

POSITION PAPER

OVWG

Österreichische Vereinigung
für Wetten und Glücksspiel

**Who we are, what we stand for,
what we want to achieve.**

TABLE OF CONTENTS

1. WHO WE ARE AND WHAT WE STAND FOR.....	3
1.1. The Association.....	3
1.2. Common values	3
1.3. Added value potential for Austria.....	4
2. WHAT WE WANT TO ACHIEVE	4
3. STATUS QUO AND (NECESSARY) RE-REGULATION THROUGH DIGITALISATION	5
3.1. Changed market conditions through digitalisation	5
3.2. Legal provisions	5
3.3. Market power in the online sector & judicature of the CJEU	6
3.4. Lack of an independent authority.....	7
4. BEST PRACTICE EXAMPLES FROM OTHER COUNTRIES	8
4.1. Denmark and UK.....	8
4.2. Conclusions for Austria	8
5. RE-REGULATION IN AUSTRIA	9
5.1. Benefits of a new regulation for the state.....	9
5.2. Socio-political benefits.....	10
6. SPECIFIC LEGISLATIVE DEMANDS.....	10

1. WHO WE ARE AND WHAT WE STAND FOR

1.1. The Association

The OVWG is an Austrian interest group aiming to create awareness of betting and gambling among opinion leaders. The members of the Association are leading operators offering online services. The OVWG primarily focuses on the regulation of online products (online sports betting, online gambling).

Membership to the OVWG is open for any company being active in the area of online betting and gambling and fulfilling the following access criteria:

- Licensed within the EU
- Implement active and systematic player protection
- Actively and systematically prevent money laundering
- Audited by a state-certified auditor
- Compliance to tax obligations in Austria
- Actively supporting the objectives of the OVWG
- Committed to an open and regulated betting and gambling market
- Committed to safe platforms and stationary transactions
- Committed to providing fair working conditions

Through their membership in the OVWG the providers demonstrate responsibility and transparency.

1.2. Common values

All members of the association are committed to the same values:

- **Corporate Citizenship:** This value refers to actions of a responsible company or institution and includes four areas: Licensing in an EU member state, protecting players, paying taxes and responsibility towards employees.
- **Compliance:** For the OVWG, as a special interest group, transparent behaviour in accordance with the law is self-evident and important. Consequently, its members act in a compliant and transparent manner and clearly communicate the objectives of the association.
- **Innovation:** The OVWG members operate in a market characterized by intense competition and state-of-the-art technology. To be able to provide world-class entertainment, the operators use the latest and most professional technology. The OVWG members are constantly investing in new technology, research,

development and ongoing employee training in order to provide safe networks and high-performance platforms.

- **Social responsibility:** The OVWG members are committed to the integration of sports, effective prevention of gambling addiction, protection of minors and comprehensive crime prevention and control.

1.3. Added value potential for Austria

Online gambling and online betting are not only used for pleasure; they also constitute an important economic factor. The technical platforms and computer systems used require the latest technologies, which constitute an important sector of the digital economy with high value added potential.

Our members are also important employers: In this constantly evolving industry, only companies with high levels of expertise in the areas of internet and security technologies, system architecture and user experience will succeed. The OVWG members are state-of-the-art companies and therefore attractive employers who need skilled professionals to develop and operate their platforms.

2. WHAT WE WANT TO ACHIEVE

The OVWG pursues the objective of reforming the legal framework for betting and gambling in order to achieve legal certainty and fairness for all providers on the Austrian market. The association aims to achieve a nationwide regulatory and fiscal framework for the entire (online) industry that is in accordance with market needs and with the provisions of EU law.

In a modern and fair legal framework players should have the possibility to choose from a wide range of legal forms of gambling and betting and are therefore less tempted to transfer to unlicensed providers. As a result, customers are channelled to play within a regulated system with clear protection and control mechanisms. Only corresponding provisions of regulated sports betting and gambling can meet the objectives of the legislative authorities, especially concerning player protection. The current Austrian gambling monopoly – in violation of EU law – doesn't fulfil this purpose; nine different sports betting laws also prevent a channelling effect on a subnational level.

