

**ONCE RESPONSES TO THE QUESTIONS IN THE
EU GREEN PAPER ON GAMBLING IN THE INTERNAL MARKET**

1.2. On-line gaming in the EU: current situation.

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

According to our reading of the EU gaming market, we do not consider on-line gaming to be a separate market; it is, rather, one more outlet for the products which form part of the EU gaming market. This principle was set down some years ago in the gaming market and recognised by, among other bodies, the World Trade Organization in its report on the case of Antigua and Barbuda against the United States.

As regards the volume of the EU gaming market which takes place on-line, the *European State Lotteries and Toto Association* publishes an annual report on European lotteries' activities in the European Union. This includes information on on-line activities by authorised lottery operators in all EU-member countries. according to this report, gross gaming revenue (income minus prize money) for on-line gaming in 2009 was 1 378.4 million Euros out of a total gross gaming revenue for all sales channels of 34 707 million Euros.

Several consultancy companies which are relatively new to the market, such as MECN, GBGC and H2, publish reports on the overall gaming market in Europe which include data regarding on-line sales (GBGC's Interactive Report, February 2011), forecasts for the future and their own estimations. Nevertheless, we do have doubts about the trustworthiness of such reports as the data are not cross-checked by any public body and remain unaudited. In many cases the data being used are not homogeneous and no distinction is made between licensed and unlicensed operators. Consequently the results are practically impossible to verify due to the lack of transparency shown by operators working without the required national licenses in some European countries. In this respect, it is vital to demand that all operators show the same level of transparency in each of the European countries where they are present as licensed operators.

In our view, it is also necessary for the study on the key features in the on-line gaming market to form part of EUROSTAT's planned activities and, therefore, of the EU Member States' activities.

(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)

In principle it is important to point out that for us, as an operator in strict compliance with Spanish gaming legislation which is adhering to current Spanish law, it is only possible to talk about legal and illegal gaming in terms of whether or not an operator that offers its services in the Spanish market possesses a license issued by the Spanish state to operate in this market. This principle was set out in the work carried out by the Spanish Presidency in 2010.

Given the current lack of transparency, the illegal gaming market is difficult to quantify. In Spain, the Spanish Association of On-line Bettors (Asociación Española de Apostadores por Internet [AEDAPI]), composed of some of the on-line operators working in the Spanish market without a license, publishes annual data on the activities of these unlicensed illegal operators. The information is quite unreliable; apart from inconsistencies through time and the fact that different criteria have been employed, the data are not checked nor audited by any public organisation. In actual fact, the main unlicensed operators are not members of this association, so it is difficult to gauge how representative the figures it offers actually are. It is also worth pointing out that it is in the interests of the association to boost figures in order to come across as a more important player in the Spanish gaming market and thus increase legitimacy, despite the fact that these operators do not have the necessary licenses to operate in our country. In this respect, once again it is vital to demand that all operators show the same level of transparency in each of the European countries where they are present as licensed operators.

According to figures provided by AEDAPI, the on-line illegal market in Spain is three times larger than the legal on-line market, although the legal market is still largely undeveloped as only authorised lottery operators are involved.

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

These operators are working in a manner which is entirely unregulated by the Spanish authorities, and consumers are thus completely unprotected against any possible fraudulent activities. The activities undertaken by such operators is also a clear case of unfair competition in respect of licensed operators which pay high tax rates, create numerous jobs, do not market products and prizes which risk causing gambling addiction and adhere to the law in terms of advertising. In Spain, ONCE itself, operating within the legal framework and through its gaming-related activities, provides direct employment for over 25 000 people and, in addition, indirect employment to over 105 000 more people, most of these jobs (both direct and indirect employment) are held by persons with disabilities who therefore face serious obstacles in gaining employment. In this respect, operators offering services in Spain without a license from the Spanish authorities are jeopardising both the jobs in the legal gaming sector and the role carried out by regulated operators in channelling demand towards responsible gaming which carries little risk of addiction but is attractive to customers.

Unlicensed operators in the Spanish market are constantly running aggressive marketing campaigns despite the explicit restrictions in advertising gaming products which are in force on our country. In addition, as the products they offer also carry a high risk of addiction by their very nature (among other reasons, due to the perception that there is some control over the outcome, high frequency, privacy, high pay-out rate and the social setting), the outcome is that organisations assisting people with gambling problems are shocked to see how those gamblers turning to them for assistance are getting younger and younger.

(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?

Our experience in this respect is similar to the one set out in the response to question 3, although the main operators offering services in the Spanish market without holding a national license do have a license issued in Malta or Gibraltar.

(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?

