Could Europe's Digital Services Act be used to curb promotion of black market gambling?

DSA'S HORIZONTAL FRAMEWORK HAS PLUSES AND MINUSES WHEN IT COMES TO ENFORCEMENT ACTIONS AGAINST PROMOTIONS OF UNLICENSED GAMBLING SERVICES, FIND **LUÍS CARVALHO, TANIA PINHO** AND **MARTA BOTICA SANTOS**

Introduction

In April 2026, Sabine Verheyen, a Member of the European Parliament from the European People's Party, Germany, submitted a written question to the European Commission (EC) that raised fundamental questions about the practical enforcement of the Digital Services Act (DSA) in the online gambling sector[1]. The DSA, which has been in full application since February 2024, was designed to establish comprehensive obligations for digital intermediaries. Verheyen's inquiry challenged whether those mechanisms are proving effective in practice, particularly against the promotion of unlicensed gambling services targeting European consumers. The question is therefore not simply whether the DSA applies, but whether it can deliver meaningful intervention where illegality is defined through fragmented national licensing rules rather than a single EU standard rule.

The inquiry asked whether the EC is aware that online content creators established or active within the Union are actively promoting unlicensed gambling services to substantial audiences, and whether the Commission intends to open an investigation into this practice[2]. In support of this inquiry, Verheyen invoked empirical findings from a 2024 study conducted by Yield Sec[3] and commissioned by the European Casino Association (ECA). The study estimated that approximately 71 percent of online gambling activity directed at European users occurs on unlicensed platforms, a figure that, if accurate, would point not merely to a significant market presence but to a serious weakness in the combined capacity of national licensing regimes and EU-level enforcement mechanisms to protect consumers from unregulated gambling operators.

The Commission's reply, issued on 12 June 2026 under the authority of Executive Vice-President Henna Virkkunen[4], acknowledged in general terms the issue of undisclosed advertising on online platforms, as well as the promotion of illegal products online. The response stopped short of committing the Commission to any dedicated inquiry into gambling-related illegal content promotion. Instead, it largely restated existing DSA obligations, such as the notice-and-action mechanism and systemic risk assessment duties, without explaining how these horizontal tools would address the sector-specific challenges of identifying unlicensed gambling content. The response is legally cautious as it leaves a central practical question unresolved: whether the general enforcement powers available under the DSA can be deployed effectively in this sector.

This exchange, though narrow in its immediate institutional context, exposes a deeper tension within the European Union's regulatory architecture for digital services. It invites scrutiny of a central proposition that this article seeks to interrogate. The DSA, notwithstanding the formal enforcement powers it confers upon the Commission, exhibits an enforcement gap when applied to the dissemination of unlicensed gambling content online. The gap is not simply an absence of legal authority, but arises from the interaction between the DSA's horizontal, cross-sectoral framework and the predominantly national regulation of gambling. It is particularly pronounced in relation to content promoted by operators who deliberately circumvent national licensing requirements and target European consumers through major digital platforms.

The analysis that follows considers these issues in turn, placing the Verheyen exchange within the broader context of the DSA's tiered obligations, its enforcement practice to date, and the national and jurisprudential developments that illustrate the practical limits of applying a horizontal regulatory framework to the specific context of unlicensed gambling operators.

What is striking is the disproportionality between the scale of the problem and the institutional response. Industry data points to a multi-billion-euro market of unlicensed

1 iGaming Expert (2026) European Commission questioned over Digital Services Act enforcement against illegal gambling. Available at: https://igamingexpert.com/features/ec-dsa-2026-illegal/

2 European Parliament (2026) Parliamentary question E-001475/2026: Questions submitted by Sabine Verheyen to the European Commission. Available at: https://www.europarl.europa.eu/doceo/document/E-10-2026-001475_EN.html

3 European Parliament (2026) Answer to Parliamentary Question E-001475/2026 (ASW): Reply from the European Commission. Available at: Parliamentary question | Answer for question E-001475/26 | E-001475/2026(ASW) | European Parliament

4 *Ibid*

gambling operators thriving across major platforms, yet the Commission's reaction so far has been measured rather than proactive. The result is a framework that can identify responsibilities in the abstract but struggles to convert them into timely, sector-specific action.

