

Policy Department
Economic and Scientific Policy

ONLINE GAMBLING
FOCUSING ON INTEGRITY AND
A CODE OF CONDUCT FOR GAMBLING

IP/A/IMCO/FWC/2006-186/C1/SC2

This study was requested by the European Parliament's committee on Internal Market and Consumer Protection (IMCO)

Only published in English.

Authors: Robert Young
Jonathan Todd
with contributions from: Alexandra van Cruysen
Europe Economics
Chancery House
53-64 Chancery Lane
London WC2A 1QU
Tel: (+44) (0) 20 7831 4717
Fax: (+44) (0) 20 7831 4515
www.europe-economics.com

Administrator: Balazs MELLAR
Policy Department Economy and Science
DG Internal Policies
European Parliament
Rue Wiertz 60 - ATR 00L 024
B-1047 Brussels
Tel: +32-2-2832202
Fax: +32-2-2846805
E-mail: balazs.mellar@europarl.europa.eu

Manuscript completed in November 2008.

The opinions expressed in this document do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorised provided the source is acknowledged and the publisher is given prior notice and receives a copy.

✉ Rue Wiertz – B-1047 Bruxelles - ☎ 32/2.284.43.74 Fax: 32/2.284.68.05

✉ Palais de l'Europe – F-67000 Strasbourg - ☎ 33/3.88.17.25.56 Fax:
33/3.88.36.92.14

E-mail: poldep-esc@europarl.europa.eu

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
1 INTRODUCTION	3
2 DIFFICULTIES AND DETRIMENTS IN ONLINE GAMBLING	5
3 POLICY RESPONSES	18
4 FOUR COUNTRY STUDIES	25
5 EU POLICY OPTIONS	33
6 CODES OF CONDUCT	35
7 CONCLUSIONS AND RECOMMENDATIONS	44
APPENDIX 1: ONLINE GAMBLING IN AND BEYOND THE EU	47
APPENDIX 2: ORGANISATIONS CONSULTED	61
APPENDIX 3: OVERVIEW OF MAJOR JURISDICTIONS OFFERING ONLINE GAMBLING	62
APPENDIX 4: CODES OF CONDUCT FROM OTHER SECTORS	63
APPENDIX 5: DATA GATHERING	67
APPENDIX 6: BIBLIOGRAPHY	68

EXECUTIVE SUMMARY

- 1 Our brief was to research what policy options are available to ensure a reliable and transparent online gambling market, and to establish whether a Code of Conduct for licensed gambling operators is an adequate measure to ensure the integrity of operators. Integrity is defined as relating mainly to fraud but also embraces money-laundering, problem (addictive) gambling, and under-age gambling.
- 2 The legislative and regulatory landscape for online gambling in the EU is extremely diverse and rapidly changing. No single EU market exists for online or conventional gambling, and the extent of diversity between Member States is so great that we see no likelihood that a single market will emerge at any time soon. Twenty EU Member States allow online gambling and seven do not. Some, by virtue of recent legislation, have decided deliberately to allow or prohibit online gambling, while others allow or prohibit it “passively” by continuing to apply legislation established, often many years earlier, for conventional gambling. Of the twenty Member States that allow online gambling, thirteen operate a liberalised market, six operate state-owned monopolies and one has licensed a private monopoly.
- 3 Those that have banned online gambling altogether and those that allow it only under monopoly conditions claim that such arrangements are essential to keep gambling free of crime, to contain problem gambling and to protect minors. The European Commission has challenged this thinking and has launched infringement proceedings against several Member States on the grounds that such legislation is not necessary for purpose and that it breaches Article 49 of the EU Treaty.
- 4 Thus, we suggest, the justification for EU policy intervention lies, for the moment, not in the creation of a *de jure* single market but in addressing pan-EU detriments that arise.
- 5 Operator associations told us that, where national governments have prohibited online gambling, for example in the US (2006) and Germany (2008), determined gamblers will find ways round the prohibition. One data source we have seen for North America, i.e. not for the US alone, rather confirms this view. We have seen no figures for Germany, and it is perhaps too soon to be able to establish the effect there with any precision.
- 6 We are unable to assess the effects on money-laundering of different legislative approaches to online gambling. EU Member States without exception are members either of the international Financial Action Task Force or of Moneyval, both of which exist to tackle money-laundering and the financing of terrorism through any mechanisms that might be used, not just gambling. Neither organisation publishes material estimating how much money is laundered through online gambling.
- 7 As regards problem gambling and under-age gambling, independent factual studies are few in number. In relation to problem gambling we were able to do a simple comparison between Sweden, which has a state monopoly model of gambling, and the UK, which operates a liberalised market: interestingly, the rate of problem gambling is broadly the same in both jurisdictions, from which it *may* be possible to conclude that the organisational structure and ownership of gambling does not bear decisively on problem gambling.

- 8 We received little hard evidence that EU consumers of online gambling are defrauded on EU-licensed websites (or even on non-EU sites).
- 9 On the other hand, operator associations emphasised that fraud is practised by consumers against operators and other consumers. The two most frequent forms of fraud are false “charge-backs” (where the consumer’s card issuer restores funds to the user on the grounds that the card owner says he or she did not make the transaction) and the collusive playing of poker. We estimate the total detriment to EU consumers at current levels of EU-based online gambling to be about €20 million per annum – but that is a very approximate figure. We cannot estimate how much of it damages consumers rather than operators, nor can we break it down by Member State.
- 10 Despite the diversity of legislative, regulatory and economic models that EU Member States have adopted, gambling operators and regulators have begun to turn their minds to Codes of Conduct or equivalents. Regulators see such Codes as desirable for consumer protection, and operators see them as enhancing consumer confidence. While there are differences between published or emerging Codes, there is also substantial common ground, covering player identification, player protection, self-exclusion, expenditure limits, clarity of game rules, integrity of software, the exclusion of criminality and help with problem gambling.
- 11 We believe that legislative and regulatory convergence on gambling between EU Member States is highly unlikely in the short to medium term. It is open to EU-level institutions to let existing initiatives roll on or peter out as the case may be or to take an initiative which builds on the momentum that already exists in respect of Codes of Conduct. We favour this last-mentioned approach. It should underpin consumer protection more quickly and more consistently than a passive strategy, and it *may* represent the first step in a process which leads eventually to a single EU market in online gambling. In answer to the specific question in our brief - is a "Code of Conduct" for licensed gambling operators an adequate measure to ensure the integrity of operators? – we respond that it is *at the present time*.
- 12 In order to give effect to the development of a possible EU Code of Conduct for online gambling we suggest that the Council, the Parliament and the Commission between them instruct a working group to be formed which brings together (a) regulators from those EU jurisdictions which allow online gambling and (b) the trade associations of EU online gambling operators. The Working Group would be charged with producing a Code of Conduct which all EU Member States that allow online gambling would agree to adopt.
- If they share substantial common ground on what needs to be regulated the fact that they prefer and operate different organisational arrangements should not be an insuperable obstacle.
- 13 Finally, we should like to add that reliable quantitative information, presented in a consistent manner across Member States, about online gambling in the EU has proved difficult to find. We agree with an observation made two years ago in a study by the Swiss Institute for Comparative Law that improving the availability and comprehensiveness of data about all gambling in the EU ought to be a high priority for EU policy-makers.

1 INTRODUCTION

Brief from the European Parliament

- 1.1 Our remit is to provide a briefing paper of maximum length 40 pages on the following subject:

“Which policy options are available to ensure a reliable and transparent online gambling market, where public interests and consumer interests are safeguarded?”

More in particular the briefing note shall address:

1. Is a "code of conduct" for licensed gambling operators an adequate measure to ensure the integrity of operators? If yes, how (and by whom) could it be designed and effectively enforced? What consumer detriment can be quantified and how can this best be tackled? [according to the specifications “Integrity is in this context understood as a responsible approach towards preventing fraud.”]
2. Which (other) policy options are available to ensure the integrity of online gambling operators?

The briefing note shall draw on experiences from a representative selection of Member States, focusing on effects of different regulatory models and possibly include best practises relating to consumer protection and prevention of fraud.”

Countries considered in this report

- 1.2 The EU27 is the primary focus of this report. However, we reviewed experience elsewhere for its applicability to online gambling in the EU, given the ease with which consumers can engage in online gambling across borders. Our review thus extends to Australia, Canada, the USA and a number of so-called “rock jurisdictions”, namely Antigua & Barbuda, Curaçao, Alderney, Gibraltar, the Isle of Man and Jersey.

Principal information sources

- 1.3 In June 2006 the Swiss Institute of Comparative Law (“SICL”) published a report entitled *Study of Gambling Services in the Internal Market of the European Union*. This is a substantial body of work, running to over 1500 pages, and is an important source of information for this study.
- 1.4 Also of great value was GamblingCompliance.com. This website provides legal and regulatory information to the gambling industry worldwide, and we understand that it is well regarded by the industry.
- 1.5 Our terms of reference do not require us to approach stakeholders, but we chose to do so for purposes of information gathering. Although the industry and regulators were generally very willing to speak to us, it proved difficult to obtain information from consumer representative bodies.

As a matter of principle we made ourselves available to any organisation that wanted to speak to us. Appendix 2 lists those bodies with which we held meetings or conference calls, and we should like to thank them all for their assistance.

- 1.6 We should also like to thank the two officials from the European Parliament, Mr. Balazs Mellár and Mr. Tjalling de Vries, who were our main contact points and provided guidance throughout the project.

The structure of this report

- 1.7 **Section 2** discusses what regulatory difficulties and consumer detriments arise from online gambling.
- 1.8 **Section 3** considers the policy responses that national governments have made.
- 1.9 **Section 4** contains four brief country studies covering Germany, the USA, Sweden and the UK.
- 1.10 **Section 5** considers policy options available at an EU level.
- 1.11 **Section 6** examines Codes of Conduct and how an EU-level Code of Conduct might be established.
- 1.12 **Section 7** summarises our conclusions and recommendations.
- 1.13 There follow a number of **Appendices**, among which Appendix 1 is particularly important in that it sets out a description of the approach taken by the EU27 to gambling in general and to online gambling in particular. Appendix 2 lists the organisations with which we exchanged information or opinion. Appendix 3 reproduces a table from an academic paper which ranks the top 20 jurisdictions world-wide by number of online gambling websites and by volume of online gambling transactions. Appendix 4 discusses Codes of Conduct or Codes of Practice from other trading sectors. Finally, Appendix 5 draws attention to the importance of, and current difficulties with, obtaining quantitative evidence on which to base future policy-making. Appendix 6 provides a bibliography.

2 DIFFICULTIES AND DETRIMENTS IN ONLINE GAMBLING

Defining terms

- 2.1 We begin by commenting on the terms “reliable”, “transparent” and “market” which appear in our brief, since in context they are either ambiguous or controversial.
- 2.2 **Reliable** is normally taken to characterise something in which confidence or trust may be put, or something which will not fail or break down.
- 2.3 **Transparent** is taken to mean easily understood, with nothing hidden, half-hidden or obscure.
- 2.4 The term **market** may be disputed at length, especially in relation to gambling. We take it to mean a physical place or other arrangements in which buyers and sellers of a particular commodity or service come together to trade. The **EU single market** is taken to mean trade which is bounded by the whole EU, not by individual Member State boundaries or by limitations imposed within Member States.
- 2.5 As Appendix 1 shows, Member State attitudes towards gambling, and the legislation and regulations adopted to control it, differ widely, such that there is no single EU market in online or any other forms of gambling. Some governments have decided that there should be no competition within the national market either, i.e. that gambling services should be subject to particular forms of organisation, ownership and regulation that preclude competition between operators.
- 2.6 Government attitudes towards online gambling are conditioned by attitudes towards conventional gambling, some of which have prevailed for decades. Thus, Member States that have opted for monopoly state ownership of conventional gambling tend to adopt similar structures for online gambling, while those that have historically allowed more liberal gambling *régimes* have generally continued to do so.
- 2.7 Before we consider (in Section 3) the policy options that can be or have been adopted, we examine features peculiar to online gambling that may cause difficulties for policy-makers.

Regulatory difficulties arising from online gambling

- 2.8 Here we are seeking only to identify the difficulties that face policy-makers and regulators because of the nature of online gambling – not the detriments that arise, which are dealt with in the sub-section immediately following.
- 2.9 The primary difficulty is that online gambling can easily cross **national and EU borders**. Consumers who wish to gamble online have a choice of operators of varying domicile, and players may not know where the service that they are using is domiciled. Thus, although (as Appendix 1 shows) online gambling lacks a single legal framework across the EU or internationally, it may in practice have acquired some of the characteristics of a single global market.
- 2.10 The next difficulty is the sheer **scale** of online gambling. All mass gambling, whether online or offline, involves very large numbers of transactions, which then exacerbates the difficulty of identifying the gambler.

- 2.11 The problem of **identity** is in some respects more difficult, and in other respects less difficult, than with conventional gambling. Arising directly from problems of identity is the problem of gambler **supervision**.
- 2.12 Conventional gambling is physically supervised: customers of (say) a betting shop, a casino or a kiosk selling lottery tickets are within the view of the operator. It should be clear to the operator if the player is a child, is under the influence of drink or drugs, appears to be gambling recklessly, or is in some other way behaving suspiciously. None of this is possible with online gambling. It *may* therefore follow that online gamblers are intrinsically more “vulnerable” than conventional gamblers: if they gamble under the permitted age, acquire a gambling addiction, or gamble while under the influence of drink or drugs, the problem may remain undetected for some time.
- 2.13 Placing cash bet with a bookmaker or playing the tables at a casino can be completely anonymous: the source of the cash is unknown, the identity of the person betting is unknown, and any winnings are paid, in cash, to anybody who happens to bring the winning betting slip or chips. The very anonymity of gambling with cash is for many its primary appeal.
- 2.14 Online gambling cannot be done for cash: it requires an account, which implies some form of identity, so in theory the identity of the player should always be discoverable. In practice, however, ascertaining identity is not always easy: any organisation which needs to know an individual’s identity has to find it among many millions of possibilities and may have to swim against the tide of data protection law. Even when identified, the person using the account (usually a card account) may not be its rightful owner: the card may have been stolen, cloned or used by a family member who should not have access to it.

Detriments arising from online gambling

- 2.15 This next sub-section considers detriments in online gambling, i.e. those things that militate against the emergence of a reliable and transparent online gambling market. We consider five kinds of detriment: fraud, money laundering, misleading advertising, problem gambling and under-age gambling.

Gathering evidence of detriments in online gambling

- 2.16 The field of consumer detriment is complex and is the subject of continuing research by (among others) DG SANCO. Europe Economics completed in 2007 a study for DG SANCO entitled *An analysis of the issue of consumer detriment and the most appropriate methodologies to estimate it*.¹ An important part of the conclusions we reached was that detriment can be divided into two: personal detriment, affecting individual consumers or groups of consumers, and structural detriment, which may be related to market or regulatory failure. Personal detriment, which is relevant here, encompasses not only financial detriment but also (at the least) psychological detriment; but we concluded that the non-financial elements of detriment were effectively impossible to value.

¹ http://ec.europa.eu/consumers/strategy/docs/study_consumer_detriment.pdf

A vital component of the study, and of the recommendations we made, was the importance of consumer surveys as a means of establishing hard evidence about financial and non-financial detriments.

2.17 Our findings from that study are of relevance here. Monitoring the totality of a detriment arising from online gambling is inherently challenging because the raw data is likely to be spread across a wide variety of sources, even where it is retained at all. On the other hand, responsible and well-resourced providers of online gambling accumulate a great deal of information that would be of relevance to independent study. We suggest that an overarching aim for policy-makers should be to move towards a situation where EU online gambling markets are serviced by operators which keep such data in a reliable, consistent fashion good and which they feel they can share with regulators for better public policy-making. Such data, possibly combined with surveys of online gambling consumers, would provide a much stronger evidence base for the quantification of detriments than currently exists.

2.18 We now turn to the specific detriments.

Fraud

Fraud against consumers by operators

2.19 We found limited hard evidence of gambling operators defrauding consumers. We do not say that it does not happen, but there is little evidence in the public domain and *prima facie* it happens on a very small scale. The types of operator fraud that have been recorded include, but are not necessarily confined to:

- Sites taking wagers and then shutting down or simply refusing to pay out winnings.
- Fraudsters misusing card or bank details.
- Personal and financial details being sold to other organisations and used, for example, for telemarketing, spam e-mails and attempts to defraud.
- Installing viruses or spyware on the gambler's computer while he/she is gambling.
- Manipulation of the software to the disadvantage of users.

2.20 The nature of the internet inevitably means that the risk of fraud against consumers can never be entirely eliminated. However, there are reasonable grounds for confidence that the risk that it creates for EU consumers is not great. The major suppliers in the EU market are EU-licensed. Licensing conditions reinforce other law in prohibiting fraudulent behaviour. The operators, trade bodies and regulators we have spoken to (listed in Appendix 2) all say that licence conditions are routinely enforced. We heard no concerns from any of those interviewed about the standards of inspection and enforcement. National rules concerning the advertising and promotion of online gambling products, and the costs of promotion, create not insignificant barriers to market entry and tend to funnel EU consumers in the direction of these EU-licensed firms. Finally, it is in the long-term interests of gambling operators to attract repeat business, and a reputation for fair dealing is regarded by operators and their associations as fundamental in this respect.