Until the Gaming Regulation Act was published in May 2011, on-line gaming remained entirely unregulated in Spain, so there is no jurisprudence arising from national courts in this respect. Nevertheless, in the rationale for the Gaming Regulation Act the legislator expresses a willingness to adopt regulations that are respectful of the doctrine set down by the Court of Justice of the European Union, which has indicated the need to establish a properly-sized supply in gaming products. However, it should not be forgotten that despite the CJEU doctrine, there is still considerable legal uncertainty in the Union on certain key questions related to gaming and regarding the implementation of restrictive policies at EU level, so there is a need to ensure the gaming sector takes a co-ordinated and specific approach to guarantee consistency in relation to gaming services at EU level.

Within this context and without prejudice to possible future rulings from Spanish courts when enforcing the Gaming Regulation Act, it should be noted that as they do not have the necessary authorisation, operators which have been marketing their products on-line are doing so illegally, thus creating a situation of serious legal uncertainty for consumers.

The sanctioning mechanisms imposed by the new Gaming Regulation Act do not enter into force until January 2012, and at that time it will be possible to begin analysing how effective the new law is in terms of suppressing illegal gaming.

(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?

As we said in our response to the previous question, national law regulating on-line services in Spain has just been adopted, so it is too soon to judge if it will be adequate or not in terms of addressing the needs of the sector. Nevertheless, as Article 1 of the Act states, its objectives are to ensure public order is protected, combat fraud, prevent addictive behaviour, protect the rights of minors and safeguard the rights of those taking part in gaming.

Furthermore, the law includes provisions to limit the number of operators if there is a need to protect the public interest, to protect minors or to prevent phenomena leading to gambling addiction.

Therefore and in principle at least, the aims of the regulation would appear to be correct. Nevertheless and as was pointed out in relation to the previous question, the fact that on-line gaming services may be easily offered transnationally means that Spain having suitable regulations in place may be insufficient, so there remains the need for European Union Member States to work together to address the problems the new law may face in relation to transnational gaming.

As regards private operators offering on-line services without the necessary permission - and therefore in an uncontrolled fashion - it is evident that they do not provide any safeguards whatsoever regarding the protection which is required by those groups which are most vulnerable, nor regarding preventing potentially fraudulent activities or money laundering. This is contrary to the general interest aims pursued by the new Gaming Regulation Act and to the measures included in the Act in order to achieve such aims.

2.1 Definition and organisation of on-line gambling services

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

The new Spanish Gaming Regulation Act defines gambling activities as those lotteries, bets and other formulæ by means of which amounts of money or other objects on which an economic value can be put in any manner are risked on future and uncertain results, and which allow for the transfer of such amounts of money or objects among the participants, regardless of whether the most important factor in determining the result is the skill of the participants or mainly or solely luck, stakes or chance. Gambling activities include raffles (with in-kind prizes) and contests in which participation involves a counter-payment. Prizes may be in cash or in kind, depending on the type of activity.

On the other hand, the Act does distinguish between gambling activities entered into on-site and those carried out through means which are electronic,

computer, telematic or interactive (such as television, internet, fixed telephony, mobile telephony or any other type of telephony, or interactive communication, whether in real time or pre-recorded).

Therefore, the difference between the definition of on-line gaming services in the Green Paper and the definition set out in the Spanish Act is that in the Spanish legislation there is no definition of on-line gambling as such; on-line services are considered to be the same services as those which are offered through on-site channels, but offered through different channels, whether they be internet, fixed or mobile telephony or television.

(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?

According to the Spanish Gaming Regulation Act, which regulates the gaming market nationally, services offered by the media, whether it be television, radio, through internet or any other type (contests), for which the participant makes a payment, are considered games of chance within the category of contests. However, promotional or advertising draws (random combinations for promotional or advertising purposes) remain outwith the scope of services covered by the law, so there is a clear distinction between promotional gaming and games of chance.

Act 25/2009, dated December 22nd, the Spanish act which transposes the Services Directive, has removed the need to seek prior permission for promotional games. However, the Gaming Regulation Act does establish the need to have prior permission for any game of chance which is to be run nationally.

(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?

Licenses granted in Spain to gaming operators offering licensed premises (casinos, bingo halls, gambling halls) do not allow operators to offer cross-border on-line services. If any licensed operator attempted to do so, it would run the risk of losing its license. As a result, unlicensed operators have exploited the situation to gain a competitive advantage which may be almost unbreachable for any licensed operator trying to enter the market after a delay of more than five years with respect to unlicensed operators.

The new Gaming Regulation Act states that services offered by physical or legal persons located outside Spain that organise or offer gaming services to residents in Spain must comply with all the legal requirements set out in the Act.

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

The main advantage is that the regulations in each Member State cater for the specific cultural and social characteristics of each state with a view to achieving the aims of ensuring public order, consumer protection and social interest which they are designed to pursue. Bearing in mind the special nature of gaming and its social character, this is very positive. In this way, each Member State can decide which risks it is willing to assume and what restrictive measures work best with its citizens and companies and in its territory.

