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Accompanying document to the

GREEN PAPER

On on-line gambling in the Internal Market

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The purpose of the Green paper on on-line gambling is to collect the facts, assess the stakes and to gather the views of all interested stakeholders on a phenomenon that has multiple dimensions. The Green paper seeks to launch an extensive public consultation on all relevant public policy challenges and possible Internal Market issues resulting from the rapid development of both licit and "unlawful" on-line gambling offers directed at citizens located in the EU.

This staff working paper provides background material of an explanatory nature. This document is only available in English and is not a part of the Commission's consultation on on-line gambling in the Internal Market.

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1. REGULATING ON-LINE GAMBLING IN THE EU: RECENT DEVELOPMENTS AND CURRENT CHALLENGES FROM THE INTERNAL MARKET STANDPOINT

1.1. The Stakeholders and their interests

- (a) **Citizens.** Many EU citizens purchase on-line gambling services for entertainment purposes¹, while a smaller group of players make a living as professional gamblers (e.g. professional poker players) and there are also associations/syndicates operating in the EU market. Many of these users, either because of a lack of national supply of such services or because they seek to maximise their return on stakes, search across competing on-line gambling services across borders.

According to a study from 2006, the profile of an average on-line gambler seems to differ from that of a traditional casino or betting shop customer and tends to reflect the profile of the average internet user – young and educated. On-line gambling also attracts more women than traditional bricks and mortar forms of gambling, as the internet sites are easy to customise and the offer of gambling services may be designed to appeal to the female population².

Citizens who gamble may be interested, *inter alia*, in the following issues:

- Protection from fraud (where on-line gambling is permitted) in that the supply of services should come from licensed operators and be well regulated and supervised by relevant authorities. This also includes protection from misleading and aggressive marketing practices.

¹ Gambling being an entertainment service is also reflected in its statistical classification - CPA section R: Arts, entertainment and recreation services (two specific codes for online gambling: 92.00.14 On-line gambling services and 92.00.21 On-line betting services). On-line gambling is an area where a large number of citizens have tried to benefit from an extensive offer from operators established in another Member State. For example, one commercial operator (Betfair) processes 5.5 million transactions a day, which according to the company corresponds to twice the amount of all EU stock exchanges together.

² Department for Culture, Media and Sports (UK), "A Literature Review and Survey of Statistical Sources on Remote Gambling" Final Report, RSeconsulting, October 2006

- Choice / economic interest in terms of attractive selection of gambling services and good payback ratio.
- Fairness which includes that games are regulated and supervised. Fairness also includes transparency conditions; that potential users receive information on the rules of the game, the chance of winning and basic information about the operator before he/she takes up the offer.

Citizens may have an interest in prohibitions or restrictions to the provision and/or promotion of on-line gambling services for various reasons, including moral, religious or related to public health. It must be noted that there are citizens who have problems with their gambling habits and need help and support to address this. (These problems are highlighted in section 2.4 of the Green paper).

These citizens may be interested, *inter alia*, in the following issues:

- Restrictions on commercial communications (e.g. prohibition of billboard advertising close to religious premises or schools) and exposure of on-line gambling in the editorial content of the media.
- Access to treatment for gambling addiction.
- Assistance for problem gamblers and/or their families to get their financial problems.

- (b) **Operators**, providers of online gambling services, include private and public companies and foundations set up for the purpose to provide gambling services. They may have a business model that is based on exclusively providing online gambling or a mix of online and offline gambling. Operators also include gambling service providers that have their main source of revenues from other activities such as media operators or producers or retailers that organise promotional games.

Their key interests may include, *inter alia*:

- Commercial objectives in that they wish to benefit from the scale and of the Internal Market (market access) and have the legal security to exploit these commercial opportunities.
- Fairness and crime prevention (in particular to prevent fraud by players and match fixing).

- (c) **Media** operators may have a double interest in online gambling. They both (i) offer gambling services directly to consumers by using their audiovisual platform interactively (e.g. IPTV) or in combination with for example premium rate phone lines (calls or sms) and (ii) promote gambling services offered by other gambling operators (advertising and sponsorship).

Moreover, they have an interest in a clear regulatory framework as they may be retransmitting lottery draws (or poker tournaments) into non-national territories and be held responsible for displaying visual images of events that expose commercial communications/promotions of gambling services or (advertising on players jerseys or billboards at an arena) for which they do not receive any reimbursement. There is also an

increasing number of specialised magazines that are dedicated to online gambling (in particular poker).

To summarise, their key interests may, *inter alia*, include:

- Commercial objectives - to benefit from the Internal Market (media sales / advertising).
- legal security – including definitions of gambling services or rules on when a license is required for a game show.
- the same as an operator (see operator above) if they offer on-line gambling services.

(d) **Intermediaries**, include internet service providers, data (storage) centres, providers of telecom/broadband infrastructure, hard- and software producers, payment service providers.

They also include insurance companies (to the extent that bookmakers or other operators insure risks), advertising agencies, media sales companies, event organisers, sport wear producers (e.g. sales of replica football jerseys).³

Key interests:

- Commercial – innovative businesses providing on-line gambling services are often driving developments in other areas by offering new revenue streams for these on-line and off-line service providers.
- Legal security (for example, clear rules on commercial communications to enter into sponsorship agreements with on-line gambling operators)

(e) **Sport event organisers**; Organisers of horse races and other sports events and interest groups linked to such events.

