
RESPONSE PREPARED FOR THE

MINISTRY OF SECURITY AND JUSTICE

OF

THE NETHERLANDS

IN REGARD TO

**REPORT ON REGULATORY REQUIREMENTS AND TECHNICAL AND OPERATIONAL
COMPLIANCE SYSTEMS FOR IGAMING**

BY



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1 Executive Summary

The introduction of gambling activities via the internet and other remote means of communication has brought many changes to the regulation of gambling.

In order to establish effective social policies and to prevent illegal activities a regulatory and compliance framework needs to be put in place to ensure that gambling opportunities offered via remote media are conducted in a fair, secure and transparent manner and that taxes are collected just as they are for other forms of commercial activities.

In Europe in 2011 Belgium, Denmark, Greece, Hungary, Poland, Romania, Serbia, Spain and Schleswig Holstein all either adopted laws regulating remote gambling in their territory, brought laws previously adopted into force or opened a licensing process. France, Italy, Malta and the United Kingdom already had laws in force regulating this sector as did the territories of Gibraltar, the Isle of Man and the Channel Islands of Alderney and Jersey.

The review we have been instructed to undertake of the regulatory and compliance provisions applicable in Belgium, Denmark, France, the Isle of Man and the German state of Schleswig Holstein covers a rather broad spectrum in terms of the type of regulation of remote gambling as well as the size of the jurisdiction.

It should be noted that, although the type of regulation varies immensely between each of these jurisdictions, the underlying objectives for regulation do not actually differ greatly from one jurisdiction to another. The legislation governing the remote gambling sector in each of these jurisdictions states in more or less similar terms that it seeks to deter excessive or pathological gambling, curb the illegal provision of gambling services and to protect the weak and the vulnerable, including minors. Other common denominators are the desire of all of these jurisdictions to ensure the reliability of gambling operations *vis-a-vis* consumers and to prevent fraud and criminal activities. On the other hand, the methods adopted to implement these objectives differ greatly from one another.

It is possible through a comparative approach of the regulatory systems of these jurisdictions to extrapolate several measures which it would be desirable to adopt in an online gambling regulation framework.

Belgium

Of the jurisdictions reviewed, Belgium is the only one which ties all licenses to offer remote gambling within its territory to pre-existing licenses to operate bricks and mortar gambling venues; specifically casinos, amusement arcades and betting shops. Belgium argues that this is in order to protect consumers and “exercise control over games of chance and gambling organisers”.

Under the Belgian remote gambling licensing system a licensed casino operator would only be permitted to provide online casino games but no online betting. Similarly, a licensed betting shop would only be permitted to provide online betting but no online casino.

However, it is our understanding that the additional license system is not being implemented as originally foreseen with at least one land-based operator holding an amusement arcade license launching a joint venture for the provision of poker online with the blessing of the Belgian Gaming Commission.

We note in our review that having amended its gambling laws in 2010 in order to provide for remote gambling to date Belgium has not yet published all of the provisions required to give effect to the primary legislation. Important matters such as player registration and identification, age verification, types of games offered and payment methods are all meant to be regulated via secondary legislation but to date no decrees dealing with these issues have been published. Nonetheless, it our understanding that such requirements are provided to operators once they commence the licensing process.

Taxation varies by region in Belgium. Currently remote gambling operations in Flanders and Wallonia are liable to pay tax at 11% of Gross Gaming Revenues and at 15% in Gross Gaming Revenues.

Given the relative recent entry into force of the Belgian regulatory regime and the persisting lack of clarity on technical and operational standards required of licensees it remains to be seen how this regime will work in the future.

Denmark

The coming into force of Denmark's Act on Gaming was delayed by a full calendar year due to an investigation by the European Commission on whether a lower tax burden on remote gambling than on traditional land-based gambling constituted state aid. The Competition Directorate of the European Commission ruled that, while the lower taxation rate qualified as state aid, the proposed policy was compatible with EU law and the Danish Gambling Authority issued the first remote gambling licenses early in January 2012. The Danish Gambling Authority (Spillemyndigheden) is an office within the Danish Ministry of Taxation

The policy pursued in the Act on Gaming is that, in order to capture the Danish gambling public from operators licensed outside Denmark and offering their services there, the offer by operators holding Danish license must be attractive and competitive enough. In that sense, the gaming reform sought to redirect gaming demand to a controlled framework in order to "prevent the negative social implications in society" that gambling can generate.

Denmark has introduced the possibility for an operator fulfilling a set of licensing criteria to obtain licenses allowing it to offer casino games, betting on sports and non-sports events (either with fixed odds or pari-mutuel), and poker.

Lottery games, horse racing and dog racing remain under the monopoly of DanskeSpel.

Danish regulation allows Danish licensees to organize games where Danish customers play against players located outside of Denmark. This is an especially important point for online poker networks which require a critical mass of users in order for the network to be efficient. The Danish licensed operators will have to pay duty on the part of the stake relating to Danish customers.

Gambling tax on services offered to Danish customers is set at 20% of an operator's GGR generated by Danish residents.

Denmark has prescribed by regulation a series of technical and operational requirements aimed at combating fraud and money laundering as well as safeguarding minors and other vulnerable members of society. Other measures such as the ring fencing of customer funds are geared at protecting the interests of consumers.

Of particular note are also Denmark's provisions regarding exclusion of problem gamblers and detailed rules on the types of offers which licensees are allowed to use in order to attract new customers and to encourage existing customers to play more.

As a general rule, the equipment used to provide the remote gambling services should be located within Denmark, but this is not an absolute requirement. An operator may be permitted by the Gambling Authority to locate the equipment outside of Denmark in certain circumstances. In any event Danish law obliges a remote gambling licensee to have in place a reporting mechanism consisting of (i) a server where data for all games must be stored and which is accessible by the Gambling Authority online ("SAFE") and (ii) a security system which is aimed at ensuring that the data saved by the operator in its SAFE is not tampered with.

These systems and the overall technical integrity of a licensee's system are required to be certified by an authorised certification entity.

France

France regulated remote gambling in June 2010 following a process triggered in great part by the European Commission's infringement proceedings against it. The nuance to the partial liberalisation of the French remote gambling market was that it was a "controlled opening". French law itself states that one of its objectives is to ensure the balanced and equitable

development of different types of gambling to avoid the economic destabilisation of the economic sectors concerned.

Of the jurisdictions reviewed France is the only one which does not permit private operators to offer remote casino games (other than poker). The provision of games of chance the result of which is randomly generated via remote media remains to date a prerogative of la Française des Jeux ("FDJ").

Prior to the law of June 2010 FDJ enjoyed a monopoly, both offline and online, for sports-betting and lotteries. Pari Mutuel Urbain ('PMU') enjoyed an offline and online monopoly for off-course horse-race betting. Land-based casino operators were prohibited from operating in the online environment.

The remote gambling products for which a private operator can obtain a license in France provided all the statutory conditions are met are betting on sports (fixed odds and pari-mutuel), poker (Texas Hold'Em and Omaha Poker cash and tournament formats) and horse race betting (pari-mutuel only).

There are several restrictions in place in relation to sports betting; in relation to the type of bets which can be placed but also with regards to the events which those bets can be placed on. In addition the maximum average payout rate for sports-betting operations is 85% of stakes.

Remote gambling tax liability in France is far higher than that in the other jurisdictions reviewed. When factoring in tax, special contribution to social security and health care and to the sports or to the racing industry the effective tax rate for remote sports betting activities is 9%, 14.4% for horse race betting and 2% for poker.

French regulation requires a remote gambling licensee to have a 'Front End' which collects and archives transactions from the player towards the platform. The 'Front End' must be located in France. A data storage device ("DSD") must also be located in France and specific protocols are required to be put in place for transaction data to be stored in the DSD in a manner that guarantees authenticity. Prior to commencing operations in France an operator must declare that a data storage device ('DSD') (meeting set criteria) is functional, to store the data collected via the 'Front End'.

A licensee's entire gaming system must go through an in depth certification process within a year from obtaining the license.

France has isolated its remote gambling market from other markets by not allowing licensee's to mix or combine in any way their French operations with those overseas. For instance, poker players in France are not allowed to participate in the same network as players in other jurisdictions.

A large proportion of remote gambling by French residents is still carried out on offshore sites which continue to target France.

Isle of Man

The Isle of Man regulated remote gambling as far back as 2001. There is no exhaustive list of remote gambling products which this jurisdiction will license. In its Guidance the Commission notes that it "remains receptive to all proposals".

Nevertheless certain activities cannot be carried on from the Isle of Man without a license. These include sports betting, betting exchanges, live dealer games and financial trading and lotteries

Only a company incorporated and registered in the Isle of Man can apply for a remote gambling license in that jurisdiction. Game play must as a rule take place either on servers located in the Isle of Man and gambling and trading accounts should also be located in an Isle of Man bank.

The Isle of Man taxes remote gambling operations on a sliding scale starting at 1.5% of Gross Gambling Revenues for gross revenues not exceeding GBP20 million to 0.1% of Gross Gambling Revenues for gross revenues exceeding GBP40 million. An exception is made for pool betting which is taxed at 15% of Gross Gambling Revenues.

Specific rules on the registration of players, the opening of their accounts and subsequent verification upon logging into an operator's site apply. As a rule at the account opening stage a customer can only deposit money by the use of a credit or debit card. Other means of payment must be approved by the Commission.

Customer funds are required to be ring fenced even in the Isle of Man. Customers must be asked to set their own maximum stakes or bets either on a session by session basis or for a longer period of time (.e.g. monthly).

Schleswig Holstein

The German state of Schleswig Holstein has not given in to pressures by the other 15 German länder to sign up to a new Inter-State Treaty regulating the provision of gambling services across all 16 states and restricting the remote gambling offer to betting on sports. It has instead adopted its own Gambling Act, in force as of 1 January 2012, which establishes an open licensing system under which any person meeting the requirements set out by law (including depositing the necessary financial guarantees) will be able to apply for licenses to offer any one or more of: Remote betting on sports competitions, both so called "pre-live" and "in-play" and at fixed-odds or in the form of pool or pari-mutuel bets; and casino games which do not involve a banker.

Licensing will be the responsibility of a Board under the supervision of the Ministry of the Interior. Only land-based casinos will be given the right to offer games which involve a banker such as blackjack, roulette and baccarat remotely. In parallel, Schleswig Holstein is moving towards privatisation of the casinos on its territory which to date were fully owned by the state.

The provision of lotteries will remain the exclusive preserve of a state monopoly.

Schleswig Holstein has followed the Danish example when it comes to taxation. Remote gambling services will generally be taxable at 20% of gross gambling revenues (GGR). On the other hand taxation for online casino games without a banker has been set at 20% of the operator's turnover.

The Gambling Act provides Schleswig Holstein with the authority to ban credit and financial services institutions from processing payments for unlicensed illegal gaming and in pay-outs from illegal gaming in a responsible manner.

In line with the practice of some other jurisdictions Schleswig Holstein requires that player accounts are ring-fenced and that operators give players the opportunity to set loss limits. Furthermore operators must provide customers with the option to self-exclude and regulations require that an operator have in place a customer complaints procedure and that, amongst others, it publicize how results are determined, percentage payouts for winning stakes and the amount of winnings.

Schleswig Holstein does require player ID prior to withdrawal of any funds but is quite generic in terms of how this should be done. Payments from an account are to be paid directly to an account with a financial institution in the name of the player or made payable to the player and forwarded to the player's address.

As of yet there are no detailed specific conditions in the current draft versions of the technical standards available from Schleswig Holstein.

2 Introduction

2.1 Purpose of This Report

We have been requested by the Ministry of Security and Justice of Netherlands (the “Ministry”) to supply the Ministry with a report on a system of technical and operational compliance which could be implemented in respect of licenses issued for the provision of gambling via remote communication (“remote gambling services”) in the territory of the Netherlands (“the Netherlands”).

We have been instructed to do so on the basis of a comparative analysis of the regulation of remote gambling in five jurisdictions: Belgium, Denmark, France, the Isle of Man and the German state of Schleswig Holstein.

This report is intended to assist the Ministry with making important policy choices in respect of the regulation of remote gambling in the Netherlands. Following consideration of this report and its conclusions by the Ministry, and any necessary follow up, we will provide the Ministry with a proposal for a regulatory system. Our proposal will be based on the Ministry’s policy choices, uniquely tailored for the Dutch environment and designed to secure the technical and operational compliance of remote gambling within the Netherlands.

2.2 Objectives of Regulatory Reform in the Netherlands

From a broader perspective the Ministry's current endeavours regarding the regulation of remote gambling are aimed at giving effect to the intentions of the State Secretary for Security and Justice as set out in the 'Policy Note on Gambling' of 19 March 2011.¹ We understand the current Report will feed directly into the achievement of the aims set forth in this Policy Note and therefore it is extremely valuable that the content of this Report is read in light of these objectives and the Policy Note more generally.

From the Policy Note we understand that the objectives of the future regulatory regime for remote gambling will centre around:

- Enabling Dutch residents to participate in gambling in a safe and responsible manner;
- Allowing consumers access to an appropriate and attractive range of gambling services;
- Protecting vulnerable persons so as to protect them against the risk of gambling addiction;
- Allowing competition in the market instead of the current sector-based monopolies; and
- In further detail regarding remote gambling specifically;
 - Excluding minors from participating;
 - Combating criminal and fraudulent behaviour;
 - Ensuring that a trustworthy and fast system of payments;
 - Ensuring that games are fair;
 - That advertising is responsible;
 - Creating a safe and reliable operational environment;
 - Aligning the regulatory regime with international standards;
 - Awarding licenses in a public and transparent manner; and
 - Regulating forms of remote gambling for which consumer demand exists (thus for more forms than merely poker which was advised by the 'Commissie Jansen'²).

¹ Tweede Kamer, TK 24557 nr. 124 *Beleidsvisie kansspelen*

² Eindrapport van de Adviescommissie Kansspelen via Internet, 'Legalisatie van Kansspelen via Internet', augustus 2010.

Furthermore, having recognised that importance of European Union law the State Secretary notes the importance of complying with the notion of 'horizontal consistency' as developed by the CJEU in the case of *Carmen Media* (Case C-46/08) (see Section 5 for further information on this point).

During our discussions with the Ministry of Security and Justice it has become apparent that there is an appreciation that to be successful in achieving the above aims the regulatory regime must be competitive. If, when seen from an international context, the Dutch regime is perceived as overly burdensome, too costly or that the range of remote gambling services is too narrowly defined then operators will likely not seek to obtain a license from the forthcoming Gaming Authority. This will undermine the achievement of the regulatory objectives advanced in March 2011 and require greater emphasis on enforcement activities vis-à-vis operators not holding a Dutch license. Such enforcement activities could prove intensive in terms of costs and manpower whilst a high degree of effectiveness is not guaranteed.

Given that there has not been any subsequent elaboration on the objectives of the future regulatory regime for remote gambling this Report assumes that the objectives advanced in the Policy Note, as described above, are those which will be reflected in the eventual regulatory regime. However the realisation that a competitive environment is desirable has not been ignored.

Equally important alongside the specification of regulatory objectives is the standard to which those objectives are to be upheld. However, although the objectives given are fairly detailed other than in instances where the standard is absolute (e.g. the exclusion of minors) there has been no attempt to date at qualifying or quantifying the objectives. Whilst this is perhaps to be anticipated from the Policy Note given the relatively early stage at which it was published in the reformatory process it nevertheless has the consequence that the advice we provide is somewhat more open in nature.

2.3 Method and Structure

In accordance with the Ministry's wishes, and following extensive exchanges with Ministry officials, in drafting this report we have adopted a comparative approach focusing on the jurisdictions listed below in order to highlight the typical characteristics of a system of compliance in the area of gambling services over the internet.

The jurisdictions we have focused on are

- Belgium;
- Denmark;
- France
- Isle of Man; and
- The German state of Schleswig Holstein.

Each of these jurisdictions is dealt with individually, in detail, in [Section 3](#). For each of them we have set out, amongst others, the principal regulatory objectives, which type of gambling products are covered by the respective regulations, how monitoring and enforcement issues are dealt with and what player protection anti-fraud and anti-money laundering mechanisms exist.

Of the above jurisdictions only the Isle of Man is not subject to the full force of European Union law.

Each of the jurisdictions permit a different combination of forms remote gambling services. Some jurisdictions permit their license holders to offer a much narrower range of services than others, and this often reflects, by and large, the overarching regulatory objectives. Where a regulatory regime seeks to capture a significant part of the black market to protect consumers then popular forms must be regulated as is the case in Denmark. If remote gambling services are seen as a means to generate business for an economy then the breadth of permitted forms will be broader, such as in the Isle of Man. However, other jurisdictions seek to replicate their offline environment online and therefore the online offer does not vary from the forms of gambling which have an established regulatory history. This has occurred in Belgium. The degree to which established incumbents are able to lobby

successfully for a narrowly circumscribed market should not be ignored, as they will have an interest in protecting their market position particularly where monopoly rights are dissolved.

In spite of the absence of harmonised rules relating to gambling the fundamental freedoms and basic principles of the European Union which are set out in the European Union's constitutive documents, namely the Treaty on the Functioning of the European Union ("TFEU"), do apply to gambling. Certain provisions of the TFEU, most notably Article 49 on the right of establishment and Article 56 on the provision of services, have been the subject of several requests by courts of the Member States for preliminary rulings by the Court of Justice of the European Union on their application to gambling provided over the internet within the European Union across Member State borders.

The European Commission has also, especially within the context of the application of Directive 98/43/EC (as amended) and in application of its powers under Article 258 TFEU, set out its interpretation of how Articles 49 and 56 TFEU apply to gambling services provided over the internet.

We have therefore set out in [Section 6](#) those that we believe are the most relevant European Union law issues which should be taken into consideration by a European Union Member State in formulating its regulatory and compliance policy in the area of gambling services provided over the internet.

For the sake of consistency, throughout the report we have used the term remote gambling in order to encompass what is variously referred to as online, internet or interactive gaming, gambling or games of chance. The use of remote gambling is broad enough to include media such as mobile and IPTV in addition to the internet.

3 Jurisdictional Overview

3.1 Belgium

1. High-Level Analysis

With the legislative framework introduced in late 1990s Belgium was unable to respond effectively to the subsequent emergence and expansion of remote gambling services. It is therefore understandable that it sought to expand its regulatory reach to the online environment. However, it has done so in a very restrictive manner which is most probably incompatible with European law through only awarding licenses for remote gambling to operators in possession of a land-based venue license.

Apart from restricting market entry by new operators this approach also limits the scope of services offered to Belgian residents. Should this be too narrowly defined than the danger emerges that the regulated market will fail to capture a sufficiently large proportion of demand. Greater emphasis then has to be placed upon enforcement activities.

At the time of writing no technical standards were available, even in draft form, and thus it is unclear how stringent these will be or whether a high degree of trust will be placed in the fact that, at least in theory, all operators will already be present within the Belgian territory.

2. Legislative Overview

The Belgian gaming market is regulated by the Gaming Act of 7th May 1999 and the National Lottery Act of 2002. The 'Act to Amend the Laws on Gaming of 10th January 2010 ('2010 Act') introduced modifications to the 1999 Gaming Act, with these modifications entering into force on 1st January 2011. Under the 2010 Act an explicit regulatory framework was established for the regulation of online gambling which was not foreseen when the Gaming Act was introduced in 1999.

Pursuant to the amendments introduced by the 2010 Act the following secondary legislation has been introduced for internet gaming:

- 1.) Royal Decree on the form of the supplementary license and how applications for a supplementary license must be submitted and verified.³
- 2.) Royal Decree on the quality requirements to be met by the applicant for a supplementary license.⁴

Yet these two decrees do not provide all the provisions required to give effect to the primary legislation and considerable gaps still remain. For example the Gaming Act notes that the conditions under which games of chance can be offered are to be set out in a Royal Decree, in particular encompassing:

- Player registration and identification;
- Verification of player's age;
- Games offered;
- Rules of the game(s);
- Payment methods; and
- Distribution of prizes.⁵

It will become apparent through this section that there are many issues on which legislation in Belgium quite simply has not yet been drafted. In the immediate instance it means that certain elements are lacking in the following pages and therefore we suggest

³ Koninklijk besluit betreffende de vorm van de aanvullende vergunning en de wijze waarop de aanvragen voor een aanvullende vergunning moeten worden ingediend en onderzocht inzake kansspelen.

⁴ Koninklijk besluit betreffende de kwaliteitsvoorwaarden die door de aanvrager van een aanvullende vergunning dienen te worden vervuld inzake kansspelen.

⁵ Article 43/8 Gaming Act.

that the Ministry of Security and Justice contacts the Kansspelcommissie (hereinafter 'Gaming Commission') and attempts to acquire draft copies of these standards for informational purposes. Our attempts at acquiring these documents have not been met with any success, however they may be more willing to cooperate with the authorities of another Member State, particularly under the principle of sincere cooperation as embodied in Article 4 of the Treaty on European Union.

a. Regulatory Objectives

No regulatory objectives are set forth in the Gaming Act as it currently stands but reference to the preparatory documents during the parliamentary history of the original version of the Gaming Act during the 1990s reveals that the objectives were considered as being:

- Channeling human desire to gambling into legal gambling circuits so as to protect the player and ensure the integrity of the game and to prevent crime;
- Be able to effectively control all gambling activities; and
- To establish a skilled and efficient licensing body which gives advice and assures that gambling legislation is complied with.⁶

According to the explanatory notes of the 2010 Act, the objective of the amendments introducing a regulatory system for online gaming was to introduce a "consistent and properly controlled licensing system" to channel previously banned games (internet games) through licensed establishments, where control is ensured. To achieve this policy, the Belgian government decided that they will only grant licenses for online gaming to companies that are authorised to operate land-based gaming venues in Belgium. In this way they intend to "restrict the supply to defined limits in order to protect the player and exercise control over games of chance and gambling organisers." The explanatory notes to the 2010 Act go on to explain that it is desirable to allow a limited and controlled supply of online games. According to this document "if there is not a controlled supply, the players, including many young people, resort to the illegal supply of games, with all the uncontrollable consequences that entails".

This is why only land-based operators are allowed to offer games that they are authorised to offer in their physical venues. For example, a casino operator who has a license would only be permitted to provide online casino games but not online betting.

b. Definition of Online Gaming

Article 2 of the Gaming Act uses the following definitions relevant to online gambling:

- **Game of chance** - every game whereby a stake of value is set, whether the loss of the stake by at least one player or where something of value can be won by another, or the organisers of the game and in which chance, even as a secondary element in the outcome of the game, plays a role in determining the winner or the amount of prize.
- **Information society instruments** - electronic equipment for the processing of, including digital compression, and the storage of data, entirely by wire, radio, optical means or other electro-magnetic means are transmitted, conveyed and received.

c. Sectors

As is detailed in Section 2 *Licensing Requirements*, only operators in possession of a license for land-based gaming in Belgium are eligible for a license to provide online gaming. Combined with the fact that online licenses only cover the

⁶ Proposition de loi sur le jeu, amendment, *Doc. Parl. Senate*, 1-419/4, pp. 24-25 as referred to in Hoekx, N. 'The New Belgian Gambling Regulation in the European Context', in Littler, A., Hoekx, N., Fijnaut, C. and Verbeke, A.-L. (eds), *In the Shadow of Luxembourg: EU and National Developments in the Regulation of Gambling* (Leiden; Martinus Nijhoff, 2011), p. 154.

forms of gaming which is offered offline, it is necessary to consider the structure of the offline market.

The offline gaming market is divided along the following lines:

- Casinos (including poker);
- Amusement arcades;
- Catering establishments which can host two 'bingo' machines; and
- Betting offices

Other regulated forms of gaming include televised media games and lotteries. However licenses for online gaming are only available for casinos, amusement arcades and betting. Furthermore the provision of the national lottery which is subject to a monopoly held by the Nationale Loterij, is also found online. However this falls outside of the regulatory regime currently discussed, is not regulated by the national regulatory body and therefore will not be discussed further.

d. Types of Licenses

Belgian regulation provides a number of specific operating licenses applicable to gaming activities:

- Class A for casinos;
- Class B for amusement arcades;
- Class C for street located games,
- Class D for employees of gaming venue;
- Class E for suppliers and distributors;
- Class F1 for sport betting;
- Class F2 for betting in Class IV venues;
- G1 for televised lottery games; and
- G2 for other media lottery gaming.

Numerus clausus provide that there are the following maximum number of licenses:

- Casinos; 9⁷
- Amusement arcades; 180⁸
- Betting establishments; the Gaming Act does not set a limit to the number of venues in contrast to casinos and amusement arcades but rather limits the number of F1 licenses. A F1 license is required to organise betting in order to offer betting in betting establishments, with such establishments being either fixed or mobile. F2 licenses are required for persons accepting bets on behalf of F1 license holders. The Gaming Act states that a *numerus clausus* will be set for the number of F1 licensee as well as one for the overall number of betting establishments; this will be done in secondary legislation.