The main disadvantage is that the different regulatory measures do not adequately address the challenges posed by cross-border gambling. A co-ordinated and co-operative approach by Member States is required for this, as are supplementary and specific regulations for the sector at European level.

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

(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?

To date, this type of communications related to on-line gaming services were forbidden in Spain as gaming advertising was prohibited without having the necessary authorisation. Nevertheless, many operators without a Spanish license have carried out commercial communications regarding on-line gaming and have not been sanctioned for it. This situation has caused serious cross-border problems as services which are unlicensed in Spain have been advertised by operators with licenses in other countries, with no control mechanisms and without paying taxes.

Under the new law, these commercial communications are permitted provided the mandatory license has been granted and there is compliance with the basic provisions regulating publicity and promotional activities in the act and the regulations drawn up for its implementation. Such communications by operators who do not hold a license to market gaming products in Spain will not be allowed.

Until such time as regulations are drawn up to implement the law or the first general licenses are granted, it will not be possible to determine which types of advertising and sponsorship legal on-line gaming operators will be able to carry out.

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

There are no specific regulations for on-line gambling services; there is merely a generic act regulating payment services.

Currently, illegal gaming operators are overwhelmingly using payment systems provided by internet suppliers which are entirely unregulated by the Spanish financial authorities: PayPal, Neteller, Click&Buy, Moneybookers and other similar methods.

The new Gaming Regulation Act does indirectly establish that the terms and conditions for the granting of a general license (the first step to be able to operate legally in the on-line gaming market) should explicitly consider the systems, procedures and mechanisms in place to avoid access by persons who are prohibited from participating, and especially minors. The terms and conditions are expected to state that the only permissible payment methods are those which allow for the player's age to be verified.

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

In ONCE's opinion, players' accounts are absolutely necessary if there is to be adequate supervision to ensure players comply with the regulations, and for their own protection. In fact, in the on-line games currently offered by ONCE, when a new player registers he or she is automatically assigned a virtual account in order to manage both the deposits made to play and the prizes he or she wins.

Additionally and as a result of ONCE's commitment to responsible gaming and promoting responsible gaming among its customers, players may not deposit more than 500 Euros in their virtual account in any one week, purchase products over that amount or bet more than that amount in any one week.

The Gaming Regulation Act does not make any explicit reference to players' accounts, although it is to be assumed that as this practise is widespread it will be included in the operational plan operators will be asked to submit when applying for a license to market gaming products. We refer you to our response to question 22, which includes a more detailed explanation of the aforesaid operational plan.

(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?

For services currently offered under license in Spain, there are strict rules to prevent minors or vulnerable persons from playing, although there is no obligation to verify the players' data except when he or she receives a prize exceeding 5 000 Euros. However, operators working under license in other Member States or without any type of license are not subject to any kind of supervision by the Spanish authorities. There is evidently room for improvement in this respect, and verification of players' data should be mandatory in order to protect minors and avoid money-laundering.

According to the new Gaming Regulation Act, one of the rights held by players is to be able to identify themselves safely by means of their national identity card, passport or an equivalent document, or through a recognised electronic signature system, in accordance with the regulations set out in this respect.

In Spain there is a National Identity Card which incorporates an electronic microchip. Using a card reader connected to the computer, information about the user, including his or her age, can be known. Although it is not widely used, the regulations to be put in place to implement the Gaming Regulation Act are expected to be based on this type of identity card or on a similar system.

On the other hand, operators shall only use the information about the participant which is absolutely necessary to properly run the gaming activities for which it has received authorisation and in order to meet its obligations under the law. Data will be deleted once the purposes for which they were gathered have been completed. Operators must implement the security measures set down in the current regulations regarding data protection and keep such data secret.

The new Gaming Regulation Act does, therefore, lay down a client verification system for on-line gaming which is compliant with data protection rules.

2.3. Public interest objectives

2.3.1. 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)

There are numerous academic reports and research outcomes that conclude that such factors, among others, have a direct influence on the development of excessive gambling, which may not be an illness as such, but may occur when a player is driven to play beyond his or her means or above his or her initial budget.

Worthy of mention at this point, *inter alia*, are the papers by Professor Marc Griffiths, R. Shaffer, Dr. Bombín, Professor Labrador or Professor Echeburúa.

In addition to research in the academic field, there is evidence from numerous interviews with former pathological gamblers which confirms that the factors mentioned, among others, have a determining influence on their addictive behaviour and on the risk of relapsing following treatment.

The factors are very difficult to classify individually as they act together and it is different combinations which create problems for different types of players.

(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)

Once again we can cite the conversations held with members of support groups for former players. According to their experience, these measures are helpful, but they are not always effective because they are not always properly implemented.