- 2.21 Nonetheless, a recent UK survey found that online gambling remains one of the least trusted e-commerce sectors in relation to keeping safe the identities of consumers. GB Group, an online identity verification company, commissioned The iD Factor, a research agency, to conduct a survey on consumer confidence in the e-commerce industry's ability to protect and secure consumers against online identity fraud. The survey, conducted by amongst 1000 18+ adults across the United Kingdom between the 19th and 23rd September 2008, found that the gambling sector is the least trusted of the ten sectors surveyed: 46 per cent of those surveyed said that they had least trust in "Gambling companies including casinos, online gaming sites, [and] interactive TV gambling programmes" compared with 24 per cent who least trusted Central Government and 11 per cent who least trusted banks and building societies.²
- 2.22 The government of New Zealand sponsors a website that alerts citizens to the potential means by which online gambling websites might defraud consumers. It describes the types of fraud listed above and warns gamblers of the risks of gambling on non-New Zealand-licensed websites:
- "If you decide to use overseas websites to gamble, you need to understand that even if you don't break the law by gambling on overseas websites or in overseas competitions, you still face two risks:
1. It may be difficult to tell whether you are dealing with something that is legal in the country where it is based
 2. You have little protection if something goes wrong."³
- 2.23 The state of New Jersey in the USA also cautions that, "even if a person wins an Internet wager from a casino-style game, horse race or sporting event, we cannot be sure that he or she will ever be paid".⁴
- 2.24 We are very grateful to the European Casino Association (ECA), a European association representing land-based casinos⁵, for undertaking a survey of its members in relation to questions we asked about fraud practised by online gambling sites. ECA obtained responses from EU-domiciled members in Estonia, France, Germany, Greece, Hungary, Italy, the Netherlands, Portugal and Romania, and it added material from Serbia and the Mohawk territory of Kahnawake in Canada. No quantified evidence was available from Estonia, Greece, Hungary, Italy, Romania or Serbia, while the material from Kahnawake referred to a well-publicised case of poker-fraud which is still in process.
- 2.25 In Germany, where online gambling is prohibited, ECA reported anecdotal instances of software manipulation, one of non-payment of winnings and the targeting of players after "non-money" plays. In Greece, another EU Member State where online gambling is prohibited, ECA reports "un-regulated offers from online gambling services". In the

² See <http://www.gb.co.uk/gbgroup/gb-news/2008/government-not-trusted-to-keep-our-id-safe-says-public>.

³ http://www.netsafe.org.nz/keeping_safe.php?pageID=185§ionID=adults&menuID=110

⁴ http://www.state.nj.us/oag/ge/internet_gambling/internet_gambling_faqs.htm

⁵ <http://www.europecasinoassociation.org>

Netherlands, ECA records objectionable practices in relation to entry bonuses, credit cards, advertising and poker fraud. The evidence from France is perhaps uncertain:

ECA reports that “studies and experience shows that the main worry for online gamblers is the security of the financial flows. All the CRM [customer relationship management] data express that this concern is vastly confirmed by the daily calls received to verify that payments are on the way.”

- 2.26 Public perceptions, and the actions of the Governments of New Zealand and New Jersey, underline the need for continued vigilance, but in our view the real need is for evidence of fraud against consumers to be fully and consistently documented. The scale of such fraud is not well documented, and we think that if it operated on a substantial scale the evidence would by now have been forthcoming. The adverse evidence we have seen does not in general make clear whether “rogue” operators are EU-licensed or not. On the face of it, consumers using EU-licensed sites are at less risk of being defrauded than if they use non-EU-licensed sites.

Fraud by consumers against firms and other consumers

- 2.27 By contrast, operators and their trade bodies insist that attempts by consumers to defraud operators are more numerous. Such fraud is of more than one variety. On-line gambling firms usually distinguish between criminal and contractual fraud.
- 2.28 Criminal fraud might involve a player stealing someone else’s identity, hacking into an IT system, using stolen credit cards when playing, or other forms of deception. Clearly some of these activities damage both the operator and other users. By definition, the criminal law is available to deter and prosecute such offences.
- 2.29 “Charge-backs” are cited by operators as the most commonly practised form of contractual fraud. Here, a player instructs his or her credit/debit/charge card supplier to reverse the payment on the grounds that the card was lost and/or used fraudulently. It is extremely difficult for card suppliers or gambling operators to distinguish between situations where a consumer has genuinely discovered fraudulent transactions from those made by players who decide not to pay what they owe. In such circumstances, we were told, the card issuer invariably comes down on the side of the card-holder.
- 2.30 Contractual fraud typically involves collusion among players. Here, for example, a group of players would join an online poker table having previously agreed on a game tactic that maximises their joint probability of winning. These winnings would later be redistributed among the colluding parties. Contractual fraud of this type causes a direct detriment to other consumers (for example, the other players at an online poker table) and an indirect detriment to the operator once it becomes known that the site has played host to contractual fraud.
- 2.31 One stakeholder told us that an operator would consider a loss (arising from contractual fraud) of no more than one per cent of turnover as “reasonable”. Another stakeholder told us that operators aim to maintain consumer fraud below 2.5 percent of overall deposits per payment type (i.e. Visa, MasterCard, Maestro, etc.).
- 2.32 In view of the amounts wagered on online gambling, this would suggest that fraud involves substantial sums of money. To give an idea of how much might be involved, we applied the one per cent figure suggested above to the Gross Gaming Revenues (GGR)

estimated by PwC in its study *Global Entertainment and Media Outlook, 2008 - 2012*. PwC's estimates for online gambling in the EU cover only a subset of Member States – Austria, France, Germany, Hungary, Ireland, Sweden and the UK.⁶ These together have an estimated combined GGR of \$2.315 billion for 2008 and \$2.484 billion in 2009. Our estimate, based on proportions of gambling across the EU, is that adding in the remaining Member States of the EU27 will add some 40 per cent to these estimates, bringing them up to an approximate figure of between \$3.2 billion and \$3.5 billion.⁷ If these estimates are even broadly correct, the amount of fraud involved is of the order of \$32-35 million per annum, equivalent to approximately €1-22 million.

- 2.33 We have no breakdown as between charge-backs and other contractual fraud, nor any way of knowing how much the detriment affects other gamblers and how much it affects the shareholders of the gambling operators. Whatever the breakdown, online operators have a strong commercial incentive to invest in anti-fraud technologies, and to share information about fraudulent activities. Stakeholders told us that they are increasingly successful in detecting some kinds of contractual fraud but that charge backs remain extremely difficult to deal with.

Money-laundering

- 2.34 Money-laundering is a process by which funds obtained by criminal means are channelled into legitimate business and the origin of the money is thereby concealed. Money-laundering needs organisational resources and is thus attractive to organised crime.
- 2.35 Strong allegations continue to be levelled against online gambling websites in relation to money-laundering. For example, Mr. Michael Adlem of Protivity, the UK risk consultancy, has been reported as saying: “online casinos are ready-made for money laundering”.⁸ Mr. Guido Berghmans of the European Casino Association asserted in an interview with us that there are around 2,600 “completely illegal” gambling websites in the world and that around 80 per cent of the money passing through these websites is being laundered. We have no way of verifying the extent of money-laundering that Mr. Berghmans suggests, and his figure for illegal websites seems high: the academic paper that we refer to in Appendix 3 estimates that worldwide there are 2,069 online gambling websites in total, not all of which can be counted as “completely illegal”.⁹
- 2.36 Further published research is promised by the Financial Action Task Force (FATF – see Section 3 for more detail), an inter-governmental body which aims to combat money laundering and terrorist financing. The published FATF reports that we viewed mention but give no great detail about the connection between money-laundering and online gambling.

⁶ Germany drops to a nil figure in 2008, while France enters from a nil figure in 2009.

⁷ SICL, p.1486, calculates that these Member States account for 71 per cent of all EU gambling revenue. To bring the total to 100 per cent requires the addition of 40 per cent of the 71 per cent.

⁸ *The Observer*, 31 October 2004

⁹ *Internet Gambling: A Comprehensive Review and Synthesis of the Literature*, August 31, 2007, by Professors Robert J. Williams and Robert T. Wood, University of Lethbridge, Alberta, Canada.

But Rick McDonnell, head of the Asia Pacific Group money laundering division of FATF, has been reported as describing online gambling as “a vulnerable area”.¹⁰ EU-licensed operators claim to cooperate closely with FATF, and we have no reason to doubt this.

Given (as we have said) the scarcity of good quantitative information about online gambling, further evidence of the magnitude of money being laundered through online gambling websites would be welcome.

- 2.37 The third EU Money Laundering Directive¹¹, as well as EU Member State licensing requirements, are designed to minimise the extent to which money-laundering takes place within EU-licensed operations. It is perhaps likely that non-EU-licensed operators represent a more substantial cause for concern.
- 2.38 Some regulatory authorities and representatives of credit card and gambling operators have in the past asserted that online gambling is no more susceptible to laundering than other forms of e-commerce.¹²
- 2.39 Whatever the scale of money-laundering through online gambling, it seems clear that it would be reduced by maximising the proportion of online gambling business that EU consumers conduct through EU-licensed operators. We were told by one trade body that money-launderers are sometimes willing to accept significant losses in converting dirty money to clean – as high as 80 per cent (i.e. €100 of dirty money is turned into €20 of clean) – and substantial percentage losses may be inevitable if gambling is the chosen laundering route and operators are diligent in pursuing unusual patterns of wagering.
- 2.40 Given the time and resources available to us, we are in no position to assess the volume of money being laundered through online gambling operations, whether within or beyond the EU. Lexsi (<http://www.lexsi.com>), a French firm that provides services to tackle cyber-crime, told us that technologies do exist that could quantify the amounts involved – but they are not accessible to us.

Misleading advertising

- 2.41 Directive 84/450/EEC, amended by 97/55/EC and by 2006/114/EC, has been central to the body of EU law that is intended to protect market participants and consumers from misleading advertising. Article 2b of Directive 2006/114/EC defines such advertising as that which:

“deceives or is likely to deceive the persons to whom it was addressed or whom it reaches; by reason of its deceptive nature is likely to affect their economic behaviour; or for those reasons injures a competitor.”

- 2.42 Because online gambling services in some Member States are regulated by systems inherited from previous gambling forms, they may be particularly susceptible to legal dispute.

¹⁰ *The Observer*, 31 October 2004

¹¹ 2005/60/EC, 26 October 2005

¹² *Internet Gambling, Report to Congressional Requests*, United States General Accounting Office, December 2002, p.2. See <http://www.gao.gov/new.items/d0389.pdf>

Certainly while EU Member States take divergent views about the legality of advertising gambling and are sometimes so flexible in applying the law as to create legal loopholes¹³, we saw from our own searches of online gambling websites very little *misleading* advertising.¹⁴

- 2.43 The UK is one of two jurisdictions (the other being Malta) which have regulations specifically tailored to online gambling, and which have codes of conduct covering the advertising of online services.
- 2.44 In those Member States where the advertising of online gambling is permitted, it is often practice for online gambling operators to advertise introductory offers, particularly free initial bets. Some objections have been raised on the grounds that these advertisements are misleading in that they require consumers to commit to further activity later, and some stakeholders said that checks on advertising standards are less stringent in jurisdictions with monopoly systems than in others.
- 2.45 One stakeholder emphasised that advertising authorities needed increasingly to turn their attentions to internet advertising and especially to “spam” e-mails that promote online gambling offers. Spam, of course, is known to be a difficult – indeed thus far intractable – problem for regulators and consumers alike, accounting, according to some estimates, for some 85 per cent of all internet traffic.¹⁵

“Vulnerable” consumers

- 2.46 Although misleading advertising may not exclusively target “vulnerable” consumers, we feel it is important to mention Directive 2005/29/EC on Unfair Commercial Practices, since it stresses that what is meant by “vulnerable” varies with context. Page 16 of the explanatory brochure¹⁶ says that:

“The definition of a “vulnerable” consumer depends on the commercial practice in question. Consumers may be vulnerable to the practice because of their mental or physical infirmity, age or credulity, for example, children or the elderly, in a way which the trader could be reasonably expected to foresee.

¹³ For example, gamblingcompliance.com reports that: “...lack of restrictions, in both the detail of the law and the reality of its enforcement, have allowed advertising campaigns for online gambling services to become prominent, in spite of the fact that the advertising of gambling services is technically illegal in Poland. “

¹⁴ Gamblingcompliance.com also reported in March 2008 that: “Under fire from the EU over its gaming laws, Sweden’s prosecutors have now been advised to halt their attempts to prosecute media organisations that accept advertising from foreign bookmakers. The delay, ordered until the EU completes its infringement processes, means that many of the ongoing cases will expire before they can be tried.”

¹⁵ See, for example, http://www.maawg.org/about/MAAWG20072Q_Metrics_Report.pdf

¹⁶ http://ec.europa.eu/consumers/cons_int/safe_shop/fair_bus_pract/ucp_en.pdf

Within the Directive, certain commercial practices are prohibited since they are considered unfair and are likely to affect especially vulnerable consumers in that case. Examples of such practices include:

- Claiming that products are able to **facilitate winning** in games of chance...”

Problem Gambling

2.47 Problem gambling is defined by the World Health Organisation as any excessive gambling that leads to financial, social and/or psychological disorders.^{17 18} Online gambling has recently come under greater scrutiny because, as one psychologist has argued:

“gambling on the internet is typically done in an isolated setting. There is therefore the added danger for the gambler of acting on impulse, because the checks and constraints that can be exercised by the presence of others are lacking”.¹⁹

2.48 The SICL study reported that, although a substantial number of EU Member States argue that their gambling regulatory regimes aim to control problem gambling, there was little systematic research into or reporting of problem gambling.

“For the most part, most EU Member States have neither carried out prevalence studies nor put into place explicit strategies for developing a greater understanding of the causal or contributing factors to problem and pathological gambling within their borders. In light of changing legal principles and political sentiments, along with jurisprudence pressures from within the EU, one can expect that this situation will change rapidly in the near future.” (SICL, p.1443)

2.49 In the UK Griffiths and Barnes²⁰ studied the online gambling practices of 473 self-selected students, and concluded that:

“the structural and situational characteristics of Internet gambling may be having a negative psychosocial impact...most notably because of increased number of gambling opportunities, convenience, 24-h access and flexibility, increased event frequencies, smaller intervals between gambles, instant reinforcements, and the ability to forget gambling losses by gambling again immediately... further research needs to be carried out into the effects that the Internet has in facilitating gambling behaviour.”

2.50 Notwithstanding the SICL’s expectations we have found few EU-based studies since the SICL report was published.

¹⁷ World Health Organisation (1992) *The ICD-10 Classification of mental and behavioural disorders: Clinical descriptions and diagnostic guidelines*. World Health Organisation, Geneva.

¹⁸ Other commonly used terms include pathological, compulsive, disordered, excessive and addictive gambling.

¹⁹ Submission to the Joint Committee on the UK Draft Gambling Bill by Dr E Moran, FRCP FRCPsych FRSA.

²⁰ *Internet Gambling: An Online Empirical Study Among Student Gamblers*, Mark Griffiths & Andrew Barnes, Springer Science + Business Media, LLC 2007

The Harvard Study

- 2.51 A significant recent research study that explicitly concerns online gambling is one in which Harvard Medical School and online sports betting operator bwin21 cooperated. The project used data provided by bwin to analyse the online gambling behaviour of players.
- 2.52 The study^{22 23} by Harvard Medical School, completed in 2007 and published in 2008, observed and analysed some 47,000 players, all subscribers of online gambling operator bwin, over a period of two years beginning in February 2005.
- 2.53 Of the 47,000 players studied, 91.6 per cent were male, in their early thirties, and 99 per cent exhibited harmless gambling behaviour.
- 2.54 Players were active, on average, for a total of 4 months, placing less than 4 bets a day of less than €5 each. Average loss was €3 for sports bets with fixed odds and €9 for live bets. One per cent of players were considered to be potential problem gamblers. Nevertheless, the Executive Summary of the study reports that:
- “only 0.4% of the total sample could be classified as distinctively heavy bettors with large losses, suggesting that only a limited number of players might have serious financial problems”.²⁴
- 2.55 Harvard reports that, of the 47,000 bwin subscribers, only 160 (0.3 percent) exceeded (self-imposed) deposit limits once or more. Those who did exceed deposit limits placed higher bets more often than those who did not. The findings do not disagree with the notion that players take riskier bets once they exceed deposit limits, but this was prevalent in an extremely small percentage of cases:
- “...Internet gamblers who exceed deposit limits constitute a group of bettors willing to take high risks; yet, surprisingly, they appear to do this rather successfully because their percentage of losses is lower than others in the sample. However, some of these gamblers exhibit some poor outcomes.”²⁵
- 2.56 The objective of the report was to help bwin identify potential problem gamblers to improve player protection. While bwin’s self-imposed deposit limits effectively identify potential problem gamblers, the Study found that they do not constrain behaviour.
- 2.57 Harvard also studied online gambling casinos, publishing a further paper entitled *Inside the Virtual Casino*. Of the 47,000 players studied, 4,222 (9 per cent) played in online casinos.²⁶ Only 18 percent had tried conventional casino gambling.
- Online gamblers played casino games on average once every two weeks during the nine months of the study, placing a median 49 bets of €4 during each playing day. They lost a median 5.5 percent of the amount wagered.

²¹ See <https://home.bwin.com/page.aspx?view=aboutus>

²² <http://www.harmreductionjournal.com/content/pdf/1477-7517-5-27.pdf>

²³ See also bwin’s press release 22 June 2007 *First Empirical Study of Online Gaming Behaviour*.

²⁴ Harvard Study, Executive Summary.

²⁵ *Virtual Harm Reduction* from http://www.divisiononaddictions.org/html/reprints/broda_virtualharmreduction08.pdf

²⁶ *Inside the Virtual Casino*, Introduction, p.1, from http://www.divisiononaddictions.org/html/reprints/labrie_kaplan_casino08.pdf

2.58 The study concluded that there was little indication of substantial losses generated from playing in online casinos, with only five percent of players suffering heavier losses. Some five percent of online casino players demonstrated signs of potential problem gambling, compared with one percent of sports bettors, which supports the hypothesis that casino players do exhibit riskier behaviour. Harvard goes on to say:

“The findings also show the need to consider time spent as a marker of disordered gambling. These findings provide the evidence to steer public health debates away from speculation and toward the creation of empirically-based strategies to protect the public health.”

