EUROPEAN COMMISSION PUBLIC CONSULTATIONS ON THE EUROPEAN STRATEGY FOR DATA AND WHITE PAPER ON ARTIFICIAL INTELLIGENCE

THE EUROPEAN STATE LOTTERIES AND TOTO ASSOCIATION (EL) SUBMISSION

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Brussels, May 2020

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.

For more information please see:
https://www.european-lotteries.org/
https://www.benefit4society.eu/

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The European State Lotteries and Toto Association ("EL") welcomes European Commission's efforts to grant the EU a leading role in data and Artificial Intelligence (AI) driven society while ensuring that balanced rules are applied with regard to access to (and re-use of) data and AI is regulated through an appropriate framework. National lotteries run gambling activities both offline and online and in many of the European countries they are the biggest operators with millions of players, dealing with particularly sensitive data. In this respect, the European Commission's initiatives in the fields of Data Strategy and AI are of great interest to them.

In the EU, **gambling is regulated in observance of the subsidiarity principle** and gambling activities can only be legal if authorized and in full compliance with the applicable laws and regulations of the national jurisdiction where the player is located. EL considers this approach indeed to be justified and in the best interest of European society, as gambling is an economic activity of particularly sensitive nature. In light of the overriding reasons of public order (fight against frauds, money-laundering and illegal gambling offerings) and consumer protection (prevention of gambling addiction and protection of minors), **Member States are best placed to regulate gambling sector**, taking into account national specificities and significant moral, religious and cultural differences. This notion was **repeatedly recognized by the Court of Justice of the EU[1], the European Parliament and the Council of the EU**[2].

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[1] European Parliament Resolution on online gambling in the Internal Market 2013
[2] Council Conclusions 1992, Council Conclusions 2010

Any transversal EU policy in the area of data and/or AI should therefore leave a sufficient degree of latitude to the Member States in areas where they have the exclusive or primary competence such as public health and gambling services, including by establishing more restrictive rules if need be, or limiting or excluding their use in the light of the specificities of their own gambling policy.

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Data Strategy:

The status of data in the gambling sector is deemed to be ambivalent.

Lotteries deal with players' data. For example, all the activities each single player undertakes through his/her online gambling player account and/or player card are registered and stored by the lotteries in accordance with the General Data Protection Regulation (Regulation (EU) 2016/679, GDPR) rules, applicable national regulations, as well as internal protocols. Such data are particularly sensitive and lotteries are required to ensure their traceability for integrity controls, responsible gaming management reporting obligations and for compliance with the supervision of the competent national regulatory authorities. Given the high risk of such data, they should remain protected under strict conditions and guarantees set out by the GDPR and the applicable national legislations on privacy and gambling.

Such player data can be anonymised, but even then can still reflect relevant gambling behaviors and reveal patterns or addiction factors, for example. As such, they can be used for research, the results of which may inspire the adaptation of the national regulatory measures, as well as creation of detection tools and setting up of preventive initiatives aiming at curbing problem gambling. Such data can also be used for commercial purposes, possibly in a way that is detrimental to consumer protection, especially vulnerable groups.

Gambling data thus remain highly sensitive and need an appropriate regime leaving sufficient latitude for the Member States to adapt it to their own national gambling policy. **The access to and the re-use of gambling data – due to the specificities of the sector – should be subject to national restrictions pertaining to clearly defined data to be shared, types of users, as well as the purpose of their reuse**. Such restrictions should apply whether the data are held by the lottery or authorized gambling operator which produced them, but also when they are held by/made available to third parties covered or not by the Open Data Directive (Directive (EU) 2019/1024), including B2B providers, online platforms and the relevant national regulatory authorities. Access to players' (personal) data by authorities for monitoring/investigative purposes going further to the current arrangements should be duly justified and framed in a clear regulatory environment.

The fight against illegal online gambling offerings undertaken by the relevant national authorities could also benefit from an easier access to certain types of data. This fight is a priority considering that unauthorized gambling products represent an unfair competition to legal operators, an important loss of public revenues to Member States, and foremostly a threat to consumer protection, as they do not comply with the protective regulatory frameworks applicable in the country of where the player resides and aiming at preventing underage gambling, problematic gambling, integrity of gambling operations and players' deposits protection. Access by authorities to data on companies' ownership, taxes and other financial information relating to illegal gambling operators should be facilitated. In this respect, dataspaces opened to public authorities could be of great help.

With regard to data altruism/data donation, personal gambling data donated by individuals could primarily benefit national regulatory authorities and researchers. For the former, the data could provide a new source of information on the players and the gambling operations. For the later, it could enable more in depth research into the area of gambling, of which the most prominent is of course research into problematic gambling. Data altruism/data donation for the public good could be promoted via specific regime, though it refers the data portability right enshrined in Article 20 of the GDPR, since it would require special detailed guarantees, in particular in terms of traceability and transparency for the individual "donator" concerning the use and reuse of data.

Finally, any initiative resulting from the new EU Data Strategy should not lead to additional costs and/or administrative burdens for companies.

Artificial Intelligence (AI):

AI can be used for many plausible causes in the gambling sector, such as improving customer identification, early detection of excessive and underaged gamblers and support, prevention of fraud or the use of gambling for criminal purposes such as money-laundering, to name a few.

However, as also recognised by the European Parliament in its study "New Aspects and Challenges in Consumer Protection: Digital Services and Artificial Intelligence", AI application can sometimes be misused by malevolent parties (and/or illegal operators) to induce people to "purchase goods (or services) they do not need, to overspend, to engage in risky financial transactions, to indulge in their weaknesses such as gambling". It is also acknowledged that in certain segments of gambling, namely skill games (such as horse race betting) the use of AI can be detrimental to and undermine the integrity of the betting activity and increase the risk of manipulation. In this connection, as recalled by the recent reply from Commissioner Thierry Breton to the Parliamentary Question E-001260/2020 rules protecting consumers' interests in advertising and pricing practices shall fully apply, regardless of the use of AI or other technologies. This includes all rights and obligations under the GDPR, but also the Unfair

Commercial Practices Directive ([Directive 2005/29/EC](#)) and its guidance document, as well as the newly adopted Directive on better enforcement and modernization of EU consumer protection rules ([Directive (EU) 2019/2161](#)).

A very fine balance should thus be achieved between the deployment of AI for commercial purposes and the respect of necessary consumer protection, public order and personal data protection rules in the gambling sector.

The [Ethics Guidelines for Trustworthy AI](#) issued by the European Commission's High Level Expert Group could give good guidance, but **the implementation of such technologies should be authorized and supervised under national rules in the gambling sector.**

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EL and its Members hope that the above coordinated contribution to these public consultations will help the European Commission in its reflections over data and AI.

In summary, EL emphasizes the need to recognise the specific characteristics of gambling sector and – for reasons of consumer protection and protection of public order – the need to leave a sufficient degree of latitude to the Member States to limit and/or partially exclude the usage of the general rules on data and AI within the context of their national gambling policy and in accordance with their own risk assessment.

This contribution is without prejudice to possible individual contributions of EL members.

As usual, we stay at disposal for any further information or explanation.

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29 May 2020, The European State Lotteries and Toto Association