



**EC Green Paper on online gambling in the Internal Market:
PokerStrategy.com response**

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ABOUT POKERSTRATEGY.COM

PokerStrategy.com, operated by Gibraltar-incorporated Swerford Holdings Ltd, is the world's largest online poker affiliate, poker school, e-learning community and social network with in excess of 5 million members worldwide, the vast majority of which reside within the European Union. As such, it is uniquely placed to provide a response to the European Commission's Green Paper ("**Green Paper**"), not only as a mouthpiece for the interests of its members, but also as a respected industry commentator generally and a vital business partner for the market-leading online poker operators and networks.

While not undertaking any form of activity capable of regulation itself, PokerStrategy.com enjoys close working relationships with operators licensed in both EU and non-EU jurisdictions including: Gibraltar, Alderney, the Isle of Man, Malta, France, Italy, Antigua and Barbuda, Curacao, the Philippines, Kahnawake and, formerly, the Dutch Antilles.

We sincerely hope that our substantive responses to the Green Paper will contribute to an informed debate that will, going forward, support the interests of EU-licensed operators and the online gambling industry generally, protect the interests of consumers and ensure that EU fundamental freedoms are sufficiently upheld.

INTRODUCTION

It is impossible to ignore that consumer demand for online gambling continues to grow within the EU and that, in fiscally difficult times, many Member States are moving to increase state revenues by seeking to regulate the industry and introduce national licensing regimes. Although, it is our opinion, and that of our partners and other industry commentators, that a great deal of these national regulations are contrary to EU fundamental principles and are, generally, protectionist and nationalistic in their approach, as well as being burdensome for operators by duplicating licensing and compliance requirements that have been satisfactorily fulfilled in the licensing Member State of origin. Further, the combination of anti-competitive establishment requirements, duplicated compliance obligations and aggressive licensing fees and tax regimes can actually result in newly-regulated markets becoming unviable and unsustainable for operators licensed in other Member States who, in accordance with EU free market principles, should otherwise be entitled to offer their services cross-border, without hindrance.

Of course, a serious concern in bona fide operators being driven away from nationally regulated markets and reducing the competitive choice available to consumers is the rise of unlicensed and unregulated “black market” operators who are not subject to the same stringent licensing requirements and regulatory scrutiny with regard to game fairness, social responsibility, fraud prevention and anti-money laundering as an EU-licensed operator would be. Thus, rather than increasing levels of consumer protection, an inadequately regulated market may actually increase the exposure of its citizens. It is our belief that the proper application and enforcement of fundamental EU principles would go a long way to address these issues and ensure an open, fair and competitive, yet effectively regulated, market.

Whilst it is acknowledged that Member States have a degree of discretion available to them as regards the implementation of EU legal principles in such a way so as to assist/achieve certain public policy objectives, like consumer protection, any restrictions imposed on the market must be consistent, proportionate and non-discriminatory in approach, scope and application. Further, it is the Commission’s role as “Guardian of the Treaties” to ensure that this is the case, although we are keenly aware that the perception within the online gambling industry is that, over the last few years, the Commission has been fairly “toothless” in this regard and acquiescent in relation to the introduction of certain national legislation by Member States that has been overtly prejudicial to the interests of operators licensed in other Member States and detrimental to the Internal Market generally. As such, we welcome the Commission’s desire, via the Green Paper, to examine thoroughly the current state of the EU gambling market and we trust that the Commission, in its follow-up to this exercise, will continue to be mindful of the economic environment and pressures pursuant to which the industry currently operates, while ensuring that Internal Market freedoms are sufficiently protected.

ANSWERS TO THE COMMISSION'S SPECIFIC QUESTIONS AS POSED IN THE GREEN PAPER:

ONLINE GAMBLING IN THE EU: CURRENT SITUATION

Main features of the online gaming industry operating in the EU

(1) Are you aware of any available data or studies on the EU on-line gambling market that would assist policy-making at EU and national level? If yes, do the data or study include licensed non-EU operators in the EU market?

There are numerous sources of data available which may be of use to the Commission:

- H2 Gambling Capital Consultants (www.h2gc.com) – a commercial compiler and supplier of gambling statistics and reports to the industry. Data is believed to include non-EU licensed operators;
- GamblingData (www.gamblingdata.com) – a commercial compiler and supplier of gambling data and case studies to the industry. Data is believed to include non-EU licensed operators;
- GamblingCompliance (www.gamblingcompliance.com) – a commercial supplier of gambling-related news, legal/compliance resources, data and case studies. Data is believed to include non-EU licensed operators; and
- Statista (www.statista.com) – a commercial compiler and supplier of online statistics generally, including gambling (German focused). It is unknown whether or not data includes non-EU licensed operators.

With reference to available studies, we would suggest that the commission refer to:

- *Study of Gambling Services in the Internal Market of the European Union - Final Report, 14 June 2006. Swiss Institute of Comparative Law;*
- *Online gambling: a Report for the European Parliament, November 2008. Europe Economics;* and
- the numerous studies and publications of Global Betting and Gaming Consultants (GBGC), available via www.gbgc.com.

(2) Are you aware of any available data or studies relating to the nature and size of the black market for on-line gambling services? (Unlicensed operators)

We are not specifically aware of any data or studies relating to the nature and size of the black market for online gambling services. However, it is believed, that a substantial part of the gambling market within the EU is serviced by operators from outside the EU who do not have a licence issued by a Member State's regulatory body (and as such are "unlicensed" from an EU perspective), but we would query whether such operators should be considered "black market", especially if they are licensed in a reputable, albeit non-EU, jurisdiction. It is believed that the potential growth of the black/grey sector for online gaming will largely depend on the harmonisation, or otherwise, of the online gaming market by the EU and the implementation of national regulation by its Member States, especially as to whether or not increased regulation proves to be economically viable for the EU-licensed operators.

(3) What, if any, is your experience of EU-based on-line gambling operators licensed in one or more Member States and providing and promoting their services in other EU Member States? What are your views on their impact on the corresponding markets and their consumers?

As the world's largest online poker affiliate, we have considerable experience of dealing with EU-licensed operators that are established in one Member State but who rely on free market principles to offer their services cross-border into other Member States.

One obvious impact that the cross-border supply of services has in relation to the online poker market and its consumers, online poker being a peer-to-peer activity, is the opportunity for poker operators to create larger pools of liquidity in terms of the number of players available to play poker at any given time. Many of our partners have noted a reduction in player liquidity in those Member States, such as Italy, that have elected to completely "ring fence" their players so as to be completely separate from and unable to interact with players from other Member States – it is believed that such ring-fencing actually drives players to seek out unlicensed operators not subject to this restriction in order to be able to play poker against larger pools of players.

Another important aspect from a consumer perspective is that an open and transparent marketplace, which includes licensed operators from other Member States than that in which a consumer resides, would promote and encourage a competitive market with a broader range of choice for the consumer, better products/offerings and, ultimately, better value.

Some governments seem to harbour concerns about cross-border online gambling services undermining their own domestic operators (who are often state backed). However, we do not believe that cross-border gambling (especially online poker) necessarily has a detrimental effect on existing operations, such as state lotteries. For example, in the UK, the state lottery operator has been able to assert itself on the market although the UK has one of the most open and competitive gambling markets within the EU.

(4) What, if any, is your experience of licensed non-EU on-line gambling operators providing and promoting their services in EU Member States? What are your views on their impact on the EU market and on consumers?

From our own experience of dealing with non-EU licensed operators, there is little discernible difference with regard to how they conduct their business in comparison with EU-licensed operators. However, this may be a reflection of how we select appropriate business partners as, certainly, some non-EU operators are based in highly regulated jurisdictions, while others are subject to questionable regulation in not-so-reputable jurisdictions.

The impact of the less reputable operators on the EU market and its consumers at this moment in time is thought to be low due to the proliferation of reputable and high-profile EU-licensed operators for the consumer to choose from, although their competitive position in the market would undoubtedly be strengthened if reputable and properly regulated operators find themselves excluded from certain markets.

