THE EUROPEAN LOTTERIES
FOR THE BENEFIT OF SOCIETY

Digital Fairness Act

Perspectives from the Lotteries and Gambling Sector

April, 2026

Executive Summary

The European Lotteries welcome the objective of strengthening fairness and transparency in digital markets. Consumers must be effectively protected against manipulative online practices, including exploitative digital design and misleading commercial communication.

At the European Union level, several horizontal legislative instruments already address many of these concerns. Frameworks such as the Unfair Commercial Practices Directive, the Audiovisual Media Services Directive, the Digital Services Act and the General Data Protection Regulation establish rules on consumer protection, advertising, transparency and the use of personal data in digital markets. These operate alongside national consumer protection frameworks that provide additional safeguards. In the gambling sector, these horizontal rules are further complemented by comprehensive sector-specific ones.

The jurisprudence of the Court of Justice of the European Union (CJUE) recognizes that the gambling sector constitutes an economic activity of a particular nature, allowing Member States to restrict and organize it in pursuit of objectives such as consumer protection, fraud prevention and the safeguarding of public order. It also acknowledges that national regulatory approaches are necessary to reflect and accommodate moral, cultural and religious differences across Member States. As a result, gambling sector is primarily regulated at national level, with Member States having established robust frameworks that typically include licensing systems, strict operational requirements, advertising restrictions and responsible gambling obligations, in line with the principle of subsidiarity and national societal considerations. In this context, certain games may be prohibited or subject to particularly strict regulation at national level. Where such approaches are not excessively restrictive, they are supported by the established case-law of the CJUE.

The specificity of the sector is further reflected in EU secondary law, as gambling activities are explicitly excluded from the scope of both the Services Directive and the E-Commerce Directive.

While certain digital fairness concepts expected to be addressed by the forthcoming Digital Fairness Act may not exist as standalone legal categories, they are already effectively covered through the combined application of European Union horizontal legislation, national rules and sector-specific regulation. Against this background, The European Lotteries underline that – for the gambling sector – the key challenge lies not in the absence of regulatory rules, but in ensuring effective enforcement of existing European Union and national frameworks.

The European Lotteries therefore encourage the European Commission to exclude lotteries and gambling services as such from the scope of the Digital Fairness Act. Applying additional horizontal obligations to a sector that is already comprehensively and specifically regulated risks creating legal uncertainty and overlap with well-established national frameworks. Furthermore, a one-size-fits-all approach would not be appropriate for a sector that requires tailored regulation reflecting diverse national moral, cultural and religious contexts. Despite the Commission's objective to enhance consumer protection, such an approach could ultimately have the opposite effect, undermining the effectiveness of existing safeguards rather than strengthening them.

1. Comprehensive Legislative Framework in Place: Focus on Effective Enforcement

The European Lotteries (EL) welcome the objective of strengthening fairness and transparency in digital markets. Consumers must be effectively protected against manipulative online practices, including exploitative digital design and misleading commercial communication. Ensuring a high level of consumer protection – both online and land-based – is a core priority for EL.

At the European Union (EU) level, an extensive horizontal legislative framework already provides robust tools to address many of these concerns, including in relation to the gambling services. The Unfair Commercial Practices Directive[1] prohibits misleading and aggressive practices that distort consumers' economic decision-making. The Audiovisual Media Services Directive[2] introduces specific safeguards for commercial communications. The Digital Services Act[3] establishes obligations for online platforms, including advertising transparency and the mitigation of systemic risks in digital environments. In parallel, the General Data Protection Regulation[4] sets strict conditions for the processing of personal data, including profiling and targeted advertising practices.

These horizontal instruments operate alongside national consumer protection frameworks, which are directly applicable to operators in the gambling sector.

They are further complemented by detailed national gambling regulations specifically designed to address the risks associated with gambling activities. Across the EU, such frameworks typically include strict licensing systems, responsible gambling obligations, limitations on marketing practices, player protection tools such as spending limits and monitoring mechanisms, as well as targeted measures to protect minors and vulnerable consumers.

