



THE
EUROPEAN
LOTTERIES

FOR THE BENEFIT OF SOCIETY

THE EUROPEAN LOTTERIES
WHITE PAPER

ON
A SOUND AND SUSTAINABLE
GAMBLING POLICY
FOR
THE BENEFIT OF SOCIETY

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The debate on gambling at EU level is gaining new momentum following the Green Paper consultation process launched by the European Commission last year. Ahead of the autumn 2012 European Commission Action Plan on Online Gambling, there is a need to discuss and to explore the possibilities for a sound and sustainable policy for gambling in the EU.

This Paper presents The European Lotteries' policy proposals to the EU institutions and the Member States of the European Union, based on the fundamental principles adopted by our association.

The European Lotteries (EL) is the European umbrella organisation of national lotteries operating games of chance for the public benefit in **44 European countries** – including **all 27 EU Member States**. EL members together have a **turnover of more than 80 billion EUR**. They employ more than 19 000 people in the EU and create **more than 290 000 jobs** through indirect employment.

EL brings together state-owned and private operators, both profit and non-profit, who operate on behalf of the state. EL's members only offer gambling and betting services in the jurisdictions in which they are licensed by the respective national government.

In 2011, EL's members contributed more than 25 billion EUR to the State budgets and the funding of sport, culture, social projects, research and other causes of general interest. Almost **70 per cent of the gross gaming revenue** generated by EL members (the stakes minus the prizes) **was returned to society**, equalling on average 46 Euros per capita.

We stand for a system in which the state ensures that the proceeds are used for the benefit of society as a whole rather than being a source of private profit.



THE EUROPEAN LOTTERIES

PRINCIPLES FOR GAMBLING POLICY

EL and its members have unanimously adopted and act on common values and principles – **solidarity, integrity, subsidiarity and precaution**. These principles are in line with the values and principles expressed by the Council and the European Parliament and should form the foundations of gambling policy in the EU and in the Member States in order to provide legal certainty for the public benefit model that EL members represent.

SUBSIDIARITY: Member States hold the primary competence to organise and regulate gambling activities. They need to work together to guarantee law enforcement against illegal operators and to protect consumers. The European Lotteries are determined to continue fighting together with the public authorities against illegal gambling.

PRECAUTION: Consumers need to be protected from harmful and unregulated gambling offerings through effective and efficient law enforcement. Given the high financial flows inherent to any gambling activity, gambling is an area with high vulnerability to fraud and money laundering where not regulated appropriately or where the existing regulation is not enforced.

SOLIDARITY: Lotteries in Europe raise more than 25 billion EUR for the State budget and specific good causes. The specific features and the sustainable contributions from lotteries to society need to be recognised and taken into account in any coordinated approach at EU level.

INTEGRITY: As the historic partners of sport, we defend the European sport model against threats from match-fixing and other criminal activities and call for further measures to protect sport integrity.



THE EUROPEAN LOTTERIES POLICY PROPOSALS TO THE EU INSTITUTIONS AND THE MEMBER STATES OF THE EUROPEAN UNION

THE EUROPEAN LOTTERIES:

1. **Calls upon the European Institutions** – and in particular on the European Commission with regard to its forthcoming Action plan on online gambling – **to clearly recognise Member States’ primary competence in the field of gambling**, in particular with regard to protecting public order and consumers. These two objectives are first and foremost achieved through efficient law enforcement measures aiming at combating illegal operators and protecting sport integrity.