Following amendments to the Gaming Act holders of license types A, B and F1 can obtain an additional or supplementary license, known respectively as A+, B+ and F1+ licenses for operating games of chance via "information society instruments". Holders of such additional licenses are only permitted to offer the same forms of gaming online which they offer online.⁹ Therefore a casino operator can only offer casino games online and no sports-betting. Furthermore, only those forms of casino games which are offered offline can be offered online. In terms of sports-betting it would thus appear that a F1 license holder can only take bets online if bets are taken on the same events in the offline venue.

Taking such an approach will result in an online market which is highly fragmented; given that operators will be restricted to the services they offer in their land-based venues there will be no seamless service for online consumers.

⁷ Article 29 Gaming Act.

⁸ Article 34 Gaming Act.

⁹ Article 43(8)(1) Gaming Act.

Whilst the peers of Belgian residents in other EU Member States will be able to access a range of services offered via a single website Belgian residents will only be able to access a comparatively narrow range of services per website. Likewise internationally orientated operators accustomed to offering a range broad range of gambling services may find the fragmented market to lack economic viability.

It would appear at first glance that the numerous *clausus* applicable to the land-based licenses transcends into the online world, thus there could be up to nine online casinos and 180 online amusement arcades. However, there are fewer than nine land-based casino operators in Belgium at present, with operators operating multiple venues. The same is likely to be true in terms of the amusement arcades. If a casino operator holds three land-based licenses then it can serve the online market on the basis of one of these casinos and the other two are not available for facilitating access to the online market.

However, it seems that the additional license system is not being implemented as originally foreseen since a land-based operator (Groupe Circus) has tied up with an online provide of poker (Pokerstars) on the basis of the license held for the casino in Namur. The online operation has been licensed on the basis of the E type license which is for suppliers and distributors of slot machines. In effect this appears to work in combination with the A+ license which is held by the land-based casino operator. Gambling Compliance notes that similar constructions are found in relation to online betting (F1+ license and an E license) and also for online arcades (B+ license and an E license).¹⁰

Given the relative recent entry into force of the Belgian regulatory regime it remains to be seen how this regime will work in the future; will operators tie-up with land-based operators or will land-based operators seek to enter the online market themselves? Thus there could indeed be nine online casinos if each of the existing land-based licensees form joint ventures with multiple online operators as has already occurred regarding the Namur casino. To a degree this process removes the determination of which online operator enters the market from the Gaming Commission. Instead this will depend upon negotiations between existing land-based operators and willing online parties. When thinking about a regulated market it is questionable whether market access is determined to an extent by existing operators in the land-based as opposed to national authorities. There is a danger that land-based operators will seek to protect their offline interests and it is unclear whether the regulatory objectives are best served by this construction.

The upper limit to the number of licenses and the ability of online operators to enter into joint ventures with existing offline operators raises a number of interesting questions. Firstly such a numerous *clausus* restricts market access, in terms of the free movement of services and the freedom of establishment (the latter given the Belgian requirement to be established in the Member State in the form of an offline venue). Whilst an upper limit is less restrictive than a monopoly it is nonetheless more restrictive than an unlimited number of licenses for operators satisfying stringent conditions. Therefore it is inherent that the Belgian regime is regulated in a manner which is consistent with the objectives used to justify a limited number of licenses. For example the offering of new games should be in line with the notion of player protection. This relates to the notion of consistency as explored 'Horizontal Issues on European Law' in Section 7. This Section also describes why the requirement for an operator to have a land-based venue in Belgium is incompatible with EU law.

Secondly, given that the Gaming Commission has already authorised online operations prior to the passage of secondary legislation establishing technical standards is unusual. Arguably the E license is being used for a purpose which it was not intended when drafted and moreover undermines the land-based - online construct which the + license system was designed to create. Although falling outside the confines of this study the manner in which the discretion of the regulatory body is constrained by administrative practices and law should be

¹⁰ Gambling Compliance, *Regulatory Report - Belgium*, 9th December 2011.

clear. Transparency at the license award stage should prevent the arbitrary use of discretion, and whilst we do not wish to allege that this has occurred in this instance, for legal certainty in the market transparency and predictability should be ensured by the regulatory regime.

e. License Duration

Additional licenses permitting the provision of online gaming are valid for the same period as the underlying license of the land-based operation.¹¹ The relevant periods are:

- A/A+ for online casinos; 15 years (renewable);
- B/B+ for online amusement arcades; 9 years (renewable); and
- F1/F1+ for betting; 9 years (renewable).

The duration of these licenses is long in comparison to those of other jurisdictions in this study. However this reflects the fact that licenses for remote gambling are tied to those in the offline sector where investments, and the recoupment of such costs, are likely to occur over a longer period of time than in the online environment. Given the lack of experience with this model it remains to be seen whether this is of any effect; land-based licensees could terminate their contractual agreements with their online partner thus entailing a more frequent change of online operators than these timeframes would suggest. Alternatively, should this not materialize, then such timeframes could serve to entrench exclusion from the market for those parties which did not enter the market whilst it was in its infancy.

f. Tax Rates

Licensed operators will be subject to the following gambling specific taxes calculated on the basis of gross gaming revenue:

Region	Tax
<i>Wallonia</i>	11% on GGR
<i>Flanders</i>	11% on GGR
<i>Brussels</i>	15% on GGR

3. Licensing Requirements

a. Suitability of Applicants

The additional licenses for the provision of online gaming can only be obtained by a holder of a land-based license. Conditions for obtaining a land-based license are hereby reviewed in relation to the obtaining an A license for casino gaming.

The conditions for gaining a license are found in Article 31 of the Gaming Act which require that:

- Where the applicant is a natural person they;
 - must reside in the EU;
 - be in possession of the all their civil and political rights; and
 - behave in a manner consistent with the provision of gambling services.
- Where the applicant is a legal entity and not a non-profit association it must;

¹¹ Article 43/8(3) Gaming Act.

- be established under Belgian law or that of another EU Member State;
- the directors and managers must be in possession of all their civil and political rights; and
- behave in a manner consistent with the provision of gambling services.
- Conclude a concession agreement with the local authorities where the land-based venue will be established;
- Submit evidence to show the credit worthiness and financial capacity and the identity of shareholders; and
- Show that all taxes are paid.

However, without a license for land-based gaming becoming available then these conditions are rather academic. Therefore it is relevant to give attention to the conditions upon which the Gambling Commission will award an additional license to an existing land-based license holder. These are found within the Royal Decree on the quality requirements to be met by the applicant for a supplementary license. According to the Royal Decree the requirements are the following:

- **Fairness of the game:** The applicant shall be responsible for fairness with regard to the organised games of chance, and shall ensure the consistent operation therefore.
- **Control by the regulator:** License applicants shall ensure that the Gaming Commission is able to contact an authorised official at any time. In addition, the applicant shall ensure a permanent data connection between the website and the Gaming Commission .
- **Financial credit record:** The applicant must be able to demonstrate a 40% solvency ratio.
- **Payment Plans:** The applicant shall submit a detailed plan demonstrating that payment transactions between the operator and the players are guaranteed as being secure. This plan must contain at least:
 - i) the technical specifications of the current plans, and
 - ii) the permanent security checks to be implemented in the future .
- **Customer protection:** The applicant must show the Gaming Commission that it has or will develop policies to prevent socially vulnerable groups from being lured to its website.
- **Customer complaint procedure:** The applicant must describe the complaint process to be put in place for players which must be permanently available. The Gaming Commission must be informed of each complaint registered by a player. A license applicant must describe the measures taken to ensure that the complaint process is available at any time .
- **Advertising:** An applicant must clearly explain its advertising strategy to the Gaming Commission. It must demonstrate that some form of restraint will be exercised . An licensee official must be available to be contacted by the Gaming Commission for each advertising campaign. This official must have the authority to discontinue any advertising campaign upon the Gaming Commission's simple request.
- **Taxes:** The applicant shall submit a statement from the Finance Department of the Federal Government evidencing that all final and undisputed tax debts have been paid.

Further insight as to what the Gambling Commission will take into consideration can be garnered from the Royal Decree on the form of the supplementary license and how applications for a supplementary license must be submitted and verified.

Attached to this decree is an application from which requests the following information:¹²

- From natural persons:
 - Two most recent fiscal declarations from the past three years;
 - To cover the interim period between the latest declaration and request for a license;
- Pay-slips covering the interim period;
- Income from property and capital
 - Details of any loans;
 - Details of any security the applicant provides;
 - Details of any accounts held outside of Belgium; and
 - Whether the applicant has been declared bankrupt.
- From legal persons:
 - Corporation tax declarations for past three years
- From both, with regards to the gambling the applicant intends to offer:
 - An opinion from the federal public finance service that the applicant has honoured all its tax obligations;
 - A list of the types of games of chance to be offered;
 - An attestation to the solvency, financial capacity and ability of the firm to pay the guarantee;
 - Rules applicable to the games of chance;
 - The location where the server and the identification of the server on which data shall be recorded and the website managed; and
 - The name of the website.

b. Business Internal Controls

No business internal controls are currently specified for gaming operators in the present state of Belgian law.

c. Gambling Internal Controls

No business internal controls are currently specified for gaming operators in the present state of Belgian law.

4. Regulatory Oversight

Oversight is vested in the Belgian Gaming Commission (Kansspelcommissie / Commission des Jeux de Hasard) which is established within the Ministry of Justice¹³ and includes representatives of the Ministries of Justice, Finance, Economic Affairs, Interior Affairs, Public Health and the Minister competent for the National Lottery.¹⁴ Nevertheless it exercises all of its competences in an independent manner.¹⁵

a. Competence of the Regulator

The Gaming Commission is responsible for:

- Awarding licenses;
- Issue a warning to license holders
- Suspend or withdraw the license for a specified period of time;
- Temporarily or permanently a prohibit license holder from offering one or more forms of gambling.
- Award an administrative fine

The Gaming Authority can award an 'administrative fine' against a license holder where a crime has allegedly been committed under the Gaming Act and the public prosecution service has failed to take action within six months or otherwise explicitly notify that Gaming Commission that there are no grounds for prosecution. Such administrative fines, awarded

¹² Formulaire de demande pour la license complémentaire can be downloaded from www.gamingcommission.fgov.be/website/FR/pages/pdf/LICPLUSFR.pdf

¹³ Article 9 Gaming Act

¹⁴ Article 10(2) Gaming Act

¹⁵ Article 10(6) Gaming Act.

pursuant to Article 15/1 can only be awarded for a criminal breach of the Gaming Act and not for merely failing to uphold licensing conditions.

5. Responsible Gaming & Player Protection

a. Opening a Player Account

In order to give effect to central register of excluded players, whether self-excluded or otherwise denied entry to casinos and amusement arcades, the Gaming Act requires that upon entry to a venue the operator ascertains the following information:

- Forename and surname;
- Place and date of birth;
- Nationality;
- Identification number; and
- Profession

Via an online system the operator is, prior to admitting the potential player to its venue, required to check the details against those contained within the central register. There are no details as yet as to how this procedure is to work with regards to online operations, as the necessary Royal Decree has not been drafted. Therefore it is thus unclear whether online operators will only permit as customers those individuals who have previously registered with them in a land-based venue. Nevertheless it is difficult to understand how an operator could effectively check potential online customers against the central database without requiring them to open an account and furnish the necessary details. However as stated under "Legislative Overview" this is one area in which a secondary legislation is anticipated.

b. Separation of player accounts

There are no conditions requiring the separation of player accounts from other business capital.

c. Setting Loss/Play Limits

Currently it does not appear that there are mandatory limits explicitly designed for online gaming activities, thus reference is made to those applying to license holders of land-based venues. Article 8 of the Gaming Act establishes that in an amusement arcade a customer cannot lose more than €25 per hour. The Article does not set any limit to the amount of hourly losses which a consumer can sustain in a casino and neither does it do so in relation to betting. There do not appear to be any conditions requiring that operators give consumers the option of, or oblige consumers to, set upper limits in terms of time or money spent.

d. Self-exclusion Measures

The ability of a consumer to be excluded from gaming services is central to consumer protection within the Belgian regulatory system.¹⁶ All operators of casinos and amusement centers are connected to a central database, which pre-dates the regulation of online gambling as of 2011.¹⁷

A consumer can request self-exclusion by contacting the Gaming Commission and requesting that they be included. However, several other classes of person are also included in the database, notably:

- Those with an extended age of minority (i.e. are still considered as minors although older than the age of majority),¹⁸

¹⁶ Article 54 Gaming Act .

¹⁷ Koninklijk besluit 15 december 2004 betreffende het instellen van een systeem van informatieverwerking voor spelers aan wie de toegang tot kansspelinrichtingen van klasse I en klasse II.

¹⁸ Participation in online casino gambling and amusement centers is forbidden for those under 21 years of age whilst the minimum age for online sports-betting is 18 years.

- Those who are addicted to gambling; a request for an entry ban can be made by any party with an interest in the gambling addict's life. An entry ban is not automatic but at the discretion of the Gaming Commission; and
- Those subject to debt settlement proceedings.

Should an individual who has self-excluded wish to lift the entry ban then he/she must request that the ban is lifted and then wait three months before being permitted to enter a casino or amusement arcade.¹⁹

We note that the ability of a third party to request that a player be excluded from gambling services is a particularly unique element of the Belgian regime when compared to other jurisdictions. Indeed, this may serve to ensure a high level of consumer protection as an individual may not necessarily be aware of what is in their best interest. However clear procedural elements must be in place to ensure that this system is not misused and that the privacy of individuals is not endangered.

Whilst it appears to be common practice of a cooling-off period to pass before a ban is lifted three months is longer than practice established in other jurisdictions, including those within this Report. This certainly provides an individual with time to reflect, but it is questionable as to whether three months is too long, and if an individual wishes to play again then it may be undesirable to push them towards the unregulated market by having in place an overly long cooling-off period.

On a different note it is also interesting to appreciate that following the amendments introduced by the 2010 Act it is an offence to participate in a form of gambling which is not licensed in accordance with the Gaming Act. Individuals who do so run the risk of being criminally sanctioned for their activities under Article 4(2) thereof.

This is another element unique to the Belgian regulatory system and whilst this may prove unwieldy to give effect to when thought is given establishing whether an individual knowingly participated in unlicensed gambling. Ultimately the effect of this provision will rest in its capacity as a deterrent and therefore so does its ability to encourage participation of services offered by Belgian licensees.

e. Information Requirements

Under Article 61 of the Gaming Act operators of online gaming must make a 'folder in electronic form' available which contains information about gambling addiction, a telephone number for a helpline and addresses of organisations to which consumers can turn to for assistance. In land-based venues the folder must be positioned so that it is visible, presumably this will apply to the electronic version too.

f. Customer Service Requirements

There are no specific customer service requirements detailed in the existing primary nor secondary legislation.

6. Payment Methods

As a means to protect consumers, the provision of credit for the provision of gaming is restricted. Under Article 58 of the Gaming Act, as amended, credit cards are not permitted for use in online gaming (whereas they are permitted for land-based casinos but not other forms of land-based gaming).

7. Player Privacy

There are no specific player privacy requirements detailed in the existing primary nor secondary legislation.

¹⁹ Koninklijk besluit 15 december 2004 betreffende de wijze waarop de toegang tot de kansspelinrichtingen klasse I en II wordt verboden of ontzegd.

8. Money Laundering

There are no specific anti-money laundering requirements detailed in the existing primary nor secondary legislation.

9. System Security

There are no specific system security requirements detailed in the existing primary nor secondary legislation.

10. Technical Standards

Current, there are no specific regulations are publically available which set forth the technical conditions which the holder of an additional must comply with. Only one requirement is made within the Gaming Act, notably that the servers on which data and the gambling website are maintained must be located within a permanent establishment on Belgian territory.²⁰ Without detailed technical details being it is impossible to ascertain the manner in which the Gaming Commission will seek to access the data stored within Belgium, whether it will seek to access the servers in a physical sense or will be satisfied with remote access, or a combination of both. Equally it is unclear as to how the Gaming Commission will test the computer infrastructure prior to allowing a website to 'go live'.

11. Change Management

There are no specific change management requirements detailed in the existing primary nor secondary legislation.

²⁰ Article 43(8)(3)

3.2 Denmark

1. High-Level Analysis

The approach taken by Denmark is characterised by its pragmatism. In an attempt to bring Danish residents under national standards, including those of consumer protection, which the Danish government considers most appropriate an approach based upon ensuring that a large a slice of the Danish Kroner is captured as possible has been taken. We consider that the government attempts to do this through what we consider to be a fairly balanced and attractive regulatory regime for remote gambling operators. By extending its regulatory reach in this manner less reliance will have to be made on enforcement measures against unlicensed operators given that as many operators as possible will be licensed. Such is an advantage of a licensing system that does not restrict the number of licensees whilst avoiding overly burdensome regulatory requirements in what is, in terms of population, a relatively small market.

Such pragmatism is found with the possibility for an operator to locate its IT infrastructure outside of Denmark subject to approval, that international liquidity is permitted thus enabling Danish players to participate in games along with players of the same operator but who are not subject to a Danish license and also the differentiation in the rates of taxation between the offline and remote gambling sectors. The attitude and approach of the Danish Gaming Board also embodies this spirit; through learning by doing the Board is well placed to avoid establishing less desirable practices which could otherwise become entrenched over time.

2. Legislative Overview

For the past decade, DanskeSpil, the state controlled lottery operator, had a monopoly over internet gaming in Denmark. Up to the end of December 2011 only DanskeSpil was authorised under Danish law to offer lottery and sports betting services through the internet.

2010 saw Denmark undergo a complete overhaul of its gambling laws. As part of this reform Denmark decided that it would open and thus regulate certain the provision of certain forms of gambling via the internet, including casino games, sports betting and poker. The bill (hereinafter referred to as the Act on Gaming) was introduced to the Danish parliament in March 2010 and it was approved in June 2010.

Originally the law was planned to come into force on 1st January 2011. However a state aid complaint filed by the Danish casino and land-based slot machine operators caused delay. According to this complaint, the tax regime that the draft legislation would result in would result in a tax regime less burdensome to online operators than that applicable to land-based operators. The complainants considered that should this regime come into effect it would result in illegal state aid. In essence, the land-based operators considered that online operators would be given an 'undue advantage'.

The European Commission started a formal investigation in December 2010 into this matter. The issue was finally determined in September 2011, when the Competition Directorate of the European Commission ruled that, while the lower taxation rate qualified as state aid, the proposed policy was compatible with EU law. In summary this was based on the finding that the lower rate of taxation would ensure that the Danish regulatory regime would be attractive to operators, and thus they would apply for Danish licenses thereby enabling the extension and enforcement of Danish regulatory objectives to online gambling activities supplied to Danish residents.

As a result of the European Commission's decision the regulatory regime for internet gambling entered into force on 1st January 2012. This Section will only consider the regulatory regime applicable as of this date.

Primary legislation which regulates internet gambling is as follows:

- The Act on Gaming
 - Occasionally reference is made to "Bill for a Regulation of Gaming Act" to elucidate further information where necessary.

- The Act on Duty on Gambling
- The Act on DanskeSpil A/S
- The Act on Distribution of Profits and Lotteries and Betting on Horse and Dog Racing.

Further the Danish government has issued six statutory orders to implement the abovementioned laws, however only the following are applicable to online gambling:

- *Statutory Order on Online Casinos and Statutory Order on the Provision of Online Betting*; establish conditions regarding the registration of players, gaming accounts and payments, information for players, responsible gaming, bonuses and the suspension and closure of gaming accounts.²¹
- *Statutory Order on Reimbursement of Costs Incurred for Blocking of Payments*; permits debit card issuers to have costs incurred by the Gaming Authority for the development and operation of a system that ensure that no payments are processed between Danish residents and illegal operators.²²

In addition to these the newly established independent regulatory body, the Danish Gambling Authority published four documents that regulate different technical aspects implementing the new regulatory regime. These documents are:

- Annex 1, technical requirements for the license holder;
- Requirements for accredited testing companies;
- Programme for managing system changes; and
- Spillemyndigheden's Technical Standards²³.

a. Regulatory Objectives

The English translation of the bill which subsequently became the Gaming Act note that the fourfold objectives of the regulatory regime are:

- To maintain the consumption of gambling "(gaming for money)" at a moderate level;
- To protect you and other vulnerable people from being exploited through gaming or developing a gaming addiction;
- To protect players through ensuring that games are provided in a fair, responsible and transparent way;
- To ensure that public order is maintained and preventing games from supporting crime.

The explanatory notes of the Act on Gaming state that the development of the internet has allowed Danish citizens to consume online services offered by offshore operators. In this scenario, Danish consumers were thus able to compare the offer and range of products provided by the Danish monopoly DanskeSpil with the products provided by operators located in other jurisdictions such as the UK, Malta and Gibraltar as well as those located in jurisdictions outside Europe such as Costa Rica, the Mohawk Territory of Kahnawake in Canada and Curacao, and to choose the most attractive offer. This had led many Danish consumers to play with foreign online operators.

²¹ The draft texts of both of these orders as notified to the European Commission are available via the Technical Regulations Information System (TRIS):

Online Betting:
http://ec.europa.eu/enterprise/tris/pisa/app/search/index.cfm?fuseaction=pisa_notif_overview&iYear=2011&inum=488&lang=EN&sNLang=EN&newwindow=true

Online Casinos:
http://ec.europa.eu/enterprise/tris/pisa/app/search/index.cfm?fuseaction=pisa_notif_overview&iYear=2011&inum=489&lang=EN&sNLang=EN&newwindow=true

²² The other four statutory orders are; Statutory Order on Repayment Rates and Fees for Control and Supervision of Certain Games; Statutory Order on Land-Based Casinos; Statutory Order on Gaming Machines in Gaming Machine Arcades and Restaurants; and Statutory Order on Non-Profit Lotteries.

²³ Version 1.1.0. of 1st September 2011 on file with authors of report.

In that sense, the gaming reform sought to redirect gaming demand to a controlled framework in order to “prevent the negative social implications in society” that gambling can generate.

b. Definition of Online Gambling

The following terms and definitions are used in the Act on Gaming (only those relevant to the online environment are referred to here):

- Combination game: "Activities in which a participant has a chance of winning a prize and where the probability of winning is based on a combination of skill and chance."
- Betting: "Activities in which a participant has a chance of winning a prize and where bets are placed on the outcome of a future event or the occurrence of a particular event in the future."
- Online games: "Games that take place between a player and a game provider through the use of remote communication."

Given the scope of the definition of online games the Danish regulations apply not only to those services provided to a desktop computer but also other means of remote communication such as mobile telephones and interactive television.

c. Sectors

Under the Act on Gaming Danish legislation will permit private operators to offer the following types of online gambling services:

- Online casinos, including;
 - Games combining skill and chance, e.g. poker
 - Games determined solely by chance, e.g. roulette and online gaming machines offering cash winnings
- Online betting, namely betting on non-sports events and sports events other than horse racing, and dog racing. According to the Explanatory Memorandum this should include fixed odds (including betting exchanges and spread betting) and pool betting.

Other forms of online gambling remain under the monopoly of Dansk Spil, namely remote lottery games, betting on horse racing and dog racing and other forms of gambling such as bingo, scratch cards and keno.

Denmark seeks to allow private operators to offer a broad remote gambling offering and does not preclude them from offering those forms where the outcome is solely determined by chance. This will allow the Danish license regime to respond to consumer demand and has the advantage of pulling such players into the realm of Denmark’s standards. However other games determined purely by chance remain with the monopolist which appears rather arbitrary. Whilst nationwide lotteries can gain from economies of scale the exclusion of other forms from the private market, such as bingo and scratch cards, may entail that supply does not satisfy the nature of demand thereby undermining the achievement of the regulatory objectives.

d. Types of Licenses

The new regulatory regime establishes nine different license types, of which only two are applicable to online gambling. Both types are available on a non-exclusive basis with no maximum as to the number which can be awarded. These are:

- **Wager license;** for both land-based and online betting covering fixed odds betting, pool betting and live betting.²⁴

A restricted version is also available with gross gaming revenues limited to DKK 1 million.

²⁴ Section 11 Act on Gaming.

- **Online casino license;** for the provision of roulette, baccarat, punto banco, blackjack, poker and gaming on gaming machines offering cash winnings in an online casino.

A restricted version is also available with gross gaming revenues limited to DKK 1 million.

The Danish regulatory regime permits Danish customers to play against players located outside of Denmark and thus regulated pursuant to different regulatory regimes. This is known in the industry as "international liquidity" or "open liquidity". Danish law requires that such open poker networks comply with Danish law, be supervised by the Gambling Authority and that the operator pays duty on the part of the stake relating to Danish customers.

e. License Duration

Both wager licenses and online casino licenses are valid for a period of five years. As indicated above both license types are available with revenue restrictions and both enjoy a fixed term of one year.

Although we do not have specific information as to why Denmark has chosen for a license duration of five years and indeed this may reflect more general practices within general Danish administrative law. Nevertheless, it is worth pointing out that a five year period will provide operators with a reasonable opportunity to recoup investments made when entering the Danish market whilst providing services in manner compliant with license conditions and thus in line with the regulatory objectives.

f. Tax Rates

The regime entering into force on 1st January 2012 establishes both fees, payable to license applicants and license holders, and taxes.