3. STATUS QUO AND (NECESSARY) RE-REGULATION THROUGH DIGITALISATION

3.1. Changed market conditions through digitalisation

Especially in the online sector, gambling and betting are enjoying increasing popularity among users. Traditional casinos and betting shops are complemented by online and mobile solutions, increasing the online market share. A recent study by *Kreutzer, Fischer and Partner* (2017) on gambling and sports betting in Austria states that online gambling gross gaming revenues have increased by around 40% since 2014. In 2016, the online gambling sector has generated a gross gaming revenue of € 185 Mio.

Digitalisation not only affects sales figures but also players: Due to high availability and easy access to online gambling and sports betting products via computer, smartphone and tablet, a high level of player protection is indispensable – the OVWG unconditionally acknowledges this fact. The OVWG members have recognized the importance of the online market and changed market conditions through digitalisation. Still, there is an **urgent need for legislative action**.

3.2. Legal provisions

In Austria, the right to offer games of chance is reserved to the state; a gambling monopoly exists (§ 3 Gambling Act). The right to offer games of chance can be transferred to others through licensing. Until 2010, the hands-free awarding of the licenses was declared inadmissible by the ECJ ruling “Engelmann” (C 64/08). As a result, and for the first time, Austria had to issue its gambling licenses Europe-wide, publicly and transparently.

The twelve land-based casino licenses were put out to tender in two packages with six licenses each (all of them in the hands of CASAG). In addition, three further licenses were put out to tender for the first time in 2013. The awarding of these licenses is delayed by legal disputes; according to the current status it is unlikely that they will be put out to tender again.

The only lottery license, which also entitles to offer online gambling, was granted to ÖLG (most recently in 2011, until 2027). The terms of tender were tailored to the monopolist, especially as a proof of at least five years of experience in offering lottery products (inter alia) was required. By establishing offline and online requirements, it was in fact impossible for an (solely) online provider to obtain this license. Moreover, there is still no justification why in a rapidly growing market the grant of only one license is the most appropriate way to channel players to regulated networks. There

are also severe concerns regarding the accordance of lottery license awarding process with EU law.

Due to their licenses from other EU-Memberstates, the members of the OVWG offer their services completely legally in Austria. Due to the lack of possibility to obtain Austrian licenses and the fact that the Austrian gambling monopoly is contrary to EU law, need for action on the part of the legislator arises. The providers are prepared to apply for Austrian licenses at any time and already comply with high player protection standards. Despite a lack of legal certainty, these providers are taxed by the Federal Ministry of Finance at 40% of the annual gross gaming revenues.

The right to offer sports betting is not subject to quantitative limitations. Responsible for regulation, supervision and tendering of licenses are the federal states (die Bundesländer). Consequently, there are nine different laws concerning sports betting in Austria. Online betting is not regulated in all federal states, although even where it is regulated, the needs of the online market are not addressed in detail. Some federal states do not (yet) consider the steadily increasing online sector. Taxation is set at 2% of the wagers. In addition, the question in which federal states bets on other events than sports are allowed, remains outstanding. This also leads to considerable legal uncertainty.

3.3. Market power in the online sector & judicature of the CJEU

The Austrian gambling market is characterized by the dominant position of CASAG and ÖLG; the companies are now majority-owned by the Czech Sazka Group. CASAG has twelve land-based casinos in Austria. ÖLG holds the only lottery license in Austria, which inter alia allows offering “electronic lotteries” (means: online gambling). Due to this monopoly, other providers are not allowed to offer online gambling with an Austrian license.

The CJEU states in its recent judicature that restrictions on the freedom to provide services – such as the adoption of a monopoly – are only allowed with a justification or valid reason. Justifications like consumer or player protection and the fight against fraud are valid. The CJEU also states that not the objective of the national act constitutes a decisive factor but its actual effects. Therefore, it is not sufficient to determine them programmatically. According to the judicature of the CJEU a restriction on the freedom to provide services based on the justifications of “player protection” and “crime prevention” is contrary to EU law if it doesn’t actually pursue these goals. In addition, the restriction has to consistently and coherently reduce gambling opportunities and associated crimes.

