



EUROPEAN
COMMISSION

SUMMARY OF RESPONSES

GREEN PAPER ON ONLINE GAMBLING IN THE INTERNAL MARKET

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1. BACKGROUND

This document provides a summary of the responses to the Green paper public consultation on online gambling in the internal market that was held between March and July 2011¹.

The public consultation was held in response to calls for action by Member States and the European Parliament in light of the growth of online gambling services across Member States in the offer and take-up of these services and the regulatory developments taking place in a number of Member States over the last few years.

In total the Commission consulted on 51 questions under the following themes: 1) Definition and organisation of online gambling services; 2) Rules and practices relating to services performed and/or used by online gambling service providers; 3) Consumer protection, including minors; 4) Public order (fraud and money laundering); 5) Financing of benevolent and public interest activities and events; 6) Enforcement of applicable laws.

1.1. The contributions

The Green paper public consultation was broadly welcomed by the majority of the respondents and generated valuable information and market figures. 260 responses to the public consultation were received and a clear majority of responses were in favour of follow-up initiatives by the Commission in a number of areas, both binding and non-binding.

The vast majority of stakeholders responded to all questions on the different subject areas. In the majority of cases, responses stem from stakeholders within the EU/EEA. However, the Green paper also solicited responses from jurisdictions outside the EU, such as from competent authorities, commercial operators and academia.

The wide variety of stakeholders contributing to the Green paper consultation include central and regional public authorities, national parliaments, commercial online gambling and betting undertakings, national lotteries, charity lotteries, industry associations, sport bodies and athletes, payment and media service providers, academia and dedicated researchers, individual citizens, consumer associations and civil society associations (including trade unions in the Member States).

The responses converge on the prevailing regulatory, technical, societal and public order issues discussed with expert participants in the thematic workshops organised to compliment the consultation.

The focus of the consultation was on online gambling, however, a number of responses were provided by 'bricks and mortar' establishments, representatives of casinos and gambling machines for example, given the pertinence of questions such as those related to consumer protection and the prevention of fraud and money laundering.

28 responses were submitted by national governments or their competent gambling regulatory authorities. These represent the official submission of respective Member States 5 responses came from parliaments or political parties.

¹ Green Paper on online gambling in the Internal Market of 24 March 2011 (COM(2011)0128 final)

26 responses were from commercial online operators and 10 from public lotteries, including representative associations respectively. 34 responses represent other operators and associations, notably 'bricks and mortar' operators.

Intermediary service providers such as payment system providers, internet service providers (ISPs) and media-related companies provided 37 of the responses. Sport also provided 32 responses, representing European, International federations, national and regional bodies as well as athletes. 76 responses were submitted by individuals and European or national entities such as consumer associations, research institutes and academia, whilst over 20 contributions were sent by organisations or associations benefitting from gambling services aside from sport, including charity lotteries.

The European Parliament and the Economic and Social Committee provided a formal contribution to the Green paper, with converging views on a number of issues.

All non-confidential contributions to the public consultation may be found on the Commission website:

<https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp>

Finally, this document is a working document of the Commission services and is intended to provide a synthesis of the responses received to the public consultation.

2. MARKET, DEFINITION AND ORGANISATION OF ONLINE GAMBLING SERVICES

One of the aims of the Green paper consultation was to get a better understanding of the specific issues arising from the development of both authorised and unauthorised offers of online gambling services directed at consumers located in the EU/EEA. Reliable data and statistics are a useful tool for measuring developments and trends in the online gambling sector and to describe the scale of the issues and problems identified. So far policy making in many Member States and at EU level suffers from the lack of such data and statistics.

2.1. Market data

The Green paper asked about data and statistics on the EU online gambling market that would assist policy-making at EU and national level, with a particular focus on the cross-border offer of these services.

Respondents have provided studies and substantial information on the economic and legal development of national gambling markets, the effect of regulation and on the different public interest objectives raised in the Green paper consultation. In a number of Member States regulatory authorities regularly collect market data and publish data concerning their national market for online gambling. In a few jurisdictions regular surveys are conducted on the development of the market and the achievement of the public interest objectives. Most of the data and studies are however provided by the industry.

Still, in many Member States no data seems to exist on the scale of the cross-border gambling market. Member States stress that it is difficult to quantify the cross-border dimension of online gambling services as these services are very often not regulated in the respective Member State. A number of Member States however have conducted studies and surveys while for others third party studies are available.

2.2. Cross-border offer

Online gambling services are widely offered and used in the EU. The development of the internet and the increased supply of gambling services have made it more difficult for national regulatory models to co-exist. The Green paper therefore inquired about the experience of Member States and stakeholders about the impact of the provision and promotion of cross-border online gambling services, licensed within or outside the EU.

Member States criticise the lack of level-playing field for consumer protection due to cross-border offers and different levels of regulation. Some Member States feel that foreign operators do not offer the same level of protection and security as domestic ones. One response indicated for example that national age limits are not respected by foreign operators. Other responses reported about experiences with foreign operators refusing to include players in a self-exclusion list or about aggressive advertising of unauthorised operators. Member States also criticised that foreign operators do not contribute to social costs caused by gambling in relation to an individual's addictive gambling behaviour for instance. Some regulators feel that operators hide behind internal market principles. They consider it challenging to enforce national legislation, also because of difficulties in enforcing

prohibition orders and corresponding judgements abroad. However, it has also been pointed out that many operators that are actively regulated, whether in EU Member States or outside the EU, do have good standards of social responsibility. Regulating gambling services and the monitoring and supervising of licensed operators can be done cross-border, ensuring the necessary level of consumer protection.

Some Member States have highlighted practical difficulties in their everyday regulatory work such as the requirement to provide the regulatory authority with details of suspicious betting transactions. Such an obligation does not necessarily apply to operators licensed in other Member States. Consumers seem to be confused about the jurisdiction they gamble in. Finally, it is difficult to have access to information held by other regulators on companies targeting the respective national market.

Operators at the same time criticise the lack of legal certainty in the way a number of Member States have regulated their online gambling market. They claim that Member States often do not take due account of the requirements set by the Court of Justice of the European Union for the restriction of cross-border gambling services and at the same time establish market regulation that is unsustainable and commercially unviable. The lack of convergence between the different national regimes creates a high administrative burden and related costs. Operators also criticise that there is little recognition granted to operators who are licensed in reputable jurisdictions and that considerable time and resource is spent on compliance, anti-fraud, anti-money laundering and responsible gambling measures.

They also see positive aspects and advantages in a cross-border gambling market. In their view the sector creates jobs, is a driver of digital technologies and has contributed significantly to the development of e-commerce and consumer trust in e-commerce. A cross-border market allows for the creation of a more attractive legal offer, and offers better tools for prevention of fraud and other criminal activities. Commercial operators in particular also do not see any evidence for cannibalisation between different types of games offered. According to them, available figures show that commercial operators and state lotteries profit from open markets.

With regard to licensed operators from non-EU jurisdictions it has been stressed by a number of respondents that substantial differences exist between non-EU jurisdictions regulating gambling services. While some non-EU jurisdictions regulate gambling services to the same or even higher standards than most EU Member States less reputable regimes exist. The impact of operators licensed in these countries is considered low for the time being – one response reported about 15.5% of all enquiries and complaints received in 2010 referred to non-EEA sites - but it was also suggested that their competitive position might grow in the future, depending on the regulatory developments in the EU. It was also suggested that non-EU jurisdictions with elaborated regulation for the offering of online gambling services and sufficient experience and expertise in the sector could make a valuable contribution to the development of policy initiatives at EU level.

2.3. The impact of the jurisprudence and national and EU law

Online gambling services have been the subject-matter in a huge number of Court cases at national and EU level. At the same time these services are regulated at national level and in EU primary and secondary legislation. The Green paper therefore raised the question of legal certainty for the offering of online gambling services and suitability of the regulatory framework at national and EU level.

A number of Member States feel that the Court rulings and their diverging interpretation creates legal uncertainty and undermines a common position between Member States. Others believe that the high number of Court cases at national and EU level is not caused by legal uncertainty but by differing interests between the legislator and commercial operators. Member States tend to conclude that their national gambling rules are fully compatible with EU law. Some however find it difficult to design legislation compatible with EU law and also to fully adapt their national rules to new technologies. At the same time a number of respondents urged not to ignore consumer demand and choice when regulating the gambling market.

Operators also raise the issue of legal uncertainty due the vagueness of the requirements set by the case-law and the diverging interpretations of these criteria by Member States. They criticise furthermore the high degree of divergence between national gambling laws, both in their scope and their approach to online gambling. Operators consider it very difficult to provide a sustainable and economically viable offer in a number of markets which in their view is indispensable for the provision of an attractive offer channelling consumers into the regulated national market.

With regard to EU secondary legislation a number of responses have concluded that the set of rules provided at EU level is incomplete and comprehensive regulation is lacking. Responses consider that advertising needs proper regulation at EU level. Some Member States find it difficult to align their national restrictions on the advertising of gambling services with the provisions of the AVMS Directive². It is also felt that the Anti-Money Laundering Directive³ does not offer adequate protection.