2.59 Although the Harvard sample is very large, it is, of course, not a genuinely random sample of internet gamblers. Nevertheless, it is an important contribution to evidence-based policy-making and it does not support widespread beliefs that internet gambling leads to excessive gambling any more than does conventional gambling.

The UK Prevalence Study

The UK 2007 Gambling Prevalence Study²⁷, conducted for the Gambling Commission by the National Centre for Social Research, found that:

“Only a small proportion of people (3%) gambled online (like playing poker or casino games etc) or placed bets with a bookmaker using the internet (4%). 3% used fixed odds betting terminals (FOBTs) and 4% gambled in a casino. Overall, 6% of the population used the internet to gamble in the past year.” (Executive Summary, page 9)

2.60 The problem gambling screen used (the DSM IV screen²⁸) found that the rate of problem gambling in the adult population was about 0.6 per cent, unchanged from a substantially similar study researched in 1999. One form of online gambling – the use of online betting exchanges – attracted a problem gambling rate of 9.8 per cent, but the Study says (consistently with our own research into Fixed Odds Betting Terminals) that this does not indicate causality.

Under-age gambling

2.61 While all EU Member States set age limits below which no young person should be able to access gambling, whether offline or online, breaches of the rules are said to be commonplace. The age at which gambling becomes legal differs between Member States and between gambling forms, the most commonly applied thresholds being 16 years (normally for lotteries and scratch-cards), 18 years (for betting) and 21 years (for entry into casinos). Such diversity does not facilitate enforcement.

²⁷ *British Gambling Prevalence Survey 2007*, September 2007, National Centre for Social Research. See <http://www.natcen.ac.uk>.

²⁸ The DSM-IV screening instrument is taken from the fourth edition of the manual used by the American Psychiatric Association.The DSM-IV consists of 10 diagnostic criteria, and a person who answers ‘yes’ to 3 or more criteria is classified as a ‘problem gambler’, with a score of 5 or more indicating a ‘probable pathological gambler’. See the Prevalence Study 2007, p. 73.

- 2.62 A UK report²⁹ published in July 2008 jointly by the children’s charity NCH, the gambling support charity GamCare and the Citizencard organisation (which provides proof-of-age services), reveals that only 7 out of 37 gambling sites tested stopped a 16-year-old girl from registering her details online. The report says that the youngster, from London, was able to lie successfully about her age and register her details on websites under test conditions using her Solo card.³⁰ Many sites would also allow her to gamble in several ways, including interactive television, a mobile telephone and telephone betting, using the same account set up online. This is despite the existence of age verification systems specially designed to block accounts for under-18s at the point of registration.
- 2.63 The authors of the report noted that a number of banks supply debit cards to under 18s – and some to 11-year olds. Banks and credit card companies, they said, could and should play a greater role in preventing under-age gambling.
- 2.64 In the UK, GB Group, said to be the most widely used age verification service³¹, published in April 2008 details of what young people are able to buy online. It reported that nearly half of teenage boys under 18 had tried to buy adult DVDs or violent video games online in the past year, and that over three quarters of these had been successful; that 1 in 20 14-year olds successfully purchased alcohol online; and that a quarter of teenage boys and over a third of teenage girls (both groups under 18) had managed to buy items online using someone else’s credit card.
- 2.65 The report went on to acknowledge that the UK online gambling industry “had embraced latest age and ID verification processes to protect young and vulnerable consumers” but it emphasised that the rise of pre-paid VISA cards as a form of electronic money placed more of a responsibility on financial service providers to include age verification at the point of card registration.
- 2.66 Published research which we ourselves (Europe Economics) have carried out for the UK’s Association of British Bookmakers suggests that the age at which people begin to gamble, whether legally or illegally, is of decisive influence on whether they become problem gamblers: the earlier they start gambling, the more likely they are to become addicted to gambling, regardless of what gambling forms they pursue.³²

²⁹ http://www.gamcare.org.uk/news.php/27/press_release_underage_internet_gambling_study

³⁰ A Solo Card is a debit card available from NatWest bank for teenagers from the age of 11 and from HSBC bank for teenagers from the age of 13. Barclays and Halifax offer a similar Visa Electron debit card.

³¹ <http://www.gb.co.uk/gbgroup/what-we-do/solution/age-verification-and-compliance>

³² <http://www.eer.co.uk/download/2006abbfr.pdf>. See page 52, paragraph 4.7.19.

- 2.67 The UK Gambling Commission has just published a report by Professor Gill Valentine of the University of Leeds reviewing the literature available on gambling by young people.³³ Professor Valentine reports that a very high percentage of young people – 76 to 91 per cent according to UK and North American studies – have gambled, and that the prevalence of problem gambling among young people is higher than among adults. She concluded that there was “relatively little public information about, or awareness of, the potential risks associated with underage gambling in relation to other risk taking behaviours such as alcohol and drugs”. She recommended further research under seven principal headings, including parental attitudes, the effects of advertising and promotion, and the impacts of regulation.
- 2.68 If this true across the EU³⁴, and if (as may be the case) online gambling is easier for young people to access than conventional gambling, the question of under-age gambling online may justifiably begin to loom much larger in the minds of policy-makers.

³³ <http://www.gamblingcommission.gov.uk/UploadDocs/publications/Document/LitReviewChildrenYoungPeople.PDF>

³⁴ In this section of our report we have had to rely mainly on material available to us from the UK. In the time available we have found no equivalent studies exist in the EU. We found two US studies, one from 1995 the other from 2000, but nothing relating to EU Member States apart from the UK.

3 POLICY RESPONSES

EU Member State policy responses

3.1 In this section we deal with policy responses by Member States at two levels. The first might be thought of as the higher level, involving decisions as to whether online gambling is permitted or prohibited, and whether a state-owned, monopolised or liberalised form of supply-side organisation is preferred. The second group of responses are concerned with *direct* actions against *specific* detriments, such as money laundering or problem gambling.

High-level responses – prohibition and ownership

Prohibition

3.2 We have categorised into four the high-level policy stances adopted by EU Member States towards online gambling.³⁵ The four categories are:

- | | |
|----------------------|-----------------------|
| 1. actively allow | 2. passively allow |
| 3. actively prohibit | 4. passively prohibit |

3.3 We define Member States that actively allow or actively prohibit online gambling as those which have passed legislation and/or imposed regulation which deals explicitly with online gambling. Examples are the UK (actively allow) and Germany (actively prohibit). We define Member States that passively allow or passively prohibit as those which have chosen to take no new action in relation to online gambling but to remain silent on it or to apply pre-existing legislation. The position is not static, however: a number of Member States are either in process of changing legislation or are intending to change it, but have not yet done so.

3.4 Table 1 below sets out our categorisation.

³⁵ Please see Appendix 1 for more detail about the categorisation.

Table 1: Summary of EU Member States' approaches to online gambling

Actively allow	Passively allow	Actively prohibit	Passively prohibit
Austria	Bulgaria	Germany	Lithuania
Belgium	Cyprus	Greece	Netherlands
Denmark	Estonia	Romania	Slovenia
Finland	Hungary	Czech Republic	
France	Ireland		
Italy	Luxembourg		
Latvia	Poland		
Malta	Portugal		
Slovakia	Spain		
Sweden			
UK			
11	9	4	3

Source: Europe Economics from gamblingcompliance.com and SICL

- 3.5 We emphasise that such categorisation is simplistic. At a detail level, Member State practices are highly diverse, and the categorisation we have attempted is aimed only at permitting a high-level analysis of policy, not to lead to specific prescriptions.
- 3.6 EU Member State governments which prohibit online gambling have generally placed the burden of prevention on the financial system, by requiring banks and other payment processors to block financial transactions between would-be players and online gambling operators.
- 3.7 Financial institutions including MasterCard, Citibank and PayPal have criticized this approach on the grounds that they are ill-equipped to differentiate between legal and illegal transactions without an explicit black list. They also argue that such measures breach Article 56 of the EU Treaty on the free movement of capital.
- 3.8 An additional or alternative measure is to have internet service providers (ISPs) block access to illegal gambling sites. Italy has given its main gambling authority, the AAMS, the right to require Italian ISPs to block access to gambling websites not licensed in Italy. However, ISPs enjoy some protection under EU Directive 2000/31/EC on e-commerce³⁶, so that (they argue) forcing them to block sites would necessitate launching a long bureaucratic process.

³⁶ 2000/31/EC. Article 5d says that the Directive does not cover gambling but Article 12 provides protection for ISPs as “mere conduits” and Article 13 provides protection for “caching”.

- 3.9 Hard evidence on the effectiveness of blocking mechanisms within the EU, whether financial or otherwise, has been impossible to obtain. To do this we need access to “before and after” levels of online gambling traffic, and we have been unable to obtain them.
- 3.10 On the face of it, it is arguable that measures to block access to illegal gambling sites can be neither entirely effective nor entirely ineffective. The next section of this report – Section 4: Country Studies – includes Germany and the United States as examples of two jurisdictions that have explicitly prohibited online gambling, the US in 2006 and Germany in 2008. In that section we show that measures to block access to illegal gambling sites are unlikely to be either entirely effective or entirely ineffective.

Structure and ownership

- 3.11 Those Member States that have decided to allow online gambling (20 in all) have adopted different policy options to bring about a reliable and transparent online gambling market. The options concern primarily organisation and ownership, and the principal categories here are:
1. State monopoly (or, where relevant, regional monopolies)
 2. Licensed private monopoly
 3. Liberalised market with regulation
- 3.12 Table 2 below sets out our categorisation, in relation to organisational structure and ownership, of the Member States that allow online gambling.

Table 2: structure and ownership of online gambling – approaches of 20 Member States

State or regional monopoly	Licensed private monopoly	Liberalised regulated market
Denmark	Austria	Belgium
France (note 1)		Bulgaria
Hungary		Cyprus
Luxembourg (note 2)		Estonia
Spain		Finland
Sweden		Ireland
		Italy
		Latvia
		Malta
		Poland
		Portugal
		Slovakia
		UK
6	1	13

Note 1: France is now moving to a limited liberalised market

Note 2: Luxembourg allows some relaxation if the monopoly licensee agrees

Source: Europe Economics from gamblingcompliance.com and SICL

- 3.13 We emphasise that, as in Table 1, the categories in Table 2 are not watertight. France and Luxembourg either allow or are intending to allow new entrants into the online gambling market, but in neither case is the result intended to be a fully liberalised market of the type seen in, for example, the UK or Ireland. It is also worth noting that the structure and ownership of conventional gambling is not always that which applies to online gambling.

Have different organisational and ownership structures had different effects?

- 3.14 Member States whose gambling industry is characterised by monopolies, whether state-owned or private, contend that this is the best way of ensuring that consumers are protected from the detriments identified in Section 3.

- 3.15 In its adoption of the 2002 National Lottery Act, for example, Belgium attempted to give the state-owned National Lottery a monopoly of online gambling. The Belgian Finance Minister explained that:

“...much of online gambling offered to Belgians is based in offshore jurisdictions where there is little emphasis on money laundering and problem gambling issues.

Placing online gambling under the umbrella of the national operator would ensure that a number of safeguards are put in place to protect players”.³⁷

- 3.16 This is the general direction that Austria, Denmark, France and Sweden have also taken. But question then arises whether it represents a breach of Article 49 of the EU Treaty.
- 3.17 Section 4 of our report explores what differences in online gambling patterns and consequences may be associated with different forms of organisation and ownership. We chose Sweden and the UK respectively as exemplifying monopoly state ownership and a liberalised gambling market.

Non-EU jurisdictions

- 3.18 We considered a small number of non-EU jurisdictions with two main objectives in mind. First we wanted to establish whether there are approaches to legislation, regulation or Codes of Conduct in online gambling that might be beneficial to the EU, assuming that these better models could reasonably be transplanted. Secondly, some of the jurisdictions we considered (the so-called “rock jurisdictions” on account of the fact that some are small and sometimes remote islands) are effective competitors to EU Member States in respect of the attractions they offer to operators and services they offer to an EU clientèle. For the avoidance of doubt, we do not claim these non-EU jurisdictions as a statistically representative sample of world-wide practice.
- 3.19 The jurisdictions we considered are the USA, Canada and Australia; and the “rock jurisdictions” are Alderney, Jersey, the Isle of Man, Gibraltar, Antigua and Barbuda, and Curaçao. The USA, Canada and Australia are most comparable to the EU in that the individual states have legislative power over all forms of gambling, except online gambling, provided state legislation does not breach federal or national legislation as appropriate. Online gambling is illegal in all three jurisdictions at the national level.
- 3.20 The striking thing, in the context of this study, is the determination of the “rock jurisdictions” to compete in order to attract and retain online gambling operators. They do so predominantly by creating favourable infrastructure, favourable regulation and (notably) favourable tax régimes. More detail about the non-EU jurisdictions we considered may be found in Appendix 1.

Responses to specific detriments

- 3.21 We now give consideration to other policy responses that have been taken up in response to the detriments identified and, to the extent that evidence allows, the effectiveness of each such response.

³⁷ GamblingCompliance.com

Money laundering – the Financial Action Task Force and Moneyval

- 3.22 The Financial Action Task Force (FATF)³⁸ is an inter-governmental body, created in 1989, whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. According to FATF's website its membership currently consists of 32 sovereign jurisdictions plus the Gulf Cooperation Council and the European Commission. There are also 27 international and regional organisations which are Associate Members or Observers of the FATF and participate in its work. FATF members are required, among other things:
- To provide a written commitment at the political level.
 - To endorse and support FATF recommendations and methodology.
 - To implement all the FATF recommendations within a reasonable timeframe.
- 3.23 Although FATF has not dealt with gambling across members collectively, it has made references to gambling in (for example) the US (2006) and UK (2007) country reports.³⁹
⁴⁰
- 3.24 Some EU Member States are not (or not yet) members of FATF. Those that are not are members of an alternative body, Moneyval, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism.⁴¹
- 3.25 Given the number of jurisdictions which are members of FATF or Moneyval, and the equally wide range of measures taken by both bodies, we have no further contribution to make in this report on the subject of money-laundering.

Fraud

- 3.26 As with problem gambling and under-age gambling (see below) all EU Member States require regulators and operators to take steps to identify and eliminate fraud, though such legislation does not generally distinguish between different types of fraud. Some Member States have argued that state and/or monopoly ownership is needed to deter or contain fraud.

Problem gambling

- 3.27 All EU Member States recognise problem gambling as an issue that needs to be addressed by regulation, and some insist that state ownership and/or monopoly structures are needed to control it. But the availability of treatment for problem gambling varies by Member State. To quote from SICL:

³⁸ http://www.fatf-gafi.org/pages/0,2987,en_32250379_32235720_1_1_1_1_1,00.html

³⁹ For the US see <http://www.fatf-gafi.org/dataoecd/44/9/37101772.pdf>, paragraph 935 *et seq.*

⁴⁰ For the UK see <http://www.fatf-gafi.org/dataoecd/55/29/39064399.pdf>, paragraph 38 *et seq.*

⁴¹ <http://www.coe.int/t/dghl/monitoring/moneyval/>

“...in the UK, The Netherlands, France and Sweden, there are help-lines available for problem gamblers, as well as dedicated out-patient treatment services...It is only in the UK’s Gambling Act 2005 that provision is made to ensure that all these activities [treatment; public awareness and prevention; training; and research] are developed and funded through the establishment of an industry body...and through the requirement that licensees demonstrate social responsibility.”⁴²

Under-age gambling

- 3.28 Those Member States that favour monopoly structures generally take the view that monopolies are more effective than liberalised arrangements in keeping children and young people away from gambling. However, it is hard to see how any particular organisational structure would be effective in preventing an under-age person from sitting down at a PC and gambling online. What counts is likely to be the rigour of the checks that the operator carries out, and that is not intrinsically likely to be better done by a state monopoly operator than a private operator in a liberalised market.
- 3.29 In summary we are unable to say whether specific forms of organisation or ownership have any effect on money-laundering, fraud, problem gambling or under-age gambling, their prevalence or scale.

⁴² p.1451

4 FOUR COUNTRY STUDIES

- 4.1 In this section we consider four jurisdictions: two which have recently and explicitly prohibited online gambling, namely Germany and the USA; and two which allow online gambling, namely Sweden and the UK. Sweden has a state-monopoly supply of gambling while the UK favours a liberalised market.

Germany

- 4.2 In March 2006 the German Federal Constitutional Court required the sixteen *Länder* to draw up new legislation regarding sports betting before the end of 2007 because the Court considered that existing regulation did not sufficiently protect players from gambling addiction. Consequently, the *Länder* collectively drew up a new Interstate Gambling Treaty (Glücksspielstaatsvertrag) which came into force on January 1st 2008.

- 4.3 The aims of the Treaty are given (in Section 1 of the English translation) as:

- “1. to prevent the development of addiction to games of chance and gambling and to establish the preconditions for combating this addiction in an effective manner,
2. to restrict the games of chance on offer and to steer the natural gaming urges of the population along well-ordered and supervised paths, in particular, to prevent a switch to illegal games of chance,
3. to guarantee protection for young people and gamblers,
4. to ensure that games of chance are conducted in accordance with regulations, that gamblers are protected against fraudulent wheelings and dealings, and that the criminal aspect which follows and accompanies games of chance is averted.”

- 4.4 The Treaty is widespread in its effects on gambling generally, but one specific provision of the Treaty covers internet gambling specifically. Section 4.4 of the Treaty states quite simply that:

“The organising and arranging of public games of chance on the Internet is prohibited.”

- 4.5 The *Länder* can order internet service providers to block websites featuring illegal betting operations and can require banks to prevent money transfers to such operators.
- 4.6 The Treaty also outlaws the advertising of gambling over the internet, on television and through telecommunications equipment.
- 4.7 Since the prohibition is of recent date, there is as yet no reliable evidence which might show its effect on German gambling. We have seen material which points in both directions:
- In its *Global Entertainment and Media Outlook: 2008-2012*, PwC envisages a drop in revenue of \$465 million in German casino gaming between 2007 and 2008. (But this is a forecast, not an expression of actual outcome.)