Key interests include:

- Economic – to ensure that some of the proceeds from on-line betting are used to finance the events or the activities on which the bets are placed.
- Integrity – to prevent that sport events are subject to manipulation.

f) **Good causes and other beneficiaries**; Organisations or entities that receive a share of the proceeds from on-line gambling without being involved in the organisation of the activity. These include registered charities, grass root sport organisations, cultural organisations or institutes as well as Member States (fiscal revenues or license fees).

³ One of the seven goals listed in the Commission's digital agenda³ is a new Single Market to deliver the benefits of the digital era.

Key interests:

- Economic (It must be noted that a sport or cultural body that enters into a sponsorship agreement and therefore receives funds should be considered to be an Intermediary, mentioned under (d) above)

- (g) **Regulators and authorities** include gambling regulators, police authorities, national Courts, consumer agencies and self regulatory associations in the area of advertising,
- (h) **Other stakeholders**, Any other stakeholder not listed above including: organisations, institutes (private or public) or individuals working with treatment and/or research relating to problem gambling and addiction, persons practising a legal profession (individual judges, public prosecutors or lawyers), academics, employees working for online operators, offline operators whose business may be affected by the supply of online and investors.

1.2. Key findings in the Commission's 2006 study⁴

The purpose of the Study, carried out in 2005 and early 2006, was to evaluate how the various laws regulating on-line and off-line gambling services⁵ impact upon the smooth functioning of the Internal Market for these and their associated services and thus could restrict growth in employment and general economic activity associated with such services. The report listed all national laws, draft laws, self-regulatory norms and jurisprudence pertaining to the commercial communication, establishment and provision of gambling services. It described stakeholders and markets, the expected cross-border development of each market sector and other market trends linked to technological change and international developments. Finally, the study identified, in view of these regulatory and market reviews, the existence and nature of barriers to the free movement of gambling services in the Internal Market.

The Study presented a picture of a very fragmented Internal Market where Member States frequently imposed restrictions on cross-border gambling services. The interpretation of national rules was not always clear and the study listed almost 600 cases that were brought to national Courts⁶.

The Country reports for remote gambling in the Study pointed out some of the policy positions towards remote gambling that had emerged among the Member States⁷. These are summarised below

⁴ Study on gambling services in the EU Internal Market. The contract was awarded to the Swiss Institute of Comparative Law. See http://ec.europa.eu/internal_market/services/gambling_en.htm

⁵ (1) lotteries, (2) betting (including horse and dog racing, event betting and pool competitions); (3) gambling offered in casinos; (4) gambling on gambling machines that are placed in locations other than licensed casinos; (5) bingo; (6) media gambling (i.e. games in the editorial content of the media); (7) sales promotion services consisting of promotional games with a prize exceeding €100,000 or where participation is exclusively linked to purchase; (8) gambling services operated by and for the benefit of recognised charities and non-profit making organisations.

⁶ 587 cases, most of these cases were dealt with by German Courts.

⁷ Chapter 7, "The impacts of internet gambling and other forms of remote gambling on the EU gambling market", page 1414. This overview did not include 3 of the EU25 Member States (CZ, EE and PL).

Restrict gambling activity	Internet gambling prohibited	Protect Monopoly & revenues	Foreign operators not allowed	Domestic internet gambling allowed	Accepts cross border internet gambling	Liberal approach with licenses offered
AT, BE, ES, LX	EL, HU, LT, LX	AT, BE, DK,	BE, DK, ES,	AT, BE, DE, ,	CY, IR, LV,	FI ⁸ , LV, MT,
		EL, FI, FR, IT,	FR, HU, IT,	ES, FR, IR, IT	MT, UK	UK
		NL, PT, SE	NL	PT, SE, SI, SK		

Figure 1. Member States' policy positions towards remote gambling in 2005

⁸ The Åland Islands.

1.3. On-line gambling in the EU: current situation

As mentioned in the Green paper, in 2008, the annual revenues generated by the gambling service sector, measured on the basis of **Gross Gaming Revenues (GGR) (i.e. stakes less prizes but including bonuses)**, were estimated to be around 75,9 bn €(EU 27⁹), showing the economic significance of the sector. On-line gambling services accounted for annual revenues in excess of €6,16 bn, i.e. 7,5 % of the overall gambling market. This on-line market is the fastest growing segment and is expected to double in size in five years¹⁰.

National levels of demand for these on-line services vary across the Union depending on a number of factors. In that respect it is not surprising to see that the UK is the largest market at the current time given that its e-commerce market is twice as large as the average for the Member States¹¹.



Figure 2 The 10 largest national on-line gambling markets in the EU in 2008 (GGR)¹².

It is also worth noting that, in 2008, the GGR for on-line gambling (national market) were €5 million or below in six Member States : Luxembourg (5), Lithuania (2), Estonia, Latvia, Malta and Slovenia (1).

⁹ H2 Gambling Capital for the European Commission (2008 figures).