2.4. Advantages and difficulties of the co-existence of national regulatory schemes

In the EU there are currently three main models of national legal framework applied in the field of online gambling: a prohibition on the provision of online gambling services, a controlled monopoly (state owned or otherwise) or licensed operators providing services within a regulated framework. The Green paper inquired about the advantages and difficulties of the co-existence of different national regulatory schemes.

Most Member States believe that the co-existence of different national systems allows them to adopt the most appropriate system in relation to their culture, tradition and vision for the achievement of their public interest objectives, such as public order and consumer protection. Responses stress that Member States aim to attain different objectives with their gambling

² Directive 2010/13/EU

³ Directive 2005/60/EC

regulation and apply different methods for achieving these objectives in their regulation. It enables each Member State to choose the kind of regulation for the sector, even to ban it altogether. Member States furthermore believe that a national approach ensures best the monitoring and control of the national gambling market and warrants consistent consumer protection.

At the same time operators and a number of Member States point out that the co-existence of different national systems increases the administrative burden and costs for operators and regulators alike. Member States and regulators often duplicate efforts when regulating their respective national market. Some responses consider that the fragmentation in the online environment has a negative impact on efficient enforcement and supervision, also stemming from a lack of technical and legal means to enforce national laws. Instead of enhancing consumer protection through the co-existence of national systems consumers ultimately might not be adequately protected in a fragmented online market. Operators claim that compliance with national systems is cumbersome and markets become unsustainable. Responses suggest that the co-existence of national markets favours larger operators that can bear the compliance costs and drives smaller operators out of the market. Operators might also decide not to enter smaller markets.

2.5. Online gambling definition

The Green paper highlighted that a large number of differing gambling services are covered by the term “online gambling”, such as online provision of sports betting services (including horse racing), casino games, spread betting, media games, promotional games, gambling services operated by and for the benefit of recognised charities and non-profit making organisations and lottery services. In the Green paper the Commission took the view that the definition as set down in the E-Commerce Directive⁴ should be maintained for gambling and that it should be combined with that for information society services as set down in the Transparency Directive⁵ such that the following common definition for online gambling services should be applied as defining the scope of the consultation:

Online 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.

The comments on the suitability of this definition revealed that many Member States do not yet have a definition of online gambling at national level. Where Member States have established a definition for online gambling services these definitions include similar elements and terms.

Member States and stakeholders alike stress that there is a need for any definition to encompass all forms of gambling and all forms of electronic or distance communication. A number of jurisdictions therefore do not refer to online gambling but to remote gambling. Some responses also pointed out that not all games typically considered games of chance

⁴ Directive 2001/31/EC

⁵ Directive 1998/34/EC

comprise only of chance element but also a skill element (such as poker or sports betting). These responses therefore suggest that in order to avoid that certain games are not covered by the definition because a skill element can prevail in playing a particular game and thus risking that a common policy would be incoherent the understanding of games of chance should also comprise games of chance and skill, the result of which are not totally accidental but depend, to a certain extent, on the skill of the participant.

Concern has been raised that the criteria "individual request of a recipient of services" would wrongly exclude gambling services where the distance transaction is taking place through a network of natural persons acting as intermediaries using electronic means, such as gambling and betting shops.

Gambling services offered by the media and promotional games

In most Member States gambling services offered by the media are typically covered by the national gambling law. However, some Member States in their media laws apply a *de minimis* rule on stakes. Games of chance are principally allowed if the stakes are not in excess of a certain amount. Responses furthermore show that usually no distinction is made between gambling and promotional games if they fulfil the conditions of application of the respective gambling law (stake, prize, random outcome). Sometimes specific rules for commercial communication games are laid down in the gambling law. In other cases Member States have specific rules in their consumer protection regulations or specific acts or codes of conduct for promotional games. Some Member States however consider it sometimes difficult to clearly define if a certain promotional activity falls within the definition of gambling.

Cross-border online gambling services offered in licensed premises

Member States consider cross-border online gambling services offered in licensed premises to fall within the general prohibition on cross-border gambling activities. Most member States allowing for the offering of online gambling services in licensed premises do not allow them cross-border but subject them to a domestic licence.

3. INTERMEDIARY SERVICES (COMMERCIAL COMMUNICATIONS, PAYMENT SYSTEMS)

3.1. Regulation of commercial communications

Responses to the question on how commercial communications for online gambling are regulated at national level show that Member States often combine the application of general consumer protection and competition law provisions, such as on comparative publicity, misleading information and unsolicited direct communications, with specific online gambling provisions. These rules should ensure that gambling advertising is not aimed at children and young people and that no impression is given to the outside world that participation in games of chance will solve financial problems of citizens. National commercial advertising rules in relation to gambling can be grouped in two main categories:

- quantitative restrictions such as limiting TV advertising for gambling to hours outside "protected times", limiting the number of advertising statements by gambling licence holders, banning advertising in printed press, limiting advertising only to the website used for provision of online bets,
- qualitative limitations like aggressive sales promotions, no endorsement by well-known personalities that suggest that gambling contributed to their success, no implication that gambling promotes or is required to gain social acceptance.

Member States' regulations are accompanied by a number of self- regulatory codes of conduct adopted by regulated gambling operators and advertising agencies. Cross- border complaint system exists at the level of the European Advertising Standards Alliance (EASA) that deals with gambling related claims. The majority of lodged complaints concern bogus competitions and lotteries by unregulated operators attempting to take advantage of lottery scams against vulnerable consumers.

3.2. Cross-border issues related to advertising for online gambling

With regard to cross-border issues, a considerable number of stakeholders including TV and Radio broadcasters, sport event organisers and sport federations, advertising agencies, and associations of printed press point to the current disparity of national rules for cross-border commercial gambling communications. The fact that some Member States strictly prohibit any form of advertising for gambling services of operators not authorised in their jurisdiction, including the ban on shirt sponsorship imposed on sport clubs from Member States where the sponsor has acquired a gambling license, whilst others either distinguish between passive and active advertising and take account of technical possibilities to hide certain forms of advertising, exempt shirt sponsorship from the definition of gambling advertising, or even allow for commercial communications in favour of operators licenced in other Member States, leads in their view to confusion and lack of legal certainty. The lack of legal certainty would result in confusion on the application of commercial communication regulations, notably when it comes to potential responses from national administrations such as financial fines, criminal prosecution, removal of advertising, prohibition of organisation of an international sport event. At the same time it seems to cause problems for sport clubs in terms of compliance with sponsorship arrangements. Stakeholders also point to the fact that shirt

sponsorship bans often have only little impact as in countries with bans for reasons of public interest TV viewers are free to watch events carried outside their territory where shirt sponsorship is permitted. Summarised, the fore mentioned different approaches by Member States seem to cause problems for organisers of cross-border sport events sponsored by gambling operators, broadcasters of these events as well as for individual sport clubs sponsored by a gambling operator when participating in foreign sport events.

Member States, who aim at efficient enforcement of national gambling regulations, are also concerned about the current situation with regard to cross-border commercial advertising. They point to the fact that is often very difficult for national authorities to tackle advertising for games of chance not authorised in their jurisdictions. There are several reasons for that, in particular the fact that secondary services providers such as broadcasters and advertising agencies are often foreign companies and the existence of sponsorship agreements between unauthorised operators and large domestic and international sport federations. All Member States who submitted their views on that particular issue agree that in order to deal effectively with cross-border commercial communications, structures for regulatory cooperation must be established at EU level.

3.3. Payment services

Responses regarding the regulation and use of payment services in the online gambling sector show that a number of payment solutions are being offered by gambling operators to their customers. In this respect, the use of credit cards to effect payments toward gambling operators is in no way exclusive. Other payment products such as debit cards and electronic money products have for already some time offered alternatives. E-money products, mostly bearing the form of prepaid cards, are often subject to simplified due diligence regimes under the applicable anti-money laundering regulations and, therefore, a number of restrictions including those on value held and amount spent apply to them. In this context, it is suggested that the risk of money laundering through pre-paid cards is minimised even where the cardholder has not been identified, whether through the development of typologies at industry level, through active collaboration with gambling site operators and card issuers, or through systems and controls implemented by the card issuer that effectively limit the use of these financial products for criminal purposes.

When it comes to regulation by Member States of the use of payment systems in online gambling, national gambling laws are, in the majority of cases, medium neutral and do not specify the manner in which players may deposit cash into a player's account. Some Member States though do not allow for the use of credit cards in relation to certain on-line games of chance or prohibit gambling operators to grant players any kind of loans or credits, or to enter into any kind financial transaction with said persons with a view to pay for a stake or a loss. In addition, national gambling regulations very often require gambling operators to transfer winnings from the player's account exclusively to the account from which the payment of stake was made.

4. PROTECTION OF CONSUMERS AND CITIZENS, INCLUDING MINORS AND VULNERABLE ADULTS

The questions raised in the Green paper on the protection of consumers and all citizens solicited similar responses regarding the measures that should be available such as age limits, identification checks to register and open an account, setting time and deposit limits and exclusion possibilities. The variation in the systems lies in how these are set out (e.g. through legislation, licence requirements, code of conduct or practice, self-regulation) and the level of detail prescribed. Responses highlight that a number of the measures and research regarding online gambling and behaviour is relevant in the offline gambling environment. Some responses provide that measures to protect consumers and citizens could be a mix of obligatory and voluntary ones, whilst some responses advocate the effectiveness of common or uniform measures to protect players.