This means that the European Institutions should recognise that:

- Licences for gambling products are issued only at national/regional level and remain national/regional in scope
 - The principle of mutual recognition does not apply in the field of gambling
 - There is no such thing as a “grey” market: an operator is either authorised by the Member State where he provides his services, or not authorised – and thus illegal
 - The responsibility for the protection of consumers lies with the Member States
 - Internal consistency of a Member States’ gambling policy is a national competence.
2. **Invites the Council and its Working Groups to study and make proposals for Information exchange and administrative coordination between Member States in order to fight together against illegal operators.**
 3. **Calls on Member States to protect consumers by adopting efficient law enforcement measures against illegal gambling:**
 - IP/DNS blocking mechanisms
 - Defining payment solutions and blocking measures for transactions
 - Banning illegal advertising
 - Setting up of black lists
 - Explore an institutionalised solution for coordination between the National Regulatory Authorities, inspired from the administrative cooperation schemes that exist in other sectors.



THE EUROPEAN LOTTERIES
**POLICY PROPOSALS
TO THE EU INSTITUTIONS AND
THE MEMBER STATES OF THE
EUROPEAN UNION** (CONTINUED)

4. **Calls on Member States to implement the “unfair operator principle”**, according to which a gambling operator can only operate or bid for a national license in one Member State if it does not operate illegally in another EU Member State.
5. **Recommends the extension of the scope of the Third Anti-Money Laundering Directive** to other forms of online and offline gambling beyond casinos. An adapted regime for offline lotteries and most forms of offline sports betting services should take the form of the identification and verification of the winners’ identity as soon as their prize exceeds a predetermined threshold.
6. **Calls on the recognition of the fundamental contributions of Lotteries for the benefit of European society** and the specific role of lotteries in all discussions at EU level, as agreed by the Council in its December 2010 Conclusions.
7. **Calls for the preservation of Sport integrity** through:
 - The adoption of a common definition of sports fraud as a criminal offense at EU-level under Article 83 TFEU
 - The adoption of a definition of sports fraud as a criminal offense under national legislation in all the Member States of the EU
 - The adoption of incentive measures aiming at “developing the European dimension of sport ” by “promoting fairness and by protecting the physical and moral integrity of sportspersons” under Article 165 TFEU
 - Setting up an EU platform for exchange of information and management of the cross border aspects of sport integrity financed by contributions from the sport betting operators, taking into consideration the direct and indirect contributions, other than commercial communication, made by some operators
 - Firm support from the EU Institutions and Member States to any initiative in multilateral fora (Council of Europe, UNESCO) towards an International Convention for the preservation of sports integrity or the creation of an International Agency for Sports integrity



1. EUROPEAN INSTITUTIONS SHOULD RECOGNISE THE PRIMARY COMPETENCE OF THE MEMBER STATES IN THE FIELD OF GAMBLING

Gambling, Member States, the EU and subsidiarity

The European Parliament has clearly endorsed the latitude of Member States to determine the conditions of their own gambling market in its 15 November 2011 Resolution on Online Gambling in the Internal Market. In its Resolution, the European Parliament highlighted “Member States’ discretion in determining how gambling is organized” and noted: “in this context the decision by a number of Member States to ban all or certain types of online gambling or to maintain government monopolies on that sector, in accordance with the jurisprudence of the Court of Justice”.

The primary competence of Member States to regulate the gambling sector has also been recognised by the Council.

The CJEU has ruled that Member States have a very wide discretionary margin in determining their gambling policy. This is because gambling is an activity that is potentially very harmful for consumers and that can also be, if not regulated appropriately or where the regulation is not strictly enforced, attractive for criminal purposes such as money laundering.

Member States are thus entitled to determine: the objectives of their restrictive gambling policy, the requirements for ensuring the level of consumer protection and preservation of public order that they consider are necessary on their territory (including the number of operators, the type and volume of games allowed, the size of the stakes and how games are operated), which enforcement actions to take and, finally whether to impose criminal or other sanctions on the unauthorised provision of games or the advertising of unauthorised games.

EL calls for the Commission in its forthcoming Action Plan to state as clearly as the European Parliament, the Council and the CJEU have that the following fall within the competence of the Member States:

- **Licences for gambling products are issued only at national/regional level and remain national/regional in scope**

Member States control the gambling offering on their territory by giving the authorisation to a single or to multiple operators, under strict state control, to offer gambling products. Member States and regions should respect each other’s jurisdiction in this regard and not issue licences with the claim that they can also be used in other parts of the European Union or in another region of a Member State.



