

**EUROPEAN COMMISSION PUBLIC
CONSULTATIONS ON AN ACTION PLAN
FOR A COMPREHENSIVE UNION POLICY
ON PREVENTING MONEY LAUNDERING
AND TERRORIST FINANCING**



**THE EUROPEAN STATE LOTTERIES AND
TOTO ASSOCIATION (EL) SUBMISSION**

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About the European State Lotteries and Toto Association (“EL”)

The European State Lotteries and Toto Association (“EL”) is the European umbrella organisation of national lotteries operating games of chance for the public benefit in 44 European countries with a total of 76 members, including all EU Member States. It is the largest and most representative lottery and gambling sector’s organisation in Europe whose members only operate in those jurisdictions in which they are licensed and where they comply with the legal requirements (e.g. anti-money laundering, responsible gaming policies, etc.). EL stands for the sound and sustainable gaming model for the benefit of society based on the values of subsidiarity, precaution, solidarity and integrity. In 2018, EL members secured €21 billion for society and directly supported valuable projects related to sport, cultural heritage, art, individuals with disabilities/disadvantages, education, science and many other areas.

For more information please see:

<https://www.european-lotteries.org/>

<https://www.benefit4society.eu/>

The European State Lotteries and Toto Association (“EL”) welcomes the European Commission’s initiative to launch a broad public consultation in the light of possible changes to the EU anti-money laundering and terrorism financing (AML-TF) framework.

This consultation gives the opportunity to all stakeholders, especially non-financial obliged entities, to express their views and to highlight the specific features of their respective sectors, as financial services providers are often taken as a sole reference for any evolution of the AML-TF framework.

In this respect, EL underlines that gambling operators are not in the same situation as financial institutions towards their clients and do not have the same capacity and means to reach a high level of information, for example as regards the origin of the customers’ funds. EL members have hundreds of thousands or millions of customers, the majority of which remain occasional customers wagering small amounts a few times a year on lottery games.

Moreover, EL and its members consider that any revision of the existing framework should take into account the specificities of the gambling sector, and in particular lotteries, as recalled in the following paragraphs where the Association shares its insights and draws up suggestions and recommendations.

The primary competence of Member States to determine how online and land-based gambling offer is organized and regulated within their jurisdiction is consistently recognized by the European Court of Justice through dozens of rulings, as well as by the Council¹, the European Parliament² and the European Commission³.

The Court expressly stated that: *“moral, religious or cultural factors, as well as the morally and financially harmful consequences for the individual and for society associated with betting and gaming, may serve to justify a margin of discretion for the national authorities, sufficient to enable them to determine what is required in order to ensure consumer protection and the preservation of public order”*.

This means that, if not regulated appropriately or where the regulation is not strictly enforced, gambling may be attractive for criminal purposes such as money laundering, fraud and match-fixing related to sports betting.

The overriding reasons of general interest of protecting consumers and preserving public order can furthermore justify restrictions to the rules of the Internal Market and the freedoms enshrined in the EU Treaties, such as a ban of the most dangerous forms of gambling in some Member States, the maintaining of monopolies or making the operation of all forms of gambling subject to a prior authorization scheme (through the granting of exclusive rights or licenses, depending if the segment concerned if opened or not to competition).

In the absence of EU harmonization in the gambling sector, Member States are therefore free to set the objectives of their policy on betting and gaming in accordance with their own scale of values and, where appropriate, to define the level of protection sought⁴. The mere fact that a Member State has opted for a system of protection that differs from that adopted by another one cannot affect the assessment of the need for and proportionality of the relevant provisions, which should be gauged solely by reference to the objectives pursued by the relevant national authorities and the level of protection that they seek to ensure⁵.

¹ Point 3 of Annex 2 to Part A of the Conclusions of the Presidency – European Council in Edinburgh 11–12 December 1992:

<https://op.europa.eu/en/publication-detail/-/publication/2b738e60-f2cc-4197-93d4-d16d1ab11b48> .

² European Parliament Resolution of 10 September 2013 on online gambling in the internal market : <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0348+0+DOC+XML+V0//EN> .

³ Commission Recommendation (2014/478/EU) of 14 July 2014 on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014H0478> “Member States are in principle free to set the objectives of their policy on games of chance and to define the level of protection sought for the purpose of protecting the health of consumers”.

⁴ Judgment of 24 March 1994, *Schindler*, C-275/92, EU:C:1994:119, § 32 and Judgment of 6 March 2007, *Placanica and Others*, C-338/04, C-359/04 and C-360/04, EU:C:2007:133, § 47.

⁵ Judgment of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International*, C-42/07, EU:C:2009:519, § 58.

In addition, the Court has explicitly denied the application of the principle of mutual recognition in the field of gambling, meaning that a Member State must not recognize the controls and rules set in place by another Member State, nor the gambling licenses granted in other jurisdictions.

In accordance with the specific situation of the gambling services in the Internal Market, which are economic activities of a particular nature and with due regard to the leeway recognized to Member States on how to organize and regulate properly their national market, no further harmonization of the AML–FT rules defined at EU level is needed where they apply to this sector.

