takes its responsibility through initiatives aimed at increasing the knowledge and understanding of problem gambling. The industry commissions and contributes to peer-reviewed academic research into problem gambling. Examples are studies into problem gambling by Professor Jonathan Parke and Professor Joerg Haefeli and the participation of bwin.party in the research of the Division on Addictions, a teaching affiliate of the Harvard Medical School by Professor Howard Shaffer.</p> <p>The industry also donates funds to the prevention and treatment of gambling addiction on a voluntary basis. For instance, in the UK many online operators voluntarily donate to The GREaT Foundation to support research, education and treatment of problem gambling. Last but not least, individual operators cooperate with gambling counselling agencies to offer their customers qualified support and to train staff.</p>

Financing of benevolent and public interest activities as well as events on which online sports betting relies

Question	Answer
<p>(41) What are the proportions of on-line gambling revenues from sports betting that are redirected back into sports at national level?</p>	<p>The figures on the proportion of online gambling revenues redirected to sports are incomplete because of the current regulatory situation and restrictions across the EU.</p> <p>In order to solve this problem, the European Commission should enforce the rules of the Internal Market in a consistent and systematic way. This will allow EU-licensed operators to have access to national markets and optimize funding opportunities for sports.</p> <p>Instead, EU-licensed operators have limited opportunities to generate revenue for sports because of the sponsorship and advertising restrictions in place in most Member States. For a list of missed sponsorship opportunities, please see table 5.11, page 60 of the RGA study (see link).</p> <p>In Italy and the UK, some figures are, however, available.</p> <ul style="list-style-type: none"> • In Italy, grassroots sports and sports organizations benefit from the involvement of the gambling industry which is illustrated through the Italian regulatory model. The Italian fiscal system for the whole gambling market (offline and online) generated in December 2010 EUR 470 million which were redistributed to the Italian Olympic Committee. Of these EUR 470 million, EUR 250 million are redistributed to all federations while the other EUR 220million are redirected to the Italian Olympic Committee and activities such as anti-doping controls, education, etc (see link). • Figures for Italy provided by MAG in 2008 estimated that the total gambling market contributed EUR 118 million in advertising and sponsorship.

- In the UK, a study produced by the Remote Gambling Association (RGA) entitled *“Sports betting: legal, commercial and integrity issues”* in January 2010 concluded that EUR 3.4 billion per year goes to EU sport alone, with EUR 2.1 billion (62%) contributed by private gambling companies (see [link](#)). This figure according to the RGA, however, *“does not include the considerable amounts directed from lottery funds to Olympic sports, as the “amount of gambling support to Olympic sports (which comes almost exclusively from lottery operators) fluctuates so widely from year to year that [Europe Economics] concluded that it could be misleading to include them.”*
- This very comprehensive study provides extremely useful statistics on sponsorship and advertising opportunities offered by the UK market. Some key figures include:
 - Football sponsorship in England: Figure 5.12 showed that in 2009/10 that *“seven (or 35%) of the twenty Premiership teams were sponsored by a licensed gambling operator at a cost approaching EUR 20 million”*
 - Football sponsorship across Europe and United States: According to Sports Pro Magazine in April 2009, for the top leagues in England, Germany, Spain, Italy, France and the USA, the statistics show that *“sponsorship from gambling companies with football clubs in those leagues equated to more than EUR 72 million”*, or nearly 15% of the total global sponsorship deals.
 - Sponsorship across other sports: Figure 5.13 of the same study shows that licensed gambling companies also invest in so-called secondary sports like handball with the sponsoring of various teams and tournaments in several European countries.

Finally, the question of redistribution should be put into perspective and also consider the proportion of offline gambling revenues redirected to sports. After all, the offline gambling market (both lotteries and casinos) represents almost 90% of the total gambling market.

When it comes to grassroots funding, it is to be said that there is no direct link between private gambling operators and grassroots sports, except for an historical use of gambling income in some countries. The principal funder of grassroots and mass participation in most countries appears, therefore, to be the public sector.

