

Consultation draft

April 2024

to No 01-VD-LG-2706/2023-34

Explanatory notes

on the draft law

amending the Carinthian Slot and Gaming Machines Act

General part

1. Need for amendment

The Constitutional Court of Justice (Verfassungsgerichtshof – VfGH) repealed parts of § 25(3) of the Gambling Act with its ruling of 14 December 2022, G 259/2022-16. In the Carinthian Slot and Gaming Machines Act – K-SGAG, those passages of § 25(3) of the GSpG, which have been repealed by the VfGH, are almost word-identical. There is therefore a need for legislative adjustment.

On the part of Department 7 – Economics, tourism and mobility of the Carinthian Provincial Government, an expansion of player protection and the prevention of gambling addiction (elimination of individual locations, making it impossible to participate in games by providing technical devices for cash withdrawal as well as technical devices for the placing of gaming stakes by means of cashless payment in indoor and outdoor areas of the premises) is encouraged.

In addition, as part of the proposed amendment to the K-SGAG, editorial adjustments are to be made in the current legislative text.

2. Main content of the draft law

- Adaptation of the K-SGAG to the ruling of the VfGH;
- Development of player protection measures and measures preventing gambling addiction;
- Adaptation to the amendment of the Carinthian state constitution, introduced with the Provincial Law Gazette No 97/2021, according to which personal expressions apply to all genders.
- editorial corrections.

3. Legal bases of powers

The jurisdiction of the Land legislature to enact the draft law arises from the Land's residual competence in the area of federal monopolies (Article 10(1)(4) Federal Constitution Act (B-VG)), in so far as this is excluded from the Federal Gambling Act or has been left to the Laender, and is based on Article 15(1) and (3) of the B-VG.

To the extent that Article I of the draft law affects matters which are a matter for the Federal Government in legislation (see Article 10(1)(9) B-VG 'Post and telecommunications', Article 10(1)(5) 'Money, credit, stock exchange and banking', Article 10(1)(8) of the B-VG 'Appropriations of trade and industry', Article 10(1)(12) 'Health care', Article 10(1)(6) B-VG) 'Civil law', in the sense of the theory of point of view, the state legislature assumes that, for the purposes of player protection and prevention of gambling addiction, it is authorised to regulate this provision.

4. Specific aspects of the legislative process

Pursuant to Paragraph 22(2) of the K-SGAG, it is provided that the organs of the law enforcement agency Federal Police shall provide assistance to the authorities and bodies competent under the provisions of this Act concerning their requests to ensure the implementation of this Act within the scope of their legal sphere of action.

The present draft law primarily aims to extend player protection. It is assumed that this could be seen as an extension of the participation of federal bodies pursuant to § 22(2) of the K-SGAG. It is therefore necessary to obtain the Federal Government's consent to the participation of the federal bodies in accordance with Article 97(2).

In addition, a notification is required in accordance with Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and rules on information society services (codified text), OJ L 241, 17.9.2015, p. 1.

Special part

Re Point 1 (Table of contents):

The editorially necessary adjustments are made in the table of contents.

Re Point 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 46, 50, 51, 52, 54, 55, 58, 59, 60, 61, 62, 63, 64 (§ 2(4), (6), (8), (9), (10); § 4 (1); § 7 (1), (3), (5); § 9 (1)(a), (5)(b), (7)(b); § 11; § 12 (1), § 12(3)(a) and (b), (4)(b), (c) and (d), (5)(a), as well as (9) and (10); § 13(c); Title to § 14; § 14 (1), (3), (6), (8), (9), (11), (15), (16); § 15 (1), (2), (3), (5); § 16 (1), (5); § 17 (1)(a)(2), (1)(b)(2); § 17 (2); § 18 (1), (2)(e); § 19 (2)(a), (d), (f); § 20 (1), (2); § 23 (2); § 24 (1)(c), (e); § 34 (3)(d), (e)):

At the request of Department 7 – Economy, Tourism and Mobility of the Office of the Carinthian Provincial Government, the elimination of individual locations provided for in the draft law will be included as a further player protection measure.

The state government has to analyse and assess the risks of money laundering and terrorist financing in Carinthia when conducting provincial lotteries involving slot machines (cf. § 19a(2)(a) K-SGAG).

In the preparation of this risk analysis, it has been shown that the individual location of gaming machines appears problematic not only for reasons of player protection, but also for reasons of money laundering prevention due to the necessary monitoring by appropriately trained personnel.

The current very low risk of money laundering in Carinthia in the field of legal slot gambling results, in particular, from the elimination of individual locations by the concession holder, who is entitled to install and operate gaming machines in slot machine parlours as well as in individual locations (cf. § 7(3) K-SGAG).

At present, no individual locations are foreseen in the 'permission Laender' of Lower Austria and Styria.

