



ECA response to European Commission public consultation on measures to further improve the effectiveness of the fight against illegal content online

The European Casino Association (ECA) welcomes the European Commission's focus on improving the effectiveness of measures tackling illegal online content, including the Communication on Tackling Illegal Content Online from September 2017¹ and the Recommendation on Measures to Effectively Tackle Illegal Content Online from March 2018².

The ECA represents licensed land-based casinos in Europe, with 28 members that make up 900 casinos 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 that strictly respect national licensing conditions.

Illegal online content in the case of gambling

The ECA welcomes the Commission efforts on tackling all types of illegal content and recognises the necessity to take into account the specificities of each type of illegal content. The gambling sector is also impacted by the issue of illegal online content. This response would therefore like to detail and provide suggestions for possible counter-measures.

Gambling is for good reasons a non-harmonised sector regulated under the principle of subsidiarity in line with case-law of the Court of Justice of the European Union. As gambling is a sensitive economic activity, which is embedded in the social, religious and cultural environments of each country, Member States can and should regulate this sector according to their specific objectives in a proportional manner. Gambling licenses are only available and valid for each specific Member State, meaning that any gambling operator wanting to provide online gambling services has to obtain a national license issued by the competent authority (e.g. the gambling regulator of each individual country where the operators services are available). Without such a license, the operator is not allowed to provide its services in the given country. The ECA therefore supports the definition of illegal content included in the Commission Recommendation, saying that *"'illegal content' means any information which is not in compliance with Union law or the law of a Member State concerned;"*. This means that in the case

¹ http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=47383

² http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=50095



of gambling content, the respective national legislation lays out the definitions of legal and illegal gambling services.

In the case of online gambling, the issue of illegal content is substantial. The average market share of unlicensed gambling in the EU stands at approximately 50%, which would amount to over €6.5 billion considering an estimated market size of the online gambling industry in Europe at 13 billion (2015)³⁴. Across Member States, there is a large number of websites targeting customers without a national license, for instance 100 – 150 websites in Finland and 250 German-language websites in Austria. The Swedish gambling regulator estimated that in 2017 the Gross Gaming Revenue (GGR) generated by unlicensed illegal gambling providers stood at SEK 5 534 million (ca. EUR 540 million) and per inhabitant over the age of 18 at SEK 691 (ca. EUR 67).

The availability of illegal online gambling content presents a substantial challenge to society, consumers and governments. Gambling is not an ordinary economic activity, which - if left uncontrolled - can lead to a number of negative issues. Firstly, illegal online gambling content does not include adequate responsible gambling measures put in place by national legislation to protect minors, vulnerable individuals and those with a problematic gambling behaviour. Secondly, there are concerns that illegal gambling providers are at times linked to organised crime and money laundering. Finally, illegal operators do not pay taxes in the country where the consumer is located, often seeking out the country with the lowest tax regimes. This leads to an unequal playing field for legal operators who respect all national regulations and fully fulfil their tax obligations.

Tackling illegal online gambling is a societal and political responsibility. The ECA therefore supports the measures proposed by the European Commission and calls for their implementation at national level in line with the principle of subsidiarity. It should be noted that illegal online content in the case of online gambling concerns both the websites offering gambling products (including sports betting), as well as advertising for such content and websites (including so-called affiliate websites).

³ Position paper on Illegal Gambling Services, <http://www.europecasinoassociation.org/policy/position-papers/>

⁴ http://research.handelsblatt.com/assets/uploads/GI%C3%BCcksspiel%20Studie2_20171024.pdf



Use of trusted flaggers

The removal of illegal online gambling content in all its forms requires the effective cooperation of all stakeholders alongside a comprehensive legal framework. Within this overall framework, trusted flaggers can serve as an effective instrument in tackling illegal online content. The ECA therefore supports the development of a network of trusted flaggers that can assist in the identification and quick removal of illegal online gambling content by hosting providers. As laid out in the Commission's Recommendation, associations can also act as trusted flaggers, which the ECA would be keen to explore further.