Taken together, this multi-layered framework already addresses, in a comprehensive manner, many of the practices currently discussed in the context of digital fairness. Against this background, the key challenge for the gambling sector lies not in the development of additional regulatory instruments, but in ensuring the effective application and enforcement of existing rules — particularly in the digital environment, where illegal operators can bypass national licensing, consumer protection, anti-money laundering and other requirements to reach consumers across borders. These efforts also rely on existing EU instruments facilitating cross-border enforcement and cooperation.[5]

2. The Particular Nature of Gambling and the Principle of Subsidiarity

Gambling services occupy a particular place within the European regulatory landscape. The CJUE has consistently recognized that gambling constitutes an economic activity of a particular nature,

[1] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (OJ L 149, 11.6.2005, p. 22).
[2] Directive 2018/1808/EU of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities (OJ L 303, 28.11.2018, p. 69).
[3] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).
[4] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).
[5] Including, inter alia, the Brussels I Regulation (jurisdiction and enforcement of judgments) and the Rome I Regulation (law applicable to contractual obligations).

reflecting the specific risks associated with it and its broader societal implications[6]. Furthermore, the Court recognizes that free competition in the gambling sector is detrimental to the consumer.[7] On this basis, Member States retain broad discretion to organize their national gambling markets and to determine the level of protection they consider appropriate. This specific legal treatment is also reflected in EU secondary law, as gambling activities are excluded from the scope of both the Services Directive[8] and the E-Commerce Directive[9].

Given the subsidiarity principle (article 5(3), (4) of the TUE), such sector has been considered unsuitable for EU legislation. Indeed, it is for Member States to determine what consumer protection and the preservation of public order require in accordance with their own values. Due to differences existing in terms of specificities in the gambling sector within Member States and to the lack of harmonization at EU level, Member States have so far regulated gambling through their own national framework with coherent policies that are subject to judicial control.

As a result, the gambling sector in the EU is primarily regulated at national level. Member States have established comprehensive frameworks covering both online and land-based activities, typically including strict licensing regimes, detailed operational requirements, advertising restrictions, consumer protection measures and extensive supervisory powers for competent authorities.

In particular, it enables them to take into account differing moral, cultural and religious considerations, while balancing key policy objectives such as consumer protection, the prevention of gambling-related harm and the fight against illegal operators[10].
Within this broader sector, different types of gambling activities and regulatory models coexist. Some Member States operate licensing systems open to multiple operators, others maintain monopoly-based approaches, while some combine elements of both. In this context, lotteries occupy a distinct position. Typically operating under close state oversight or specific mandates, they are associated with lower-risk products, lower wages and a bigger pool of players centered on offering controlled and responsible participation opportunities. Beyond that, lotteries are a powerful engine for the public good. In 2025 alone, €29,4 billion in lottery revenues were channeled back into society[11] — funding culture, sport, health, education and community projects across Europe.

This diversity reflects long-standing national policy choices and regulatory traditions. It also underlines the importance of preserving a regulatory framework that allows for differentiation and targeted approaches within the sector.

For lotteries, the President of the Court of Justice has even taken the view that there is a "*Union* law *on lotteries*" based on its specific nature with cultural, religious and moral differences amongst Member

[6] Case C-275/92, Her Majesty's Customs and Excise v Gerhart Schindler and Jörg Schindler, EU:C:1994:119, judgment of 24 March 1994, para. 59. The Court confirmed that lotteries and games of chance constitute an economic activity within the meaning of the Treaty, while recognizing their peculiar nature in light of the moral, religious and cultural aspects associated with gambling across Member States. This characterization has been consistently reaffirmed in subsequent case law; see, inter alia, Case C-243/01, Piergiorgio Gambelli and Others, EU:C:2003:597; Case C-338/04, Massimiliano Placanica and Others, EU:C:2007:133; Case C-258/08, Ladbrokes Betting & Gaming Ltd and Ladbrokes International Ltd, EU:C:2010:308.
[7] Judgment of 19 December 2018, Stanley International Betting and Stanleybet Malta, C-375/17, para 48.
[8] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).
[9] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1).
[10] Ibid Placanica C-258/08 para. 46-47 and Case Läärä and others C-124/97 ECLI: ECLI:EU:C:1999:435, para. 32.
[11] https://www.european-lotteries.org/news/european-lotteries-deliver-record-eu294-billion-society

States. He recognized that "*Lotteries are not only part of Europe's cultural heritage; they also play a role in shaping Europe's social fabric*".[12]

Against this background, any future EU initiative on digital fairness should carefully take into account this well-established architecture and the competence of Member States in the organization and regulation of lotteries and gambling markets.