Online gambling under the Treaty rules

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

Domestic laws in EU Member States are often completely silent or vague and uncertain on the issue of online gambling and the accessibility of the domestic market to operators licensed in other Member States. The CJEU has clearly established that in the absence of EU-wide harmonisation, Member States have discretion to decide upon their national regulatory framework, but that such

discretion is not unfettered and that any imposition of regulation must be compliant with EU legal and free market principles – which we are certain do not need to be rehearsed to the Commission in this document.

We are concerned that, in recent times, the Commission and the CJEU has not seemed quite so willing to move to correct these domestic/national discrepancies. Since early 2008 no new proceedings have been initiated by the Commission despite its having received several complaints from Member States and other interested parties, such as the European Gaming and Betting Association (EGBA) and the Remote Gambling Association (RGA). Further, we are led to believe that, between 2006 and 2010, over 150 pieces of gambling-related draft national legislation have been notified to the Commission for single market screening and that many have received a first formal warning from the Commission for not complying with EU law. Further, we are also aware that many such pieces of legislation have actually been enacted on a national level, in spite of the Commission's warnings, with little or no amendment to ensure compliance with EU legal principles.

We are of the opinion that the Commission should “bare its teeth” in such circumstances and, having issued formal warnings to Member State legislators, continue to apply pressure by initiating infringement cases in a systematic way to correct legislative flaws and to prevent further violation of EU law and greater market distortion to the detriment of bona fide EU-licensed operators.

(6) Do you consider that existing national and EU secondary law applicable to online gambling services adequately regulates those services? In particular, do you consider that coherence / consistency is ensured between, on one hand, the public policy objectives pursued by Member States in this field and, on the other hand, the national measures in force and/or the actual behaviour of public or private operators providing on-line gambling services?

The laws of many Member States, in particular those which either have a non-regulated gambling market or which have sought to prohibit online gambling in one form or another, are often not compliant with EU law – although there is a large degree of variance from state to state on this point. Generally speaking, it is our experience that the restrictions/prohibitions imposed on public policy grounds in such Member States are disproportionate in their application and/or anti-competitive in scope. Such restrictions can also be counter-productive with reference to their stated intentions, as certain gambling operators will elect not to comply with the established regulations and will continue to rely on EC free market principles to offer their services. In contrast, in *compliant* regulated markets licensed operators are compelled to act in accordance with the regulations in order to maintain their status as a licensee and, as such, public policy objectives are consequently supported.

DEFINITION AND ORGANISATION OF ONLINE GAMBLING SERVICES

Definitions

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

Pursuant to the Gibraltar Gambling Act 2005:

- “*remote gambling*” means gambling in which persons participate by means of remote communication, that is to say, communication using (a) the internet, (b) telephone, (c) television, (d) radio, or (e) any other kind of electronic or other technology for facilitating communication;
- “*gambling*” means (a) betting (including pool betting) and bookmaking; (b) gaming; (c) promoting or entering a lottery; and
- “*gaming*” means playing a game of chance for a prize.

We do not see any significant difference between the definitions and deem them to be sufficiently equivalent.

(8) Are gambling services offered by the media considered as games of chance at national level? Is there a distinction drawn between promotional games and gambling?

Yes, gambling services offered by the media would be considered games of chance at national level. There is no legal distinction between promotional games and gambling under the Gibraltar Gambling Act 2005, although it is acknowledged that whether or not a promotional game might be considered gambling depends entirely on the activity undertaken and would need to be assessed on a case by case basis.

(9) Are cross-border on-line gambling services offered in licensed premises dedicated to gambling (e.g. casinos, gambling halls or a bookmaker's shop) at national level?

No such activity is offered within licensed premises in Gibraltar, although it is recognised that such activity may occur due to the proliferation of mobile technology.

Establishment and licensing of online gambling services

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

From an advantageous perspective, differing national systems of licensing in respect of online gambling enables national-level regulators to maintain control over their own licensing requirements/policies/enforcement actions etc. and to make allowance for cultural differences with respect to gambling and the attitude of the consumer, but which might not necessarily translate cross-border.

Clearly, the co-existence of differing national systems has the potential to create more difficulties than it does advantages, examples of which could include:

- proliferation of regulations in certain Member States which allow online gambling but which also have the effect of protecting/maintaining a state-backed monopoly, whether or not this may be an intended effect;
- uncertainty in the supply of cross-border services as to questionable national regulations are compliant with EU legal principles; and
- increased overhead for operators in seeking to accommodate the differing national regulations in respective Member States (considering both the licence application process and ongoing regulatory compliance) – for example certain Member states seek to impose establishment requirements and/or physical presence requirements; differing levels of tax are imposed from state to state, which can have the effect of pricing certain operators out of the market by reducing the commercial viability of their offering; duplication of tests, as the same software and products have to be tested separately pursuant to differing regulations due to a lack of mutual recognition between national regulators.

RELATED SERVICES PERFORMED AND/OR USED BY ONLINE GAMBLING SERVICES PROVIDERS

Promotion of online gambling – Commercial Communications

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

The Gibraltar Regulatory Authority has published the Code of Practice for the Gambling Industry, pursuant to which advertisements for licensees' services must not be: 1) indecent, pornographic or offensive; 2) false, deceptive or misleading; 3) intended to appeal specifically to persons under the minimum permitted age; or 4) in breach of copyright laws.

The GRA Code of Practice for the Gambling Industry is freely available under: http://www.gra.gi/sites/gambling/downloads/215/generic_code_v1.0.2009.pdf

Many territories ban the advertisement of gambling-related content which clearly creates potential issues with cross-border promotion of online gambling services – including the bona fide sponsorship of televised international events (sporting events, poker tournaments etc.), as well as direct promotion via more traditional advertising media. In addition, there are inconsistent regulations and requirements as regards online commercial communications from Member State to Member State; specifically as regards public “health warnings” which are required to be displayed on all promotional materials, including online assets such as banners and pop-ups/pop-uppers, which clearly creates difficulties for operators in producing promotional materials which comply with all applicable laws.

Online payment services, payouts and customer identification

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

The Gibraltar Gambling Act 2005 contains several provisions pertaining to payment systems, namely that a licensee is required to maintain banking and payment processing arrangements of a type approved by the licensing authority at the time the licence was granted or last renewed and to keep records of transactions which allow true and fair financial statements and accounts to be prepared annually and for those financial statements and accounts to be audited.

The Gibraltar Gambling Act 2005 is freely available here: <http://www.gibraltarlaws.gov.gi/articles/2005-72o.pdf>.

Although not a gambling operator, we consider the regulations to be sufficient and we do not believe that there should be any significant difference to the general payment systems regulations applicable to other companies in the commercial sector, which do not provide online gambling services – subject, of course, to there being sufficient ancillary regulations in place for online gambling operators that deal with anti-money laundering and fraud measures.

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

Yes, we believe so – utilising player accounts allows operators to be able to better identify their customers, verify their legal age and monitor financial and gambling activity. Further, it assists operators with complying with certain regulatory requirements such as detection of money laundering, prevention of fraud and the provision of player self-exclusion systems.

(14) What are the existing national rules and practices relating to customer verification, their application to on-line gambling services and their consistency with data protection rules? How do you assess them? Are there specific problems associated with customer verification in a cross-border context?

The Gibraltar Regulatory Authority has published the Remote Technical and Operating Standards for the Gibraltar-based licensees, whereby an operator is required to take reasonable steps to validate the information provided by customers upon registration; specifically for age verification, security and responsible gambling purposes. This would include a licensee being expected to perform identity verification checks against third party databases, where available, as well as against internal records and system checks. Further, a licence holder should engage with electronic verification services, where these are available and add value, in order to verify registration details and identify both errors in data entries or deliberate attempts to mislead operators as well as to use and develop the means to search and cross check registration, technical and financial data to identify associations between accounts and attempts to open accounts.

PUBLIC INTEREST OBJECTIVES

Consumer protection

(15) Do you have evidence that the factors listed above are linked to and/or central for the development of problem gambling or excessive use of on-line gambling services? (If possible, please rank them)

It is our opinion that the research in this area is far too incomplete to provide a definitive list of contributing factors which are linked to the development of problem gambling in a specifically online context.

