



Consultation Feedback |

Code of Commercial
Communications

August 2016

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1. Introductory Provisions

The majority of respondents commended the MGA's approach in publishing the draft Code of Commercial Communications (hereinafter 'the Code') for consultation by the industry and the public at large, although it was noted that it would have been preferable to have access to the entire gaming framework which is currently under review¹.

The general feedback was very positive but a number of concerns, outlined further below, were raised.

A number of respondents intimated their objections to the proposed exclusion of applicability of the Code from games regulated by the Public Lotto Ordinance and the Racecourse Betting Ordinance, even though such activities are excluded due to the fact that their regulation falls outside of the MGA's remit. Conversely, another respondent submitted that due to the differing characteristics of the different games offered under MGA licences, the Code should not be equally applied to all gaming activities. It was further suggested that the Code takes into consideration the area or the medium through which the games in question are being offered.

A couple of respondents also shed light on the fact that advertising alone cannot be considered to induce 'problem gamblers' to play more than they already do, since it is the physical act of gambling which makes it problematic in itself. The self-exclusion measures within the current legislative framework are intended to address these concerns.

¹ The consultative document on Commercial Communications is part of a series of consultations which will all eventually feed in to the new gaming legislation which will be proposed to the Government of Malta in the coming months.

2. Substantive Provisions of the Proposed Code of Commercial Communications

I. Part I – Preliminary

No comments were put forward in relation to this section.

II. Part II- Definitions

Multiple respondents commented on the lack of clarity of certain definitions, particularly the definitions of ‘vulnerable person’ and ‘under-age person’, which were criticized as being more broad than is necessary.

A number of respondents also called for a unified definition of the term ‘minors’ or ‘under-age persons’ in order to replace the current system wherein different games and establishments from which the games are provided are covered by different age-limits.

One respondent further noted that the proposed definition of ‘vulnerable persons’ within the draft Code results in a situation wherein authorised persons are only able to identify vulnerability when this is actually proven. The respondent suggested that this definition makes reference to the reasonable judgement of the authorised person in order to determine whether a person fits the profile of a vulnerable person in line with the Code.

III. Part III – Applicability

One respondent called for more clarity with regards to the specific authorized persons that would be bound by this Code, specifically whether affiliates, howsoever defined, would be covered.

IV. Part IV – Protection of underage and vulnerable persons

One respondent questioned whether the mere inclusion of underage persons within an advertisement would also be considered unlawful by virtue of this Code.

Another respondent suggested that the prohibition placed on advertisements which encourage or targets under-age persons or vulnerable persons “to play a game” is replaced with a prohibition on advertisements encouraging such persons “to gamble”.

V. Part V – General obligations and limitations

A respondent opined that Clause 8, relating to the prohibition on authorized players from inducing players to continue gaming, is too broad and should be more restrictive in its approach, while a number of other respondents submitted that such a prohibition was already provided for in other legislative instruments.

Multiple respondents submitted that the prohibition on distribution of tokens and leaflets in Clause 10 is too excessive, while another respondent questioned whether

all branded items are considered to fall under this prohibition. It was also questioned whether such a prohibition was applicable in all areas, outlets and locations.

Clause 11 was met by disfavour by a number of the participants who opined that such a list is unnecessarily burdensome and required further clarification, such as whose name should be displayed in the commercial communications.

A number of respondents proposed the deletion of Clause 12 which relates to the profiling of customers for marketing purposes, since this may result in an authorized person missing a potentially vulnerable person who could have otherwise been helped via the appropriate agencies.

VI. Part VI – Misleading and Unfair Promotional Mechanisms

Multiple respondents called for greater clarity in the rules determining the specific prohibitions and requirements relating to promotional schemes. In particular, one respondent questioned whether Clause 15(a)(i) also prohibited the promotion of free bets and bonuses.

Another respondent suggested the addition of a prohibition on the inclusion of bonus terms within additional click-wraps.

VII. Part VII – Prohibition of commercial communications in specific locations

Multiple respondents opined that the list of locations mentioned could be narrowed down and further proposed the exclusion of senior citizens' care facilities and places of worship from the list, while a number of other respondents proposed the deletion of the entire section.

Furthermore, one respondent submitted that 75 metres is too little in distance.

VIII. Part VIII – Sponsorships

Multiple respondents suggested the use of the term 'children-sized clothing' as opposed to 'merchandise designed for under-age persons', with a view to achieving greater clarity.

A number of respondents noted that the term in Clause 17(d) which prohibits sponsorships from encouraging people to participate in games was not correctly expressed and appears to be excessively prohibitive.

IX. Part IX – Social Media

Multiple respondents noted that authorised persons are restricted by what the particular media in question allows them to do. It was opined that the Code should recognize that on occasion under-age persons are still exposed to advertisements on social media regardless of all the safeguards which an authorised person may have taken.

X. Part X – Exemption

Multiple respondents suggested that for-profit organisations issuing commercial communications within their premises and within the premises of affiliated entities are also exempted from the provisions of this Code.

XI. Part XI – Powers

A number of respondents opined that the requirement on authorised persons to submit marketing plans for approval, as listed in Clause 21(a)(v), should be deleted from the Draft, or at the very least, that the requests for authorisation are replied to in the shortest time possible.

3. Concluding Remarks

The consultation on the draft Code of Commercial Communications is part of a series of consultations which the MGA is currently conducting with a view to advising it on the best approaches to be adopted in its general regulatory overhaul which it is currently working on. A number of other consultations on an array of subjects will continue to be published and will ultimately culminate in a revised legislative framework for the gaming industry that shall be proposed to the Government of Malta.

The feedback provided on this consultation will now be considered in the finalisation of the text as well as, where relevant, in the drafting of the rest of the legislative initiatives required to complete the framework.

The MGA would like to extend its gratitude to all participants.