There are too many cases of operators who claim to use measures such as these, but who do not check the player's age and merely ask the player to declare it. In addition, limits to play can be circumvented easily by opening various accounts under false names and some operators make widespread use of deposit bonuses, free practise games or commercial communications, thus failing to meet the standards a gaming operator should hold in terms of diligence and ethics and making players feel as if they have been tricked by the small print used in promotions.

It is very difficult to rank the instruments since they act jointly and different combinations work best in limiting excessive gambling. Many studies have confirmed that the instruments mentioned are vital for implementing effective and efficient responsible gaming practises.

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

Several studies on prevalence in regions in Spain exist, but they were carried out in the nineties, that is to say before the arrival of on-line gaming, and therefore do not measure its impact. According to these studies, the prevalence of pathological gaming was between 1.4% and 2.5% of the population taking part in the studies.

(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?

There is reliable evidence from those directly affected - individuals who are prone to develop a problem when gaming because they have already had and recovered from a problem. In our interviews with support groups for former pathological gamblers, they have confirmed that there is an alarming increase in the number of young players who are turning to them to try to overcome an addiction to on-line gaming, and especially poker games, casino games and sports betting.

From an academic point of view, we can quote several studies from the beginning of the last decade which demonstrate that on-line gaming has a higher risk than other types of gaming for those susceptible to develop problems related to dependency, and especially for adolescents. Especially relevant in this respect is the work carried out by Meyer ("Meyer, Internet Gambling: A Challenge for the Prevention of Addiction, Suchtreport Nr.3, May/June 2001, and "Meyer, Analysis of the Risk Potential of Online Gambling for Adolescents, 2011") and Griffiths. (Griffiths et al., 2007 British Gambling Prevalence Survey, 2007).

Internet and digital channels are higher risk than physical channels because they are completely accessible at all times and from anywhere in a social setting of absolute privacy. As a result, such gaming channels are much more pernicious for vulnerable persons.

In addition, it must be borne in mind that in the past two years the number of people using cutting-edge mobile telephones (smart phones) has increased dramatically. These devices normally allow users to connect to internet and purchase gaming products anywhere and anytime. As these telephones are particularly popular among young people who, in addition, are most interested in on-line betting, we are likely to witness a sharp increase in purchasing gaming products on-line and pathological behaviour.

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

According to players themselves, the most problematic types of games are those which include most of the factors laid out in point 2.3.1, plus a high prize payout. This means poker, casino games, fruit machines, sports betting and instant games offering a high pay out.

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

A new act to regulate on-line gaming has recently been adopted in Spain. It will attempt to address many of the points set out in 2.3.1.

(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?

The National Health Service, under the auspices of the Ministry for Health, Social Policy and Equality, and Regional Health Departments are the competent authorities for programmes to combat addictions related to anomalous behaviour in the area of gaming. There are also civil self-help organisations whose members are former addicts. Licensed operators in Spain contribute indirectly to funding these activities through the high taxes imposed on gaming which are raised by public authorities, part of which goes to financing the health services. Furthermore, thanks to a co-operation agreement signed in 2010, ONCE helps to fund FEJAR, the largest self-help organisation for former players in Spain. There is no evidence to suggest that unlicensed on-line operators in Spain contribute in any way whatsoever to funding preventative and therapeutic actions to combat gambling addiction.

(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?)

According to current gaming legislation in Spain, those operators wishing to obtain a gaming license must submit an operational plan which takes into

account responsible gaming, among other questions, and those other aspects related to its activities which the regulations stipulate. In this respect, the regulations which are drawn up to implement the act should make it mandatory for operators to introduce whatever measures are required to identify players who show signs of potential addiction and offer them solutions.

Whatever the case, and without prejudice to the regulations which need to be drafted, the Gaming Regulation Act states that gaming operators must draw up a plan which includes measures to mitigate the potentially pernicious impact of gaming on people and includes basic rules for responsible gaming policies. More specifically, and with respect to consumer protection, operators must:

- Pay sufficient attention to at-risk groups;
- Provide the public with the necessary information in order to make a conscious selection when gaming, and promote moderate, non-compulsive and responsible gaming.

Operators are forbidden from granting loans or any other type of credit or financial assistance to participants.

(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?

When the age limits are imposed my means of the new law they will be adequate if there is effective verification of the player's age and identify when he or she registers and if accounts cannot be opened without prior checks against official databases. These measures will ensure that each user is in fact who he or she claims to be, has only one account and is an adult over the age of eighteen.

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

There are currently no valid control mechanisms as there is no requirement to check the data a user provides when registering against their national identity card. Evidently there is room for improvement in this respect and data verification should be mandatory for all players in order to protect minors and prevent money laundering.

Along these lines, the Spanish Gaming Regulation Act states that the National Gaming Commission shall establish which measures will be required of operators, in accordance with the nature of gaming itself and the potentially pernicious impact on players and with the aim of ensuring the effectiveness of the subjective prohibitions included in the law (one of which concerns minors).

