



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

Message 201

Communication from the Commission - TRIS/(2024) 0600

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Forwarding of the response of the Member State notifying a draft (Denmark) to of Malta.

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2. Denmark

3A. Erhvervsstyrelsen

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4. 2023/0621/DK - H10 - Games of chance

5.

6. Reply to Malta's detailed opinion

Requirement for Danish licence for gambling providers

Malta states that the Danish proposal for requirements for gambling provider licences contained in Draft Act L 100 amending the Gambling Act (Strengthened effort against match fixing, improved sanctions, legal basis for increased data processing, amended fees for gambling machines and various adjustments to the gambling field) constitutes a restriction on the freedom exchange of services, as described in Article 56 TFEU. Malta considers that the proposal constitutes an unnecessary and disproportionate restriction on the freedom to exchange services, as it creates double-checking for companies that have obtained such licences in other Member States.

As is apparent from the notification of the draft Act, it is proposed to require that gambling providers who wish to provide games to gambling operators with Danish permission must have a Danish licence. This is proposed to ensure that gambling providers comply with the Danish gambling legislation and that they can be sanctioned if they do not comply with Danish legislation. The proposal should also be seen in conjunction with the fact that the draft Act requires all games to appear on a gambling register. The Danish Gambling Authority, which monitors that games offered on the Danish market comply with the Danish gambling legislation, will thus have the opportunity to intervene quickly across gambling operators when games are offered that are not in compliance with the legislation.

Current requirements for gambling systems in Denmark and their enforcement

Under the current rules, it is (only) the gambling operators who are responsible for ensuring that the games they offer comply with the requirements of the Danish gambling legislation. The Danish Gambling Authority will therefore, in principle, be able to hold a gambling operator responsible for ensuring that the games meet, for example, the requirement for certification of the gambling system with the associated tests and inspections which follow from the Danish gambling legislation. The certification must, inter alia, ensure that games offered as random actually have a real random generator and that the games are correctly presented with the relevant rules of play. The game providers have



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their system tested and inspected once a year. If the testing and inspection requirements of another Member State are comparable to the Danish requirements, such an approved test result is recognised and no further Danish tests are then required.

There are many gambling operators who use a gambling provider to develop and provide games, so gambling operators do not have control over the design of the games themselves. There are also several Danish gambling operators who use the same gambling providers. If a game is deemed not to meet the certification requirements, the Danish Gambling Authority will contact the gambling operator. However, the latter does not have immediate access to the relevant technical information and will first have to obtain it from the gambling provider.

The Danish Gambling Authority has experienced that errors are not corrected, even if a gambling operator tries to pass the criticisms of the Danish Gambling Authority on to a gambling provider. This is probably to some extent due to the fact that there is an imbalance in the power relationship between small gambling operators and large gambling providers, and in addition, gambling providers cannot be held criminally liable for the errors in their games and that they therefore have no incentive to correct the errors.

In addition, gambling operators will often legitimately expect that the game is offered in accordance with the Danish requirements. Although the gambling operators are in principle responsible for ensuring that the games offered comply with the requirements of the gambling legislation, the Danish Gambling Authority has found that there will often be no basis for holding the gambling operators criminally liable for errors and defects in the offered games.

The current legislation has thus proved insufficient in practice to ensure that the requirements of the gambling legislation can be effectively enforced.

The proposed model for Danish requirements for gambling provider licenses

In the light of the above, the Danish Ministry of Taxation considers that there is a need to require a licence for gambling providers in order to obtain the necessary protection for gambling consumers on the Danish market.

In this regard, it should be noted that, in the field of gambling, the Court of Justice of the European Union has given Member States substantial discretion as regards the choice of the level of consumer protection and social order that they consider most appropriate. The restrictions must satisfy the conditions laid down in the case law of the Court of Justice, in particular that they are justified by overriding reasons in the public interest and proportionate (see, for example, *Domenico Politanò*, C-225/15, paragraphs 39 and 40 and the case law cited).

The licence requirement for gambling providers is introduced in order that games offered in Denmark meet the requirements made of the games at all times. This should ensure the best possible safety for gambling consumers. By requiring licences for gambling providers, there can be direct control of the gambling providers, and they will be held criminally liable if their games does not meet the Danish requirements. In the end, a licence may be revoked, e.g. if a gambling provider grossly or repeatedly violates the Danish gambling legislation. Such criminal liability is expected in itself to result in a higher level of compliance on the part of gambling providers.