Mixed views are expressed on the risk of problem development or addiction related to online, with limited empirical studies showing a casual link between the online provision and development of problem gambling.

However, national regulations largely call for socially responsible marketing, advertising and commercial communications more generally, primarily to protect minors people.

4.1. Why player accounts are required

The overall majority of commercial and public operators and the competent authorities of Member States concur that player accounts, together with registration, are a prerequisite for the protection of consumers together with checks that should be carried out on consumers opening an account. This is done with a view to mitigating the risks arising from non-face-to-face transactions. Identification checks and age verification are broadly carried out where an online account with a regulated operator can be opened. However, the level of due diligence procedures, including early detection measures and the verification methods vary across applicable regulatory systems. Responses by some Member States and operators state that checks that an operator is required to carry out can take place at different tiers, first and foremost to capture minors trying to open an online gambling account. Manual identification/documentation for the online account is required by some Member States and subsequently by the operators licensed in those Member States, whilst in some Member States use of third party suppliers for verification purposes is possible, other than digital verification. A number of Member States and several stakeholder responses, including ancillary ones highlight the audit trail possibilities of customers through the online account in terms of activity, behaviour, payment systems used, deposits and withdrawals for example.

A minority of respondents, including Member States, explained the necessity of obligatory separation of player funds from those of the operator's company finances, the paying of winnings into the same player deposit account, prevent multiple accounts being created and the approval by the regulating authority of credit institutions used by the operators.

4.2. The complimentary prevention and detection measures to Know Your Customer (KYC)

All responses manifest that several instruments⁶ from those suggested in the Green paper are used to monitor player activities and to detect and prevent alterations in behaviour symbiotic to the development of a problem, with a view to protecting players. The responses from Member States and from commercial and public operators show that so-termed 'responsible gambling measures' can stem from national legislation or authorisation/licensing requirements and they can also be supplemented by industry self-regulatory measures. These responses acutely indicate that the efficacy of the instruments is more pronounced where all or most are in place and where information and self-check possibilities are available to players at all times. Very few responses ranked the types of instruments suggested in terms of efficiency in preventing or limiting problem gambling relating to online gambling.

Player protection tools and the self-regulation of exposure

Responses indicate that risk-based and/or preventive approaches vary across Member States in being a requirement and subsequently provided for by industry, or provided by industry as part of the responsible gambling self-regulatory measures they have in place. In some responses support to players is required amongst the preventive measures.

Overall the most common responsible gambling features cited are

- pre-committing to deposit and time limits,
- upward review of deposit limits only after a set period,
- access to account history,
- session activity information,
- warning signs and reality checks at regular intervals.

There is broad agreement across the range of respondents that certain information is to be visible and accessible to players at all times. This includes information on

- the game or bet,
- the time spent on the site or game, through a counter display on screen,
- the account activity (winnings and losses), through a counter display on screen,
- helpline assistance,
- direct links to treatment or specialist information and centres.

Age limits to open an account are obligatory in a clear majority of cases whilst banning of credit is supported in most responses both by operators and by competent authorities, as well as other respondents such as researchers. As regards account deposits, some responses suggest that pre-paid cards enable a player to set limits and to keep funds for gambling separate. Others state that age verification can be more difficult and that credit cards permit an audit trail. The importance of early warning/detection measures as a specific preventive measure is

⁶ Age limits, self-limitation (financial and time), self-exclusion, information, warnings, self-tests, banning use of credit, reality checks, diligence obligation, restricting certain forms of games or bets considered riskier, other (eg commercial communications limits)

advocated in a number of responses by operators, though it is not necessarily an obligatory requirement across all jurisdictions where online gambling is enabled.

Self-exclusion and cooling-off

It seems that self-exclusion and cooling-off periods as a responsible gambling tool are broadly available. They are deemed most effective if time-bound, with a revocation request (email or phone) carried out only after lapse of a determined time. Self-exclusion requests are generally possible for definite periods from 3 months up to 12 months, or permanently. However, although stakeholders and Member States broadly advocate this, few examples were given of self-tests being available to keep behaviour and gambling patterns in check. Very few respondents expressed themselves on the sharing of data or a common database of self-excluded players at national or EU level, though some note that a self-excluded operator can move to another site. In a few cases registries of excluded players are kept by Member States' competent authorities.

Banning or restricting forms of games or bets

As regards banning or restricting forms of games or bets, several responses including researchers or studies quoted by Member States and operators, relate this to evidence or research to show a causal link to a gambling-related problem. Some responses explain that instruments currently used to protect players are important harm-minimisation tools, given that preventive concepts have not yet been scientifically validated. Further, the risk of inadvertent advantage to an unregulated offer or a less diligently regulated operator was highlighted in some responses.

Although a number of responses list types of games like slot machines, bingo, casino-type games or skill games (not ranked), views on the perceived risks are mixed even on delineating these from same or similar games in the offline environment.

Monitoring of licensees

Several responses state that real time monitoring not only ex-post reporting is to be available and a number of responses stress the importance of monitoring for a safe offer to consumers, as well as customer support mechanisms both by operators and by regulators. Currently, real time monitoring seems to be carried out in some Member States. Whilst a number of measures do exist seeking to protect consumers and to keep player behaviour in check, ultimately responses provide that these rely on operators for their efficacy. In this respect responses, some from operators others from some Member States, stress the relevance of:

- due diligence and of 'fit and proper'⁷ tests of operators for licence issuing and renewals,
- supervision by the licensing authorities including reporting,
- ad hoc and regular checks,
- interaction with the gambling regulator

⁷ Broadly, this is used to refer to investigations the authorising competent authority carries out and/or the documentation required as to the suitability of the applicant company as well as the persons involved in the company (or associated)

and the need of adequately resourced regulators for this.

The pre-submission of the mechanisms and technical equipment that will be put in place by the operators is generally required by relevant authorising authorities.

A number of the responses, both those by regulators and operators, refer to the CEN workshop agreement⁸. Some responses feel that information on voluntary measures is lacking. A few responses stress the importance of employee screening and training (awareness and skills) by industry about responsible gambling and for monitoring player activity for signs of risky behaviour, termed 'Know Your Employee' (KYE). This also allows for proper interaction with customers, including for answering emails, processing complaints and providing information.

4.3. Gambling behaviour

Studies and Surveys

A number of studies at European and national level have been carried out, some of which are peer reviewed. Surveys are also carried out in the Member States. Based on most of the responses there are acute differences on the criteria, scope and population range of the studies or surveys carried out regionally, nationally or more broadly, some of which include offline gambling in the sample. These do not allow for conclusions to be drawn on the scale of the problem in the EU. Despite this, the scale of the problem related to gambling (e.g. problem gambling, addiction or pathological gambling) seems to be in the margin of 0.5-3%. A few responses explain that a number of caveats need to be considered when interpreting the figures, such as the causal link or the problem gamblers' participation in more than one form of gambling.⁹

Stakeholders, including researchers point out a lack of consensus and of collaboration in the academic world on the terms used and on the determinants of addictive behaviour. Situational and structural features are cited as contributing to the risk of problem development, as is a link to past manifestations of behavioural characteristics/disorders or to gambling problems prior to playing online. Some responses view the online environment's accessibility as a characteristic, others state that addiction can be to the additional medium rather than the product, whilst others still state that negative consequences exist even if not leading to addiction. Overall responses generally express that more national studies on the regulatory impact of measures to protect consumers are useful.

There is no stark evidence emerging from the responses to mark types of games or bets which are clearly more problematic or addictive than others or to demonstrate that online gambling is more harmful than other forms of gambling. Behavioural research on this service activity is in its infancy, as some research responses state. Findings from studies quoted by respondents and the responses themselves vary from indicating that with online activity players have more control, better options for self-regulation and that it offers tracking possibilities of each player to pointing to a lack of human or social control with a permanent online offer and that it

⁸ CEN Workshop Agreement <ftp://ftp.cen.eu/CEN/AboutUs/publications/GamblingMeasures.pdf>

⁹ The Staff Working Document provides extracts of data from the responses

carries a higher risk potential than other forms of gambling. Some responses suggest that excessive gamblers use a range of products both online and offline, that the internet provides the channel of distribution, others that there are socio-demographic differences between the two whilst others state that players who gamble with regulated operators have a lower risk.

Several respondents highlight corresponding factors rather than specific types of games. Further, the responses largely suggest that the availability and use of behavioural tracking tools of player activity is rarely obligatory or part of licensing conditions but would be supported as part of due diligence procedures.

Finally, risk-assessment mechanisms like Gam-GaRD¹⁰ or AsTERiG¹¹ exist in certain instances to test products and determine the level of risk. Playscan¹², enabling identification of change in player behaviour was also given as an example.

Factors linked and/or central to development of a gambling problem or to excessive use of online gambling

Empirical evidence on the factors linked to problem gambling is widely lacking. The vast majority of responses point to more than one of the factors¹³ suggested in the Green paper as being relevant to a development of a problem or to excessive behaviour. A few suggest non-evidenced rankings and others express that the lack of empirical research prevents the determining of specific risk factors. However, none of the factors are deemed to work in isolation and all of the factors have their own impact. A number of responses suggest that the same risk factors apply for games/bets in the physical and in the online environment. Frequency or intensity of gambling engagement is referred to in a number of responses, whilst the pay-out ratio is frequently stated to not influence gambling behaviour.