Fees

Upon the submission of a license application for either a wager license or an online casino license will require the applicant to pay a fee of DKK 250,000 to the Gambling Authority. This amount increases to DKK 350,000 where both license types are applied for.

As and when a license has been awarded the operator will be bound to pay an annual fee to the calculated upon the basis of the operator's Gross Gaming Revenue (total deposits from Danish players less total winnings distributed to players).

Fees will be determined in accordance with the scale below:

Gross Gaming Revenue	Fee
Under DKK 5m	DKK 50,000
Between DKK 5m to DKK 10m	DKK 250,000
Between DKK 10m to DKK 25m	DKK 450,000
Between DKK 25m to DKK 50m	DKK 650,000
Between DKK 50m to DKK 100m	DKK 850,000
More than DKK 100m	DKK 1.5m

Fees must be paid at the beginning of each year. Should the eventual Gross Gaming Revenue for that year exceed the amount upon which the fee calculation was based an amount corresponding to the difference between the fee paid and the actual fee due will be charged. This amount must be paid no later than one month after it was charged. Should the income realised for a calendar year be lower than that upon which the fee calculation was based then likewise an amount corresponding to the difference between the fee paid and the actual fee due will be refunded.

Although it falls beyond the remit of this Report to consider the taxation of remote gambling services the issue of fees is an important one. As noted below under the 'Costs of Regulation' the regulatory costs associated with regulating remote gambling are to be covered by fees paid license holders. Seen in this light the regulation of the sector is cost neutral for the state. However fees to be paid to the regulatory authorities increase the cost of doing business in a jurisdiction and we hold the view that as such they should not negate the commercial viability of such operations.

Taxes

The taxation of licensees is regulated by the Act on Duty on Gambling, under which operators of both online wagering and online casino games will be taxed at a rate of 20% of the Gross Gaming revenue generated by Danish residents.

Taxes are calculated and due on a weekly basis which has the consequence of pushing the effective tax rate above 20% when considered on an annual basis. In practice operators are unable to offset losses sustained in one week against profits made in another. As far as we are aware this is one of the few operator unfriendly elements of the Danish regime.

3. Licensing Requirements

In contrast to other jurisdictions offering licenses for online gambling, licenses are not available on a continuous basis, but within certain timeframes. The first and initial licensing procedure closed on 17th October 2011 and thereafter no new applications can be filed. It is unclear at present when a licensing window will be opened.

a. Suitability of Applicants

Licenses can be granted to individuals, companies, associations, funds and similar entities. In the case of individuals, they must be at least 21 years of age and may not have (i) started restructuring proceedings, (ii) filed a petition for compulsory composition, (iii) bankruptcy, (iv) debt rescheduling or have gone into restructuring proceedings, (v) bankruptcy proceedings, (vi) debt rescheduling, or compulsory composition. An individual charged with or convicted of a crime will not be eligible for a license.

Companies will have to comply with the same requirements established for individuals only when they are relevant. Nevertheless members of the management and the board of directors must comply fully with all the same requirements that apply to individuals.

Licenses can only be granted if it is presumable that the applicant will be able to provide gambling in an economically safe way and that the relevant persons are professionally qualified.

Location Requirements

Companies established in Denmark, or in another EU or EEA Member State are eligible for a license for online gambling, even without having a physical presence in Denmark. Those companies located outside of the EU and EEA will need to have a representative in Denmark; such a person must be authorised by the Gambling Authority and fully comply with the same requirements as applicable to individual applicants (as noted in the sub-section above).

Such pragmatism on the part of the Danish system will, in our opinion, improve the attractiveness of a Danish license as the investment that an operator is required to make in terms of IT infrastructure in Denmark is mitigated. Through doing so the consequences of a fragmented internal market are mitigated to a degree, reflecting the extent to which system replication is reduced. As explained in terms of the technical aspects of regulatory oversight (below) attention is focussed on the collection of, and access to, data rather than where that data is located. Again, this serves to increase the capture by Danish regulation of as many operators as possible.

Financial Requirements

An online operator must be managed on an appropriate financial basis. Therefore, when applying for a license, operators must enclose documentation that will enable the Gambling Authority to assess the company's financial position (financial statements, funding plan for the project, etc). The Gambling Authority will assess whether the operator will be in a position to pay out all potential winnings, that budgets are consistent with the targets defined in the business plan, and that sufficient funds have been allocated to the company requesting the license.

b. Business Internal Controls

Former employees, consultants or third parties shall not have access to the gambling system.

Access to the gambling system for employees, consultants and third parties shall be in accordance with their job descriptions.

c. Gambling Internal Controls

The gambling system shall be able to shut down in an appropriate manner in the event of a power outage and keep a log of the system performance and be capable of generating reports on this basis.

Resource consumption shall be monitored and adjusted, and forecasts shall be made for the requirements for future capacity in order to ensure that the required performance is achieved.

All data sent via public networks shall be encrypted. Moreover, all communication between geographically dispersed systems shall protect against:

- incomplete transmission;
- mis-routing, unauthorised message alteration;
- unauthorised disclosure;
- unauthorised message duplication; and
- unauthorised replay.

4. Regulatory Oversight

The Danish gambling industry is overseen by the Danish Gambling Authority (Spillemyndigheden), an office within the Danish Ministry of Taxation.

a. Competence of the Regulator

The Gambling Authority's main functions are the following:

- Licensing, regulation and inspection of the gaming market, including online operators;
- Supervision of Danske Spil A/S and Det Danske Klasseslotteri A/S;
- Monitoring of the Danish gaming market;
- Licensing, regulation and inspection of public poker tournaments; and
- Supervision of land based casinos.

b. Technical Aspects

Technical control by the Gambling Authority

Licensed operators must ensure that their systems are capable of providing access to the Gambling Authority so that the functioning of the licensed activities can be monitored. Monitoring activities will not occur directly on the operator's gaming platform. Rather operators are obliged to store their gambling data on a specific server and provide the Authority with access to such data.

The overall gaming control system ('system complex') which constitutes the operator's gambling system, will consist of three systems; the data store ('SAFE');

a security system ('Tamper Token') and a Problem Gambling Register ('ROFUS'). Together these systems will ensure that:

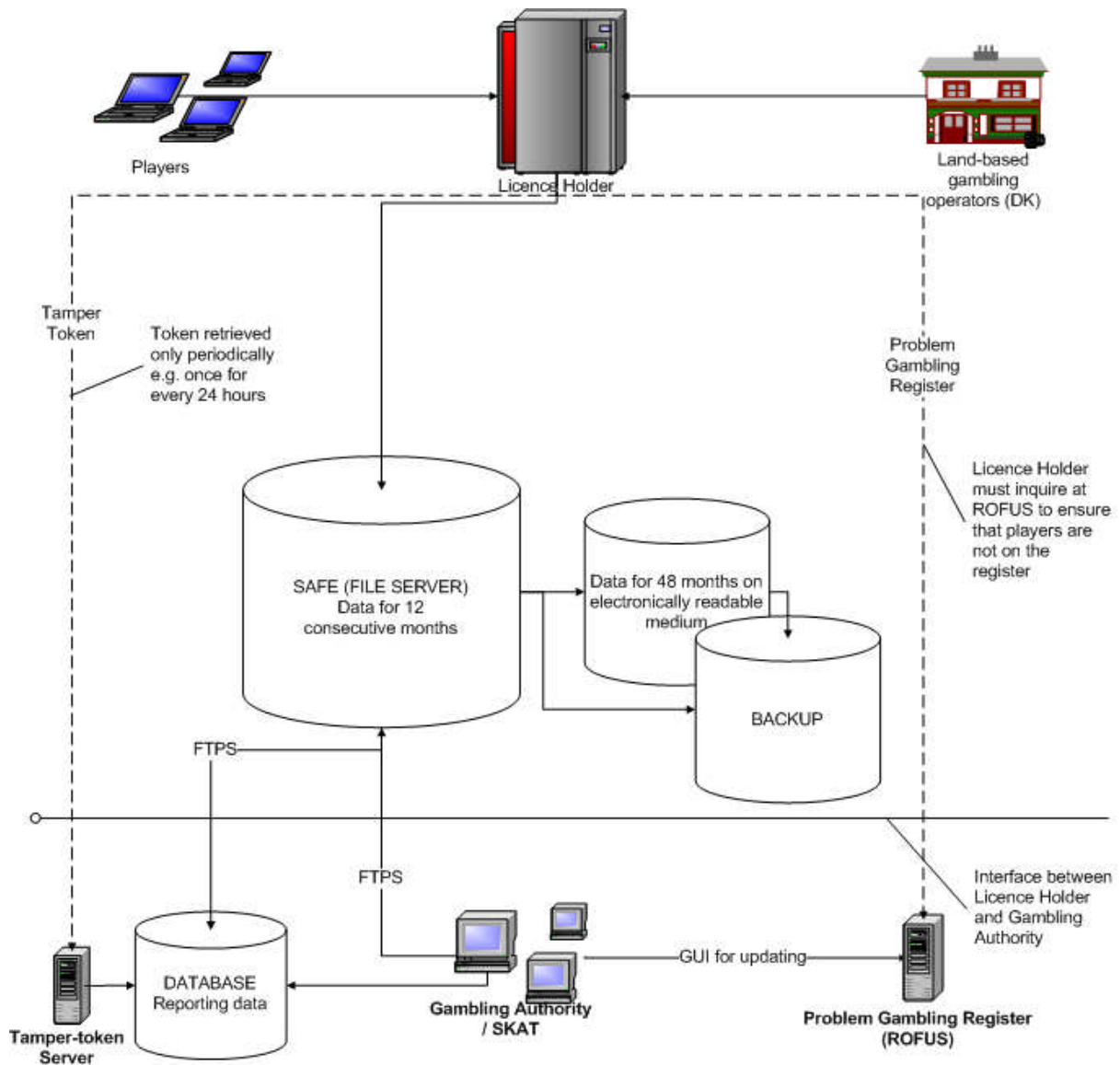
- Players are able to play online games with licensed operators;
- Operators are able to legally provide online games in Denmark and prove that they meet statutory requirements; and
- The Gambling Authority is able to check that online gambling satisfies the requirements of current legislation.

The three systems can be described as follows:

1. The **SAFE** is the operator's own data store (a file server) where data for all hosted games must be stored. All operators are required to establish a SAFE. The Gambling Authority must be able to obtain online access to the SAFE. The data that needs to be sent to the SAFE is very broad and covers anything ranging from timestamps of events, player actions during game play (such as betting amounts, winning combinations, jackpots, etc) to accounting transactions, money transferred through the gaming system. The point of saving all this data in the SAFE is to give the regulator all the necessary information to reconstruct fully any interaction between the player and the system at any given time for purposes of money-laundering, safety and player tracking.
2. **Tamper Token** is a security system which is aimed at ensuring that the data saved by the operator in its SAFE remains unchanged while stored. The Tamper Token will be implemented in the Gambling Authority's system and will handle:
 - Creating keys (tokens) used for calculation of identification codes;
 - Storing identification codes for later control;
 - On-going control of compliance with time periods for the termination of tokens;
 - Verifying that a retrieved series of data has not been changed in relation to the identification code received.
3. The **Problem Gambling Register (ROFUS)** is a register of all players in Denmark who have voluntarily requested exclusion - temporarily or permanently - from participating in online gambling services licensed in Denmark. The register will be managed by the Gambling Authority. It must be possible for all players to register through either the operator or the Gambling Authority. The register will contain information about all excluded players in Denmark.²⁵

A diagram on the following page how, under the Danish system, an operator's IT infrastructure take shape and interact with that of the Gambling Authority.

²⁵ Information provided within Annex 1 of the Technical Requirements for license holders.



Together, the three systems will help ensure that:

- players are able to play online games with approved License Holders;
- License Holders are able to legally provide online games in Denmark and prove that they meet statutory requirements; and
- the Danish Gambling Authority is able to check that online gambling will meet the requirements of current legislation.

The Danish model of capturing data and ensuring that operations are cross-referenced with the database of excluded players is perceived throughout the industry as being relatively easy to comply with and more favourable in terms of costs than other systems, such as that employed in France. Essentially the Danish system requires that specified information is pushed from the operator - consumer relationship to the reporting database. This is in contrast to the French set-up whereby the system for data capture has been inserted between the operator and consumer.

However the Danish model is not free from criticism. A widely held view amongst licensees is that the TOKEN system represents a potential single point of failure.

Should this element of the system fail then an operator's website will cease to operate. Consequently ensuring the robustness of this single point is of the utmost importance, not only in terms of ensuring the economic viability of operations in Denmark but also the achievement of the Danish regulatory objectives.

At this point it is worthy to take note of the industry's experience of working with the Danish Gambling Board. As a new regulatory authority the Danish regulators faced a steep learning curve but in broad terms this has not resulted in a negative experience for market entrants.

From our understanding of the licensing process many operators have appreciated that the Board has been willing to enter into dialogue with operators, often through direct contact between operators and the Board. Indeed, the Board has been open to learning through doing and thereby only establishing definitive conditions following discussions with operators. This has helped to ensure that the Danish regime remains attractive to operators and thereby achieving the objective of attracting the black and grey markets of demand. With a population of a little over 5.5million inhabitants, since opening the market at the start of 2012 Denmark has already attracted approximately 40 operators who hold 75 licenses (some holding both online wagering and online casino licenses). We believe that this testifies to the relative overall attractiveness of the Danish regulatory model.

c. Costs of Regulation

Within the Bill for the Act on Gaming an estimate of the costs for establishing the regulatory machinery to oversee an open market for remote gambling services was given. This information is reproduced here so as to offer an insight into the nature and distribution (between state and market participants) of the costs of sustaining the chosen regulatory framework including the IT infrastructure and institutional architecture.

It goes without saying that costs for similar regulatory endeavors in other jurisdictions will result in different costs deriving from a combination of the scope of tasks given to a new independent regulator, the division of tasks with existing institutions (which may or may not already execute some of the functions associated with the new regulatory regime), the size of the regulated market, the complexity of the IT infrastructure and the bureaucratic style associated with the national civil service.

Upon the introduction of the bill in 2009 it was estimated that come the first year of operationalization of the proposed new system that it would cost DKK 18.8 million (€2.53m) for 2011 in terms of annual costs.²⁶ Such a figure was factored for 2011, whilst the regime has only become operational in 2012. A cost of approximately DKK 10.4million (€1.4m) was estimated necessary to cover the functions of issuing licenses, controlling and supervising providers of betting and online casino games and other tasks directly flowing from and related to granting market access for private operators. Further, annual operational and development costs IT infrastructure required for controlling online betting and casino game providers were estimated at DKK 8.4million (€1.13m).

Annual costs associated with the IT system were in addition to the foreseen 'one-time expenses' involved in establishing the IT system, estimated at DKK 41.3million (€5.56m) (excluding interest). Other one-off expenses included DKK 3.4million (€0.46m) to establish the Danish Gaming Board. Such 'sunk costs' involved in operationalizing the regulatory regime will not arise in future years.

However the Danish system is designed to be cost neutral to the Danish state considering that the expenses hereby will be absorbed by the license fee payable by licensees. Operators will thus be paying for their own regulation and whilst Danish consumers will benefit from having operators upholding Danish standards

²⁶ Based on an exchange rate of 1 DKK = 0.1345€ (on 7 February 2012 via www.xe.com) and rounded-off to two decimal points.

Danish residents who arguably form a broader group, should not be left footing the bill for the regulation of the new sector.

d. Certification of Gaming Systems

All operators will have to certify their IT equipment, with certification requirements having been divided into the following five categories:

Certification Category	Covering	Description
A	Gambling system	Random Number Generator (RNG), game rules, registration, reporting on operations, customer overview, terms and conditions, etc.
B	Business system	Information security, etc. (audit)
C	Preventive measures to counter money laundering of proceeds and financing of terrorism	Registration, security, suspicious player behaviour
D	Vulnerability and penetration testing	Information security (testing)
E	Managing systems	Standard for approved changes to gambling systems.

Certification can only be carried out by an authorised certification entity.

The Gambling Authority is allowing operators to have their systems certified after the initial opening of the market (1st January 2012). In this context, operators are given a one year license and during this period they must satisfy all the necessary certification requirements.²⁷

5. Responsible Gaming & Player Protection

a. Opening a Player Account

To participate in regulated forms of online gambling a player must be registered as a customer of the operator. The license holder shall obtain information concerning the customer's identity, including his name, address and personal ID number, or other similar information if the person in question does not have a personal ID number.

License-holders must verify the accuracy of the information the player has provided by obtaining the "necessary documentation". It is understood that the Danish government will provide operators access to a specific service for the purposes of allowing them to verify the identity of customers when new players register with them. If this service is not available, operators will need to a copy of the player's form of identification (passport, driver license, etc).

This verification must be made when the licensee establishes the customer relationship, and no later than when the first payment is made. Customer information has to be kept for five years after the end of the customer relationship and then deleted.

For every registered customer the operator is obliged to set up an account. Each customer is only permitted to have a single account with an operator. Whilst the checks on the identity of the customer are being carried out a temporary account can be accessed. Should the information provided prove to be false, or the would-be customer has failed to furnish the necessary documentation within one month then the license holder must close the temporary account.

²⁷Information provided by the Gambling Authority's Technical Standards and the Gambling Authority Change Management Programme.

We hold the opinion that this approach provides sufficient flexibility for the operator to verify a player's identity in a manner which is not overly complex; access to a governmental service will facilitate the accurate and quick verification of an individual's identity. Equally the ability of the operator to call upon paper-based documentation if the need arises means that no potential player is excluded from the process and denied an account merely because an ID number is lacking.

b. Separation of player accounts

Funds associated with each individual customer account should be considered as entrusted funds and deposited in a "setoff free" account held at a financial institution. Such funds must be kept separate from the own funds of an operator. Funds can only be paid out to the customers and therefore may not be used to cover claims made against the operator. At all times these funds must be at least equal to the amount on all the customers' accounts. Moreover, such funds must be insured against the insolvency and other risks related to the license holder.

c. Setting Loss/Play Limits

Customers must be able to set limits in terms of deposits made, in terms of daily, weekly and monthly limits. Requests to set a deposit limit must be implemented immediately upon request, however an operator must allow 24 hours to pass before a request to implement a previously fixed limit is given effect. Furthermore, as a licensing requirement no more than 10,000DKK can be deposited by a customer into a temporary account.

Although there are no provisions requiring operators to allow limits in terms of time spent to be established, a clock must always be displayed and be visible indicating how long a player has spent on the gambling page.

Through setting a limit in terms of the amount of money which can be deposited into a temporary account we consider that the legislator is striking a balance between avoiding an account opening process which is not so cumbersome as to deter players but equally achieves a good degree of consumer protection. This measure limits the risk that a person whom is subsequently found not to be eligible for a full account suffers negative consequences in terms of having deposited too much prior to a decision being taken on their account. The value allows a reasonable amount with which to play, thus ensuring that the player registration and account creation process is not overly cumbersome and unattractive to players.

In terms of determining the structure of the online casino games offered Danish legislation establishes the following:

- Interval between games - 3 seconds
- Minimum/maximum payout ratios - none set
- Maximum stakes - none (yet players must be able to set their own, as noted above)

By establishing a minimal interval of three seconds between games in online casinos the regulations impact upon the structural characteristics of games offered through reducing the frequency and speed of play. This extends the period of time over which consumers can spend their deposited amounts and thus moderates their play. However, in theory there could be an upper limit to this interval beyond which a game becomes unattractive to the majority of players who would then seek another supplier of the game and thus fall beyond the scope of the other protections offered by the Danish regulatory regime.

d. Self-exclusion Measures

Operators must allow customers the option to self-exclude from their licensed services on both a temporary and permanent basis. Once exclusion has been

requested the operator must ensure that the customer cannot commence any new game.

Legislation requires that temporary exclusion cannot be for less than one month, whilst also permitting customers the opportunity to choose for a short break from gambling, i.e. for a 24 hour "cooling-off" period. During both types of temporary exclusion that customer's account is deactivated.

The permanent exclusion option will require the operator to close the customer's account and fully terminate the relationship with that customer. Furthermore the operator must ensure that once having exercised this option an individual cannot re-register within one year following the closure of the account. Upon such exclusion the operator must inform the individual about options for counselling and the treatment pathological gambling at a Danish treatment center.

A register of self-excluded players (both temporary and permanent) will be established and maintained by the Gambling Authority; operators are obliged to consult this register on a daily basis and when registering a new customer during the account creation process.

Operators must ensure that they do not send any advertising material to those individuals who are temporarily or permanently excluded.

Operators cannot set up accounts, including temporary accounts, for those listed in the register of self-excluded persons.

From a consumer protection perspective the central database system is valuable because it will prevent consumers being able to play with other operators upon exclusion from the services of a single operator. However, so as to be truly effective in our opinion, and non-discriminatory in its effect, all operators within a national market should be connected to the central database so as to prevent grounds for unfair competition between those connected and those unconnected.

e. Information Requirements

Operators are obliged to include the following information, in Danish, on their websites:

- That persons under the age of 18 will not be allowed to participate in gambling;
- Information on responsible gambling and the potentially negative consequences of gambling. The information must be produced in cooperation with a treatment center;
- Information that facilitates access to a self-administered test for gambling addiction; and
- Information on and contact addresses for Danish treatment centers.

The operator must indicate on its front page that it has a license and it operates under the supervision of the Gambling Authority.

In relation to the customer account the operator must provide the following information to customers:

- Account balance;
- Gaming history, including stakes, winnings and losses
- Deposits and withdrawals and other transactions related thereto

Such information must be available on the gambling account for at least 90 days and operators, upon request from the customer, must be able to provide statements for all transactions related to their account for the past 12 months.

f. Free-play Games

No license is required for the provision of free play games, i.e. those for which participation is not dependent upon the payment of a stake. Nevertheless pursuant to the applicable tax legislation the organizer will be liable for tax, at a

rate of 15% of cash winnings exceeding DKK 200 or 17.5% for other winnings exceeding DKK 200.²⁸ However, should a supplier of gambling services pursuant to a license for online casino or betting choose to offer free-play games then such games must represent the chance of winning in an accurate manner so not to create an impression that the chance of winning is greater than it actually is when stakes are placed.

Through requiring that when offering free-play games license holders do not misrepresent the chances of winning is a valuable contribution to consumer protection. If it were permitted that free-play games were able to give the impression that the chances of winning were greater than they actually are in paid gambling then this could mislead consumers into depositing more than they otherwise would. Thus, this measure helps ensure the integrity of the services offered.

g. Bonuses

The Danish establishes several provisions detailing the use of bonuses by operators, namely:

- Information on all of the terms and conditions must be stated in a clear and simple manner in "direct connection with the offer";
- They cannot be offered in a way that "explicitly encourages a player to increase his gaming activity or to win back a lost stake";
- Players cannot be given individualized deals;
- Offers cannot be constructed so that the player must satisfy the associated terms within a period of less than 90 days;
 - Except those bonuses offered to existing customers and consist of full or partial refund of fees/rake paid or the earning of points for the purchase of goods or services that cannot be exchanged for cash or tokens;
- Payment of any bonus must be immediate upon the relevant conditions being satisfied

There are no provisions governing the award of consolation prizes nor near-misses.

We consider that the rules on bonuses seek to prevent consumers from being targeted in a manner which would encourage behavior which could contribute to excessive gambling patterns. In this context we can appreciate the need for a prohibition on giving players individualized deals. Equally though we also consider that this has a potential to be counter productive; players on Danish websites who are extremely successful cannot be rewarded by a system of bonuses even in situations where their play suggests that they have the financial capacity to sustain this. This may reduce the attractiveness of Danish licensees for the most successful players residing in Denmark and could undermine the value of international liquidity in the system.

h. Advertising

The Act on Gaming sets forth several conditions relating to the marketing of online gambling which are as follows:

- The chance of winning must be presented in a correct and balanced way so not to give the impression that the chance of winning is greater than it actually is;
- Focus of games as a form of entertainment;
- Not be aimed at those under 18 years of age, including in terms of the choice of media used;

²⁸ Article 15 of the Bill for a Gaming Duties Act, 26 March 2009. Only an English translation of the draft bill is available although we understand that the final legislation is almost identical.

- If using well-known personalities it is forbidden to suggest that participating in games has contributed to that individual's success; and
- Content must not convey the idea that participation is a means to providing a solution to financial difficulties or a means to improve a player's social acceptance.

Furthermore gambling falls within the scope of generic legislation prohibiting the use of misleading advertising practices and requires that the Danish Gambling Authority cooperates with the Danish Consumer Ombudsman regarding the marketing of games.

i. Customer Service Requirements

It must be possible for communication between the operator and customers to be in Danish.

j. Account Suspension and Closure

The Statutory Order on Betting and Online Casinos establishes several conditions relating to the termination of a customer's account. These conditions;

- Require that the operator pay out the balance from the gaming account within 5 business days of the account being closed and no fee can be charged for account closure;
- Upon closure of a temporary account operators must return deposited funds to the nominated bank account whilst retaining any winnings themselves;
- Operators can suspend an account on the basis of suspecting the customer to have;
 - Unlawfully obtained winnings;
 - Violating provisions of Danish gambling legislation; and
 - Violating the terms of their gaming account.

