

ESSA response:
Notification of 'Betting
Law of 2017' -
2017/273/CY (Cyprus)

September 2017

1. ESSA¹, a not-for-profit trade association representing the betting integrity interests of many of the largest licensed betting operators predominately based and operating in Europe, would like to draw your attention to a number of issues and concerns with regard to the notified draft law entitled 'Betting Law of 2017' - 2017/273/CY (Cyprus)² and its compatibility with European Union (EU) law.³
2. ESSA welcomes much of the draft legislation, notably a continuation of the regulatory framework that enables betting operators to apply for licences and to offer their services, and which appears to allow such services to be offered both within (nationally) and outside (internationally) of Cyprus.
3. However, we note that the draft law also includes a ban on both betting exchange (Article 85) and spread betting (Article 86) with no rationale provided as to why these forms of betting have been prohibited, whilst fixed odds betting products are permitted.
4. This constitutes a restriction of trade and the freedom to provide services for ESSA members, which include betting exchange and spread betting operators licensed and regulated in other EU jurisdictions. As such, it should be noted that these betting products are available to consumers through licensed and regulated frameworks in other member states e.g. the United Kingdom.
5. Within a global competitive market, any restrictions on the types of bets or products offered (and which are available elsewhere) can have a detrimental impact on the market and the level of consumer channelling. It is fundamental to the viability of regulated betting operators and their markets that they are able to offer a wide range of products; imposing restrictions invariably leads to consumers seeking banned products through other markets, including unregulated channels.
6. This adversely impacts the evidence gathering and consumer protection capabilities of a regulatory authority and its associated ability to safeguard the integrity of its betting market and related sporting events. Furthermore, imposing product restrictions on regulated operators does not make it any less likely that the sporting events in that licensing jurisdiction will be any safer from betting related corruption, which can take place with a multitude of operators around the world.
7. The current Betting Law of 2012⁴ (being amended by this new 2017 draft law) includes these same product prohibitions, however, there does not appear to be a clear justification for their inclusion in this or related notifications.⁵ The impact assessment⁶ for the law (notified in 2010) merely states that spread betting is prohibited because it "is considered to be dangerous since players do not know beforehand the amount of money they may lose."⁷ There is no detailed evidence to support this position, nor the ban on betting exchanges, which is not addressed in the impact assessment; it should be noted that exchange betting is a form of fixed odds betting (which is permitted).
8. ESSA contends that the prohibition of any betting services should be evidence-based and that there should be clear and robust reasons accompanying any proposed law and related provisions that restricts the availability of licensed betting operators to trade and to offer services to consumers. As such, ESSA argues that detailed supporting evidence should be provided to justify why those products cannot be safely licensed and regulated in Cyprus (as is already the case in other EU jurisdictions) as opposed to the other betting products and services licensed betting operators are permitted to offer under the terms of the existing and proposed Cypriot betting legislation.

¹ <http://www.eu-ssa.org/>

² http://ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaaction=search_detail&year=2017&num=273&mLang=EN

³ https://europa.eu/european-union/law_en

⁴ <https://nba.gov.cy/wp-content/uploads/TheBettingLawof2012.pdf>

⁵ http://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaaction=search_detail&year=2010&num=615

⁶ http://ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaaction=search_detail&year=2010&num=615&mLang=EN

⁷ *ibid.* Paragraph 16 (ii)

9. According to the Court of Justice of the EU (CJEU) any restriction to the freedom to provide services “must be justified by imperative requirements in the general interest, be suitable for achieving the objective which they pursue and not go beyond what is necessary in order to attain it.”⁸ The notified 2017 draft law’s proposed continuation of the prohibition on certain betting products (exchange and spread betting), without any accompanying supporting evidence-base, appears contrary to Article 56 of the Treaty on the Functioning of the European Union (TFEU) and related case-law.

10. The draft 2017 law also includes a provision in Article 74 (Betting Tax) which imposes a levy upon licensed operators which is, in part, allocated to various Cypriot sports organisations (see 74 (3) (a)).⁹ Again, this provision is included in the existing law of 2012 (see 71 (3))¹⁰, albeit it is not referred to as a ‘levy’ but a ‘contribution’. Importantly this payment does not appear to have been part of the notified draft law in 2010 (which appears to have subsequently become the 2012 law currently in operation and which the notified draft 2017 law is now seeking to replace). As such this payment seems to have been added afterwards; there does not appear to be a separate notification for this payment provision, which provides a commercial advantage for Cypriot sports bodies from betting.

