

EUROPEAN COMMISSION
CONSULTATION ON REGULATORY
ENVIRONMENT FOR PLATFORMS,
ONLINE
INTERMEDIARIES, DATA AND CLOUD
COMPUTING AND THE
COLLABORATIVE ECONOMY

**THE EUROPEAN LOTTERIES (EL)
SUBMISSION**

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INTRODUCTION

The European Lotteries Association (EL) welcomes the opportunity to participate in the European Commission consultation on the role of online platforms.

ABOUT THE EUROPEAN LOTTERIES (EL)

EL is the European umbrella organisation of national lotteries operating games of chance for the public benefit in 44 European countries – including all 28 EU Member States – and is by far the largest representative European umbrella organisation in the field of gambling.

EL is an association representing state lotteries and lotteries authorised by the state, thus bringing together state-owned and private operators. **EL's members offer lottery, gambling and betting services only in the jurisdictions in which they are licensed by the respective national government.** EL's EU members contribute more than 20 billion EUR per year to the State budgets and the funding of sport, culture, social projects, research and other causes of general interest.

Lotteries are strongly in favour of a well-regulated EU internal market whereby the special nature of gambling, the principle of subsidiarity and the culturally diverse nature of lotteries in the Member States are taken into account. Lotteries stand united in a model that supports society and whereby innovative solutions in an online environment are pursued. In doing so, they stress the importance of ensuring the protection of the consumer in accordance with policies set by Member State public authorities; as well as strengthening possibilities for national authorities to ensure online security, including combating crime and anti-money laundering efforts and the fight against illegal operators that operate without a license in the Member State of the consumer.

Further information is available at www.european-lotteries.org.

SUBMISSION

In our submission, we focus on questions pertaining to the section dedicated to “Tackling illegal content online and the liability of online intermediaries” which are of relevance for The European Lotteries.

The response to the consultation by the association is complementary to individual submissions by its members.

EL accepts that its contribution be published under its name.

In this contribution, EL answers questions pertaining to the section dedicated to “Tackling illegal content online and the liability of online intermediaries” of the European Commission's consultation questionnaire.

Tackling illegal content online and the liability of online intermediaries

- *Have you encountered situations suggesting that the liability regime introduced in Section IV of the E-commerce Directive (art. 12–15) has proven not fit for purpose or has negatively affected market level playing field?*

Online gambling is one of the activities of information Society services that are specifically excluded from the scope of the e-Commerce Directive. Article 1, 5 (d), third indent, specifies that the Directive “*shall not apply to the following [activity] of information society services: gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions*”.

The European Lotteries considers that this exclusion from the scope of the e-Commerce Directive is justified and legitimate because Member States are the best placed to set up their own gambling regime in line with policy they see fit for their own citizens and taking into account national specificities and cultural habits. These national gambling policies may notably include enforcement measures against illegal gambling websites, which EL members constantly call for.

Recital 46 in the preamble of the e-Commerce Directive clarifies that, notwithstanding the general rule regarding limitation of liability of internet service providers, blocking procedures are taken in accordance with procedures established for this purpose at national level.

The European Lotteries considers that the current framework designed by the E-Commerce Directive sets the appropriate scope. Indeed, in the field of gambling, the national legislations differ substantially between all Member States, and national regulatory frameworks are the best placed to define in details the liability of the platforms and Internet Service Providers when it comes to illegal gambling websites.

On the “notice”

- *Do you consider that different categories of illegal content require different policy approaches as regards notice-and-action procedures, and in particular different requirements as regards the content of the notice?*
- *Do you think that any of the following categories of illegal content requires a specific approach (mentions “illegal offer of goods and services (e.g. (...) unauthorised gambling services etc.)*
- *Please explain what approach you would see fit for the relevant category.*

The European Lotteries welcomes the European Commission’s possible forthcoming initiative on illegal content and reiterates the importance to tackle illegal gambling websites at the national level, for consumer protection and public order purposes.

We point out that within the Council Spanish Presidency Progress Report in 2010, Member States have come to a common understanding on a shared definition of illegal gambling

whereby “Illegal gambling may be defined as gambling in which operators do not comply with the national law of the country where services are offered provided those national laws are in compliance with EU Treaty principles.”

The Spanish Presidency added that “In respect of the proportionality principle, a number of measures adopted by Member States, such as sanctions or IP blocking for online operators, have been identified as possibly effective against illegal gambling.”

What is precisely 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 in accordance with the applicable laws and regulations of the jurisdiction where the consumer is located.

Therefore, EL calls for the application of the subsidiarity principle according to which Member States can define what is considered as illegal gambling on their territory and how the enforcement measures against illegal gambling should be implemented.

It should be noted, that, as recognised by the European Parliament in its 2013 Resolution on Online Gambling¹: “Member States have the right (...) to enforce all measures they consider necessary against illegal gambling services”.

Thus, the requirements for notice in the case of illegal gambling content should be decided at the national level. Given the specificity of gambling, allowing for a precise definition and implementation mechanisms to be designed and decided at the national level is the best way to ensure that illegal gambling is efficiently tackled, and thereby ensure the best protection of consumers.

Any initiative concerning Notice and Action should not diminish or in any way restrict current possibilities for Member States to act against illegal gambling. National gambling authorities should be able to give notice to internet service providers by way of appropriate means as defined by their national law and should be in a position to define and implement enforcement mechanisms, including sanctions against non-compliant ISPs.

Any approach decided at national level to tackle illegal online content on gambling could also include the setting up of the possibility for consumers to report illegal content, the encouragement of self-regulatory measures in line with the existing legislative framework. However these examples of measures can never be the exclusive means of notification of illegal content. It is Member States that need to protect consumers against an illegal offering and self-regulatory measures or consumers’ notice mechanisms can only complement procedures, regulatory and enforcement measures put in place by the public authorities, but never replace it.

¹ European Parliament Resolution of 10 September 2013 on online gambling in the internal market (2012/2322(INI))

On the "action"

- *Should the content providers be given the opportunity to give their views to the hosting service provider on the alleged illegality of the content?*
- *Should action taken by hosting service providers remain effective over time ("take down and stay down" principle)?*

The European Lotteries considers that the implementation and the extent of enforcement measures against illegal content ought to be decided at the national level in order to be tailored to the national specificities. EL would be pleased to provide the Commission with any support it might need to address these issues.

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