

ESSA response:  
Notification of 'Styrian  
Betting Act 2017' -  
2017/307/A (Austria)

October 2017

1. ESSA<sup>1</sup>, 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 titled 'Styrian Betting Act 2017' - 2017/307/A (Austria)<sup>2</sup> and its compatibility with European Union (EU) law.<sup>3</sup>

2. ESSA has a number of concerns regarding the draft law, most notably (but not limited to):

- a) the ambiguous wording and scope of the draft Act, notably in terms of its potential application to remote (online) betting; and
- b) the unjustified and incoherent restriction of most in-play (live) betting products.

3. The notified draft law is intended to replace the Betting Act 2003 (as amended), notably incorporating a revision of the definitions e.g. "betting operator" instead of "bookmaker", and the scope of licensed betting activities within the Austrian state of Styria. In doing so, the draft law's impact assessment states: "The activities undertaken by a betting operator may only be practised in a betting outlet. Every betting operator must operate at least one betting outlet in Styria."<sup>4</sup>

4. It is, however, unclear how this interrelates, if at all, with the provision of remote (online) betting by licensed operators under the draft Act. This makes it difficult to comment, in detail, on the scope of the draft law and its potential impact on licensed betting operators. ESSA is mindful that remote (online) gambling is permitted in other states within Austria that license and regulate sports betting (e.g. Upper Austria and Vorarlberg), albeit there is not always a clear and specific reference to that betting medium within the associated legislation, as appears may be the case in this instance.

5. The association therefore contends that more clarity is necessary regarding the scope of the draft Act in relation to remote gambling, and indeed other products such as exchange and spread betting, before proper detailed comment and assessment of the draft Act can be made, along with any impact on trade and the freedom to provide services for ESSA members. On the latter, we are also mindful that remote betting is widely available in many other EU member states (e.g. Denmark, Spain, UK, Italy, France, Portugal and others) and jurisdictions within the wider global market place.

6. Clause 11 of the draft Act seeks to ban all live (in-play) betting with the exception of:

- a) live betting on the final result, the result at the end of a half or a period; and
- b) which team will score the next goal in football or ice hockey.

7. As with earlier comments, there is again a lack of clarity regarding the scope of this provision. In particular, the concept of a "period" is not defined. In tennis, it could be argued that the end of a set, game or even a point could represent a "period", or in golf that a round (18 holes) or each individual hole could be deemed a "period", due to the clearly defined break in play. It is a premise which can be transposed to other sporting events with definable periods and breaks.

8. It is also unclear, and unspecified in the text, why betting cannot take place on the scoring or point aspects of other sporting events, as has been permitted for football and ice hockey i.e. team scoring the next goal. What is clear is that the resulting impact represents a potentially widespread restriction of trade, the boundaries of which appear somewhat ambiguous and arbitrary.

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<sup>1</sup> <http://www.eu-ssa.org/>

<sup>2</sup> <http://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2017&num=307>

<sup>3</sup> [https://europa.eu/european-union/law\\_en](https://europa.eu/european-union/law_en)

<sup>4</sup> <http://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2017&num=307> page 2

9. The restriction on live betting is attempted to be justified on two (albeit flawed) points in the draft law's related impact assessment<sup>5</sup>, 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. It is important to assess both issues 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.<sup>6</sup>

10. On the first point, there is no validation or reference to the level of potential addiction for live (in-play) betting being greater than other forms of betting permissible under the draft Act. Nor any consideration, if that was the case (which is unproven), why additional mitigating provisions could not be included in the draft legislation to adequately cater for such potential addiction concerns.

11. As the Austrian Association for Betting and Gambling (Österreichische Vereinigung für Wetten und Glücksspiel (OVWG)) has pointed out in its response to this notified draft Act<sup>7</sup>, according to Harvard Medical School research there is no indication that live betting is more prone to addiction in contrast to other types of betting.<sup>8</sup> 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.<sup>9</sup>

12. 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 position paper on the issue in September 2016.<sup>10</sup> That paper assessed the potential dangers of addiction from live (in-play) 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."<sup>11</sup>

13. The issue of match manipulation (match-fixing) is raised as the second (and again flawed) justification for limiting the availability of live betting, with the draft law's impact assessment asserting that "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."

14. However, this statement 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 across much of Europe, including Austria) but unregulated operators mainly based in Asia.<sup>12</sup> 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 (prohibited by the draft Act) with much lower liquidity levels.

15. An independent report published by the ASSER Institute, which assessed the integrity risks of certain sports bets on the basis of quantitative empirical evidence, supports this position.<sup>13</sup>

<sup>5</sup> <http://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2017&num=307> page 4

<sup>6</sup> Case C-243/01, para. 65

<sup>7</sup> [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](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)

<sup>8</sup> <http://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2017&num=307> "Contributions" page 3

<sup>9</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>10</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.

<sup>11</sup> British Gambling Commission In-play (in-running) betting: position paper (September 2016)

<sup>12</sup> British Gambling Commission In-play (in-running) betting: position paper (September 2016) paragraph 2.4

<sup>13</sup> Page 11 Interpol Match-fixing in Football Training Needs Assessment 2013 & <https://www.europol.europa.eu/content/results-largest-football-match-fixing-investigation-europe>

<sup>14</sup> <http://www.asser.nl/media/2422/the-odds-of-matchfixing-report2015.pdf>

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.

16. 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.

17. The British Gambling Commission also covers the issue of match-fixing in its 2016 and earlier policy papers. The Gambling Commission, which adopts an evidence-based risk assessment approach regarding the 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.

18. The regulator, 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 sporting integrity grounds.<sup>14</sup> It reiterated this stance in late 2013 stating that "any threat to sports betting integrity can be managed without the need to ban what is a very popular activity."<sup>15</sup>

19. In its subsequent October 2013 position paper, it 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."<sup>16</sup> The regulator importantly 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".<sup>17</sup>

20. 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."<sup>18</sup> 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."<sup>19</sup>

21. 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.

22. 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

<sup>14</sup> 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>

<sup>15</sup> [http://www.egmagazine.com/news/gambling\\_commission\\_rejects\\_in-running\\_ban\\_proposal](http://www.egmagazine.com/news/gambling_commission_rejects_in-running_ban_proposal)

<sup>16</sup> Paragraph 3.6 <http://www.gamblingcommission.gov.uk/pdf/Protecting%20betting%20integrity.pdf>

<sup>17</sup> Ibid.

<sup>18</sup> British Gambling Commission In-play (in-running) betting: position paper (September 2016)

<sup>19</sup> British Gambling Commission In-play (in-running) betting: position paper (September 2016)

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.

23. 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 live (in-play) 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 betting related corruption.

24. It also appears to be a rather incoherent and inconsistent policy to impose betting product restrictions on responsible regulated betting operators on perceived (but unevidenced) integrity grounds, 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 Competitions<sup>20</sup> which promotes that approach.

25. 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; the 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 large-scale ban on regulated live betting products.

26. ESSA contends that the notified draft law has: a) ambiguous wording on the scope of the draft Act, notably in terms of its potential application to remote (online) betting, as well as other betting products; and b) includes an unjustified and incoherent restriction of most in-play (live) betting products. The association therefore requests more clarity on the first issue to allow a full and detailed assessment on this aspect of the draft law. On the second, that the Commission explore the appropriateness and compatibility of these unjustified product limitations with EU law, and the associated restriction of trade imposed on licensed betting operators, as a matter of urgency.

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<sup>20</sup> <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/215>

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