11. As this payment provision does not appear to have been identified in the original 2010 notification, there is understandably no reference or justification for it in the related impact assessment.¹¹ ESSA contends that this provision (as maintained in the notified 2017 draft law) appears to constitute a State aid adversely impacting licensed betting operators (i.e. intervention by the state benefiting sports bodies to the detriment of betting operators licensed in Cyprus and consequently affecting trade and competition). As the Commission will be aware, the TFEU “generally prohibits State aid unless it is justified by reasons of general economic development. To ensure that this prohibition is respected and exemptions are applied equally across the European Union, the European Commission is in charge of ensuring that State aid complies with EU rules.”¹²

12. Where such levies are in place (or proposed) within the EU, there is therefore a requirement that they have been notified, justified and attained State aid clearance from the European Commission before their introduction. It is also important to note that similar levies have also been limited to the betting taking place on that national sport. In other words, that sports bodies can (where a levy is justified and cleared) only benefit from betting on its related national sporting events. This is the case in the recently cleared UK horserace betting levy and its reform¹³, which only relates to British racing and does not apply to international racing (and related betting). The notified draft ‘Betting Law of 2017’ (as with the 2012 law) does not include such territorial limitation and thereby potentially imposes that all betting be subject to this levy and that the Cypriot sports listed in the law consequently benefit from any betting taking place, including on non-Cypriot sporting events.

13. ESSA is therefore concerned that: a) this legislative provision (betting levy/contribution) has not been notified to the Commission; and b) that no State aid consideration has been made of it. The association therefore requests that the Commission explore the appropriateness and compatibility of this State aid provision with EU law as a matter of urgency, along with the separate issues raised concerning the draft law’s unjustified prohibition of certain betting products (i.e. exchange and spread betting) and the associated restriction of trade imposed on licensed betting operators.

⁸ Case C-243/01, para. 65
<http://curia.europa.eu/juris/showPdf.jsf?jsessionid=9ea7d0f130d55d280685d10844e18476fc236eddf9ad.e34Kaxilc3eQc40LaxqMbN4PaN8Re0?text=&docid=48383&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&art=1&cid=537316>

⁹ http://ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaction=search_detail&year=2017&num=273&mlang=EN

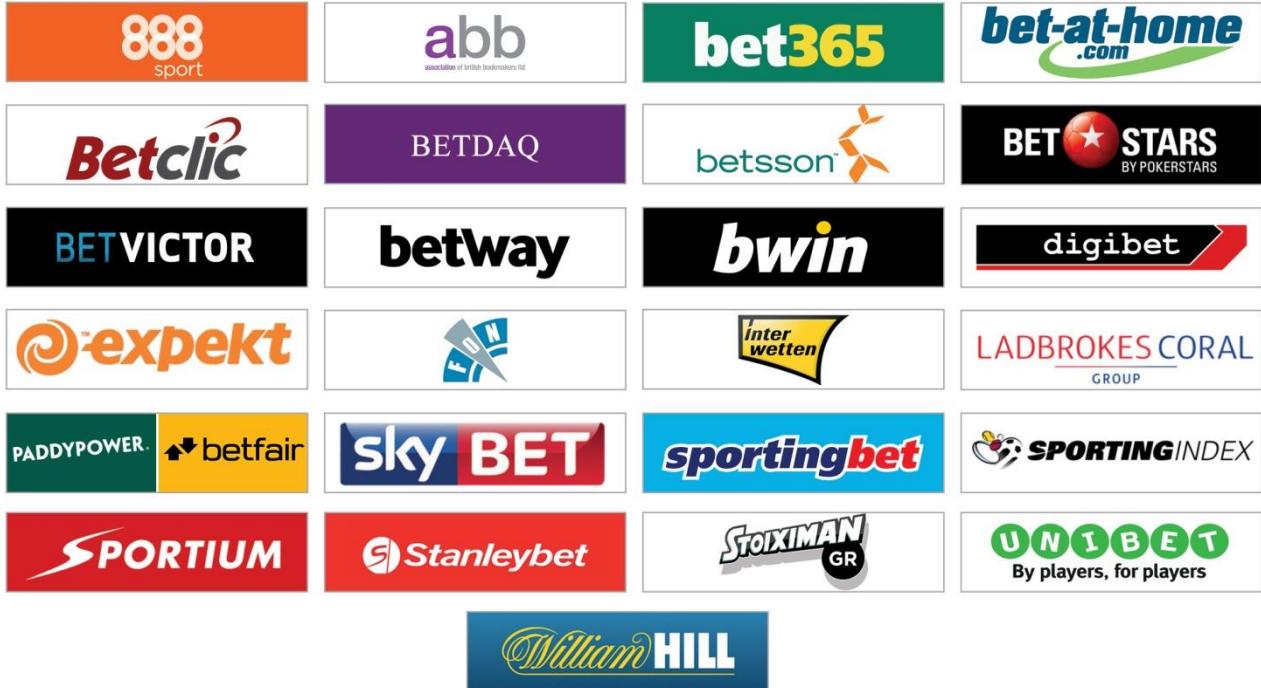
¹⁰ <https://nba.gov.cy/wp-content/uploads/TheBettingLawof2012.pdf>

¹¹ http://ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaction=search_detail&year=2010&num=615&mlang=EN

¹² http://ec.europa.eu/competition/state_aid/overview/index_en.html

¹³ http://ec.europa.eu/competition/state_aid/cases/267768/267768_1901680_142_2.pdf

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