As mentioned in the response to question 14, the regulations to be drawn up to implement the law will set out which systems are to be used for participants to identify themselves, and this must include age verification. This is technically

possible in Spain because we have electronic identity cards which all Spanish citizens have or have access to.

(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 videosharing for marketing purposes.

As stated in the response above to question 11, the new Spanish Gaming Regulation Act allows commercial communications provided that a license is held and there is compliance with the basic regulations governing advertising and promotions in the Act and the regulations for its implementation.

The regulations will set out the conditions and the limits within which licensed operators will be permitted to carry out advertising activities. Therefore, and as we pointed out in previous responses, the regulations to be drawn up to implement the Act should include whatever measures are required to avoid publicity aimed at minors.

In any case, the Act does state that the sending of commercial communications or promotions by email or any other equivalent electronic communication method shall only be possible if the recipient has given his or her prior consent (in line with the regulations governing the information society and electronic commerce).

However, until January 2012 illegal operators in the gaming field may freely continue to sponsor sports teams and offer merchandising related to these sponsorship arrangements, including the sale of football shirts to minors with the names of illegal operators on them.

On the other hand, Spain does have specific regulations governing advertising aimed at minors, and especially through television. As a protective measure for minors, the General Act for Audiovisual Communications (Law 7/2010) only allows programmes on games of chance and betting to be broadcast between one o'clock and five o'clock in the morning.

(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?

As indicated in the previous response, the key conditions for commercial communications will be set out in the upcoming regulations for the implementation of the new Act, and these will be reflected in the conditions of the licenses which are to be granted to operators. Once established it will be possible to assess them.

2.3.2. Public order

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

As regards users, there are several cases and examples of consumers who have felt let down by companies with dubious reputations and who have had no simple and economically viable recourse to file a complaint with any authority.

In terms of sport integrity and money laundering, there are a number of reports linking on-line gambling with organised crime. These include:

- ‘Online crime and internet gambling’, article by John McMULLAN and Aunshul REGE published in the Journal of Gambling Issues (July 2010)
- ‘On-line gambling and criminal threats’ (‘Jeux en ligne et menaces criminelles’), Report to the minister of the Budget by Alain BAUER (2009)
- Tracfin (Traitement du renseignement et action contre les circuits financiers clandestins) 2009 activity report
- Article on fraud in sports betting in Lettre 46 de Transparency International France
- ‘Crime and gambling: A brief overview of gambling fraud on the Internet’, article by Mark GRIFFITHS published in Internet Journal of Criminology (January 2010)
- ‘Can Internet Gambling Be Effectively Regulated? Managing the Risks’, report by Malcolm SPARROW (Harvard) (December 2009)
- ‘Money Laundering through the Football Sector’, FATF report (July 2009)
- ‘White collars and dirty hands’ (Cols blancs et Mains sales), book by Noel Pons (detached public servant with the French ‘Service Central de Prévention de la Corruption’) (2006)
- Rapport d’information n° 3463 Lamour Filippetti sur la mise en application de la loi n° 2010-476 du 12 mai 2010 relative à l’ouverture à la concurrence et à la régulation du secteur des jeux d’argent et de hasard en ligne (May 2011).

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

Some regional authorities have rules in this respect, for instance Madrid. Nationally, the recently-adopted legislation will introduce standardisation for this type of equipment for use in the field of on-line gambling. On July 5th last, the Spanish Government published a draft Royal Decree setting down the technical requirements for gaming activities which will regulate the characteristics and requirements for approval for systems to be used in on-line gaming. This Royal Decree should enter into force before the end of this year, but the exact date is as yet unknown.

(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?

Best practises to prevent fraud are based on allowing only those companies which have a license granted by the State in which the player resides to offer services. Such licenses must be granted under strict requirements to adhere to the regulations issued by the State in question, and strict control mechanisms to ensure compliance. *Inter alia*, these requirements should include:

- Compliance with security standards (ISO-27001 or SCS WLA-2006);
- Compliance with responsible gaming standards;
- Games must be run in accordance with the terms of the license and under the strict supervision of a competent government-appointed authority (Gaming Commission, Lottery Inspectorate, etc.);
- Supervisory systems must be put in place to detect anomalous gaming patterns and behaviour;
- Deposits should be set at such a level to discourage fraud;
- License terms and conditions should include responsible gaming rules;
- Advertising should be controlled and sponsorship by gaming operators restricted to prevent disingenuous advertising, excessive gaming and publicity aimed at vulnerable groups;
- Operators and the persons involved must be registered;
- Gaming and payment systems must be regulated and restricted (it must be mandatory to open a virtual account, including meeting certain requirements, to be able to play, and topping-up accounts using internet-based payment systems must be prohibited).