Other than the factors suggested in the Green paper, responses highlighted the link with other factors such as environmental or situational factors

4.4. Education of consumers and access to treatment

In a few cases the validity of outreach to consumers through information and communication is highlighted and for consumers to be able to make an informed choice, such as being aware of the winning-losing probabilities or the risk of addiction. Education and awareness campaigns are deemed part of preventive measures in some responses, to keep the percentage of the population who may develop a problem gambling as low as possible and can form part of license conditions. Although as stated above studies or surveys vary, a number of stakeholders and Member States state that awareness/education campaigns do have a positive impact. The recognition of the regulator and operator logo is put forward by some Member States as a measure to be promoted to consumers in education campaigns to protect against an illegal offer.

¹⁰ <http://www.gamgard.com/>

¹¹ <http://www.forschung-gluecksspiel.de/pdf/AsTERiG.pdf>

¹² <http://www.playscan.com/>

¹³ Event frequency, payout interval, accessibility/social environment, chasing losses or being close to winning, perceived skills and "involvement" and commercial communications

As regards mystery shopping exercises, few Member States and stakeholders provide information on the use of this to test player protection or minors' access to gambling content possibilities.

Availability and access to treatment varies, from the national to the local level in the Member States. Based on a number of the responses funds from gambling activity are channelled to treatment centres, dedicated research and/or social projects, voluntary or mandatory. However, responses provide minimal data which does not allow any extrapolation on the number and or type of players who reverted to helpline numbers and/or treatment centres.

Public authorities at national, regional or local level offer consultancy or assistance in some Member States and access to these can be free of charge. These public entities are either dedicated out-patient centres/clinics or are responsible for all types of addictions. In some Member States self-help groups exist. Assistance to individuals may not necessarily be health/medical related but may also be in the form of debt management consultancy. A number of responses explained that the nature of treatment required varies and is generally of short term duration but also that further research is required on the determinants of problem gambling or addiction to be able to identify the treatment required.

Funding of treatment and research

Treatment and research can be funded from revenue derived from gambling either through mechanisms established by the State or through statutory or voluntary contributions by operators. This is the case for a number of Member States regarding treatment.

Funding revenue from gambling for treatment or research is frequently distributed through the State budget. It can be directed by the State into a Fund and is then redistributed to public entities providing support and treatment to respective individuals and families as well as education and research. A legal obligation for operators to fund treatment centres, dedicated research or helplines exists in some Member States, or is a statutory obligation. The funding can be payable to the regulating authority, through the licence fees for example. The authority is then responsible for funding relevant projects or helplines. Some regulatory authorities carry out pilot projects on gambling behaviour through their ordinary budget. In some instances industry provides voluntary contributions for treatment or research.

4.5. Protecting minors

18 is the minimum statutory age limit to access gambling in the vast majority of Member States, although in some Member States there are lower age limits (eg for lottery) and/or higher age limits (eg for casinos). There is broad support across the range of respondents for the age limit to be 18 years, whilst some responses suggest the need for consistency in age restrictions. Whilst the importance of preventing minors accessing online sites and of effective controls is underlined by the overwhelming majority of responses, no data was provided through the responses, for example, on underage access to online gambling. Whilst credit cards are not issued (directly) to under-18s in Europe, pre-paid or debit cards can be held by under-18s.

Age controls

Several responses link the effectiveness of this directly with identification and age verification procedures as well as with education and internet safeguards adopted in the home. Several operators state that age controls can be checked in real time against data provided, against official registers where these are available, against hard copy documents such as identity cards, tax or social security individual numbers, utility bills and email verification. In a number of instances an account cannot be activated prior to age verification having been carried out and the account is to be suspended if an under-age player is suspected.

A few of the responses state that verification is carried out again at the point of winnings/pay-out stage. A number of responses highlight existent filtering software at home possibilities. A divergent range of respondents stated that similar to other possible addictions, the younger a habit is acquired the greater the possibility of abuse at a later stage, though potentially also with other prevailing situations. Few responses referred to virtual cash games or to social networks where these may be accessible.

4.6. Socially responsible commercial communications

As regards commercial communications, only a number of Member States have gambling-specific regulations and/or codes of conduct. Where these are in place similar provisions may be found across Member States or industry self-set practices in terms of responsible business conduct, that a licensee shall not:

- target, use or entice
 - minors,
 - young people in general and
 - vulnerable adults;
- portray gambling as
 - socially attractive,
 - solution to financial or other problems;
- provide misleading images or information.

Legislation can also regulate TV advertising during certain hours (e.g around programmes for children). Transparency for such communications rather than an outright ban is highlighted in a number of responses, including by stakeholders. Finally, the responses do not inform on causal evidence of commercial communications as regards problem gambling. However, the majority of responses support clearer provisions at the national level on commercial communications.

5. PUBLIC ORDER (PREVENTION OF FRAUD AND MONEY LAUNDERING)

The sections of the Green paper dedicated to prevention of fraud and money laundering aimed at obtaining a better understanding of the nature and scale of the risks involved and existing measures in place to protect customers and operators from fraudulent activities, including operational practices established to fight against money laundering.

5.1. Types of gambling fraud

The most frequent type of gambling fraud, as reported by the majority of stakeholders, is identity theft. In the online gambling sector it involves the use of personal data of a third party as well as unauthorised use of certain means of payment such as credit cards. This type of crime is very often committed in the context of money laundering transactions. Another common fraudulent behaviour identified by stakeholders is the so called chargeback fraud. This occurs when an individual claims that a transaction is fraudulent and the credit card issuer then debits the money from the merchant's account. This facility is designed to protect consumers from fraudulent use of their credit card, but can also be used to retrieve gambling losses. It is suggested that a significant number of these claims are fraudulent.

When it comes to cybercrime, the frequency and risk of cyber-attacks is not considered higher than in any other industry sectors. In this context, it is suggested by a number of stakeholders that anti-cybercrime mechanisms and technologies developed by the gambling industry are being used by other industry sectors to combat this phenomenon.

Match fixing, occurring with the involvement of organised crime structures from non-European jurisdictions, is also very much referred to by stakeholders as one of the most severe threats to regulated sports betting operations.

As for money laundering, the Green paper consultation has confirmed that there is currently very limited information or evidence suggesting that licensed online gambling operators in Europe are subject to money laundering activities. The problem seems to occur in relation to illegal, unregulated operators who are offering their services on a distant basis from countries with either no or a very low degree of regulation.

5.2. Preventive tools and measures

As regards prevention of fraud and money laundering, the Green paper consultation shows that a number of mechanisms have been put in place both through Member States' gambling regulations and self-regulation by the gambling industry. A majority of Member States are of the opinion that strict licensing conditions requiring gambling operators to apply due customer diligence such as identity verification and monitoring of customer's behaviour are crucial in order to tackle fraud. This should go hand in hand with efficient supervision of gambling license holders. Nonetheless, the degree of application of these mechanisms varies across Member States.

Preventive measures include, in particular, KYC tools aiming at profiling customer's behaviour. A number of variables such as login data, player activity, and deposit patterns (e.g. initial deposits of substantial sums, deposits not immediately used as stakes in betting, deposits and withdrawals made without placing any bets) are systematically being monitored

by operators in order to identify anomalous or suspicious customer's behaviour. Risk assessing by operators includes identification of jurisdictions into which gambling operations are eventually not offered (either not initiated or suspended).

In dependence on national anti-money laundering regulations, operators are obliged to file suspicious activity reports (SAR) to their local financial investigation units (FIU). Share of information between operators regarding fraudsters and potential fraud trends exist to some extent as well.

Due customer identity verification is an equally important means of fraud and money laundering prevention. Submission of a number of identity proofs such as scanned ID cards, utility bills and other supporting documents is required within the process of player's account opening. This is often accompanied by operators' checks on whether the Internet Protocol address used for the deposit process, the country chosen as registration country and the origin of the initial deposit payment itself match one and the same country. Operators also use official international watch lists for suspected members of terrorist organisations and Political Exposed Persons. In few cases operators profit from access to national identity registers. However and due to lacking cooperation at international level, problems arise with regard to cross-border application of customer's verification checks. Data protection rules often do not make the exchange of information/data on customers possible.

With regard to means of payment (e.g. credit cards, pre-paid cards) used in online gambling, it is believed that these could pose different risks in terms of fraud and money laundering. Some may be subject to identity thefts whilst others, due to their anonymity, could be abused for money laundering operations. Operators deal with the different fraud/money laundering risks within the due diligence checks carried out on customers, taking account of the degree of regulation of the different payment systems and anti-money laundering controls already applicable to the financial sector.

5.3. Money laundering

As regards money laundering more specifically, it is suggested that structured cooperation between national gambling authorities, national police and international enforcement authorities needs to be enhanced given the complexity of transnational transactions operators and regulators have to face.