With reference to those factors listed by the Commission in the Green Paper, We would comment as follows:

- we are not aware of any specific research which demonstrates or suggests that increased event frequencies and/or shorter payout intervals in online gambling lead to the development of problem gambling as a result of heightened enjoyment and more exciting play;
- regarding the accessibility and social environment factor, the available data shows that there is no significant difference between online and offline forms of gambling. Although online games are more accessible than the land-based alternatives, the advantage of gambling in the online space is that there is greater possibility for, and obligation on, an online operator to monitor and flag potential problem gambling;
- chasing losses or being close to winning should not, in our opinion, be considered a contributing factor to problem gambling that is distinct to online offerings as it relates also to other forms of gambling – in fact there is an argument that this is a greater factor in an offline environment where self-exclusion mechanisms are not so readily available; and
- we believe that the majority of research available as regards the inclusion of perceived skills and “involvement” as a contributing factor to problem gambling is focused on pure games of chance, such as slot machines and lotteries, where applied skill and player involvement has little to no effect on the outcome of the event. Once again, we believe that gambling in a regulated online environment would minimise the impact of these factors in possible problem gambling scenarios by effectively monitoring and identifying potential problem gambling habits while, simultaneously, providing the participants with the means to address and/or control the same – e.g. self-exclusion, self-imposed deposit limits etc.

Ultimately, those factors listed by the Commission are almost equally applicable to nearly all forms of gambling but, as noted above, regulated online gambling provides greater possibilities for an operator to monitor gambling activity and to introduce controls to prevent and/or address problem gambling. It should also be noted that, specifically in relation to poker, minimum stakes in the online environment tend to be considerably lower than their offline counterparts – we believe this to be the case with other forms of gambling too, such as table casino games (roulette, blackjack, baccarat etc.). As such, there exists greater possibility for a participant to self-regulate his/her exposure while not necessarily limiting his/her entertainment and experience when partaking in services offered by an online operator, through effective “bankroll management” and by electing to play lower limit games.

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

While we do not have any direct evidence as to the efficacy of those measures set out in the Green Paper and are, therefore, unable to rank them per the Commission's request, we would wish to state that, in our opinion and experience, the existing measures/mechanisms employed by regulated EU-based operators are efficient in the prevention and limiting of problem gambling. Specifically, we would comment as follows on those measures mentioned in the Green Paper:

- 1) **Age Limits:** In our experience online gambling operators take their responsibilities and obligations with regard to restricting access to their services to those over the age of 18 very seriously indeed. In practice, all operators require customers' accounts to be verified – this is achieved both through in-house processes/tools and also third party verification services and databases;
- 2) **Self-limitation (financial and time) and self-exclusion:** As far as we are aware, all responsible operators offer the possibility to limit the amount of money that a customer is able to deposit in his/her account during a specific time period. Many, if not all, also offer the possibility for customers to limit the amount of time that they are permitted access to the operator's services in a given period. These measures allow the customer the opportunity to directly control his/her gambling activities. Further, a user is able to temporarily or permanently exclude him/herself from having access to an operator's services if he/she feels that their gambling habits are becoming problematic. It is our opinion that the availability of such measures is vital in the promotion of online gambling as a socially acceptable/responsible form of entertainment;
- 3) **Information/warnings/self tests (more easily applied on-line than off-line):** Problem gambling can much easier be detected online than offline, because the operator benefits from a complete overview of its customers' gambling habits and can proactively and more readily identify potentially problematic gambling. Further, the majority of operators provide information (or links to information) directly to customers via their websites on the subject of problem gambling, as well as providing self tests to encourage gamblers to consider their habits objectively and to assess whether or not their behavior with respect to gambling is potentially problematic. Clearly all of these measures offer a distinct advantage when compared to the equivalents that may exist in the offline environment – i.e. where information may not be so readily available and gambling habits cannot be so easily scrutinised;
- 4) **Banning the use of credit:** All online gambling operators allow the use of credit cards and it is our opinion that this is perhaps the safest method of payment from both a consumer and prevention of crime perspective. It is unclear how banning the use of credit cards for online gambling would help problem gamblers as there are numerous other payment methods available, all of which tend to be fundable by credit card. It is our belief that the credit limits available to problem gamblers should be greater cause for concern than the use of a credit card as a payment method in and of itself;

- 5) **Reality checks:** In our experience, all operators advise their customers to monitor their play in terms of time spent gambling and amounts wagered. A customer's account history is always made available to him/her – in terms of online poker this will provide an overview as to playing history, deposits/withdrawals made, length of play sessions etc.;
- 6) **Diligence obligation for the online operator:** To the best of our knowledge, operators generally take their responsibility to provide awareness training to their staff very seriously and, as an industry, greater social responsibility is seen as key to cementing online gambling as a safe and acceptable pastime;
- 7) **Restricting certain forms of games or bets that are considered to be the most risky:** We do not believe that restricting access to certain forms of game will be an effective counter-measure to problem gambling. In fact, it is likely that such a measure would simply force individuals to avail themselves of the services of unregulated and/or unlicensed non-EU operators – whose attitudes and obligations with respect to problem gambling may be wholly inadequate. Further, we are unaware of any empirical evidence that clearly proves that certain types of gambling are more “risky” than others with respect to problem gambling; and
- 8) **Other (e.g. limits on commercial communication – restrictions on the use of certain media, sales promotions and sign-up bonuses or free practice games):** In our opinion, all commercial communication should be fair and socially responsible and should not try to downplay to customers the risks of gambling addiction. We do not see any merit to restricting sign-up bonuses and promotional offers and are not aware of any causal link having been established between the provision of such offers and problem gambling. Clearly “free to play” versions of games should be powered by and be subject to the same parameters as the software used to provide the “real play” offering, so as not to mislead the consumer into believing that the potential “real play” experience would be materially different to what it actually is in terms of event frequency, payout ratios etc.

Gambling addiction

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

We would recommend that the Commission reads Professor Mark Griffiths' report from April 2009 entitled “*Problem gambling in Europe: an overview*”, which can be downloaded from here:

[http://www.responsiblegambling.org/articles/Prob/20Gamb/20Europe/202009/20\(3\).pdf](http://www.responsiblegambling.org/articles/Prob/20Gamb/20Europe/202009/20(3).pdf)

In his report, Professor Griffiths assesses that the problem gambling rates across Europe are typically around 0.5-2% , although some territories exhibit a rate higher than 3% .

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

We would direct the Commission to the 2009 Harvard University study “*Can Internet Gambling be Effectively Regulated? Managing the Risks*” authored by Professor Malcolm K Sparrow, which can be downloaded from here:

http://www.house.gov/apps/list/hearing/financialsvcs_dem/sparrow.pdf

Professor Sparrow's study concludes that the only reliable predictor of problem gambling is the intensity with which an individual is involved in gambling and that problem gamblers typically use a wide range of gambling products both online and offline.

Further, there are several studies that have been conducted at national level in many EU Member States and which confirm that gambling machines are, in contrast, often more addictive for consumers than any online gambling service. For example, please see:

- PAGE 2010 study regarding pathological gambling (German study):

http://www.sucht.de/tl_files/pdf/veranstaltungen/24/_20Heidelberger/_20Kongress/Beitraege/_2024/_20Kongress/_202011/rumpf_f2.pdf

- University of Bremen 2006 study, "Gambling in Germany" (German study):

http://www.spielsucht-brandenburg.de/fileadmin/redaktion/dokumente/untersuchungen_glinde_BISDRO.pdf

- ARGE Austrian addiction prevention and University of Hamburg, Center of interdisciplinary addiction research, July 2009 – February 2011 (Austrian study):

<http://www.zis-hamburg.de/projekte/projektetails/OEsterreichische-Studie-zur-Praevention-der-Gluecksspielsucht/>

- German Federal Centre for Health Education, Gambling behaviour in Germany, 2007-2009 (German study):

<http://www.bzga.de/forschung/studien-untersuchungen/studien/glueckspiel/?sub=55>

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

Not that we are aware of. In fact, recent studies have concluded that online gambling does not inherently encourage excessive gambling (see the Harvard University study mentioned above for reference).