As part of the application process, games provided by gambling providers must be registered in a gambling register. After being granted a licence, the gambling provider must maintain the information on games in the register on an ongoing basis. The register will enable the Danish Gambling Authority to respond immediately and across all gambling operators as soon as the Danish Gambling Authority becomes aware that a game, for example, is not properly certified or otherwise does not comply with the requirements for offering the game in question. In this way, consumer protection will be increased, as the period where non-compliant games are offered will be significantly reduced.

The Court of Justice of the European Union has held that the protection of consumers, the prevention of fraud and the elimination of incentives for individuals to gamble excessively can be regarded as overriding reasons in the public interest capable of justifying restrictions on the fundamental freedoms laid down in Articles 49 and 56 TFEU (see, to that effect, for example, *Stanley International Betting and Stanleybet Malta*, C-375/17, paragraph 43 and the case law cited).



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It can also be noted that in its Recommendation of 14 July 2014 on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online, the European Commission recommends a high level of protection for consumers, players and minors with regard to online gambling services.

The licence requirement applies to any legal person wishing to provide games to gambling operators with a Danish licence, regardless of their place of establishment within the EU and the EEA. The requirement for gambling providers to obtain a licence is therefore considered to be non-discriminatory and justified by overriding reasons in the public interest.

In relation to Malta's claim that a Danish licence requirement for gambling providers is disproportionate and unnecessary, it is pointed out that the field of gambling is not harmonised in the EU and that the field is characterised by cultural differences. Therefore, what is required of a gambling provider in, for example, Malta, is not necessarily the same that is required of a gambling provider on the Danish gambling market. In this regard, it can be noted that, in other EU Member States, a separate licence is also required for gambling providers, for example in Sweden.

Games offered in Denmark must be certified. The certification helps to protect the player by, inter alia, ensuring that games that are produced as random are also conducted in a random manner. As described above, it is now recognised if a gambling operator's game is tested against another Member State's testing standards and these are comparable to the Danish testing standards. This will continue to apply in the proposed model.

In order to apply for a licence as a gambling provider, the provider must pay a fee for the Danish Gambling Authority's processing of the application and a fee for the subsequent supervision of the gambling provider. The fees are intended to correspond to the costs incurred by the Danish Gambling Authority. In order to obtain a licence as a gambling provider, there are requirements for the gambling provider as a company and for the beneficial owners, members of the Executive Board and the Board of Directors. These are requirements such as that the company and the relevant persons must not have been convicted of a criminal offence that justifies an imminent risk of abuse when working in the gambling sector. In addition, licences can only be granted to applicants who are likely to be able to engage in gambling activities in a professionally sound manner. These requirements are some of the same requirements imposed on a gambling operator wishing to offer games in Denmark, except that the same requirements are not imposed on a gambling provider's finances, as a gambling provider does not handle bets from players.

The requirement for gambling providers to have a licence is therefore considered appropriate to meet the objective of ensuring that gambling providers comply with the Gambling Act's objective of protecting players by ensuring that games are offered in a fair, responsible and transparent manner.

In addition, it is considered necessary to introduce a licence requirement for gambling providers. The current system, under which only the gambling operator is held responsible for compliance with the technical requirements and certification of the gambling offer, has proved in practice – as described above – not to be able to adequately protect players.

It is further noted that gambling operators have the gambling system tested and inspected once a year. The gambling providers are covered by this inspection, but the certification of the game may for example expire a few days after the annual inspection. Unless the certification is renewed, the game will thus be offered illegally without the Danish Gambling Authority having the opportunity to discover this before next year's inspection.

By introducing licence requirements for gambling providers, it will be possible to make the provider criminally liable for violations of the Danish gambling legislation and thus ensure better protection of players, as violations can be sanctioned. In addition, several gambling operators use the same gambling provider, and the registration of the games provided by licensed gambling providers will ensure that a violation can be detected and corrected by multiple gambling operators at the same time. The proposed scheme will also ensure more effective protection for players.

It is considered that it will not be possible to provide sufficient protection to players by other less intrusive methods, for example by a notification procedure for gambling providers or a voluntary gambling register. Such methods are



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considered not to be able to ensure adequate protection for players, as the gambling provider will not be held criminally liable for violations and it will be unclear for gambling operators which gambling providers can be used to provide games.

The proposed scheme, where a gambling provider must have a Danish licence to provide games to the Danish market and can be held liable for violations of the Danish gambling legislation, is therefore considered necessary in order to ensure real and adequate protection for players.

European Commission

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