DSA obligations and the scale of unlicensed gambling

The DSA tackles illegal online content through a framework that applies horizontally, across every sector, gambling included. That breadth is one of the Regulation's great strengths, but it is also precisely where the difficulty for gambling arises: illegality here does not turn on the DSA's own terms, but on sector-specific licensing rules that vary from one member state to the next. The Regulation builds a graduated system of obligations for intermediary service providers, distinguishing between mere conduit, caching and hosting services. For hosting providers, including platforms that host user-generated content promoting gambling services, Article 6 of the DSA[5] sets the conditions for the liability exemption: providers must act promptly to remove or disable access to illegal content once they obtain actual knowledge of it.

More specifically, the DSA imposes upon hosting service providers a duty to implement notice-and-action mechanisms pursuant to Article 16[6], enabling any individual or entity to notify the platform of the presence of information considered to be illegal content. Where such notifications are sufficiently precise and adequately substantiated, the platform is required to take a decision on the notified content in a timely, diligent, non-arbitrary, and objective manner. On paper, this mechanism can reach content promoting unlicensed gambling services, which constitutes illegal content under the national laws of virtually all member states that regulate gambling through licensing regimes. In practice, however, the mechanism places considerable weight on the notifier's ability to establish the relevant licensing position and on the platform's ability to assess it across jurisdictions.

For Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs), those reaching more than 45 million monthly active users in the Union, the DSA imposes additional obligations under Articles 33 to 43[7]. These include mandatory annual risk assessments addressing systemic risks arising from the design, functioning, and use of their services, including risks related to the dissemination of illegal content. VLOPs must also implement reasonable, proportionate, and effective mitigation measures to address identified systemic risks, and submit to independent audits of their compliance with these obligations. These obligations appear substantial, but their practical force depends on whether gambling-related risks are identified with sufficient specificity and followed through with measures capable of disrupting promotion at scale.

Limitations of the DSA framework in the gambling context

While the DSA establishes a horizontal framework for addressing illegal content online, its effectiveness in the gambling sector is constrained by the interaction between EU platform regulation and the predominantly national regulation of gambling. This is a structural limitation, not merely an operational inconvenience. The difficulty is not that gambling falls outside the DSA's scope. Rather, the problem is that determining whether gambling-related content is unlawful frequently depends on national licensing rules requiring knowledge that the DSA's general mechanisms do not themselves provide. This creates an enforcement gap between the identification of potentially illegal gambling content and the determination that such content is unlawful under the applicable national regulatory framework.

The limitations of the DSA's notice-and-action mechanism are particularly apparent in this context. Article 16 requires

5 European Union (2022) Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act). Official Journal of the European Union, L 277, 27 October, pp. 1–102. Available at: https://www.eu-digital-services-act.com/Digital_Services_Act_Article_6.html

6 European Union (2022) Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act). Official Journal of the European Union, L 277, 27 October, pp. 1–102. Available at: https://www.eu-digital-services-act.com/Digital_Services_Act_Article_16.html

7 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), OJ L 277, 27 October 2022, Arts. 33–43

hosting services to establish mechanisms through which individuals and entities can notify them of specific items of information that they consider to be illegal content. However, the illegality of gambling-related content is not necessarily apparent from the content itself. Determining whether an operator is authorised to provide gambling services to consumers in a particular member state may require verification against national licensing registers and an understanding of the territorial scope of the relevant license. The gap therefore lies not in the absence of legal authority, but in the structural interaction between the DSA's horizontal, cross-sectoral framework and the predominantly national regulation of gambling, which may constrain the practical effectiveness of those powers.

Article 22[8] offers a partial answer. It allows entities with recognised expertise in identifying categories of illegal content to be designated as trusted flaggers, whose notices platforms must prioritise. The Commission has said that trusted flaggers are meant to bring exactly this kind of specialized expertise, and gambling is a strong candidate for the mechanism, since licensing illegality is inherently jurisdiction-specific rather than something a generalist can assess. The catch is that the mechanism only helps where suitably specialized trusted flaggers exist, with the geographic reach and capacity to cover the relevant markets. Where they do not, Article 22 mitigates the gap, it does not close it.

The DSA's framework presents a second area of difficulty. Article 15[9] requires providers of intermediary services to publish periodic reports concerning their content-moderation activities, including information on notices received, orders issued by national authorities and measures taken in response to content-moderation decisions. VLOPs and VLOSEs are subject to enhanced and more frequent reporting obligations. The Commission has subsequently harmonised the format of these reports, with the first harmonised reporting cycle beginning in 2026. These measures improve formal comparability, but they do not necessarily produce the sector-specific visibility needed to evaluate enforcement against unlicensed gambling.