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

The Gibraltar Gambling Act 2005 (<http://www.gibraltarlaws.gov.gi/articles/2005-72o.pdf>) stipulates certain requirements for gambling operators licensed in Gibraltar:

- A licence holder shall ensure that systems are in place
 - to enable a person to request to be self-excluded from gambling with the licence holder;
 - to designate a named person to be responsible for formulating responsible gambling policies, including, but not limited to, providing training for staff on the implementation of those policies;

- to warn persons that they should not gamble beyond their means to pay and to discourage them from so doing;
 - to cooperate with the Licensing Authority, Gambling Commissioner and other licence holders to establish and refine techniques to identify and discourage problem gambling; and
 - to seek to prevent a person from participating in any remote gambling activity who is under the minimum permitted age.
- A licence holder shall not permit a person to participate in any gambling activity, unless that person has registered with the licence holder in the form specified by the Licence Authority, giving his full name, residential address, age and any other particulars which may from time to time be so specified.

Further details about how these provisions are expected to be implemented and how such measures are intended to work in practice can be found in the *Code of Practice for the Gambling Industry - The Generic Code - v.1.0.2009*:

http://www.gra.gi/sites/gambling/downloads/215/generic_code_v1.0.2009.pdf

As well as in the *Remote Technical and Operating Standards for the Gibraltar Gambling Industry – Gambling Commissioners Guide v. 1.0.2010*:

http://www.gra.gi/sites/gambling/downloads/290/rtos_2009.pdf

Both of which are published and maintained by the Gibraltar Regulatory Authority.

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

In Gibraltar there are several bodies offering support and/or treatment with respect to gambling addiction:

- Gibraltar Gamblers Anonymous (<http://www.gibconnect.com/~gibga/>)
- Bruce's Farm rehabilitation centre (<http://www.brucesfarm.gi/index.html>)
- Gibraltar Citizen Advice Bureau (<http://www.cab.gi/start/>)
- GamCare (<http://www.gamcare.com/>)

We are not aware of the extent to which gambling operators contribute to the funding of these operations.

Given the international scope and reach of online gambling operators, it should be noted that the Gordon Moody Association website "*Gambling Therapy*" (www.gamblingtherapy.org) operates in over 30 languages and is 100% funded by the online gambling industry.

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

Section 5.8 of the *Code of Practice for the Gambling Industry - The Generic Code - v.1.0.2009* contains provisions regarding the monitoring of online players' behaviour in order to warn them about potentially gambling beyond their means. In so doing, licensees should have systems in place to record and take into account information such as communications from the player and advice from

financial institutions. If such a warning is issued, the licence holder should offer its customer the facility to set controlled, daily deposit, time or gambling limits, and the possibility of self-exclusion.

Furthermore, sections 4 and 5 of the *Remote Technical and Operating Standards for the Gibraltar Gambling Industry – Gambling Commissioners Guide v. 1.0* contain certain provisions which further explain the respective provisions of the *Code of Practice for the Gambling Industry - The Generic Code - v.1.0.2009* as to how gambling operators should inform their customers about responsible gambling and how to deal with customers seeking self-exclusion and/or who are returning after a period of self-exclusion:

4.1. Responsible gambling training

(1) Licence holders should appoint a designated individual to hold responsibility for ensuring that the licence holder's responsible gambling policies are relevant, up to date and effectively communicated to all members of the organisation associated with providing gambling facilities. This individual, referred to here as the „Responsible Gambling Manager“, should be adequately and appropriately trained in responsible gambling policies and procedures, to ensure awareness and understanding of problem gambling issues in the organisation.

(2) The responsible gambling manager should have sufficient authority to develop, communicate, implement, and maintain responsible gambling policies and practices throughout the organisation.

(3) All customer-facing staff and agents should be trained to an appropriate level to ensure awareness and understanding of problem gambling issues and how to respond when receiving contact relating to problem gambling.

(4) Training for staff and agents should be refreshed on an annual basis and staff participation/completion of training should be recorded.

(5) Licence holders should review the effectiveness of their responsible gambling policies and processes not less than annually.

(6) Licence holders should notify the Gambling Commissioner of any corporate responsible gambling certification that it receives.

4.2 Responsible Gambling Information

(1) Licence holders should design, develop and implement a well constructed system for communicating responsible gambling principles and protections to customers and potential customers. Responsible gambling information should be a progressive multi-layered information system that may be split and arranged as follows:

(a) Layer 1 – General awareness of responsible gambling information: general information about responsible gambling should be readily available to all visitors of the operator's remote gambling website(s) and to customers via the licence holder's website(s).

(b) Layer 2 – Providing responsible gambling information: where a customer elects to use a gambling management tool, they should be provided with a reminder of the availability of responsible gambling principles and information. If the licence

holder provides an option for receiving this information, the default should be to provide it.

(c) Layer 3 – Providing problem gambling information: Where a customer seeks exclusion of six months or more they should be provided with substantive advice about the operation of the exclusion policy together with information on responsible gambling principles, including the contact details of at least one organisation(s) that advises, assists with and/or treats problem gambling, together. The customer should not be able to opt out of receiving this information.

(d) Layer 4 – Providing controlled return advice: where an excluded customer wishes to re-open/register an account, or in another form requests to return to gambling with the operator, the customer should be sent a specific information package catering for excluded customers. The information package should include the following:

- (i) information and advice on problem gambling;*
- (ii) advice on returning to gambling under an agreed arrangement using gambling management tools;*
- (iii) encourage only responsible and controlled gambling and discourage excessive gambling;*
- (iv) discourage the player from returning to gambling if he/she is unsure about his/her return.*
- (v) Contact details of an organisation dedicated to treating and/or assisting problem gamblers, before returning to gambling.*
- (vi) The customer should not be able to opt out of receiving this information. The licence holder should only allow an excluded customer to return under a written agreement which includes the option to use gambling management tools.*

4.3. Awareness of responsible gambling

(1) Notwithstanding the varied structure of licence holders' online products, a licence holder's website(s) and landing pages should have a responsible gambling webpage link and/or a link to a responsible gambling website operated and maintained by or on behalf of the licence holder that:

- (a) Provides a statement of the licence holder's commitment to responsible gambling.*
- (b) Provides details of the licence holder's responsible gambling policy.*
- (c) Advises on the consequences of problem/irresponsible gambling, and discourages persons to gamble beyond their means to pay.*
- (d) Advises on responsible gambling practices and encourages customers to gamble responsibly.*
- (e) Advises on and provides a credible problem gambling self assessment tool or process.*
- (f) Provides a link to, and contact details (e.g. email and helpline number) of, at least one organisation dedicated to treating and/or assisting problem gamblers, should anyone be concerned about their own or someone else's gambling.*
- (g) Informs customers about and provides access to the licence holder's gambling management and/or player protection facilities, such as:*

- (i) deposit limit and other financial management facilities*
- (ii) time management facilities*
- (iii) break periods*
- (iv) exclusion facilities*

(2) Responsible gambling information should be accessible via “one click” from the home page, “about us” page, the customer registration pages and any page from where gambling may be accessed.

(3) Any “Responsible Gambling” (or similarly named) hot link or tag/tab or other indication of responsible gambling advice, should give direct access to that advice.

(4) The home page, “about us” page and the customer registration page(s) of the licence holder’s website(s) should display a statement in a clearly visible form that encourages and/or reminds the customer to gamble responsibly.

(5) Unless deemed inappropriate, direct written communication (e.g. post/mail, email, etc...) with the customer should carry a statement that encourages and/or reminds the customer to gamble responsibly.

(6) The gambling account management interface, particularly the deposit and withdrawal sections, should contain a direct hyperlink to the following:

- (a) deposit limit and other gambling management facilities;*
- (b) a conspicuous direct link to licence holders responsible gambling webpage/website.*

(7) All links to the licence holder’s responsible gambling webpage/site and links to responsible gambling organisations dedicated to assisting problem gamblers should be regularly tested by the licence holder. Where the service is no longer available or is not available for a significant period of time, the licence holder is to identify an alternative support service.