- On the other hand, one German online lottery operator, Tipp24⁴³, reported a 27.7 per cent rise in revenues for the first quarter of 2008, despite difficulties acknowledged by the company arising from the new Interstate Treaty.⁴⁴ The company also claims year-on-year growth in registered customers – although at half the rate of previous years.

4.8 The European Commission has asked Germany to reconsider the ban on online gambling, arguing that the measure is disproportionate to the problems that the Treaty seeks to remedy or forestall.

The USA

4.9 The US took final steps to prohibit online gambling for US citizens with the passing of the Unlawful Internet Gambling Enforcement Act (UIGEA) in 2006.

4.10 The Act has a remarkable genesis in that it was (a) never debated by the Senate before being passed into law, and (b) was constructed as a late addendum (Title VIII) to a completely unrelated piece of legislation, namely the Safe Port Act. The intention of the UIGEA had, so far as we can tell, nothing to do with the protection of consumers, or with gambling addiction or under-age gambling, but simply the updating of earlier legislation, specifically the Wire Act of 1961, which already sought to prohibit gambling across state borders over telecommunications equipment. It appears that US law-makers were intent mainly on tackling criminality in gambling.

4.11 Professors Robert Williams and Robert Wood of Lethbridge University, Canada⁴⁵ point out that in practice, the UIGEA bites upon providers rather than on consumers, in that the Act makes it illegal for financial transaction providers to make fund transfers to online sites that take bets or wagers on the outcomes of contests, sports event or games subject to chance. It is also illegal for internet gambling providers to accept money transfers from potential US online gamblers.

4.12 Williams and Wood go on to say that:

“The UIGEA is not directed at individual bettors, and there have only been rare cases of prosecution of U.S. citizens for placing an Internet bet....Anecdotal information suggests that many U.S. players are circumventing the UIGEA by depositing money into non-U.S. financial transaction intermediaries to place bets....Furthermore, many online gambling sites ensure that credit card and/or banking statements do not indicate that the transaction was for gambling.” (*op.cit.* p.11)

⁴³ See <https://www.tipp24.de/app/home.html>

⁴⁴ Source: <http://gamingintelligencegroup.com/gig/content/view/1019/2>

⁴⁵ *Internet Gambling: A Comprehensive Review and Synthesis of the Literature*. Prof. Robert Williams and Prof. Robert Wood, University of Lethbridge, Alberta, Canada, August 31 2007

- 4.13 The Williams/Wood paper draws upon information available from online.casinocity.com which estimates the number of online gambling sites operating worldwide and the proportion of those which are no longer accepting wagers from players identified as playing in the US. Casinocity estimates a total of 2,069 online gambling websites in existence worldwide as at July 2007, and that these were owned by 436 different companies, i.e. an average of between 4 and 5 sites per company. It went on to estimate that about 25 per cent of sites stopped taking wagers from players in the US – not necessarily US citizens – immediately after the passing of the UIGEA in 2006; and that by 2007 about 50 per cent of sites worldwide had done so too.
- 4.14 It is striking that, as the world's largest economy, the United States was nevertheless ranked – following the passage of the UIGEA – as only the tenth largest online gambling jurisdiction in the world (measured by volume of transactions) and that by July 2007 it hosted only 28 online gambling websites compared with 377 in Kahnawake, 299 in Curaçao, and 236 in Costa Rica.⁴⁶
- 4.15 On the other hand, information we have seen from H2 Gambling Capital (see Appendix 5 for further detail) indicates that although the volume of online gambling in North America as a whole fell in 2007, the year after UIGEA came into force, it did not fall even remotely close to zero: the decline in Gross Gambling Yield (equivalent to the term Gross Gaming Revenue used earlier) fell only by about 25 per cent. H2 forecasts that Gross Gambling Yield in 2008 will recover almost to pre-ban levels and that in 2009 it will surpass them. Admittedly, these figures are for North America as a whole, not for the US alone, but it is inconceivable that the US would not exert a substantial influence on the region.
- 4.16 Again, therefore, we are confronted with evidence that prohibition may well have an effect on the location of supply of online gambling services but that it does not necessarily deter consumers from finding accessible sites.

Sweden

- 4.17 Sweden is the first of two jurisdictions that we study which allow online gambling. However, Sweden allows only state monopoly and ownership of gambling, and our concern here is to assess the impacts that this structural arrangement has compared with that of the UK, which operates a liberalised regime.
- 4.18 The Swedish Government has consistently argued that the restrictions it applies to the Swedish gambling market are aimed not at securing revenues for the Treasury but at protecting Swedish gamblers and at countering gambling addiction and gambling-related crime.
- 4.19 Internet gambling was authorized in 2002 for non-profit associations running lotteries whose principal purpose is public benefit; and in 2003 for the State-controlled operator *Svenska Spel* and racing industry operator, ATG.

⁴⁶ The table in the Williams/Wood report from which these figures are extracted appears as Appendix 3 to this report.

In 2005 *Svenska Spel* was given authorization to trial online poker, which was launched in March 2006 and extended to June 2008.

- 4.20 *Svenska Spel* is thus not a monopoly operator in the literal sense of the word but it is the sole operator of those forms of gambling awarded to it by the state, as ATG is for different gambling forms. No other operators, Swedish or foreign, may have access to the gambling run by *Svenska Spel* or ATG. The European Commission sought information with a view to launching infringement proceedings against Sweden (IP/08/118 and IP/06/436) in relation to the compatibility of Swedish restrictions with EU law, specifically Article 49 of the Treaty.
- 4.21 Whatever its legality under EU law, the state monopoly ownership of online gambling in Sweden has not suppressed its uptake by Swedish consumers. Sweden has the thirteenth largest population of the EU27 but in 2007, according to the Williams/Wood paper, had the EU's third highest volume of online gambling transactions (after the UK and Malta).⁴⁷
- 4.22 Sweden has monitored problem gambling for at least 13 years (we are aware of studies going back to 1995 but there may be good earlier studies too). A 1999 study, based on a sample of some 9,000 15 to 74 year-olds found that, using the DSM-IV test, 0.6 per cent were problem gamblers and 0.3 per cent might be considered severe problem gamblers.⁴⁸
- 4.23 The British Gambling Prevalence Survey 2007⁴⁹ briefly compared problem gambling rates across twelve jurisdictions, among which Sweden and the UK (or, strictly speaking, Great Britain, i.e. the UK less Northern Ireland) were the sole EU representatives, although Norway and Switzerland were also covered. Interestingly, the Swedish and British problem gambling rates are closely similar:
- a central rate of 0.6 per cent for Sweden, with a 95 per cent confidence interval of 0.4 per cent to 0.8 per cent.
 - a central rate of 0.5 or 0.6 per cent for Britain (depending on the test applied), with a 95 per cent confidence interval across the two tests of 0.3 per cent to 0.9 per cent.
- 4.24 The problem gambling rate in Sweden (and thus in Britain too) is higher than in Norway (a central rate of 0.2 per cent), similar to that of Canada, New Zealand, and Switzerland, and lower than in Australia, South Africa, the US, Singapore, Macao and Hong Kong. Hong Kong's rate of 5.3 per cent is some way higher than that of the next highest jurisdiction, Macao, with 4.3 per cent. (But note that different methodologies were used in different countries.)⁵⁰

⁴⁷ Among the top 20 online gambling jurisdictions worldwide, as shown in Appendix 3, Sweden ranks 15th by volume of transactions.

⁴⁸ *Gambling and problem gambling Sweden: report No.2 of the National Institute of Public Health Series on Gambling*. Ronnberg, S., Volberg, R.A., Abbott, M.W., Moore, W.L., Andren, A., Munck, I., Jonsson, J., Nilsson, T. & Svensson, O. (1999).

⁴⁹ *British Gambling Prevalence Survey 2007*, September 2007, National Centre for Social Research. See <http://www.natcen.ac.uk>.

⁵⁰ See table 4.10 on p.85. in the UK Prevalence study

- 4.25 It is thus not obvious that Sweden's monopoly ownership of gambling generally assists in achieving a lower rate of problem gambling than emerges from the liberal market arrangements in Great Britain.
- 4.26 Sweden treats problem gambling (at least in part) under its national health scheme. SICL reports (p.1451) that research and education programmes are offered through the National Institute of Health and the *Spel Institutet*, while treatment services are offered through local organizations financed by local communities.
- 4.27 In addition, *Svenska Spel* is now using a system that analyses how online players place bets, how much they bet, under what circumstances, and how often. The system is voluntary. The technology aims to identify individuals with a growing gambling habit before they become problem gamblers. Once individuals are identified by the system as at risk, *Svenska Spel* undertakes to cease advertising gambling to them, to urge them to reconsider their gambling habits, to work out a gambling budget, to take a test for gambling addiction and to exclude themselves from using *Svenska Spel's* services.
- 4.28 We found little material on under-age gambling in Sweden. One section of the larger report referred to in paragraph 4.22 above found that:
- “During the first phase of the survey, the young people were between 15 and 17 years old...
- “Approximately 10 to 15 per cent of the young people say they have done the football pools, played an instant lottery or the Bingo-Lotto game or played cards for money in the last month.
- “Among schoolchildren in grade 9 of compulsory school (aged 15), more than twice the number of boys (44 per cent) than girls (18 per cent) said they had gambled in the last month...” (p.5)
- 4.29 The report makes no specific reference to online gambling.

United Kingdom

- 4.30 The UK has possibly the most liberalised arrangements for gambling in the EU27. With one exception, the state neither owns nor runs gambling operations.⁵¹
- 4.31 In 2005 the government passed a new Gambling Act, the underlying aim of which was to create a unified regulatory regime to replace the patchwork quilt of former regulation, some of which dated back to the 19th century.⁵² The Gambling Act created a new arm's length Gambling Commission, which now regulates all forms of gambling in Great Britain except for the National Lottery, which kept its own arm's length regulator.⁵³

⁵¹ The exception is The Tote, a long-established off-course and online *pari-mutuel* bookmaker, currently in public ownership as a prelude to formal privatisation.

⁵² http://www.opsi.gov.uk/acts/acts2005/ukpga_20050019_en_2

⁵³ The National Lottery is a licensed monopoly, the operating contract for which is re-tendered competitively every ten years.

- 4.32 The Gambling Act and the Commission became fully operational in September 2007. Particularly given the diversity of gambling legislation and structures adopted by other EU Member States, it is interesting that the UK generally shares other Member States' overarching policy aims but sees no conflict between these and the existence of a competitive market in gambling.
- 4.33 The aims of UK legislation are:
- “(a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
 - (b) ensuring that gambling is conducted in a fair and open way, and
 - (c) protecting children and other vulnerable persons from being harmed or exploited by gambling” (Gambling Act 2005, Part 1, Section 1)
- 4.34 Although it occurs *passim* throughout the Act, the term “vulnerable person” is not defined.
- 4.35 Section 24 of the Act makes explicit reference to Codes of Practice.
- 4.36 Until September 2007 it had been illegal for UK gambling operators to domicile their online operations in the UK. Principally for tax reasons they have not relocated their online businesses back to the UK.
- 4.37 Consistently with its liberal approach to market structure, the UK Government has drawn up a “White List” of jurisdictions so that operators registered offshore who wish to offer their services in the UK may, subject to conditions, do so. The conditions relate to regulatory standards, which must satisfy the requirements of the UK. Any online gambling company licensed in a White List territory is free to advertise its services in the UK.
- 4.38 The White List has had the effect of preventing many online gambling sites from advertising in the UK. The List currently includes only three jurisdictions outside the EU/European Economic Area – Tasmania, the Isle of Man and Alderney. Antigua and Kahnawake are conspicuously absent, both jurisdictions having appealed unsuccessfully.
- 4.39 UK citizens have long displayed a substantial appetite for gambling. When the SICL reported in 2006, the UK then had the highest gross gambling revenue (amounts wagered less amounts returned to players) of any of the EU25, though it ranked only third by population. The UK had the fourth highest gross gambling revenue *per capita* (after Ireland, Finland and Luxembourg) and the highest of any large-population Member State.⁵⁴
- 4.40 On the face of it, the liberal market-based gambling *régime* that the UK has operated, and still operates, appears to have stimulated gambling. As yet it is hard to see the effects of the Gambling Act 2005, since it became fully operative only last year, but the new Act did not in general seek to impose more draconian forms of regulation so it is unlikely that by itself the Act will have changed gambling practices in the UK.

⁵⁴ By our calculation, expansion of the EU25 to the EU27 leaves the rankings unchanged.

4.41 As regards online gambling, the Roberts/Wood paper already referred to (see Appendix 3) places the UK in second place, after Gibraltar, in the ranking of the top 20 jurisdictions measured by volume of online gambling transactions.⁵⁵

We do not have a breakdown of where the transactions originated, or a split between online gaming and online betting, so it is difficult to comment further on the UK's ranking.

4.42 It is possible, however, to comment on problem gambling within the UK, since two closely comparable independent studies, conducted by the same team and based on substantial survey samples, were published in 2000 and 2007.

4.43 As we have said, the 2000 report the British Gambling Prevalence Survey 2007 found an overall problem gambling rate of 0.6 per cent. Despite considerable changes in the UK gambling landscape in the intervening years, the 2007 report found exactly the same percentage.

4.44 The prevalence of online gambling had been negligible in the 2000 study, and was too small to be further analysed. By 2007 participation in internet-based gambling on casino-type games had risen to only 3 per cent of adults – less than many commentators had expected – with 4 per cent using the internet to place a bet with a bookmaker (the two totalling 6 per cent, not 7, since there is some overlap) . Nevertheless, participation by problem gamblers in online gambling was markedly higher than in other forms of gambling. Online sports betting with bookmakers showed a problem gambler participation rate of 6 per cent, i.e. 6 per cent of problem gamblers said that they used this form of gambling.⁵⁶ The result for online betting exchanges was 9.8 per cent, and for all other forms of online gambling 7.4 per cent.⁵⁷

4.45 We are unable to perform a comparison between the UK and Sweden in relation to online gambling. But it is notable that the results obtained in the UK are somewhat higher than (though difficult to compare precisely with) those of the Harvard Study referred to in Section 3. Harvard found a “potential problem gambler rate” of 5 per cent in its sample of 47,000 bwin customers (mostly online casino gamblers), compared with an actual 7.4 per cent rate among UK adults.

What the Country Studies imply

4.46 We stress first that the four country studies are not a representative sample of the EU27. That said, we believe we can draw some conclusions that may have wider relevance.

4.47 The first is that even a complete prohibition of online gambling does not appear to eliminate it. This is consistent with what some academic commentators have said about prohibition.

⁵⁵ Interestingly, the three jurisdictions in the top 20 which have substantially larger populations than the UK (namely the Russian Federation, the USA and the Philippines) all rank lower in volumes of online gambling transactions, at 16th, 10th and 9th respectively.

⁵⁶ This does not imply that any particular form of gambling causes problem gambling. Problem gamblers characteristically participate in several forms of gambling, and the study did not aim to define their “primary” or “preferred” forms.

⁵⁷ The highest rate was 14.7 per cent, for spread betting, and the lowest was 1.0 per cent for the National Lottery.

As far back as 1998, an Australian paper by Roger Clarke and Gillian Dempsey of the Australian National University, ACT, concluded that prohibition “is neither a sensible nor a feasible option. It would appear to be appropriate to permit Internet gambling within Australian jurisdictions, in order to impose controls, and to extract revenue from it.”⁵⁸

- 4.48 Two further papers, dating from 2004, take a similar line. In the October 1 edition of *Gaming Law Review*, Adrian Parke and Mark Griffiths of Nottingham Trent University argue not merely that prohibition *may* not work but *will* fail. In an article for the *Journal of Public Policy and Marketing* dated Fall 2004, Professor William R. Eadington, Director, Institute for the Study of Gambling and Commercial Gaming, University of Nevada, concluded that:

“The present U.S. strategy is intended to marginalize online gambling, purportedly because of concerns about adverse social impacts. However, because of actions abroad to create legal regulatory regimes to govern online gambling, and because the Internet is becoming increasingly worldwide, U.S. attempts to prohibit online gambling are likely to be futile in the long run.”⁵⁹

- 4.49 The conclusion that we draw from the different models of market organisation and ownership adopted by Sweden and the UK is that *prima facie* the choice of model does not bear decisively upon either the prevalence of gambling generally or upon the prevalence of problem gambling. Much more research is needed, however, to explore the similarities and differences in more detail, and indeed to relate them to organisation and ownership.

⁵⁸ Paper presented at the conference *Gambling, Technology and Society: Regulatory Challenges for the 21st Century*, convened by the Australian Institute of Criminology in conjunction with the Australian Institute for Gambling Research, Sydney, 7-8 May 1998. See <http://www.aic.gov.au/conferences/gambling/dempsey-clarke.pdf>

⁵⁹ <http://www.atypon-link.com/AMA/doi/abs/10.1509/jppm.23.2.214.51399>

5 EU POLICY OPTIONS

- 5.1 In this section we consider what policy options are open to the EU in order to create “a reliable and transparent market in online gambling”, and we focus particularly, as our brief requires, on a Code of Conduct.

What is the basis for EU policy?

- 5.2 EC best practice in regulatory impact analysis requires first a clear rationale for establishing any particular policy. Here, the principal objective is to find ways of establishing the reliable and transparent market in online gambling that the brief refers to. Previous sections of this report, together with Appendix 1, have established a substantial diversity of policy adopted by individual Member States, ranging from outright prohibition of online gambling to explicit permission, and from state monopoly ownership to a liberalised supply-side. It is also clear that detriments persist irrespective of the policy chosen.
- 5.3 We have shown that online gambling can easily cross borders, which means, among other things, that online gamblers in Member States with monopoly providers do not trade exclusively with the monopolies. Such a *de facto* single market would, all other things being equal, encourage EU action to create a *de jure* single market. But all other things are not equal. Different Member States take different views as to how gambling should be conducted; the EC has contested the legality of some of these policy measures under EU law; and infringement proceedings against several Member States are now in process.
- 5.4 One may reasonably expect that it will take time for these proceedings to conclude, and at this stage it is uncertain *how* they will conclude – whether Article 49 of the Treaty will prevail, effectively requiring Member States to create a single gambling market, or whether distinctive national approaches will be allowed to persist. We argue therefore that the basis for EU policy at this time does not exist in the attempted creation of a *de jure* single market but in the minimisation of detriments in the context of an online gambling sector where a single market might be said to exist *de facto*.