The term 'contract partner' (§ 2(4) K-SGAG) is used only in connection with the individual location; therefore, regulations in this regard must also be eliminated.

The elimination of the terms 'individual location' or 'contract partner' also entails certain linguistic and terminological adjustments or adaptations of references.

Re Point 13 (§ 9(5)(g), § 16(1)):

In § 9(5)(g) and § 16(1), as regards the protection of game secrecy, consideration is now given to third parties acting on behalf of the concession holder. § 51 In this context, Paragraph 1 of the GSpG provides that 'contracting partners and persons otherwise active for the organiser' must also safeguard the confidentiality of the game. Since the term 'contract partner' is used in the current K-SGAG – as stated above – only in connection with the now eliminated individual location, reference is now made to 'third parties acting on behalf of the concession holder'.

Re Points 31, 32, 33, 43, 45 (§ 14(10), (12) and (14), § 17(1)(a)(3); § 17 (1)(b)(3)):

The VfGH has repealed parts of § 25(3) of the GSpG as unconstitutional due to violation of equality. According to the VfGH, the protection of players required by EU law was not implemented in a manner consistent with the objective requirement:

The provision of additional protection and due diligence obligations (only) in the event that there is a 'conspicuous' credit rating report will often come too late in an average assessment to stop a risk to the minimum subsistence of the player (in this sense also OGH 30. 9. 2002, 1 Ob 175/02w, according to which the complained casino management should not rely on obtaining a 'non-significant credit report'.

In such a case, the player will regularly already be in a situation in which he can no longer pay his current obligations and therefore a threat to his minimum subsistence has already occurred. The (additional) protection and due diligence obligations of the casino management, in particular a consultation, are too late in this case. The contested provision is therefore not capable, in an average view, of ensuring effective player protection.

In the view of the VfGH, the ordered limitation of the casino management's liability to gross negligence and intent, as well as the provision that the contested provision definitively regulates all claims of the player against the casino management in connection with the validity of the game contract or with losses from the game, is not capable of ensuring effective player protection.

Against the background of the requirements of EU law, the VfGH had to proceed (only) in order to establish a constitutional legal situation by repealing the provisions set out in § 25(3) of the GSpG as set out in the sentence of the relevant knowledge.

§ 5 Paragraph 4(a)(9) of the GSpG requires that the provisions of § 25(3) of the GSpG be complied with *mutatis mutandis*.

In Land law, the provision of Paragraph 25(3) of the GSpG in conjunction with Paragraph 5(4)(a)(9) of the GSpG was transposed into § 14(10) to (14) K-SGAG. Therefore, in Paragraph 14(10)(a) of the K-SGAG, Points 1 and 2 and the introductory sentence of (b) are now to be deleted. § 14 Paragraph 12 of the K-SGAG shall also be deleted without replacement. In Paragraph 14(14) of the K-SGAG, the wording 'or if only slight negligence in fulfilling its obligations can be blamed on the concession holder' shall be deleted.

The amendment is also taken as an opportunity to restructure or renumber § 14(10) K-SGAG. As a result, certain references in other provisions must also be adapted accordingly.

Re Point 47 (§ 17(4)(b)):

The Telecommunications Act 2003 (TKG 2003), BGBl. I No 70/2003, as last amended by BGBl. I No 90/2020, expired with the entry into force of the Federal Law Gazette I No 190/2021. § 174 Telecommunications Act 2021 (TKG 2021) essentially corresponds to the provision of § 107 TKG 2003; the reference was therefore to be updated accordingly.

Re Point 48, 49 (§ 17(5), (5a))

At the request of Department 7 – Economy, Tourism and Mobility of the Carinthian State Government as a measure of player protection, the provision that players may not be allowed to participate in the game may not be made possible by the provision of technical equipment for cash handling purposes as well as technical equipment for the provision of game bets by means of cashless payment in indoor and outdoor areas of the premises. The measure is limited to a prohibition of allowing participation in the game by keeping such technical devices available in order to avoid interference with the legislative competence of the Federal Government pursuant to Article 10(1)(5) of the B-VG ('Money, Credit, Stock Exchange and Banking').

According to § 7(2)(4) of the Automated Gambling Ordinance, which also applies to gaming machines within the scope of the Carinthian Slot and Gaming Machines Act on the basis of the references (see, in particular, § 9(1)(b) K-SGAG), gaming machines may not contain devices with which money can be transferred directly into the gaming machines by means of electronic transactions through ATM or credit card functionality. This prohibition is – as for example the provision of § 22 (cooling phase) – a requirement in the interest of player protection.

