

PUBLIC CONSULTATION OF THE NORWEGIAN MINISTRY OF CULTURE ON THE PROPOSED AMENDMENTS TO THE BROADCASTING ACT

THE EUROPEAN LOTTERIES AND TOTO ASSOCIATION (EL) SUBMISSION

67 Rue de la Loi/Wetstraat, BE – 1040 Brussels, Belgium
14 Av. de Provence / CP 6744, CH – 1002 Lausanne, Switzerland

Brussels, June 2019

The European Lotteries and Toto Association (EL) appreciates the opportunity to share its views in the Norwegian Ministry of Culture's consultation on the proposed amendments to the 4 December 1992 Act No. 127 on Broadcasting ('The Broadcasting Act').

EL gathers together national lotteries operating games of chance for the public benefit in more than 40 European countries – including all EU Member States – and is by far the largest representative European umbrella organisation in the field of lotteries and gambling. **EL's members are state lotteries and lotteries authorised by the state – thus bringing together state-owned and private operators – offering lottery, gambling and betting services only in those 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.

EL member in Norway is Norsk Tipping AS.

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

When operators – even if authorised and thus legal in their Member State of origin – convey commercial communications to the consumers in other Member State(s) where they are not authorised to provide their services, they do so while bypassing the applicable legislation of that/those Member State(s). Such a practice directly undermines efforts taken at the level of each Member State in the field of consumer protection – in particular minors and other vulnerable groups – gambling addiction, money laundering, taxation, public order and/or other.

Given that the first and foremost objective of any national gambling policy should be to protect consumers and fight the risk of fraud, **EL welcomes the amendments to the Broadcasting Act proposed by the Norwegian Ministry of Culture to further limit the illegal gambling marketing in audio-visual services made available from outside Norway.**

EL members have a mission to channel the gambling desire of the population towards a regulated and responsible offer. Lately, EL members are getting more and more confronted with illegal offer of more harmful, risky gambling products within their jurisdictions. In response, national authorities often opt to (partially) open up their markets for such products which can lead to an increased number of licensed operators and an enhanced competition between them. As recognised by the Court of Justice of the EU (CJEU), enhanced competition is likely to have detrimental effects owing to the fact that those operators would be led to compete with each other in inventiveness in making what they offer more attractive and, in that way, increasing consumers' expenditure on gambling and the risks of addiction¹. As a final result, this might prompt the authorities to, unfortunately, take uniform corrective

¹ Joined Cases [C 186/11](#) and [C 209/11](#) *Stanleybet International and Others*

measures to prevent unwanted side effects of increased advertising without taking into account different risk levels of different gambling products.

The CJEU has recognised the role gambling advertising can play to attain what the CJEU refers to as a policy of '**controlled expansion**'²:

"[i]ndeed it is the second type of objective, namely that of preventing the use of betting and gaming activities for criminal or fraudulent purposes by channelling them into controllable systems, that is identified, both by the Corte suprema di cassazione and by the Italian Government in its observations before the Court, as the true goal of the Italian legislation at issue in the main proceedings. Viewed from that perspective, it is possible that a policy of controlled expansion in the betting and gaming sector may be entirely consistent with the objective of drawing players away from clandestine betting and gaming – and, as such, activities which are prohibited – to activities which are authorised and regulated. As the Belgian and French Governments, in particular, have pointed out, in order to achieve that objective, authorised operators must represent a reliable, but at the same time attractive, alternative to a prohibited activity. This may as such necessitate the offer of an extensive range of games, advertising on a certain scale and the use of new distribution techniques."

CJEU further acknowledged a **hierarchy of risks** between different types of gambling products where gambling products entailing higher addiction risks, e.g. short-odds games, (online) casino games, card games, slot machines, etc., require stringent advertising regulation. Traditional lottery games do not entail such a considerable risk of addiction. **Different regulatory regimes should apply to different types of gambling products.**

The CJEU case-law has thus fine-tuned the balance whereby Member States are permitted to regulate advertising for gambling in the way that most coherently fits their national gambling policy, as long as it does not discriminate.³

Gambling advertising is an extremely delicate area which needs to be addressed by the legislator with extreme caution and in line with the subsidiarity principle, but it also absolutely needs to be acknowledged as a tool for channelization of consumers to a responsible legal offer.

While any regulatory framework obviously needs to be a clear one providing certainty to both consumers and operators, it also needs to be accompanied by an **adequate law enforcement** which will ensure that those who have been given the authorisation can offer their products

² [C-338/04](#), [C-359/04](#) and [C-360/04](#) *Placanica*

³ [C-258/08](#), *Ladbrokes*, paragraphs 43, 44 and 56

[C-347/09](#), *Dickinger*, paragraph 68

[C-176/11](#), *HIT LARIX*, paragraph 31

[C-447/08](#) and [448/08](#), *Sjöberg*, paragraph 57

in the manner intended by the legislator and consumers are protected from the overly addictive offers and fraud.

June 2019, The European Lotteries and Toto Association