3. Mapping of Existing Regulatory Frameworks Relevant to Digital Fairness

In light of the policy debate surrounding the upcoming Digital Fairness Act, EL has reviewed digital commercial practices frequently cited by the European Commission, European Parliament, national authorities, stakeholders and in reports, hearings, consultations and other relevant sources up to date. The purpose of this overview is to provide a factual mapping of how these practices are currently addressed within existing regulatory frameworks across Member States in the gambling sector. In many cases, these practices are not regulated through dedicated legal categories. Instead, they are typically addressed through a combination of horizontal EU and national legislation, together with vertical national gambling regulation and sector-specific safeguards.

3.1. Dark Patterns / Manipulative Design

Practices commonly described as "dark patterns" are generally addressed through consumer protection and advertising frameworks rather than through explicit references to interface design.

Across Member States, the main legal basis stems from national laws implementing the Unfair Commercial Practices Directive, which prohibit misleading or aggressive commercial practices that distort consumers' economic decision-making. Within this framework, authorities may intervene where digital design elements misrepresent key information, create artificial urgency, obscure relevant choices (such as subscription cancellation) or otherwise exert undue pressure on users. As a result, manipulative design techniques are typically assessed through their effect on consumer autonomy and transparency rather than through specific technical definitions. These principles are then often complemented by sector-specific safeguards embedded in national licensing regimes. These may include obligations relating to transparency of odds, responsible gambling messaging, protection of minors and vulnerable consumers and restrictions on advertising content or placement. Some jurisdictions rely heavily on such targeted safeguards, while others apply broader public-policy approaches.

3.2. Addictive Features

Regulatory responses to design elements that may encourage excessive engagement generally focus on behavioral outcomes rather than on prohibiting specific technical features. National frameworks typically rely on responsible gambling obligations, advertising standards and consumer protection rules to prevent commercial practices that encourage excessive play or exploit consumer vulnerability. Across several jurisdictions — including Germany, Spain, Portugal, Hungary and Belgium — legal provisions prohibit commercial communications that portray gambling as a financial solution, exert social pressure to play or target vulnerable consumers. These principles can extend to digital environments where product design or messaging creates similar effects. In some countries, regulation also introduces operational safeguards intended to mitigate the risks associated with intensive play. Examples include mandatory breaks, spending limits, time-tracking tools or self-exclusion mechanisms

[12] See article in Journal de droit européen 'Les loteries et la jurisprudence de la Cour de justice de l'Union européenne', K. Lenaerts, October 2024, No 312.

integrated into online gambling platforms. Spain and the Czech Republic provide examples where certain specific design or operational elements — such as representations of "near-miss" outcomes or restrictions related to high-risk players — are addressed more explicitly.

3.3. Loot Boxes / Pay-To-Win Mechanisms

The legal treatment of loot boxes and similar monetization mechanisms remains diverse across Member States. There is no consensus to regulate loot boxes as gambling. Most jurisdictions assess these mechanisms through existing gambling legislation or consumer protection frameworks rather than regulating them as a separate category. The central legal question generally concerns whether the mechanism fulfils the traditional elements of gambling: a stake, an element of chance and the possibility of obtaining a prize with monetary value. In many cases, the decisive factor is whether virtual rewards can be converted into real-world value. Where such conversion is not possible, regulators often conclude that the activity falls outside gambling legislation. This approach can be observed in countries such as France, Germany, the Czech Republic, Poland, Finland and Italy, where loot boxes are generally treated as digital consumer products rather than gambling services, although the issue continues to attract regulatory attention. A smaller number of jurisdictions have adopted more interventionist interpretations. Belgium, for example, classifies certain paid loot boxes as games of chance when they involve a stake, chance and the possibility of gain, making them subject to gambling regulation. Spain is developing a regulatory framework focusing particularly on the protection of minors through transparency and age-verification requirements.

