

**EUROPEAN COMMISSION PUBLIC
CONSULTATIONS ON THE DIGITAL
SERVICES ACT PACKAGE**



**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.

Since the start of the COVID-19 pandemic, EL Members across Europe have been instrumental in supporting local communities – from offering relief and funding medical equipment to the creation of emergency funds and welfare aid. This upholds national lotteries’ historic support and benefit to society in times of need.

For more information please see:

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

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

The European State Lotteries and Toto Association (“EL”) appreciates the opportunity to share its views with regard to the European Commission’s (“Commission”) efforts in assessing the rules currently regulating online platforms and other digital services in the EU.

In its submission, EL would like to draw Commission’s attention to the following related key points from the perspective of the legal lotteries and gambling sector.

1. Given that **gambling services are economic activities of a particular nature**, overriding reasons of general interest such as the protection of consumers and minors, the preservation of public order, the fight against addiction and the combat of fraud have justified restrictions to the rules of the Internal Market and the fundamental freedoms enshrined in the EU Treaties. Due to their specific nature and the risks that gambling can present, the sector is regulated in strict observance of the subsidiarity principle, whereby EU Member States are deemed to be best placed to regulate the sector, to set their own objectives and to define the modalities of achieving such objectives in accordance with the extensive case law of the Court of Justice of the EU.

This was **repeatedly recognised** by different EU institutions – **the European Parliament¹, the Council of the EU²**, as well as by the extensive case-law (more than 70 rulings) of the **Court of Justice of the EU** whereby 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”³.

Member States may therefore submit the operations of gambling to a prior authorisation scheme, prohibit some forms of betting and gambling and grant exclusive rights or licenses, depending on their assessment of the domestic situation and their own scale of values. In addition, where services are allowed to move freely within the internal market based on the country of origin principle, the Court of Justice has explicitly denied the application of the principle of mutual recognition in the field of gambling, meaning that a Member State must not recognise the controls and rules set in place by another Member State, nor the gambling licenses granted in other jurisdictions⁴.

These reasons account for the absence of harmonisation within the European Union and the fact that there is no sector-specific EU legislation on gambling. EL considers this approach to be both legitimate and justified today. In consequence, **the lotteries and gambling sector is currently explicitly excluded from the scope of the Directive on electronic commerce. EL calls for this exclusion to be maintained in the future Digital Services Act.**

2. EL welcomes the Commission’s possible forthcoming provisions within the future Digital Services Act on content moderation/notice-and-action rules and reiterates the importance of tackling illegal gambling services at the national level, for consumer protection and public order purposes.

The increasing availability and spread of illegal goods, services and content is a serious threat to the safety of EU consumers. The lotteries and gambling sector in particular face unregulated and illegal operators which tend to be licensed in a single EU Member State or outside the EU while offering their products online to players located in multiple EU Member States. This practice is to be considered illegal, as there is **no mutual recognition of licenses in the gambling sector within the EU⁵**. In most cases these unregulated and illegal operators do not

¹ [European Parliament Resolution on online gambling in the Internal Market 2013](#)

² [Council Conclusions 1992](#), [Council Conclusions 2010](#)

³ Judgment of 6 March 2007, *Placanica and Others*, C-338/04, C-359/04 and C-360/04, Judgment of 6 November 2003, *Gambelli*, C-243/01

⁴ Judgment of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International*, C-42/07

⁵ Judgment of 8 September 2010, *Markus Stoß*, [C-316/07](#).

obtain any authorisation by the respective national authorities of the Member States of the player to provide their services. Such operators also tend not to comply with the requirements set up by the national legislation applicable in the Member States of their players with regard to consumer protection, anti-money laundering, taxation matters, etc., nor do they contribute to public good or specific charities. These illegal operators therefore do not only represent unfair competition to the operators authorised to provide their services in these Member States, but also undermine national efforts in the field of consumer protection, public order and they end up challenging the fundamental legal principles of sovereignty and public policy.

EL members offer their services only in those jurisdictions in which they are authorised to do so by the respective competent authorities. The legality of gambling services is actually subject to the conditions that the concerned games or forms of gambling are authorised by the legislation applicable in the country of destination of those services, and that the operator is granted the authorisation required by the same legislation for proposing them in this jurisdiction. Moreover, as the lotteries and gambling sector is not regulated at the EU level, what precisely is to be considered as **illegal gambling can only be defined according to the national regulatory frameworks, as any gambling activity is illegal if it is not allowed and licensed in accordance with the applicable laws and regulations of the jurisdiction where the player is located.**

All EU Member States should however adhere to the loyal cooperation principle requiring of its license-holders to take full account of the legal regimes of other Member States and do not offer their services where they are not licensed by the respective national authorities.

EL members which offer their services only in those jurisdictions in which they are authorised to do so by the respective national authorities are committed to addressing illegal gambling practices and related criminal activities while minimising any potential harm to society and vulnerable groups. Even if gambling services were to be excluded from the scope of the future Digital Services Act, EL supports the **notice-and-action procedures to be applicable to intermediaries providing their services to illegal gambling operators, as defined by their national law. However, it should not diminish or in any way restrict any possibilities currently at disposal to the Member States to act against illegal gambling.** EU Member States are the sole instances to define how the enforcement measures against illegal gambling should be implemented.

3. EL also encourages the Commission's proposals to address further the issue of large platforms acting as gatekeepers in their relationships with business customers, among which lottery and gambling operators. Despite the adoption of the [Regulation on promoting fairness and transparency for business users of online intermediation services \(2019/1150\)](#), the final text thereof seems insufficient to ensure that balance, transparency and fairness always

prevail, to the benefit of the consumers. In line with our previous observations, legal offers of betting and gambling should be largely available to consumers to counter the illegal ones.

In line with the aforementioned, EL would like to encourage the Commission to continue taking into account the specificities of the lotteries and gambling sector (i.e. national level regulation and supervision) also in their work on the future Digital Services Act and any legislative or other initiative stemming therefrom.

This submission is without prejudice to possible individual submissions of EL members.

EL remains at disposal of the European Commission for any further information and/or explanation.

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