There is a broad demand to extent the scope of application of the Anti-Money Laundering Directive to all types of games of chance. This general support for a broader definition of gambling under the Directive is based on a number of reasons. Namely, to create a level playing field for all gambling operators since cost of compliance would give entities that are not covered an "unfair" economic advantage, and to remove market access obstacles arising from the application of different national anti-money laundering regulations in the field of gambling.

5.4. Certification of gambling equipment

Certification of gambling equipment is another instrument used in the gambling sector to prevent fraud. The Green paper consultation shows that certification of equipment and processes, including testing and certification of software, is common practice in Member States. In this context, there is a strong call by operators for more approximation of technical standards so that re-testing and certification, with associated costs, is not required.

6. INTEGRITY OF SPORT

6.1. Betting bans

The responses to the questions raised in the Green paper show that the most commonly used measure to combat match fixing are betting bans for persons involved in sports events.

Betting bans are imposed either through legislation (gambling regulations, sports laws) or at the level of sport federations through codes of conducts or statutes of federations.

In some countries and sport disciplines educational campaigns for athletes, launched also in cooperation with the betting industry, accompany these bans. Categories of persons to which betting bans apply differ from country to country and from discipline to discipline, ranging from sportspeople including coaches and officials to their family relatives, from executive directors and owners of sport clubs to their employees. In addition, betting bans are not always limited merely to the sport discipline in which the person is involved but may comprise any sports betting activity. Along with persons involved in sport competitions betting operators' employees are also often prohibited to place bets, either on the basis of gambling licencing rules or through self-regulation by betting operators. Other tools referred to in responses are hotlines and other whistle-blowing alert mechanisms introduced by sport federations and/or gambling operators to support people faced with match fixing threats or already involved in match fixing. Currently, these tools exist to varying degrees across the Member States and sport disciplines.

6.2. Bet monitoring systems

Respondents refer to a number of bet monitoring systems put in place either by betting operators, regulators or some large sport federations. In this context, memoranda of understanding between some regulated operators and large sport federations on share of data intelligence are frequently highlighted. Data protection issues are often mentioned as a barrier for information sharing, in particular with regard to match fixing alerts involving player's sensitive data. A clear majority of respondents strongly believe that more efforts are needed in terms of cooperation between operators, sport bodies and state authorities. This should encompass more efficient share of information and intelligence between all parties concerned, both at national and international level.

6.3. Sponsorship of sports by betting operators

Sponsorship by betting companies of sport clubs or sporting competitions is not believed, by the majority of respondents, to create a higher risk of fixed outcome of an event, especially in well regulated gambling markets. Many sponsorship agreements of that kind currently exist and there has not been any evidence of active involvement of regulated gambling operators in match fixing scandals. It is frequently suggested that within regulated markets sponsorship of sport events and clubs is sought by betting operators to get credibility and fair play labels and in this way be distinguished from unregulated operators. Nonetheless, in some countries ownership by betting companies of sport clubs is prohibited whilst sponsorship is, pending authorisation of competent authorities, permitted as far as no direct and indirect control by operators over the decision making processes in sport clubs can be carried out.

6.4. Limitation on bets/exclusion of events from betting

When it comes to prohibition of certain types of bets and exclusion of certain sport events from betting, approaches vary in the Member States. Whilst in some Member States certain bet types and modes such as live betting, betting exchanges and spread betting are prohibited, other Member States allow for their operation without perceiving an increased risk of fraud or gambling addiction. Provision of these bets is frequently accompanied by risk balancing measures such as limitation on stakes, required either by legislation or set by gambling operators within their internal risk based approaches. In some jurisdictions legislation requires regulators to establish a list of authorised events and bets, based on previous consultation of operators and sport federations concerned.

6.5. Sports integrity financing

Approaches in Member States also vary in the financing of sports integrity measures. Integrity measures are financed either from gambling licensing fees used by public authorities for the establishment of sports integrity mechanisms such as monitoring systems, from direct contributions by gambling operators to sport bodies which finance their sports integrity infrastructure, or by the sport sector itself. A number of stakeholders point to the fact that such financing systems, irrespective of their design, should not leave out less popular and visible sports, given that the risks of match fixing run across all sport disciplines. Some sport stakeholders call for the recognition of their right to explore the events they organise including the right to request financial contribution from gambling operators.

6.6. Criminalisation of match fixing

A number of stakeholders, mostly sport bodies and operators as well as some Member States, call for an EU-wide introduction of match fixing as criminal offence and for a stronger involvement of international enforcement agencies in the fight against match fixing. It is suggested that in this way national enforcement authorities would be given a clear legal base and competences for tackling fraud occurring in the field of sport.

7. FINANCING OF PUBLIC INTEREST ACTIVITIES

The responses concerning financing systems acutely confirm that Member States pursue different approaches. The Green paper had already provided that the reliance on gambling revenues to fund public interest activities is organised in various ways. More concretely, this encompasses the manner in which revenue from public and commercial operators, as well as charity lotteries is received, the distribution schemes, the revenue proportions re-distributed and the type of activities or projects this revenue is channelled to or is relied on.

Whilst there are varied recipient activities benefitting from this source of revenue in a number of Member States sport is ultimately a main beneficiary, with the horse racing sector generally set up to rely on its own system of funding. Broadly, a number of responses favour sustaining the support from gambling revenue to public interest activities, partly because of inadvertent effects on their activities in light of potential reductions in public funding. Examples of revenue derived from gambling are provided in the Staff Working Document.

7.1. Differing systems for receiving and allocating revenue from gambling activities

In a large number of Member States the revenue from betting and gambling activities is directly attributed to the State. From the responses, across the range of Member States and stakeholders, the percentage of turnover on stakes or GGR or the fixed amounts to the State, the benefitting public interest activities and the allocations to these public interest activities can be prescribed in legislation and by national parliaments. In a few situations the figures can be revised on a yearly basis. Further, in some Member States re-distribution is through designated Ministries. Views differ between Member States and operators on what constitutes such revenue, that is, whether the notion is taken to incorporate licence fees, gambling taxes, corporate taxes and compulsory or statutory levy schemes. Additionally, a number of public and commercial operators contribute directly to public interest activities through voluntary contributions, including through initiatives related to social responsibility or a charity program.

As regards charity lotteries, these are set up in a number of Member States through a licence for specific objectives largely within the respective jurisdiction or through a licence to operate a private lottery for multiple objectives. In terms of revenue, in some Member States national regulations set the pay-out ratios or cap the proceeds and/or prizes. Responses from such stakeholders suggest that such regulations differ to the systems adopted for national lotteries.

In a few Member States a Fund is established to channel revenue to benefitting public interest activities. The direct or indirect allocation of the amounts and the activities to such Funds tends to be pre-determined. As regards, the channelling or otherwise of unclaimed prizes, few responses stated that this was also channelled into beneficial causes.

When it comes to allocation, a number of responses state that ultimately the decision on how best to allocate the revenue generated from gambling services, including that re-directed to sports, should be for the national/regional governments. As regards transparency of revenue, this is broadly the case for a majority of operators and mainly through annual accounts but is less broadly transparent when it comes to recipients. Some stakeholders suggest that the uptake of the allocated revenue by recipients should also be more accessible.

Lastly, some responses by Member States and operators refer to EU case-law namely as regards gambling-related revenue, the scope and historical tradition of national lotteries, online gambling and respective revenue streams from these activities as well as the cross-border impact of online gambling, including unauthorised offers. These are included under the respective sections in this document.

7.2. Diverse public interest activities are recipients

The contributions show that a broad range of public and social public interest activities benefit from revenue stemming from gambling and betting, directly and indirectly. These beneficiaries can range from the more visible ones like sport, the arts and culture, to research, humanitarian-related programs, tourism, national heritage, education, health and welfare. In this respect, recipient stakeholders in particular, indicate that a number of social causes do rely extensively on funding stemming from gambling-related revenue (e.g. European Cultural Foundation: 73% of annual budget from lottery income). Furthermore beneficiary stakeholders state that in some instances allocated revenue is channelled into projects with a long-term objective or there are criteria to be met for grants rather than automatic allocation.

Finally, some of the benefitting charities stressed that contributions from gambling should be towards promoting the specific causes and not reinforcing the charitable approaches, to the needs of the disabled for instance.

Some Member States prescribe contributions from gambling generated revenue to addiction-related research, public education, prevention and/or treatment. This is done through direct contributions or re-distributed through a specific body or respective Ministries. Channelling of revenue generated from gambling by public and commercial operators can be mandatory, statutory and/or voluntary contributions. Channelling is largely done by the State or through the active engagement with dedicated centres and organisations. Overall, most stakeholders stress the importance of contributions to research, public education and treatment.

7.3. Financing of sport disciplines and sport events, benefitting disciplines and exploitation rights

The different financing mechanisms and the regulatory approaches across the EU do not enable fair conclusions to be drawn on the proportions from online sports-betting re-directed to sports. However, based on the majority of responses of stakeholders and Member States, sport emerges as a main beneficiary whether through governments' redistribution schemes or directly by operators. Moreover whilst national Olympic committees are beneficiaries in a majority if not all Member States, football is a main sport beneficiary in many jurisdictions. Member States allocate different proportions to sport directly or indirectly. For instance, this can be up to 1.8% of stakes from sports betting paid directly to a dedicated sport body or the amount directed to such a body is fixed and can be as much as €470M annually. Generally, these mechanisms are in turn responsible for re-distribution across sport disciplines, and can also be channelled into amateur sport. Other mandatory and voluntary contributions can supplement these mechanisms. In some responses sponsorship, merchandising and such types

of commercial partnerships with sport disciplines and for event competitions is referred to in terms of financing directed to sport.