Where suspension occurs;

- Customers must be informed immediately of the reasons behind the suspension of their account and during which time they must be prevented from closing their account;
- Operators may confiscate customer funds obtained by improper means; and
- The operator must provide the customer with a reasoned decision, sending a copy to the Gambling Authority.

We consider that embodying the ability of operators to suspend player accounts is a valuable provision in the Danish system. It recognises that operators are also vulnerable to be defrauded by players and therefore takes a balanced approach to this issue by establishing a legal basis for operators to take appropriate action.

6. Payment Methods

Licensed operators may only receive payments into a gaming account from a payment services provider that provides such services legally in Denmark pursuant to the Danish Payment Services Act. Cash is expressly excluded as a form of payment.

Excluding cash as a form of payment prevents third parties offering gaming services via computer terminals in shops or other premises (e.g. fast-food outlets) to consumers. Through excluding the emergence of such intermediaries Danish consumers can only access services directly with operators and thus no participation can occur without a player being identified. This means that anonymous play is avoided and therefore that responsible gambling measures are given effect to.

As soon as the operator has received the payment from the customer, the amount paid must be immediately credited to that customer's account. Likewise winnings must be

immediately credited to the account.²⁹ No payments from a temporary account can be made to the customer's nominated bank account; all Danish residents have a bank account which has been nominated as their 'NemKonto' into which all payments from the state such as tax refunds and social welfare payments are made. Operators must allow customers the opportunity to specify that winnings above a certain amount are automatically credited to their nominated bank account.

Further, operators cannot permit transfers of money to be paid between gaming accounts.

In our view these measures contain the flow of winnings between operators and consumers thereby ensuring that money cannot be directed to third parties and thus prevent operators being used as a means to launder money or otherwise conduct illegal capital transfers.

7. Player Privacy

There are no requirements regarding player privacy which are specific to the gambling sector or contained within the gambling regulations.

8. Money Laundering

The gambling system shall be capable of analysing suspicious transactions and use this as a basis for generating reports for the purpose of preventing money laundering and financing of terrorism. The gambling system shall be capable of analysing changes in the extent of the customer's gambling and in gambling patterns and use this as a basis for generating reports.

9. System Security

The gambling system shall keep a log of the system performance and be capable of generating reports on this basis. Resource consumption shall be monitored and adjusted, and forecasts shall be made for the requirements for future capacity in order to ensure that the required performance is achieved.

10. Technical Standards

a. Gaming Platforms

Server Location

Specific provisions concern the location of the IT equipment used to support the gaming platform upon which the licensed activities are based. As a general rule the equipment should be located within Denmark, but this is not an absolute requirement. An operator may be permitted by the Gambling Authority to locate the equipment outside of Denmark when one of the following two conditions are satisfied, namely:

- a) The operator has a license to offer gambling in another jurisdiction (not necessarily within the EU/EEA), where a public authority monitors the license holder's provision of gaming and that monitoring authority has entered into an agreement with the Gambling Authority on monitoring of the license holder's provision of gambling services in Denmark; or
- b) The operator can provide the Gambling Authority with access to its IT infrastructure to perform an adequate check on the gaming system by means of remote access, or similar.

In relation to the requirement in a) Denmark has already concluded cooperation agreements with the relevant authorities of Alderney, Gibraltar and the Isle of Man.

²⁹ Section 6, 7 and 8 of the Order on online casinos. A similar requirement is established in the Order on Online Betting.

As previously noted we consider the ability of an operator to locate its equipment outside of Denmark to be highly beneficial as it reduces the fragmentation of multi-jurisdictional operations, thereby mitigating costs. Mitigation of costs is important as this contributes to the economic viability of operations in Denmark which is particularly important given the size of the market. Being concerned with access to the data rather than the location of the data reflects the aforementioned pragmatism of the Danish approach.

b. Random Number Generators

The scaled sequence of numbers shall pass the same statistical tests that apply to the sequence of numbers produced by the RNG; scaled algorithms are not permitted to lead to bias or result in the creation of patterns. Methods for mapping and scaling shall be linear. There may be clear exceptions for games which temporarily change character during the game and events where the mapped outcome is proportional to the turnover. The license holder shall be able to verify that the results of the RNG are the same as those found in the gambling system after the event.

If a hardware RNG is being used, the gambling system shall use a fail-safe mechanism to deactivate the game in the event of errors in the unit.

If a software RNG is used, the gambling system shall apply dynamic monitoring of output and deactivate games in the event of RNG output failure.

Information Security Management

The gambling system shall be able to shut down in an appropriate manner in the event of a power outage. Resource consumption shall be monitored and adjusted, and forecasts shall be made for the requirements for future capacity in order to ensure that the required performance is achieved. The gambling system shall have tools for prevention of intrusion and insertion of unauthorized code as well as methods for disclosing suspicious circumstances in real time and generating reports of such events.

In terms of back-up recovery should an error occur then the gambling system must be able to restore all important (critical) data from the time of the most recent backup to the time of the system error (no time limit has been set for this). All information about customers' account balances and gambling shall be protected

Aside from these conditions there are no requirements establishing the frequency of back-ups, or further requirements regarding the data to be saved. Indeed it is not stated that that backups should be made at regular intervals.

11. Change Management

The license holder shall plan its internal procedures for managing changes in a way which ensures that the particular changes and their effect on the overall system can be identified at all times.

Part of the internal procedure shall ensure that the license holder will have a manager who is responsible for managing system changes. This manager shall also take charge of preparing a formal change planning document, describing all the specific procedures and ensuring that the various measures are coordinated.

The change management program is structured in a way that allows routine changes etc. to be carried through in an expedient and controlled manner, while having minimal impact on the license holder's business procedures.

The license holder shall ensure certification according to the gambling authority's "Change Management Program", and it shall be completed before the commencement of the license holder's offering of betting and online casino services.

The certification will be issued for a term of 12 months.

Once a proposed change has been evaluated the manager(s) responsible shall review the evaluation and decide whether the change should be approved or not.

Even if changes recommended by suppliers of business functions will generally be considered to be reasonable and justified, the license holders should still formally approve or reject such changes.

All considerations and decisions concerned with system changes should be recorded in a log. Notice of decisions should be circulated to the relevant stakeholders inside- and outside the organisation, including the relevant accredited testing organisation.

The accredited testing organisation shall analyse the basis on which all decisions that deviate from the suppliers' recommendations have been made. All decisions shall be handled separately. The accredited testing organisation shall certify whether the license holder's decision is justified.

3.3 France

1. High-level analysis

There can be no doubt that the Framework Law was on the face of it, intended to liberalise the provision of online gambling services on the French territory. The liberalization process was characterized, ever since it was announced by then Budget Minister Eric Woerth in June 2008, as a “controlled opening” indicating that the state would retain a high degree of control and regulatory interference.

It is our view that France has sought to do so both in law and in fact to a larger extent than what is the case in any of the other jurisdictions reviewed. This approach has led the French system to be criticised on a number of points by the private sector, the French Competition Authority, the Competition Directorate of the European Commission and the French online gambling regulator, the *Autorité de régulation des jeux en ligne* (“ARJEL”).

We hasten to point out that, from a technical point of view, we consider various aspects of the Framework Law and its implementing regulations to be solid. However, we do believe that from an overall compliance perspective there are several improvements which could be made to the French system

2. Legislative Overview

There are currently 48 legislative instruments including laws, decrees and executive orders which in one way or another govern the provision of online gambling in France.

The primary piece of legislation regulating online gambling in France is the Law of 12 May 2010 regarding the opening to competition and the regulation of the online gambling sector, (“Framework Law”). This is essentially a framework law which sets out the basis of and principles upon which online gambling in France is to be regulated.

The main piece of secondary legislation for the online sector is the Executive Order of 17 May 2010 approving the duties applicable to online gambling operators, the “cahier des charges”.

Other relevant secondary pieces of legislation cover aspects such as advertising, the organisation of sports-betting, the powers of the regulator and the conditions an operator must fulfil in order to be granted a license.

a. Regulatory Objectives

The stated objectives of the Framework Law are to limit and regulate the supply and consumption of gambling and to control the operation thereof with a view to:

- Preventing excessive or pathological gambling and protecting minors;
- Ensuring the integrity, reliability and transparency of gambling operations;
- Preventing fraudulent and criminal activities as well as money laundering and the financing of terrorism; and
- Ensuring the balanced and equitable development of different types of gambling to avoid the economic destabilisation of the economic sectors concerned.

This follows from the Framework Law's understanding that gambling is “neither an ordinary form of commerce, nor an ordinary service and must be subjected to strict control with regards to public order, public security and the protection of health and of minors”.³⁰

³⁰ Article 1 Framework Law.

b. Definition of Online Gambling

The Framework Law only defines gambling in general, and not the online aspect thereof. Gambling is defined as “a game paid for where chance predominates over skill and combinations of intelligence for obtaining a gain”.³¹

c. Sectors

Prior to the opening of online gambling to private operators in 2010 the French gambling market consisted of the following:

- Two state controlled companies each enjoying monopoly status in its sector, namely Français des Jeux ('FDJ') in relation to sports-betting and the national lottery, and the Pari Mutuel Urbain ('PMU') in relation to off-course horse-race betting; and
- 197 land based casinos with concessions granted to several private operators.

Moreover, land-based casino operators were prohibited from operating in the online environment.

The opening of the online market removed the online monopolies held by the PMU and the FDJ. Both PMU and FDJ have retained a monopoly over their land based activities and FDJ has also retained its monopoly over lotteries, both online and offline. FDJ currently offers various lotteries, bingo and scratch cards online benefitting from its monopoly over all of these “lottery based” products.

Private operators now compete with the PMU and FDJ in the provision of online sports-betting and horserace betting services. Opening of the market has also permitted the casino industry to offer certain shared games, the outcome of which depends on a degree of skill; thus regulating the offering of poker.

d. Types of Licenses

ARJEL (), is responsible for the licensing of operators. As at 19 January 2012 there were 34 licensed operators holding a total of 34 licenses. 7 operators of the 41 which obtained a license in 2010 (17% of licensees) ceased business in 2011³².

Licenses can be awarded for; online sports-betting (pari-mutuel and fixed-odds), online horserace betting (pari-mutuel only) and online skill games (poker). Based on a single license an individual operator can offer services via multiple websites.

In relation to sports betting, operators are restricted not only as to the type of bets which can be placed but also with regards to the events which those bets can be placed on. Not all types of bet can be placed on every sporting competition which can be bet upon; ARJEL has been empowered to specify all the permitted combinations.³³ Therefore ARJEL designates which events can be bet upon (e.g. in the case of cycling, the winner of the event, the winner of the stage, best climber, best sprinter and best team) the type of bet per event (e.g. outright winner, ranking). Competitions upon which bets can be placed are divided between four categories; national, European, international and world, examples from football being Coupe de France (national), UEFA Champions League (Europe), World Cup (world) and English Premier League (international).

It is our understanding that the French legislator's objective in delegating authority to ARJEL to restrict the events on which bets can be offered was to limit the risk of gambling corruption. That is indeed an important objective. However, in our view it is important for that concern to be balanced with ensuring that consumer demand is reasonably catered for and that consumers do not need to seek events on the offshore illegal market over which the state has no control or

³¹ Article 2 Framework Law.

³² <http://www.arjel.fr/IMG/pdf/voeux2012.pdf>; <http://www.arjel.fr/IMG/pdf/voeux2012doc.pdf>

³³ Décret n° 2010-483 du 12 mai 2010 relatif aux compétitions sportives et aux types de résultats sportifs définis par l'Autorité de régulation des jeux en ligne.

visibility. The same can be said about bet types. We understand for instance that currently a bet type referred to as “Asian handicap” is not permitted in France though it is popular amongst French punters who resort to betting on offshore illegal websites.

It should be noted that the maximum average payout rate for sports-betting operations is 85% of stakes.³⁴

The rationale behind a capped payout was that limiting payout would serve to prevent addiction to gambling. Whilst it is not within our remit to delve into problem gambling issues we observe that we are unaware of any studies which show that this measure effectively meets the stated objective. We note that at least one other European jurisdiction, i.e. Italy, has taken the opposite approach, requiring operators to observe an average payout of not less than 80% of stakes for games which include an element of skill and played in a tournament format (e.g. poker tournaments) and not less than 90% in the case of games of pure chance (i.e. casino type games) and card games played for cash³⁵. The objective of the latter approach is to ensure that consumer interests are protected.

Regarding table games; poker can be played either as a cash-game or in a tournament format. Secondary legislation prescribes the characteristics of poker games offered online and the terminology to be used.³⁶ Notably Texas Hold'Em and Omaha Poker are the two forms which can be offered in France by license holders.

Numerous forms of gambling are excluded from the regulated online market; fixed-odds horserace betting, lotteries, casino games (e.g. black jack), online slot machines, spread betting, exchange betting and betting on virtual competitions.

e. License Duration

Licenses are valid for a period of 5 years, and are renewable subject to the same conditions as the initial license. During their period of validity licenses are non-transferable.

f. Tax Rates

The table below shows the applicable tax rates for holders of a French license pursuant to the Framework Law:

Form	Effective rate of taxation	Base rate	Social security & health care duty	Levy
<i>Sports-betting</i>	9%	5.7%	1.8%	1.8%
<i>Horserace betting</i>	14.4%	4.6%	1.8%	8%
<i>Poker</i>	2%	1.8%	0.2%	-

These rates are percentages of the total amount staked in sports and horserace betting and a percentage of the amount staked by players in terms of poker.

The levy charged on sports-betting is to the benefit of sports federations and that on horserace betting is for the benefit of horseracing bodies.

Although taxation goes beyond the remit of our assignment we consider it pertinent to comment about the impact which tax has on the ability of a regulatory

³⁴ Décret n° 2010-605 du 4 juin 2010 relatif à la proportion maximale des sommes versées en moyenne aux joueurs par les opérateurs agréés de paris hippiques et de paris sportifs en ligne

³⁵ www.aams.gov.it/sites/aams2008/files/GIOCHI/GIOCHI-DI-ABILITA/NORMATIVA/20110110_Decreto_Direttoriale_2011_666_Giochi_GAD-04-02-11.pdf

³⁶ Décret n° 2010-723 du 29 juin 2010 relatif aux catégories de jeux de cercle mentionnées au II de l'article 14 de la loi n° 2010-476 du 12 mai 2010 relative à l'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne ainsi que les principes régissant leurs règles techniques

system to draw consumers away from the offshore illegal market. It is necessary to note that in the French experience the level of taxation is probably the main barrier to entry for remote gambling operators. In view of the intentions of the State Secretary for Security and Justice as set out in the 'Policy Note on Gambling' of 19 March 2011 to have a competitive market would strongly advise the Ministry to follow up the issue on taxation directly with key stakeholders of the remote gambling industry.

It must be noted that information relating to the technical standards for the jurisdiction of France are currently in the process of redrafting. A new technical requirements document is expected to be available shortly featuring new technical requirements on the "Frontal" (backend, database, servers and safe), that will force operators to significantly redesign their platform structure in France. The technical aspects described in the following paragraphs reflect the old standards since the new ones are yet to be published.

3. Licensing Requirements

a. Suitability of Applicants

License applicants do not have to be established in France, but can be established in other Member States of the European Economic Area (EEA) if a treaty providing for administrative assistance in the fight against fraud and tax evasion has been entered into with that other Member State and provided that Member State is not considered by France to be a non-cooperative tax jurisdiction.

The following categories of information must be provided to ARJEL in order for it to determine the suitability of the applicant:

- Location and legal status of the head office;
- Identity of managers;
- Information on identity of shareholders holding 5% or more of share capital or voting rights;
- Any criminal convictions delivered by any French court against the applicant entity or its owners, including offences relating to French gambling legislation and administrative penalties awarded by ARJEL;
- Financial information such as balance sheets, profit and loss accounts, tax returns and statutory auditors' general and specific reports for the past three years or, if the applicant is newly established a certified opening balance sheet. Further off-balance sheet liabilities should be detailed;
- A business plan must be presented for the .fr site for the fiscal year in which the application is made and at least the subsequent fiscal year detailing categories of games or bets intended to be offered for each license;
- Bank account identifier (RIB or IBAN) with a credit institution in a EU or EEA Member State which is dedicated exclusively to the collection and payment of revenues related to the .fr site;
- If the applicant is not established in France, details of its fiscal representative in France to complete formalities and pay taxation due on behalf of the operator;
- Information as to financial strength; ability to meet legal and regulatory obligations;
- Ownership of or the right to exploit the .fr top level domain on which the online gambling business will be operated;
- Types of activities it hopes to supply via the site, including characteristics of the site and whether there will be advertising;
- Specify types of gambling which will be offered; including whether contracts will be entered into with business-to-business suppliers; and

- Details on how it will comply with conditions regarding player accounts, protection against fraud and criminal activities, protection against excessive or compulsive gambling and information system architecture.

b. Business Internal Controls

The operator must define a "security team" in charge of monitoring the entirety of the network, systems and applications equipment. The logical safety of the equipment shall be ensured by this team; in its response the operator shall supply all dispositions applied concerning the security team, as well as the safety charter when specifying the activity.

The operator shall describe the mechanisms and procedures installed in order to protect the data it handles, in particular:

- The nominative and personal data of its clients,
- The data and statistics concerning a game or player of a game, knowledge of which might be advantageous to a player,
- The "secret" gaming data (for example other players' cards or those which have not been returned during a poker game).

The organisation created in order to manage the operator's information systems must rely on documentation and the procedures allowing the monitoring of their development. Apart from the security policy, the documentation shall comprise the following elements:

- A functional description of the IS (it can be integrated into the security policy) specifying its interconnection components and the flows passing through it,
- A technical description of the IS from the architecture study (technical elements, addressing/ naming, technical flows (protocols) required with their direction, etc.) and comprising the factual elements (licenses of software used, maintenance contracts, updated equipment configurations, status of modifications realised),
- A list of the operational procedures of the interconnection components (which may be included or not in a technical declination of the security policy),
- The classic operational procedures like account management and passwords, management of the configuration of components, back up management,
- The specific procedures connected to security ;

The following operational procedures must be transmitted by the operator:

- Logging management procedures,
- Alert management procedures,
- Regular updating procedures for all the components (operating systems, applications, routers, etc.),
- Management procedures for the frequent updating of the components (anti-virus, intrusion detection systems, if applicable),
- Procedures for updating in case of release of a critical security patch,
- Procedures for rendering the systems secure in the event of an emergency or imminent danger,
- IS components operation procedures (servers, routers),
- Account and password operation procedures,
- management procedures for facilities management components,
- procedures regarding the physical safety (security, etc.),
- roll-back data management procedures,
- technical backup procedures,
- remote-administration procedures,
- SSI progress report management procedures.

c. Gambling Internal Controls

The operator must manage security of each phase of the development cycle of its systems, in the definition, development, operation and utilization phases, then the maintenance and development phases as well as respect a secure development referential for the projects it develops.

The operator must also supply the means for the creation of a storage service in order to ensure the saving of all its treated data and in particular that stored in the front end's safe. These storage procedures shall be made available to ARJEL by the operator for consulting and storage. The type of equipment and the format of the storage shall be indicated to allow ARJEL to verify the exploitable nature of these archives and their contents.

The operator must have an SSI master plan or an equivalent document. It shall specify the date the start of its application and the periodicity of its updates. It shall also specify if it is integrated into the IT master plan and it shall supply the latest version and, if possible, the previous version.

4. Regulatory Oversight

a. Competence of the Regulator

As previously outlined, the online gambling sector is supervised by ARJEL, which has been established pursuant to Article 34 of the Framework Law, and is an independent administrative authority. The competences accorded to ARJEL include ensuring that all regulatory objectives are attained, supervising online gambling operators and all aspects of remote gaming, proposing regulations to relevant ministries, as well as amendments to legislation and establishing conditions, requirements and technical standards for operators, license holders and gambling platforms.

In order to give effect to its competences ARJEL can apply the following administrative sanctions.³⁷

- Should an operator fail to comply with applicable laws then a notice can be awarded, demanding that the operator complies within a period ranging from one to six months. Notices can be renewed once, except in cases of serious or repeated breach.
- Issue a warning;
- Reduce the duration of a license by up to a year;
- Suspend the application of a license for three or more months; and
- Withdraw a license, which may include a prohibition against that operator applying for a license in the following three years after withdrawal.
- Instead or in addition to the above ARJEL can award penalty payment proportionate to the severity of the breach, and which:
 - up to 5% of turnover (excluding taxes) of the previous year with a maximum of €150,000;
 - up to 10% of turnover (excluding taxes) of the previous year for subsequent reaches, with a maximum of €375,000.
- In instances where a license holder provides false information, refuses to provide documents requested by ARJEL or obstructs an investigation then ARJEL may subject the operator to a financial penalty of up to €30,000.

³⁷ Article 43 Framework Law.

b. Technical Aspects

A decree of 18 May 2010 specifies obligations imposed upon license holders enabling the control of game data by ARJEL.³⁸

An operator must:

- Possess and operate a device as a 'Front End', which securely collects and archives the transactions going from the player towards the gaming platform;
- Any recognised French player connecting to the gaming platform should be redirected towards this Front End, as well as the data subsequently exchanged between the player and the platform. This data must be stored in a specific format defined by ARJEL and remain available to ARJEL locally or by means of remote access;
- The operator must also periodically transmit to ARJEL, or on request the data required for the monitoring of the games;
- Finally, the operator should check the folder showing game bans and if applicable block the accounts of the clients found there.

Prior to commencing operations in France an operator must declare that a data storage device ('DSD') (meeting set criteria) is functional, to store the data collected via the 'Front End'.³⁹ Every exchange between players, the DSD and the operators platform must be secured in a manner guaranteeing their authenticity and confidentiality. The DSD must, at least, enable:

- Collection and formatting of traced data;
- Storage of traced data;
- Consultation and extraction of traced data; and
- Administration and management of DSD users.

Whilst at the same time the design of the DSD must guarantee that:

- Only ARJEL staff can decrypt the stored data;
- Any deletion or damage of stored data, whether malicious or not, is identifiable by ARJEL staff; and
- Management of safe access rights can only be performed by ARJEL staff.

The DSD must have two spaces; one for administration data and the other for traced data. This must be replicated for each license type held by the operator. Traced data includes elements such as player identification, the player's pseudonym, IP address of player and every game/bet event or activity relating to the balance.

ARJEL must be able to access the safe of the DSD via either the hosting website or downloading the data remotely. Data must be stored for a period of 5 years. Moreover ARJEL staff can access the DSD hosting website at any time. Concurrently, a whole list of data must be available to ARJEL via either permanent access to the DSD, periodic transmission to ARJEL of some or all the data or following a request from ARJEL. Data includes game account operations made by the player, a player's gaming behavior and controls performed by the operator, e.g. regarding game incidents and detected fraudulent operations. We consider that the requirement for physical presence of servers in France does not significantly add to the security and integrity of servers. So long as a reporting

³⁸ Decree no. 2010-509 of 18th May related to obligations imposed on licensed online gaming operators regarding the game data control by ARJEL / Décret no. 2010-509 du 18 mai 2010 relatif aux obligations imposées aux opérateurs agréés de jeux ou de paris en ligne en vue du contrôle des données de jeux par l'Autorité de régulation des jeux en ligne.

³⁹ Under Article 38 Framework Law operators must be certified by an independent testing house to show that they satisfy all the legal and regulatory requirements.

system is put in place (viz. Encryption of the server on which mandatory events are recorded with a key which only the regulator knows) preventing interference on the operator's side with data which has been recorded and so long as the system is certified as being in line with the regulatory requirements, we consider that from a security point of view there is no significant benefit of having servers present on a particular territory. What is important in our view is for any servers used in relation to a licensed online gaming activity to be kept in a data centre which is at least Tier 3, PCI DSS and ISO27001 compliant.

On the other hand, from an enforcement point of view, having servers present on a national territory and configured in such a way so as to make the entire gaming system dependent on their proper functioning is likely to make it easier for a regulator to take an operator's system down by physically unplugging the servers present on its territory if it deems that it is necessary to do so. At the same time any configuration which contains a single point of failure in the system will increase risk of business continuity for licensees and their customers due to the potential for loss of data and game play interruption.

5. Responsible Gaming & Player Protection

a. Opening a Player Account

A player can only have one account with an operator. Upon the creation of the account particular details must be requested by the operator, such as name date and place of birth, the postal address of the individual's place of residence, etc. Prior to the verification by the operator of the details provided a provisional account can be opened, if the player so chooses, but this does not permit the player to cash-out their balance. Within a month of requesting to open an account the applicant player must provide the operator with a copy of their passport, ID card or drivers' license and proof that the bank account for which details were provided is held in his/her name. Once such documents are received and the operator has verified the accuracy of the details provided, the operator sends a secret code, via post, to the applicant player's postal address; this either opens the account online or changes the status of the provisional account to one of permanency. A cross-check must be made at the time of verification, with the ARJEL database to ensure that an individual is not on the list of excluded players held by the Ministry of the Interior.