The available options

- 5.5 Against this background, we see the broad policy options available to the EU as follows.
- 5.6 **Option 1 is to do nothing**, which in effect means allowing existing regulatory practice and existing initiatives to roll forward. There are at least two types of current initiative that could result in “reliable and transparent” online gambling.
- One is industry self-regulation, for example the principled Code of Conduct already adopted by members of the UK-based Remote Gambling Association (RGA) or the more prescriptive Code in course of finalisation by EGBA.
 - Another is continuing co-ordination between Member State regulators (e.g. through GREF or IAGR) which might eventually produce a viable code.
- 5.7 **Option 2 is to prohibit online gambling throughout the EU.**

- 5.8 **Option 3 is to issue EU Directives that create a *de jure* single online gambling market, i.e. a liberalised EU gambling market subject to EU regulation.**
- 5.9 **Option 4 is to require one or more EU institutions to devise an EU Code of Conduct.**
- 5.10 Option 1 is by no means infeasible (it is already happening) but its pace of progress is uncertain, as is the final outcome. Prolonging, at least in some Member States, the uncertainties already faced by consumers, operators and regulators is undesirable.
- 5.11 Option 2, prohibition across the EU, seems to us in practice infeasible. Twenty out of 27 Member States already allow online gambling, even though they adopt different economic models. Given the nature of the internet, an EU-wide prohibition on online gambling, even if it were enforceable, which we doubt, would in all probability achieve no more than to drive some EU consumers to gambling sites outside the EU, with consequent losses of tax revenue and employment. Prohibition seems also an extreme way of combating problem gambling – a primary concern of prohibitionists. If (as the studies we have referred to show) problem gambling affects no more than about 1 per cent of adult populations in European countries⁶⁰, forbidding it to the remaining 99 per cent might seem excessive.
- 5.12 Option 3 likewise seems to us infeasible, at least in the short term, and possibly even in the long term. It would require at least the seven Member States which have prohibited online gambling to abandon positions which they have adopted – in some cases recently and for reasons which they believe are entirely sound. It would also require those Member States which allow online gambling but favour state monopoly in its provision to embrace market principles and to open their markets to operators from other Member States.
- 5.13 Options 2 and 3 also raise issues that are already before the courts, and pursuing them would thus merely throw more fuel on current fires.
- 5.14 We therefore conclude that at the present juncture the best option to explore is Option 4 – to attempt to devise an EU Code of Conduct. In the next Section of this report we consider what might be done, and how.

⁶⁰ See Table 4.10, p.85, of the GB Gambling Prevalence Survey 2007 for a list of countries.

6 CODES OF CONDUCT

- 6.1 We adopt here a broad definition of the term, and thus include practices published under comparable names, such as Code of Practice, Memorandum of Understanding, Membership Rules, and so on.
- 6.2 A Code of Conduct is characteristically more responsive than primary or secondary legislation to changes in the external environment such as technological developments, the advent of new products or services, changes in consumer preferences, or radical developments in market structure. This is simply because in most jurisdictions, and because of pressure on Parliamentary time, changes to primary legislation, and in some cases even secondary legislation, can take a very long time. It is unsurprising, therefore, that Codes of Conduct have become more apparent in fast-moving consumer goods and services, especially those where IT is involved. Online gambling is precisely such an example.
- 6.3 Although Codes tend to be separate from legislation, a Code of Conduct may be referred to in primary or secondary legislation and may in some circumstances acquire force almost equivalent to that of regulation. One might say that in some sectors convergence is taking place between Codes and regulation – and again, as we show below, online gambling provides evidence of precisely this.
- 6.4 The most common characteristics of Codes of Conduct are that:
- (a) Codes are developed mainly or entirely by the signatories to it, and they are thus most commonly drawn up by operators;
 - (b) nevertheless, there are exceptions to this, where Codes are drawn up between operators (or their representatives) and government or regulators;
 - (c) Code set out rules of conduct which signatories are required to agree before they sign and to observe afterwards;
 - (d) Codes may provide for independent verification that signatories are abiding by the terms of the Code; and
 - (e) Codes may set out sanctions that will apply if any member organisation breaches the Code to which it has agreed.
- 6.5 As regards point (c), a Code of Conduct may incorporate a considerable amount of technical and other prescription or may confine itself to policy principles. Examples of both exist in and beyond the gambling world.

Codes of Conduct in online gambling

- 6.6 We briefly review some of the Codes of Conduct that are already in existence or in contemplation in online gambling. We begin with Codes from the industry and then proceed to Codes from regulators.

Codes from the industry

The European Gaming and Betting Association (EGBA)

- 6.7 The European Gaming and Betting Association (EGBA), a pan-European association set up by and representing the eight leading online gambling operators in Europe⁶¹, launched in July 2008 a “set of standards” covering all aspects of player protection, fair gaming and responsible operator behaviour. All members must abide by these standards, which build upon other industry initiatives.
- 6.8 As this report was being drafted, the final version of the EGBA Code of Conduct was not quite complete, but we were told that it would cover main headings as follows:
- a requirement for player registration including name, age, address and unique password details;
 - stringent player verification processes for under-age and identity checks;
 - the ability for players to be excluded and self-exclude;
 - the ability for players to establish bet and deposit limits;
 - the ability to provide players with a statement of their account activity;
 - 170 technical requirements;
 - accessible and responsive customer support on a 24/7 basis;
 - links to problem gambling and betting information and qualified advice services where available in a territory;
 - measures to combat fraud including player-fraud, money-laundering and fraud against the operator; and
 - sanctions against members who breach the Code.
- 6.9 EGBA told us that members who breach the terms of the Code will be removed from the Association if they fail to remedy those breaches.

The Interactive Gaming Council (IGC)

- 6.10 The IGC (<http://www.igcouncil.org/index.php>) describes itself as:

“a not-for-profit organization...founded in 1996...to provide a forum for interested parties to address issues and advance common interests in the global interactive gaming industry, to establish fair and responsible trade guidelines and practices that enhance consumer confidence in interactive gaming products and services, and to serve as the industry’s public policy advocate and information clearinghouse.

⁶¹ PartyGaming, bwin Group, Unibet, bet-at-home.com, The Carmen Media Group, Expekt, Interwetten Gaming Ltd and digibet.

“We have members from the U.S., the U.K., South Africa, Israel, Canada, the Caribbean, Australia, Denmark and Sweden...”

- 6.11 It is clear that IGC’s membership is indeed substantially greater than (for instance) that of EGBA, at 25 to EGBA’s 8. We could see no overlap of members in the respective listings.
- 6.12 The IGC too has published a Code of Conduct covering compliance, integrity, consumer privacy and data protection, advertising (for which there is a further dedicated Code of Practice), dispute resolution, problem gambling, prize payouts and corporate social responsibility. IGC says that, where a member is licensed by a sovereign jurisdiction, the terms of that licence override those of the Code of Conduct. It is not clear, however, from IGC publications what sanctions are visited upon members that breach the Code.
- 6.13 The IGC Code is relatively short and non-prescriptive (it has twelve short paragraphs) and may be viewed at <http://www.igcouncil.org/content/view/20/37>.

Pari-mutuel Urbain (PMU)

- 6.14 PMU is the monopoly supplier of pari-mutuel horserace betting in France. According to its website (<http://www.pmu.fr/pmu/html/fr/entreprise-pari-mutuel-urbain/index.html>) it is the largest such organisation in Europe and the second largest in the world. It offers both online and conventional betting. PMU provides on its website a 28-page guide document which spells out the commitments that PMU makes towards its customers. The headings under which the guide is published are:

Promoting responsible gambling	Offering transparent gambling
Forestalling problem gambling	Ensuring the protection of minors
Providing means for players to manage their gambling expenditure	
Help and support when other measures are ineffective.	

International Responsible Gambling Code of Conduct

- 6.15 This Code was launched in October 2007 on the initiative of UK gambling care charity GamCare, the UK Remote Gambling Association (RGA), the player protection and standards body eCommerce and Online Gaming Regulation and Assurance (eCOGRA), and with contributions from EGBA and the IGC. The Code can be viewed on the eCOGRA website, at <http://www.ecogra.org/RGCode>.
- 6.16 The coverage of the Code does not differ greatly from that of the IGC Code. The headings are: under-age gambling, player protection measures, customer communication, training and advertising/promotion. The player protection measures break down into: link to a Responsible Gambling web-page, self-exclusion, deposit limits, reality checks, player accounts, game fairness, and a requirement that free games should be subject to the same provisions as paid-for gambling.

Codes from regulators

Gaming Regulators' European Forum

6.17 The Gaming Regulators' European Forum (<http://www.gref.net>) is made up of representatives from gaming regulatory organisations throughout Europe. Its principal aims are stated as providing a forum in which European gaming regulators can meet to exchange views and information and to discuss policy on gaming matters; and on special occasions and with the agreement of members to represent the different views of European gaming regulators.

6.18 GREF recognises that different Member States take different views about gambling in general and online gambling in particular:

“The Gaming Regulators European Forum regards the regulation of gambling (that is gaming, betting and lotteries) as a matter for the competence and jurisdiction of individual countries, in the light of their particular social, cultural and economic conditions. It therefore follows that it is a matter for individual Governments, either at national or at autonomous regional level, whether or not they wish to permit any forms of gambling to be offered on the Internet in their territories and, if they do, under what circumstances or conditions particular forms of gambling are to be allowed. Any such decisions should be respected by other jurisdictions.”

6.19 But it goes on to say that:

“If a jurisdiction is to permit forms of gambling to be offered on the Internet, the members of GREF regard it as important that:

(i) those to be permitted to offer such forms of gambling should be subject to the same level of investigation and probity and other checks as is applied to traditional, terrestrial gambling operators.

(ii) those so licensed should be required to establish their operation in the territory of the jurisdiction concerned so that the operation can be properly controlled and policed.

(iii) the gambling so offered should be restricted to residents of the jurisdiction concerned and residents of such other jurisdictions with whom there are co-operative or reciprocal arrangements.”

6.20 GREF then suggests a check-list of issues that gambling regulators should include in their responsibilities. The list is somewhat lengthy but we consider it well worth reproducing, in that it seems tantamount to a Code of Practice for regulators:

“The methods to be used to ensure that such operations are fairly conducted and the players are fully aware of the rules that apply.

The methods of ensuring that such operations are not used as a means also of conducting any illegal activities, in particular for money laundering.

The permitted arrangements for paying for wagers on the gambling offered, including restrictions on the granting of credit.

The methods of protecting and guaranteeing the funds deposited and the monies won by the players.

The means of ensuring that no players are under the legally permitted age for the appropriate form of gambling in the jurisdiction concerned.

The means and level of protection to be offered to compulsive gamblers and others who have difficulty in controlling their gambling.

The controls to be placed on advertising, particularly in respect of jurisdictions which do not permit such gambling or do not welcome such advertising.

The methods to be used to protect the privacy of the players and the confidentiality of the information provided by them.

The methods to be used to ensure data protection and security of transmission.

The methods to be used to ensure that tests and checks are conducted regarding the randomness of the games and, including EDP-audits, regarding the electronic gaming systems used by the operators.”

International Association of Gaming Regulators (IAGR)

- 6.21 The IAGR (<http://www.iagr.org>) is “an organization of gaming regulators from around the world who communicate on a continuing basis about matters of common interest and convene annually at a formal meeting”. Its membership is geographically very wide.

In Europe, 17 EU Member States are IAGR members⁶², together with Norway and Switzerland. The rock jurisdictions are generally well represented, though Curaçao and Gibraltar are not.

- 6.22 IAGR does not itself publish a Code of Conduct, but its annual conference characteristically covers a wide-ranging list of subjects in a multiplicity of sessions. This year it included professional codes of conduct (as well as money laundering). The 2008 conference was proceeding as this report was being drafted, and we have as yet seen no papers from it, but we mention it because the papers are likely to be relevant to the Parliament’s deliberations that take place after this report has been completed.

UK Gambling Commission

- 6.23 The UK’s Gambling Act makes specific provision (at Section 24) for the regulator, the Gambling Commission, to devise and enforce Codes of Practice. We quote:

“24 Codes of practice

(1) The Commission shall issue one or more codes of practice about the manner in which facilities for gambling are provided...

⁶² Among large EU Member States, France and Germany are notable exceptions.

(2) In particular, a code shall describe arrangements that should be made by a person providing facilities for gambling for the purposes of -

- (a) ensuring that gambling is conducted in a fair and open way,
- (b) protecting children and other vulnerable persons from being harmed or exploited by gambling, and
- (c) making assistance available to persons who are or may be affected by problems related to gambling.

(3) A code may include provision about how facilities for gambling are advertised or described.”

6.24 The Act goes on to say that although failure to comply with a Code of Practice does not constitute a civil or criminal offence, the Code is admissible in court or tribunal proceedings and is to be taken into account by the Gambling Commission in discharging its duties.

6.25 The Gambling Commission in turn has published a number of Codes of Practice within wider documents also encompassing licence conditions. The original document, Licence Conditions and Codes of Practice,⁶³ was published in June 2007 ahead of implementation in September 2007. The headings under which the Codes of Practice operate are:

- 1. Financial requirements
- 2. Protection of children and the vulnerable
- 3. ‘Fair and open’ provisions
- 4. Marketing
- 5. Complaints and disputes
- 6. Gambling licensees’ staff
- 7. Pool betting

6.26 There is then a separate Code of Practice on access to casino premises for children and young persons.

National Codes or an EU-level Code?

6.27 From the evidence we have considered, we are encouraged by the commonality of purpose that gambling operators and regulators have shown in relation to reliability and transparency in online gambling.

6.28 The principal operators of online gambling are almost universally international players, and, as they have emphasised to us, if governments will not help or require them to be consistent in their practices their best option is to agree such practices among themselves. Codes of Conduct thus emerge as an attractive regulatory mechanism where national legislations differ materially: operators see it as decisively in their own best interests to establish reputations for fair dealing and to show social responsibility towards those who gamble.

⁶³ <http://www.gamblingcommission.gov.uk/UploadDocs/publications/Document/LCCP%20June%202007.pdf>. The original document has twice undergone revision. A new version is due to be published imminently for implementation in January 2009.

- 6.29 Although there are some differences between the Codes of Conduct or Practice that we have referred to, it is striking that most such documents have substantially common aims no matter whether they originate with industry players or regulators, and regardless of monopoly or liberalised market organisation. The most visible common features across suppliers and regulators are:
- stringent age and identity checks
 - the ability for players to be excluded and self-exclude
 - the ability for players to establish bet and deposit limits
 - access to problem gambling information and advice services
 - measures to combat fraud including player-fraud, money-laundering and fraud.
- 6.30 If there is such substantial common ground across operators and regulators, it seems to us logical that establishing a single EU-level Code of Conduct should be the objective of both groups. We think also that a concerted EU-level approach, *provided it builds on work already done*, could be the quickest and most effective solution for EU consumers.
- 6.31 Technical issues apart, there are three important issues for consideration in an EU-level Code.
- who would draw up this Code
 - whether common principles can be agreed irrespective of regulatory differences
 - whether it should be confined to broad principles or prescriptive at a detail level
 - the policing of compliance
 - sanctions that should be applied to operators that breach the Code

Practical considerations towards an EU-level Code

- 6.32 There are a number of important practical questions that arise. We see them as:
- 6.33 The first is: **who would draw up an EU Code of Conduct?**
- 6.34 As we have shown regulators and the trade associations of operators are already beginning to work, largely independently, on Codes of Conduct. As we have also shown, the ground which each side wishes to cover is in important respects common. Furthermore, it seems to us that if a Code is to command the support of consumers it should be seen to be a matter on which the industry and regulators agree.
- 6.35 There is unlikely to be one right mechanism which makes all others wrong, but some form of working group chaired by neither side may be the most appropriate way forward. A tentative suggestion on our part for a Chairman is perhaps a lawyer well versed in gambling, to be appointed by agreement of the Council, the Parliament and the Commission.
- 6.36 It is important that the EU seeks to maximise the inclusion and participation of EU-based operators and regulators in taking an EU Code of Conduct forward. Imposing such a Code upon the unwilling or the indifferent is unlikely to be successful.

Nor is there merit in a Code which rides roughshod over commercial considerations or makes operators uncompetitive against those (within or beyond the EU) who do not sign up to it.

6.37 The second question is: **can common principles be agreed irrespective of regulatory differences?**

6.38 We see no reason why not. Member States may differ on *how* to achieve such aims as securing transparency, deterring problem gambling or preventing under-age gambling, but they do not appear to differ on *whether* to do so. It is surely not unreasonable to expect representatives to sink their cultural differences in order to formalise agreement on those things which are agreed anyway?

6.39 From our knowledge of what regulators and operators are focusing on at present, we suggest that the following could be a minimum list of principles to be included in a Code of Conduct:

- age and identity checks
- procedures for the exclusion and self-exclusion of players
- betting and deposit limits for those players who want them
- complete transparency in game rules
- clear statements as to the chances of a win
- prompt payment of winnings
- access to problem gambling information and advice services
- commitment to measures to combat fraud by operators against consumers and by consumers against operators
- commitment to measures aimed at combating money-laundering
- in the case of sports betting, a commitment to vigilance against breaches of sports integrity, to reporting suspected breaches, and to action against those who commit such breaches
- regular independent audits of compliance
- sanctions against those who breach the Code

6.40 The third is: **should a code of conduct go beyond agreed principles?**

6.41 There is clearly a spectrum of preference on this point. At one end sits the draft Code of EGBA, which, we are told, will incorporate 170 technical standards. At the other is (for example) the rather broader approach adopted by the IGC. Since we are not gambling technologists we are unable to adjudicate (for example) on whether EGBA is right to adopt the technical standards that it says it intends. We certainly think it will be important for the Parliament to give close consideration to the EGBA Code of Practice when it is published.