3.4. In-App Currencies

In-app or virtual currencies are generally regulated according to their economic function rather than their technological form. Across Member States, they may fall under different legal frameworks depending on how they are used: gambling legislation when functioning as a stake or prize, financial regulation when resembling electronic money or crypto-assets or consumer protection rules when used to purchase digital services. In the specific context of gambling sector, several jurisdictions — including Germany, Portugal, Hungary and the United Kingdom — limit acceptable payment methods to legal tender. This approach effectively excludes the use of virtual currencies without requiring specific regulation of the currency itself. Where virtual currencies are addressed more explicitly, regulation often arises from broader financial or digital-market legislation rather than gambling law. Italy and Spain, for example, examine the issue through crypto-asset and financial regulatory frameworks, while the Czech Republic applies a combination of consumer protection, payment services regulation and EU-level digital finance rules. Belgium illustrates a different regulatory trigger: where a virtual currency is used to obtain randomized rewards with economic value, the activity may fall within the scope of gambling regulation.

3.5. Unfair Personalization Practices

Personalized marketing and algorithmic targeting are typically governed through the combined application of consumer protection law, gambling regulation and data protection rules. Across Member States, national consumer protection frameworks derived from the Unfair Commercial Practices Directive prohibit marketing practices that exploit consumer vulnerability or mislead users about the nature of an offer. In parallel, the General Data Protection Regulation provides the horizontal framework governing profiling, automated decision-making and consent for targeted advertising. Within the gambling sector, several jurisdictions introduce additional safeguards tailored to player protection objectives. Countries such as Spain, Germany, Italy and Finland restrict or prohibit personalized marketing directed at minors, self-excluded individuals or consumers identified as being

at risk of harmful gambling behavior. Some regulatory frameworks also require operators to verify exclusion registers before sending promotional communications.

3.6. Misleading Marketing by Online Influencers

Influencer marketing is increasingly treated as a form of commercial communication subject to the same transparency requirements as traditional advertising. Across Member States, national consumer protection and media laws — often implementing the Unfair Commercial Practices Directive and the Audiovisual Media Services Directive — require that promotional content be clearly identifiable. The core regulatory principle is disclosure: where influencers receive payment, gifts or other forms of consideration, the commercial nature of the content must be made explicit to audiences. Failure to do so may constitute misleading advertising or a deceptive commercial practice. Some countries have begun introducing more explicit regulatory frameworks addressing influencer activity. France and Italy, for example, have adopted rules clarifying disclosure obligations and enforcement mechanisms, while other jurisdictions rely primarily on existing consumer protection provisions and regulatory guidance. In the gambling sector, influencer promotion is typically treated as standard advertising and therefore subject to additional safeguards, including restrictions on targeting minors and requirements for responsible gambling messaging.

3.7. Kidfluencers

The regulation of child influencers remains uneven across Member States. In most jurisdictions, the phenomenon is addressed indirectly through a combination of child labor rules, audiovisual media regulation and consumer protection provisions rather than through dedicated legislation. A limited number of countries have begun to regulate the issue more explicitly. France has introduced specific legislation governing the commercial use of children's online content, while Spain has incorporated influencer activity into its audiovisual regulatory framework. In the gambling sector, however, national advertising rules generally produce a clearer outcome. Most Member States prohibit gambling advertising that targets or features minors, effectively excluding the use of child influencers in promotional activity. Countries such as Spain, Finland and the Czech Republic explicitly prohibit commercial communications directed at persons under 18. Other jurisdictions reach similar results through broader restrictions, such as Italy's comprehensive ban on gambling advertising or strict participation age limits in countries like Portugal.