Financing of benevolent and public interest activities as well as events on which online sports betting relies

Question	Answer
<p>(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?</p>	<p>Part I. Clarification regarding online gambling exploitation rights</p> <p>First there is need for a legal clarification and definition of online gambling exploitation rights. Indeed the European Commission through this question assumes that horse betting benefits from exploitation rights but it is, in fact, a levy that is in place in France.</p> <p>The state aid case opened by DG Competition on 14 January 2011 against the ‘<i>Levy to finance the public service mission of improvement of the equine species and the promotion of horse breeding, training in the horse racing and breeding sector and rural development</i>’ (State aid C 34/10, see link) is worth mentioning in this context. The case confirms indeed that the French horse racing system is a ‘<i>parafiscal levy on online horse-race betting</i>’ and raises several concerns. It has ‘<i>doubts as to whether the notified measure can be declared compatible with the single market</i>’.</p> <p>We do not believe that either the French parafiscal levy or the UK levy on horse racing fit within the definition of exploitation rights. Hungary and Sweden also seem to have similar systems.</p> <p>Part II. Beneficiaries of the French sports betting right</p> <p>The French sports right’s is to benefit all sports in principle, but in fact, restrictions (ARJEL’s approval, high amounts with 1% of the stakes, etc) apply to such an extent that it only benefits Stars sports.</p>

From June to December 2010, event organizers in all sports generated an income of no more than EUR 530,000, with around 60% going to the **Professional Football League**. Many operators refrained from offering bets or reduced their offer on a number of sports and focused only on those sports that generate the most income, i.e. soccer, tennis and motor sports, or else, they focused on international events of certain sports, reducing the visibility of French events, i.e. NBA instead of French Basketball League. Hence, smaller and less popular sports lose out. In the international .com offers, sports like handball, volleyball or futsal also profit from video streaming, etc as a result of the symbiosis with online sports betting operators.

One of the **consequences of the high costs** incurred by the operators (taxation plus betting right) is that they have **reduced their marketing and sponsorship spending**. Today, no more than five Ligue1 football teams have betting partners in France, compared with more than half of the entire Premier League and Serie A teams in the UK and Italy.

Integrity is not better served with the new right, as event organizers did not increase their efforts in the fight against corruption. A lot of small event organizers, that run only a limited number of events per year, clearly said they would not spend their limited resources on integrity but on commercial success. Integrity is a fundamental element for the future of sports and sports betting and needs a European approach instead of via this flawed mechanism.

Finally, the French Competition Authority opinion related to the online gambling sector dated 20 January 2011 (see [link](#)) aired concerns on the high price of the sports betting right which may constitute a market entry barrier.

Financing of benevolent and public interest activities as well as events on which online sports betting relies

Question	Answer
<p>(43) Do on-line gambling exploitation rights that are <u>exclusively</u> dedicated to ensuring integrity exist?</p>	<p>No, it does not exist. The French sports right is the first of its kind in Europe, with no precedent nor any legislative equivalent whatsoever, but it is not exclusively dedicated to ensuring integrity as confirmed below:</p> <ul style="list-style-type: none"> • The French Decree n°2010-614, 7 June 2010, on sports right refers to a <i>“price”</i> which shall be proportional to the amount of the stakes. This reveals the intention of the French authorities to create a tight connection between the remuneration of the sports organizers and the economic weight of the sector and the disconnection between the amount of the remuneration and the expenses incurred for the control and detection of match fixing. • The French Council of State decision about Betclic requests to nullify the French Decree on sports right on 30 March 2011 (see link) refers to a double objective: <ul style="list-style-type: none"> - First an economic driven objective, making sure that <i>“the economic flux induced [by the online sports betting sector] contributes to the development of the sport movement”</i> - But also a sport integrity related objective to <i>« prevent risks of threats to the Ethics of sports, to the loyalty and the integrity of competitions”</i> <p>It results from (i) the initiative of the French Government as outlined from the outset, (ii) the Parliamentary process, (iii) the wording of the implementing Decree and (iv) the negotiations initiated between sports federations and licensed operators that the main goal pursued is the financing of the sports industry.</p>

Financing of benevolent and public interest activities as well as events on which online sports betting relies