¹⁰ EGBA and H2 Gambling Capital, 2009, http://www.egba.eu/pdf/EGBA_FS_MarketReality.pdf

¹¹ See Report on retail Market monitoring, 5 July 2010 (COM(2010) 355 final)

¹² H2 Gambling Capital

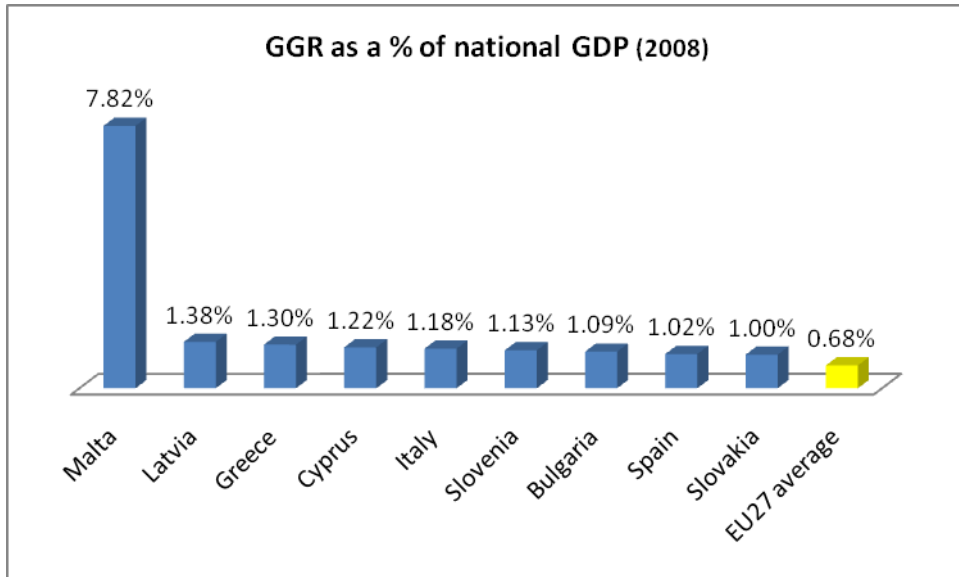


Figure 3. Member States where gross gambling revenues exceeded 1% of the national GDP.



Figure 4. Proportion of national gambling consumption attributable to on-line gambling

1.4. What are the most popular on-line gambling services in the EU27?

The Green paper presents a pie-chart describing on-line player activities by product:

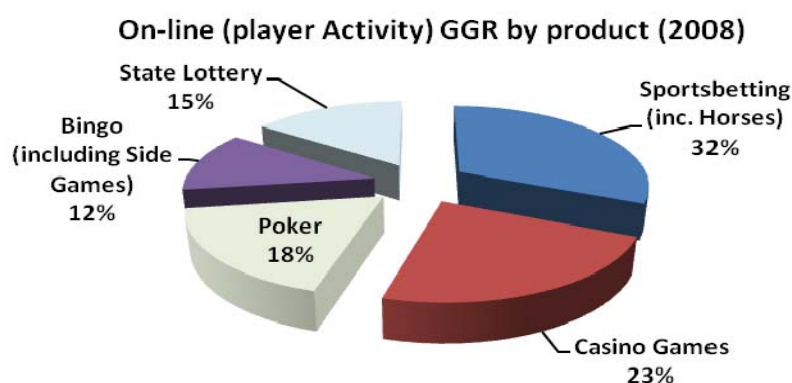


Figure 5. Breakdown of the Gross Gambling Revenues by type of on-line gambling service (EU27)

More detailed information by Member State is presented below¹³:

Member State	Online (Player Activity) GGR by Product Vertical (€m (%))				
	Sportsbetting (inc. Horses)	Casino Games	Poker	Bingo (including Side Games)	State Lottery
Austria	92 (55%)	22 (13%)	8 (5%)	3 (1%)	42 (25%)
Belgium	8 (17%)	22 (48%)	8 (17%)	8 (18%)	0 (0%)
Bulgaria	4 (40%)	4 (41%)	2 (19%)	<1 (1%)	0 (0%)
Cyprus	2 (31%)	3 (46%)	1 (18%)	<1 (6%)	0 (0%)
Czech Rep	9 (43%)	5 (26%)	6 (30%)	<1 (1%)	0 (0%)
Denmark	38 (15%)	34 (14%)	56 (22%)	3 (1%)	119 (48%)
Estonia	1 (47%)	<1 (5%)	1 (46%)	<1 (3%)	0 (0%)
Finland	38 (13%)	35 (12%)	18 (6%)	58 (20%)	145 (49%)
France	316 (53%)	94 (16%)	71 (12%)	28 (5%)	93 (15%)
Germany	178 (25%)	242 (34%)	124 (18%)	23 (3%)	137 (19%)
Greece	46 (37%)	61 (48%)	17 (14%)	1 (1%)	0 (0%)
Hungary	4 (24%)	6 (34%)	5 (29%)	<1 (2%)	2 (11%)
Ireland	53 (36%)	46 (31%)	24 (16%)	25 (17%)	0 (0%)
Italy	346 (51%)	184 (27%)	99 (15%)	14 (2%)	35 (5%)
Latvia	<1 (43%)	<1 (7%)	<1 (45%)	<1 (6%)	0 (0%)
Lithuania	<1 (25%)	<1 (5%)	1 (66%)	<1 (4%)	0 (0%)
Luxembourg	<1 (8%)	4 (86%)	<1 (5%)	<1 (1%)	<1 (0%)
Malta	<1 (7%)	1 (76%)	<1 (16%)	<1 (1%)	0 (0%)
Netherlands	21 (15%)	41 (28%)	55 (38%)	6 (4%)	22 (15%)
Poland	4 (16%)	8 (29%)	11 (44%)	3 (11%)	0 (0%)
Portugal	9 (22%)	21 (52%)	9 (21%)	2 (6%)	0 (0%)
Romania	4 (32%)	4 (36%)	3 (29%)	<1 (3%)	0 (0%)
Slovakia	1 (11%)	<1 (2%)	1 (19%)	<1 (3%)	4 (66%)
Slovenia	<1 (36%)	<1 (6%)	<1 (55%)	<1 (3%)	0 (0%)
Spain	61 (16%)	66 (18%)	93 (25%)	153 (41%)	0 (0%)
Sweden	173 (30%)	84 (15%)	151 (26%)	100 (17%)	68 (12%)

