

ESSA response:
Notification of 'Provincial
Act amending the Upper
Austrian Betting Act -
2017/536/A (Austria)

March 2018

ESSA response: Provincial Act amending the Upper Austrian Betting Act' – 2017/536/A (Austria)

1. ESSA¹, a not-for-profit trade association representing the betting integrity interests of many of the largest licensed retail and online betting operators in the world, 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 titled 'Provincial Act amending the Upper Austrian Betting Act' - 2017/536/A (Austria)² and its compatibility with European Union (EU) law.³
2. ESSA has concerns regarding the underlining reasoning and impact of the proposals to prohibit consumers from engaging in, and licensed betting operators offering, the following services:
 - a) Bets where the value of the stake exceeds EUR 500; and
 - b) live bets, excluding bets placed on a (numerical) interim or final result or an event deriving therefrom, or on which individual or team will next improve their standing (e.g. scores the next goal or obtains the next point).
3. Before outlining our concerns, ESSA would first like to bring to your attention that the impact assessment provided with this notification does not appear to relate to the subject matter.⁴ As such, ESSA has been unable to explore the detailed reasoning (if any) behind the proposals. The association has therefore determined to proceed on the basis that these proposals are based on an often used but flawed assumption that such service restrictions will have a positive impact on the integrity of sporting events, consumers protection and the national licensed betting market.
4. Taking the issue of the restriction of the value of stakes first. There does not appear to be any clear rationale for this limitation, in general, or the level at which it has been set. The level (not to exceed 500 EURO), in particular, appears to be an arbitrary and unevicenced restriction. Many countries around Europe, such as the UK and Denmark, offer betting markets without such consumer and trade restrictions and do not suffer from increased levels of addiction as a result.
5. Operators work closely with regulators to set clear parameters, including self-exclusion policies tailored to each customer, whilst allowing responsible consumers access to a wide variety of regulated products. It is not in the interests of responsible regulated operators to encourage or facilitate social problems from gambling, quite the contrary. Such adverse behaviour is to the detriment of responsible operators and the reputation of the industry; regulatory authorities will also understandably impose new regulatory measures and increased cost burdens on operators.
6. The second issue - the restriction of live betting - is often attempted to be justified on two (albeit flawed) points, namely that: a) live (in-play) betting has the potential to foster addiction; and b) that it may facilitate the manipulation of matches, and hence, betting fraud. As with the stake limitation issue discussed above, it is important to assess these betting market and product restrictions on the basis of EU law and case law, notably that any restriction to the freedom to provide services be justified by imperative requirements in the general interest, be suitable for achieving the objective and not go beyond what is necessary in order to attain it.⁵

¹ <http://www.eu-ssa.org/>

² <http://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2017&num=563>

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

⁴ <http://ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaction=search.detail&year=2017&num=563&mLang=EN> An email was sent to DG GROW to this extent on 28 February.

⁵ Case C-243/01, para. 65

http://curia.europa.eu/juris/showPdf.jsf?jsessionid=9ea7d0f130d55d280685d10844e18476fc236edff9ad_e34Kaxilc3eQc40LaxqMbn4PaN8Re0?text=&docid=48383&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=537316

7. On the first point, there is no validity to assertions that potential addiction for live (in-play) betting is greater than other forms of betting permissible under the legislation. Nor any reason, if that was the case (which is unproven), why less restrictive mitigating provisions could not be included in the draft legislation to adequately cater for such potential addiction concerns.
8. According to research by Harvard Medical School, there is no indication that live betting is more prone to addiction in contrast to other types of betting.⁶ It is also of significant importance that no proof of an increased danger from live betting has been determined in recent prevalence studies carried out in Austria.⁷
9. The British Gambling Commission, which covers one of the largest and most mature betting markets in the world, and which regulates live betting without any restrictions, published a policy paper on the issue in September 2016.⁸ That paper assessed the potential dangers of addiction from live betting and concluded that: "We do not consider that someone who bets in-play is automatically at increased risk of harm from gambling, but expect that licensees will monitor all bettors for signs of risk as required by our Licence conditions and codes of practice."⁹
10. The issue of match-fixing is often used to justify limiting the availability of live betting. However, this runs contrary to the available data. Firstly, law enforcement bodies such as INTERPOL and Europol have stated that match-fixing is not primarily focused on regulated betting operators (as in much of Europe, including Austria) but unregulated operators mainly based in Asia.¹⁰
11. Secondly, corruptors are also known to focus on the more mainstream traditional betting markets, such as the final result (permitted by the draft law), which have higher levels of liquidity and therefore offer greater opportunity to mask their illicit activities, rather than other live or side betting markets (as prohibited by the draft law) with much lower liquidity levels.
12. An independent report published by the ASSER Institute, which assessed the integrity risks of certain sports bets on the basis of quantitative empirical evidence, further supports this position.¹¹ Published in January 2015, the report analysed a detailed set of betting data covering football matches likely to have been manipulated for betting purposes over a period of five years (May 2009 - November 2014) to assess the impact of pre-match and live (in-play) betting.
13. The report shows that match-fixers primarily take advantage of high liquidity betting markets and that almost all suspicious betting patterns were observed in the main betting markets which relate to the final outcome of a match (with only 0.4% in side markets). The report therefore concluded that the evidence does not support the claim that live betting, in comparison to pre-match betting, significantly encourages corruption in sport. It found no correlation between live betting and possible instances of match-fixing that would justify a prohibition of these bet types.
14. The British Gambling Commission also covers the issue of match-fixing in its policy papers. The regulatory authority, which adopts an evidence-based risk assessment approach regarding the

⁶ 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.