Opinions of Member States and stakeholders, in particular sport bodies, athletes and operators, diverge on the notion or understanding of exploitation rights, fair return, sponsorship or other forms of commercial partnerships providing funding to the sponsored party. Some of the views relate to legal interpretations of 'rights', including intellectual property rights, others relate to fiscal and other revenue-related systems in place (e.g. compulsory or statutory levies, taxes). On the one hand, sport bodies in particular express that revenue derived from sport-related betting should allocate a specific return from such revenue to sport. On the other hand operators, mainly commercial operators, refer to commercial agreements and partnerships with sport organisations or clubs, like sponsorship, merchandising, donations and broadcasting/media fees other than the fiscal contributions directed to the respective Member State.

More specifically, as regards exploitation rights similar to the one for horse-racing the majority of responses from Member States, sport bodies and operators state that such a system is not in place other than in France. A few stakeholders express themselves outright in favour of extending this system at national or European level. Some responses suggest that the costs of such a system are high both for operators and for the administration in relation to the income it generates. These responses suggest that an approach whereby a central system is set up to re-distribute to sports the proportions allocated by government may be more efficient and fair. In this respect, some stakeholders stress the importance of distribution systems not being such that they may be to the detriment of small or less visible sport disciplines and for revenue to sport in general derived from gambling to reach all federations, leagues and clubs. Commercial rights are presented as a source of income by some sport bodies. Contributions concerning mechanisms for the integrity of sport, separate from funding as such, are encompassed in section 4.

In all the Member States where horse and greyhound racing takes place the systems are traditionally intended for the industry to be responsible for funding its range of activities (e.g. breeding, track management, racing, education) through horse and greyhound-specific sports betting, online and offline. Broadly, in some Member States revenue is through a form of statutory levy scheme based on a percentage of gross profits of bookmakers in others it is through a pari-mutuel betting system.

7.4. Indicators on contributions derived from gambling services

It is difficult to provide comparable figures across Member States and stakeholders because the figures reflect the varying mechanisms in place. However, state owned lotteries and those licensed by the state in Europe contribute around 66% of their GGR per year from the online and offline lottery games and sports betting activities to public interest activities, including to the State budget. These lotteries provide €20 billion annually towards public interest activities, largely re-distributed through the State budget. On average around € 0.44 is returned to society per individual in Europe (2010). In terms of pay-out ratios for on-online gambling, these are on average set up to 95% or more, with 95% of the payment of customers

being returned as winnings (prize money). One study quoted in some responses provides that €3.4 billion per annum is invested into sports, 62% of which is from commercial operators.¹⁴

In terms of football sponsorship, a number of responses cite Sports Pro Magazine¹⁵ which provides that seven (or 35%) of the twenty Premiership teams in England were sponsored by an authorised operator. The cost is approximately €20 million. Football sponsorship for the top leagues in England, Germany, Spain, Italy, France (and the USA) derived from gambling companies equated to more than €72 million, representing 15% of total global sponsorship deals. In Italy for example, the advertising and sponsorship from this activity amounted to €118 million in 2008.¹⁶

National charity lotteries raise around €500 million each year local, national and international causes. Private charity lotteries in the Netherlands for instance, raise around €375 million annually for their benefitting causes, with the internet used as the distributing channel. The online and offline society lotteries licensed in the UK contribute a minimum of 20% of revenue for charitable causes.

As regards horseracing, in the Nordic countries, an average of 12-13% of the total turnover is directed back to the industry. This is 8% in France. Horserace betting in the UK has provided £45 million through the Levy Board to veterinary science and education since 1962.

Market data on the different forms of gambling in Europe is provided in Section XX of this document, including growth of the market in Europe together with examples of some Member States.

¹⁴ Remote Gambling Association: www.rga.eu.com/data/files/eu_sports_funding_pr_nov_09.pdf

¹⁵ April 2009

¹⁶ MAG

8. SUPERVISION, COOPERATION AND ENFORCEMENT

The Green paper highlighted the importance of effective enforcement for Member States to ensure the achievement of the public interest objectives behind their national gambling policy. Effective enforcement encompasses the organisational structure and competences of the national gambling authority, administrative cooperation with other regulators and appropriate enforcement tools.

The responses to the questions on enforcement and related matters showed that the supervisory structure in Member States differs substantially. Administrative cooperation is taking place, often though on an ad-hoc basis and informally. Existing bilateral and multilateral cooperation is considered useful, it has however deficits in terms of the quality of information that can be exchanged and the implementation of decisions taken in multilateral structures. Outside the area of sports administrative cooperation with other stakeholders seems to be limited. The majority of Member States does not use technical enforcement means. Those Member States using technical means for the enforcement of their regulatory regimes see benefits in using these instruments, admitting however a number of shortcomings and technical limits. Member States and stakeholders have mixed views on the efficacy and suitability of these enforcement means.

8.1. Gambling authorities in Member States

The Green paper already stated that role and competence of the gambling regulatory body differs among Member States. This was confirmed by the responses. In a given Member State the regulation and supervision of gambling services can be the competence of several authorities, sometimes depending on the type of game or channel of distribution. Some Member States for example have a separate authority responsible for the online offer of gambling services or for lottery services.

The regulatory authority for the online gambling market is either set up as a department of a Ministry or as an independent regulatory body, often reporting to a specific Ministry. While more and more Member States establish independent regulatory bodies, the majority still entrusts a specific department within a Ministry, very often Ministry of Finance or Ministry for the Interior, with the task of regulating and supervising the gambling market. Member States with a licensing regime tend to have an independent regulatory body while monopoly systems are directly regulated by ministerial departments.

Regulatory authorities do not necessarily enjoy the same powers and competences. Competences of a regulatory authority may cover all or some of the following activities, including regulatory, investigative, and punitive powers:

- determine applications for operating and personal licences, specify the (general and individual) conditions to be contained in such licences, limit the duration of such licences, and determine applications to vary or renew operating and personal licences
- inquire into the suitability of licensees and the main suppliers thereof, and to ensure that anyone involved is fit and proper persons to carry out their functions relative to such games;

- issue the licence or licences for the operation of games of chance and to supervise the operation thereof;
- ensure that games and gaming are kept free from criminal activity, and to prevent, detect and ensure the prosecution of any offence against the national gambling rules;
- ensure that authorised games are operated and advertised fairly and in a responsible manner and in accordance with the law;
- regulate by licence the manufacture, assembly, repair, service, placing on the market, distribution, supply, sale, lease, transfer, making available for use, hosting and operation of relevant gaming devices, and to ensure that they are secure and satisfactory for the use for which they are intended;
- to supervise, attend and validate the draws of the National Lottery and of such other authorised games as it deems necessary;
- issue directives, conditions and codes of practice that describe arrangements that licensees should put in place in order to:
 - ensure that gambling is conducted in a fair and open way,
 - protect children and other vulnerable persons from being harmed or exploited by gambling; and,
 - make assistance available to persons that are or may be affected by problems related to gambling;
- receive and investigate complaints by consumers relating to games;
- advise the government on new gambling development and on the making of regulations;
- act as supervisory authority under the prevention of money laundering and funding of terrorism rules, cooperating the national competent authority on the prevention of money laundering;
- conduct investigations and inspections and
- impose administrative sanctions.

Responses show though that it is rather common that some of these competences are not held by the gambling regulatory authority but other enforcement bodies, such as the police, financial intelligence units or tax authorities.

Some responses suggest that sufficient competences are crucial for effective administrative cooperation with regulatory authorities in other Member States. They feel that such cooperation could be hampered by the fact that not every Member State has a single, central and independent gambling regulatory authority.

8.2. Administrative cooperation

Administrative cooperation is organised in multilateral or bilateral agreements, mainly with a view to discuss and exchange information and best practices on gambling-related issues. Respondents found existing forms of multilateral cooperation to be useful tools to establish contacts with other regulators, to exchange information and best practise and to develop responses to challenges posed by the development of the gambling market. Networks established through participation in multilateral cooperation agreements are used for ad-hoc, informal cooperation. Many respondents however admitted that cooperation today is limited

to more general issues and excludes exchange of sensitive information. They furthermore criticise the lack of commitment and the non-binding character of the output of the common work.

A few Member States have entered into bilateral cooperation agreements or are in the course of concluding cooperation agreements, including with third country gambling jurisdictions.

Multilateral cooperation

Today multilateral cooperation between gambling regulators takes place in two regulatory organisations, in which Member States participate: the Gaming Regulators European Forum (GREF)¹⁷ and the International Association of Gambling Regulators (IAGR)¹⁸.