We consider that the customer account opening process including the method used in order to verify customer ID is not optimal. Requiring a physical copy of ID documentation to be sent by physical mail is inefficient and does not add anything to security of player ID or to integrity of the identification process. We understand from our experience working with remote gambling operators that have a French license that circa 20% of those who register do not send in their paper ID and circa 3% do not validate their account using the pin number sent to them.

In addition, a player is still allowed to open a provisional account which allows him to deposit money and play. Although that player is unable to withdraw any funds before the secret code has been received by the player and the account status changed, he is still able to lose money. In Section 4 we set out methods which we consider are more efficient ways of determining a person's ID and which would still allow a real time cross check with a national database of problem gamblers and other excluded persons in order to prevent them from registering with an online operator.

b. Separation of player accounts

The Framework Law requires operators to keep player funds of French players served pursuant to a license awarded by ARJEL separate from funds held for players served in other jurisdictions. However, the Law does not state whether

per se that player funds must be separated from other business and operational capital.

c. Setting Loss/Play Limits

Upon the opening of a player account, the operator must request that a player set an upper limit to the amount which they can bet.⁴⁰ Without such a limit being set no gambling can take place. The limits relate to a period of seven days. Players must be able to modify the limits; any increases to the limits can only become effective after two days whilst decreases should become effective immediately. The law does not establish any parameters to such limits.

d. Self-exclusion Measures

Operators must ensure that players can exclude themselves from their services on both a temporary and permanent basis. Players must be able to determine the period of exclusion, with a minimum of a seven day period. Permanent exclusion must result in the closure of the player's account and once this has occurred an operator cannot register that player again during the following three years.⁴¹

e. Information Requirements

When advertising gambling services operators must include reference to a helpline dealing with addiction, debt and isolation. Furthermore advertising in print or cinema must include a horizontal banner (of at least 7% of the page or screen) containing public health information/message. Advertising in publications destined for those under 18 and any online communication which is likely to be principally targeted at children is also prohibited.⁴²

f. Customer Service Requirements

Operators must provide a telephone number for a helpline which provides advice regard excessive gambling and gambling addiction, the cost of which must be limited to the price of a local call for users.

g. Localization

The Framework Law requires that gambling offered pursuant to an ARJEL awarded license is provided via a dedicated website which is exclusively available for which the address terminates with .fr.⁴³

6. Payment Methods

A player's account can only be credited by means of a payment instrument offered by a payment services provider established in a Member State of the European Union or a Member State of the European Economic Area with which France has concluded an agreement for administrative assistance regarding combating money laundering and tax evasion.⁴⁴

Credit held on a player's account can only be paid out to a single account held with a payment services provider established in the same way as for crediting the player's account. Details of the bank account to be used are to be notified by the player upon opening the player account with the operator.

7. Player Privacy

Operators have to satisfy the provisions of general data protection legislation. Nevertheless secondary legislation requires the operator to have specific procedures and mechanisms in place to protect data in its possession, particularly:

⁴⁰ Decree 2010-518 of 19 May 2010 regarding the offering of games and betting by licensed operators of games and betting online.

⁴¹ Decree 2010-518 of 19 May 2010 regarding the offering of games and betting by licensed operators of games and betting online.

⁴² Decree 2010-624 of 8 June 2010 regarding the regulation of advertising carried out by online gambling operators and the provision of information about the risks related to gambling

⁴³ Article 24 Framework Law.

⁴⁴ Article 17 Framework Law.

- Personal data of customers
- Data and statistics about a game or players (which could be used to give another an advantage)
- "Secret" game data (such as players' cards which have not be revealed in poker).

8. Money Laundering

Operators are left to define the controls which they implement to prevent and combat fraudulent and criminal activities. In particular regarding protection against money laundering and the financing of terrorism operators must have monitoring measures, a system for declaring to the relevant French authority (TRACFIN) transactions which the operator knows, or has good reason for suspecting, as being involved in money laundering or the financing of terrorism. Furthermore procedures and internal controls must be in place regarding risk assessment and management.

9. System Security

Secondary legislation requires an operator to identify certain elements of its information system security policy. This includes issues such as; legal and regulatory aspects to the policy's scope of application; descriptions of the security needs in the operator's area of activity; an analysis of the substantial and non-substantial threats and security rules relating to the organization (e.g. insurance and certification), to implementation (e.g. incident management, backups) and technical aspects (e.g. identification/authentication, encryption). Security requirements with sub-contractors should also be detailed.

10. Technical Standards

a. Random Number Generators

Attention must be given by the operator to procedures and mechanisms installed to protect the random number generator, in particular regarding:

- Monitoring of number series;
- Protection of a possible grain of the RNG algorithm; and
- Software integrity protection.

11. Change Management

Pursuant to a decree giving effect to the Law of 12 May 2010, encryption procedures must be in place to authenticate software components, protect confidentiality and authenticate various flows of communication, such as that between an operator and ARJEL and also between players and the operator. Other required elements include measures relating the security around authentication secrets such as player passwords.

3.4 Isle of Man

1. High-Level Analysis

While the Isle of Man forms part of the British Isles it is not part of the United Kingdom. Rather it is a Dependency of the British Crown thereby enjoying a large degree of independence and autonomy, including its own legislative and judicial system. However the system of law reflects English common law and the ultimate court of appeal is the Privy Council in London. Although there may be some similarities between the regulation of online gambling in the Isle of Man and that in Great Britain under the Gambling Act 2005 the two regimes are wholly independent of each other.

In terms of EU law the Isle of Man is not a member of the European Union. However, pursuant to Protocol 3 of the United Kingdom's Act of Accession 1972 which formed part of its Treaty of Accession to the then European Economic Community the free movement of goods applies to the Isle of Man. Furthermore the Manx authorities are bound to treat all national and legal persons of the EU in the same manner. Whilst the free movement of services does not apply, the free movement of capital does given Article 63 of the Treaty on the Functioning of the European Union⁴⁵. This means that operators licensed by the Manx authorities are prevented from relying upon the free movement of services in contrast to operators based in other jurisdictions within the internal market, such as Gibraltar (for this purpose) and Malta. However Article 63 applies to third countries, thus extending to the reach of this freedom to the Isle of Man. Consequently, Manx based operators can only challenge restrictive measures upheld by Member States on the basis of the free movement of capital (except for those existing prior to 1 January 1993 as these have been 'grandfathered' into, and are thus deemed compatible with, EU law). Given that the two freedoms diverge in their scope, and that the free movement of services does not apply to third countries, Member State measures which restrict remote gambling services stemming from the Isle of Man are thus not subject to free movement of service type challenges in a manner comparable to the discourse that has occurred before the CJEU to date.

Thus far none of the decisions of the CJEU concerning (remote) gambling have been decided upon on the basis of the free movement of capital as the free movement of services mostly takes precedence in instances where both freedoms are relied upon. Indeed in every case only one freedom is considered when assessing a restrictive measure and the CJEU will apply that freedom which is predominantly affected by the measure in question.

The Manx regulatory regime is in general very flexible and we consider that it was designed bearing in mind that the island would derive a significant economic benefit from attracting online gambling operators to its shores. Remote gambling is far more important to the Isle of Man's economy than land based gambling.

Manx law does not limit the forms of gambling which may be provided by operators based and licensed in the Isle of Man. This grants the Manx regime flexibility which other regimes do not enjoy. In licensing online gambling operator a 'fit and proper' test is employed which is reasonable and transparent. Manx law deals specifically with money laundering and financing of terrorism in relation to gambling.

However, we note that the Isle of Man does not impose particularly onerous player protection requirements. It does not require that operators provide customers with the opportunity to exclude, nor does the law require operators to establish a helpline accessible to players.

2. Legislative Overview

Online gambling is regulated in the Isle of Man pursuant to the *Online Gambling Regulation Act 2001* ("2001 Act") with accompanying secondary legislation, so called 'statutory documents', providing the finer details. The enforcement of the legislation and supervision of the sector is in the hands of the Gambling Supervision Commission,

⁴⁵ Article 63(1) TFEU reads "... all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited."

("Commission") which is responsible for the entire Isle of Man gambling sector, including both land-based and online operations⁴⁶.

In addition to the 2001 Act current secondary legislation applicable to online gambling covers, among other things, the taxes payable by operators, advertising, player registration and accounts and license fees.

There are several codes which cover the sector regarding money laundering, notably:

- Proceeds of Crime (Money Laundering - Online Gambling) Code 2010
- Prevention of Terrorist Financing (Online Gambling) Code 2011

Furthermore, the Commission operates pursuant to the *Gambling Supervision Act 2010*. Substantial guidance to the Isle of Man regime is provided for in the Commission's *Guidance for On-line Gambling* which is accessible via its website⁴⁷.

This Section will only deal with the regulations applicable to business-to-consumer transactions and not those applicable to business-to-business services which are also regulated by the Isle of Man regime.

a. Regulatory Objectives

The threefold regulatory objectives are currently detailed in the *Gambling Supervision Act 2010* which sets forth the tasks of the Commission. These objectives are:

- Ensuring that gambling is conducted in a fair and open way;
- Protecting children and other vulnerable persons from being harmed or exploited by gambling; and
- Preventing gambling from being –
 - a source of crime or disorder,
 - associated with crime or disorder, or
 - used to support crime.

b. Definition of Online Gambling

"Online gambling" is defined by section 1(1) of the 2001 Act as:

- (a) any gaming, where any player enters or may enter the game, or takes or may take any step in the game, by means of a telecommunication,
- (b) the negotiating or receiving of any bet by means of a telecommunication, or
- (c) any lottery in which any participant acquires or may acquire a chance by means of a telecommunication."

It should be noted that the Commission's *Guidance* notes that means of telecommunication incorporates "phones, internet, servers, etc". Such activities are deemed to be conducted by a person where, according to section 1(2);

- (a) in the case of gaming or a lottery, he takes part in its organisation, management or promotion;
- (b) in the case of a bet, he carries on any business involving the negotiating or receiving of the bet; or
- (c) he maintains, or permits to be maintained, in the Island any computer or other device on or by means of which the game or lottery is operated, or the bet is received, as the case may be."

⁴⁶ See also the website of the Isle of Man Gambling Supervision Commission at <http://www.gov.im/gambling/benefits/aboutgcc.xml>

⁴⁷ Isle of Man Gambling Supervision Commission, *Guidance for On-line Gambling Version: 260911*, effective as of 26th September 2011, available at <http://www.gov.im/lib/docs/gambling//externalguidancev5.pdf> (last accessed on 21st December 2011).

c. Sectors

The online gambling sector does not have any strong sectoral sub-divisions and therefore does not reflect in anyway the offline Isle of Man gambling industry which consists of casino, amusement and slot machines, betting offices and lotteries.

d. Types of Licenses

There is no exhaustive list of as to those forms of online gambling which require a license pursuant to the 2001 Act. Indeed, in its Guidance the Commission notes that it "remains receptive to all proposals". Nevertheless the following forms of online gambling do require a license:

- Sports books;
- Betting exchanges
- Online casino games (roulette, blackjack, slots, etc);
- Live dealing;
- Peer to peer games (poker, bingo, backgammon, Mah-jong, etc);
- Mobile phone betting;
- Fantasy football (or similar);
- Financial trading (but not spread betting);
- Pari-mutuel and pool betting;
- Network gaming;
- Lotteries; and
- Certain spot-the-ball style games.

The Commission's *Guidance* further states that licenses are not required for the supply or offering of:

- Gambling covered by a Betting Office license or a Casino license; rather such services are covered by the land-based licenses and pursuant regulations which fall outside the scope of this report.
- Spread-betting as this would require consultation with the Isle of Man Financial Supervision Commission.
- "Pure freeplay games"; no license is required where "no money or money's worth can be won or lost and where success cannot be translated into gratuitous access to cash games (such as entry fees waived or seats at a tournament)". In such instances no gambling is deemed to take place.

e. License Duration

According the 2001 Act licenses are valid for a period of five years. Licenses can be renewed prior to the date of expiry and will remain in force until either a positive decision is given to renew the license. Should the application be refused then the initial license retains its validity for 21 days as from the date on which notice of refusal was given, subject to any appeal proceedings during which it also remains valid. Once awarded licenses cannot be assigned to other parties..

f. Tax Rates

The following fees and duties apply to online gambling operations when a license is held pursuant to the 2001 Act.

*Duties*⁴⁸

Annual Revenue	Duty Applicable
GGY or retained profit not exceeding £20m p.a.	1.5%
GGY or retained profit of more than £20m p.a. but not exceeding £40m p.a.	0.5%
GGY or retained profit exceeding £40m p.a.	0.1%

⁴⁸ In accordance with the Online Gambling Duty Regulations 2008.

GGY is gross gaming revenue which is defined in the Online Gambling Duty Regulations 2008 as:

- "(a) the total amount of all bets or stakes made, and the price of all chances sold, less
- (b) the value of all winnings and prizes due".

GGY applies to all forms other than those explicitly falling within the scope of the retained profit concept. Retained profit is defined as:

"profit accruing to the operator from the players of a game, in the form of commission, entrance fee or otherwise in the course of the types of online gambling specified...".⁴⁹

The retained profit concept applies to the following forms of online gambling:⁵⁰

- Prize draws, prize competitions and lotteries
- Poker or other games where individual players play against one another using systems or facilities provided by the operator;
- Sponsored pool betting and pari-mutuel betting which employs the use of a totalisator, or any form of pool betting;
- A betting exchange;
- Where the operator acts a bet-broker; and
- Spread betting.

As an exception to this sliding scale the duty applicable to pool betting reflects the UK rate, which presently stands at 15%. Furthermore the Commission's *Guidance* notes that a levy is charged to fund education, research and support for problem gambling. The rate at which this levy is charged is not specified.

Various fees are also applicable, and the principal fees are:

- £5,000 administration fee for initial license application (all license types);
- £50,000 per annum thereafter for a Network Services license;
- £35,000 per annum thereafter for a Full license; and
- £5,000 per annum thereafter for a Sub-license

3. Licensing Requirements

a. Suitability of Applicants

The 2001 Act, as amended, sets forth the general principles which govern the award of an online gambling license to an applicant. Section 4 thereof requires that licenses are granted when the Commission is satisfied that:

- The company is under the control of a person or persons of integrity;
- As to the beneficial ownership of the share capital of the company;
- The activities of the company are under the management of a person or persons of integrity and competence; and
- That the company has adequate financial means available to conduct online gambling operations.

According to the Commission's *Guidance* applicants must have a "genuine presence" in the Isle of Man in order to qualify for an online gambling license (assuming that other requirements are satisfied). "Genuine presence" requires that:

- A company is established on the Isle of Man;
- There are at least two local directors, who are natural persons not legal entities;

⁴⁹ In accordance with the Online Gambling Duty Regulations 2008.

⁵⁰ s. 5 (2) of the Online Gambling Duty Regulations 2008.

- At least one "Designated Official" is appointed who resides in the Isle of Man. Alternatively, where such an official cannot reside on the Isle of Man an "Operations Manager" can be appointed to do so;
- Either players must be registered on Isle of Man servers or the operator must operate under a network services license which obliges the operator to establish the network services in the Isle of Man; and
- Gambling and trading accounts should be located in an Isle of Man bank.

Within its Guidance the Commission notes that it "reserves the right to decline applicants who appear to be creating a nominal Isle of Man presence purely in order to advertise in the UK their parent or sister organisations located elsewhere in the world."⁵¹

It is worthwhile recalling that the free movement of services and the freedom of establishment, central to EU law, do not apply to the Isle of Man. Were they to apply, then the strict requirements for establishment in the Isle of Man would certainly be in contravention of the freedom of establishment and the freedom to provide services as defined in the Treaty on the Functioning of the European Union and interpreted by the Court of Justice of the European Union.

A license will not enter into force until the aforementioned 'Designated Official' has been approved by the Commission. Such an official must be a director of the entity holding the license whilst residing in the Isle of Man. In essence, the Commission must be satisfied that the official is a person of integrity and competence in order to be approved, and retain such approval.

Not only must directors gain the approval of the Commission but equally the systems the operator will rely must also be approved in accordance with the *Online Gambling (Systems Verification) (No. 2) Regulations 2007* which is further described in the technical specifications. In essence, prior to commencing operations, a certificate from an approved testing house must be provided to the Commission.

The 2001 Act provides numerous grounds for the Commission to cancel a license and these include; instances where the operator without 'reasonable excuse' has failed to comply with the conditions thereof; has ceased to offer online gambling, or; fails to satisfy the Commission that it has adequate financial means available to conduct online gambling.

4. Regulatory Oversight

a. Competence of the Regulator

The competences and governance of the Gambling Supervision Commission are set out in the *Gambling Supervision Act 2010*, and the regulatory objectives which this statutory board are to achieve have been enumerated above, in technical specifications. Under the 2001 Act⁵² the Commission is competent to:

- Grant, renew, vary or transfer a license;
- Impose or vary a license condition;
- Refuse to approve a designated official;
- Withdraw the approval of a designated official; and
- Suspend or cancel a license.

5. Responsible Gaming & Player Protection

It is worthy to note that in contrast to some other jurisdictions online gambling contracts are legally enforceable under the 2001 Act.

⁵¹ The Isle of Man is one of the jurisdictions 'white-listed' in accordance with the United Kingdom's Gambling Act 2005. Operators located in the Isle of Man are not only able to provide services to UK residents but also to advertise such services in the UK. For more information on the white-listing construction please refer to the section on the UK.

⁵² As amended by the Gambling Amendment Act 2006.

a. Opening a Player Account

Specific rules to the registration of players, the opening of their accounts and subsequent verification upon logging into an operator's site are contained within the *Online Gambling (Registration and Accounts) Regulations 2007*. Matters dealing with payment methods are dealt with in Section 5, titled 'Payment Methods'. However, at the account opening stage a customer can only deposit money by the use of a credit or debit card. Other means of payment must be approved by the Commission.

Operators can only offer online gambling services to an individual who is registered with the operator and holds an account with that operator. However, in instances where the services are free to play and "nothing in money or money's worth" can be won or lost, then the registration requirements are inapplicable.

Registration of an individual as a customer is dependent upon that individual not being under the age of 18 and providing details of his/her age, identity and place of residence. Operators must use their "best endeavors" to exclude from registration, or otherwise cancel the registration of, problem gamblers. What this standard entails is not specified in legislation.

Technical Specifications articles:

- No person may be registered except on an application for registration in such form, and containing such particulars, as may be approved by the Commissioners.
- No Player under the age of 18 may be registered.
- Before an applicant for registration is registered (unless such is a Business Participant), he must provide details of
 - his age;
 - his identity; and
 - his place of residence.
- The Operator shall use his best endeavors to exclude from registration, and to cancel the registration of, problem gamblers.
- The Operator shall maintain a secure online list of all registrations (current or closed).
- The Operator must provide the Player (other than a Business Participant) with one of the following options for setting his maximum stakes or bets
 - a maximum stake or bet, or maximum total stakes or bets, per session; or
 - a maximum total stakes or bets in any period (not being less than 7 days); and
 - a Player shall not be permitted to increase any such maximum except after 7 days' notice.

b. Separation of player accounts

The *Online Gambling (Participants' Money) Regulations 2010* require that the money which appears on customers' balances is ring-fenced from other capital within an operator's business. Therefore in practice deposits, winnings, transfers, gratuities and redeemed bonuses are to be segregated by being paid into a client account, the contents of which are held in trust.

Furthermore where financial transactions between the operator and consumer take place electronically via a payment service provider, the operator is obliged to ensure that funds are held in the client account to make up for any shortfall which may arise between the total amount of money available from within an operator's player protection mechanism and the customer's balance. Under these Regulations should the operator go into default the operator is prohibited, without the consent of the Commission to withdraw money from the client account, unless in good faith, the operator believes that this will preserve or enhance the fund.

c. Setting Loss/Play Limits

The *Online Gambling (Registration and Accounts) Regulations 2007* impose certain obligations upon operators to temper the amount of money which a player can lose. Firstly the Regulations do not allow operators to accept any bet or stake, which if lost, will result in the customer's account becoming overdrawn. Secondly, each customer must be provided with the opportunity to set his/her maximum stakes or bets on either a session by session basis or on an aggregated basis for a certain period of time (but not less than seven days). Seven days' notice is required before a player can increase their limits.

However, it is important to note that there are no mandatory upper limits; the operator is obliged to provide the option for limits to be set, and the customer must decide whether to set limits on a session per session or periodical basis and subsequently use their own judgement as to their upper limit. Furthermore, a customer must be able to access an online statement of account, which details the customer's account on a session by session basis and details major wins.

d. Self-exclusion Measures

There are no provisions requiring that operators provide customers with the opportunity to exclude, nor require the operator to exclude, customers from their services.

6. Payment Methods

The *Online Gambling (Registration and Accounts) Regulations 2007* regulate the depositing on and withdrawal from a player's account of money, in addition to the depositing of money upon the opening of an account as detailed above in [Section 4](#). Several conditions apply to the use of credit and debit cards, and will also apply to other payment methods upon approval from the Commission. These pertain to the depositing and withdrawal of money from an account.

In relation to the depositing of money on a customer's account the operator can only make this available for online gambling once the funds have actually been received from the provider of the card account or upon the operator receiving an authorisation number from the card account provider that the funds are guaranteed.

To enable a customer to withdraw any money from the balance of the account held with a single operator, the operator must send a personal identification number to the customer's place of residence. Once the identity of the customer has been positively verified then a withdrawal can be made. However funds from the account held with the operator can only be transferred to the same card, or other financial facility (payment service) from which the initial deposit was made. In the event that the card account holder or financial services provider does not accept the transfer from the operator then a cheque must be sent to the customer's account. The Commission has the competence to specify the amount at which a withdrawal by cheque, or aggregated withdrawal by cheque, triggers the need for additional verification procedures to be executed regarding the customer; such amounts are notified directly and in writing to the operator.

7. Player Privacy

Under the *Online Gambling (Registration and Accounts) Regulations 2007* operators are prohibited from disclosing to any person any information obtained through the registration of or opening an account for a customer. Subsequently information as to the state of a customer's account cannot be disclosed. Disclosure is permitted where required by law or when the customer's consent has been obtained.

Further, "personal data of a confidential nature" must be stored in an encrypted or hashed form, and this includes bank account details, card numbers, card expire dates and answers to any question used to verify a customer's identity (i.e. questions to prompt a response to a secret question). Moreover any personal information numbers relating to

bank accounts and customer accounts have to be stored using an irreversible encryption algorithm.

These online gambling specific requirements are without prejudice to the more generally applicable Data Protection Act 2002.

8. Money Laundering

Anti-money laundering regulations specific to online gambling are contained within the *Proceeds of Crime (Money Laundering - Online Gambling) Code 2010* ('2010 Code') whereas the *Prevention of Terrorist Financing Code 2011* contains regulations which give effect to the Financial Action Task Force's Recommendations. Without replicating the entire 2010 Code several notable conditions are:

- Operators are prohibited from maintaining anonymous accounts and accounts held by a fictitious name.
- Establishing, maintaining and operating procedures which require the prospective customer to provide satisfactory information as to his/her identity "(either online or in writing) as soon as reasonably practicable after contact is first made". In the absence of satisfactory information no account can be opened, no money can be accepted and neither will participation in online gambling.
- Before the first 'qualifying payment' is made to a customer the identity of that customer must once again be verified. Failing such verification no qualifying payment will be paid out and no further participation in online gambling with that operator will be allowed. Qualifying payments are those exceeding €3,000 or €3,000 when payments over the preceding 30 days are aggregated. This does not extend to peer-to-peer play.
- In executing all but the first condition operators must assess the risk of money laundering and terrorist financing with regard to each prospective customer. Such a risk assessment must have regard to several conditions, including but not limited to; the value of funds deposited; the source of the funds deposited and the jurisdiction of the customer.

These requirements are supported by internal recording keeping requirements, including (but not limited to) the requirement that records are maintained of all transactions carried out to enable the compilation of an audit trail. Such records must be kept for 6 years from either when the customer ceased to be a customer or the last transaction with an individual customer. Each operator is also obliged to appoint a Money Laundering Reporting Officer.