(8) A licence holder should not display advertising or promotional material on their responsible gambling website and/or webpages.

(9) Messages of a licence holder’s support for the provision of problem gambling treatment, research or education initiatives must be accurate and up to date.

10) Responsible gambling information including warnings on underage gambling should also be accessible from the „free play“ website presentations as per the real money version.

4.4 Use of local languages

(1) Responsible gambling facilities and customer information should be offered in the language(s) the licence holder provides its remote gambling website(s) and services.

5.1. Financial and time management limits

(1) Irrespective of where the customer is located, he or she should be provided with the opportunity and tools to help them monitor, manage and control their gambling behaviour. A

licence holder's documented procedures for its Gambling Management facilities should be readily accessible and clearly communicated on the licence holder's website(s).

(...)

(2) The documented Gambling Management procedure(s) should clearly state the conditions for setting a gambling management facility; It should be made clear that for a gambling management facility to be implemented the customer is required to follow the clearly documented gambling management implementation procedure(s).

(3) Customers should be given the opportunity to set a gambling management facility (deposit or time) as part of the registration process (or at the point at which the customer makes the first deposit).

(4) A licence holder's procedure to implement a gambling management facility via its website(s) should be user friendly and unambiguous.

(5) The gambling management facilities should include at least one of the following gambling management options:

- a) Deposit limit per time period – an overall maximum deposit limit over a specified period of time (e.g. daily, weekly, etc...)*
- b) Time played reminder – a means for the customer to be reminded of the length of time he has been logged on to the gambling facilities.*

(6) A clock displaying the current time, local to the customer, should be clearly visible at all times. (This may be the PC clock, for example, found within the taskbar.) If for any reason that is obscured by the game client then the operator should add an onscreen clock as part of the service.

(7) Breaks in play - The customer should have the facility to self suspend his gambling for a predetermined period.

(8) The licence holder may set their own gambling management facility limits for customers, in which case:

- a) Customers should be informed of any such limits.*
- b) The lower of the two limits (self imposed / imposed by licence holder) should always apply.*

(9) Where a customer requests a limit to be reduced (reduced gambling), it should be implemented as soon as reasonably practicable. The request process should make the customer aware that any requested reduction in a limit will not be implemented until notification in writing has been issued.

(10) Customers should be able to impose the limit of their choice (not only from a preset limit values/options list). There should be no default limit option/value.

(11) Customers should be able to set a limit on a primary gambling product/category e.g. sports book, casino, poker, bingo etc. (by way of establishing separate but associated accounts if necessary/available) as well as a limit on any gambling account as a whole. Where this facility is made available, confirmation of the product limit should be provided to the customer in writing and should specify the limit and product/category it applies to.

(12) Once established by a customer, a request to increase a limit (increased gambling) should, generally, only be implemented after a 24 hour cooling-off period and confirmed by written communication. There may be circumstances however where a request to increase a limit(s) may be implemented before 24 hours. In these cases:

a) A trained manager should consider the request and allow the limit to be increased if he/she considers it appropriate. A trained manager is considered to be someone of appropriate seniority and appointed by the licence holder to make judgements and take responsibility for such decisions.

b) A record of the request including details of the request, the manager(s) involved, the decision, and the reasons for the decision should be kept. Typically, such cases will involve established and unproblematic customers with an evident reason for increasing their limit.

(13) Where a gambling management facility fails and/or a registered customer is able to gamble beyond an agreed limit established with the licence holder, the licence holder should notify the Commissioner of the occurrence providing a description of the event and the cause of the failure and/or circumvention of the system.

5.2. Access control facilities (Cooling off, time out, and self exclusion)

(1) Licence holders should have in place systems that enable a customer to request to be prevented from accessing a licence holder's gambling facilities. A range of access control options may be provided. Licence holders may enable the customer to request access control facilities for a specified period of up to six months (cooling off/time out), or for a period of six months or more (self exclusion), with corresponding, different, arrangements for managing the customer during the control period and any decision to recommence gambling.

(2) Requests for access control should be recorded in writing and administered as quickly as possible. There should be no undue delay in implementing such requests. A licence holder's description of its access control procedures should be readily accessible and clearly communicated on or from the licence holder's Responsible Gambling pages), and make clear that it is an agreed, structured and documented process, even for telephone accounts.

(3) The documented process for the access control facilities should clearly state the different conditions for each facility (e.g. i) less, ii) more: than 6 months). It should make clear that for any such facility to be implemented the customer must follow the clearly documented procedure, and that the licence holder will do likewise.

(4) The Commissioner encourages licence holders to adopt processes that minimise any ambiguity about whether a customer has sought access control, when it starts and finishes, and the required actions of the customer during the control period. (e.g. all elements should be set out in writing.)

(5) Licence holders should consider permitting access controls in respect of specific products e.g. sports book, casino, poker, bingo etc., by the use of restricted discrete accounts where this is possible/available.

(6) Where a customer requests access control the licence holder should ensure that:

(a) As soon as reasonably practicable following receipt of such a request through a recognised process, no new bets or deposits are accepted from that customer, until such time as the control has expired or been removed.

(b) During the control period, the customer is not prevented from withdrawing any or all of their cleared account balance.

(c) In the case of an indefinite self exclusion, the licence holder should ensure that the customer's account balance is remitted to the customer.

(d) In the event of six months or more exclusion, where the customer wishes to resume gambling after the conclusion of the control period, the excluded customer should confirm to the licence holder via a documented process that they wish to return from an exclusion before their account or the facility is reinstated.

(7) Licence holders may decide to exclude a customer for responsible gambling reasons („operator imposed exclusion“), in which case a record should be kept of the assessment and decision made and any account balance remitted to the customer.

(8) Licence holders should take all reasonable steps to prevent their own marketing material being sent to customers who are subject to substantive access control. Where the licence holder has provided customer personal data to third parties, similar steps should be taken to ensure that those third parties make arrangements to ensure that marketing material is controlled. It is recognised that up to or over 28 days may be needed to cancel future marketing plans.

Protection of minors and other vulnerable groups

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

Without stating what the sought objective actually is, it can be assumed that the government of Gibraltar wishes to protect minors (meaning persons under the age of 18 years) from any negative effects that might result from the minor's participation in those services.

From our experience, there is no indication/suggestion that using the age of majority as the minimum age for participating in online gambling is any less adequate than other activities that, by law, require an individual to be of a certain age to participate – e.g. driving (17 in Gibraltar), consuming alcohol (16 in Gibraltar) etc. As such, we believe that the current age limits are both adequate and appropriate.

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

Pursuant to section 28 of the Gibraltar Gambling Act 2005, a licence holder shall not permit a person to participate in any gambling activity unless that person has registered with the licence holder in the form specified by the Licensing Authority, giving his full name, residential address, age and any other particulars which may from time to time be so specified.

In accordance with section 8 of the *Code of Practice for the Gambling Industry - The Generic Code - v.1.0.2009*, licensed operators should self test the effectiveness of their age verification systems.

Further, section 2 of the *Remote Technical and Operating Standards for the Gibraltar Gambling Industry – Gambling Commissioners Guide v. 1.0.2010*, provides further guidance as to

how how the registration details of the players are expected to be verified. This includes, but is not limited to, verification checks such as age, identity, security checks against third party databases, as well as against internal records and system checks. Also, a licensed operator shall advise the players during the registration process that identity documents may be required to verify the individual's age and identity and to release any winnings to him/her.

Although not an operator, we support and have adopted this best practice approach on the PokerStrategy.com website, which utilises various measures in order to prevent underage persons from registering and making use of the PokerStrategy.com services.

We find the comparison with offline "face-to-face" verification procedures a difficult one to make as, while it might be easy for land-based gambling establishments to control the respective age of their customers by restricting access at the point of entry to the establishment, offline gambling establishments are not generally required to open accounts for their customers in the same way as online gambling operators are.

For that reason, it is our opinion that it is not really possible to compare online and offline gambling with regard to the effectiveness of identification measures. We would, however, think it fair to say that online identity verification is more stringent in its approach as every customer is required to create an account and to verify his/her identity in order to avail themselves of an operator's services.