⁷ 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.

⁸ British Gambling Commission In-play (in-running) betting: position paper (September 2016)

⁹ British Gambling Commission In-play (in-running) betting: position paper (September 2016) paragraph 2.4

¹⁰ Page 11 Interpol Match-fixing in Football Training Needs Assessment 2013 & <https://www.europol.europa.eu/content/results-largest-football-match-fixing-investigation-europe>

¹¹ <http://www.asser.nl/media/2422/the-odds-of-matchfixing-report2015.pdf>

availability of any product, including live betting, published its initial betting position paper in 2009 and has continually reassessed its policy position on that matter since that time.

15. The Commission, which has detailed data from one of the largest betting markets in the world, “works on the principle of risk-based regulation and must act in a proportionate manner” and was “not persuaded that there is a sufficient case for restricting types of bets” such as live betting on integrity grounds.¹² It reiterated this stance in 2013 stating that “any threat to sports betting integrity can be managed without the need to ban what is a very popular activity.”¹³
16. In its 2013 position paper, it further commented that it is “familiar with methods used in other countries to promote betting integrity such as restricting the types of bets offered or approving sports governing bodies’ rules before allowing betting on those sports.”¹⁴ The regulator noted that it “has the power to impose such restrictions” but “based on the available evidence, that such intrusive or resource intensive methods are warranted or would be effective”.¹⁵
17. The Commission reassessed its policy position in its latest paper (September 2016), stating that: “Despite the concerns raised about the risks to integrity from in-play betting there is limited evidence to show that the risks are greater than those associated with pre-event betting.”¹⁶ As such, restrictions on the type of bets regulated betting operators can offer to consumers “are not warranted at this time. Taking such action may also increase the risk that bettors would be driven to seek to place bets via grey and black markets, over which we have no oversight.”¹⁷
18. Within a competitive global market, any restrictions on the types of bets or products offered (and 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 channels, including unregulated.
19. 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 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.
20. Moreover, unregulated operators will continue to offer whatever types of products they chose without any regulatory limitation, oversight or possible sanctions and there is also no requirement on them to engage in responsible preventative actions to protect betting markets. Imposing betting restrictions on regulated operators does not therefore make it any less likely that the sporting events in that licensing jurisdiction will be any safer from match-fixing.
21. It also appears to be an incoherent and inconsistent policy to impose betting product restrictions on responsible regulated betting operators on perceived (but unevidenced) integrity grounds,

¹² Paragraph 3.2 <http://www.gamblingcommission.gov.uk/pdf/Betting%20integrity%20policy%20position%20paper%20-%20March%202009.pdf> & Paragraph 1.5 <http://www.gamblingcommission.gov.uk/pdf/Betting%20integrity%20policy%20position%20paper%20-%20March%202009.pdf>

¹³ http://www.egrmagazine.com/news/gambling_commission_rejects_in-running_ban_proposal

¹⁴ Paragraph 3.6 <http://www.gamblingcommission.gov.uk/pdf/Protecting%20betting%20integrity.pdf>

¹⁵ Ibid.

¹⁶ British Gambling Commission In-play (in-running) betting: position paper (September 2016)

¹⁷ British Gambling Commission In-play (in-running) betting: position paper (September 2016)

but not set out any integrity protection procedures in the draft law aimed at detecting, deterring and punishing match-fixing. Especially, given that Austria is a signatory to the Council of Europe Convention on the Manipulation of Sports Competitions¹⁸ which promotes that approach.

22. Other more effective integrity measures are readily available to regulatory authorities, including: obligation for licensed operators to report suspicious betting; information sharing; voiding suspicious bets; suspension of betting markets; and the instigation of criminal prosecutions. However, these widely promoted and employed integrity protection provisions do not appear to have been considered as alternatives to an unsupported ban on regulated live betting products.
23. ESSA contends that the notified draft law includes an unjustified and incoherent restriction of many live betting products and an arbitrary limit on consumer stakes (to EUR 500). The Austrian authorities have not provided any evidence that would justify such restrictions. ESSA is aware that the European Commission has unfortunately decided to close its infringement procedures and the treatment of complaints in the area of gambling.¹⁹ ESSA nevertheless requests that the Commission explore the appropriateness and compatibility of the unjustified product limitations contained in the proposed amendments to the Upper Austrian Betting Act with EU law and the associated restriction of trade imposed on licensed betting operators and Austrian consumers.

¹⁸ <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/215>

¹⁹ http://europa.eu/rapid/press-release_IP-17-5109_en.htm

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