Technical Specifications:

- All financial reports produced by the System must be readily reconcilable with Gaming or Lottery transaction reports (as relevant) and conversely. All such reports shall be freely available to the Commissioners.
- The System must:
 - be capable of producing auditable and aggregated financial statements of Gaming and/or Lottery transactions (as relevant); and
 - calculate accurately all excise of duty payable under the Act and other monies due to the Treasury under the Act.
- The System must maintain information about all Games and/or Lotteries played, including:
 - the identity of the Participant;
 - the time the Game began;
 - the balance on the Participant's account at the start of the Game or the start of the Participant's participation in the Lottery (as relevant);
 - the sums placed by Participant placed in the Game (time stamped);

- the Game status (in progress, complete, etc.);
 - the result of the Game and/or Lottery (time stamped);
 - the time the Game ended;
 - amount won or lost by the Participant;
 - the balance on the Participant's account at the end of the Game and/or Lottery (as relevant); and
 - the currency or currencies utilised by the Participant.
- The System must maintain information about significant events as follows:
 - large wins (as agreed by the Commissioners from time to time);
 - transfers of funds (between Participants or between any Participant and the Operator) in excess of such amount as the Commissioners may from time to time direct by notice in writing to the Operator;
 - material changes made by the Operator to Game and/or Lottery returns, disclosed under paragraph 7 above; and
 - material fluctuations in theoretical/estimated statistical return to Participants (agreed with the Commissioners from time to time).
 - The System must be capable of providing auditable and aggregated financial statements:
 - of Betting transactions; and
 - sufficient to calculate accurately any and all duty of excise payable under the Act and other monies due to Treasury under the Act.
 - The System must maintain information about all Bets received from Participants, including:
 - the identity of the Participant;
 - the time that the Bet was taken;
 - the balance in the Participant's account at the start of any Betting transaction;
 - the Bets made by any Participant;
 - amounts won or lost by the Participant;
 - the currency or currencies used by the Participant;
 - large wins (as agreed by the Commissioners from time to time); and
 - transfers of funds (between Participants or between any Participant and the Operator) in excess of such amount as the Commissioners may from time to time direct in writing to the Operator.
 - The System must be able to display the following information on the current page or on a page directly accessible from the current page via a hyperlink:
 - the rules regarding the placing of Bets, including circumstances in which the Operator will void a Bet; the treatment of errors, the treatment of late Bets and the treatment of withdrawals and non-runners;
 - restrictions on the placing of any Bets;
 - the Participant's current account balance and the currency or currencies utilized to place Bets; and
 - the means by which a winning Bet will be determined.
 - All financial reports produced by the System must be readily reconcilable with Betting transactions reports, and conversely. All such reports shall be freely available.

9. System Security

In relation to the security of the customers' accounts the Other security requirements contained within the *Online Gambling (Registration and Accounts) Regulations 2007* establish several broad conditions. These are:

- Accounts must be secured against invalid access or updates; the Commission approves in writing the appropriate methods;
- Deposits, withdrawals and other transactions must be recorded in a system audit log;
- A secure online list of all accounts, both current and closed, must be maintained;
- Measures must be taken to protect an inactive account with credit against illicit access or removal; and
- All account transactions must be backed up so that they can be recovered in the case of a system failure.

10. Technical Standards

Online Gambling (Systems Verification) (No.2) Regulations 2007

a. Gaming Platforms

1. The System must:

- a. follow the rules for Online Gambling published to the Participant or potential Participant prior to its placing any sums with the Operator for participation in Online Gambling; and,
- b. provide over specified periods no more than the house advantage (if any) agreed by the Commissioners with the Operator; and
- c. integrate contingencies for loss of continuity of play; and
- d. if utilized in any peer to peer game, ensure that over the specified periods that no one Player has any advantage over any other Player playing the same game.

2. Both the Online Gambling and financial transactions software must be congruent and secure.

3. Any software utilized must be capable of providing for congruent and secure betting and financial transactions.

4. The Operator shall ensure that the integrity of the Betting transactions can be assured and that Participant transactions are not lost though System failures or unauthorized modification or access by a third party.

b. Random Number Generators

1. The System must satisfy the criteria for randomness for any Gaming or Lottery (save where different rules apply and have been approved by the Commissioners and published to the Participant or potential Participant prior to its participation), following Schneier (ie: the data must be randomly generated, unpredictable and must not be able to be reliably reproduced).

2. The Operator must disclose the methodology of any random seeding and any seeding must be proven to result in an unpredictable output.

3. The outcome of any Game or Lottery, as the case may be, and the return to the Participant, must be independent of the CPU, memory, disk or other components used in the computer or other device used by the Participant.

4. The Game or Lottery outcome, as the case may be, must not be affected by the effective bandwidth, link utilization, bit error rate or other characteristic of the communications channel between the System and the computer or other device used by the Participant

c. Games

Integration between games and platforms

11. Change Management

The System by means of which Gaming or a Lottery is conducted may not, without the prior approval of the Commissioners, be altered in any way which is likely to affect its compliance with the requirements.

3.5 Schleswig Holstein

1. High-Level Analysis

The recent formulation of a regulatory regime for various forms of remote gambling services in Schleswig Holstein represents a break from the established approach to remote gambling and equally a breakaway from rest of Germany. As of yet the regulatory regime is not operational and thus there is no experience of how it works in practice. However in many respects it reflects the approach taken by Denmark immediately to the north. It is therefore characterised by an open market for a range of remote gambling services whilst avoiding overly burdensome and potentially counter-productive regulatory requirements.

2. Legislative Overview

Over recent years there has been considerable controversy in Germany surrounding the federal Interstate Treaty through which all 16 German länder agreed a framework to regulate the provision of lotteries and betting. In essence these sectors were subject to monopoly based supply, this being one aspect of 'federal solidarity' between the länder. 2010 saw the Court of Justice of the European Union deliver two judgments which severely questioned the compatibility of the regulation of gambling under the then applicable Interstate Treaty.

On a single day in September 2010 the CJEU delivered its judgments in Case C-316/07 *Markus Stoß* and Case C-46/08 *Carmen Media* where it held that a national court may find that a monopoly is not suitable for securing the attainment of the objective for which it was established, that being to prevent incitement to squander money on gambling and combat addiction through reducing opportunities for gambling in a consistent and systematic manner, where:

- Advertising from monopoly holders is not limited to what is necessary to channel consumers towards the monopolist's offer in order to direct them away from unauthorized offers, but rather encourages the propensity of consumers to gamble and stimulates their active participation with a view to revenue maximization; and
- Other forms of gambling, which are permitted subject to authorisation but not a monopoly, present a higher potential risk of addiction than those forms subject to a monopoly whilst the relevant authorities permit or tolerate the expansion of supply, particularly with a view to generating revenue therefrom.

Following this ruling the German Federal Administrative Court overturned an earlier decision in which it had held that the Interstate Treaty was compatible with EU law and decided that the Interstate Treaty could in fact only be compatible with EU law if gambling addiction were reduced in a consistent manner.

This placed pressure on negotiations between the länder in 2011 to draw up a new Interstate Treaty. Schleswig Holstein broke away from the pack, being the only länd not to sign the current Interstate Treaty. An integral part of Schleswig Holstein's move is to create a regulatory regime for remote gambling in Germany for the first time.

Legislation adopted in September 2011 by the parliament of Schleswig Holstein came into force on 1st January 2012, although the licensing process will only commence on 1st March 2012.

This regime is under considerable political pressure from certain political factions within Schleswig Holstein as well as from other lander. The lottery and betting monopolies of the länder pool together their economies of scale in the nationwide Deutscher-Lotto und Totoblock, but in light of the legislative developments described below there are calls for the lottery of Schleswig Holstein to leave this organisation.

The principal piece of legislation is *Entwurf Glückspielgesetz*, 'Act for the Reorganisation of Gambling', hereinafter referred to as the Gambling Act 2011. However, there are several other pieces relevant to Schleswig Holstein, plus a 'wrecking act' introduced by an opposition party in the regional parliament.

It must be noted that information relating to the technical standards in Schleswig Holstein are currently only available in draft format.

a. Regulatory Objectives

The objectives of the Gambling Act 2011 are:

- To direct the natural desire to gamble to regulated supply so as to curb illegal offerings and ensure that consumption is at reasonable levels;
- To ensure that gambling activities are carried out in a proper, fair, responsible and transparent manner;
- To protect players against fraudulent practices, to avoid any crime in connection with gambling;
- To prevent the integrity of sporting events from being undermined;
- To effectively protect players and minors;
- To avoid the danger of addiction to gambling, whilst having effective anti-addiction policies and safeguards against exploitation by gambling; and
- To ensure that a significant proportion of the proceeds of gambling is used to fund public, non-profit or charitable purposes and to promote the sustainable financing of sport.

b. Definition of Remote Gambling

Section 3 of the Gambling Act 2011 provides for numerous definitions, the most relevant in the present context being:

- **Gambling** - games, lotteries and betting, for which purchasing the chance of winning requires a stake and determination of the winning outcome is largely dependent on chance. Also including casino games where the chance of winning is dependent upon chance and the skill of the player.
- **Online gambling** - gambling without the physical presence of the player on the Internet or other remote means of communication

c. Sectors

Four forms of gambling are regulated under the Gambling Act 2011, namely;

- Lotteries;
- Land-based casinos;
- Online casinos; and
- Betting (excluding horserace betting).

Apart from the lottery sector which will remain under a state monopoly, the online sector will be made up of betting and online casinos games. Private operators will be able to offer betting on the outcome of sports competitions and on events during sporting competitions (so-called "in play betting"). Such operators will also be able to offer casino games which do not involve a banker; therefore games such as blackjack, roulette and baccarat can only be provided online by operators of land-based casinos. Land-based casinos in Schleswig Holstein are regulated under the länder's Casino Act which restricts the award of such land-based licenses to companies in which Schleswig Holstein is the majority shareholder or public companies with their seat in Schleswig Holstein.

However, legislation has been notified to the European Commission in November 2011 which will permit private companies to obtain one of the länder's land-based casino licenses. Licenses will be limited to five and will permit operators to stream in real-time live dealing from within the casino to the internet.

Therefore, as and when such changes are complete there will be two types of online casino operations:

- Online casino games without a banker; offered only online.
- Online casino games with a banker; offered in a land-based casino and relayed on the internet.

d. Types of Licenses

For all forms of remote gambling the Gambling Act 2011 establishes two types of license:

- **Organising license** - otherwise referred to as the 'event permit'. These licenses are awarded for the organization of public gambling.
- **Distribution license** - otherwise referred to as the 'sales permit'. This license permits parties to sell or broker gambling services on behalf of operators to consumers.

In terms of betting the number of licenses will be unlimited, thus there is no ceiling on the number of operators licensed by Schleswig Holstein.

e. License Duration

Licenses for the organization of online betting and online casino games will be initially valid for two years, with future licenses being valid for four years.

f. Tax Rates

License holders will be obliged to pay both fees and taxes to Schleswig Holstein.

Fees

The Gambling Act 2011 establishes that a Gaming Board for Schleswig Holstein will be established, and that it will be competent to charge the following:

- **Processing fee** - for applications for the organising licenses and distribution licenses; and a
- **Regulatory fee** - an annual fee to cover the Gaming Board's operational costs.

These fees are yet to be established.

Taxes

Those parties providing gambling services within Schleswig Holstein will be liable to pay tax on the services offered under the Gambling Act 2011. The general rate of taxation will be 20% of GGR (gross gaming revenues), whilst a different tax base will be used for online casino games without a banker. Here, the rate of 20% will be applied to the operator's turnover.

Significantly, through its legislation Schleswig Holstein will seek to tax gambling services provided to customers of its licensees, including where those customers reside in other German länder.⁵³ Although the Schleswig Holstein licenses will not offer an explicit basis for remote gambling to be offered across the entirety of Germany, and subject to the lack of effective blocking measures in the other länder to restrict these licenses to the territory of Schleswig Holstein, operators will still be taxed upon such transactions.

3. Licensing Requirements

a. Suitability of Applicants

Requirements

Applicants for a license to **organise** online casino games (non-banked) or offer online betting must be approved by the Gaming Board. Issuance (and subsequent prolongation) occurs upon the authority being satisfied that the applicant is reliable, solvent and possess the required expertise at the time of application.

⁵³ A revised Section 35(2) reads:

"Games of chance shall be deemed to be sold within the territory of application of this Act if they are intentionally made accessible, beyond the territory of application of this Act, by a holder of a license under this Act, to persons who have their place of residence or usual place of abode in the territory of the Federal Republic of Germany. If a game of chance which is subject to a licensing obligation is intentionally being made accessible without the required license, this shall also constitute a "sale" within the meaning of this provision."

According to the Gambling Act 2011 license applicants must be a citizen of an EU Member State or be a legal person with a registered office, or central administration or place of business within the EU or European Economic Area (EEA). ;

Further conditions are contained within the GGVO according to which a license application will be successful where the Gaming Board is satisfied as to the 'enhanced reliability' and solvency of the applicant as well as the transparency and security of the gambling operation. These three elements are viewed in light of the following:

- Enhanced reliability:
 - Disclosure of identity and addresses of all partners, shareholders and other capital investors in private law entities and also those with a controlling shareholding or are in a trustee relationship;
 - Disclosure of the lawful origin of the funds used for the operation.
- Solvency:
 - Show sufficient funds for long term operations, a suitable organizational structure and guarantee sound business conduct;
 - Indicate the profitability of the proposed gambling activity; and
 - Have settled security payments.
- Transparency and security of gambling:
 - How transparency of the gambling operation is assured including guaranteeing that supervision of the sales network is always possible without interference;
 - Should the organizer or distributor not be headquartered within Schleswig Holstein then details of their representatives based in Schleswig Holstein;
 - Organizers and distributors must have their own accounting systems;
 - An operational process must be set-up to record all gambling contracts, games and payment transactions in such a way that they can be supervised and controlled by the authority; and
 - Assure that organizational obligations are in accordance with recognised national and international standards.

Approval will not be granted upon the making of mere declarations that such requirements are satisfied, but must be backed-up by various means, such as a police report. In this context Schleswig Holstein will accept documentary evidence from both German institutions and those of jurisdiction where the applicant is headquartered.

In light of this information the Schleswig Holstein authorities set objectives which are to be reached by successful license applicants whilst avoiding the prescription of specific infrastructural requirements as is the case in other jurisdictions, particularly France. We consider this to be beneficial, and not only in terms of ensuring compliance with EU law, but also allowing operators flexibility in designing their systems in light of infrastructure elsewhere. Similar to the Danish situation this regulatory approach is more interested in access to data rather than establishing onerous conditions relating to the location of that data.

Should an applicant have been convicted of a crime, including the unauthorized organization of gambling activities and participating in unauthorized gambling activities then they will fail the reliability test. The same will happen to those who are or have in the last three years, been subject to insolvency proceedings or are or have been subject to "gross negligence in reducing taxes or for tax evasion". It

is irrelevant whether such convictions or proceedings have taken place outside of Germany.

In essence these conditions will give effect to the provisions of the Gambling Act 2011 which establish that license applications are to be refused where:

- Public safety or public order will be endangered by the proposed activities, or relations with the Federal Republic of Germany, or other states, will be negatively affected;
- There is a danger that through collaboration with third parties, the overall transparency of operations and ability to monitor will be hampered; or
- It cannot be guaranteed that the gambling offered would satisfy the overall regulatory objectives and that both the consumers and Gaming Board would be able to understand the activities offered.

An earlier draft of the bill for the Gambling Act 2011 noted that where online casino game operators hold a license elsewhere in the EU or EEA it would be presumed that as applicants for a Schleswig Holstein license they hold the requisite degree of reliability, capability and expertise and that the grounds for refusing to grant a license do not apply. Although this did not remove the need to have a Schleswig Holstein license for EU/EEA licensed operators this provision was removed from the bill prior to the adoption of the Gambling Act 2011.

Broadly similar requirements exist for the **distribution licenses** for online casino games and online betting. The same conditions apply to applicants for this license type as do to organisers (enhanced reliability, solvency, and transparency and security of gambling) as does the afore described application procedure.

Noteworthy conditions specific to distribution (brokerage) licenses include:

- Regardless of sales channels, at least two thirds of amounts collected from players must be passed on to the gambling organizer (holder of the license for organizing gambling);
- The broker must clearly communicate to players the amount passed on to the gambling organizer. This must be done before the contract is concluded, in writing and name the organizer;
- Players have the right to examine receipts brokered on their behalf;
- Each gambling order can only relate to a single operator;
- Distribution licensee cannot broker on behalf of minors;
- Players must be identified before a contract is concluded when brokering casino games and sports-betting services. Central database of excluded players must be cross-referenced and those listed cannot be served;
- Tickets and receipts must provide information on the dangers of addiction for each type of gambling brokered and provide information on opportunities for help;
- Upon request from a player a broker must provide information about counseling and the treatment of gambling addiction at a counseling centre near the player's place of residence;
- All wins must be paid out without delay and only to the player's bank account; and
- Advertising by offering free (play) games is permitted however it must be made clear that participation in such games is not conditional upon placing an order for the brokerage of gambling services.

The same grounds for refusal apply as referred to above for the operating licenses. Distribution licenses require that the successful license holder provides security in the form of a guarantee provided by a bank based within the EU or EEA. Failure to secure such security will mean that the license is denied. The

required amount for online casino games and online betting is €1m and can be increased up to €5m at the discretion of the Gaming Board on the basis of the operator's expected average turnover over a two week period.

Procedure

The application procedure for an organizational license is established by the GGVO. Applications, including supporting documentation, must be made in writing and in the German language (documents from other länder or EEA member states have "equal status" when accompanied by officially certified German translations). In particular it is worthy to note that applicants must show how they will achieve particular objectives and requirements phrased in terms of "concepts". The following must be shown:

- 'Security concept' - measures for ensuring public safety through up holding IT and data security;
- 'Payment processing concept' - for securing payment processing;
- 'Money laundering concept'- for combating and avoiding laundering;
- 'Combating fraud concept' - for combating manipulation and fraud;
- 'Social concept' - measures to exclude minors and excluded players; and
- 'Profitability concept' - illustrate the profitability of the proposed operation in light of tax obligations; various evidence must be included, e.g. a business plan and evidence of the entity's creditworthiness.

Additionally an operator must:

- Agree to cover the costs incurred by the authority when verifying the above concepts; and
- Agree not to organize unauthorized gambling in Schleswig Holstein directly or through an affiliated company.

Furthermore, license applicants will be obliged to submit the terms and conditions which they intend to use in their customer relationships.

4. Regulatory Oversight

a. Competence of the Regulator

Under the Gambling Act 2011 a Gambling Board will be established under the supervision of the Ministry of Interior of Schleswig Holstein. The competences of the Board are described in the Act as including:

- Granting, withdrawing and revoking gambling licenses;
- Monitor compliance with the Act, and in particular;
- Ban the hosting and sale of illegal games of chance as well as any associated advertising,
- Request information or evidence from holders of events or sales permits that are subject to its supervision in order to fulfil its duties; and
- Make decisions on any objections to external exclusions.

Following the prior notification of illegal gaming offerings, ban credit and financial services institutions from being involved in payments for illegal gaming.

- There will also be an Advisory Board offering advice to the main Gambling Board in the execution of the latter's duties. The scope of the Advisory Board's competences to provide advice will be:
 - Legal and technical aspects of gaming systems;
 - Drug prevention, crime prevention, youth and consumer protection; and

- Providing recommendations for the general development of supervisory practice.

5. Responsible Gaming & Player Protection

The Gambling Act 2011 establishes a general duty on operators to ensure that players play responsibly and that minors are prohibited from gambling. Detailed conditions however are found within the draft GGVO regarding the procedure for opening player accounts and responsible gambling measures.

a. Opening a Player Account

Prior to commencing play operators will be required to ensure that players open an account. Before an account can be created the potential player must be registered. Accounts can only be opened for 'registered players' and the GGVO establishes conditions for player registration, thus the GGVO:

- Requires that the player provides his or her first name, surname, name at birth, date of birth and residence;
- Prohibits the registration of minors;
- Stipulates that the operator verifies the accuracy of information provided and obtains evidence to this end;
- During registration for casino gambling and sports-betting the operator must check that the potential player is not listed on the central database. No account can be opened for those listed in the database. This check must be made for every subsequent log-in; and
- Personal data must be archived for 5 years and then deleted.

Having registered a player an account can be opened. Principal points of interest in the account opening procedure are:

- A player can only have one account per operator;
- Players must be able to directly access information regarding their account, including balance, history (bets placed, wins and losses), deposits and withdrawals;
- Every time that a player is identified and authorized upon login they must be presented with their gambling history for the past 30 days. Players can only proceed to play upon having confirmed that they have taken note of this information;
- Following a request by a player an operator must be able to provide statements containing all transactions for the previous 12 months;
- Until the identity of a player has been verified player's can only have access to a provisional account;
- Should incomplete or false information be provided by a player then the provisional account must be closed by the operator
- Funds cannot be transferred from a provisional account to the player's bank account; and
- A provisional account cannot be opened for individuals listed in the central database of excluded players.

The requirement that a player is confronted upon login with their gambling history for the previous 30 days is particularly innovative in comparison with other jurisdictions covered in this Report. It entails that data is not only collected and has to await consultation by the player, but that the data is actively used to inform the player. As such we are of the opinion that this compliments the requirement that operators must provide consumers with the opportunity to set deposit limits.

b. Separation of player accounts

The draft GGVO specifies that funds which players have in their player's account will have to be held in a 'settlement-free' bank account separate from the operator's own funds whilst being at the disposal of the players. It is explicitly stated that player funds can only be paid out to players and are not to be used to settle any claims against the operator. This extends even to cases of insolvency.

Funds in the settlement-free bank account must always correspond to the total of the funds across the player accounts.

c. Setting Loss/Play Limits

Conditions are set forth in the GGVO requiring operators to give players the opportunity to set daily, weekly and monthly deposit limits. However no mandatory upper limits are provided for.

When a player applies for a deposit limit to be set it must enter into force immediately, as must an application to reduce a deposit limit from an earlier level. In contrast, when a player applies for the limit to be increased there is a cooling-off period of 48 hours before it takes effect. Applications for increasing the deposit limit can not be made within one month of an application to reduce the deposit limit.

Furthermore, operators must enable players to determine that wins above a certain amount (to be determined by the player) are automatically transferred to the player's bank account.

This latter element enhances the degree of consumer protection in our view whilst enabling the consumer to take responsibility for their online behavior. In effect it enables consumers to cash-out automatically once a threshold is reached. However should a consumer set the limit too low then further play could be hampered by their deposit limits and given the cooling-off periods applicable to increasing deposit limits encourage play with other non-Schleswig Holstein operators should consumers feel that they have to wait too long. Since the limits, or thresholds, are not set out in the regulations, then ultimate responsibility rests with the individual.

d. Exclusion and Self-exclusion

Pursuant to the GGVO operators must provide players with the opportunity to self-exclude from services offered. Three levels of exclusion must be available, notably two degrees of temporary exclusion being 'a short-term gambling break' and 'a temporary bar' with permanent exclusion being termed as 'an irrevocable bar'.

Players must be able to exclude themselves from any game function and a request for exclusion must be executed immediately. Both the short-term gambling break and temporary exclusion lead to the deactivation of the relevant player account for a period of at least 24 hours or at least one month, respectively. The irrevocable bar requires the account to be closed and the player cannot re-register until at least a year has lapsed. During the exclusion period no advertising material can be sent to the excluded player.

During the exclusion process an operator must give the player the opportunity to be registered in the central exclusion database (detailed below).

Upon exclusion the operator must send a player information about opportunities for counseling and gambling addiction treatment near to the player's place of residence.

On a quarterly basis operators must report to the regulator the number of players to be barred or excluded in the previous quarter.

Under the Gambling Act 2011 land-based casinos are required to establish and maintain a centralized database of excluded players, a requirement which extends to operators of online casino games.

Persons on this database will either have self-excluded or be included based upon the perception of operators' staff or the existence of other evidence which shows they have a) a gambling problem or b) are insolvent or otherwise failing to meet their financial obligations.

The Gambling Act 2011 establishes which data the land-based casino, and thereby the online casino game operator, must hold on file in relation to the excluded player. This information being:

- Surname, first name, maiden name;
- Aliases, any false names used;
- Date of birth;
- Place of birth;
- Address;
- Photograph;
- Reason for exclusion;
- Duration of exclusion; and
- Notifying casino

Such stored data must be transmitted to the authorities (presumably the Gaming Board) so that the exclusion system can be supervised. Data must be kept for six years after the expiry of an individual's exclusion. It is not clear whether such online betting operators must maintain such a database.

e. Bonuses

Pursuant to the GGVO operators will be permitted to offer bonuses or other benefits in the form of loyalty payments. A bonus offer must run for at least two months. Bonus offers must be made available to all players in the same manner and must not invite players in a targeted manner to increase their activities or regain their losses. Payment of the bonus must be immediate upon the conditions have been satisfied.

f. Information Requirements

Online operators are obliged to inform their customers, in a manner which is easily accessible to them (and the public authorities) of:

- All costs resulting from participation;
- Amount of all winnings;
- When and where any winnings are published;
- Percentage of payouts for winnings from stakes;
- Information on the win/loss probabilities and the average payout rates for the different forms of games of chance offered;
- Cut-off time for participation;
- The process by which the winner is determined;
- How winnings are split between multiple winners;
- Any limitation period within which winners may claim their prizes;
- Name of the license holder and their contact details (address, email and telephone number);
- Trade register number (if available);
- Customer complaints procedure; and
- Date on which the license was issued by the Gaming Board.

The Gaming Board may make provisions for exceptions to these obligations if the nature of the game or other circumstances make it unreasonably difficult to meet the various requirements.

Furthermore, operators are obliged to educate players about profit and loss and any risk of addiction arising out of the forms of gambling which they provide.