IAGR is a world-wide organization with members from the EU (Austria, Belgium, Bulgaria, Denmark, Finland, Hungary, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden, the UK), Africa (South Africa), America (USA, Canada, Antigua and Barbuda, the Bahamas, Jamaica, St. Lucia, US Virgin Islands, Peru), Asia (Macau, Singapore), and Australia and New Zealand. The mission of IAGR is to advance the effectiveness and efficiency of gaming regulation by providing:

- a forum in which gaming regulators from around the world can meet, exchange views and information, and discuss policy issues among themselves and with representatives of the international gaming industry;
- a means of fostering cooperation between gaming regulators in the performance of their official duties; and
- a central point of contact for inquiries from governments, gaming regulatory agencies and personnel, and representatives of the international gaming industry.

GREF is the only multilateral organization that concentrates on European countries. Regulators from most but not all Member States are active members of GREF. GREF's main importance is described as providing a forum for the competent authorities to meet both at formal and informal level, exchange information and views and learn from the different approaches of the participating countries (best practices) regarding land-based and remote gambling. GREF serves as a body to represent the different views of European gambling regulators and also provide a central point of contact for enquiries directed at them from authorities or related organisations in Europe and elsewhere.

The members of GREF have annual plenary sessions and more regular meetings in four working groups (technical issues, information and statistics, gambling addiction and e-gambling issues). The working groups collect and process information, develop regulatory tools and discuss solutions to emerging technical and regulatory challenges. The work of GREF is supported by a website where members can share and exchange information.

Both, GREF and IAGR, have established eGambling working groups. The IAGR eGambling working group was established in 2006 in response to an identified need for international

¹⁷ For more information see: <http://www.gref.net/>.

¹⁸ For more information see: <http://www.iagr.org/>.

regulators to collaborate and share experience. At the time it comprised those jurisdictions that were regulating online gambling or considering regulating online gambling. The GREF eGambling group was established only in 2010 in response to an increasing demand from European regulators to engage in and share experiences on online gambling. The work focuses primarily on getting a common understanding of the risks and the options for dealing with the risks in terms of consumer protection, ensuring gambling is fair and keeping crime out of gambling.

Benefits and shortcomings of existing multilateral cooperation

Respondents consider that IAGR's eGambling working group has been very successful in sharing experiences and good practice. The group has produced good practice guidelines for internet gambling. Those Member States being members of GREF have a positive experience regarding the work pursued in the organization. However the work in GREF and thus the results achieved seem to be limited due the scope and mandate of the organization and a number of constraints on the exchange of information and data.

The main benefit of GREF is described by many responses as channelling the diversity of the different regulations and approaches across Europe and therefore providing an effective forum for sharing knowledge and best practices and exchange of views addressing problems of common interest. Irrespective of the regulatory system in a Member State (e.g. exclusive right or licensing system), members can learn from each other and discuss particular questions and challenges of gambling regulation and enforcement. It is "system-neutral" and allows for a non-political and professional exchange on technical issues. For many Member States GREF and the personal contacts built via GREF have been an important source of gathering information on regulation and experiences of other Member States. Members can learn from each other and information received is often used to review and improve national gambling rules.

Online gaming regulation is considered by some responses, at least to some extent, a trial and error process, making sharing experiences and lessons learnt even more important. This is even more important in the light of the fast pace of development of the market, which the cumbersome law making process is often unable to anticipate and must scramble to follow.

Responses however also identify a number of shortcomings. The work in GREF suffers from communication deficits, in particular language barriers. A number of Member States regret the lack of an appropriate structure for the exchange of information. Contacts very often depend on individuals and need to be rebuilt when individuals leave the regulatory authority. Furthermore the exchange of information is often limited due to data protection constraints. The administrative cooperation pursued mainly seems to concern technical issues such as national standards, testing/certifying gaming equipment, taxation and supervision. Responses suggest that information on operators and licence holders, infringements found and sanctions imposed and unlicensed operators should also be exchanged among Member States.

While the informal character of the work in GREF seems to ensure participation from members with very different regulatory background most responses raise the fact that work in GREF is done on a voluntary basis as an issue with regard to common initiatives. The fact

that statements and recommendations discussed and developed in GREF are non-binding seems to make it rather difficult to develop common policies and measures. The political impact of the forum is thus limited. Finally not all EU/EEA Member States are members of GREF.

Many responses see a role to play for the European Commission in organising administrative cooperation among Member States. They call on the Commission to create a structure for administrative cooperation and to assist this cooperation, in order to ensure focussed discussions and an appropriate follow-up on agreed implemented programmes.

Data protection has been raised by many responses as a key challenge. Responses stress that effective cross-border administrative cooperation depends on the exchange of data and information on authorised and unauthorised operators, on players and other market participants. However, due to the legal structure of the existing multilateral cooperation agreements and data protection constraints in national legislation only general information can be exchanged.

In that respect some Member States refer to the Internal Market Information System (IMI)¹⁹ as a specific tool for establishing formalised administrative cooperation between the Member States in the gambling sector. They suggest that benefit should be drawn from the experience acquired in connection with the establishing and use of IMI, and thought should also be given to the possibility of making specific use of IMI to support administrative cooperation in the gambling sector. In their opinion IMI has proved to be an important practical tool providing support for cross-border administrative cooperation, and the system has also proved able to minimise practical and linguistic barriers to administrative cooperation. Responses refer to the Green paper mentioning among other things the need to exchange information on unauthorised and fraudulent operators. The IMI system already contains a similar function in the form of a warning mechanism which is used in relation to the Services Directive²⁰. If the use of IMI in the gambling sector is definitely considered, the necessary legal basis for data protection will need to be established.

Bilateral cooperation agreements

Although all Member States recognize and stress the need for administrative cooperation only a few of them have entered into bilateral cross-border administrative cooperation agreement that go beyond the level of cooperation in multilateral agreements.

Responses explain that such agreements are driven by the feeling that cooperation between authorities is essential, especially since the regulatory authorities are operating in a market marked by fast-paced growth and technological development. The challenge is therefore to control by means of national laws the inherently cross-border online gaming market.

Member States believe that on-going sharing of information and experiences enable the authorities to improve the effectiveness of their action in key areas. Priorities in existing bilateral agreements are:

¹⁹ About IMI: http://ec.europa.eu/internal_market/imi-net/index_en.html

²⁰ Directive 2006/123/EC

- exchange of information on licensing and supervision;
- exchange of best practise, in particular on the regulation of recently launched games, such as cash poker or casino games;
- compliance checks on operators licensed in both countries and adoption of player protection measures, with a focus on technical measures to promote responsible gaming;
- institutional communication strategies;
- preventing fraud in the sports sector;
- the fight against illegal websites.

Responses inform that bilateral cooperation agreements enable ad-hoc sharing of information on double-licensed operators, on market data, and on specific aspects of regulatory practices and to develop common strategies and plan operational follow-ups on the priority areas. One response also stresses that cooperation will allow online gambling operators' technical equipment (e.g. the servers) to be located outside the Member State where the service is offered.

Benefits and shortcomings of bilateral cooperation

Bilateral cooperation allows to better adapt the scope and content of the cooperation to the individual needs of the parties. Responses suggest that cooperation seems to be more effective when carried out between jurisdictions that have similar regulatory models and objectives. However, bilateral agreements seem to suffer from similar deficits than multilateral cooperation agreements. A more enhanced cooperation also shows the difficulties in working together on the basis of differing national regulatory regimes and the need for a common glossary. Lack of resources limits the possibilities for enhanced cooperation.

8.3. Enforcement

The Green paper highlighted two technical enforcement methods used for restricting access to online gambling services: blocking access to websites and blocking payments between the player and the gambling regulator.

While many Member States do not have experience with or simply do not apply technical enforcement means responses show that Member States in the course of reforming their national regulatory systems at least consider the introduction of technical enforcement means. Member States applying technical enforcement consider technical enforcement methods an important element in the fight against unauthorised gambling services. They however qualify that their effectiveness depends on the use of other enforcement means, such as a ban on advertising for unauthorised gambling services, and a regulated range of games of chance which is comparable to the range of online games commonly offered abroad.

Blocking access to websites

The Green paper refers to Domain Name System (DNS) filtering and Internet Protocol (IP) blocking. A number of Member States is applying Domain Name System (DNS) filtering. Internet Protocol (IP) blocking does not seem to be used.

Domain Name System (DNS) filtering

In order to access a website, rather than having to write the full IP address (which is actually the 'location' where the content really is on the worldwide network), it is possible to use a domain name. A domain name is an alias to an IP address, and an IP address can have an unlimited amount of aliases. A domain name looks like <http://europa.eu>. To ensure that these aliases work, a matching table associates a precise domain name to a specific IP address; they are provided by the DNS Servers.

An example:

1. The Internet user opens a web browser and types "europa.eu";
2. The browser asks the DNS servers which IP address is associated with "europa.eu";
3. The DNS server checks its matching table and, if a match is found, it answers by giving the associated IP address '123.345.567.789';
4. The browser contacts the given IP address and tries to access its content.

DNS blocking occurs at Step 3. Instead of answering the real IP address which is associated to the given alias, the DNS Server answers with another IP address which is, in most of the cases, owned by a governmental service such as the police or, in the case of gambling, the gambling authority.