To achieve this aim, the principle of subsidiarity must be applied to regulate gaming activities in line with the customs and traditions of the country in question, which may include certain restrictions in mutual license recognition as these may be granted under conditions and requirements which vary greatly from state to state and which may be insufficient or non-applicable in other states.

Co-operation among Member States in exchanging information on gaming operators, criminals and criminal activities is also of the utmost importance.

(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?

By means of subjective prohibition, the Spanish Gaming Regulation Act bans the following people, among others, from taking part in gaming activities:

- Sportsmen and sportswomen, coaches and others taking part directly in the sports event or activity on which the bet is placed;

- The directors of any sports body taking part in or organising the sports event or activity on which the bet is placed;
- Judges or referees officiating at the sports event or activity on which the bet is placed, and those involved in the appeal procedure concerning decisions taken by them.

Nevertheless, until January 2012 sponsorship agreements involving sports teams and illegal operators may continue without any restrictions whatsoever.

Furthermore, it is vital to have a reliable player registration system which allows the key data identifying the player to be verified and makes it impossible for a player to have more than one registered account.

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

In our opinion, the priority is to put in place regulations based on a system to grant licenses to operate in the consumer's country of residence to a limited number of companies. These companies must be in compliance with strict requirements in terms of financial solvency, trustworthiness and technical capabilities, and must operate under close supervision by a competent state-appointed authority. Deposit schemes and sanctioning mechanisms which discourage non-compliance with the license requirements and regulations must be in place.

It is also necessary to introduce effective systems to block activities by illegal operators who do not have the corresponding license in the consumer's country of residence.

(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?

This constitutes a major risk arising from the conflict of interests caused by the fact that if the club or association being sponsored is successful, this has a positive effect on the sponsor's brand and, consequently, on its advertising and income.

Just as many countries have specifically banned sports sponsorship by alcoholic drinks companies and cigarette manufacturers in an attempt to combat excessive consumption, sports sponsorship by betting operators should also be prohibited or severely restricted, taking into consideration the potential conflict of interests mentioned in the previous paragraph.

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

Several news items have been published on on-line gaming which show how money laundering cartels have posed as on-line players, utilising data from

stolen credit cards to play on-line under false names and sharing a series of bank accounts.

Notorious cases of money laundering through on-line sports betting include 'La Louvière' (Belgium) and 'Bochum' (Germany). More cases have recently been discovered in Turkey, Greece and Malaysia.

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

All the micro-payment systems used for on-line gambling services require specific regulatory control when they are used for on-line gaming transactions. The methods we could mention here include bank transfers to the player's account, credit cards, debit cards, pre-paid cards, payment using mobile telephony, internet-based payment systems (PayPal and other similar systems) and pre-paid cards using secret codes.

Regulations on micro-payment systems should state that only payment systems under suitable supervision by the financial authorities in each State, including the ability to identify unequivocally the person making the payment, may be used to pay for gaming services on-line.

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

In our view, best practises must be based on the following:

- A system for granting licenses to operate which includes strict security requirements and is closely supervised by the state in which the player resides;
- Operators must co-operate with both national and international authorities working to combat money laundering and internet-based crime;
- Co-operation with other gaming and lottery operators;
- The use of player registration systems which provide reliable means to verify the player's identity and place of residence;
- Systems to detect anomalous playing patterns and prize-collecting patterns.

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

We have no evidence of cases in this context. However, in June 2010 Kaspersky Lab warned that money laundering activities had taken place on social websites. Such websites are prone to be used for "person-to-person" laundering activities such as chip-dumping, where there is no initial link between those committing the crime and contact is made through social web-sites.

(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?

In our view the principle of integrity must be paramount in managing gaming services in order to achieve the aims of social order, consumer protection and social interest. In order to do this, the gaming sector must be strictly regulated by means of exacting requirements in terms of transparency, responsible gaming rules, effective regulations to combat money laundering and to ensure compliance with the applicable regulations, and must be under close supervision by the State.

The new Gaming Regulation Act seeks to standardise on-line gaming activities in Spain. To date, such services were offered by private operators who did not have a license from the Spanish state and whose activities were entirely unclear and completely free of public supervision, with the subsequent risks this entailed in terms of criminal activities and fraudulent practises.

The new act introduces mechanisms to boost transparency and closer supervision of on-line gaming, and these are also applicable to cross-border gaming services. Nevertheless, as reported in responses to previous questions, to ensure this legislation and national rules in other countries are applied effectively and efficiently, it is vital that States co-ordinate their activities and co-operate. The Gaming Regulation Act entrusts responsibility for supervision to the National Gaming Commission.

