

**European Commission**

**DG GROWTH**

Internal Market, Industry, Entrepreneurship and SMEs

Unit B2

200, Rue de la Loi

B-1049 Bruxelles

Belgium

[Grow-Notif-Infractions@ec.europa.eu](mailto:Grow-Notif-Infractions@ec.europa.eu)

Brussels, 23 May 2018

**RE: The European Lotteries Association Reaction to the Notification 2018/99/MT – H10 (Gaming Act, 2018) and All of its Accompanying Subsidiary Legislation**

To whom it may concern,

On behalf of the European Lotteries Association (hereinafter 'EL') – the umbrella organisation of national lotteries operating games of chance for the public benefit – I would hereby like to share the Association's views on the overhaul of the Maltese gaming legal framework as notified to the European Commission<sup>1</sup>. These views are additional to any other individual EL member submission.

EL stresses the importance of the respect for the principle of subsidiarity as an essential regulatory principle in the field of gambling, as this principle ensures that special nature of gambling and the culturally diverse nature of lotteries in the Member States are respected. The primacy of the subsidiarity principle in the field of gambling and special nature of the overall sector have both been repeatedly recognised by the Court of Justice of the EU, the European Parliament and the Council.

In other words, regulation of gambling is an exclusive competence of Member States.

Equivalently – and without any prejudice – EL fully recognises and respects freedom of the Maltese authorities to set up their own gambling policy for their own residents in line with their own set of values.

EL takes note that in the newly notified draft framework, the draft Maltese Gaming Act specifies that operators already holding a license in another (EU/EEA Member) State and seeking to provide their services in Malta will now have to obtain a 'recognition notice'. This 'recognition notice' refers to an official notice to be issued by the Maltese authorities whereby a licence issued by another (EU/EEA Member) State would only be recognised as

---

<sup>1</sup> [Gaming Act 2018](#) (2018/0099/MT – H10) and all the accompanying subsidiary legislation:  
[Gaming Definitions Regulations](#) (2018/0103/MT – H10)  
[Gaming Authorisations Regulations](#) (2018/0100/MT – H10)  
[Gaming Compliance and Enforcement Regulations](#) (2018/0102/MT – H10)  
[Gaming Authorisations and Compliance Directive](#) (2018/0124/MT – H10)  
[Gaming Commercial Communications Regulations](#) (2018/0101/MT – H10)  
[Gaming Player Protection Regulations](#) (2018/0105/MT – H10)  
[Gaming Player Protection Directive](#) (2018/0130/MT – H10)  
[Gaming Premises Regulations](#) (2018/0106/MT – H10)  
[Gaming Tax Regulations](#) (2018/0107/MT – H10)  
[Gaming Licence Fees Regulations](#) (2018/0104/MT – H10)  
[Gaming Social Causes Fund Regulations](#) (2018/0108/MT – H10)

having the same effect as a license issued by the Maltese authorities if safeguards of the country that issued it would be deemed equivalent to Maltese law. By introducing the notice, the Maltese authorities are acknowledging that the 'mutual recognition' obligation of gambling licenses between Member States does not apply. The Court of Justice of the EU clearly established in 2009 that there is *no* automatic mutual recognition of gaming licenses ([C-42/07 Liga Portuguesa and Bwin](#))<sup>2</sup>. **EL welcomes this agreement by Malta that there is no automatic mutual recognition of licenses between Member States in the field of gambling due to its potentially detrimental impacts.**

As the European Commission is aware, a number of online gambling operators holding a Maltese license offer their products electronically to players in other Member States without having obtained any authorisation to do so by the respective national authorities of these Member States. These operators thus do not comply with the requirements set up by the national legislation applicable in these Member States (for instance to protect players) and often avoid paying due gambling taxes. Such operators therefore do not only represent unfair competition to the operators authorised to provide their services in these Member States, but they also undermine national efforts in the field of consumer protection and challenge fundamental legal principles such as sovereignty and public policy.

**EL urges the Maltese authorities to require of its license-holders, current and future, that they take full account of the legal regimes of other Member States and do not offer their services where they are not licensed by the respective national authorities.** This is also along the lines of the [European Parliament's resolution on online gambling in the internal market](#) from 2013 advocating that operators can be considered legal only if *inter alia* they are not considered to be illegal under the law applicable in any other Member State. We take note of the existence of the option of denying the recognition notice foreseen for reasons pertaining to public interest, public order or Malta's reputation (as stipulated in Articles 12 b and 27 2 of the draft Gaming Authorisations Regulation) and **urge the Maltese authorities to apply these provisions towards operators that operate illegally outside of Malta.**

According to Part V of the draft Gaming Tax Regulations, the Maltese regulator would be allowed – subject to the agreement with the Minister responsible for the gambling sector – to grant arrangements for exempting gambling operators to pay the taxes established by the same Regulations. **We encourage the Commission to ask the Maltese authorities to provide more details about the guarantees ensuring the safeguards and fairness among operators with regard to these tax exemptions,** in particular in light of the fair taxation on digital economy initiatives recently launched by the European Commission.

I am convinced you will take the views of our Association into account while examining the notified Maltese drafts and I of course remain at your full disposal for any further information or clarification.

Best regards,



Dr Arjan van 't Veer

Secretary General

[arjan.vantveer@european-lotteries.eu](mailto:arjan.vantveer@european-lotteries.eu)

---

<sup>2</sup> The Malta Gaming Authority itself acknowledges adhering to such practice in its '[White Paper to Future Proof Malta's Gaming Legal Framework](#)' in the section on 'Mutual recognition principle', page 15.

## ABOUT THE EUROPEAN LOTTERIES ASSOCIATION

EL is the European umbrella organisation of 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 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 authorities.** 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 all 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](http://www.european-lotteries.org).