6.42 Much will depend on the extent to which Member States agree with our suggestions, but one way forward may be to envisage a Code based on principles as a step towards a Code based on prescriptions. Prescription might well be preferable to principle for the greater certainty it provides, so long as it does not compromise the principle of wide inclusion.

- 6.43 The fourth question is: **should an independent third party audit compliance with the Code?**
- 6.44 This would, and we suggest should, be regarded as part of modern best practice in the application of Codes. The body or bodies authorised to undertake such audits, and the scope of such audits, would logically be identified by the working group that devises the Code.
- 6.45 Finally: **should penalties be applied to non-compliance with the Code?**
- 6.46 If there is no penalty for non-compliance then the Code would quickly become discredited, so our view is that there should be penalties. But non-compliance is often not clear-cut, so independent adjudication would be needed to assess the severity of non-compliance, to determine steps and a timetable needed to secure compliance, and to determine penalties for continued non-compliance. Again we see, as tasks for the working group, the development of rules under this heading, the identification of a suitable compliance mechanism, and sanctions for non-compliance.

Lessons from outside gambling

- 6.47 We considered a number of settings other than online gambling where codes of conduct have been applied. Such codes covered sectors as varied as retail banking, energy wholesaling, mortgage intermediation, travel agencies, drugs marketing, video games classification and premium rate telephone services.
- 6.48 Of these, only the last two, namely video games and premium rate telephone services, have sufficient in common with gambling to make them worth reporting, and we do so in Appendix 4. We emphasise that these do not form precise models to be adopted in online gambling but they may assist policy makers in general rather than specific terms.
- 6.49 There is one aspect of the Code of Practice relating to premium rate telephone services that may particularly bear upon online gambling, and that concerns the fact that both types of services involve very large numbers of transactions and consumers. In telecoms, the major regulators are generally set up to process, so to speak, a small number of large issues, involving mainly operator-to-operator issues (i.e. wholesale rather than retail). Problems faced by retail consumers in premium rate services are different in character, and it is this which has resulted in the adoption of Codes of Practice, usually to be supervised by a distinct body (for example in the UK) or by a distinct group within the regulator (for example in Ireland).
- 6.50 Like online gambling, premium rate telephone services are subject to rapid technological (and cultural) change and it has been found round the world that primary or even secondary legislation cannot keep pace with such changes, nor with the commercial changes that follow them. Codes of Practice can be amended much more quickly, and that is why they have found favour. But in the cases of both the UK and Ireland (and elsewhere in and beyond the EU) the Code of Practice is explicitly referred to in legislation, and in the UK in particular the main communications regulator, Ofcom, has power to delegate the regulation of premium rate telephone services to a third party.
- 6.51 It remains to be seen whether such an approach might be valuable in online gambling, but we think it is worthwhile to draw the attention of the Parliament to it.

7 CONCLUSIONS AND RECOMMENDATIONS

- 7.1 Different Member States take different views as to how gambling should be conducted – whether online gambling is legal at all, and, if it is allowed, whether it should be run as a state monopoly or as a regulated but competitive market. The EC has contested the legality of some national policy measures under EU law. One may reasonably expect that it will take time for these legal proceedings to conclude, and at this stage it is uncertain whether Article 49 will prevail, effectively requiring Member States to create a single gambling market, or whether diverse national approaches will be allowed to persist, based on claims that each national approach is justified by concern for public health and public order.
- 7.2 Thus, we suggest, the justification for EU policy intervention lies, for the moment, not in the creation of a *de jure* single market but in addressing pan-EU detriments that arise.
- 7.3 In these circumstances, some form of Code of Conduct is the best way forward, since it would allow Member States to leave their differences on one side and concentrate on issues seen as important across the whole EU.
- 7.4 Although there is no one right way of devising a Code of Conduct, our suggestion is that such a Code be devised by regulators and operators coming together in a working group under a Chairperson to be identified by the Council, the Parliament and the Commission or the institutions jointly.
- 7.5 It would be for the working group to determine whether a Code of Conduct should be confined to principles or to detailed prescription. We envisage that the first might be a forerunner of the second.
- 7.6 We recommend that compliance with the Code should be independently monitored and that penalties should be imposed on non-compliant signatories. On any other basis the Code is unlikely to command public or consumer confidence. It would be for the working group to identify one or more suitable audit bodies and to devise an initial tariff of sanctions.
- 7.7 The adoption of a Code of Conduct does have the capacity to improve reliability and transparency in online gambling but it will not bring about a [single] EU online gambling market, or even national markets in the sense that the word “market” is usually applied.

Responses to questions in the brief

Is a "code of conduct" for licensed gambling operators an adequate measure to ensure the integrity of operators?

- 7.8 Based on the research we have carried out, we do not believe that integrity is lacking among EU-licensed operators. With relevant and well defined licensing conditions in place and with effective sanctions against misbehaviour, we think that Codes of Conduct *can be* an adequate measure to ensure the integrity of operators.

We say this because the evidence we have seen suggests that operators see it in their own best interests to devise and adopt such Codes.

- 7.9 We acknowledge entirely that Codes vary, and that some are more prescriptive than others. In general we favour specificity over broad principle.

If yes, how (and by whom) could it be designed and effectively enforced?

- 7.10 We have already said that an EU Code of Conduct should be devised by a working group of regulators and operators under an independent Chairman. It is important for regulators and the regulated to have confidence in each other, which suggests that close consultation between them is desirable from the outset. The Codes of Practice widely adopted for Premium Rate Telephone Services (see Appendix 4) depend substantially on close consultation between regulators and the regulated.

What consumer detriment can be quantified and how can this best be tackled?

- 7.11 Assessing the impact of misleading advertising would need to rest on a whole edifice of assumptions and approximations, and we see no point in attempting them. Estimates of the value of money-laundering are not made public by bodies that deal with it, and we do not think it is for us to make guesses. No problem gambling study that we have seen attempts to quantify the costs arising from problem gambling. The only consumer detriment we have been able to quantify therefore concerns fraud.
- 7.12 There is little evidence of fraud practised by EU-licensed gambling operators on consumers.
- 7.13 Anecdotally, non-licensed operators or operators domiciled in jurisdictions where licensing and enforcement are not accorded high priority have defrauded consumers, but we have been unable to find reliable or systematic evidence as to the scale of the fraud.
- 7.14 We have been told that the extent of loss suffered by online gambling operators through fraud of one kind or another could amount to 1 per cent of Gross Gaming Revenue. This would amount to some €1-22 million per annum in the EU at current rates of online gambling. Some of this damage has an impact on other players, since (a) it raises operator costs, which ultimately have to be recovered from customers, and (b) in some cases players are damaged by the cheating of other players. We have no means of estimating, especially within the timescale of this project, how much of that €20 million or so is a financial detriment to players.
- 7.15 Nor are we able to put a value on the social damage arising. As we have said, the field of consumer detriment is complex and is the subject of continuing research by (among others) DG SANCO. A *sine qua non* of future policy making in relation to the consumer detriment that may arise from online gambling is a good evidence base. The SICL made exactly the same point in its own study.
- 7.16 Fraud practised by consumers against operators is being tackled by experts within the operator organisations, and we are not competent to comment on their techniques, which are in any event not made public. Operators also emphasise that there is no real safeguard against fake charge-backs, but they acknowledge (and we agree) that the burden of reducing it falls on them.

Which (other) policy options are available to ensure the integrity of online gambling operators?

- 7.17 Essentially, the choice lies between doing nothing, prohibition, new primary or secondary legislation at EU, and then national, level, and Codes of Conduct.
- 7.18 We have said that Option 1, doing nothing, i.e. allowing existing regulatory practice to roll forward, will result in an uncertain outcome to an uncertain timetable. We do not therefore recommend it.
- 7.19 We have also concluded, albeit on the basis of limited evidence, that Option 2, prohibition, is unlikely to be effective. It must give rise to some risk that some consumers will migrate to poorly regulated or unlicensed sites. Furthermore some financial institutions and some academic commentators have said that they regard prohibition as unrealistic. We do not recommend it.
- 7.20 As regards Option 3, the creation of a single EU online gambling market, the problems that we foresee arise from that fact that EU national governments take diverse views of the legitimacy, structure and ownership of gambling, and that EU institutions have therefore failed to bring about even the prospect of a single EU market in gambling. In these circumstances it seems highly unlikely that devising a single Directive or set of Directives would succeed in creating the “reliable and transparent online gambling market” that we are required to have in mind. Option 3 is thus, in the short term and even in the medium term, infeasible.
- 7.21 In these circumstances, and by a process of elimination, we take the view that Option 4, Codes of Conduct in general, and an EU-wide Code in particular, are the only realistic way forward.

[What are] best practices relating to consumer protection and prevention of fraud?

- 7.22 Given that detriments persist in both liberal and monopolised systems, best practice at the highest level is not clear. But the principles to which best practice aspires in both systems are rather clearer (for example, the commonalities between the Codes of Conduct produced by the RGA and PMU). We suggest that best practice is perhaps that which most effectively makes realities of these principles. Regulators (through GREF and IAGR) and industry (through EGBA and other groupings) are coming together to exchange ideas on how this might be done.
- 7.23 This is to be encouraged and we are hopeful that best practices will more clearly emerge as an EU Code of Conduct evolves from a basis of principle to prescription. Best practice is thus likely to be constantly evolving. For that reason we place importance upon creating a forum for practices and experiences to be shared (as in the EU Working Group we have suggested) rather on preferring or proscribing any particular practices.
- 7.24 We are confident that with the right forum for exchanges of experience, better practices will evolve over time, and that consumers will continue to enjoy increasing levels of protection.
- 7.25 We have seen no Codes developed outside the EU which are visibly superior to those which exist among EU-based regulators and operators.

APPENDIX 1: ONLINE GAMBLING IN AND BEYOND THE EU

- A1.1 Online gambling has not, so to speak, risen without trace: it has emerged from patterns of gambling and gambling legislation which in many respects were established long before the EU itself. Long-standing patterns and practices in conventional gambling have all too clearly conditioned Member States' attitudes towards online gambling, so we begin by briefly reviewing these conventional forms. The picture is immensely diverse.
- A1.2 Given the relatively recent emergence of online gambling, most gambling legislation is designed for offline gambling. Within the EU, only the UK and Malta have developed regulation specifically for online gambling. Where online gambling is explicitly allowed or prohibited in other Member States, practice has been decided either by court cases or simply by extending current regulation to include or exclude online gambling. As a result, regulatory loopholes have been created, leaving some online gambling companies operating in what are, from a legal point of view, grey areas.
- A1.3 Difficulties arising from this diversity are magnified by rapid growth in gambling generally and in online gambling particularly. Figures provided in PricewaterhouseCoopers' *Global Entertainment and Media Outlook: 2008-2012* expect the European online gambling market to grow at a minimum rate of 8.4 per cent per annum (in Austria and Hungary) to a maximum of 17.6 per cent (in Italy).⁶⁴ Similarly, an EGBA study indicates that the European online gambling market is expected to double between 2007 and 2012.⁶⁵

What gambling is available in the EU?

- A1.4 National governments are constantly adapting and developing gambling regulation in order to keep pace with consumer preferences and suppliers' services. We have relied on information sources that are the most up-to-date that we can reasonably access, but we cannot guarantee that the information we present here is fully accurate as at the date of our report.⁶⁶ If we have misstated the position in any Member State, the error is entirely inadvertent and we apologise in advance.

Lotteries and bingo

- A1.5 Lotteries are allowed or present in all 27 Member States and are thus by far the most commonly available form of gambling in the EU27. In some Member States, regional governments are authorised to run and regulate regional lotteries – for example in Spain and Germany.
- A1.6 Fourteen Member States allow non-state monopolies and/or private operators to run lotteries. Of these, 7 allow private operators to run only small-scale lotteries and/or bingo games.

⁶⁴ P. 623. Growth is measured as the compound increase in annual gambling revenue.

⁶⁵ Market size is calculated as GGR in €billion. Source: EGBA

⁶⁶ The SICL study was criticised by a number of Member States on precisely these grounds.

A1.7 Some Member States regard lotteries and bingo as one and the same thing for legislative and regulatory purposes. We have not therefore been able to assess precisely how many Member States allow bingo and how many prohibit it, whether actively or passively.

Casinos

A1.8 Casinos are also widely available in the EU27. They are allowed or present in 26 Member States. Only in Cyprus are casinos prohibited outright, although in France casinos are allowed only in small cities deemed to be of importance to tourism.

A1.9 In 5 of the 25 Member States where casinos are present, they are owned and run by state monopolies. In the 20 others legislation allows state authorities, in certain circumstances or with certain limitations, to issue licences to non-state organisations.

Betting

A1.10 All 27 EU Member States allow some form of betting, but in all of these betting is subject to regulatory restrictions. In newer Member States bookmaking is often provided by non-local companies.

A1.11 The ownership of betting activities is very diverse. For example, in the UK and Ireland, for example, betting on horses, greyhounds and sports events is owned and operated by the private sector. In Sweden, horse-race betting is owned and operated by national horse-racing associations. In France, *Pari Mutuel Urbain* (PMU), a monopoly Economic Interest Group since 1985, has under its umbrella betting 51 non profit-making racing associations. In Malta, bookmakers and kiosks are independently owned but licensed by the Malta Racing Club.

Gaming machines

A1.12 While most Member States allow a variety of locations for gaming machines, Greece, Latvia, Luxembourg and Portugal allow them only inside casinos.

A1.13 Twenty-three Member States allow gaming machines to be located in public or semi-public places outside casinos, for example in gaming salons, arcades, shopping centres, bars and clubs. Regulatory authorities characteristically limit the number of machines allowed in any given location and/or the total number allowed in the country, as well as maximum stakes and prizes.

Media gambling services and sales promotional gambling

A1.14 The term “media gambling services” refers to competitions and/or lotteries provided by television broadcasters or radio shows. Sales promotional gambling refers to lotteries or prize-draws aimed at promoting a product. The provision of these two forms of gambling services differs widely across the EU27, and some legislations do not provide explicitly for them. Some Member States, while recognising them, do not consider them as gambling, and do not therefore regulate them by gambling legislation.

A1.15 Cyprus, Denmark and Finland allow media gambling services but prohibit sales promotional gambling. Luxembourg does the opposite. Greece prohibits both forms, while 12 other Member states allow both. In the remaining 10 Member States the position is unclear from the information sources that we have used.

Charity gambling

A1.16 Charity gambling is not a distinct form of gambling in any technical sense, since it invariably takes one or other gambling forms already mentioned. But it is one in which all or part of the proceeds are given to charitable funds, most often for education, sports or the arts. We mention it only because it is widespread in the EU, and SICL treats it as a specific gambling form. No Member State actively prohibits charity gambling, but it is not always explicitly recognised in gambling legislation.

What online gambling is available in the EU?

A1.17 The diversity of approaches to gambling and gambling regulation that applies to traditional gambling forms is visibly being carried over into online gambling. We detect no consistency in the stances of different Member States and no intention on their part to harmonise what is allowed, what is prohibited, or by what body or bodies regulation should be carried out.

A1.18 We have found it useful first to categorise Member States' approach to online gambling and then to consider what forms of regulation and ownership are provided for.

Permissions and prohibitions

A1.19 We first distinguish between:

- those MS that actively allow online gambling;
- those that passively allow it;
- those that actively prohibit online gambling; and
- those that passively prohibit it.

A1.20 In this context, the terms “actively allow“ and “actively prohibit” refer to legislation or regulation that is explicit in relation to online gambling. In many instances such legislation or regulation is relatively recent and is the result of specific deliberation by a national government or regulator.

A1.21 The terms “passively allow” or “passively prohibit” refer to legislation or regulation that is applied to online gambling because online gambling is, to the satisfaction of national governments or regulators, covered by existing provisions, some or all of which may have been established many years earlier.

A1.22 In Table 3 below we set out a simplified summary of which MS fit into which of the four categories. We reiterate here what we said earlier about the dynamic nature of online gambling and the regulation thereof. Table 1 may not be fully up-to-date, and the four categorisations we have used may be too crude to reflect legislation or regulation at a detail level. Furthermore, one trade association that we spoke to (EGBA) pointed out that contradictions still abound in national gambling legislation, and that that makes categorisation even more hazardous. Even if the details require some amendment, we still think the categorisation has value for high-level policy analysis.

Table 3: Summary of EU MS approaches to online gambling

Actively allow	Passively allow	Actively prohibit	Passively prohibit
Austria	Bulgaria	Germany	Lithuania
Belgium	Cyprus	Greece	Netherlands
Denmark	Estonia	Romania (legislation due)	Slovenia
Finland	Hungary	Czech Republic	
France	Ireland		
Italy	Luxembourg		
Latvia	Poland		
Malta	Portugal		
Slovakia	Spain		
Sweden			
UK			
11	9	4	3

A1.23 It is clear that the majority of EU MS allow online gambling – eleven actively and a further eight passively. Within both sub-groups there is a mix of older and newer Member States.

A1.24 The MS which prohibit online gambling, although smaller in number, include the largest single Member State, Germany, and two other MS of long standing, namely the Netherlands and Greece.

Actively prohibited

A1.25 After the German Federal Constitutional Court moved to allow online gambling operations, the 16 Länder (states) voted to prohibit, as of January 2008, both on and off-shore online operations by requiring banks to identify and block money transfers to operators. The legislation is known as the Interstate Treaty on Gambling ((*Glücksspielstaatsvertrag*)).

The European Commission has issued two Detailed Opinions and a Letter of Formal Notice to Germany stating that the ban is non-compliant with EU competition law, particularly the free movement of capital and freedom of establishment, and that it fails to achieve the rationale stated, of combating problem gambling. Infringement proceedings have been opened.