Minors and marketing of online games

(25) How are commercial communications for gambling services regulated to protect minors at national or EU level? (E.g. limits on promotional games that are designed as on-line casino games, sports sponsorship, merchandising (e.g. replica jerseys, computer games etc) and use of social on-line networks or video-sharing for marketing purposes.

Apart from the measures already mentioned in our answers to questions 20 and 23 above, section 32 of the Gibraltar Gambling Act 2005 and section 17 of the *Code of Practice for the Gambling Industry - The Generic Code - v.1.0.2009*, contain provisions related to the advertisement of online gambling services, and state that advertisements must not be:

- indecent, pornographic or offensive;
- false, deceptive or misleading;
- intended to appeal specifically to persons under the minimum permitted age ; or
- in breach of copyright laws.

Also, section 6 of the *Remote Technical and Operating Standards for the Gibraltar Gambling Industry – Gambling Commissioners Guide v. 1.0.2010*, reaffirms that the marketing campaigns of licensed operators should not be directed or specifically attractive to persons below the minimum age to gamble. Furthermore, the presentation and content of the websites of licensed online gambling operators should not be designed in such a way as to appeal to underage players.

With regard to *TV advertisements*, the Gibraltar Broadcasting Corporation Act 1963 (<http://www.gibraltarlaws.gov.gi/articles/1963-150.pdf>) legislates generally with regard to the protection of minors. Specifically, section 10E (6) states that "*Television advertising shall not cause moral or physical detriment to minors, and shall therefore comply with the following criteria for their protection, that is to say it shall not...directly exhort minors to buy a product or a service by exploiting their inexperience or credulity*".

Further, section 10F of the Act contains further provisions regarding broadcasts generally to minors, namely that “*Television broadcasts by the Corporation or by a programme contractor shall not include any programme which might, other than by virtue of the matters referred to in subsection (1), seriously impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts*”.

With regard to the regulation of commercial communications for gambling services at EU level in order to protect minors, we are not specifically aware of any at this time.

Other vulnerable types of players

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

The statutory provisions dealing with these issues can be found in sections 27 and 28 of the Gibraltar Gambling Act 2005 and in section 5 of the *Code of Practice for the Gambling Industry - The Generic Code - v.1.0.2009* as well as in sections 4 to 6 of the *Remote Technical and Operating Standards for the Gibraltar Gambling Industry – Gambling Commissioners Guide v. 1.0.2010*.

The measures that are currently in place in Gibraltar with regard to the protection of vulnerable consumers are quite extensive and detailed. We do not believe that there is any indication and/or evidence that the existing provisions and measures with regard to commercial communications are failing to meet the objectives sought.

Prevention of fraud

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

We would recommend that the Commission review the following studies:

- *Malcolm K. Sparrow, John F. Kennedy School of Gover, Harvard University, 2009 - Can Internet Gambling Be Effectively Regulated? Managing the Risks*

http://www.house.gov/apps/list/hearing/financialsvcs_dem/sparrow.pdf

This study asserts that regulation, and not prohibition, would best mitigate the risks posed by online gambling.

- *Online Gambling: Focusing on Integrity and a Code of Conduct for Gambling, (2008)*, a study requested by the European Parliament's committee on Internal Market and Consumer Protection:

<http://www.europarl.europa.eu/activities/committees/studies/download.do?file=23191>)

This report concluded that there is little evidence available to suggest that EU consumers of online gambling are defrauded by EU-licensed operators. Moreover, according to the report, various operator associations emphasised that typically fraud is perpetrated by consumers against operators and other consumers.

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

According to section 13 of the *Code of Practice for the Gambling Industry - The Generic Code - v.1.0.2009*, licensed operators should self test the effectiveness of their age verification systems as well as ensuring that the operator's software has been tested and certified by an approved independent testing house or appropriate in-house testing facilities:

13. Safeguarding and integrity of equipment (Section 25/26)

13.1 Licence holders are required to use equipment, software and services that are compliant with the Commissioner's Technical Standards document and take responsibility for any failures in these arrangements.

13.2 The Commissioner requires from licence holders' an agreed high level plan (schematic) of the technical infrastructure of its gambling operations. Any changes to this plan should be notified to the Commissioner in writing before the changes take place, or where this is not possible, as soon as practicable after.

13.3 All such computer equipment (software and hardware and associated systems) is required to meet the Commissioner's Technical Standards document in respect of system security and product reliability, including proof of software testing by an approved independent testing house or appropriate in house testing facilities.

13.4 The Commissioner requires certification of such testing to be made available in respect of all gambling related software and equipment not more than one year from the date that the licence holder is granted its licence, but before the relevant equipment or software is used commercially. Further certification may be required where there are concerns about quality failures. Such a requirement would be imposed in conjunction with the Licensing Authority.

13.5 Testing of software certified as having been satisfactorily tested in another jurisdiction will be considered on a case by case basis. Where a licence holder acquires control over a range of software products the testing arrangements shown to have been applied by the previous controller will be taken into account.

13.6 There are presently four Independent Testing Facilities approved by the Licensing Authority. These are listed on the GRA website. 13.7 The Commissioner may require licence holders to provide information in respect of any software supplied to it or software supplier it uses (S.26). If the Commissioner is not satisfied with the information provided he may prohibit the use of such software by the licence holder by way of a notice in writing.

Also, sections 7 and 10 of the *Remote Technical and Operating Standards for the Gibraltar Gambling Industry – Gambling Commissioners Guide v. 1.0.2010*, further explain the respective provisions of the *Code of Practice for the Gambling Industry - The Generic Code - v.1.0.2009* as regards the control of gambling equipment and random number generators:

7.1. Game fairness

(1) Licence holders should ensure appropriate systems and resources are deployed to prevent or detect attempts to cheat by customers or other parties. Such measures should be applied on a risk sensitive basis, with analytic programs (e.g. algorithms, exception reports, cluster analysis) deployed to identify long term or systemic cheating as well as short/medium term sporadic efforts.

7.10. Poker/P2P Games

(1) In respect of P2P games, in particular poker, licence holders should implement collusion pattern analysis to identify any biases or patterns that indicate collusion. As a minimum the analysis should:

(a) Aim to identify those individual players earning unusually high RTP.

(b) Be able to identify players who routinely make decisions contrary to the mathematically-optimal course of action, and yet persist to have RTPs greater than the average.

(c) Review player table placement and aim to identify players who tend to collude or operate in consistent team groupings.

(2) Licence holders should have the facility to monitor and evaluate the playing style of substantial or regular winners and losers and be satisfied that these outcomes are consistent with fair and predictable playing patterns and do not arise through extraneous or irregular events or actions.

(...)

10.1. General

(1) The Generic code requires licence holders to meet the Commissioner's Technical Standard's document, including proof of testing. This standard sets out the Commissioner's testing requirements for the Commissioner's RTOS including third party testing, and provides advice on the Commissioner's approach to assess compliance with the RTOS.

(2) The Commissioner will have regard to a licensee's compliance record when determining if the current level of testing and assurance arrangements are adequate.

(3) To determine what, and the level of, testing that is required for each standard and corresponding guidelines the Commissioner will consider:

Visibility: Whether compliance may be easily assessed by observation.

Expertise: Whether particular expert skills are required to properly assess compliance.

Precedent: Whether there is precedent for error or reliability.

Potential customer impact: Whether non compliance has an unfair or significant impact (e.g. fairness or financial) on the customer, whether it's easily rectifiable, or whether it may be inconsequential.

Priority: Whether the regulation is considered a priority in online gambling regulation.

(4) The Commissioner may require and impose further testing and/or certification where there are concerns about quality or compliance failures.

10.2. **RNG and game randomness**

(1) Licence holders should be able to demonstrate the fairness and randomness of all games to the Gambling Commissioner without any undue delay.

(2) The output obtained through the use of the RNG in games shall be proven to:

(a) Be statistically independent.

(b) Be uniformly distributed over their range.

(c) Pass various recognised statistical tests intended to demonstrate a) and b) above and the absence of patterns.

(d) Be unpredictable without knowledge of the algorithm, its implementation, and the current seed value (all of which should be secure).