Internet Protocol (IP) blocking

In order to access a website, a web browser has to contact the IP address (which is actually the 'location' where the content really is on the worldwide network) of the server that hosts the specific website. This process is hidden to the Internet user who, in most of the cases, uses a domain name (alias) such as "europa.eu". Aliases exist due to DNS Servers providing matching tables that associate a precise domain name to a specific IP address. An IP address is associated to one server and may host one or many websites that are not related to each other.

An example:

1. The Internet user opens a web browser and types "europa.eu";
2. The browser asks the DNS servers which IP address is associated with "europa.eu";
3. The DNS server checks its matching table and, if a match is found, it answers by giving the associated IP address '123.345.567.789';
4. The browser asks the ISP to connect it to this IP address;
5. The ISP forwards the query to Europa's server via Internet transit services and carriers;
6. Europa's server responds by sending data packets to the user's computer and a connection is created.

For each information exchange between the user's computer and Europa's server, step 5 and 6 are repeated.

IP blocking occurs at Step 5, instead of forwarding user's packets to destination, the ISP checks if the IP address is censored or not and decides if to carry the packet or not. If the connection is dropped, the website or service is not accessible to the user.

Procedures

Responses show that the procedure for the application of the rules for blocking access to websites offering unauthorised gambling services differs between Member States. Gambling authorities have either been vested with powers to order internet service and other network service providers directly to block access to remote gambling operators not authorised to offer their services in the Member State or they will have to seek a Court order to the same effect.

Benefits and shortcomings

Member States applying methods for blocking access to websites believe that blocking websites offering unauthorised gambling services is an essential tool for better consumer protection. In their view it offers the possibility of making citizens aware of the existence of authorised and unauthorised gambling services. Players very often do not seem to be aware of such a distinction. The regulator's website which appears when a player attempts to access a blocked website is viewed up to million times a day. From a consumer information perspective this is considered much more effective than any consumer information or education campaign. Responses also point out that blocking access to websites has proven to be effective in preventing the marketing and advertising of unauthorised online gambling operators and this has, in turn, reduced their impact on the respective national market and the ability to influence the gambling preferences of consumers. According to one response, the effectiveness of blocking methods can briefly be summarised in such a manner that the persons who truly wish to continue using unlicensed operators can continue to do so. For persons who do not necessarily have such a desire or need, the simplest restrictions based on DNS filtering can be a sufficient impediment.

But Member States do not consider it only a method to protect consumers but also a method to protect operators that have received authorisation to offer their gambling services in the Member State. Operators authorised in a Member State applying blocking methods seem to be in favour of the application of such technology.

However, responses have also raised a number of substantial shortcomings concerning blocking access to websites, in particular in view of their technical feasibility and efficacy, related costs and proportionality.

Responses state that it is very difficult, if not impossible, to implement systems that are completely effective in blocking access to websites offering unauthorised gambling services.

According to a number of responses DNS filtering procedures pose significant technical and organisational problems such as:

- The DNS filtering and redirection procedures operate on the DNS server of the domestic internet service provider and can be easily circumvented; instructions are easily available on the internet.
- DNS blocking implies blocking the entire domain name at the level of a DNS server. This means that if unauthorised gambling services are hosted on a subdomain, all other (legal) subdomains that have the same parent domain will be blocked as well. This would have a

direct impact on the freedom of communications, especially because the existence of additional subdomains may not readily be apparent.

- Deceitful gaming operators may change their internet name (as registered in DNS) and/or their IP addresses frequently, thus bypassing blocking controls. When an address is added to the list of blocked websites, on the very same day the unauthorised gaming operator activates a new address (e.g. www2.website.com) which is not blocked and which the operator communicates to all his customers. The unlicensed operator also updates the links in the banners of his associated websites to lead to their new address.
- An ISP can locate its DNS server in one Member State and use that server to also provide services in other Member States. Given that DNS blocking always applies to the entire server, a website that is illegal in one Member State will also be blocked in other Member States where it might not be illegal.
- Keeping the list of blocked websites updated requires both time and resources as the search for websites offering unauthorised services for addition to the list is manual. However, the efficiency of the system depends on the frequency of the updating interval.

Responses have raised similar problems regarding IP blocking:

- IP blocking entails a very high risk of over-blocking. Websites share IP addresses; therefore the blocking of an IP address would very often block other websites with authorised content.
- IP blocking is harder to circumvent than DNS filtering but still possible.
- While IP blocking is considered by some responses as the more effective systems its implementation would result in a considerable increase in costs and administrative work, for regulators and ISPs.

A number of responses criticise that the procedures and methods used for blocking access to websites offering unauthorised gambling services place a disproportionate burden on the ISP provider, in terms of costs and resources implied, and give ISPs an inappropriate policing role. In this respect, many responses also refer to the liability regime for ISPs under the E-Commerce Directive.

Responses also highlight that blocking access of websites requires proper authority by a gambling authority or a court capable to decide promptly on the blocking of a site and such procedures are not necessarily in place in Member States.

Finally, a number of stakeholders raise concern about the compliance of methods for blocking access to websites with the freedom of expression as set out in Article 11 of the Charter of Fundamental Rights.

Blocking payments between the player and the gambling operator

Payment blocking is implemented by a prohibition on credit and financial service institutions to be involved in payments for unauthorised gambling services and pay-outs from the same. The prohibition covers the processing of payments (procurement of stake and prizes) to unauthorised gambling operators. Entities covered by the prohibition are banks, financial enterprises, payment enterprises, e-money enterprises, branches of foreign credit institutions and other payment entities established in the Member State. While a number of EU and EEA

Member States have provisions on payment blocking in their gambling legislation, only a few use this method and experience is thus limited.

Methods

As shown above different payment means are offered and used in gambling transactions. The methods for blocking payments between the player and the gambling operator depend on the payment means used. Payment blocking for card payments is based on the Merchant Category Code (MCC) used by the merchant, i.e. gambling operator. The prohibition of processing payments is undertaken via the blocking of payment orders where cards are using the gambling specific MCC. Payment blocking for bank transfers is based on the account number used by the gambling operator. For e-wallets, the implementation of the prohibition of processing payments to unauthorised gambling operators seems to depend on the active involvement and internal controls of the e-money issuer. For other payment means, such as pre-paid cards, little information has been provided on how the prohibition of processing payments is undertaken.

Benefits and shortcomings

Countries using or introducing payment blocking methods consider it a useful tool to reduce the number of gambling transactions between players and unauthorised gambling operators and to inform consumers about unauthorised gambling offers. Transfer of payments to unauthorised gambling operators has become more difficult for players and the prohibition is considered to have an effect on spontaneous, first time gamblers. The prohibition provides the information to the player that an available online gambling site is not necessarily licensed or supervised by the national authority.

At the same time responses stress a number of substantial shortcomings of the different methods for blocking payments between players and unauthorised gambling operators. There seems to be a risk that in addition to payments and pay-outs for unauthorised gambling, payments connected with authorised gambling or to other lawful non-gambling payment transactions would also be affected. A payment blocking mechanism, in particular if based on the operators MCC, thus may result in blocking licit commercial transactions.

The effectiveness of these methods is furthermore questioned in the responses. It seems that in countries applying payment blocking the majority of players continues to use the services of unauthorised gambling operators, using their credit or debit cards.

Responses also raise the risk that payment blocking systems force players to resort to less controlled and regulated means of payment, not covered by existing enforcement measures. These payment methods often offer less consumer protection.

Stakeholders and Member States alike furthermore explain that payment blocking systems can be circumvented. Gambling operations may be combined truly or artificially with other activities to cover their industry affiliation and use a different MCC, for example entertainment or recreation. Deceitful gambling operators might also use intermediaries, such as factoring companies, for the execution of their payment transactions. These operators do not necessarily carry the MCC of a gambling company. Payment blocking for bank transfers

depends on the correctness of the account number. Account numbers can be changed and thus lists of blocked account numbers need to be constantly updated, a time and resource-intensive work. Responses furthermore report that unauthorised gambling operators have implemented technical solutions helping players attempt to circumvent payment blockings, as well as intensified information to their customers how this may be done.

Stakeholders furthermore point out that the implementation of payment blocking systems entails substantial costs for the payment service provider and other financial institutions. They also stress that payment blocking provisions give financial institutions a policing role, comprising monitoring and executive obligations, while compliance with national gambling rules should primarily be the responsibility of the gambling operator. Finally, stakeholders believe that such restrictions are not in line with the goals of the Single European Payment Area (SEPA), which aims to establish a true single market for financial and other banking services.

Other (technical) enforcement methods

Whitelisting / Blacklisting

Some responses consider a list of unauthorised operators a necessary and efficient tool to inform players and service providers. Together with a list of licensed operators it is supposed to show players and facilitators such as banks, Internet providers, credit card companies which operators are operating games of chance without an authorisation.

Domestic domain name

A few responses raised the requirement of using a domestic domain as an enforcement tool. In order to maintain control over transactions between players and licensed operators over the internet, and to establish a separation of operations carried out by the same operator in a given Member State with regard to other Member State in which said operator is authorised to perform its activities, it is felt essential that all domestic gambling transactions are directed to a system with a domestic domain.

Cross-border initiatives

None of the responses mentioned a cross-border initiative in the area of technical enforcement methods. However, such initiatives have been raised by a number of Member States as an upcoming issue for enhanced administrative cooperation.