Question	Answer
<p>(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?</p>	<p>No, there is no evidence that online gambling services reduce revenues to public interest activities. On the contrary, online gambling services generate additional revenue streams for instance for sports.</p> <p>Currently, a number of Member States fund selected public interest activities through revenues from offline gambling activities. The schemes referred to here are schemes linked to the offline gambling market. Based on the current and projected market figures, the offline market in Europe has grown and will continue to grow in real terms [See Annex 1]. Thus, (the growth of) the online market does not jeopardize the offline market and therefore neither the revenue generated by schemes based on the offline market.</p> <p>On the contrary, the regulation of the market creates other and new sources of revenue that can be to the benefit of (public interest) activities like in Italy where grassroots sports and sports organizations benefit from the involvement of the gaming industry. By allowing sports sponsoring and common advertising with a reasonable gaming taxation, Italy doubled the revenues for the Italian Olympic Committee from EUR 255 million in 2003 to EUR 450 million per year between 2005 and 2008 (MAG Study, page 31).</p> <p>A note of caution is warranted on the use of the term <i>"free-riding"</i>. <i>"Free riding"</i> is derived from the economic and public policy theory of public goods. The use of this term suggests that there are public goods being used but not paid for. As far as we are aware, there are no online gambling service providers making use of public goods without paying for it in any Member State. The use of the term <i>"free riding"</i> in the context of the Green Paper on online gambling, whether in quotation marks or not, could therefore be read as suggestive and misleading.</p>

Likewise, the term “*national public interest activity*” is not defined and might be open to misunderstanding and misinterpretation. For instance, the French government argues that a horse-racing levy is legitimate as horse husbandry is a service of general economic interest. Although this argument is likely to be settled as the levy is subject of a State Aid investigation (C 34/10), it does evidence that such terms need to be used with caution.

Financing of benevolent and public interest activities as well as events on which online sports betting relies

Question	Answer
<p>(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?</p>	<p>We are not aware of such obligations. Moreover, the CJEU seems to say that such practices would not be acceptable for monopolies in its “<i>Stoss</i>” ruling on 8 September 2010, C-316/07 (points 100 – 106).</p> <p>According to the Court, when a Member State chooses to have a monopoly, its advertising must be <i>‘strictly limited to what is necessary in order thus to channel consumers towards authorised gaming networks. Such advertising cannot, however, in particular, aim to encourage consumers’ natural propensity to gamble by stimulating their active participation in it, such as by trivialising gambling or giving it a positive image due to the fact that revenues derived from it are used for activities in the public interest, or by increasing the attractiveness of gambling by means of enticing advertising messages depicting major winnings in glowing colours.’</i></p> <p>The Court prohibits monopolies from using image campaigns based on the financing of so called <i>‘good causes’</i> to entice consumers to gamble.</p>

Enforcement and related matters

Question	Answer
(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?	See question 47 for links to some national regulatory bodies

Enforcement and related matters

Question	Answer
<p>(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?</p>	<p>See links to some regulators' websites:</p> <ul style="list-style-type: none">• Belgian Gaming Commission: http://www.gamingcommission.fgov.be/website/jsp/main.jsp?lang=EN• France (ARJEL): http://www.arjel.fr/• Gibraltar (GRA): http://www.gra.gi/index.php?site=gambling• Italy (AAMS): http://www.aams.gov.it/?id=home• Malta (LGA): http://www.lga.org.mt/lga/home.aspx• The U.K Gambling Commission: http://www.gamblingcommission.gov.uk/• Other links are available on GREF (Gaming Regulators European Forum) and IAGR (International Association of Gaming Regulators) websites:<ul style="list-style-type: none">- http://www.gref.net/links_reg.html- http://www.iagr.org/members/members.html#Europe

Enforcement and related matters

Question	Answer
<p>(48) Which forms of cross-border administrative cooperation are you aware of in this domain and which specific issues are covered?</p>	<p>EGBA clearly supports multilateral cross-border cooperation (while bilateral agreements are by definition selective) and in particular a European approach in the light of the clear fragmentation of the market.</p> <p>The existence of GREF and some bilateral agreements have yielded very little results so far and it is unclear what the practical effects of these agreements are going to be.</p> <p>With European markets gradually opening up, there is a strong possibility that the EU-licensed operators will be subject to 27 mini licensing requirements. This will clearly lead to duplications which are both excessive in terms of administrative and financial requirements. Some suggestions for areas of cross-border cooperation include:</p> <ul style="list-style-type: none"> • The taking into account certain licensing requirements • Consumer protection • Licensing procedures • Exchange of scientific data <p>Fraud and money laundering: This is one area where there is already obligation between financial investigation units to cooperate with one another. However, reporting procedures and duties often vary from one country to another, hence the need for better cooperation.</p> <p>In this context, EGBA would like to emphasise that the online gambling industry is facing major administrative and other difficulties due to fragmented national regulatory systems and practices for the licensing of online gambling services. Thus, EGBA encourages the Commission to work towards establishing a pan-European legal framework for the online gambling industry - a significant part of the European e-commerce sector.</p>