(3) The random number generation must not reproduce the same output stream (cycle).

(4) No two instances of a random number generator should produce the same stream as each other (synchronise).

(5) Seeding should be generated in such a way that the RNG or its product cannot be „reverse engineered“ or any other process applied that facilitates any level of predictability.

(6) Where software algorithms are used to generate random numbers the method of reseeding should be through a methodology that ensures the software operates in a random way. For example, reseeding should take place before the RNG output pattern repeats.

(7) The RNG period (the total number of outcomes produced by an RNG, before the cycle starts to repeat itself) should be of a scale that provides adequate security and prevents predictability during its use.

(8) The RNG range (the difference between the minimum and maximum values that the RNG may produce) should be sufficient to support the games that utilise its output.

(9) Scaling of the raw RNG product must be designed and deployed to ensure that bias, pattern or predictability are not introduced and randomness is not compromised.

(10) Mapping of the raw/scaled RNG output into game outcomes (“mapping”) must create the expected distribution of outcome probabilities for the game.

(11) Game outcomes must not be influenced, affected or controlled by anything other than RNG outputs used in accordance with the rules of the game. Note: this does not prohibit metamorphic games or jackpots determined by means other than individual game outcomes from being considered on a case-by-case basis.

(12) RNG outputs should be used to generate game outcomes in the order in which they are received, in accordance with the rules of the game. Valid RNG outcomes should not be manually or automatically discarded.

10.3. **Mechanical RNGs**

(1) For games that use the laws of physics to generate game outcomes (“mechanical RNGs”) the mechanical RNG should also meet the following guidelines:

- (a) Components should be constructed of materials that will not degrade before their scheduled replacement lifecycle.
- (b) The properties of the items used should not be altered.
- (c) Customers should not have the ability to interact with, come into physical contact with, or manipulate the mechanics of the game.

10.4. **RNG Failure**

(1) Systems should be in place to quickly identify any failure of the RNG (for example, if a short sequence is repeated, or if the output is a constant flow of the same value).

(2) In the event of an RNG failure, games that rely upon that RNG should be made unavailable for gambling until the failure is rectified or the RNG replaced.

(...)

10.6. **Third party testing and ongoing verification and certification of games**

(1) The game and Random Number Generator should be evaluated and certified prior to it being used in the live environment, in accordance with these standards; thereafter (subject to changes in the software) periodic output audits should be performed to verify and certify the ongoing integrity of the game(s).

(2) Ongoing integrity - output audits:

- (a) (For casino games only) Once the RNG and game evaluation is done at the outset, an ATF should perform RTP audits, which certifies the actual RTP of the game and compares it against the game’s theoretical RTP, of the licence holder’s games, on a quarterly basis.
- (b) (For poker or other P2P games) RTP audits are not valid for the ongoing verification and certification of Poker (and other P2P games). An RNG output audit should be undertaken on a bi-annual basis (as a minimum) to verify and certify the ongoing integrity of Poker and other P2P games; an RNG output audit should compare actual cards and player hands against the card and player hand’s theoretical probabilities. E.g. actual and theoretical probabilities comparison for Poker hands, Actual and theoretical probabilities comparison for Ranks, Actual and theoretical probabilities comparison for Suite.

(3) Any changes to software relating to a game or RNG previously certified, needs to be evaluated before it is reintroduced to the live environment.

10.7 **In-house testing facilities**

(1) Many operators have in house testing facilities of equivalent sophistication and reliability as independent ATF’s. Such facilities should be able to demonstrate to the Commissioner that they apply expected relevant industry standards to their arrangements and procedures.

(2) *The Commissioner will take into account the ongoing record of any in house testing facility in determining its continued suitability and extent of operations.*

(3) *Operators may rely on the in house testing facilities of approved third party software suppliers. Such suppliers should make available to the operator a copy of the test certification for supply to the Commissioner on request and for the purpose of game information references.*

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

We are not aware of any instances of fraud being perpetrated by EU-licensed operators against their customers. As such the more significant risks relate to individuals seeking to defraud an operator and peer to peer fraud. Accordingly, we would suggest the following practices to minimise/prevent online gambling fraud:

- Licensed and harmonised online gambling in the EU – as is currently the case, statutory licensing requirements, both of companies and individuals, and robust internal security and audit procedures have effectively eliminated operator fraud;
- Servers should be based in the EU or in an EEA state;
- Players are obliged to submit copies of ID and other verification documents in order to prevent fraud. For greater security and to minimise the possibility of ID fraud, the ID verification function could be carried out by a centralised regulatory body in the licensing state, rather than by operators themselves;
- Operators should share information about known fraudsters and potential fraudsters amongst each other and with relevant third parties such as service and payment providers and law enforcement agencies; and
- Operators should employ and develop software monitoring of both the user registration process and game play to more efficiently identify anomalous behaviour and maximise the chances that potential fraudsters can be identified prior to any fraud being committed.

(30) As regards sports betting and outcome fixing - what national regulations are imposed on on-line gambling operators and persons involved in sport events/games to address these issues, in particular to prevent 'conflicts of interest'? Are you aware of any available data or studies relating to the magnitude of this problem?

With regard to the laws of Gibraltar, we are not aware of any such law/regulation at this time. The same applies to studies about the topic.

With regard to studies on an EU level about the issue, we are not aware of any previous studies except the study carried out by David Forrest, Ian McHale and Kevin McAuley from 2008 titled “*Risks to the Integrity of Sport from Betting Corruption*” (Centre for the Study of Gambling, University of Salford (2008):

http://www.epma-conference.net/Download/22012009/SalfordREPORT_Feb08.pdf)

However, we are aware that the Commission is currently preparing a study called “Study on a possible future sport monitoring function in the EU”:

<http://ted.europa.eu/udl?uri=TED:NOTICE:154870-2011:TEXT:DE:HTML&tabId=1>

According to the official press release, this study shall “look into the feasibility of establishing a sport monitoring function in the EU to analyse trends, collect data, interpret statistics, facilitate research, launch surveys and studies and promote exchange of information. The study should map existing processes and relevant networks active in these fields at national, transnational and European levels and identify gaps that could be addressed by a possible sport monitoring function as a means to improve the knowledge base for sport in the EU. The study should assess ways to carry out sport monitoring within the EU in relation to 3 broad fields: sport and health (e.g. health-enhancing physical activity), societal aspects of sport (e.g. participation in sport) and sport's economic dimension (e.g. employment in sport). It should develop concrete ideas for the establishment of such a sport monitoring function to support policy making in the EU, including its possible scope and activities, as well as working methods linked to the EU policy and institutional framework.”

Furthermore, the European Elite Athletes Association, the European Gaming and Betting Association, the Remote Gambling Association and the European Sports Security Association have released a “*Code of Conduct on Sports Betting for Players*”:

http://www.egba.eu/pdf/Athletes_COC_A5_EN_v08.pdf

This document focuses on athletes and provides general advice to them on the issues surrounding the integrity of sport and betting.

(31) In your view what issues should be addressed as a priority?

We do not have an opinion on this, sports betting being outside the sphere of our expertise.

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

Although sports betting is outside our sphere of expertise, we would assume that, with regard to operators licensed in reputable and regulated jurisdictions, there is little to no risk of an operator seeking to influence the outcome of a sporting event, as the maintenance of reputation, integrity and brand trust is paramount.

Prevention of money laundering

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

We believe that the risks of money laundering in the online gambling sector are minimal and, certainly, we are not aware of any online gambling operator licensed in a reputable jurisdiction having been the target of money laundering activities. On the contrary, certain studies have concluded that online gambling is largely unattractive to money launderers due to the stringent regulations and the fact that any individual wishing to hold an account with an online gambling operator must have completed the necessary identity verification checks etc. Also, details of all financial transactions between the persons participating in gambling and operators are monitored, stored and accessible for further review (Source: *MHA Financial Crime Support, The threat of money laundering and terrorist financing through the online gambling industry (2009)*).

