

**Internal Market, Industry, Entrepreneurship  
and SMEs Directorate-General**

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**TRIS notification number 2017/307/A**

**Statement regarding the Draft Act on the offering, placement and brokering of bets  
and the brokering of betting customers (Styrian Betting Act 2017)**

Dear Sir or Madam,

The Austrian Association "Österreichische Vereinigung für Wetten und Glücksspiel" ("**OVWG**", "**We**"), with its seat in Seilerstätte 24, 1010 Vienna, is a voluntary association of enterprises operating in the fields of online gambling and online sports betting. It was founded in 2016 and registered in the Austrian Central Register for Associations<sup>1</sup> under the number 695024560. Its primary task is to ensure a higher standard of legal certainty and an EU-compliant re-regulation in the fields of online gambling and online sports betting in Austria. This shall be achieved by developing feasible and viable solutions for the sake of all stakeholders: for the State, its consumers as well as enterprises operating in these fields.

With regard to the recent amendments to the Styrian Betting Act ("**StWG**", "**Act**") (notified to the European Commission under TRIS number 2017/307/A), the OVWG has prepared the following **statement**: The goal of this statement is to justly **balance the interests** of the State, betting operators and their customers, as well as to reach an appropriate and adequate level of **player protection standards**. Some provisions of the StWG raise concerns among numerous operators that exercise their activity in the field of online betting and online gambling.

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<sup>1</sup> Available at <http://zvr.bmi.gv.at/Start>.

## 1. DEFINITION

§ 2 sets out the relevant definitions of the StWG:

A **bet** is "*an aleatory contract between a betting operator and a betting customer who makes a prediction regarding the outcome of a future (at the time the bet is placed) event against payment of a selected stake and, in the event that this prediction is accurate, obtains prospective winnings (odds)*".

A **betting operator** is "*a person who offers, places or brokers bets for commercial reasons or who brokers betting customers for commercial reasons*".

A **betting customer** is "*a natural person who makes use of a service offered by a betting operator*".

**(Betting) outlets** are "*fixed business premises in which bets are offered, betting offers received, bets placed or brokered or in which betting customers are brokered*".

## 2. PROFESSIONAL QUALIFICATION

§ 4 section 1 requires a betting operator to be "*professionally qualified*". However, the Act itself as well as the explanatory notes fail to define what the prerequisites are to be "*professionally qualified*".

Such unclear provisions are to be considered as an entrance gate for arbitrary discrimination of licensees. However, the CJEU repeatedly stressed that a Draft Act must fulfil the criteria of the principle of transparency<sup>2</sup>. Thus, the legislator shall set out clear guidelines in order to fulfil the requirement for transparency.

## 3. RESTRICTION OF REMOTE GAMBLING/LIVE BETTING

### 3.1. Partial prohibition of live betting

#### 3.1.1. General remarks

§ 11 ("*Prohibited betting*") of the StWG states: "*Betting operators may not offer, place, or broker the following bets: [...]*"

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<sup>2</sup> CJEU 24 January 2014, C-186/11, *Stanleybet International and Others*.

Point 1: *"bets during an ongoing event (live betting), with the exception of live betting on the final result, the result at the end of a half or a period and which team will score the next goal in the case of football and ice hockey"*.

OVWG welcomes the approach of the legislator to appropriately trying to **protect betting clients**. However, we consider a prohibition of live betting **not suitable to reach** the intended **objectives** since in our opinion it even **runs counter** to them. For a comprehensive assessment of this matter we will elucidate national as well as Europe-wide findings.

The explanatory notes set forth the following: *"Live bets' have a particular potential to foster addiction. In addition to the particular addiction potential, since "live betting" regularly concerns secondary circumstances within an overall event whose creation does not necessarily require the interaction of several persons, it may also facilitate the manipulation of matches and, hence, betting fraud."* Hence, this restriction shall serve to protect betting clients from (i) the development of **gambling addiction** and its negative impact as well as (ii) betting-related **manipulation**.

### 3.1.2. Gambling addiction

The refusal of the legislator to allow certain types of live betting is hardly understandable as it is **necessary to provide empirical evidence** of an increased addiction potential. According to a survey by the prestigious Division on Addictions of Harvard Medical School<sup>3</sup>, there is **no indication for live betting bearing the potential of being more dangerous** in contrast to other types of bets. On the contrary, the study pointed out that typical betting clients generally – without distinction between live bets and traditional bets – show more moderate gaming behavior compared to other sorts of gambling spending rather low amounts of money per week (averagely less than EUR 5). An increased danger of live bets as well as a higher potential of addiction as follows the opinion of the legislator can therefore not be detected.