These informational requirements will ensure greater transparency regarding the nature of games on offer, enabling consumers to understand their chances of winning particularly if operators are required to educate players and not merely provide statistical information. In our view the educational requirement is somewhat surprising given that some parties may question the objectiveness of the educative information. Furthermore a question mark could be placed against whether operators can provide useful information regarding the risk of addiction of games they provide. Addiction arises out of a combination of many factors, many specific to the player and beyond the realm of information that the operator will have access to. Any information is therefore likely to be very general at best and therefore whether it makes any real contribution to player protection is doubtful.

g. Customer Service Requirements

No specific provisions, other than the customer complaints procedure noted above, have been made in this regard.

h. Localization

Remote gambling services must be offered in German although other languages will be permitted. Services must be offered via a .de domain name.

i. 'Social Concept'

The Schleswig Holstein legislature has developed the notion of a 'social concept' which is binding upon all operators. To prevent the development of pathological gambling behavior operators must develop adequate 'social concepts' in relation to the respective forms of gambling offered, and in particular they must:

- Nominate representatives who develop social activities with the purpose of promoting responsible gambling;
- Train their staff in the early detection of problematic gambling behavior;
- Provide players with the opportunity to assess their own risk (of problem gambling);
- Setup a telephone counseling service for players; and
- Report every two years to the Gaming Board on the success of player protection measures.

The requirement that a 'social concept' is developed by operators will support the ability of consumers to set their own deposit limits. Responsibility remains with the consumer whilst an effectively executed 'social concept' will help consumers to avoid truly excessive behavior. In our view the regulatory regime is responsive to the capacities of individual consumers without straightjacketing them with a one size fits all approach which would be the case if mandatory deposit limits were established.

j. Closure and Blocking of Player Accounts

The draft GGVO contains a number of provision relating to the closure of a player's account, these are:

- Any remaining credit must be credited to the player's bank account within 5 days and no fees can be charged for closure and payout;
- Upon closure of a provisional account only the remaining funds can be returned to the player's bank account; and
- An account can be blocked upon suspicion that a player won illegally or violated other laws. During the period that the account is blocked the player cannot close the account (and is thus unable to cash out).

6. Payment Methods

Deposits to and withdrawals from the player's account held with the operator can only be transacted via a bank account according to the draft GGVO. The player must be the bank account holder. Once a deposit has been received by the operator, the amount must be credited immediately to the player's account.

Cash is prohibited as a means of making deposits or withdrawals, and there is a prohibition on credit. Finally, operators are prohibited from allowing players to transfer money, game points or similar between their accounts.

A prohibition on the transfer of monies and points (which arguably are of monies' worth) is another means to ensure that remote gambling operators are not a vehicle for money laundering. Furthermore it prevents account holders from trading their money and points amongst each other thereby reinforcing the effectiveness of deposit limits.

7. Player Privacy

Any information obtained by operators in respect to player registration or account establishment must not breach the operator's Privacy Policy. In addition, the following rules shall be met:

- Any information about the current state of player accounts must be kept confidential by the operator, except where the release of that information is required by law;
- All player information must be securely erased (i.e. not just deleted) from hard disks, magnetic tapes, solid state memory and other devices before the device is decommissioned. If erasure is not possible, the storage device must be destroyed.

8. Money Laundering

The following principles must apply to the maintenance of player funds for the purpose of anti-money laundering and transparency of money transfers:

1. Player accounts must be secured against invalid access or update other than by approved methods;
2. All deposit, withdrawal, transfer or adjustment transactions are to be maintained in an audit log;
3. A deposit into a player's account made via a credit card transaction or other methods which can produce a sufficient audit trail must not be available for betting until such time as the funds are received from the issuer or the issuer provides an authorization number to the operator indicating that the funds are authorized;
4. Positive player identification, including any Personal Identification Number (PIN) entry or other approved secure methods, must be completed before the withdrawal of any monies can be made;
5. Inactive accounts holding monies must be protected against illicit access or removal;
6. All transactions involving monies are to be treated as vital information to be recovered in the event of a failure
7. Payments from an account are to be paid (including funds transfer) directly to an account with a financial institution in the name of the player or made payable to the player and forwarded to the player's address. The name and address are to be the name as held in player registration details;
8. Account statements must be sent to the registered address of the player either on request and to the player's e-mail address on a monthly basis. Statements must include sufficient information to allow the player to reconcile the statement against their own records to the session level;
9. Any adjustments to player accounts must be subject to strict security control and audit trail; and

10. It shall not be possible to transfer credits which represent a monetary value between two user accounts.

9. System Security

a. Information Security Policy

An information security policy document shall be approved by management, and published and communicated to all employees and relevant external parties.

b. Human Resources Security

All employees of the organization and, where relevant, contractors and third party users shall receive appropriate awareness training and regular updates in organizational policies and procedures, as relevant for their job function.

The access rights of all employees, contractors and third party users to information and information processing facilities shall be removed upon termination of their employment, contract or agreement, or adjusted upon change.

To ensure critical data can only be accessed by authorized personnel, systems and processes must be in place to limit access based on need to know and according to job responsibilities.

c. Technical Security Controls

The Gaming System must implement the self-monitoring of critical components (e.g. central hosts, network devices, firewalls, links to third parties, etc.).

A critical component which fails self-monitoring tests must be taken out of service immediately. The component must not be returned to service until there is reasonable evidence that the fault has been rectified.

A policy on the use of cryptographic controls for protection of information shall be developed and implemented.

10. Technical Standards

a. Gaming Platforms

As of yet there are no specific conditions in the current draft versions of the technical standards available from Schleswig Holstein.

b. Random Number Generators

The Random Number Generator (RNG) and its methodology must be based on a pseudo random number generating algorithm or be hardware based, and be cryptographically strong at the time of submission. Where more than one instance of an RNG is used in a Gaming System, each instance must be separately evaluated and certified. Where each instance is identical, but involves a different implementation within game(s) / application(s), each implementation must also be separately evaluated and certified.

c. Games

The following requirements outline the objectives for game fairness

- I. A game shall not be designed to give the player a false expectation of better odds by misrepresenting any occurrence or event;
- II. Each time a game element (base, primary, feature, bonus or free) is played, the player shall have a chance of obtaining any of the results displayed on the appropriate pay table of that game;
- III. Determination of events of chance must not be influenced, affected or controlled by anything other than numerical values derived in an approved manner from the approved Random Number Generator (RNG) in conjunction with the rules of the game;

- IV. Except as provided by the rules of the game and for metamorphic games, events of chance within games must be independent of (i.e. uncorrelated with) any other events within the game or any events within previous games.
- V. Where a game is represented or implied to include a simulation of a real-life physical device (e.g. the spinning of reels, the spinning of wheels, the rolling of dice, the tossing of coins, etc.), the behavior of the simulation must follow the expected behavior of the real-life physical device.
 - i) For games that intend real-life physical simulation, the visual representation of the simulation must correspond to the features of the real-life physical device;
 - ii) The probability of any event occurring in the simulation that affects the outcome of the game must be equivalent to the real-life physical device;
 - iii) Where the game simulates multiple real-life physical devices that would normally be expected to be independent of one another, each simulation must be independent of the other simulations; and
 - iv) Where the game simulates real-life physical devices that have no memory of previous events, the behavior of the simulations must be independent of (i.e.: not correlated with) their previous behavior, so as to be non-adaptive and non-predictable in practice.
- VI. Game fairness objectives for games such as horse/car/animal racing, golf/football, virtual reality, etc. shall be assessed on a case by case basis applying the general game fairness objectives specified above.

11. Change Management

a. Change Control Procedures

Program change control procedures must be adequate to ensure that only properly approved and tested versions of programs are implemented on the production Gaming System. Production change controls must include:

1. An appropriate software version control or mechanism for all software components
2. Details of the reason for the change
3. Details of the person making the change; and
4. Complete backups of previous versions of software.

b. Updates and Patches Procedures

A written policy for the implementation of all software patches and updates must be in place.

All updates and patches should be tested whenever possible on a Gaming System configured identically to the target Gaming System. Under circumstances where patch testing cannot be thoroughly conducted in time to meet the timelines for the severity level of the alert, then patch testing should be risk managed, either by isolating or removing the untested Gaming System from the network or applying the patch and testing after the fact.

3.6 Excluded Jurisdictions - Italy

The previous Italian regulatory regime for gambling came under pressure in terms of its compatibility with EU law following several rulings of the Court of Justice of the European Union, notably in Case C-243/01 *Gambelli* and particularly in Case C-338/04 *Placanica*. In 2006 a new licensing regime was introduced for sports-betting and between 2007 and 2009 legislative reform has permitted the emergence of online games of skill, e.g. tournament poker, but also cash poker, video lottery terminals, bingo and casino games. Expansion continues with notification of legislation permitting virtual betting arising at the start of 2012 which has been followed by an announcement that exchange betting will be regulated too.⁵⁴

Although there are many online market sectors within the Italian gambling market, which is under the supervision of the Amministrazione Autonoma Dei Monopoli Di Stato (hereinafter 'AAMS'), from a **technical perspective the regulatory regime is extremely complex and often considered as very burdensome.**

It is our concern that if the approach described below were to be replicated in the Netherlands then the Dutch government would most certainly run the risk of pricing itself out of the market. Given the inherently smaller size of the Dutch market compared to that of Italy then many operators would perceive operations in the Netherlands as lacking economic viability in light of considerable regulatory compliance costs. Consequently the attainment of the objectives behind the reform of the regulatory regime in the Netherlands would be threatened as very few operators would apply for a license. Therefore attention in this Report has been directed towards regulatory models established in other jurisdictions.

Whilst focusing on player protection and anti-money laundering, the Italian **technical standards specify extensive rules** on the way the different compartments of the gambling system communicate with one another as well as specifying very limited timeout periods and very demanding communication protocols. These requirements constitute a market entry barrier because the **necessary implementation solutions are very demanding from a hardware and software perspective and consequently more expensive to implement.**

Another potential barrier to market entry could be **the very detailed logs of information** that are required to be kept for each player and for each action made in regard to what is known as "**critical files**". The critical files concept was introduced in an effort to reduce testing times however in many cases this has had the opposite effect. Critical files have not been well defined, and thus do not include very important aspects such as the Random Number Generator.

Moreover the system architecture has been specified in such a way that does **not always correspond to the solutions** implemented by different manufacturers. This has led to many complaints to be brought up AAMS, arguing that the definition and specifics introduced are at times "**photographing**" **specific solutions by certain manufacturers, resulting in unfair competition.**

Many law proceedings have been filed and there are many discussions on how the standards can be changed to address the problems. It remains though as a very notable thing to mention that Italy with its cumbersome law has been one of the first thoroughly regulated jurisdictions in the iGaming era.

⁵⁴ See Directorial decree establishing rules relating to "Betting on simulated events to be provided on physical networks by licensees already authorised to take sporting and horseracing bets or remotely by licensees authorised pursuant to Article 24.13 of Law 88/2009" available via TRIS. *Gambling Compliance*, Betting Exchanges To Be Regulated In Italy', 17 January 2012.

3.7 Excluded Jurisdictions - United Kingdom

With the introduction of the Gambling Act 2005 a widespread and thorough reform of the regulation of all forms of gambling, apart from the National Lottery, swept across Great Britain. Seeking to regulate commercial gambling as a leisure activity in which adults are given the room to benefit from competition within the market, regulatory reform introduced a comprehensive and specific regime for the regulation of remote gambling, i.e. that provided via means of distance communication (hereinafter referred to as "online gambling" in keeping with the terminology used elsewhere in this Report).

Prior to 2005 Act, and the introduction of the Gambling Commission, there was no specific regime for the regulation of online gambling although this means of gambling enjoyed widespread popularity. In seeking to regulate the online gambling industry, and attract operators onto British shores the then government sought to establish an attractive regulatory environment which would be seen as a guarantee of quality and establish Britain as a world leader.⁵⁵ With a British license in hand operators would then be able to serve other jurisdictions. Indeed, when the legislation was drafted it seemed that the idea that mutual recognition would reign supreme through the European Union. Therefore, relying up on the freedom to provide services as enshrined in the Treaty on the Functioning of the European Union, British license holders would be able to reach every corner of the Union. Ultimately the gambling related case-law of the Court of Justice of the European Union evolved somewhat differently, and hence the development of a plethora of national licensing regimes.

Yet the open nature of the virtual online border flowed in both directions. The legislative regime was specifically designed to allow operators established and licensed anywhere within the EU or EEA to supply services and advertise their services to UK residents. Similarly the Act permitted the 'white-listing' of non-EU jurisdictions; where the objectives of regulatory regimes which were deemed to be similar to the British regime and the capacity for enforcement thereof was deemed also comparable, then, for all intents and purposes, operators licensed in such a jurisdiction would be treated as if they were located within the EU. Operators outside the EU and not licensed within a white-listed jurisdiction would only be able to supply and not advertise their services to (potential) British consumers.

In 2010 the government came to realise that British consumers were being served by a plethora of operators regulated in a variety of jurisdictions, the regulators of which paid relatively little effort to securing the interests of the British consumer.⁵⁶ The Department for Culture, Media and Sport ('DCMS') noted the **wide disparity in the levels of protection** actually received and concerns arose that the **core objectives of the Gambling Act were not being achieved**. Also, through losing out in terms of tax competition, with a tax of 15% on gross profits, many British facing operations remained in lower tax jurisdictions in the fact of the new regime designed to attract them back to, or keep them, onshore. Therefore, following an announcement by the Minister for Tourism and Heritage (under whose portfolio the DCMS falls) in July 2011 regime is likely to be amended at some point in the future to regulate online gambling at the **point of consumption** thus requiring the Gambling Commission to license all operators who supply to British based consumers.⁵⁷ Regardless of whether those operators are based in the United Kingdom, the EU/EEA, a white-listed jurisdiction or elsewhere.

In light of such experiences and the intention of the current government to reform the regulation regime we have decided not to include the United Kingdom within the selection of jurisdictions covered in this Report.

⁵⁵ DCMS, *The Future Regulation of Remote Gambling: A DCMS Position Paper*, April 2003.

⁵⁶ DCMS, *A Consultation on the Regulatory Future of Remote Gambling in Great Britain*, 22 March 2010. Available at http://www.culture.gov.uk/images/consultations/remotegambling_consultation.pdf (Accessed 10 January 2012).

⁵⁷ DCMS, *Written Ministerial Statement on Remote Gambling Policy Proposals*, 14th July 2011. Available at http://www.culture.gov.uk/news/ministers_speeches/8293.aspx (Accessed 10 January 2012).

4 Horizontal Regulatory Issues

It emerges from our analysis of the online gambling regulations of Belgium, Denmark, France, the Isle of Man and the German state of Schleswig Holstein that there are several legislative objects which these jurisdictions share in terms of the regulation of online gambling. It is equally true that the method of implementing these objectives varies substantially from one jurisdiction to another.

In this section we extrapolate the principal high level legislative objectives of the jurisdictions reviewed and comment on what we believe are the desirable methods of achieving these objectives. We have also included a table at page 96 within which we represent our high level assessment of level of compliance in each of the jurisdictions reviewed between policy objectives and regulatory implementation.

i. Preventing excessive or pathological gambling and protecting minors;

Each of the jurisdictions reviewed is concerned with preventing pathological gambling and protecting minors and other vulnerable members of society.

Basing ourselves on the jurisdictions reviewed we consider that the key measures which ought to be taken in reaching this objective are the following:

a. *The requirement for registration and opening of a player account and identification of the holder of that account.*

France, Denmark, Schleswig Holstein and the Isle of Man all require a individual to register and open an account with a licensee before that individual can play. It is not yet clear what method of account opening and player ID Belgium will be implementing for online operators. We consider that the main variable between the former jurisdictions is the method of verification of the individual's identity.

We have already said that we do not consider the customer account opening process method, including the method used in order to verify customer ID in France to be efficient. Requiring a physical copy of ID documentation to be sent by physical mail, as it is in that jurisdiction, is inefficient and does not add anything to security of player ID or to integrity of the identification process. The Danish system whereby the Danish government will provide operators access to a specific service for the purpose of allowing them to verify customer data via a national identification number or in default to obtain the "necessary documentation" leaves leeway for an individual to be able to provide the licensee documentary ID via online upload or electronic mail. The advantage of this system is that identification can be carried out in a more efficient manner.

Whereas it seems to us that the most efficient and secure manner of identifying an individual would be for a licensee's system to query a central government system for an ID match, we note that there exist a number of private real-time ID verification systems including systems which match a documentary photo with a photo of the user taken in real time during the registration process. We understand that this type of system, with or without a real-time photo being taken, used in conjunction with upload of ID documents on a licensee's site at the point of registration can provide high accuracy rates. Perhaps one option could be for there to be regulatory approval of such private ID verification systems similar to the approval normally required for certifiers of the integrity and output of gaming systems.

b. Measures aimed at preventing pathological gambling

We consider that the following measures are all desirable: that a player can only have a single account with any given online operator; that a player is asked to set his play/loss limit and is allowed to revise it but that the revision take place only after a 24 hour "cooling off" period; that a player be entitled to request that his account be suspended for a given or indeterminate period of time; that when advertising gambling services operators must include

reference to a helpline dealing with addiction; that operators must provide a telephone number for a helpline which provides advice regard excessive gambling and gambling addiction, the cost of which must be limited to the price of a local call for users. We consider that the Danish and French systems are broadly similar in the way they regulate these matters. In so far as “self-exclusion” is concerned the Danish system goes a step further and requires that the Gambling Authority keep a central database of self-excluded players which each licensee must consult on a daily basis as well as when opening a new account.

ii. Ensuring the integrity, reliability and transparency of gambling operations;

a. Segregation of player funds

We consider that it is desirable for player funds, i.e. outstanding balances on account in favour of customers, to be kept separate from business funds. The regulator should be able to verify that this is indeed the case via periodical reports from its licensees.

b. Due diligence process on license applicants

There is a lot to be said in favour of a thorough due diligence process on applicants for a gambling license; both in terms of financial matters and the character and integrity of the persons operating the business. It is fundamental, in our view, that any business which is allowed by the state to handle customer funds be run by persons who are judged to be reliable on the basis of a business plan which is realistic. Under the regulatory systems of France, Denmark, Schleswig Holstein and Belgium an applicant for an online gambling license must be either incorporated and registered in that jurisdiction or in a member state of the European Economic Area. This is in keeping with requirements of European law.

It is fundamental for a regulator of gambling to conduct due diligence on an operator’s gaming system itself. In the online world the gaming system is broadly composed of the hardware on which the gaming software is installed, the gaming software itself, the databases which hold client and transaction details and the front end which is the website and all that appears on it. In addition various payment systems are normally bolted on to a gaming system which allow a customer to deposit money with and withdraw money from an operator. In our experience it is very difficult to conduct in depth due diligence on such a system if it does not contain real data. We therefore believe that a system similar to the French and Danish systems whereby initial technical due diligence is conducted on the key parts of an operator’s gaming systems and a full in depth due diligence process is carried out within a year of that operator obtaining a license should be preferred.

In our experience the initial, two pronged, due diligence on the business and on key aspects of the gaming system should suffice to weed out operators which may not be up to standard. The full due diligence exercise then serves to ensure that licensees are indeed complying with the law and standards required of them

c. Oversight of a licensee’s operations

Due to European Union laws a Member State cannot force a company to establish itself on its territory in order to obtain or to hold a gambling license. The question therefore arises about how that company’s operations can be monitored. Various systems exist which would allow secure monitoring remotely. This can be securely done whether operator servers are based within the licensing jurisdiction or whether they are overseas, potentially in another Member State of the European Union. However, there seems to be a preference by a number of jurisdictions, including France, to require presence of certain servers on their territory. As we have explained above, the French system requires an applicant for a license to have in place a ‘Front End’ which collects and archives transactions from the player towards

the platform as well as a DSD in which the data captured through the Front End is securely stored. Data must be stored for a period of 5 years.

Denmark also requires a technical reporting system to be set up, though it is a system which is configured and functions very differently to that required to be set up under French regulations. From a legal point of view probably the principal distinguishing feature is that the Danish Gambling Authority will under certain circumstances authorise licenses to host this system, including the SAFE, in a another jurisdiction provide that it is satisfied that it will be able to access the data it requires from a regulatory point of view.

d. *Random Number Generator*

A random number generator (“RNG”) is a computational device (an algorithm in so far as online gambling is concerned) which generates random results. RNGs are at the basis of determining results for online games. The randomness of results is fundamental to their fairness. Randomness can be determined using a number of tests and mathematical methods. Certification of randomness is key from a risk compliance perspective and is vital to the integrity and transparency of an online gambling system.

e. *Information requirements*

All of the jurisdictions reviewed require, to some degree or another, certain information to be made available by online gambling licensees to customers. The most thorough of the requirements can be found in the Danish and French systems. We consider for instance that a customer, similarly to the requirement in Denmark, must be able to access a page which shows his account details including his account balance, game history (including stakes, wins and losses), deposits, withdrawals and other related transactions.

Publicity is also required of the fact that an online gambling operator is a licensee authorised to transact business under national law. The laws of Denmark and France both require that fact to be noted in any advertising engaged in by the licensee.

iii. *Preventing fraudulent and criminal activities as well as money laundering and the financing of terrorism;*

In France a player account can only be credited by means of a payment instrument offered by a payment services provider established in a Member State of the European Union or a Member State of the European Economic Area with which France has concluded an agreement for administrative regarding combating money laundering and tax evasion. In our view this is a desirable measure in order to ensure both that financial flows are and stay within the licensed financial system and that enforcement actions can be taken in case of any suspicious activity.

An applicant for a license should also have in place controls which seek to prevent and combat fraudulent and criminal activities including a system for reporting transactions which the operator knows or has good reason to suspect as being related to money laundering or the financing of terrorism. We consider that the Isle of Man Proceeds of Crime (Money Laundering – Online Gambling) Code 2010 and the Prevention of Terrorist Financing Code 2011, both of which we have already referred to above, contain some well thought out and well drafted provisions.

iv. *Ensuring the balanced and equitable development of different types of gambling and a sustainable level of taxation.*

The types of online gambling allowed in the jurisdictions reviewed varies as can be seen in the matrix on pp 80-81. The choice of which types of gambling can be offered is one of the factors which in our experience has the greatest impact on the ability of a jurisdiction to attract offshore online gambling operators onshore. The other principal factor is the level of direct taxation to which licensees are subjected.

In France for instance it has been estimated that the online legal market (including lotteries) only made up around 43% of the total online market.⁵⁸

It is our view that limiting the products available to players is counterproductive. That is not necessarily to say that a jurisdiction needs to be as flexible as the Isle of Man in determining which products to license but bearing in mind the intentions set out by the State Secretary for Security and Justice in the 'Policy Note on Gambling' of 19 March 2011 to have a competitive market would strongly advise the Ministry to follow up the issue on taxation directly with key stakeholders of the remote gambling industry. We consider that these objectives can be best met by having demand and supply meet within a national regulation framework.

⁵⁸ MAG, "Jeux en ligne" in the French Market – Key features, strengths and weaknesses of the French legal gaming offer, (2011) [http://www.mag-ca.it/Download_k_files/"Jeux%20en%20ligne"%20in%20the%20French%20Market_2011.pdf](http://www.mag-ca.it/Download_k_files/) (accessed 2 February 2012).

5 Comparative Element

The purpose of this section is twofold, namely:

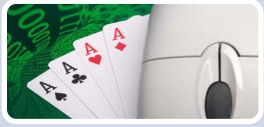
1. To provide an overview of the scope of national markets in terms of permitted forms of remote gambling, the required technical standards and other regulatory requirements in place across the jurisdictions studied.
2. To illustrate the suitability of the requirements in place across the jurisdictions studied in terms of achieving the objectives as set out in the Policy Note of the State Secretary for Security and Justice of 23rd March 2011.

Purpose one is executed via a series of tables which illustrate what is permitted and required in relation to:

- Permitted forms of iGaming;
- Licensing Requirements;
- Technical Standards;
- Regulatory Oversight;
- Responsible Gaming; and
- Financial Obligations.

These tables are followed with a key explaining the terminology used.

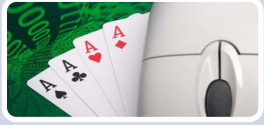
Purpose two is achieved via a table illustrating whether the regulations in place in each jurisdiction have the potential to attain the objectives listed to a “High”, “Medium” or “Low” degree. Measures which we consider necessary for the achievement of these objectives are also included. Reference should be made to the full discussion of each jurisdiction in the main body of this Report as the grading used only provides a rough comparison of each jurisdiction with the objectives of the regulatory reform.



