THE EUROPEAN LOTTERIES
FOR THE BENEFIT OF SOCIETY

# The European Lotteries' Response to the European Commission's Public Consultation on the Digital Fairness Act

*The European Lotteries Association ("EL") welcomes the opportunity to contribute to the European Commission's public consultation on the future Digital Fairness Act ("DFA"). EL is the umbrella organization for state-owned and state-licensed lotteries in Europe that operate in the public interest. They provide their services within strictly regulated and responsible frameworks that prioritize consumer protection while generating substantial funding for society — supporting public health, education, culture, sport and other good causes. In 2024 alone, these contributions amounted to €24 billion. This unique "lottery-for-the-common-good" model[1] distinguishes EL Members from purely commercial operators and underscores their role as safe, trusted and socially beneficial entertainment providers. Against this background, EL wishes to highlight several key considerations from the lotteries' perspective that we believe should be taken into account when designing the DFA.*

Since 2018, one of the core guiding principles of the EU's digital policy has been that *"what is illegal offline is also illegal online"*[2]. In the *Digital Compass for a Digital Decade*[3] from 2021, the Commission stressed that "*digital transformation should also enable modern and efficient justice systems, enforcement of consumer rights and an increased effectiveness of public action including law enforcement and investigation capacities*". The fight against illegal content online was then further enshrined in particular in Regulation 2022/2065 of 19 October 2022 on a Single Market for Digital Services ("DSA").

Building on this, the DFA will now aim to "*tackle unethical techniques and commercial practices related to manipulative interface design (dark patterns), misleading marketing by social media influencers, addictive design of digital products and online profiling, especially where consumer vulnerabilities are exploited for commercial purposes*".

**EL supports the goals of these initiatives and acknowledges the DFA as a step forward in protecting consumers online, especially vulnerable users and minors. However, many of these goals can already be achieved by better enforcing existing laws. Any new rules should be proportionate and respect national competences.**

## The DFA in the Context of Gambling

**Gambling is recognized as a sector that requires tailored national regulation.** The Conclusions of the Edinburgh European Council of 1992 and consistent case-law of the Court of Justice of the EU ("CJEU")[4] explicitly confirm that Member States are best placed to regulate gambling according to their specific social, cultural and public health needs.

[1] *See also for the cultural and social role of lotteries: European Law Journal, 2024, Journal des Tribunaux - Droit Européen; 2024; iss. 312; pp. 374 - 381, Les loteries et la jurisprudence de la Cour de justice de l'Union européenne by Koen Lenaerts.*
[2] *Commission Recommendation (EU) 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online.*
[3] *2030 Digital Compass: the European way forward, 9.3.2021 COM (2021) 118 final.*
[4] CJUE, 24 March 1994, *Schindler,* C-275/92; CJUE, 6 March 2007, *Placanica*, joined cases C-338/04, C-359/04 and C-360/04; CJEU, 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International,* C-42/07.

Consumer protection and public order are the two fundamental pillars of any national gambling regulation. The exclusion of gambling from both the E-Commerce Directive and the Services Directive reinforces this approach, as the "home country control" rule does not apply to this sector. Indeed, the exclusion of "gambling activities" stems from the fact that the gambling sector is not harmonized and that the CJEU has clarified that there is no mutual recognition of authorizations in the sector (*Markus Stoß* C-316/07, para. 112).

**The DFA should respect the subsidiarity principle and back any existing national frameworks to tackle harmful digital practices. In this regard, EL would favour guidelines, clarification and simplification of existing rules and better implementation of them, over new binding legislation.**

## Tackling Illegal Gambling Operators to Protect Consumers Online

**EL underlines the necessity for the DFA to take into consideration the special nature of regulated online gambling operated by lotteries that have consumer protection at their very core.**

It is recognized that online games of chance[5] pose different and more substantial risks of fraud by operators against consumers compared to the traditional – offline – markets, largely due to the lack of direct contact between the consumer and the operator.[6] At the WTO level, analyses have also confirmed that **online gambling carries higher risks than offline gambling**[7].

Further to this, it is important to assess the specific risks associated with the type of online games – online lottery tickets being different than other online games of chance or gambling[8].

The main threat to consumer safety stems from illegal online gambling operators who provide services without the required national licenses in the country of the consumer. These operators evade taxation and anti-money laundering obligations, deploy manipulative design features and deceptive advertising and frequently target vulnerable groups, including minors and self-excluded players (called the strategy of vulnerability victimization). Such practices create risks of addiction, fraud and social harm.