Furthermore, proof for such increased danger of live bets could neither be found in the – so far – only **prevalence surveys carried out in Austria**<sup>4</sup>, conducted in 2011 as well as 2015, nor in the 2014 annual report of the largest counselling and treatment provider

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<sup>3</sup> LaBrie, R. A., LaPlante, D. A., Nelson, S. E., Schumann, A., & Shaffer, H. J. (2007). Assessing the playing field: A prospective longitudinal study of Internet sport gambling behavior. *Journal of Gambling Studies*, 23(3), 347-362.

<sup>4</sup> Kalke, J., Buth, S., Rosenkranz, M., Schütze, Ch., Oechler, H., & Verthein, U. (2011). Glücksspiel und Spielerschutz in Österreich. Freiburg: Lambertus.  
Kalke, J., Wurst, F.M. (2015). Glücksspielverhalten und Glücksspielprobleme in Österreich. Hamburg: Institut für interdisziplinäre Sucht- und Drogenforschung.

for problem gamblers in Austria "Spielsuchthilfe"<sup>5</sup>. In fact, both studies did not consider it necessary to differ between live bets and traditional bets being placed before the game starts in order to **assess gambling addiction risks**.

By allowing live bets on the next goal, the legislator obviously indicates that live betting itself bears a lower risk in the case of football and ice hockey. This arbitrary distinction lacks any rationale and thus does not satisfy the EU-law principle of consistency.

### 3.1.3. Betting-related manipulation

According to the explanatory notes "*live betting' regularly concerns secondary circumstances within an overall event whose creation does not necessarily require the interaction of several persons, it may also facilitate the manipulation of matches and, hence, betting fraud*". The public opinion shows a tendency to regard betting as particularly prone to manipulation, which actually does not correspond to the facts. This is especially meaningful with regard to bets being influenceable by a single player (yellow card, corner kick, etc).

In reality, we are of the opinion that such allegation is to be classified as a **fundamental misunderstanding**. Bets on such events – if offered at all – may only be carried out by placing reasonable amounts of money as betting limits are quite low. Therefore, manipulation is not worthwhile in this context. In our experience with European bookmakers, it is simply **not profitable** for betting fraudsters to place amounts on events such as throw-ins and yellow or red cards.

There is no practical evidence in any means that live betting may "*facilitate the manipulation of matches and, hence, betting fraud*". Such assumptions are moreover not in line with **scientific surveys**. An independent study from 2015 conducted by the ASSER International Sports Law Centre/T.M.C. ASSER Institute<sup>6</sup> investigated the relationship between cases of betting-related manipulation and certain sports bets on the basis of quantitative empirical evidence, providing the following results:

- (i) Betting-related game manipulation is mainly related to the **end result** of a game and, particularly, the **number of goals** scored (**goal difference**). This has been confirmed by the monitoring statistics of the "Fraud Detection System" of the worldwide leading surveillance company in the betting sector "Sportradar" ("**FDS-Monitoring-Statistics**"). The most suspicious betting activities have

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<sup>5</sup> Berger, P., & Horodecki, I. (2015). 2014 Jahresbericht: Tätigkeits- und Forschungsdaten. Wien: Spielsuchthilfe.

<sup>6</sup> Die Wahrscheinlichkeiten von Spielmanipulation, Fakten & Zahlen zum Integrationsrisiko gewisser Sportwetten, available at <http://www.asser.nl/media/2691/die-wahrscheinlichkeiten-von-spielmanipulation-studie-2015.pdf>.

been detected in the most common sorts of betting: the win bet (e.g. the traditional 1x2 betting type), the number of goals bet as well as the Asian handicap bet. Manipulating the (minimum) goal difference a team has to reach in result is by far the most frequently observed method of betting-related fraud. It is particularly popular as it allows fraudsters to maximise their profits in forcing teams to lose a game by multiple goals. To reach the objective intended by such manipulation, coordinated actions of participants and/or the referee are required.

However, the legislator of the StWG **exempts the bets being most likely subject to manipulation**, for instance betting on goal difference in football, **from the ban on live betting**. In our opinion, such approach constitutes an unjustifiable evaluative contradiction with regard to the allegedly pursued objectives of the prohibition of live betting.