Regulated forms of iGaming

	Belgium	Denmark	France	Isle of Man	Schleswig Holstein	
Pure Skill with prizes	Prohibited	Prohibited	Prohibited	Regulated	Prohibited	Prohibited
Horserace Fixed Odds	State Monopoly Only	Regulated	Prohibited	Regulated	Prohibited	Regulated
Horserace Pool betting	Regulated	State Monopoly Only	Regulated	Regulated	Prohibited	State Monopoly Only
Betting on non-sports events	Prohibited	Regulated	Prohibited	Regulated	Prohibited	UNSPECIFIED
Scratchcards	Prohibited	State Monopoly Only	State Monopoly Only	Regulated	State Monopoly Only	UNSPECIFIED

**Unless a form of iGaming is expressly regulated we assume that it is prohibited (except for the Isle of Man)*



Regulated forms of iGaming

	Belgium	Denmark	France	Isle of Man	Schleswig Holstein	
Live dealing	Prohibited	Prohibited	Prohibited	Regulated	Regulated	
Virtual casino	Regulated	Regulated	Prohibited	Regulated	Regulated	
Lottery	State Monopoly Only	State Monopoly Only	State Monopoly Only	Regulated	State Monopoly Only	
Keno, Bingo	Prohibited	UNSPECIFIED	State Monopoly Only	Regulated	UNSPECIFIED	
Poker	Regulated	Regulated	Regulated	Regulated	Regulated	
Sport Fixed Odds Betting	Regulated	Regulated	Regulated	Regulated	Regulated	
Sport Pool Betting	Regulated	Regulated	Regulated	Regulated	Regulated	
Sport Exchange Betting	Prohibited	Regulated	Prohibited	Regulated	Regulated	

**Unless a form of iGaming is expressly regulated we assume that it is prohibited (except for the Isle of Man)*



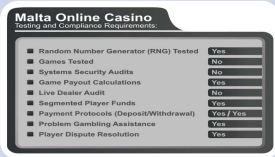
Licensing Requirements

	Belgium	Denmark	France	Isle of Man	Schleswig Holstein	
Check on financial strength of the company	Green	Green	Green	Green	Green	REQUIRED
Due diligence key individuals and company	White (Red border)	Green	Green	Green	Green	NOT REQUIRED
Internal System Security audit	White (Red border)	Green	Red	Green	Green	NOT APPLICABLE
Local representation requirement	Green	Red	Green	Green	Red	NOT APPLICABLE
Local representation requirement for non-EU applicants	Green	Green	Green	Green	Blue	UNSPECIFIED



System Requirements

	Belgium	Denmark	France	Isle of Man	Schleswig Holstein	
Backup recovery	Yellow	Green	Green	Green	Green	REQUIRED
Central database player exclusion	Green	Green	Green	Red	Red	NOT REQUIRED
Change management	Yellow	Green	Green	Red	Green	
Data capture (Vault)	Yellow	Green	Green	Red	Green	
Game recall	Red	Green	Red	Green	Green	



System Requirements

	Belgium	Denmark	France	Isle of Man	Schleswig Holstein	
Jackpot requirements	Yellow	Green	Red	White (Red border)	Green	REQUIRED
PCI Certificate Required	Yellow	Green	Red	Red	Green	NOT REQUIRED
Player registration	Green	Green	Green	Green	Green	UNDER REVIEW
RNG requirements	Green	Green	Red	Green	Green	NOT SPECIFIED
System security controls	Yellow	Green	Green	Green	Green	



Regulatory Oversight

	Belgium	Denmark	France	Isle of Man	Schleswig Holstein	
Independent regulator	Green	Green	Green	Green	Red	YES
Certification	Green	Green	Red	Green	Yellow	NO
Administrative enforcement	Green	Green	Green	Green	Green	UNDER REVIEW
Criminal Sanctions	Green	Red	Red	Red	Yellow	



Responsible Gaming

	Belgium	Denmark	France	Isle of Man	Schleswig Holstein	
Bonus Schemes	Red	Green	Red	Green	Green	REQUIRED
Credit card allowed	Yellow	Green	Green	Green	Green	
Deposit/player limits	Yellow	Green	Green	Green	Green	NOT REQUIRED
Player exclusion	Green	Green	Green	Red	Green	
Game rule explanation	Green	Green	Red	Red	Green	NOT SPECIFIED
Localization	Red	Green	Green	Red	Green	
Customer support services	Yellow	Green	Green	Red	Green	UNDER REVIEW



Financial Obligations

	Belgium	Denmark	France	Isle of Man	Schleswig Holstein	
Gambling specific Anti Money laundering	Yellow	Green	Green	Green	Green	REQUIRED
Player money transfer	Yellow	Green	Green	Green	Yellow	NOT REQUIRED
Separation of player funds	Yellow	Green	Red	Green	Yellow	UNDER REVIEW

Administrative enforcement	<ul style="list-style-type: none">• Whether the independent regulator enjoys the competence to take administrative enforcement measures against operators.
Backup recovery	<ul style="list-style-type: none">• Full backup requirement for all relevant servers/equipment.
Betting on non-sports events	<ul style="list-style-type: none">• Whether betting on events other than sporting competitions, e.g. the outcome of national elections, can be offered.
Central database player exclusion	<ul style="list-style-type: none">• Whether there is a single central database listing all excluded players as part of national policy for avoiding addiction to gambling services.
Certification	<ul style="list-style-type: none">• Requirement of regulatory certification.
Change management	<ul style="list-style-type: none">• Whether the managing and tracking of all software changes is required.
Check on financial strength of the company	<ul style="list-style-type: none">• Do the license awarding authorities check on whether the license applicant is sufficiently solvent to cover the financial liabilities which could arise from the forms of gambling it seeks to offer?
Credit card allowed	<ul style="list-style-type: none">• Whether credit cards can be used to open and fund a player's account.
Criminal enforcement	<ul style="list-style-type: none">• Whether the independent regulator enjoys the competence to take criminal enforcement measures against operators without relying upon the criminal prosecution service.
Customer support services	<ul style="list-style-type: none">• Whether licensees are obliged to operate customer help and support lines.

Data capture (Vault)	<ul style="list-style-type: none">•Whether national law requires operators to capture data covering all player transactions which is then stored securely.
Deposit limits/player limits	<ul style="list-style-type: none">•Whether operators are required to give players the option to set their own limits in terms of amounts lost or whether there are mandatory upper ceilings set by law.
Due diligence key individuals and company	<ul style="list-style-type: none">•Does the license awarding authority undertake a background check during the licensing process on the key individuals within a company and the undertaking itself.
Gambling specific anti money laundering regulations	<ul style="list-style-type: none">•Prevention of money laundering
Game recall	<ul style="list-style-type: none">•Whether provisions explicitly require operators to recall a certain number of/specific events.
Game rule explanation	<ul style="list-style-type: none">•Must operators make a full explanation of the game rules available?
Horse race betting	<ul style="list-style-type: none">•Is betting on live horseracing, thus excluding virtual race tracks, allowed?
Independent regulator	<ul style="list-style-type: none">•Does the jurisdiction have an independent regulatory body responsible for the gaming sector with responsibilities including awarding licenses, the supervision of operators and the enforcement of regulations? For present purposes such regulators should enjoy autonomy from ministries.
Internal System Security audit	<ul style="list-style-type: none">•Examination of the management controls within an Information technology infrastructure. The evaluation of obtained evidence determines if the information systems are safeguarding assets, maintaining data integrity, and operating effectively to achieve the organization's goals or objectives. These reviews may be performed in conjunction with a financial statement audit, internal audit, or other form of attestation engagement

Jackpot requirements	<ul style="list-style-type: none">•Are specific requirements established for operating one or more jackpot systems?
Live dealing	<ul style="list-style-type: none">•Does national law permit live dealing? Whilst adding after in casino studios "and relayed in real time".
Local representation requirement	<ul style="list-style-type: none">•Does national law require that the license holder has a local representative within its jurisdiction (even for operators established elsewhere within the EU/EEA)?
Local representation requirement for non EU	<ul style="list-style-type: none">•Does national law require that the license holder has a local representative within its jurisdiction (for operators established outside the EU/EEA)?
Localization	<ul style="list-style-type: none">•Are operators obliged to offer their services and customer support in the official language of the licensing jurisdiction?
Lottery, Keno, Bingo	<ul style="list-style-type: none">•Lottery, Keno and Bingo offered in the online environment.
PCI (payment card industry standard)	<ul style="list-style-type: none">•national law requires the Payment Card Industry Data Security Standard .(PCI DSS) is an information security standard for organizations that handle cardholder information for the major debit, credit, prepaid, e-purse, ATM, and POS cards.
Player exclusion	<ul style="list-style-type: none">•Are operators obliged to offer players the option to exclude themselves on either a temporary or permanent basis?
Player money transfer requirements	<ul style="list-style-type: none">•Are restrictions imposed requiring winnings above a certain value or withdrawals more generally only to be paid into the (bank) account from which credit was initially deposited?
Player Monitoring	<ul style="list-style-type: none">•Does national law require that operators monitor the online gaming behaviour of their players?
Player registration	<ul style="list-style-type: none">•Must players complete a full registration process in order to open a player's account and become eligible for a licensed operator's services?.
Poker	<ul style="list-style-type: none">•Is the provision of online poker on virtual poker tables permitted?
RNG requirements	<ul style="list-style-type: none">•Are requirements established for the use of (a) Random Number Generator(s)?

Separation of player funds

- Are operators obliged to keep player funds (monies deposited by players, monies owed to players in the form of winnings) in separate accounts from other business and operational expenses?

Skill with prizes

- Whether skill games, in which the payout (the prize) is determined predominantly or overwhelmingly by the player's skill are permitted online.

Sports betting

- Whether online sports-betting, which includes predicting the outcome of a sporting competition or an occurrence during a competition and placing a wager thereon, is permitted..

System security controls/requirements

- Are requirements specified concerning the security of the gaming platform and software used?

Virtual casino

- Whether national law permits the provision of virtual casinos where players can access casino games online with or without downloading software on to their local computer.

6 Achieving Dutch Policy Objectives: Suitability of Measures Used Elsewhere & Appropriate Measures for Implementation

Policy Objective	Belgium	Denmark	France	Isle of Man	Schleswig Holstein	Desirable Measures
<i>Preventing excessive or pathological gambling and protecting minors</i>	Low	High	High	Low	Medium	Excluding minors; ID verification; self exclusion; player-set limits & cooling off period; mandatory warnings; excluded player register ; no cash; no credit from operator; player account with info requirement; bonus rules.
<i>Ensuing the integrity, reliability and transparency of gambling operations</i>	Medium	High	High	High	High/Medium	Segregation of player funds; due diligence on licensees; regulatory oversight ensuring access to operator data; fairness of games offered; independent certification & testing; information requirement (game rules, risks); financial guarantees which do not create a barrier to market access.
<i>Preventing fraudulent and criminal activity</i>	High	High	High	High	High/Medium	AML rules to apply to all forms of gambling; MLRO; no transfer of funds between player accounts; requirement for monitoring measures to be put in place e.g. to immediately identify "chip dumping" in poker; cash out to bank or bank card used for deposit.
<i>Access to an appropriate and attractive range of gambling services</i>	Low	High	Medium	High	Medium	Product regulation to reflect consumer demand; analysis to be conducted on the basis of the specificities of the Dutch market.
<i>Allowing competition in the market</i>	Low	High	Medium	High	High	Open and transparent licensing system; licenses awarded on merit and to those considered fit and proper to run an online gambling business.

The more successful the regulations are in achieving the objectives of a policy, the Higher the policy's grade is.

7 Horizontal Issues of European Union Law

7.1 Introduction

The object of this section is to consider the compatibility of particular regulatory requirements regarding the regulation of remote gambling with European Union law. Several regulatory requirements established by the jurisdictions considered in [Section 3](#) are incompatible with EU law, or at the very least their compatibility is highly doubtful.

Regulating remote gambling for the first time, rather than simply prohibiting, provides the Netherlands with a clear opportunity to design a regulatory regime which is fully compliant with EU law. Not only will this mean that the chance infringement proceedings by the European Commission is dissolved, but perhaps somewhat more significantly, and particularly in terms of achieving the objectives of the Dutch government, operators will apply for licenses from a regime which respects EU law. Should the regulatory regime fail to fully respect EU law then many operators may seek to rely upon licenses held in other Member States or elsewhere to supply the Netherlands. A regime failing to comply with EU law will undermine the ability of the Netherlands to capture operators and thus erode the achievement of future regulatory objectives.

Therefore the following regulatory requirements and techniques will be analysed to illustrate how they breach EU law:

- Requirement to be established in the licensing Member State;
 - Requirement to locate the server in the licensing Member State; and
 - The need for regulatory consistency.
- a. [Requirement to be Established in the Licensing Member State](#)

The Belgian regulatory regime requires that in order for an operator to be eligible for a remote gambling license it must already be in possession of a license for the provision of land-based gambling. As such it requires an operator to be permanently established in Belgium in order to offer remote gambling services. Yet establishment need not be in the form of a land-based gambling venue, but a requirement to be established could relate to the primary establishment of an undertaking, a registered office or subsidiary.

It should be noted at this stage that the Isle of Man regime requires that the company holding a license for remote gambling is established on the island. The freedom to provide services as embodied in Article 56 of the Treaty on the Functioning of the European Union ("TFEU") does not apply to the Isle of Man. Had it done so then this requirement would have been untenable.

Requiring an operator to become established in the licensing jurisdiction will amount to an impediment to the provision of services and thereby constitute a restrictive measure. Restrictive measures are not per se incompatible with EU law but must be justified. However, preconditioning the provision of a service upon (a form of) establishment has long been recognised as conflicting with the freedom to provide services. Should a measure negate the free movement of services through requiring establishment then in order to be justified it must be indispensable for achieving the objective in the general interest.⁵⁹

Two recent decisions of the Court of Justice of the European Union (hereinafter "CJEU") dealt with requirements of Austrian law that gambling providers needed to be established within that Member State. *Engelmann* found that the need for the (land-based) casino operator to have its primary establishment in Austria was incompatible with EU law.⁶⁰ Austria claimed that this was necessary in order to prevent gambling activities being carried out for criminal or fraudulent purposes but actually requiring the operator to be established in Austria was found to be disproportionate. Thereby

⁵⁹ Case 205/84, *Commission v. Germany*, [1986] ECR 3755, para. 52 and Case C-222/95, *Société civile immobilière Parodi v. Banque H. Albert de Bary et Cie*, [1997] ECR I-3899, para. 31.

⁶⁰ Case C-64/08, *Criminal proceedings against Ernst Engelmann*, delivered on 9 September 2010, n.y.r..

the CJEU reaffirmed *Gambelli* to the effect that other, less trade restrictive measures, exist to control the activities of gambling operators.⁶¹ Indeed, reference is also made to *Placanica* in which it noted that information can be gathered on an operator's representative or main shareholders.⁶²

However of more interest in the context of remote gambling is the case of *Dickinger & Ömer*, which challenged the provision of Austrian law requiring that an internet casino operator had a registered office in that Member State.⁶³ Significantly the CJEU found that the requirement to have a registered office (i.e. a form of secondary establishment) in the territory of the Member State where the service is received is a discriminatory measure. Discriminatory measures can only be deemed compatible with EU law on the basis of exceptions found within the Treaty; namely public policy, public security or public health (as per Article 52 TFEU). Although the CJEU had found the measure in *Englemann* to be discriminatory too it only referred to the less stringent test which applies to indistinctly applicable measures, i.e. those measures which discriminate but not through direct reference to nationality or the place of establishment. Such measures can be justified only on the basis of overriding public interest considerations, and are not restricted to the grounds advanced with the TFEU but have been expanded upon by the CJEU itself.⁶⁴

Consequently in *Dickinger & Ömer* the CJEU adheres to the narrow exceptions provided for in the Treaty when guiding the national court as to whether the need for a registered office in Austria is compatible with EU law. Therefore it subsequently notes, that in order to rely on the public policy exception there must be a "genuine and serious threat to a fundamental interest of society" and that this justification for requiring a registered office in Austria is "as a justification for a derogation from a fundamental principle of the Treaty, [...] narrowly construed."⁶⁵ Moreover, the Court notes that the national court will have to consider whether there are "other less restrictive means of ensuring a level of supervision of the activities of the operators established in Member States other than the Republic of Austria equivalent to that which can be carried out in respect of operators whose registered office is in Austria".⁶⁶

As such for all intents and purposes Member States are unable to require that remote gambling license holders have a land-based gambling venue (e.g. Belgium) or are otherwise established in their jurisdiction (e.g. Isle of Man). The threshold for justifying such a measure is extremely high particularly given the availability of less restrictive yet equally effective measures to supervise operators. These shall be dealt with in relation to measures requiring the server to be located with the licensing Member State.

b. Requirement to Locate a Server in the Licensing Member State

A requirement to locate a server within the licensing Member State is likely to fall foul of the same reasoning as has been given above. In essence the need for an operator to establish and maintain a server along with supporting infrastructure could be considered to cross the line from a situation whereby the operator provides (licensed) services in the Member State on the basis of Article 56 TFEU to one where the operator is actually established in that Member State. Without entering into too much detail the transition from supplying services to being established occurs at a rather vaguely defined point under EU law. The early case of *Gebhard* however defines the transition from services to establishment in terms of whether activities in question are provided on a temporary basis and in terms of the service provider's infrastructure. Thus consideration must be given to "not only to the duration of the provision of the service, but also its regularity, periodicity or continuity".⁶⁷ Whilst a service provider

⁶¹ Case C-243/1, *Criminal proceedings against Gambelli* ECR [2003] I-13031, para. 74.

⁶² Case C-64/08, *Criminal proceedings against Placanica*, ECR [2007] I-1891, para. 62.

⁶³ Case C-347/09, *Dickinger and Ömer*, delivered on 15th September 2011, n.y.r..

⁶⁴ As initially recognized in relation to gambling in Case C-275/92, *Schindler*, ECR [1994] I-1039.

⁶⁵ *Dickinger & Ömer*, para. 82.

⁶⁶ *Dickinger & Ömer*, para. 84.

⁶⁷ Case C-55/94, *Reinhard Gebhard v. Consiglio dell'Origine delgi Avvocati e Procuratori di Milano*, [1995] ECR I-4165, paras. 27-28.

may "equip himself with some form of infrastructure in the host Member State" this should only be done to the extent necessary to provide the services in question. Should the service provider actually appear to hold itself "out from an establish professional base to, amongst others, nationals" of the host Members State then the particular case will shift from one falling under the freedom to provide services to one of establishment.⁶⁸

Should a Member State condition the supply of remote gambling services on the presence of a server then this is likely to constitute a case of establishment. Remote gambling services will be provided to that jurisdiction on a regular and continuous basis, via the server located in its territory. Furthermore, it will appear to be operating from this infrastructure to its customers in that Member State, particularly if it has to display a notice to the effect that it is licensed by the relevant national regulatory body.

A Member State will thus have to justify why it preconditions the provision of (remote gambling) services on the basis of this form of establishment, otherwise such a measure will be contrary to EU law. With regards to the discriminatory measure in *Dickinger & Ömer* the CJEU held that attention must be given to whether there are less restrictive measures which enable supervision that is comparable to having a registered office in Austria exist. Due consideration must also be given to whether less restrictive measures exist when considering if non-discriminatory, thus indistinctly applicable measures, can be justified when applying the proportionality test to indistinctly applicable measures. Regardless of whether the server location element is perceived a discriminatory or indistinctly applicable measure it needs to be shown that there is no less restrictive measure available.

In this regard requiring the server to be established in the licensing jurisdiction will often be unjustifiable as less restrictive measures prevail; securing access to the data for the licensing jurisdiction will secure the attainment of the regulatory objectives in the same manner as if the server were located within its territory. The technical and infrastructural requirements established in France and Denmark illustrate how it is access to data, rather than the location of the servers, which is important.

In this regard it is important to realise that the licensing Member State will not be reliant upon the supervisory and enforcement actions of a regulator in another Member State. Indeed it is important to distinguish granting access to a server from arguing that one Member State must recognise the controls exercised in the other Member State where the operator is established. Therefore access to a server is incomparable to the situation in *Liga Portuguesa* in which the CJEU explicitly dismissed the mutual recognition of regulatory conditions and controls over regulated operators.⁶⁹

Therefore, given the technical possibilities for securing access to data and as evinced by several jurisdictions in this Report, requiring an operator to establish a server within its jurisdiction is likely to constitute an unjustifiable restriction to the free movement of services.

c. The need for regulatory consistency

It goes without saying that the extensive case-law of the CJEU covers many more aspects than requiring operators to be established in one form or another in the jurisdiction where remote gambling services are provided. A growing element of the case-law deals with whether the supply of (remote) gambling services which prevails behind the protection afforded by restrictive measures is consistent with those objectives which underpin its existence. This is in the context of what the CJEU assesses with regards to monopolists' "dynamic commercial polic[ies]". Given the development of the 'consistent and systematic' test in *Gambelli* which can be summed up as requiring that regulatory practice must not conflict with the justifications used to uphold a restrictive measure, the emergence of preliminary references exploring the meaning of this term, and its implications, should not come

⁶⁸ Ibid.

⁶⁹ Case C-42/07, *Liga Portuguesa de Futebol Profissional and Bwin International*, ECR [2009] I-7633, para. 69.

as a surprise. A majority of the issues considered by the CJEU fall outwith the scope of a study designed to address technical standards in the regulation of this field. Nevertheless a couple of observations are nevertheless appropriate and can be thought of as achieving consistency; across sectors and between the online and offline environments.

As indicated earlier in relation the objectives of the current government to reform the regulation of remote gambling, reference has been made to the notion of 'horizontal consistency'. This notion emerged in *Carmen Media* (Case C-316/07) where it was held that should forms of gambling which are subject to an authorisation regime but not a monopoly, and yet present a higher risk of addiction than those forms actually subject to the monopoly whilst expansion is permitted or tolerated by more addictive forms, then the regulatory regime could be found to be incompatible with EU law. In such instances the monopoly would not be a suitable measure for securing the prevention of incitement to squander money of gambling and combat gambling addiction. In essence this suggests that consistency should not be considered on a sector by sector basis but that a broader view should be taken of how the entire national market is regulated and whether, having taken all forms of gambling into account, the regulation thereof is consistent. Horizontally, across all sectors. Consequently a monopoly for a less risky form of gambling could be undermined by a policy of expansion for a riskier form, although we hold the view that arguably measures designed to protect consumers should be taken consideration when comparing different forms of gambling should such a scenario arise.

Secondly in *Zéturf* (Case C-212/08) the CJEU noted that the internet is a "simple channel through which games of chance may be offered" (para. 75) and proceeded to consider that in so far as consumers treat the online and offline sectors as substitutable then no distinction should be made between land-based and remote gambling services when justifying a restrictive measure. Where a measure relates in the same manner to land-based and remote gambling then the offline and online sectors should be treated as a whole for the purposes of assessing the compatibility of that measure, unless it can be shown that the internet poses higher risks in terms of addiction and fraud. Unless such higher risks prevail, the introduction of measures which single out the internet for stricter or more restrictive treatment without evidence to show that this is justifiable will likely be unjustifiable under the free movement of services. Therefore regulatory measures deemed suitable for the offline world should not be copied blindly into the online environment, lest problems arise in terms of compatibility with EU law.

7.2 Final Remarks on EU Law Issues

From the perspective of ensuring compliance with EU law it would not be advisable for the Netherlands to require future license holders to establish themselves in the Netherlands, thus excluding the possibility requiring such operators to form B.V.s or N.V.s in the Netherlands. Similar considerations apply to the location of the server given that access to, rather than location of the server, is of importance; less restrictive alternatives will always prevail.

8 Conclusion

The objective of this report has been to present to the Ministry a detailed analysis of the regulatory and compliance mechanisms relating to remote gambling in the jurisdictions which we have reviewed.

The jurisdictions selected for review represent a broad enough spectrum of approaches to regulation of remote gambling. We have reviewed on the one hand Belgium which ties remote gambling to existing land based licenses and on the other hand France which prohibits entirely the provision of online casino games (other than poker) by private operators. We have reviewed Schleswig Holstein, which while wishing to follow a model more akin to the Danish in respect of product offer has decided to restrict the provision of casino games involving a bank only to land based casinos within its territory. We have also reviewed the Isle of Man which has a thorough, tried and tested regulatory framework but which is perceived as a low tax jurisdiction with all that comes with that label.

In the French and the Danish systems we have the two methods of monitoring for compliance with the law which seem to be at the forefront of regulatory compliance in the gambling industry. The two systems are based on the notion that certain transactional data relating to remote gambling transactions must be recorded and its integrity safeguarded with access being granted to the regulator of the industry at its discretion. Though the notion is common we have seen that the method of implementation differs.

In the Danish and Isle of Man regulations we see awareness and detail respectively on the use of bonus campaigns by operators and calculation of gross revenues.

These above are only of course a couple of examples.

Overall we find that Denmark is the jurisdiction which overall seems to have regulated more in line with what we understand to be the policy orientation of The Netherlands as expressed in the intentions of the State Secretary for Security and Justice in the 'Policy Note on Gambling' of 19 March 2011.

Where we have passed judgement in this report we have based ourselves on an assessment of the policy objectives of the jurisdiction being reviewed and the risk from a regulatory compliance perspective. We consider that a review of the simple facts is key in order to commence to ascertain which aspects of which regulations may be suitable to replicate, which it may be suitable to ignore and which it may be desirable to develop further in view of local circumstances.

Certainly we feel that much benefit would be gained if in examining the regulatory systems which we have reviewed the Ministry took into account how the market in each of the jurisdictions reviewed reacted and what the implications were for the state. In doing so we would advise the Ministry to interview key stakeholders from these jurisdictions: regulators, operators, the media and policy makers.

Should the Ministry so wish we would be glad to assist with the preparation of a questionnaire concerning regulatory and compliance issues related to remote gambling that could be sent to a select number of stakeholders in order to further assist the Ministry with formulating its policy on this subject. We will also be able to help with identifying key stakeholders and making contact with them should the Ministry consider that to be necessary or desirable.