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

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

ONCE clearly falls within the first category of organisations in this section of the Green Paper as regards funding good causes. ONCE invests its entire income from lotteries - approximately 800 million Euros annually - to funding the social duties entrusted upon it by the Spanish Government: achieving the social inclusion of over 70 000 people who are ONCE members, with more than 90% vision loss, and, through the ONCE Foundation, securing the social inclusion of people with disabilities other than visual impairment - more than four million people in Spain. Thanks to ONCE, more than 125 000 jobs have been created in Spain, and over 18% of these jobs are held by persons with disabilities.

ONCE therefore welcomes the fact that the Green Paper recognises the important contribution gaming makes to society through funding good causes. However, we not share the opinion that, in accordance with the Court of Justice, funding such activities may not constitute a substantive justification for a restrictive policy, but merely an ancillary beneficial consequence.

The rulings of the Court of Justice should adhere to the circumstances in each country. In the case of ONCE, after 74 years and performing a highly important

role in the social sphere delegated to it by the Spanish Government, there is a substantive justification for restrictive regulation of lotteries in Spain. The same case law also recognises that the overall trend in national legislation is to prevent gambling practises from being a source of private profit (Schindler, §60; Läära, §13; Zenatti, §14), based on the fact that as gambling undeniably has negative effects on society, it is only natural that resources generated by such activities should be returned to society to compensate for this.

Based on all of the above, for ONCE there are two basic models for channelling revenues from gaming for public benefit, as opposed to the six mentioned in the Green Paper:

- Permanent granting of a license or state ownership, whereby a major share of lottery revenues is returned to society through taxes or direct and specific funding for good causes. The main feature of this model is that games of chance are managed for the public good;
- A private operator is authorised by the state under strict conditions and the conditions for granting permission or the pertinent legislation stipulate that part of the revenues generated must be returned to society in the shape of taxes or directly and specifically earmarked for good causes.

There is a huge difference between the contribution to society made by the first model and that of the second. In 2009, the total contribution to society from members of the European Lotteries and Toto Association (EL) in the European Union amounted to 22 400 million Euros. Per inhabitant and on average, each European Union citizen received 45 Euros from lotteries in 2009. On average, 65 per cent of gross gaming revenues (stakes less prizes) was returned to society through contributions to state budgets and funds earmarked for sporting activities and other good causes such as art and culture, charity-related activities, social schemes, disability, science, health, research, education, youth, the environment, climate change and development.

(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?

Apart from the Public Treasury, which gathers funds generated by gaming services from the state gaming company (LAE) and from private operators by means of taxation and subsequently returns such funds to society through the state budget, there is no redistribution fund in Spain for revenues from “public” or “commercial” on-line gambling services.

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

In Spain, licensed gaming operators contribute indirectly to funding such measures through the high taxes levied on gaming, which are paid into the public purse and therefore used to fund health services (systems of revenue channelling 3 and 6). In addition, ONCE funds FEJAR, the biggest organisation

set up to help players in Spain, thanks to a co-operation agreement signed in 2010 (system of revenue channelling number 4.b).

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

Until the present time, virtually all on-line sports betting in Spain has been run by operators holding no license from the Spanish State, in other words by illegal operators according to the definition of “illegal operator” in the Progress Report published by the Spanish Presidency in 2010. These operators do not pay taxes or contribute in any way to funding sports. In no way can the amounts they invest in sponsorship be considered contributions to sport nationally as they are really advertising costs aimed at increasing their revenues. Furthermore, this advertising is carried out illegally as gaming advertising is banned in Spain except for lotteries.

(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?

In Spain only football, in the case of the football pools run by Loterías y Apuestas del Estado, benefits from exploitation rights. This type of gaming, however, accounts for a minimal amount in comparison with the rest of the market as the remaining sports betting is run by illegal operators in Spain (referred to in the Green Paper as black market or grey market) which do not pay for any exploitation rights whatsoever.

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

The Spanish Gaming Regulation Act includes some measures aimed at ensuring integrity in on-line gaming (See our response to question 30), but does not provide for any exploitation rights that are exclusively dedicated to ensuring integrity.

(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?

ONCE's opinion in respect of what should be considered “free-riding” in the gambling sector differs from the two types set out in the Green Paper. We consider the “free-rider” to be any operator that holds no license in the Member State where the consumer lives (and therefore does not pay any taxes in that Member State and is not subject to its control), rather than the consumer, who is often even unaware that the web-site he or she is using to play does not have a license. As regards this type of free-riding, there is evidence to suggest that the growing presence of unlicensed operators in the market represents unfair competition for regulated operators, whose revenues are adversely affected by such competition.

We are unaware of any research that shows consumers choose to gamble mainly because they wish to help to finance public interest activities, although we do believe that the fact that they contribute to a good cause is an added attraction for a limited number of players.

(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?

The Spanish National Organisation of the Blind (ONCE in Spanish) is a Public Law Corporation founded in 1938 which holds a license from the Spanish Government to run gaming services and lotteries in order to fund both the specialised social services it provides to persons who are blind or severely partially sighted, and its Foundation, which is committed to achieving the full social inclusion of all persons with disabilities in Spain, in total some four million citizens.