- **The principle of mutual recognition does not apply in the field of gambling**

Mutual recognition would undermine the specific systems that Member States have set up to control the gambling on their territory in order to protect consumers from gambling addiction, fraud and money laundering. The CJEU has confirmed this on several occasions, most notably in the landmark 2009 Liga Portuguesa case where it ruled that Portugal was not required under EU law to allow an online operator to offer products to Portuguese consumers just because the operator held a licence somewhere else in the EU.

- **You are either legal or you are not – there is no such thing as a ‘grey market’**

Some recent policy documents erroneously refer to the existence of a “grey market” in some Member States: a market consisting of operators that hold a licence somewhere in the EU, but not in the country where they offer their products. However, there is no such a thing as a “grey market” for gambling: gambling operators are either authorised by a Member State to offer products to consumers, and therefore legal, or not authorised, and therefore illegal.

There is no difference between illegal operators based inside and outside of the EU: Illegal operators are harmful and represent unfair competition to authorised operators. They avoid the cost of complying with the consumer protection, anti-fraud and anti-money laundering requirements set out by the Member States and violate taxation and financing requirements.

- **The responsibility for the protection of consumers lies with the Member States**

It's essential that Member States have a proper regulatory framework for consumer protection and that they enforce it. This is a means of ensuring that the gambling policy they pursue is consistent and that consumers are protected from gambling offerings that represent a disproportionately high risk for gambling addiction. Member States should set the conditions under which gambling products can be offered.

Member States are best placed to decide on the restrictive measures for consumer protection (e.g. a limitation on stakes) in light of the national/regional specific features, such as the culture and traditions of their population with respect to gambling.

A legislative framework does not stand in the way of additional voluntary self-regulation and certification processes set up by operators. But self-regulation can never replace legislation and strict control and enforcement by the authorities.



Strong and efficient law enforcement measures adopted by Member States aiming at combating illegal operators, which do not respect the requirements set up by national legislations, provide the primary and best guarantees for the protection of consumers.

- **Internal consistency of a Member States' gambling policy is a national competence**

Member States have to maintain a consistent and systematic policy: a policy that not only genuinely serves the purpose of protecting consumers and/or maintaining public order, but also takes into account all the gambling offering available on the territory of a Member State (not only lotteries but also slot machines, casinos and in general, the online as well as the offline products).

Maintaining a consistent and systematic policy requires having the right to have a constant search for a dynamic balance: the balance between seeking a genuine diminution of gambling opportunities while at the same ensuring that the legal gambling offering is attractive enough to draw consumers away from a potential illegal and harmful offering. The search for a dynamic balance is a complex matter which has to be undertaken at the level of each Member State. Internal consistency of gambling policy is thus a national competence – if nevertheless the question is addressed at EU level, the discussion needs to take place at the political level.

2. A CLEAR ROLE FOR THE COUNCIL AND ITS WORKING GROUPS: PROPOSALS FOR INFORMATION EXCHANGE AND ADMINISTRATIVE COORDINATION BETWEEN MEMBER STATES IN ORDER TO FIGHT AGAINST ILLEGAL OPERATORS

The Working Groups of the Council should explore the different types of information exchange and administrative cooperation that are possible so that Member States can cooperate in solidarity, helping each other in the fight against the illegal gambling offering.

Exchange of information and administrative coordination can help Member States to respond in a coordinated and rapid manner to public order issues and help each other to ensure transparency and traceability, monitor financial flows, fighting money laundering, implementing blocking measures and procedures for illegal gambling activities and advertising for illegal gambling.



