

Financial and ISP blockings

A safe and secure online gambling market can be best achieved through attractive and competitive regulation in line with EU law. Financial and ISP blockings of online gambling services are inefficient, easy to circumvent and rather drive consumers to the black rather than the regulated market.

More and more Member States regulate the online gambling to ensure that their consumers have access to safe and attractive online gambling offers. Like any other internet service, online gaming is by definition a cross-border activity that does not stop at the territorial boundaries of individual Member States. Some Member States nevertheless still try to ring-fence their gambling sector with financial and ISP blocking. The effectiveness of those measures is highly questionable, and their potential to infringe fundamental rights makes their compliance with EU Law doubtful.

How does blocking work?

Internet blocking

The following are the most common types of ISP blockings:

- **DNS filtering:** Players are prevented from gambling on pre-defined websites and re-directed to other websites (usually from a .com website to a website established within the relevant jurisdiction).
- **IP blocking:** Every device connected to the Internet is assigned a unique number known as the IP address, which includes the hostname. IP blocking prevents the connection between a server/website and one or more IP addresses.

Financial blocking

- **Blocking Merchant Category Codes:** A Merchant Category Code (MCC) is a four-digit number assigned to a business by MasterCard or VISA. Online gambling websites are assigned the 7995 MCC code and financial institutions can be asked to block credit card payments to and from these websites. These credit card payments represent the majority of transactions.
- **Other online gambling-related payment transactions** are carried out mostly through popular electronic communications payment solutions (direct debit, e-wallets) which are, in turn, also used by many other online platforms such as Ebay. These payments methods, however, don not bear an MCC coding and can hence not be subject to MCC blocking.

Shortcomings of blocking measures

- **Not effective:** EuroISPA, the European association of European Internet Services Providers Associations, has stated that “blocking, depending on the mechanism used, can be more or less easily circumvented from a technical perspective. Since the Internet was designed to provide an open flow of communication, a user can access content blocked by an access provider in its country via other means such as using foreign proxy-servers to bypass the local block; using tunneling software that encrypts online searches and prevents blocking software from seeing the web request; or by simply switching to another name server. IP blocking and hybrid blocking can also be circumvented by changing the website configuration to a different address.”¹
- **Overblocking:** EuroISPA has also stated that “In addition to be easily circumvented, blocking technologies always bring about risks of over-blocking (unintentionally preventing legal material from being distributed) or under-blocking (not preventing illegal material from being distributed) and have varying associated costs.”² These measures are, therefore, able to block legal content, and, for these reasons, are able to harm the rights of both ISPs and users. Such blockings can also lead to infringement of Article 10 of the European Convention on Human Rights, especially but not exclusively in cases where editorial content is blocked.
- **Blocking Merchant Category Codes:** Blocking MCC can also be easily overcome, for example by the use of foreign bank accounts or alternative payment methods without MCC.

Unintended consequences

- **Impact on consumers:** If the regulated offer is not sufficiently attractive; consumers are left with little choice but to turn to unregulated operators. This means that consumers are forced to play with websites outside of the EU that offer little or no legal, anti-money laundering, fraud or responsible gambling protection.
- **Impact on banks and ISPs:** it increases their liability and results in administrative and operational costs.
- **A shift to an underground industry:** Restrictions foster the growth of an underground market, away from EU regulated and established operators to operators that are established elsewhere and do not submit to the protection of EU regulatory frameworks. So even though some operators may be deterred from offering their services, others, and especially those from outside the EU regulatory framework, will quickly fill in the gap to the detriment of consumer protection, fraud prevention, tax revenue and regulated websites.

Conclusion

Technological barriers such as ISP and financial blocking infringe fundamental rights in particular the right to privacy, freedom of communication, information and expression, among others. They are not reliable given their limited effectiveness and considerable side effects. Overall, consumer protection is best preserved through attractive and internationally competitive regulation, which keeps consumers away from the black market.

^{1,2} <http://www.euroispa.org/internet-blocking-frequently-asked-questions/>