¹³ H2 Gambling capital (figures for 2008)

UK	527 (28%)	428 (22%)	363 (19%)	310 (16%)	275 (14%)
Total EU 27	1.942	1.423	1.135	741	944

1.5 Gambling and the Consumer Market Monitoring Survey¹⁴

The Green paper refers to the annual Consumer Market Monitoring Survey, in which the market for gambling services (online and offline) is one of the 50 markets. The market is rated in the middle area (29th out of 50 included markets) as regards market performance. The figures below are extracted from the annual Consumer Market Monitoring Survey (see also section 1.2 of the Green paper). The overall MPI (Market Performance Indicator) score per market is the combination of seven individual dimensions which have been incorporated in this survey.

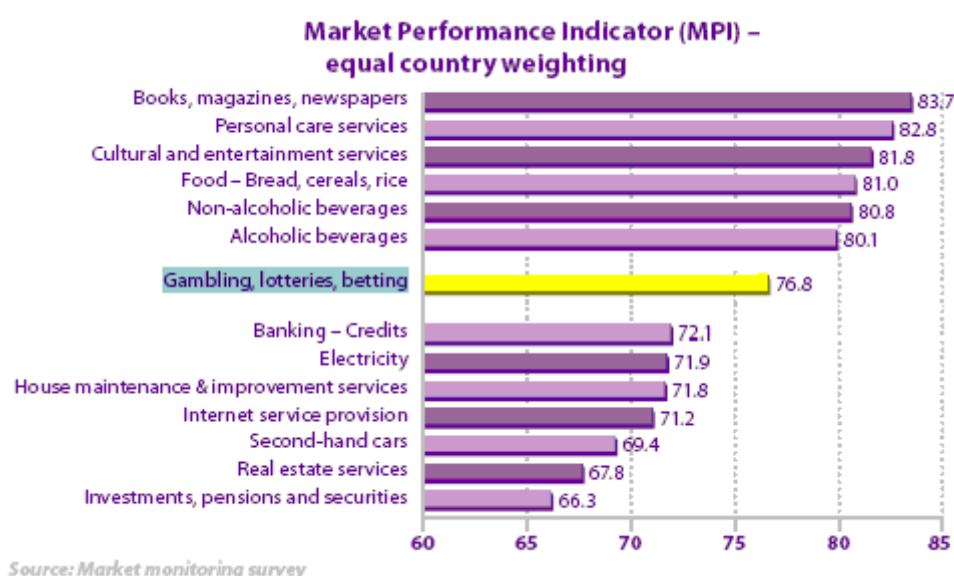


Figure 6. Gambling services and the market performance (high score means better market performance)

The consumer ranking for "comparability" as regards gambling services is relatively high. Comparability is a key component in market performance indication as it captures how easy or difficult it is for a consumer to compare products or services in a given market and implicitly covers price and quality comparison. Comparability is rather well evaluated by consumers with an overall score of 7,1 on a 10 point scale. The markets showing the best performance on this dimension are generally fast moving product categories (such as drinks, personal care products...) and home equipment markets (small or large household appliances).

¹⁴ Specific scores for market in specific countries (dashboards), the overall report (where gambling is dealt with on page 243), tables, etc. can be found at this link:
http://ec.europa.eu/consumers/strategy/cons_satisfaction_en.htm

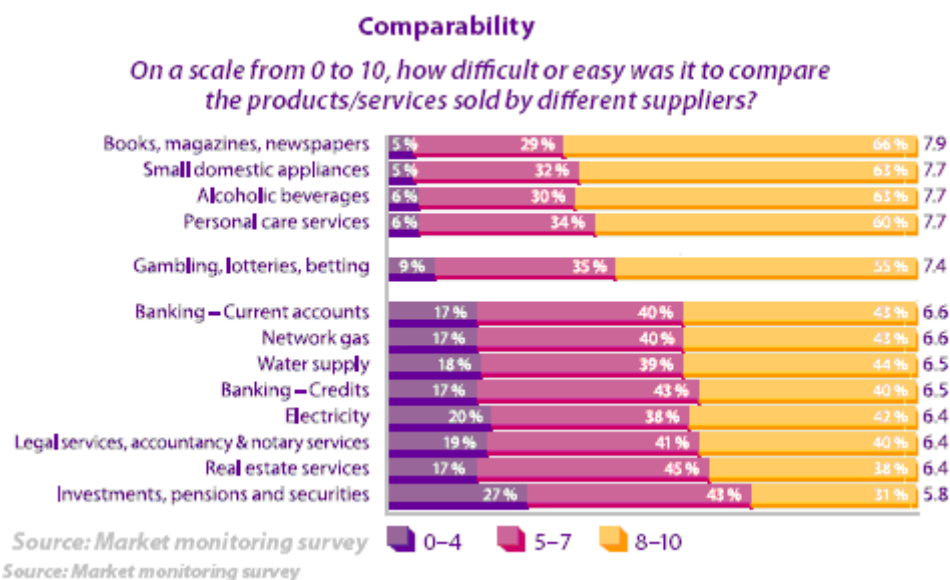


Figure 7. Gambling services and comparability

The rating for "trust" is average and the rating for problems "experienced" is much lower than the average. The overall rating for whether the product lived up to what the consumer wanted is rather low but this is perhaps not unexpected given the nature of the product.