Regarding the advertising strategy, the CJEU states that the monopolists' advertisement has to be moderate and strictly limited to what is necessary to channel players to regulated networks. Such advertising must not aim to encourage the instinct of playing. This is the case, inter alia, when gambling is downplayed, when a positive image of gambling is promoted in order to use the generated revenues for activities of public interest or when its appeal is enhanced by advertising messages that seductively promise significant profits.¹ According to media reports, the ÖLG, which belongs to the CASAG group, spends 40 to 50 million euros on advertising each year. Therefore, the ÖLG is one of the eight largest advertising investors in Austria (see also Der Standard, 02.03.2015). Its advertising strategy doesn't pursue the goal of player protection but aims to encourage those players who are not yet willing to participate in games of chance.²

In the light of this judicature, the OVWG strongly believes that the Austrian gambling monopoly contradicts EU law. This is due to the mere fact that the monopolist excessively promotes its advertising and therefore the monopoly can't be justified by the need to protect players. Provisions that are contrary to EU law must not be applied (primacy of application of Union law). **Consequently, also providers without a national license are allowed to legally offer their services in Austria (freedom to provide services).**

3.4. Lack of an independent authority

Since Dec 2017, the "tax authority responsible for fees, traffic taxes, and gambling" (Finanzamt für Gebühren, Verkehrssteuern und Glücksspiel) is in charge of granting gambling licenses in Austria, which is subordinate to the Federal Minister of Finance. Supervisory authority is the Federal Minister of Finance (BMF). Through the company ÖBIB, the state's holding in CASAG (33,24%) is also located in the BMF. The Federal Minister of Finance therefore has a triple role, which needs to be questioned critically: On the one hand, the BMF manages company shares and therefore has a legitimate financial interest. On the other hand, the Federal Minister of Finance is the supervisory authority. This constellation implies a clear conflict of interests. **A dedicated and independent Austrian Gambling Regulatory Authority, which is also to be responsible in particular for licensing to online providers, does currently not exist in Austria.**

¹ zB EuGH 08.09.2010, Rs C-316/07 ua, *Stoß*, Rz 103.

² zB OGH 30.03.2016, 4 Ob 31/16m.

4. BEST PRACTICE EXAMPLES FROM OTHER COUNTRIES

4.1. Denmark and UK

In most EU countries, there is already a balanced and clear legal framework that can serve as a point of reference for regulation in Austria. Denmark and the UK can be considered as positive examples and their regulatory frameworks as models for a nationwide, EU-compliant regulation.

- **Denmark:** The Danish licensing system for online gambling and online sports betting does not limit the number of concessions. The responsible Gambling Authority has an open and cooperative approach and publishes compliance guidelines as well as recommendations. In a transparent and fair licensing process, the competent authority conducts reliable examinations (audits) and technical reviews of companies. In addition, the companies must meet high standards of player protection. Taxation depends on the product and amounts to around 20% of gross gaming revenue (GGR).
- **UK:** The UK also provides a licensing system for online gambling and sports betting without a quantitative limitation of concessions. The authority offers applicants and active providers advice on regulatory issues and regularly publishes compliance guidelines as well as recommendations. It is obliged to grant a concession as long as there are no reasons against licensing. Providers are required to transmit all the relevant data for reporting purposes. Taxation depends on the product and amounts to around 15% of GGR. Moreover, the treatment of bonuses also depends on the products.

In contrast to Denmark and the UK, **Germany** – despite the introduction of a licensing model – continues to be a negative example. Excessive taxation (5.3% of the stake) and severe restrictions on the range of products on offer virtually force players into the black market. However, **Finland**, which is one of the last EU member states to continue to maintain its monopoly, should also be mentioned as a negative example. Finland has a prevalence rate for problem gambling of 3% of its population, while Denmark, with regulation through licensing, has a problem gambling rate of only about 0.7%. Monopolies are therefore neither suitable nor necessary to protect players.