Enforcement and related matters

Question	Answer
<p>(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?</p>	<p>Part I. Education programmes</p> <p>EGBA is aware of such cooperation and has actually been working for over a year with the European Sports Security Association (ESSA) and EU Athletes, the European umbrella organisation representing players unions across Europe, to educate players on the reality of sports betting.</p> <p>This programme is particularly noteworthy since it is actually EU Athletes that approached EGBA in the first place because there was 1) a real information problem on the ground and 2) because their sports federations had no rules on sports betting (or failed to communicate them effectively to athletes).</p> <p>A unique feature of this campaign is the employment of ex-players and top athletes to go into the dressing rooms and have face-to-face discussions with their peers about how to behave properly in relation to sports and betting.</p> <p>This programme is in its second year and has now been combined with the Remote Gambling Association (RGA) and the Professional Players Federation (PPF) in the UK and will target over 8,500 athletes across 4 countries and 7 sports. Through a common code of conduct, professional athletes are taught about the fundamental principles to respect when it comes to sports betting. This includes:</p> <ul style="list-style-type: none"> • Knowing the rules of the game • Never betting on yourself or the opponent • Never betting on other events within your sport • Being careful about sensitive information • Not seeking to fix an event or part of it • Reporting any approaches for match fixing

There seems to be a growing awareness among federations and regulators that education is crucial in this area as athletes are the first gatekeepers to integrity. This is illustrated by the recently announced Sport Accord and EU/World Lotteries, FIFA and Interpol education programmes which were both launched in April 2011, a year after EGBA had already launched its initiative. EGBA members encourage governments to 1) have clear rules on betting and 2) support such initiatives through education campaigns.

Part II. Early warning systems

EGBA has been working since 2005 with ESSA to detect suspicious betting patterns and alerts sports regulators by providing their disciplinary and legal departments with an electronic trail of data. ESSA has signed Memorandums of Understanding with leading sports bodies such as FIFA, UEFA and has established close cooperation with the IOC. The costs related to the ESSA system are entirely borne by the betting operators and are provided free of charge to the leading sports federations.

Enforcement and related matters

Question	Answer
<p>(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?</p>	<p>At this stage, EGBA is not aware of any cross-border initiative in this field. A safe and secure online gambling market can be best achieved through attractive and competitive regulation in line with EU law. Restrictions such as financial and ISP blockings of online gaming services are inefficient, easily to circumvent and drive consumers away to the <i>'black market'</i>. The current reform in France is an excellent example, where 57% of the market is still in the hands of the <i>'black market'</i> (see link page 17 of the MAG study).</p> <p>ISP blockings or any similar measures would contradict the principle of net neutrality, i.e. the principle that the Internet should remain open for all users and no content or content providers should be prioritised or downgraded. The Commission has recently held a consultation on this issue and the majority of respondents to the consultation have confirmed their commitment to an open and neutral Internet. Similar polls confirm that outcome (see link).</p> <p>In any case, such restrictions are highly questionable from many perspectives:</p> <ul style="list-style-type: none"> • First, under EU law, these restrictions have already been addressed by the European Commission in a number of Member State notifications (Belgium, Poland, Denmark, Cyprus, France, and Italy) as well as an infringement case (Germany). • Second, such restrictions must be the subject of a clear legal basis that does not infringe the basic principles (i.e. right of information and privacy) of the EU Charter of Fundamental Rights (see Advocate General's Opinion in Case C-70/10). • Third, from a practical perspective, consumers and operators can easily circumvent these blockings either by the use of changed IP addresses, proxy websites, alternative payment mechanisms (e-wallets, pre-paid cards), foreign bank accounts or altered MCC codes.

- Last but not least, there are strong doubts as to how effective these measures are:
 - In **Norway**, the Norwegian Gaming Authority's preliminary evaluation six months after the introduction of a payment blocking ban showed that 52% of Norwegian online gambling players still managed to use credit or debit cards with foreign websites (see [link](#)).
 - In **France**, the new regulator has requested the ban of 125 '*black market*' websites. However, the application of the law continues to be difficult due to the lack of agreement between the French regulator and ISPs concerning the liabilities for the costs of banning a website. One of the consequences is that the '*black market*' in France is still greater than the official licensed market (57% versus 43% - see [link](#), table 3, page 17).
 - In **Belgium**, Belgian banks members of Febelfin (Belgian federation of financial sector) told the Belgian gambling commission that they would not participate in tracking illegal online gambling website.