3. MEMBER STATES ARE TO PROTECT CONSUMERS THROUGH EFFECTIVE LAW ENFORCEMENT MECHANISMS AGAINST ILLEGAL OPERATORS

The primary means of protecting consumers is efficient law enforcement against illegal gambling, combined with a strict state control of the legal gambling offering.

EL urges Member States to protect consumers by adopting efficient law enforcement measures against illegal gambling, accompanied by the administrative resources they require.

These measures need to be adapted to the proliferation of illegal gambling activities using new technologies like internet on new platforms such as mobile phones and smartphones, tablets, iTV and others. These measures will not separately lead to a satisfactory solution, but a combination of these different tools is essential:

- **IP/DNS blocking mechanisms**

IP/DNS blocking of illegal gambling websites means making them immediately unavailable to unsuspecting consumers and is thus an essential tool to limit the illegal gambling. EL thus urges Member States to set up specific procedures to this regard.

- **Defining payment solutions and blocking measures for transactions**

Limiting the payment methods is fundamental in order to have full traceability of the transactions. The measure should be accompanied by an obligation for the bank and credit card institutions to report transactions for gambling and block suspicious payments.

- **Banning illegal advertising**

Banning illegal advertising is essential to fight illegal gambling as advertising is one of the primary means by which illegal operators draw unsuspecting players to their websites. Member States should consider sanctioning not only the advertising agencies but also affiliate service suppliers, e.g. the suppliers placing hyperlinks and banners.



- **Setting up of black lists and white lists**

Countries that have not yet done so should consider following the example of some Member States that have set up black lists and white lists. A black list indicates those operators that are infringing on the national legislation by offering their products illegally to consumers in that country. Operators are placed on a black list after a careful examination by the regulatory authority in charge. In line with agreements with financial institutions and internet service providers, payment and access to websites are blocked as soon as they appear on a black list. White lists provide consumers with the important information on what operators operate legally, under control by the state.

- **Explore an institutionalised solution for coordination between the National Regulatory Authorities, inspired from the administrative cooperation schemes that exist in other sectors**

Coordination between the National Regulatory Authorities is important in order to tackle the regulatory challenges that the rising illegal gambling offer represents, in particular the offering that is using new technologies. An institutionalised solution is necessary as informal meetings and bilateral agreements between the National Regulatory Authorities, as they exist today, are not sufficient.

4. THE UNFAIR OPERATOR PRINCIPLE: MEMBER STATES SHOULD ACT IN COORDINATION AND REFUSE LICENCES TO OPERATORS THAT OFFER GAMBLING PRODUCTS ILLEGALLY ELSEWHERE IN THE EU

Today, some operators apply for a licence to operate legally in one of the countries of the EU, while they are at the same time breaking the law in another EU country by flooding consumers with illegal products, disrespecting the national legislation of that country and being unfair competition for the authorised operators.

Member States should act in coordination: if an operator is offering his gambling products illegally somewhere in the EU, he should not be allowed to receive or retain a licence in another EU country.

Both the European Parliament and the European Economic and Social Committee confirmed their support for the unfair operator principle in 2011. **We call on the European Commission to also integrate the unfair operator principle in its forthcoming Action Plan on Online Gambling.**



5. EXTENDING THE ANTI-MONEY LAUNDERING DIRECTIVE TO OTHER FORMS OF GAMBLING BEYOND CASINOS

The gambling sector – and in particular the online gambling offering – can be highly attractive for money laundering purposes and related criminal activities, notably fraud and match-fixing, where not regulated appropriately or where the existing regulation is not enforced.

EL members express their firm support to extending the Third Anti-Money Laundering Directive to all forms of online gambling services.

Where land-based gambling activities such as lotteries and most forms of betting are concerned, the objectives of the Directive would be best achieved through the identification and verification of the winners' identity where their prize exceeds a predetermined threshold, as it is already the case in several Member States.

