



European Commission Consultation on “Fair taxation of the digital economy”

Response by the European Casino Association (ECA)

The European Casino Association (ECA) welcomes and supports the European Commission’s effort to develop a framework for a fairer taxation of the digital economy and is delighted to provide input to this consultation. For the ECA, it is clear that there are substantial challenges related to the taxation of cross-border online gambling companies registered in low- or no-tax jurisdictions, who offer their products and services throughout Europe and beyond.

The gambling industry is a sensitive sector that due to its specificities is regulated appropriately according to the subsidiarity principle. It is a sensitive leisure activity of great tradition, which is embedded in the social, economic and cultural environments specific to each country. National gambling regulations respect the different ethical, religious, cultural and historical backgrounds that exist across Europe. This has been recognised at EU level through the implementation of the principle of subsidiarity in EU legislation¹, which has been repeatedly confirmed by judgements of the Court of Justice of the European Union.

Current situation of provision of online gambling

As with any sector of industry, the advent of the internet has meant that the distribution model of gambling products and services has also evolved. The principles of national and EU legislation however still fully apply, and online gambling is and should be regulated solely at national level with any operators requiring a national licence to provide gambling products and services. However, some online gambling providers target countries in which they do not have the required national licence or concession. Such operators are often based in low-tax and low-regulation jurisdictions that often even lack enforcement. It is estimated that only 50% of the total online gambling revenue in the European Union is generated by operators which hold the required national licences and where revenue is taxed appropriately².

¹ Including Directive 2006/123 on services in the internal market ([Link](#))

² ECA position paper on Illegal gambling services ([Link](#))



This leads to an unbalanced playing field, both in applicability of legislation, enforcement, prosecution and taxation. Licenced gambling providers, who respect all national regulations follow the legal requirements and pay high amounts of taxes. At the same time, unlicensed operators do not pay taxes in the country where the player is located and instead seek out the country with the lowest tax regime. This leads to a situation where licensed and unlicensed operators in the same country are treated differently. It unfairly shifts the benefits in favour of unlicensed online gambling operators that can seek out low-tax and low-regulation jurisdictions. This leads to Member States missing out on taxation revenue, which are vital for the provision of public services and put their fiscal sustainability at risk. Given the large amount of taxation missed out on due to the unlicensed provision of online gambling services it shows a clear need for action. Furthermore, the low taxation levels contrast with the high amounts paid by the licensed industry, meaning that such providers are able to invest higher amounts for marketing, especially in the form of higher pay-out rates of their products.

This continued toleration of unlicensed online gambling operators in EU countries has also led to further harm for citizens and is failing consumers, economies and societies as these lack responsible gambling measures at times and are susceptible to money laundering as a number of media investigations have shown. Strict licensing regimes aiming at responsible gambling are thereby circumvented, which puts the wider gambling sector into disrepute and increases regulation for those within the existing strict conditions without reaching those operating outside of it.

Equally, it should be mentioned that some unlicensed gambling operators are obliged to pay Value Added Tax (VAT) in certain countries. However, this does not validate their legal status, it exclusively refers to the national economic laws these companies are forced to adhere to. A legal status can only be obtained through the appropriate national gambling licence in the respective country.

Taxation and regulatory enforcement

The ECA believes that it is crucial that gambling taxation should be regulated at national level, which takes into account the principle of subsidiarity for gambling regulation. In addition, it also leaves Member States the possibility to consider taxation as part of specific policy measures. However, if a uniform approach to taxation would be considered for gambling, it should be according to the principle that gambling operators must be taxed at point of consumption. This is in line with the fact that they must first acquire a license to operate in the jurisdiction where the services are offered.



Furthermore, it reflects the current situation for the licenced land-based gambling industry where this principle is thoroughly followed.³

In addition, to ensure that unlicensed gambling providers are not able to provide their services from low-taxation jurisdictions and at the same time enforce existing legislation, countries can take strong and effective courses of action. These include the effective use of enforcement measures against unlicensed gambling providers. The possible measures in this regard include:

- Whitelists of legal gambling operators
- Blacklists of unlicensed gambling operators
- IP blocking of unlicensed gambling operators
- Payment blocking of unlicensed gambling operators
- Blocking of advertising of unlicensed gambling operators (including affiliates)
- Administrative and criminal sanctions against unlicensed gambling operators
- Administrative and criminal sanctions against advertisers or affiliates promoting unlicensed gambling operators

A recent ECA report on the use and effectiveness of enforcement measures against unlicensed gambling operators showed that while some countries make use of such tools, more remains to be done⁴. The most effective enforcement measures against unlicensed gambling providers according to the survey underpinning the report were advertising blocking, IP blocking and blacklisting of unlicensed operators. The report also demonstrated that cooperation between countries and sharing of best practices can help policy-makers and regulators implement an approach that is effective and considers existing challenges.

For the ECA, it is therefore clear that the digital economy, especially in the sensitive field of gambling services, should be taxed more fairly and a level playing field has to be created between online and

³ In a recent case the CJEU was asked to assess the UK's shift from a point-of-establishment taxation towards a point-of-consumption taxation for online gambling. This shift was implemented exactly because online operators were prone to establish themselves in fiscal-friendly jurisdiction with a view to offering their services in the UK. See judgment of 13 June 2017, *The Gibraltar Betting and Gaming Association*, Case C-591/15, EU:C:2017:449.

⁴ ECA report "Use and effectiveness of enforcement measures against unlicensed gambling operators in Europe" ([Link](#))



offline businesses. This requires the consistent application of the principle of subsidiarity for gambling policy and in case of implementation of uniform rules for online gambling taxation, employ a point of consumption taxation. In addition, strong and effective enforcement measures should be implemented where companies are acting outside the current regulatory framework.

About the ECA

The ECA represents licensed land-based casinos in Europe, with 27 members and over 70,000 direct employees supporting local economies across Europe. It has members from nearly all EU Member States, as well as non-EU countries. The ECA's members provide their services in a sustainable and responsible manner, with some providing these through online means that strictly respect national licencing conditions. The main purpose and objective of the ECA is to address and inform issues related to casinos and the wider gambling industry, as well as promote the positive contribution of the industry. More information about the ECA can be found [here](#).