To achieve its aims, the ONCE Foundation focuses its efforts on programmes in the fields of training, employment and universal accessibility by and for Spanish people with disabilities. Thanks to ONCE and the ONCE Foundation, more than 125 000 jobs have been created, of which 81% are performed by persons with disabilities, and social inclusion has been secured for the more than 70 000 ONCE members, all of whom have more than 90% vision loss. ONCE channels approximately 800 million Euros annually from the sales of its gaming products and lotteries to the social tasks with which it has been entrusted by the Spanish State.

In ONCE's case, where all the revenues generated by its lotteries are channelled to its social responsibilities, it is mandatory for us to report to society on how these funds are being invested. To this end, and in addition to strict supervision by an official body, the Protectorate Council, ONCE publishes detailed information on its activities and the amounts from its lotteries invested in the many programmes which form part of its social responsibilities on its web site and in its annual report.

2.4. Enforcement and related matters

(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?

Under the Gaming Regulation Act, a new regulatory body called the National Gaming Commission is to be set up. This body has legal personality in its own right and a full remit to act. Although it operates independently, it is part of the Ministry of the Economy and Finance.

The principal task of the new body is to ensure the gaming sector functions properly and that there is effective availability and delivery of competitive services for the benefit of users. Its responsibilities include the following:

- Draw up basic regulations for the gaming sector;
- Propose the terms and conditions for the license-granting procedures to the Ministry of the Economy and Finance;
- Grant licenses to operate gaming activities;
- Supervise, control, inspect and, where necessary, sanction gaming-related activities;
- Crack down on unauthorised gaming run both from within Spain and from outside Spain but aimed at Spanish territory;
- Administer the registers provided for in the Gaming Regulation Act.

(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?

In accordance with the Gaming Regulation Act, the National Gaming Commission shall set up, among others, a General Register of gaming Licenses. This register will depend on and fall under the control of the Commission. Nevertheless, according to the draft Royal Decree on licenses and registers which was recently made public by the Spanish Government, it will not be publicly accessible. The National Gaming Commission shall be responsible for updating information on authorised operators and making it publicly available on its web site.

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

We are in favour of any initiatives undertaken to enhance co-operation among Member States, ensure a co-ordinated and specific approach is taken in the gaming sector and implement the measures needed to preserve integrity and achieve the proposed goals, as well as to draw up supplementary and specific regulations for the sector.

With regard to forms of cross-border administrative co-operation, among the most important ones with which we are familiar are the following:

- IMI (Internal Market Information System);
- GREF (Gaming Regulators European Forum);
- The co-operation agreement recently signed by ARJEL and AAMS, the regulatory bodies in France and Italy respectively, and which will be signed in the near future by the Spanish regulating authority;
- European Lotteries (EL) has entered into a number of agreements, including with FIFA, UEFA and other national sports organisations and authorities, with the aim of introducing measures to ensure integrity in sport and funding for amateur sports.

(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?

European Lotteries (EL) is working in partnership with a number of European organisations from the sporting world and has set up ELMS (the European Lotteries Monitoring System), a supervisory scheme for the early detection of suspected fraud cases in sports competitions, in order to prevent fraud and protect integrity in sport.

Furthermore, EL, in partnership with SportAccord (an international association of sports federations) and AIPS (the International Sports Press Association) is delivering an educational programme called APSI (Awareness Program for Sports Integrity), which aims to raise awareness, educate and inform all stakeholders in the sporting world (players, referees, etc.) on the dangers of match- or event-fixing in sport.

(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 online gambling?

Gambling legislation in Spain does not provide for this type of methods to limit access to unauthorised on-line gaming services. However, it does stipulate that service providers in the fields of audiovisual communication, electronic communication and the information society shall be administratively responsible for promotions, sponsorship and advertising in the gaming sector when those carrying out such activities do not hold a license, when they are published or broadcast without the corresponding authorisation, when they are published or broadcast beyond the restricted areas for which a license has been granted, or when they infringe current advertising regulations.

We have no knowledge of any cross-border initiatives aimed at enforcing such methods.

Despite the fact that none of the methods mentioned is completely effective, we believe they should all be employed, and above all if they are combined and used jointly, to limit activities by operators who do not have a license in the player's country of residence.

(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?

None of these methods is foolproof and they all have advantages and disadvantages. That is why we believe it is best to use a combination of two or more. In addition to the methods mentioned in the Green Paper, there must be efforts to raise players' awareness of the inherent risks attached to entering the web sites run by unauthorised operators and to encourage them to play and register only on secure sites run by operators who hold a license in their country of residence. For this reason, players should have access to an official site on internet where they can check the list of licensed operators.