National gambling regulators could also fulfil this role and as the competent national authority are well placed to identify illegal online gambling content according to national gambling legislation. In this regard, the ECA also reiterates the need for faster take-down procedures by hosting providers. A persistent issue in those countries where blocking of illegal online gambling content already takes place at national level is that the same content is almost immediately re-uploaded, either with a slightly different URL or different domain extension. The hosting providers should therefore ensure that this cannot take place, by putting in place measures to identify such cases.

Voluntary proactive measures

The ECA is keen to work with providers to discuss the development and implementation of voluntary measures to take down or even proactively prevent illegal gambling content from being uploaded. The use of proactive measures to identify whether content is legal (i.e. only when the operator holds a national gambling license) or illegal, can certainly be effective. Many gambling regulators maintain so-called whitelists listing those gambling operators holding a national license and blacklists listing those operators who do not hold a national license and are illegally offering their services in the respective country. Online gambling content should only be made available in case of an inclusion on the whitelist of the respective country.

A best-practice case is the Belgian Gaming Commission, which provides such lists on its website⁵. A website that is included on the Gaming Commission's blacklist is not accessible to a Belgian consumer

⁵ Whitelist of the Belgian Gaming Commission, https://www.gamingcommission.be/opencms/opencms/jhkswb_en/establishments/



under a national IP blocking measure. For this, the Gaming Commission has entered into an agreement with a number of internet service providers (ISPs) to block websites on the blacklist. This established mechanism also supports consumer information and education, as the website shows a big “STOP” sign informing the consumer that they are trying to access an illegal online gambling website and a link to the website of the Belgian Gaming Commission with further information. It should be noted that the practice of IP blocking is also in line with the EU’s Geo-blocking regulation from 2018 that includes an exemption to the general prohibition rules for gambling, providing the possibility for IP blocking to be used to tackle illegal gambling.

A further relevant source of reporting illegal online gambling content could also be consumers and consumer groups. For consumers it should be possible to inform competent authorities of illegal gambling content in an anonymous manner. This option is already available in a number of European countries, such as the United Kingdom, Denmark and Switzerland⁶. Alongside the network of trusted flaggers made up of national competent authorities, a combined European network to inform relevant authorities could be developed to flag illegal online gambling content.

Need for a comprehensive legal framework at national level

To effectively tackle illegal online gambling content, Member States need to put in place a comprehensive legal framework at national level to protect consumers from illegal online gambling operators. While this should include voluntary measures by hosting providers, it should be underpinned by strong legislation that is supervised and enforced by the regulatory authorities, as well as law enforcement. Evidence from the ECA and its members, which was compiled in a dedicated study, showed that the most effective enforcement measures against illegal gambling providers are advertising blocking, IP blocking and blacklisting of unlicensed operators⁷. The study also demonstrated that the most effective enforcement measures are only implemented in a few

Blacklist of the Belgian Gaming Commission,
https://www.gamingcommission.be/opencms/opencms/jhksweb_en/establishments/Online/blacklist/index.html

⁶ <http://www.gamblingcommission.gov.uk/news-action-and-statistics/Match-fixing-and-sports-integrity/Confidential-intelligence-line.aspx>; <https://spillemyndigheden.dk/en/news/report-illegal-gambling-and-advertising>; <https://www.comlot.ch/en>

⁷ ECA report “Use and effectiveness of enforcement measures against unlicensed gambling operators in Europe”, <http://www.europecasinoassociation.org/policy/position-papers/>



countries, indicating a need for bottom-up cooperation and sharing of best practices between gambling regulators and policy-makers. This cooperation, as well as mutual information on the existence illegal gambling content could be developed through established networks and mechanism, such as the European Commission's Expert Group on Gambling Services and the Cooperation Arrangement between the gambling regulatory authorities of the European Economic Area Member States concerning online gambling services⁸.

The ECA is available to provide further information and continue the dialogue and exchange of information on this crucial topic, both with the European Commission and industry stakeholders.

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⁸ <http://ec.europa.eu/DocsRoom/documents/14259/attachments/1/translations/en/renditions/native>