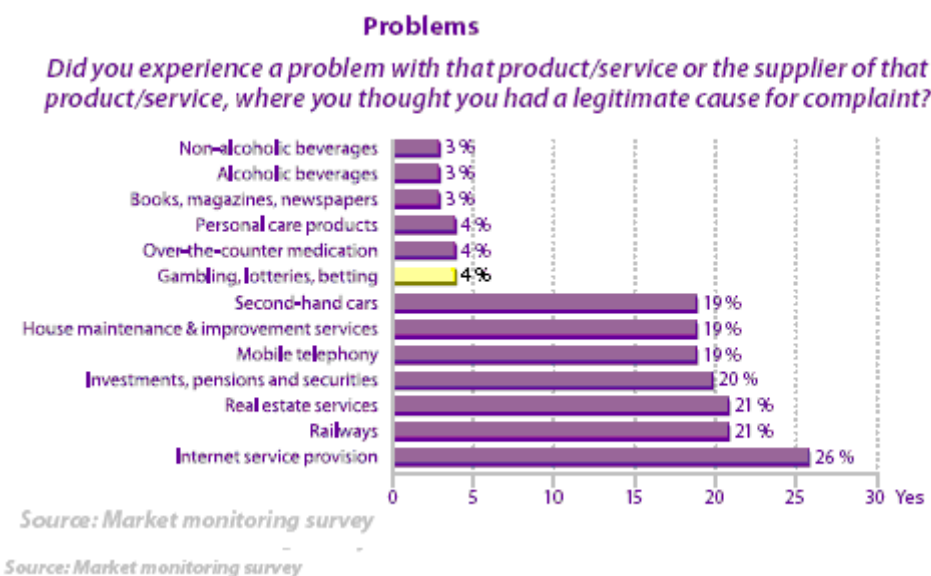


Figure 8. Extract from the annual Consumer Market Monitoring Survey (see section 1.2 of the Green paper)

2. SECONDARY LEGISLATION, NOTIFICATIONS AND CASE LAW

2.1. *EU secondary legislation relevant to on-line gambling*

As regards secondary European law, gambling services are not regulated by sector-specific regulation at EU level but nevertheless are subject to a number of EU acts. In other cases gambling services have been explicitly excluded from the scope of EU law. In addition to benefiting from horizontal rules such as those pertaining to IPR protection, the following texts are noteworthy in this respect.¹⁵: the Audiovisual Media Services Directive¹⁶, the Unfair Commercial Practices Directive¹⁷, the Distance Selling Directive¹⁸, the Anti-Money Laundering Directive¹⁹, the Data Protection Directive²⁰, the Directive on privacy and electronic communication²¹, the e-commerce Directive²² and the Directive on the common system of value added tax²³.

The **Audiovisual Media Services Directive (AVMSD)**²⁴ aims at coordinating certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services. Gambling offers, where any audiovisual content is merely incidental to the service and not its principal purpose, are not considered AVMS.

The **Unfair Commercial Practices Directive (UCPD)**²⁵ aims at protecting consumers from unfair practices which are likely to induce a transactional decision which they would otherwise not have taken. Common rules and principles provide consumers with protection against unfair practices whether they are buying from their corner shop or purchasing from a website based abroad. Businesses can advertise and market to all consumers in the EU, in the same way as to their domestic customers. Although the UCPD is without prejudice to authorisation regimes such as the rules related to gambling activities, advertising and marketing practices fall within its scope. As a consequence, gambling advertising falls foul of the Directive if it is contrary to the requirements of professional diligence and if it is distorting the economic behaviour of the average customer or a clearly identifiable group with an underlying vulnerability, e.g. minors, where the gambling provider can reasonably expect such a distortion. The UCPD bans in particular misleading and aggressive commercial practices.

The **Distance Selling Directive**²⁶ applies to most contracts where a consumer and a supplier running an organised distance-selling scheme do not meet face-to-face at any stage until after the contract has been concluded. "Distance communication" includes traditional means of distance communication but also covers more technologically advanced means of distance

¹⁵ For a more complete listing of EU secondary legislation, see "Staff working document, section II"

¹⁶ OJ L 95, 15.04.2010, p. 1.

¹⁷ OJ L 149, 11.6.2005, p. 22.

¹⁸ OJ L 144, 4.6.1997, p. 19.

¹⁹ OJ L 309, 25.11.2005, p. 15.

²⁰ OJ L 281, 23.11.1995, p. 31.

²¹ OJ L 201, 31.07.2002, p. 37.

²² OJ L 178, 17.07.2000, p. 1.

²³ OJ L 347, 11.12.2006, p. 1.

²⁴ OJ L 95, 15.04.2010, p. 1.

²⁵ OJ L 149, 11.6.2005, p. 22.

²⁶ OJ L 144, 4.6.1997, p. 19.

communication such as teleshopping, mobile phone commerce (m-commerce), and the use of the internet (e-commerce). The Directive provides a number of rights for consumers in order to ensure consumer protection throughout the EU, including provision of comprehensive information before the purchase, right of withdrawal, protection from unsolicited selling and protection from fraudulent use of payment cards. Article 6(3) however excludes the right of withdrawal for contracts for gaming and lottery services, unless the parties have agreed otherwise²⁷.