6. RECOGNISING THE CONTRIBUTIONS OF LOTTERIES FOR THE BENEFIT OF EUROPEAN SOCIETY

We call on all EU Institutions to take into account the sustainable contribution of lotteries to society, in line with the 2010 Council conclusions on the framework for gambling and betting in the EU Member States, in all discussions at EU level.

The fundamental characteristic of state lotteries – and the key difference to the commercial gambling industry – is that the state lotteries operate games of chance for the public benefit. In 2011, **EL members contributed more than 25 billion EUR to the State budgets and the funding of causes of general interest.**

For thousands of civil society organisations in the EU, funding from lotteries represents a reliable source – particularly in times of economic crisis – and an indispensable part of the income that allows them to operate in a sustainable manner.

State lotteries represent a system in which the state ensures that the proceeds are used for the benefit of society as a whole rather than being a source of private profit.

Whether the financial contribution from lottery is directly channelled to the beneficiaries or is provided indirectly through the State budget, the amounts are so substantial that voluntary contributions or sponsoring would never be able to replace them. Moreover, in those countries where parts of the gambling market have been opened to competition, the taxation contributions by commercial operators are dwarfed by the contributions of those operators that operate under an exclusive rights system.



7. PRESERVING THE INTEGRITY OF SPORT

Legal sport betting, including new forms of it, as operated by EL's members, in accordance with the applicable regulatory policy, does not on its own create any problem and largely contributes to the promotion of safe and healthy sport by adequate means of funding.

However, mainly through illegal Internet business, sport betting has developed into a global gambling service and sometimes even a high-risk financial product, sometimes controlled by organised crime, undermining the fundamental values and objectives of sport, and society as a whole. The future of sport, due amongst others to the growth of a complex match fixing problem at global scale, is therefore uncertain. **The EL Sport Charter, adopted in May 2012, provides the responses our association proposes to these problems.**

EL calls on the EU institutions and the Member States to take action against sport fraud by:

- **Adopting a common definition of sports fraud as a criminal offense at EU-level**
- **Adopting a definition of sports fraud as a criminal offense in all the Member States of the EU**

A common definition of sports fraud agreed at European level between the Member States and the inclusion of provisions making sports fraud a specific criminal offense in the national domestic laws of all Member States would facilitate and enhance cross-border police and judicial cooperation involving all Member States' competent authorities for the prevention, detection and investigation of match-fixing in connection with sport betting. The European Institutions should make use of the legal base that the new article 83 of the TFEU provides for creating a criminal offense for sport fraud at EU-level.

- **Adopting incentive measures aiming at developing the European dimension of sport by promoting fairness and by protecting the physical and moral integrity of sportspersons**

Since the entrance into force of the Lisbon Treaty, sport is now explicitly mentioned as a policy area in the new Article 165 TFEU. Article 165 allows for incentive measures adopted in accordance with the ordinary procedure, but excluding harmonisation, or recommendations by the Council. EL urges the European institutions to take full advantage of the new Treaty provisions and issue concrete proposals.



- **Setting up an EU platform for exchange of information and management of the cross border aspects of sport integrity financed by contributions from the sport betting operators**

The financing should take into account the already existing direct and indirect contributions (other than commercial communications) which are already made by some operators – most notably EL members, who contribute more than 2 billion EUR per year to sport in the EU, in particular grassroots sport.

- **Supporting an International Convention for the preservation of sports integrity and the creation of an International Agency for Sports integrity**

The EU Institutions and the Member States should express their firm support to any initiative in multilateral fora (Council of Europe, UNESCO) towards an International Convention for the preservation of sports integrity or the creation of an International Agency for Sports integrity.



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FOR THE BENEFIT OF SOCIETY

53 MEMBERS
IN THE EUROPEAN UNION

80 MEMBERS
IN EUROPE

IN 28 EU
MEMBER STATES

IN 46 COUNTRIES

53

28

80

46

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The General Secretariat oversees the management of the organisation and all our events and seminars.

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