A1.26 The Dutch government has taken a similar stance. An Online Gaming Bill would have given the state-owned monopoly, Holland Casino, a provisional licence that would give the Ministry of Finance time to “gain knowledge on the matter”. However, the Bill was rejected by both conservative and liberal members, and the government is therefore criminalizing operators who allow Dutch residents to access their services. It has created a blacklist of 30 operators and has asked the Dutch Banking Association ensure that financial institutions block financial transactions with them.

However, since this would damage clients who provide legitimate services as well as online gambling, the Association responded by asking for a more specific blacklist. An alternative approach would be to pass legislation similar in effect to that of the American Unlawful Internet Gambling Enforcement Act (UIGEA) 2006.⁶⁷ If this occurs, it seems likely that the Netherlands too will receive objections from the Commission.

A1.27 Greece, after a request by the lottery and sports-betting monopoly OPAP, has actively prohibited the provision of online gambling services by blocking payment requests and by arresting online gamblers and facilitators (for example, internet café owners). A recent defeat in a dispute with foreign operators in the ECJ (Case C 65/05 of October 26 2006) has forced Greece to draft legislation limiting OPAP’s monopoly; it remains to be seen whether this will satisfy EU concerns and how it might affect the legitimacy of online gambling.

A1.28 Romania is drafting a new law that will effectively prohibit all online gambling operations.

A1.29 Online gambling is currently illegal in the Czech Republic, although the authorities have not enforced the law against foreign operators. The Czech Republic’s Ministry of Finance has recently concluded a consultation on gambling regulation, and the Ethnic Minorities and Human Rights Minister has announced that the legislation will include a ban on online gambling.⁶⁸

Passively prohibited

A1.30 Lithuania and Slovenia have passively prohibited online gambling because it is not provided for by relevant legislation.

⁶⁷ The Unlawful Internet Gambling Enforcement Act (UIGEA) was drafted in 2006 and makes the US banking system responsible for identifying and blocking financial transactions to and from online operators. The draft was criticised for poorly defining what constitutes an illegal gambling transaction and thus greatly raises compliance costs for banks. The Federal Reserve and Treasury are expected to produce a completed draft by the end of 2008. Source: Gambling Compliance

⁶⁸ GamblingCompliance.com

A1.31 Spain has given its regions, or *Comunidades Autonomas* (CCAA), regulatory power over certain gambling services. But only the federal Spanish government may license and regulate gambling operations that operate nationwide; even in these circumstance, however, operators need authorisation by the relevant region(s). Gambling laws in Madrid and Catalonia (for example) do not explicitly mention online gambling but operators licensed to provide premised gambling services in Madrid and Catalonia are automatically allowed to do so online. In addition to land-based operators being licensed to provide online services in Catalonia by default, the authorities have officially authorised the Catalonia State Lottery to provide online gambling services as well.

Potential prohibitions

A1.32 Some Member States have considered adopting legislation similar to the American UIGEA 2006 – particularly Germany with its adoption of an Interstate Gambling Treaty in January 2008. Denmark, France, the Netherlands and Sweden have indicated interest in taking a similar path. Even Spain and Estonia, two of the more liberalized online gambling markets, have included payment blocking measures against non-licensed operators in new draft legislations.

A1.33 The Norwegian Ministry of Church and Cultural Affairs has proposed a payment ban on online operators which do not have a Norwegian licence, with the aim of attempting to combat rising problem gambling (although banks have expressed doubts as to whether the ban would be effective). Norway has sent its draft to the European Commission for comment.

State ownership or liberalised markets?

State ownership

A1.34 In relation to gambling, Article 49 of the EU Treaty allows state-owned monopolies if they are necessary:

- for consumer protection (exploitation of human passion for gambling and social consequences relating to excessive expenditure),
- for public order (prevention of fraud and crime),
- for maintaining social order (culture or morale) and
- to prevent gambling from being a source of private profit.⁶⁹

A1.35 The European Commission has brought forward ten infringement proceedings against Member States with gambling monopolies. It is not within our remit to comment on these proceedings, but they do demonstrate the extent to which there is no such thing as a single EU gambling market, and in some Member States no market (in the economic sense) at all.

⁶⁹ SICL p. xxvi

A1.36 Three of the eleven Member States in the “actively allow” category authorise only their state-owned monopolies to provide online gambling services. For example:

- Austria is soon launching a state-owned gambling website jointly run by its casino monopoly, Casinos Austria AG, and its lottery monopoly, *Österreichische Lotterien GmbH*.
- Denmark has authorised its lottery and betting state-owned monopoly *Danske Spil* to operate lottery and betting websites. *Danske Klasselotteri* (Danish state lottery) and *Varelotteriet*, two smaller state-owned lottery operators, are also authorised to provide online gambling services.
- Sweden has authorised its two gambling monopolies *Svenska Spel* and ATG Swedish Horse Racing to provide online gambling services. But it has also authorised non-profit organizations to provide online gambling services as long as the proceeds are geared towards the charitable causes.

A1.37 Spain presents a mixed picture. The national government reserves the right to regulate gambling which crosses internal Autonomous Region borders. Yet, for example, the Madrid Autonomous Region allows non-State owned operators to offer online gambling, and Catalonia does not.

Liberalised markets

A1.38 By contrast, some Member States have had open online gambling markets for several years. To quote some examples:

- Malta began approving competing websites in 2000, and passed the Remote Gaming Regulations in 2004 specifically to regulate online gambling.
- In the UK, Article 89 of the Gambling Act 2005 allows UK and non-UK based operators to provide services, but requires that any online operator using equipment based in the UK to be licensed by the Gambling Commission.
- Latvia provides a base for Victor Chandler, a UK bookmaker and online gambling services provider.

A1.39 In other Member States, the process of liberalisation is less far advanced but several MS have begun to open up their online gambling markets. For example:

- in Belgium most online gambling operators are based offshore. In the 2002 National Lottery Act, Belgium sought to give its public-lottery monopoly, *Loterie Nationale*, exclusive rights to online gambling services, but in the face of challenges from the private sector subsequently allowed private operators to compete.
- France has hitherto allowed only its state-owned monopolies, namely the lotteries monopoly *Francaise des Jeux* (FDJ) and the horse-race betting monopoly *Paris Mutuel Urbain* (PMU) to provide online gambling services, and it criminalized any foreign websites. But it has now agreed to a gradual opening of its market following EU infringement proceedings.

- Bulgaria and Estonia are currently redrafting gambling laws in such a way as to set up a licensing system and allow a competitive online gambling market.

Grey areas

A1.40 Legal grey areas persist. For example:

- Cyprus, Ireland and Portugal have laid down no regulations regarding the supply of online gambling services by off-shore operators.
- The Hungarian Act XXXIV of 1991 on the Organization of Gambling states mentions online gambling only to the extent that "any services involving gambling and betting activities provided from the territory of the Republic of Hungary through communications equipment and networks must be conducted under the provisions of this Act".
- Poland's Draft Gambling Bill, which was due in 2006 and which promises to set out Poland's regulatory framework online gambling has yet to emerge.

A1.41 Yet, despite the uncertainties, online gambling operators are active in these Member States.

A1.42 Finland has a complex situation concerning the Åland Islands. Mainland Finland has authorised its three state-owned gambling monopolies⁷⁰ to provide online gambling services, while there exist 12 foreign operators also providing services to Finnish residents. Åland, on the other hand, has given its gambling monopoly, Penningautomatförening (PAF), the ten available gambling licences. We understand that there exists fierce competition between online operators RAY (in mainland Finland) and PAF (Åland).

To what extent is there a single EU gambling market?

A1.43 It is hard to escape the view (and we are by no means the first to say this) that there is no single EU market in gambling. To quote the SICL:

"... the market frameworks for gambling in the EU are very much heterogeneous. Commercial and government owned gaming industries of Member States are organized under a wide variety of ownership regimes and market structures. Ownership and market structures are affected by numerous factors, including Member State laws and regulations; restrictions on product types, characteristics, points of sale, availability, and marketing effort; economies of scale; network effects; and impacts of new technologies. Generally speaking, most EU commercial gaming industries are significantly constrained by law and regulation, as well as by ownership structures and statutory objectives.

⁷⁰ 'Oy Veikkaus Ab', the National Lottery of Finland, which operates lotteries, pools and betting; Rahaautomaattiyhdistys, the Finnish Slot Machine Association (RAY) which operates casinos and gambling machines outside casinos; and 'Fintoto Oy', which operates horse-race betting

As a result, they operate in ways that – in comparison to what unrestricted free markets in gambling services with reasonable allocations of property rights and provision of legal protections would bring about – adversely affect the quality, quantity, price, and availability of gambling services.”⁷¹

A1.44 From a business point of view one could, however, conclude that there does exist a single market of sorts, in that consumers throughout the EU have *de facto* access to online gambling services licensed in their own or other jurisdictions. Whether online gambling, or gambling on foreign websites, is illegal or not, or conducted to different rules and regulations, the fact is that the internet makes it all possible.

A1.45 In Member States where the supply of gambling services is liberalised, the principal operators have established presences in other MS too. The principal UK-registered operators (Ladbrokes, Gala Coral and William Hill) all have multiple offices and/or offer online services in a larger number of EU Member States and beyond.

On-line gambling in non-EU jurisdictions

A1.46 We have considered a small number of non-EU jurisdictions with two main objectives in mind. First we wanted to establish whether there are approaches to legislation, regulation or Codes of Conduct in online gambling that would be beneficial to the EU, assuming that these better models could reasonably be transplanted.

Secondly, some of the jurisdictions we considered (the so-called “rock jurisdictions”)⁷² are effective competitors to EU Member States in respect of the attractions they offer to operators and services they offer to an EU clientèle. For the avoidance of doubt, we do not claim these non-EU jurisdictions as a statistically representative sample of world-wide practice.

A1.47 The jurisdictions we considered are the USA, Canada and Australia; and the “rock jurisdictions” are Alderney, Jersey, the Isle of Man, Gibraltar, Antigua and Barbuda, and Curaçao. The USA, Canada and Australia are comparable to some EU Member States in that individual states have legislative power over all forms of gambling, except online gambling, provided state legislation does not breach federal or national legislation.⁷³ Online gambling is illegal in all three jurisdictions at the national level.

United States of America

A1.48 With the exception of online gambling, which is newly prohibited, gambling is regulated by primarily at state level.

A1.49 The prohibition was originally effected by the application of the Wire Act 1961, which prohibits the use of telephones to conduct gambling between states. But loopholes emerged in that (a) neither the internet nor satellite communications existed when the Act

⁷¹ SICL p. xxxvi

⁷² The term arises because some, though by no means all, such jurisdictions are small and sometimes remote islands.

⁷³ The term “federal” or “national” is intended as that level of government that operates across the whole nation.

was implemented and (b) the internet is often accessed by wireless connection, thus calling into question whether the Act could be applied to online gambling.

These uncertainties were resolved with the passing, in 2006, of the Safe Port Act, of which Title VIII – Unlawful Internet Gambling Enforcement Act is part.

Canada

A1.50 In 1969 the Canadian Parliament gave individual provincial governments the power to regulate most gambling activities. The Canadian Criminal Code makes online gambling illegal, but the Federal government has allowed provinces (and thus operators) to provide services in what is, from a legal point of view, a grey area. Operations must be licensed by the provinces, which themselves usually operate the online gambling.

A1.51 However, two native reserves, the Kahnawake Band Council (Quebec) and the Alexander Band (Alberta), have licensed private operators, claiming authority over online gambling on their reserves. Nevertheless, Alberta has threatened to take the Alexander Band to court under the Criminal Code.⁷⁴

Australia

A1.52 Gambling in Australia is regulated primarily by the individual states, but the Commonwealth is taking an increasingly active role in regulation, particularly of online gambling. The Interactive Gambling Act (IGA), passed in 2001 as a response to growing concerns regarding problem gambling, prohibits Australian companies from offering online gambling services to residents, and requires that internet service providers block offshore gambling sites. Prosecution of offending offshore providers is similar to that established by the Wire Act in the United States.⁷⁵

A1.53 The IGA prohibits casino-like games online⁷⁶ and restricts advertising of online sites to Australian residents, but excludes online betting for horse-racing, greyhound-racing and sporting events, public gaming services, media gambling service, sales promotional gambling, and the online sale of lottery tickets.

A1.54 Several territories have therefore enacted online gambling legislation for activities not prohibited by the Commonwealth.

- The Gaming Control Commission of the Northern Territory, for example, allows the operation of only one online casino, which may offer its services only to those outside Australia.
- The Tasmanian Gaming Commission has also allowed the operation of internet gambling operators which do not provide services to Australian residents. New South Wales may do the same.

⁷⁴ Source: Gambling Compliance

⁷⁵ Source: Gambling Compliance

⁷⁶ These involve the use of the internet to play games of chance or mixed chance and skill including roulette, poker, craps, online pokies and blackjack [Source: Gambling Compliance]

- The Victorian Commission for Gambling Regulation has allowed online services to be provided only to those outside Australia, but at a tax rate of 50 percent of gross revenues. No operators have applied for a licence in Victoria, preferring instead the Northern Territory, which taxes at 4 percent.

“Rock jurisdictions”

A1.55 Online gambling based in offshore jurisdictions started to become attractive to European operators in the 1990s, when outright prohibition and/or legal uncertainty and/or relatively onerous tax regimes in Europe caused them to look for domiciles elsewhere. Over time, individual rock jurisdictions have begun to differentiate themselves and to compete actively to attract and retain online operators. They are thus no longer a homogeneous group.

A1.56 We think it worthwhile also to mention the “White List” jurisdictions that the UK Government has drawn up for those operators registered offshore who wish to offer their services in the UK.

A1.57 The White List is simply a list of UK-approved gambling jurisdictions. Any online gambling company licensed in a White List territory is free to advertise its services in the UK, but those licensed in non-White List jurisdictions must license in a White List territory before they may do so. As from September 1st 2008 the White List has had the effect of preventing many online gambling sites from advertising in the UK. The White List currently includes only three jurisdictions outside the European Economic Area – Tasmania, the Isle of Man and Alderney. Antigua and Kahnawake are conspicuously absent, both jurisdictions having appealed unsuccessfully.

A1.58 In the next few paragraphs we review the regulatory institutions and provisions established in the White List and other jurisdictions, and we conclude with a short table that summarises the advantageous tax régimes that most have established as an important ingredient of their appeal to operators.

European offshore

Alderney

A1.59 The main regulatory body is the Alderney Gambling Control Commission (AGCC) created in 2000 by The Gambling (Alderney) Law 1999 in order to supervise gambling licensing, compliance and the processing of complaints. It claims since 2005 to have worked closely with online operators, publishing the e-Gambling Regulations 2006 and e-Gambling Ordinance 2006. The Commission says it has sought to build up a competitive gambling market which “entitles all licensees to operate offshore to all jurisdictions without reservations”, including the USA and others prohibiting online gambling.⁷⁷

⁷⁷ Gambling Compliance

Gibraltar

A1.60 The Gibraltar Regulatory Authority is the primary regulator. Gibraltar has a very small land-based gambling sector, but it has sought to become competitive in e-commerce and financial services through low taxation. Online gambling has accordingly flourished. However, licences can be difficult to obtain since only companies with proven gambling experience, licensed in a reputable jurisdiction, with a good financial position and a realistic business plan are considered eligible. As of September 2007 there were 19 remote gambling licence-holders registered in Gibraltar, offering online casino gaming as well as fixed odds betting, betting exchanges and spread betting.

Isle of Man

A1.61 The Online Gambling Regulation Act 2001 is the main online gambling legislation, and the Isle of Man Gambling Supervision Commission is the primary regulator of gambling. However, online gambling in the Isle of Man is subject to other legislation too, covering issues that range from licensing and advertising to disaster recovery, and it appears that the Isle of Man has lost ground to Jersey by virtue of its greater regulatory complexity.

Jersey

A1.62 Jersey's gambling legislation is undergoing modernization with a view to securing White List status. The Shadow Gambling Control Commission published in 2007 three White Papers ("Broadening the Industry", "Regulatory Principles", and "Harm Reduction"), seeking public comment on the types of gambling that might be regulated by a new law." We are unable to comment further at this stage.

A1.63 One noteworthy attraction of European off-shore jurisdictions (compared with Caribbean) is that they generally offer more reliable bandwidth, which is fundamental to online gambling.⁷⁸

Caribbean offshore

Antigua & Barbuda

A1.64 Antigua and Barbuda also attracted significant numbers of online operators during the 1990s, particularly those serving the US market. However, pressure from the US and UK led to the creation of the Directorate of Offshore Gaming in 1999 and a legislative overhaul in 2001 and 2002. The Directorate now operates under the International Financial Sector Regulatory Authority, which regulates all offshore industries, including banks, insurance companies and trusts.

⁷⁸ <http://www.offshore-e-com.com/html/spec.html>

Online gambling companies are considered as financial institutions “subject to annual on-site inspections to ascertain compliance with relevant standards” and must abide by the 1982 International Business Corporations Act and the Interactive Gaming and Interactive Wagering Regulations. As a result, Antigua’s online gambling industry fell from around 100 licensed providers in the late 1990s to under 40 today.

Costa Rica

A1.65 Costa Rica developed an early reputation as a “cheap and easy” jurisdiction, with a regulatory void, no tax on gambling revenues and no licence fees. But lack of regulatory provision has now prevented Costa Rica from achieving White List status, and as a result it has begun to lose its attractiveness as operators move to other low-tax but better regulated offshore jurisdictions.

Curaçao

A1.66 Curaçao has licensed both land-based casinos and online operators, the latter regulated by the Curaçao Internet Gaming Association (CIGA). CIGA is updating detailed regulations to ensure consumer protection and the adoption of new technology, while the Ministry of Justice is said to be working on the improvement of overall regulation in order to promote gambling.