The **Anti-Money Laundering Directive (AMLD)**²⁸ requires certain institutions and businesses to apply a series of preventive measures with a view to prevent money laundering and terrorist financing. For the gambling sector the AMLD explicitly covers casinos. Member States can however extend the rules to other categories of undertakings with a particular risk to be used for money laundering and terrorist financing purposes. Those subject to the Directive are obliged to:

- verify the identity of their customer and to monitor their business relationship with the customer (casino customers must be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2000 or more);
- report suspicions of money laundering or terrorist financing to the public authorities; and
- take supporting measures, such as ensuring a proper training of personnel and the establishment of appropriate internal preventive policies and procedures.

Competent authorities should ensure that the persons who effectively direct or will direct the business of such entities and the owners of such entities are fit and proper persons.

It furthermore imposes enhanced due diligence procedures in certain situations which carry higher risks of money laundering, e.g. where the customer has not presented himself physically.

The **Data Protection Directive**²⁹ and the **Directive on privacy and electronic communication**³⁰ provide for the legal data protection legal framework in the EU. The Data Protection Directive sets out the general framework for the protection of individuals with regard to the processing of personal data and the free movement of such data while the Directive on privacy and electronic communication contains specific rules on processing of personal data and the protection of privacy in the electronic communications sectors, and regulates areas such as confidentiality, billing and traffic data, rules on spam/unsolicited commercial communications, cookies, etc. For gambling services these rules not only cover static data such as contact or financial information but also behavioural data, like gambling frequency and pattern or the stake.

²⁷ With the proposal for a Directive on Consumer Rights (COM (2008) 614 final) this directive is currently under review.

²⁸ OJ L 309, 25.11.2005, p. 15.

²⁹ OJ L 281, 23.11.1995, p. 31.

³⁰ OJ L 201, 31.07.2002, p. 37 as amended by Directive 2009/136/EC, (OJ L 337, 18.12.2009, p .11.

The e-commerce Directive³¹ excludes in Article 1(5)(d) gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions from the scope of the directive.

Article 135(i) of **the Directive on the common system of value added tax**³² exempts betting, lotteries and other forms of gambling, subject to the conditions and limitations laid down by each Member State, from the common system of value added tax. This however means that, in practice, a margin of discretion is available to Member States and in practice, not all forms of winnings from gambling are exempt in all Member States. In some cases, the tax exemption extends only to a limited number of forms of gambling (typically lotteries and some forms of betting) and in practice it may not specifically cover all forms of on-line gambling.

2.2. Case law relating to Internal Market rules and gambling services- an overview

2.2.1. References for preliminary rulings:

Judgment of 24/3 1994, Schindler , C-275/92, ECR [1994] I-01039,	EN FR DE
Judgment of 21/9 1999, Läärä and others , C-124/97, ECR [1999] I-06067	EN FR DE
Judgment of 21/10 1999, Zenatti , C-67/98, ECR [1999] I-07289	EN FR DE
Judgment of 11/9 2003, Anomar and others , C-6/01, ECR [2003] I-8621	EN FR DE
Judgment of 6/11 2003, Gambelli and others , C-243/01, ECR [2003] I-13031	EN FR DE
Judgment of 13/11 2003, Lindman , C-42/02 ECR [2003] I-13519,	EN FR DE
Judgment of 6/3 2007, Placanica & others , C-338/04, C-359/04 & C-360/04, ECR [2007] I-1891	EN FR DE
Judgment of 8/9 2009, Liga portuguesa (Santa Casa) , case C-42/07, ECR [2009] I-7633	EN FR DE
Judgment of 3/6 2010, Sporting exchange (Betfair) Cases C-203/08, ECR [0000] I-0000	EN FR DE
Judgment of 3/6 2010, Ladbrokes , Case C-258/08, ECR [0000] I-0000	EN FR DE
Judgment of 8/7 2010, Sjöberg and Gerdin , C-447 & 448/08, ECR [0000] I-0000	EN FR DE
Judgment of 8/9 2010, Winner Wetten , C-409/06, ECR [0000] I-0000	EN FR DE
Judgment of 8/9 2010, Markus Stoss C-316/07 etc, ECR [0000] I-0000	EN FR DE
Judgment of 8/9 2010, Carmen media , C-46/08, ECR [0000] I-0000	EN FR DE
Judgment of 9/9 2010, Engelmann , C-64/08, ECR [0000] I-0000	EN FR DE

³¹ OJ L 178, 17.07.2000, p. 1.

³² OJ L 347, 11.12.2006, p. 1.