Finally, EGBA would like to stress that such restrictions are simply not in line with the goals of SEPA (Single European Payment Area), which aims to establish a true single market for financial and other banking services.

Enforcement and related matters

Question	Answer
<p>(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?</p>	<p>Regarding ISP (Internet Service Providers) blocking, on 14 April 2011, the Advocate-General Cruz Villalón considered in the Belgium CJEU Scarlet case (C-70/10 <i>Scarlet/Sabam</i>) that a measure ordering an internet service provider to install a system for filtering and blocking electronic communications in order to protect intellectual property rights, in principle, infringes fundamental rights. The Advocate-General's recent opinion insists on the need to ensure that the legal basis for imposing restrictions on internet access is sufficiently precise and predictable. A legal provision which provides that persons facilitating illegal gambling commit a criminal offence does not meet these requirements. The final ruling is to follow by October 2011.</p> <p>The role of Belgian ISPs with respect to their subscribers' access to online gambling websites is limited to the mere transmission of information over their network i.e. "<i>mere conduit</i>". By virtue of article 18 of the e-commerce Act, these mere conduit ISPs cannot be held liable for the content transmitted. Accordingly, they cannot be held liable by the Gambling Commission or a criminal court for alleged infringement consisting in a refusal to implement domain name server (DNS) blocking with respect to gambling sites without a specific legislative intervention. References to the explanatory memorandum of the Gambling Act suggesting the opposite do not change this analysis. Article 18 of the e-commerce Act, which implements article 12 of the e-Commerce Directive, should clearly prevail on the basis of the primacy of EU law.</p> <p>The fact that gambling is excluded from the scope of the e-commerce Directive does not affect this conclusion either. This exclusion only implies that gambling providers cannot benefit from the mutual recognition principle laid down in article 3 of the e-commerce Directive. However, it does not affect the provisions determining the liability of online intermediaries. The latter are not offering gambling services and, hence, are not covered by the exclusion. They benefit from the liability provisions of the e-commerce Directive regardless of the nature of the content transmitted, stored or hosted.</p>

ISPs cannot be made subject to a general obligation to monitor traffic transmitted over their network (article 15, 1° of the e-commerce Directive, 21, 1° of the e-commerce Act).

It should also be emphasized that the access to and usage of the internet is increasingly considered to be a necessary component of the exercise of fundamental rights and freedoms.

The new article 1.3.a of the Framework Directive for electronic communications (Directive 2002/21/EC modified by Directive 2009/140/EC) provides the following :

“3a. Measures taken by Member States regarding end users access’ to, or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law.

Any of these measures regarding end-users’ access to, or use of, services and applications through electronic communications networks liable to restrict those fundamental rights or freedoms may only be imposed if they are appropriate, proportionate and necessary within a democratic society, and their implementation shall be subject to adequate procedural safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with general principles of Community law, including effective judicial protection and due process. Accordingly, these measures may only be taken with due respect for the principle of the presumption of innocence and the right to privacy. A prior, fair and impartial procedure shall be guaranteed, including the right to be heard of the person or persons concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms. The right to effective and timely judicial review shall be guaranteed.”

This provision confirms the status of consumers’ access and usage of the internet as narrowly linked with fundamental rights and freedoms.

About EGBA

The **EGBA** is an association of leading European gaming and betting operators [Bet-at-home.com](#), [BetClic](#), [bwinparty](#), [Digibet](#), [Expekt](#), [Interwetten](#), and [Unibet](#). EGBA is a Brussels-based non-profit association. It promotes the right of private gaming and betting operators that are regulated and licensed in one Member State to a fair market access throughout the European Union. Online gaming and betting is a fast growing market, but will remain for the next decades a limited part of the overall European gaming market in which the traditional land based offer is expected to grow from € 79.6 Billion GGR in 2009 to € 83 Billion GGR in 2012, thus keeping the lion's share with 87% of the market. Source: *H2 Gambling Capital*, April 2010.

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