**EL is of the opinion that the DFA should complement the DSA by compelling online platforms to verify the licensing status of gambling operators and their advertisers. This could include introducing clear verification indicators to distinguish licensed operators from unlicensed ones, as well as requiring the swift removal of illegal gambling content and advertising flagged by regulators or trusted flaggers. In addition, national authorities should be provided with effective and innovative tools to disable the infrastructure of illegal operators.**

Beyond the technical aspects used by illegal gambling operators to cheat players, respect for the rule of the law should be enforced against Member States that ignore consumer's rights as we have seen in recent consumer cases about reimbursement claims introduced by German and Austrian consumers for losses incurred with online gambling operators based and licensed in Malta. These cases highlight how illegal gambling affects consumers across the EU.

The UN Office on Drugs and Crime (UNODC) estimates that illegal gambling — mostly illicit betting markets — amounts to approximately USD 1,700 billion per year, covering bets placed in unauthorized,

[5] CJEU, 12 September 2024, *Casino de Spa and Others vs Etat belge,* C-741/22, para. 44.
[6] CJEU, 8 September 2010, *Carmen Media Ltd*, C-46/08, para. 100.
[7] DS285: United States - Measures Affecting the Cross-Border Supply of Gambling and Betting Services.
[8] CJEU, 12 September 2024, *Casino de Spa and Others vs Etat belge,* C-741/22, para. 44.

unregulated or illicit markets[9]. Under EU law, illegal gambling does not benefit from consumer protection, as confirmed by the CJEU. This was further noted in a recent Opinion at the CJEU, which found that no abuse of EU law is established when a consumer claims for reimbursement of illegal online games losses played in another Member State[10].

Finally, the CJEU acknowledged the theory of controlled expansion as a means to protect consumers in the gambling sector[11]. Expanding games may be justified where illegal activities are significant in scale and regarding the circumstances. In this context, the aggressive advertising practices of private actors promoting illegal gambling content – as well as their use of new media on internet platforms – must be taken into account.[12] EL notes the emergence of such "private advertisers in favor of illegal activities", in some Member States, and stresses the need to ensure that these advertisers and third-party platforms comply with EU digital consumer rules.

Taken together, these developments demonstrate the intersection of digital regulation and consumer protection in gambling. **The DFA should support strong consumer protection through Member States' regulations on gambling. At the same time, there is also a responsibility of the European Commission to ensure that digital rules – in particular the DSA and the upcoming DFA – are effectively applied in specific sectors such as gambling.**

EL has also observed that dominant intermediaries (VLOPs and VLOSEs) often engage in business models that go beyond simple hosting, including commercial agreements and the sale of metadata to third parties. Such activities cannot be exempted under Article 14 of the E-Commerce Directive.

**EL therefore reiterates the responsibility of large platforms to act responsibly in this context.**

## Responsibility of Intermediary Services

All actors in the digital environment bear responsibility. In the gambling context, this means both operators of gambling services and intermediary services – in particular dominant online platforms (VLOPs and VLOSEs) – that host or market gambling content (e.g., Google, Apple, Meta).

While gambling is excluded from the E-Commerce Directive as a service, the responsibility of online platforms – whether as intermediaries or hosts – still applies in the context of gambling.[13] The DSA also explicitly acknowledges Member States' competence in addressing illegal gambling content (Recitals 31–32) but does not exempt intermediaries from liability for such content. Accordingly, **intermediary services remain responsible for promoting gambling, including illegal gambling websites, applications featuring gambling activities or any gambling-related content that is not the service itself. Effective consumer protection requires clear rules and robust enforcement at both national and EU levels, with dominant platforms actively participating in efforts to fight illegal gambling.**

Furthermore, EL welcomes the key role that the DSA plays in supporting these protections. In particular Articles 9 ("Orders to Act against Illegal Content"), 16 ("Notice and Action Mechanism"), 25 ("Online Interface Design and Organisation"), 26 ("Advertising on Online Platforms") and 28 ("Online Protection

[9] *Global Report on Corruption in Sport*, UNODC (2021).
[10] Opinion of AG Emiliou on 4 September 2025, Case C-440/23 – *FB v European Lotto and Betting Ltd, Deutsche Lotto Und Sportwetten Ltd.*
[11] CJEU, 6 March 2007, *Placanica*, C-338/04, para. 55 and EFTA Court, 30 May 2007, *Ladbrokes v. Norway*, E-3/06, para. 87.
[12] Order of the Court, May 2021, case C-920/19, *Fluctus and Fluentum*, para. 52-53.
[13] A preliminary ruling at the Court of Justice is pending regarding the responsibility of Google for allowing illegal gambling advertising on YouTube in Italy (C-421/24, *Google/AGCOM*).

of Minors"). EL also supports the Guidance for Platforms under Article 28, the Guidelines on the Protection of Minors Online and the age-verification tool. Given the specific risks that online gambling poses to consumers — especially minors — EL is committed to ensuring that access to gambling content complies fully with EU digital rules. The effectiveness of measures such as the European Digital Identity Wallet and protections for minors, however, will depend on all operators adhering to the rules consistently.