- (ii) The assertion that **side bets** bear a significant risk of betting-related manipulation lacks any empirical proof. An analysis of the volume of placed bets has shown that the **liquidity** regarding the side betting market is **much lower** compared to the main betting market. European betting operators often choose to offer side bets only in connection with specific events (where it is less likely participants would risk their careers for game manipulation) and, moreover, tend to accept only small amounts of money. Even if operators would accept higher bets, for example on the next player to receive a yellow card, such high stakes would instantly cause **suspicion of game manipulation**. As a result, it seems **not profitable** for fraudsters trying to exploit these types of betting for their own purposes.
- (iii) Furthermore, there is also no basis for assuming that live bets represent a specific respectively higher risk of game manipulation than traditional pre-match bets. One of the main points emerging from the FDS-Monitoring-Statistics is that fraudsters usually choose to take advantage of **pre-match as well as live betting** options with respect to the common sorts of betting (win, number of goals, Asian handicap). This method is selected in order to reduce the hazard of getting caught and to minimise the loss of profits. Although live betting offers certain advantages to ensure higher profits (higher betting limits, variations of odds may be exploited) and the period of time available to detect betting-related manipulation is shorter, FDS-Monitoring-Statistics still indicate that **insider information is normally used in connection with pre-match betting**.

The survey explicitly proves that the (partial) ban on live betting as foreseen in the draft of the StWG is **no suitable measure to fight fraud and betting-related manipulation**. On the contrary, technical systems make it possible to effectively combat betting-related fraud which has been successfully practiced

by leading betting operators for years and was also highlighted in the conclusions of the expert workshop of the European Commission regarding the Green Paper on problem gambling.<sup>7</sup>

## 3.2. Restriction of remote gambling

### 3.2.1. General remarks

§ 3 ("*Duty to obtain a license and the duty to disclosure*") section 2 of the StWG states: "*Every betting operator must operate at least one outlet on a permanent basis.*"

As this provision does not sufficiently clarify the applicable scope, the explanatory notes on § 1 of the draft to the StWG also need to be taken into account in order to understand the legislator's intentions: "*The bookmakers and totalisators [...] are considered to be betting operators, while the scope is also clarified in relation to brokers of betting customers who are likewise covered by the term 'betting operator'. The activities undertaken by a betting operator may only be practiced in a betting outlet. Every betting operator must operate at least one betting outlet in Styria. [...] Hence, all betting products offered throughout Styria are covered by the Act. Activities not falling within the scope of the Act must be prohibited pursuant to § 16.*"

Subsequently, Styria prohibits any form of remote betting, with only terrestrial betting being legal. However, this approach contradicts the current market development. Various studies and market analyses have shown that there is an ongoing trend towards remote betting hence being the driving force behind the growth of the betting market (increase of EUR 33 million compared to 2016 according to *Branchenradar for Gambling and Betting 2017*, one of the most reliable sources for betting and gambling in Austria).

### 3.2.2. Black market

If the law prohibits the provision of remote or live betting, there will exist an **additional risk** that betting clients may turn towards **unregulated** and thus **illegal** online betting operators. This is generally **contrary to the intention of the legislation** regarding betting and gambling as the purpose should be to channel players away from the black market.

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<sup>7</sup> Conclusions, Workshop on Online Gambling: Detection and Prevention of Problem Gambling and Gambling Addiction, S 2; available at [http://ec.europa.eu/internal\\_market/gambling/docs/workshops/workshop-ii-conclusions\\_en.pdf](http://ec.europa.eu/internal_market/gambling/docs/workshops/workshop-ii-conclusions_en.pdf).



Limiting certain kinds of bets obviously runs counter to this intention since betting clients may not want to accept and try to bypass such restrictions. However, since unlicensed betting operators are **not bound to the player protection standards**, betting clients will have to face the risk of falling victim to fraud and the lack of adequate measurements that help to prevent the development of gambling addiction. **National regulatory authorities** are naturally **not able to oversee** such **betting markets** and have no access to important data on its functioning being necessary to detect fraudulent activities. Moreover, such illegal betting operators do not pay any taxes, resulting in a loss for the state budget, or financially support any player protection institutions. This **financial loss** yet does not only affect the state budget but also the licensed betting operators, which is detrimental to intended competition.

For this reason, it is essential to allow betting operators to offer a **wide range of products** in order to maintain a **viable betting market**.