3.8. Unfair Pricing Practices

Pricing practices in the gambling sector are primarily governed through general consumer protection law rather than through sector-specific price regulation. National laws implementing the Unfair Commercial Practices Directive address issues such as misleading price comparisons, hidden fees or incomplete price information. Under this framework, operators must ensure that the total price of a product or service is clearly presented and that promotional claims regarding discounts or price advantages are accurate. Enforcement typically falls within the competence of national consumer protection or competition authorities. Some Member States complement these general rules with additional safeguards linked to responsible gambling objectives or digital transparency. Germany, for example, frames pricing conduct within broader policy objectives related to preventing excessive incentives to gamble. The Czech Republic combines consumer protection provisions with gambling-specific disclosure obligations. More recently, Spain has strengthened transparency requirements for digital services, including obligations to inform consumers where prices are personalized through automated decision-making.

3.9. Issues with Digital Contracts

Concerns related to digital contracts — such as difficult cancellation procedures, automatic subscription renewals or unclear contractual terms — are typically addressed through a combination of consumer protection law, contract law principles and sector-specific gambling regulation. Across many Member States, rules implementing EU consumer legislation establish requirements for clear pre-contractual information, fair contractual terms and the possibility for consumers to exercise their rights without unreasonable barriers. Within this framework, design practices that obscure cancellation procedures or mislead consumers about contractual conditions may be treated as unfair commercial practices. In the gambling sector, several jurisdictions complement these general principles with operational requirements. Examples include obligations to allow players to close gaming accounts easily and to withdraw remaining balances without unnecessary delays. Some countries have introduced more explicit procedural safeguards. Spain, for instance, requires advance notice before subscription renewals and ensures that consumers have access to human customer support rather than relying exclusively on automated systems.

4. Call for Sector-Specific Exclusion

The gambling sector in Europe is recognized as an economic activity of a peculiar nature by the Court of Justice of the EU. It is primarily regulated at national level in line with the principle of subsidiarity, with Member States retaining broad discretion to determine the level of protection sought, in accordance with established case law. This approach is also reflected in the secondary EU legislation, including the Services Directive and the e-Commerce Directive, which explicitly exclude gambling activities from their scope.

The sector is subject to a comprehensive regulatory framework, combining EU and national horizontal legislation with detailed sector-specific gambling rules. These rules already address many of the issues currently discussed in the context of digital fairness, including manipulative design practices, marketing transparency, personalized advertising and consumer protection in digital contracts.

For the sector, the key challenge thus lies not in the absence of rules but in ensuring their effective enforcement. Introducing additional horizontal obligations risks overlap, legal uncertainty and could inadvertently weaken the safeguards already in place. More importantly, a one-size-fits-all approach would not allow for the necessary tailoring of rules to reflect differing cultural, moral and religious considerations across Member States and could ultimately undermine rather than enhance consumer protection, despite the best intentions.

Against this backdrop, EL strongly encourages the exclusion of lotteries and gambling services as such from the upcoming Digital Fairness Act.

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About The European Lotteries Association

The European Lotteries Association ("EL") is the European umbrella organization of entities operating national lotteries and other games of chance, including sports betting. The Members of EL are operating their services for the public benefit. EL is the largest and most representative lottery and gambling sector's organization in Europe, present in 39 European countries with a total of 70 Members, including all EU Member States (50 Members are in the EU and 20 not). EL stands for the sound and sustainable activity model for the benefit of society, based on the values of forward-thinking, responsibility and integrity. EL Members only operate in those jurisdictions in which they are licensed by the state and where they comply with the legal requirements (e. g. anti-money laundering, responsible gaming policies, etc.) and act as the most responsible operators in each jurisdiction. It is estimated that around half of the European adult population annually participates in the games that are offered by the EL Members.

In 2025, EL Members contributed €29,4 billion to good causes and societal initiatives, reinforcing their core mission: generating funds for public benefit through safe and responsible games of chance.

For more information about EL please see here.

EL MANIFESTO – LOTTERIES IN EUROPE:
AT THE SERVICE OF THE COMMON GOOD

Further questions? Feel free to contact us!

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Registration on EU Transparency Register: 97609783845-15

April 2026