However, controls have shown that players have recently been able to play with more than the cash brought with them to visit the slot machine parlour, such as ticket machines with ATM or credit card functionality, or card terminals, which, in addition to cashless payment, also allow cash withdrawal by ATM or credit card. This represents an unacceptable deterioration compared to the rated player protection concepts and must therefore be eliminated. A corresponding prohibition should now also be expressly regulated in the law, especially since such an approach does not correspond to the intention of the legislator, who attaches a particularly high priority to player protection and has sought a level of player protection going beyond the mandatory requirements of § 5 of the GSpG and the Automated Gambling Ordinance (cf. 01-VD-LG-1401/40-2012, General Part and, in particular, § 14 (f) and § 17).

In this context, the term 'Pain of Paying' is used in behavioural economics. Payments with cash are made more consciously and are perceived as particularly 'painful'. On the other hand, in the case of card payment, the equivalent value of the money is not noticeable in the same way as in the case of payment of cash; this leads to a decrease in the feeling of pain when paying. Under one, self-control is reduced.

In the position paper Gambling Sports Betting of the Austrian ARGE Addiction Prevention, it is also noted critically under the point ‘Instead of updating the position paper – insertion in March 2023’ that: *‘the gap between regulation and industry has continued to grow. The latter has used the coercive pause and disruption resulting from the COVID problem to intensively advance its own strategic and technological development (...)’* In this context, the cashless payment is also mentioned.

Re Points 53, 56 (§ 19(2)(c), § 19a(4)):

Due to an editorial mistake, the citation has remained incomplete and should be corrected accordingly by the proposed amendment.

Re Point 57 (§ 19a(8)):

Pursuant to § 12(1)(3)(c) of the WiEReG, the competent Land authorities are entitled to access the register in connection with gambling and betting ‘in accordance with the provisions of national law’. The insight is therefore to be determined in accordance with national law.

Re Point 65 (§ 35):

Against the background of the ruling VfSlg. 20.258/2018 and the amendment made effective with the Provincial Law Gazette No 97/2021 of Article 37 of the K-LVG it is intended to take linguistic equal treatment into account.

Re Points 66, 67 (§ 36(2)):

Updates of the static references to federal laws are made.

Re Article II:

The concession holder, who is entitled to install and operate of gaming machines in gaming machine venues as well in individual locations (cf. § 7(3) K-SGAG), currently waives individual locations. In order not to limit this holder with regard to the entitlement to individual location, the provisions relating to individual location or contract partners shall continue to apply until the expiry of his concession.

Contribution to the Sustainable Development Goals

Department 7 – Economy, Tourism and Mobility of the Office of the Carinthian Provincial Government announced by letter dated 29 March 2024, No GMO-28101/2023-11, as part of the pre-assessment procedure, with:

‘The proposed legislation is in line with the UN Sustainable Development Goals:

The present amendment aims to continue to ensure effective, i.e. successful player protection, in particular in view of the technical developments since the adoption of the Carinthian Slot and Gaming Machines Act in 2012, (cf. the Constitutional Court ruling of 14 December 2022, G 259/2022-16, which is complied with the adjustments in § 14 K-SGAG).

If players are allowed to place stakes through cashless payment or cash withdrawal with a bank card or credit card at ATM locations, the intended player protection will be weakened. Since the legislator of the K-SGAG has attached particular importance to player protection, the use of such technical possibilities should be addressed in a sustainable manner (not only at the level of enforcement but also at the legal level).

Permanently ensuring that Land gambling with gaming machines in Carinthia is not offered in individual locations (outside of slot machine parlours with access and identification systems) also serves to protect players and to prevent money laundering, an important concern of the European Union (cf. the current AML legislative package of the EU).

Thus, the proposed legislation contributes, at least indirectly, to the achievement of the UN Sustainable Development Goals, in particular Objective 3 – ‘Ensure healthy lives and promote well-being for all at all ages’ and Goal 12 – ‘Ensure sustainable consumption and production patterns’.

Financial impact

Department 7 – Economy, Tourism and Mobility of the Office of the Carinthian Provincial Government announced by letter dated 29 March 2024, No GMO-28101/2023-11, as part of the pre-assessment procedure, with:

‘The legislative proposal aims to ensure the sustainable safeguarding of the existing implementation practice of the Carinthian Provincial Government as a licensing and supervisory authority for state gambling machines as well as, where applicable, the state supervisory bodies appointed for their support pursuant to § 28(b) of the K-SGAG, which is based in particular on the decision of the Carinthian Provincial Government of 13 March 2015, GZ 07-G-G-GLAB-1/16-2015, which gave the current licences valid until the expiry of 30 October 2025.

Financial impact, particularly on the national budget or on the budget of other local authorities, is therefore not to be expected.’

Impact of EU legislation

The draft law is subject to a notification requirement as a technical regulation within the meaning of Directive (EU) 2015/1535.