### 3.2.3. Violation of the freedom to provide services according to Art 56 TFEU

In addition to the previously mentioned arguments, the planned prohibition of remote as well as live betting is, in our opinion, also violating the freedom to provide services pursuant to Article 56 of the Treaty on the Functioning of the European Union ("**TFEU**"). According to the jurisdiction of the European Court of Justice ("**CJEU**"), such restrictions can only be justified under certain conditions. The CJEU developed a **testing scheme** establishing certain requirements which need to be fulfilled **simultaneously**; if this is not the case, an interference with the fundamental freedoms is not permitted and therefore contravenes EU law. Any restrictive measure must **(i)** be justified by **overriding public interests** and **(ii)** comply with the **principles of non-discrimination and proportionality**. The CJEU has already acknowledged the combat against criminal activities and gambling addiction as overriding reasons of public interest. However, a restrictive measure – such as the prohibition of remote or live betting – is not permitted if the legislation "[...] *does not genuinely meet the concern to reduce opportunities for gambling or to fight gambling-related crime in a consistent and systematic manner.*"<sup>8</sup>. The burden of proof that a measure is suitable to pursue the specified public interests and that the restrictive measure can be justified lies with the respective Member State.

The restriction on remote or live betting is neither suitable to fight gambling addiction nor to prevent game manipulation and thus **cannot be justified** by overriding public interests. A **comparison of international** respectively national **legal provisions** regarding remote or live betting clearly demonstrates that the legislator can set high

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<sup>8</sup> CJEU 30 April 2014, C-390/12, *Pfleger et alia*, Para 56.

standards and measures in terms of player protection to prevent betting-related fraud **without establishing these restrictions**. Such restrictive measures are simply **not necessary and suitable** to achieve the intended objective and, as a consequence, do not comply with the fundamental freedoms of the European Union.

Although sports betting in Austria is regulated by the Provinces, a European assessment of provisions affecting the fundamental freedoms makes it necessary to consider the **Austrian gambling market as a whole**. The CJEU has already stated that "[...] *whilst EU law does not preclude an internal allocation of competences whereby certain games of chance are a matter for the Länder and others for the federal authority, the fact remains that, in such a case, the authorities of the Land concerned and the federal authorities are jointly required [...] not to infringe Article 49 EC [now Article 56 TFEU]. [...] in the full measure to which compliance with that obligation requires it, those various authorities are bound, for that purpose, to coordinate the exercise of their respective competences.*"<sup>9</sup> To be in line with European legislation, a restrictive measure must not only fulfil the requirements set out above, but also generally be **conducted in a coherent and systematic manner**.

In contrast to the planned amendment of the StWG in Styria, remote as well as live betting are allowed in several other Austrian Provinces (e.g. in Upper Austria or Vorarlberg). A ban on remote or live betting in Styria would hence contradict the policy of the other Provinces as they are **all pursuing the same objectives**. Since a European assessment is based on a holistic approach (i.e. the whole of Austria), the planned introduction of the prohibition of remote or live betting is not coherent and thus cannot be justified under EU law.

#### 3.2.4. International comparison

A glance at the legislation of other countries proves that the mentioned objectives **can be reached much more appropriately**:

The German Province of Schleswig-Holstein introduced a well-functioning and EU-compliant regulation for the gambling industry four years ago. The licences issued within this regulatory system only provide for restrictive measures regarding betting on sporting events in the youth and amateur sector. This approach is not only **supported** by decision-makers in organised sport, but also betting operators. Experience in recent years has shown that no problems in terms of game manipulation were encountered in Schleswig-Holstein and that the regulations are perceived as being **exemplary and expedient**.

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<sup>9</sup> CJEU 8 September 2010, C-46/08, *Carmen Media Group*, Para 70.



Other regulated markets in Europe (e.g. UK and Denmark) are permitting live betting to be conducted offline as well as online for several years. However, they are statistically among those markets showing the lowest rates in terms of betting-related problems in Europe.<sup>10</sup> Markets such as Denmark, Spain and the UK chose to implement a transparent and robust regulatory framework in order to realise an open and flexible betting market. To prevent betting fraud these markets, for instance, **(i)** oblige betting operators to **report any suspicious activity**, **(ii)** establish an **information channel and clear guidelines** within and outside the regulated national gambling sector and **(iii)** entrust the regulator with the **power of prosecution**. To establish a gambling market with functioning protection mechanisms it is doubtlessly necessary to **determine requirements and sanctions**, however, a ban on live betting is certainly no convenient solution.

We would kindly ask you to take our considerations into account.

Best regards,

Claus Retschitzegger  
OVWG-President

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<sup>10</sup> United Kingdom: 0.5%; *Wardle, H., Seabury, C., Ahmed, H., Payne, C., Byron, Ch., Corbett, J., & Sutton, R.* (2014). Gambling behavior in England and Scotland. Report prepared for the Gambling Commission. London: NatCen.  
Denmark: 0.4%; *Bonke, J., & Borregaard, K.* (2009). The prevalence of problematic gambling behaviour: A Scandinavian comparison. *Scandinavian Journal of Public Health*, No 37, page 654-660.