2.2.2 Pending cases (Article 267 TFEU)

- Case **C-212/08**, Reference for a preliminary ruling from the Conseil d'État (France) lodged on 21 May 2008 - **Société Zeturf Limited v Premier ministre, Ministre de l'Agriculture et de la Pêche, Ministre de l'Intérieur, de l'Outre-mer et des Collectivités territoriales, Ministre de l'Économie, de l'Industrie et de l'Emploi** - intervening party: G.I.E. Pari Mutuel Urbain (PMU)³³
- Case **C-347/09**, Reference for a preliminary ruling from the Bezirksgericht Linz (Austria) lodged on 31 August 2009 - Criminal proceedings against Jochen **Dickinger**, Franz **Ömer**³⁴
- Cases **C-72/10 and C-77/010**, Reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 9 February 2010 - Criminal proceedings against Marcello **Costa** (C-72/10) and Ugo **Cifone** v Giudice delle indagini preliminari del Tribunale di Trani (C-77/10)³⁵
- Joined cases **C-164/10 to C-176/10**, Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 2 April 2010 - Emanuele **Ferazzoli and others** v Ministero dell'Interno³⁶
- Case **C-255/10**, Reference for a preliminary ruling from the Tribunale di Roma (Italy), made on 23 March 2010 - Criminal proceedings against Alessandro **Sacchi**³⁷
- **Case C-279/10**, Reference for a preliminary ruling from the Tribunale del Riesame di Verbania (Italy) lodged on 4 June 2010 - Criminal proceedings against Matteo **Minesi**³⁸
- **Case C-501/10**, Reference for a preliminary ruling from the Tribunale di Santa Maria Capua Vetere (Italy) lodged on 19 October 2010 - Public Prosecutor's Office v Raffaele **Russo**³⁹

2.2.3. The Commission's cases vs Member States relating to gambling (Article 258 TFEU)

The following cases do not focus on the free movement of services (Article 56 TFEU (ex Article 49 TEU)) but concern gambling services:

Judgment of 13/9 2007, **Commission vs Italy**, Case C-260/04, ECR [2007] I-7083 [EN](#) [FR](#) [DE](#)

Judgment of 26/10 2006, **Commission vs Greece**, Case C-65/05, ECR [2006] I-10341 [EN](#) [FR](#) [DE](#)

Judgment of 6/10 2009, **Commission vs Spain**, Case C-153/08, ECR [2009] I-9735 [EN](#) [FR](#) [DE](#)

2.2.4. EFTA Court rulings

Judgment of 14 March 2007, **EFTA Surveillance Authority v The Kingdom of Norway**, Case E-1/06, EFTA Court Report 2007, p.11

³³ [OJ C 197 of 02.02.2008, p.12](#)

³⁴ [OJ C 282 of 21.11.2009, p.26](#)

³⁵ [OJ C 100 of 17.04.2010, p.27](#)

³⁶ [OJ C 161 from 19.06.2010, p.29-34](#)

³⁷ [OJ C 209 from 31.07.2010, p.27](#)

³⁸ [OJ C 209 from 31.07.2010, p.31](#)

³⁹ [OJ C 346 from 18.12.2010, p.34](#)

2.3. Application of state aid rules

The European Commission has opened, under EU state aid rules (Articles 107 and 108 TFEU), two formal investigations;

- Against Denmark, to examine whether lower taxes for online casinos in comparison to traditional casinos in Denmark could procure an anticompetitive advantage for such online casinos⁴⁰. Denmark is liberalising its gambling markets by granting licences for online gambling providers. Under the notification provided to the Commission in July 2010, online providers of casino games and gaming machines would be subject to a flat tax of 20 % on the GGR compared with up to 75 % for land-based casinos and gaming halls. The Commission has doubts at this stage whether the differential treatment entails an unjustified competitive advantage for online casinos as compared to their land-based "competitors".
- Against France to examine whether a parafiscal tax (levy) to finance the horse racing companies is inline with competition rules⁴¹ because of the doubts of the Commission regarding the qualification of the mission conferred on horseracing companies as a service of general economic interest.

2.4. Research and Technological Development

Section 2.3.1. of the Green paper raise a number of issues linked to consumer protection, including addiction. The Commission has under its seventh framework programme (FP7) for Research and Technological Development published a call for proposals in the area of "Socio-economic Sciences and Humanities – Addictions and lifestyles in contemporary European societies" that may cover gambling addiction⁴². Selected project(s) will be announced on the relevant Commission webpage⁴³.

2.5. Financing of benevolent and public interest activities

The financing of benevolent and public interest activities as well as events on which on-line sports betting relies are addressed in section 2.3.3. of the Green paper. Two issues which are mentioned in that section are worthy of development:

- At its session on 10 December 2011, the Council "Competitiveness (Internal Market, Industry)" adopted Council Conclusions on gambling and betting recognising that

⁴⁰ Case C35/2010, DA - Duties for online gaming in the Danish Gaming Duties Act. OJ C 22, 22.01.2011. and IP/19/1711. See also Staff working document Section 2.3.

⁴¹ Case C34/2010, FR http://ec.europa.eu/competition/state_aid/cases/238410/238410_1168986_34_4.pdf

⁴² OJ C177 of 30 July 2009, see also

⁴³ http://cordis.europa.eu/fp7/dc/index.cfm?fuseaction=UserSite.CooperationDetailsCallPage&call_id=252

http://cordis.europa.eu/home_en.html

contributions, in particular from state lotteries or lotteries licensed by the competent state authorities play an important role for society, via for example the funding of good causes, directly or indirectly where applicable. The Council agreed that this specific role should be recognised in discussions at European level.⁴⁴

- On 18 January 2011, the European Commission adopted a Communication entitled "Developing the European Dimension in Sport". This is the first policy document issued by the Commission in the field of sport after the entry into force of the Lisbon Treaty, which gives the EU a mandate to support, coordinate and supplement sport policy measures taken by Member States. This Communication refers to how gambling activities directly or indirectly contribute to the financing of sport.⁴⁵

2.6. Notifications

More than 150 draft Acts and regulations relating to gambling have been notified to the Commission since January 2005⁴⁶. This figure includes notifications from 23 Member States (i.e. all but Bulgaria, Luxembourg, Lithuania and Portugal) and all three EFTA States.