We would direct the Commission to Michael Levi's study, *Money laundering risks and e-gaming: A European overview and assessment (2009)*:

http://www.egba.eu/pdf/Levi_Final_Money_Laundering_Risks_egaming/20280909.pdf)

which states that “*generalised and understandable expressions of concerns by Europol and by the Financial Action Task Force about money laundering risks posed by the Internet have not been accompanied by evidence of significant laundering via e-gaming.*”

Further, it is worth considering that “cash out” requests made of an online operator must generally be processed via credit card, licensed payment processors or bank transfer etc. and that the financial institutions that provide such services are subject to their own stringent regulations when it comes to the prevention of money laundering. As such, there is an extra layer of scrutiny applied to online gambling-related transactions that would not always exist in the equivalent offline environment – i.e. where such requests may actually be fulfilled by using physical cash.

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

The vast majority of payment methods are not uniquely specific to online gambling and are regulated by the relevant financial services authority. Accordingly, we believe that together with normal gambling regulations that apply to licensed online operators (account opening and customer verification procedures) and related regulations, all current payment methods are already effectively regulated both specifically and generically.

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

The Gibraltar Regulatory Authority publishes and maintains an Anti Money Laundering Code of Practice for all GRA regulated licensees which sets out the best practice guidelines for the detection and prevention of money laundering, as well AML internal process generally. A copy of this Code of Practice can be freely downloaded from:

http://www.gra.gi/sites/gambling/downloads/215/aml_code_v102010.pdf.

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

As “social web-sites” is not defined within the consultation paper, it is assumed that the Commission is referring to “social network” style websites that do not promote, as their primary function, gambling and/or gambling-related activities. Evidentially speaking, we are not aware of any examples of increased money laundering activity in relation to such operations, although we do believe that, theoretically, the risk is clearly higher for the following reasons:

Risk 1 – Due to the social aspects and the multi-jurisdictional/cross-generational characteristics of such websites, many specifically prohibit any form of gambling activity to be conducted via their site within their terms and conditions of use – although, in practice, it is questionable how well this is policed/enforced, if at all;

Risk 2 – Many of the platforms upon which such social websites are developed allow for the uploading and distribution of user-generated programs or “apps”, which are then freely

available to the community at large. It is questionable how much scrutiny and testing, if any, is performed on such software; and

Risk 3 – Social websites are not subject to any form of regulation and, as such, are not required to comply with AML procedures.

It should be noted, however, that these risks are somewhat mitigated by the fact that the majority of the popular social networks, at this time, do not have any way of facilitating payment processing and/or peer to peer transactions, other than with respect to “virtual currency” which, while often possible to monetise by private sale (outside the confines of the website), would not be considered particularly helpful in a money laundering operation.

Prevention of other crimes

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

The Gibraltar Regulatory Authority publishes and maintains a *Generic Code of Practice* for all licensees, which sets out the extent to which licence holders are expected to be transparent with regard to their offering – for example licensees are required by the code to:

- publicise all game rules in a visible and accessible manner;
- create appropriate operating procedures and internal controls and to record the same in a documented form that is accessible to the Gambling Commissioner;
- keep transactional record and provide quarterly statistical/financial returns to the Commissioner;
- prepare annual audited accounts, copies of which are to be supplied to the Commissioner;
- follow a strict complaints procedure;
- safeguard the integrity of all equipment and for all software to be certified in respect of security, product reliability and game fairness;
- publish certain information on their websites – name and address of licence holder, the fact that the licensee is licensed by the GRA and regulated by the Commissioner, minimum age requirements etc.

This document is freely available for download to the public from here:

http://www.gra.gi/sites/gambling/downloads/215/generic_code_v1.0.2009.pdf

Gibraltar, as an overseas territory of the United Kingdom, is a Member State of the European Union and, as such, all licensees are, prima facie, permitted to provide their services cross-border to other member states, pursuant to the TFEU. The transparency requirements apply equally to the intra and extra-territorial offering of services, as it is the *regulated activities* of the licence holder that are subject to the same, wherever those activities may be undertaken (this is not confined to the EU). To the best of our knowledge, not being a licensee, all rules and regulations are enforced extremely effectively by the GRA, which has allowed Gibraltar to both gain a reputation as one of the most stringent online gambling regulators and to become home to some of the world’s largest and most reputable operators.

FINANCING OF BENEVOLENT AND PUBLIC INTEREST ACTIVITIES AS WELL AS EVENTS ON WHICH ONLINE SPORTS BETTING RELIES

Systems of revenue channeling

(38) Are there other gambling revenue channeling schemes for the public interest activities at national or EU level?

Not that we are specifically aware of at this time. However, we would wish to state that we are unsure as to why the online gambling industry should be obliged to provide additional financial resources for such schemes over and above normal business and gambling taxes.

(39) Is there a specific mechanism, such as a fund, for redistributing revenue from public and commercial on-line gambling services to the benefit of society?

The Gibraltar government directly administers a national lottery, the revenues from which are directly applied for the benefit of society. It is not known what mechanisms are employed, if any, for the specific redistribution of any taxes generated by or from Gibraltar's licensed gambling operators.

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

Not known.

Possible existence of a principle of return to event organisers

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

Not known.

(42) Do all sports disciplines benefit from on-line gambling exploitation rights in a similar manner to horse-racing and, if so, are those rights exploited?

Not known.

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

Not known.

The risk of "free-riding" through the provision of online gambling services

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

Not that is known to us.

(45) Are there transparency obligations that allow for gamblers to be made aware of whether and how much gambling service providers are channelling revenues back into public interest activities?

We do not believe that such obligations exist in Gibraltar and we are not specifically aware of similar provisions in other Member States.

ENFORCEMENT AND RELATED MATTERS

Gambling authorities in the Member States

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

Until very recently, Gibraltar's regulatory body was the Gibraltar Regulatory Authority, although all staff and GRA publications have been incorporated into the Gambling Division of the Ministry of Finance. The MoF takes its powers from the Gibraltar Gambling Act 2005 and is appointed, by the government, as Gibraltar's Gambling Commissioner. The objectives of the Commissioner are to ensure that licence holders conduct their business undertakings in accordance with the terms of their licences; that they conduct their business in accordance with the provisions of the Act; and that they conduct their business in a manner that maintains Gibraltar's good reputation as a first tier jurisdiction.

Further information regarding its competences and the application of its powers can be found on the publically available MoF and GRA websites www.gibraltar.gov.gi/internet-gaming and www.gra.gi.

(47) Is there a national register of licensed operators of gambling services? If so, is it publicly accessible? Who is responsible for keeping it up to date?

Yes. The Ministry of Finance maintains a register of issued remote gambling licences which is publicly accessible via its website:

<http://www.gibraltar.gov.gi/internet-gaming>

Administrative cooperation

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

We believe that the Ministry of Finance and, formerly, the GRA routinely cooperates with other extra-territorial regulatory bodies in particular with reference to issues of fairness, security, fraud, data protection and money laundering.

Enhanced cooperation with other stakeholders

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

Not at this time.

Payment blocking and liability regimes for ISPs

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

No DNS filtering, IP blocking or payment blocking is applied within Gibraltar, nor are we aware of any cross-border initiatives/cooperation in respect of the same. We believe that such technical means have limited effectiveness in the modern digital society as many Internet-users are technically competent and are able to circumvent such measures via virtual private networks (VPNs), IP spoofing, use of proxy servers etc. Further, information is widely shared amongst online communities and, as such, known circumventions and workarounds are rapidly shared between Internet users and online gamers.

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

We do not necessarily believe that the employment of technical means to restrict access to online gambling services is merited or effective, in terms of seeking to achieve the purposes for which access to such services is ultimately being prohibited. Requiring third parties to implement such measures shifts the onus of enforcing and policing prohibited activities to commercial ventures, rather than regulatory authorities, which often places a disproportionate burden on the resources of ISPs, payment providers etc. Such measures also often encourage a greater degree of subversive behaviour from those individuals who wish to partake in online gambling, with respect to the levels of circumvention that they can and do employ, than would otherwise be the case.

The application of non-discriminatory technical methods may also inadvertently affect and restrict legitimate cross-border trade within the EU, especially with regard to those service providers that are ancillary to the gambling industry and often have other non-prohibited business interests, such as payment processors, hosting providers etc.



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