The difficulty, however, is that these transparency obligations do not necessarily require gambling-related content to be reported as a distinct category. Consequently, publicly available transparency data may not readily reveal the volume of notices concerning unlicensed gambling, the proportion of such notices resulting in removal, or the average time taken to respond to them. This limits the extent to which the DSA's transparency framework can be used to evaluate the effectiveness of platform enforcement specifically in relation to illegal gambling. The problem is therefore less one of complete regulatory opacity than of a consequential accountability deficit. Without sufficient sector-specific transparency, it is difficult to assess whether the formal mechanisms in place required by the DSA are working effectively in practice.

A similar issue arises under the systemic-risk framework applicable to VLOPs and VLOSEs. Article 34[10] requires these services to identify, analyze and assess systemic risks arising from the functioning and use of their services, including risks relating to the dissemination of illegal content and negative effects on the protection of minors. Article 35 [11]ubsequently requires platforms to implement reasonable, proportionate and effective mitigation measures in response to the identified risks. The framework is therefore potentially powerful, but it remains dependent on how platforms define, prioritize and evidence the risks they identify.

Nevertheless, the DSA does not treat gambling as a risk category. Whether gambling-related risks receive significant attention is therefore left to each platform´s own risk assessment. That does not mean that platforms are free to disregard gambling-related risks. Where such risks are relevant to the dissemination of illegal content, protection of minors or other systemic risks identified by Article 34, they fall within the broader framework. The DSA provides, therefore, general obligations

8 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), OJ L 277, 27 October 2022, Art. 22

9 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), OJ L 277, 27 October 2022, Art. 15

10 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), OJ L 277, 27 October 2022, Art. 34

11 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), OJ L 277, 27 October 2022, Art. 35

without a gambling-specific risk-assessment methodology. That flexibility may be justified in a cross-sectoral instrument, but it also creates a risk that gambling will remain subsumed within broader regulatory categories and therefore fail to receive attention proportionate to its specific risks and characteristics.

This distinction matters when it comes to enforcement. Article 66 empowers the Commission to initiate proceedings against VLOPs and VLOSEs suspected of infringing the DSA. However, to date, no Commission proceeding has been publicly identified as specifically concerning illegal gambling promotion. While this absence does not, itself, establish a failure to enforce the DSA, it points to a limited body of publicly available evidence demonstrating that the Commission's formal enforcement powers have been applied to this problem.

The contrast with sector-specific gambling regulation makes the point sharply. National gambling authorities can determine directly whether an operator is licensed, prohibit unauthorised gambling services, block access to illegal websites and impose administrative sanctions. The DSA, by contrast, only reaches the intermediary layer through which gambling content and services are disseminated. Its tools complement national gambling regulation rather than replace it. The practical difficulty is that the DSA's effectiveness depends on an underlying determination of illegality that only national gambling law can supply. Without a reliable, coordinated route from that determination to platform action, the division of labour between EU and national levels risks becoming a source of delay rather than a solution.

Conclusion

This article has argued that the DSA leaves a genuine sectoral enforcement gap when it comes to illegal gambling content. Its notice-and-action mechanism, trusted flagger framework and systemic risk assessment obligations all apply, formally, to gambling-related illegal content. But their effectiveness is constrained by the DSA's horizontal design, which was never built to supply the jurisdiction-specific licensing expertise needed to identify unlawful gambling promotion at scale. The Commission's response to MEP Verheyen is a useful illustration of exactly this gap: rather than committing to a dedicated investigation, it restated the existing legal framework without explaining how the gambling sector's particular characteristics would be addressed in practice. That response highlights a broader limitation of the regulatory framework, as formal legal coverage does not necessarily translate into effective, sector-specific enforcement.

The DSA does not completely fail to regulate and address illegal gambling, but rather largely relies on mechanisms that operate across sectors, while the determination of whether a gambling service is unlawful often depends upon national licensing rules. The resulting regulatory structure is therefore dependent on cooperation between platforms, specialized flaggers and national gambling authorities. That dependence may be unavoidable, but it leaves the practical effectiveness of the framework contingent on coordination, sectoral expertise and a willingness to move beyond general statements of obligation toward targeted enforcement.

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