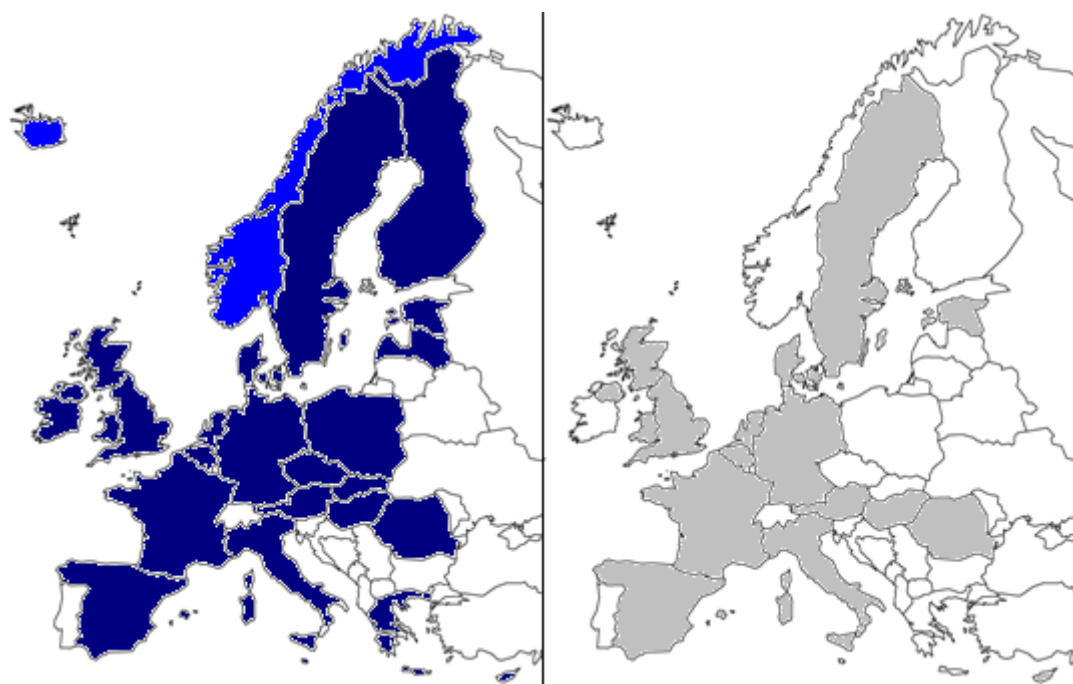


Figure 9. Notifications. Member States that have notified draft legislation relating to gambling services between 2005 and October 2010 (on left hand side). On the right hand side, the map shows Member States that notified on-line gambling legislation under directive 98/48/EC (Information society services 2005-2009).

⁴⁴ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/118398.pdf

⁴⁵ COM(2011) 12 final, see in particular section 3.2. and "Sustainable financing of sport".

⁴⁶ 137 notifications relating to gambling were notified to the Commission under Directive 98/34/EC (amended by 98/48/EC) between Jan 2006 and Oct 2010. See also: http://ec.europa.eu/enterprise/tris/index_en.htm

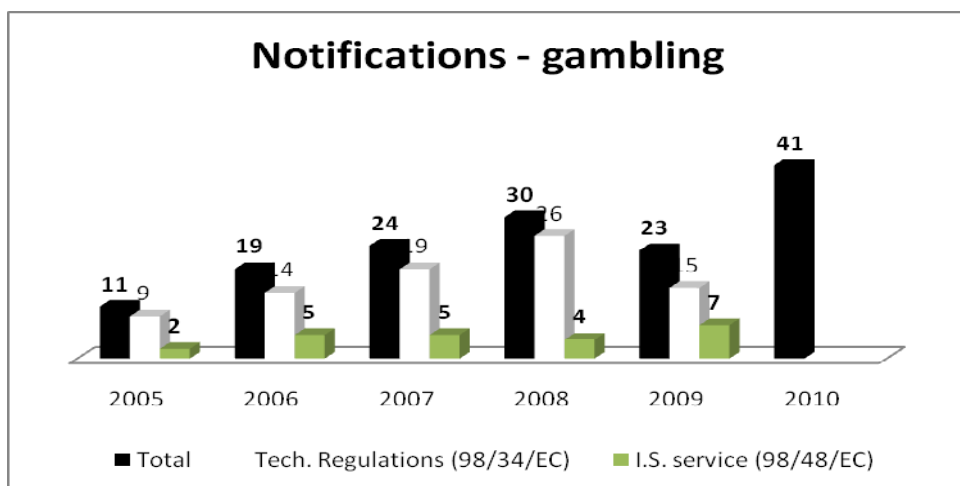


Figure 10. Number of notifications by year.

	2005	2006	2007	2008	2009	2010
Total number of notifications	11	19	24	30	23 ⁴⁷	44
- technical regulations (98/34/EC)	9	14	19	26	15	/
- Info. Society services (98/48/EC)	2	5	5	4	7	/
Detailed Opinions (Commission)	1	1	3	3	3	/
Detailed Opinions (Member States)	1	1	2	2	2	/
Comments (Commission)	4	6	6	5	2	/
Comments (Member States)	1	3	1	1	4	/

Table 1. Overview – Notifications relating to gambling, in particular online gambling

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⁴⁷ 1 text confidential