## Addressing Wider Digital Risks: Loot Boxes

The DFA expressly refers to loot boxes as digital products that require more transparency concerning the odds of winning when buying virtual items with uncertainty-based rewards. The contemporary digital environment also exposes consumers to new risks such as in-game purchases and loot boxes. While loot boxes are not considered gambling unless items can be sold for real money, they nevertheless raise consumer protection concerns. These are best addressed with gaming-specific safeguards, without extending gambling legislation. Game publishers should design such features responsibly, with the protection of minors as a priority.

Globally, several jurisdictions have intervened to control loot boxes, some applying gambling laws and others implementing more general rules framed as "consumer protection". A study by the European Parliament recommended that loot boxes and in-game purchasing systems be regulated from a *"consumer protection"* perspective.[14] The *Digital Fitness Check* of October 2024 by the European Commission also acknowledges that digital addiction – including in connection with loot boxes – poses a threat to the most vulnerable consumers.

The European Commission suggests more transparency regarding loot box mechanisms or even the default disabling of in-game payments and loot boxes.[15] IMCO also calls on the Commission to ensure that the forthcoming DFA provides strong protection for minors who play video games, particularly by banning loot boxes, as well as other forms of randomized content offered in exchange for real money in games accessible to minors[16].

**EL supports these developments and advocates for a national-level definition of what constitutes gambling, including determining whether loot boxes should be governed by gambling laws or consumer protection rules.**

EL also notes that a preliminary ruling in the Apple Distribution case (Loot boxes in the App Store in Belgium) was withdrawn after Apple settled the case out of Court with the consumer protection public authorities[17]. It illustrates that digital platforms can bear responsibility regarding access to loot boxes.

At the same time, aggressive digital advertising practices – particularly via social media, influencers and through fake reviews – allow unlicensed operators to reach consumers outside regulated systems. Lotteries, by contrast, operate under strict rules that prohibit manipulative design practices and ensure close national supervision, including pre-launch product reviews, advertising codes and advanced player protection systems. **The DFA should help close enforcement gaps while avoiding unnecessary EU-level harmonization in sectors that are already highly regulated.**

[14] *Loot boxes in online games and their effect on consumers, in particular young consumers*, EP study May 2020.
[15] Commission Fitness Check of EU consumer law on digital fairness, 3.10.2024, SWD(2024) 230 final, p.133.
[16] Ibid 2025/2081(INI), draft Opinion of IMCO to CULT, 02 October 2025, Amendment 85, para 13 k (new).
[17] Order of the Court of 26 May 2025, C-47/25

## Protecting Minors Online

The digital world in which minors are immersed today represents increased risks. Some research points to Generation Z and Generation Alpha as experiencing heightened mental health and social challenges, due in particular to the extensive digital environment and certain platform practices. These generations face issues related to technological change and a sense of isolation while being constantly connected through multiple devices and platforms.

Licensed lotteries provide some of the strongest consumer protections in Europe. They operate under strict national rules, including robust age verification and player identification checks, spending limits, self-exclusion schemes and extensive monitoring obligations. Advertising and digital offerings are closely supervised by national authorities and lotteries are independently certified under internationally recognized responsible gaming standards, including EL's own framework. These measures ensure safe play, transparency in odds and risks and sustainable operations that directly benefit society.

**The responsibility and accountability of digital platforms in protecting minors is central to ensuring EU values, trust and safety online.**

The impact of gambling on health and social care can be significant, although legal gambling offers substantial benefits when properly managed. Digital platforms should also take responsibility, especially for illegal activities, which are the most harmful to consumers.

**Therefore, EL emphasizes that future EU measures – including the DFA – should remain proportionate and targeted. Operators already subject to demanding national rules should not face redundant obligations or additional administrative burdens. Simplification and proportionality should be guiding principles for the DFA.**

**EL supports the Commission's objectives of strengthening enforcement, improving transparency and tackling manipulative digital practices, which are essential to protect consumers in the online environment while at the same time, gambling regulation must remain exclusively a national competence.**

## Conclusion

Lotteries already provide a high level of consumer protection and play a unique societal role under the "lottery-for-the-common-good" model. The upcoming DFA presents an important opportunity to further strengthen consumer protection in the digital environment while ensuring coherence with existing frameworks and national responsibilities. EL calls for measures that give Member States stronger tools to act against illegal gambling websites and advertising, ensure platform accountability to prevent unlicensed operators from reaching EU consumers and reinforce consumer protection while respecting national competence.

EL also emphasizes the need for strong enforcement of the DFA, alongside existing rules — in particular the DSA — in the context of gambling and highlights the responsibility of digital platforms (VLOPs and VLOSEs) in fighting illegal operators.

EL and its Members stand ready to cooperate with the European Commission to ensure that the DFA delivers tangible benefits for consumers, protects the integrity of regulated markets and sustains the vital contributions of national lotteries to society.

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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 2024, EL Members contributed €24 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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