This conclusion is actually consistent with the risk–based approach, which requires to take into account the specific features of the various forms of games and betting and the different kinds of risks entailed by each of them, as well as the local situation, context and other factors which can be more or less conducive to money laundering and other criminal activities. In accordance with the principle of subsidiarity, Member States are best placed and have therefore the right to determine how the offer of gambling services is to be organized and regulated at national level, and the right to enforce all measures they consider necessary against all illegal activities related to gambling, including AML–FT obligations. As regards the lotteries, betting and the whole gambling sector, the national authorities remain the most competent for defining the AML–FT obligations and mitigation measures based on the specific risk assessment of each separate segment of the gambling sector.

Besides this, one should note that the last supra–national risk assessment of the money laundering and terrorist financing released by the European Commission in 2019 underlines, with regard to gambling in general and lotteries in particular, that supervision by competent national authorities works well:

*“The Lotteries are covered by the EU AML framework since the 4th AMLD. However, based on the Directive’s minimum harmonisation principles, there could still be discrepancies from one Member State to another in terms of regulation, supervision of the sector and enforcement of AML/CFT rules. **However, at national level, supervision by competent authorities works well and is generally undertaken by public authorities.** For example, it has been pointed out that most gambling authorities have already introduced recommended procedures and checks to deter criminals from using the lottery facilities for money laundering. Additionally, lottery operators have established internal checks and heightened vigilance in these matters. For example, most Member states already have a procedure in place to verify a jackpot winner’s identity where the prize exceeds a predetermined threshold”.*

In this respect, the proposal to structure an EU supervision with direct powers granted to a supra–national supervisor, and especially a direct supervision from the European Banking Authority, which has no expertise in this specific field, is not appropriate.

Enhancing cooperation and coordination between Financial Intelligence Units (FIUs), through their network, would be of great benefit in general, and in some specific areas. That would be the case, in particular, for the identification of “politically exposed persons”, i.e. people who may represent a higher risk by virtue of the positions they hold, as well as their relatives and close associates, and regarding whom all obliged entities are required to apply specific measures consisting in enhanced due diligence.

In the EU Member States, whereas national authorities would be best placed to provide for lists of domestic politically exposed persons, obliged entities have, more often than not no other choice than relying on private providers. The lists these parties sell are expensive, vary from one provider to another and are often not accurate nor appropriately updated.

The situation could be easily improved, if FIUs would be entrusted with the task to provide all obliged entities with the lists of domestic politically exposed persons, considering that in any case they have to set up such lists for monitoring and control purposes, and that they have the necessary means to do so whereas obliged entities do not. Such a solution could greatly contribute to avoiding errors in identifying politically exposed persons, enhancing the level of legal certainty in the benefit of obliged entities and making the implementation of the AML–FT regime in the EU more secure and efficient.

Member States could furthermore set up a framework enabling the FIUs to exchange their respective lists of domestic politically exposed persons. Doing so would enable every FIU to share with the obliged entities in its jurisdiction an accurate and updated list of all European politically exposed persons. Member States should also explore common solutions aiming at facilitating the identification of politically exposed persons from third countries, as well as those that are employed by international organizations.

A similar framework could also be set up by Member States to facilitate the access by FIUs and relevant national control authorities to the national ultimate beneficial ownership registers. A “one stop shop solution” could also be created, which would enable obliged entities to identify ultimate beneficial owner of a legal entity established in all Member States.

Subject to the respect of the applicable rules on personal data protection and a strict purpose limitation, this solution could help to address key problems faced by both financial and non–financial obliged entities through the implementation of the AML–FT obligations, given that even financial institutions are often not granted access to trusted sources, such as tax databases, for the purpose of identification/verification of beneficial owners, potential new customers or for customer due diligence purposes.

As regards the role of the EU institutions, in particular the European Commission, it is deemed to play an important role in issuing guidance for the implementation of the existing EU and international frameworks and in developing manuals. It could also support the creation of

platforms for exchange of information and good practices between not only FIUs, but foremostly between national authorities in charge of monitoring and controlling the compliance of obliged entities with their AML–FT obligations, especially in non–financial sectors.

Exchange of best practices between relevant national authorities, as well as guidelines or recommendations from the European Commission if needed, could contribute to efficiently and concretely smooth out many of the difficulties and discrepancies faced in the implementation of the AML–FT framework.

Such exchanges and guidance could contribute to ensure consistency of the templates of Suspicious Transaction Reports throughout the EU, to improve the quality of reporting and to facilitate the exchange of information. FIUs could also be recommended to provide the reporting obliged entities with systematic feedback after reporting a suspicious transaction, particularly in non–financial sectors, as many analyses and assessments show that in most Member States such feedback is still deficient.

This contribution is without prejudice to possible individual contributions of EL members.

As usual, EL stays at your disposal for any further information or explanation.

On behalf of The European Lotteries and Toto Association,

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3 August 2020, The European State Lotteries and Toto Association