4.2. Conclusions for Austria

Protectionism and prohibitions lead to a massive increase in the black market rate. Experiences from other European countries show that security and player protection are best achieved by channelling the existing international gambling and sports

betting offer into the national licensing system. In a heavily restrictive and protectionist system, in which only one online concession is granted to the state's monopolist, consumers are likely to find another access to their preferred international operators.

Therefore, it is crucial to grant reputable European gaming operators Austrian licenses. Empirical data from key markets in Europe show that prohibition and protectionism models have significantly larger black market shares than liberal licencing and channelling models. A good example for this fact can be found in the German regulation system. Despite total bans on online poker and casinos, the market for online gambling has been growing for years; from 2014 to 2015 by 58%.³ In France, where online casinos are banned, the online gambling's black markets share is at least 40%. Denmark on the other hand regulates online gambling in a licensing system while maintaining the state's lottery monopoly. In its supervisory report the Danish Gambling Authority concludes that illegal gambling generates a maximum market share of 5%.⁴

In OVWG's opinion, channelization of customers into regulated networks can only be achieved by creating an attractive regulatory framework for domestic and foreign providers. Player protection, crime prevention and prevention of money laundering need to be the main objectives of a new regulatory framework.

5. RE-REGULATION IN AUSTRIA

5.1. Benefits of a new regulation for the state

The OVWG supports the adoption of a new transparent regulation, which is in line with EU law and market-conform in order to achieve the highest possible channelling effect, player protection and security. Regulated online (and offline) providers should have fair access to the Austrian gambling market.

The benefits of a re-regulation are:

- Maximum control of licenses by the federal government, because of a new licensing system;
- High level of player protection;
- Constant tax flow (into the treasury).

³ <https://gluecksspielstudie.de/> (Seite 106).

⁴ <https://spillemyndigheden.dk/en/news/data-gambling-market-4-q-2012>

In order to obtain this (politically) necessary decision, the international OVWG members would like to provide their know-how to the authorities and other institutions.

5.2. Socio-political benefits

From a socio-political perspective re-regulation and a fair tax system lead to the following advantages:

- **Players will benefit** from a better protection through the use of secure platforms from licensed operators. Thus, players will be channelled into regulated providers' systems, which in turn significantly reduces the risk of tampering, money laundering and betting fraud.
- The **state will benefit** from state-controlled providers that pay taxes under clear conditions.
- **Providers will benefit** from the legal certainty in the Austrian market. This will increase the ability to invest in innovative and secure offers for online players and strengthen Austria as business location.

6. SPECIFIC LEGISLATIVE DEMANDS

The OVWG aims to achieve the following legislative changes in the Austrian market:

- **Re-Regulation of the online sector:** The OVWG strives to achieve a nationwide regulatory and financial framework that is in line with the market and the provisions of EU law. With a modern and fair legal framework, players can choose between a wide range of legal forms of gambling and betting and are therefore less tempted to transfer to unlicensed operators.
- **Fair tax model based on the gross gaming revenue:** The taxation for all products should be based on the gross gaming revenue and should not exceed 15%. Experiences from other countries show that taxation of less than 15% creates an incentive to receive licenses. Beyond this percentage the positive channelling effect vanishes through the withdrawal of providers from the market. This in turn leads customers to play in unregulated markets.
- **High player protection standards:** Gambling and betting are forms of entertainment that can also have downsides. Regardless of legal requirements, protection and safety of persons (especially of minors) are OVWG's most important goals. The commitment to high player protection and security standards

is an indispensable precondition for an OVWG membership. Technological innovations in combination with human sensitivity (social control) are crucial for an effective enforcement of player protection. The OVWG is convinced that under a new regulation the majority of players will use the licensed platforms and not transfer to unlicensed operators. The regulation thus leads to a better channelling of players into licensed gambling and betting systems.

- **Independent regulatory authority:** Gambling and sports betting providers are to be supervised in future by an independent authority with nationwide jurisdiction; the (quantitatively unlimited) licenses for online gambling are also to be issued by this authority.

The OVWG is convinced that Austria could also serve as a positive example for channelling customers into a regulated online market. The OVWG will support the legislator in the implementation of this project with legal know-how, innovative ideas and many years of experience.