Tax advantages

A1.67 Table 4 below illustrates the rates of tax and licence fees that some of the jurisdictions mentioned above offer (for a third time we reiterate that, since competition between these jurisdictions to attract gambling operators is intense, it is possible that rates have changed since we composed the table).

Table 4: Summary of gambling licence fees and taxation in alternative locations

Location	Licence Fee (€p.a.) ^a	Gambling tax	Corporation tax rate
Malta	6,000	0.5% of turnover capped at €400,000 p.a.	Effective 4.17%
Isle of Man	120 – 30,000 ^b 45,000 ^g	1.5% or 10% or 15% of gross win depending on origination	Zero
Alderney	90,000	None	Max. 20%, zero by end 2008
Gibraltar	2,500	1% of turnover/gaming yield, min. €100,000, max. €500,000	Zero if exempt status
Antigua	50,000 ^g , 35,000 ^b	3% of gross handle	Zero
Curaçao	45,000	None	Max 2%
Kahnawake	5,000	None	Zero

Source: Europe Economics ^a currency conversions as at June 2008 ^b Betting Gaming

A1.68 The striking thing, in the context of this study, is the determination of these Rock Jurisdictions to compete in order to attract and retain online gambling operators. They do so predominantly by creating favourable infrastructure, favourable regulation and (perhaps above all) favourable tax régimes. Their collective outlook is in stark contrast to that of EU Member States taken together, which, as we have shown, display highly divergent attitudes.

A1.69 It is also, in our view, worth remembering that good quality regulation may quickly be learnt, or simply transposed. Thus, if offshore jurisdictions come to believe that they can reinforce their positions by adopting the regulatory standards of their mainland counterparts, it will not be very difficult for them to do so. The financial benefits will still remain in place.

APPENDIX 2: ORGANISATIONS CONSULTED

A2.1 We researched and/or held fact-finding meetings or conference calls with the following bodies (listed in alphabetical order).

Betfair, UK based but operating also in Australia, Malta, Italy, Austria and Germany

Department for Culture, Media and Sport, UK

e-Commerce Online Gambling Regulation and Assurance (eCOGRA), international

European Casino Association, Brussels

European Gaming and Betting Association, Brussels

European Sports Security Association, Brussels

Gambling Commission, UK

Gambling Regulators' European Forum, Netherlands

Gamcare, UK

International Association of Gaming Regulators, US-based

Lexsi, security consultancy, France

Methodist Church of Great Britain, UK-based, but operates worldwide

Dr E Moran, FRCP FRCPsych FRSA, UK psychiatrist, expert on gambling addiction

Pari Mutuel Urbain (PMU), France

Partygaming, licensed in Gibraltar, UK listed, multi-national operations

Remote Gambling Association (RGA), UK

The Salvation Army, UK-based but operates worldwide

Stanleybet Leisure, UK

APPENDIX 3: OVERVIEW OF MAJOR JURISDICTIONS OFFERING ONLINE GAMBLING

A3.1 The following paragraph and table are reproduced from *Internet Gambling: A Comprehensive Review and Synthesis of the Literature*, August 31, 2007, by Robert J. Williams, Professor, School of Health Sciences, and Coordinator, Alberta Gaming Research Institute, University of Lethbridge, Lethbridge, Alberta, Canada and Robert T. Wood, Associate Professor, Department of Sociology, University of Lethbridge, Lethbridge, Alberta, Canada. The report was prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada.

“In July 2007 there were 2,069 Internet gambling web sites owned by 436 different companies listed at www.online.casinocity.com.... The online sites consist of 793 online casinos, 466 poker rooms, 420 sports and racebooks, 258 online bingos, 53 skill game sites, 31 lottery sites, 22 betting exchanges, and 16 backgammon sites (Casino City, 2007)....These online sites operate in 45 different jurisdictions. Table 1 lists the top 20 jurisdictions by number of sites hosted and by highest volume of online transactions (Casino City, 2007).”

Table 1. Top 20 Online Gambling Jurisdictions in July 2007

Jurisdiction	Volume of Transactions (Rank Order)	Number of Online Gambling Sites	Year First Hosted Online Gambling
Gibraltar (British overseas territory)	1	126	1998
United Kingdom	2	99	1996
Antigua and Barbuda	3	197	1996
Malta	4	146	2000
Kahnawake Mohawk Territory (Quebec)	5	377	1999
Alderney (British Channel Island)	6	36	2001
Hong Kong (special administrative region of China)	7	1	
Netherland Antilles (Curacao)	8	299	1996
Philippines	9	14	
United States	10	28	
Costa Rica	11	236	1996
Kalmykia (republic in Russian Federation)	12	2	
Australia	13	18	1996
Isle of Man	14	9	2001
Sweden	15	6	1999
Russian Federation	16	13	
Austria	17	9	2000
Belize	18	49	1996
Aland Islands (province of Finland)	19	1	2001
Seychelles	20	3	2003

A3.2 The number of gambling websites appearing in the table above is 1,669, or 81 per cent of the total of 2,069 referred to in the text preceding the table.

APPENDIX 4: CODES OF CONDUCT FROM OTHER SECTORS

- A4.1 The two sectors considered here – video games and premium rate telephone services – have in common with online gambling the following characteristics:
- that they involve very large numbers of retail consumers
 - that some of these consumers are vulnerable in the sense that they are could be under-age or easily misled.
 - that the principal sectoral regulators (for broadcasting and telecoms) are generally not set up to deal with mass retail transactions
 - that the activities of a few rogue operators may damage the reputation of the whole sector
- A4.2 We do not attempt to describe the relevant Codes in detail (the Codes for Premium Rate Telephone Services in a number of jurisdictions run to over 50 pages). The material in this appendix is aimed rather at providing pointers to Codes which policy-makers might find useful in drawing up codes for online gambling.

Video games: the pan-European Game Information System (PEGI)

- A4.3 The Code we refer to here is concerned solely with age-rating, so that inappropriate material may be identified before it fall into the hands of minors.
- A4.4 From 2003 the Video Standards Council (VSC) has been jointly responsible for administering the Pan-European Game Information (PEGI) system of age rating applying throughout Europe for video and video games. PEGI accommodates different national requirements and sensitivities. The PEGI system is owned by the Interactive Software Federation of Europe (ISFE), a trade body, and is jointly administered by the VSC and the Netherlands Institute for the Classification of Audiovisual Media (NICAM).
- A4.5 PEGI games content age-suitability logos appear on the front of games packaging. On the back of the packaging pictograms indicate the main reason/s why the game has been rated at a particular level. Pictograms are used instead of text as the PEGI system is pan-European. The pictograms are thought to be the best means of educating consumers, parents and video store staff as to why a particular game has been classified in the way that it has.
- A4.6 A national approach to the Internet and online gaming will have only limited impact. When it comes to control of Internet gaming (games played or downloaded from the Internet) an international viewpoint is usually preferred as any national approach to this matter will have only limited effect because consumers access games from beyond national borders. Under the PEGI system a games publisher enters into an agreement with ISFE to comply with a Code of Conduct designed to ensure that the publisher uses the system responsibly.
- A4.7 Various technological innovations are under development which would enable a parent to ensure that children can only access games websites registered with PEGI Online but it is thought that these innovations will only be economically viable if introduced on an international basis.

A4.8 Public awareness of PEGI has grown rapidly since its launch. From a zero base in 2003 familiarity with PEGI in the UK, at 43 per cent, is the highest in Europe (Nielson Survey 2007). Education and greater awareness are important, irrespective of what regulation is enforced. If parents and other guardians are made aware of PEGI then they will be in a better position to make more informed choices for children.

Premium Rate Telephone Services

A4.9 Premium Rate Services (PRS) cover such widely differing services as weather forecasts, traffic reports, horoscopes, TV voting, competitions, and sex chat lines. What they have in common is that they are provided over telephone networks (fixed or mobile) by service providers that are independent of the network operators. Charges appear on users' phone bills (or are charged to mobile pre-pay cards) and the revenue from consumers is then shared by agreement between the carriers and the service providers. Consumers have been abused by some PRS service providers since they began in the mid-1980s. The most frequent form of abuse in recent times (though others have occurred in the past) has been deceiving consumers into subscribing regularly to services when they thought they had engaged in a once-off transaction.

A4.10 Telecoms regulators in general do not cope well with high-volume transactions: their staffing and expertise tend to be set up to deal with operator-to-operator issues – wholesale rather than retail.

A4.11 For this reason, reputable PRS service providers over time devised, jointly with network operators, a form of self-regulation embodied in a Code of Practice. Codes of Practice were not only sensitive to the interests of different parties in the supply chain but, given the dynamic nature of communications markets, were much better adapted to technological change than primary or secondary legislation.

A4.12 This model of regulating PRS has become well established round the world. We (Europe Economics) have carried out two substantial recent PRS projects, one for Ofcom in the UK, the other for RegTel in Ireland.

A4.13 In the UK, the Code is made effective by means of an authority given to Ofcom to delegate the regulation of PRS to a third party body, currently PhonepayPlus. In Ireland, ComReg, the principal communications regulator, is gradually taking over the functions of RegTel but these functions will be carried out by a dedicated team within ComReg, working to a Code of Practice.

A4.14 Both in Ireland and the UK the Codes of Practice are lengthy documents (at nearly 40 and nearly 80 pages respectively), but it may be helpful if we include some brief extracts from our report which cover the headings under which the Irish Code operates.

“The current Code (see <http://www.RegTel.ie/codeofpractice.htm> for the full text) came into force on 1 November 2005. It is structured as follows:

INTRODUCTION

1. THE CODE OF PRACTICE

2. DEFINITIONS

3. SERVICE PROVIDER ADMINISTRATIVE RESPONSIBILITIES
4. DATA PROTECTION
5. THE CODE OF PRACTICE- General Provisions
6. PROMOTION - (General Rules)
7. PRICING INFORMATION
8. PROVISIONS RELATING TO SPECIFIC CATEGORIES OF SERVICE
9. LIVE SERVICES
10. ONLINE PREMIUM RATE SERVICES
11. PREMIUM SMS SERVICES
12. FUNDING OF THE REGULATOR
13. PROCEDURES AND SACTIONS
14. OPERATIVE DATE
15. ANNEX

The General Provisions of the Code of Practice cover legality, decency, honesty, content, amusement services, unavailability of service, and promotion of PRS by non-PRS means, service provider responsibilities and monitoring.”

A4.15 “Where a breach of the Code appears to have taken place... then under Section 13 of the Code:

...where a complaint is upheld and the Regulator adjudicates that there has been a breach of the Code of Practice, the Regulator may impose all or any of the following sanctions:

- (i) to require the Service Provider to remedy the breach by taking such steps as the Regulator deems appropriate;
- (ii) to require assurances from the Service Provider, or any associated individual, relating to future behaviour, in terms determined by the Regulator;
- (iii) to require the Service Provider to submit certain or all categories of Service and/or Promotional Material to the Regulator for prior approval for a defined period;
- (iv) to require the Service Provider to refund to the complainant and all other callers to the Service an amount to be determined by the Regulator and, in default of payment of that amount within 14 days, to request the relevant Network Operator to pay that amount to the complainant and all such callers out of monies held by the Network Operator for the account of the Service Provider. Where callers cannot be identified, the Regulator may, on or after the expiration of 60 days from the date of the adjudication, stipulate a charity to which the call revenue must be paid by the Service Provider or the Network Operator as aforesaid;

(v) to require the relevant Network Operator to bar access to some or all of the numbers allocated to the Service Provider for a defined period;

(vi) to recommend to the relevant Network Operator that the Service Provider should be prohibited from providing a particular type or category of Service for a defined period; and

(vii) to recommend to the relevant Network Operator that the Service Provider should no longer be permitted to provide Premium Rate Services.”

UK Code of Practice for the self-regulation of new forms of content on mobiles

A4.16 The UK Code of Practice for the self-regulation of new forms of content on mobiles (“the Code”) was motivated by a concern about children accessing inappropriate internet content via their mobile telephones. All major UK mobile phone operators subscribe to and support the Code and the accompanying Framework which together act as self-regulatory instruments.

A4.17 The Office of Communications (Ofcom) has noted that the mobile industry has made significant investment in the development and implementation of content controls and has taken significant steps to enforce compliance, over and above the requirements set out in the Code. The mobile operators have established a process whereby an initial breach of the Code by an internet content provider results in a warning (yellow card), and any subsequent breach of the Code can result in a sanction (red card).

A4.18 The Content Classification Framework is provided on behalf of the mobile phone industry by the Independent Mobile Classification Body (IMCB), a subsidiary limited company of the premium rate phone regulator PhonepayPlus.

APPENDIX 5: DATA GATHERING

- A5.1 One of the principal difficulties that has beset this study is a shortage of up-to-date, organised data which originates from official or verifiable sources.
- A5.2 As regards current regulation we relied heavily on a subscription to a commercial service provided by gamblingcompliance.com in preference to searching the websites of all 27 EU Member States. Although we have no role in acting as a mouthpiece for commercial organisations, it is a fact that without the services that gamblingcompliance.com offers it would have been extremely difficult for us to complete this project in the time and within the budget available.
- A5.3 The nature of the project was not heavily quantitative. But future policy-making may well need to be so, and indeed ought to be so. In that context we think it appropriate to quote from the Swiss Institute study first referred to at paragraph 1.3. On page 1512, the very last page of its report, the Institute says (our underlining):

“As this report has demonstrated, there is a considerable need for more uniform compilation of economic data relating to the gambling services industries in the EU. National reporting is scarce and in those instances where we could not find such data, we had to rely largely on trade association reports or survey results, which are effectively self-reported data, for which there is no easy way to validate accuracy or veracity. Where there were major gaps in data and information (as is the case with the charities and non-profits, media gambling services, and sales promotion services sectors), we had to rely solely on survey results or secondary (non-refereed) sources such as consultancy reports, or we were unable to find any information or data to report.

If future policy in the EU is going to be based on accurate data and factual information, and advised by evidence-based research, then there is going to have to be a greater commitment by Member States, service providers and other stakeholders in addressing these information and research shortcomings. The fact that gambling services in the EU are already characterized by revenues in excess of €50 billion as well as substantial contributions to tax revenues and good causes suggests that this should be a fairly high priority. This implies a commitment to develop official statistics to cover the gambling services industries, broken down by gambling services sector and by the individual Member States.”

- A5.4 Shortly before this report was completed we were able to make contact with a relatively new gambling information service provided by H2 Gambling Capital, based in the UK. Its website is not yet functional but pending relocation to Manchester the firm may be contacted through its Director, Mr. Simon Holliday (simon.holliday@h2gc.com). We were given, without charge, a sample quarterly report and newsletter.

The quarterly report provides a great deal of financial and volume data about online gambling broken down by country (within and beyond the EU) and by type of gambling (poker, casino games, sports betting, etc). We understand that the data tables that H2 provides are based in part on official returns and in part on modelling carried out by H2. We emphasise again that it is no part of our role to promote third party commercial services, but it seems to us that H2’s services are well worth exploration by policy-makers in future work on online gambling.

APPENDIX 6: BIBLIOGRAPHY

PricewaterhouseCoopers LLP, New York, NY, USA, *Global Entertainment and Media Outlook, 2008–2012*.

Swiss Institute of Comparative Law, *Study of Gambling Services in the Internal Market of the European Union*, June 2006.

Internet Gambling: A Comprehensive Review and Synthesis of the Literature, August 31, 2007, Professors Robert J. Williams and Robert T. Wood, University of Lethbridge, Alberta, Canada.

Internet Gambling, Report to Congressional Requests, United States General Accounting Office, 2002.

The Network Operators' Perspective, Report no. 6, Second Quarter 2007, issued October 2007, Messaging Anti-Abuse Working Group, P.O. Box 29920, San Francisco, CA 94129-0920, USA.

The ICD-10 Classification of mental and behavioural disorders: Clinical descriptions and diagnostic guidelines. World Health Organisation, Geneva (1992).

Internet Gambling: An Online Empirical Study Among Student Gamblers, Mark Griffiths & Andrew Barnes, Springer Science + Business Media, LLC 2007.

Virtual harm reduction efforts for Internet gambling: effects of deposit limits on actual Internet sports gambling behaviour, Anja Broda, Debi A LaPlante, Sarah E Nelson, Richard A LaBrie, Leslie B Bosworth and Howard J Shaffer, *Harm Reduction Journal* 2008, 5:27, published 6 August 2008.

Inside the virtual casino: a prospective longitudinal study of actual Internet casino gambling, LaBrie, Kaplan, LaPlante, Nelson and Shaffer, *European Journal of Public Health*, Vol. 18, No. 4, 410–416.

British Gambling Prevalence Survey 2007, September 2007, National Centre for Social Research.

Literature review of children and young people's gambling, Professor Gill Valentine, University of Leeds, published by the UK Gambling Commission, September 2008.

Gambling and problem gambling Sweden: report No.2 of the National Institute of Public Health Series on Gambling. Ronnberg, S., Volberg, R.A., Abbott, M.W., Moore, W.L., Andren, A., Munck, I., Jonsson, J., Nilsson, T. & Svensson, O. (1999).

The Technical Feasibility of Regulating Gambling on the Internet, Roger Clarke and Gillian Dempsey, Australian National University, ACT, 1998. (Paper presented at the conference *Gambling, Technology and Society: Regulatory Challenges for the 21st Century*, convened by the Australian Institute of Criminology in conjunction with the Australian Institute for Gambling Research, Sydney, 7-8 May 1998).

The Future of Online Gambling in the United States and Elsewhere, William R. Eadington, *Journal of Public Policy and Marketing*, vol. 23, issue 2.

Licence Conditions and Codes of Practice, June 2007, UK Gambling Commission.

Code of Practice, 2005, RegTel, Crescent Hall, Mount Street Crescent, Dublin 2, Ireland.

The Social Impact of Internet Gambling, Mark D. Griffiths and Jonathan Parke, Nottingham Trent University, *Social Science Computer Review*, Vol. 20, No. 3, 312-320 (2002).