

Independent committee motion (§ 22 of the rules of procedure of the Styrian provincial parliament)

released on 30 June 2017, 13:11:49

Members of the Styrian provincial parliament: MP Johannes Schwarz (Social Democratic Party of Austria), MP Mag. Alexandra Pichler-Jessenko (Austrian People's Party), MP Maximilian Lercher (Social Democratic Party of Austria), MP Erwin Dirnberger (Austrian People's Party)

Competent committee: Finance

Member(s) of the Government: Governor Hermann Schützenhöfer

Appendices: Wettengesetz_nach Begutachtung.docx

Re:

Styrian Betting Act

In its sessions on 16 November 2016, 26 April and 29 June 2017, the "Gambling" subcommittee addressed the issue of possible revision in the area of betting. At the request of the subcommittee, in accordance with the stipulations worked out, this new Act, which the provincial parliament subjected to a public evaluation procedure, was drafted instead of an amendment. Hence, for the first time, the provincial parliament availed itself of this option, which is generally utilised by the provincial government. Eleven opinions arrived on time, the contents of which have, in part, resulted in the draft being amended.

The activities of bookmakers and totalisators are currently set out in the Act of 1 July 2003 on the acceptance and brokerage of bets in the province of Styria (Styrian Betting Act), Provincial Law Gazette No 79/2003, as amended by Provincial Law Gazette No 87/2013.

The immediate reasons for revision are the need to transpose Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC and the verdict of the Constitutional Court of 2 October 2013 (VfSlg 19.803), according to which the actions of the brokers of betting customers shall be included in the scope of the Act. In this verdict, the court of justice ruled that the activity of referring customers to bookmakers or totalisators could not be regulated as part of free trade under the provisions of the Industrial Code 1994, but under provincial law.

The key innovations of this Styrian Betting Act 2017 are as follows:

Revision of the definitions and the scope;

Incorporation of the term "betting operator" instead of "bookmaker" and "totalisator";

Inclusion of the brokering of betting customers in the scope of the Act;

Comprehensive provisions concerning the protection of betting customers;

The possibility of self-exclusion and exclusion by third parties;

A mandatory betting customer card for operating betting terminals and for bets where the value of the stake exceeds EUR 50;

Redefinition of unlawful bets, in particular the ban on live betting, with the exception of live betting on the final result, the result at the end of a half or a period, as well as which team will score the next goal in the case of football and ice hockey.

The following must be noted regarding the individual provisions:

Re § 1:

§ 1 defines the scope of the Act. The bookmakers and totalisators already covered by the (still applicable) Betting Act are considered to be betting operators, while the scope is also clarified in relation to brokers of betting customers who are likewise covered by the term "betting operator."

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.

The Act also covers the offering of bets in Styria. All licences issued in accordance with this Act shall only apply to the area of Styria. It is therefore prohibited to offer, broker or place bets in other Federal provinces or other countries by means of a licence issued or to refer betting customers to betting operators who do not have any licence in Styria.

Hence, all betting products offered throughout Styria are to be covered by the Act. Activities not falling within the scope of the Act must be prohibited pursuant to § 16.

Re § 2:

Re subparagraph 1:

The term "betting operator" encompasses all activities in connection with betting which are covered by the scope of the Act. The terms "bookmaker" and "totalisator" are no longer used in the Act.

The outcome of this interpretation is that any individual who brings together betting customers and betting operators by any means for commercial purposes requires a licence in accordance with § 4. The verdict of the Constitutional Court of 2 October 2013 (VfSlg 19.803) clarified the fact that the activity of referring customers to bookmakers or totalisators could not be regulated under the provisions of the Industrial Code 1994 as part of free trade, but under provincial law.

Re subparagraph 3:

The term "bet" is the key term under the Act. The definition is guided by the definition of a bet contained in § 1270 of the Austrian General Civil Code but also includes the criteria developed by the Supreme Administrative Court in connection with sporting bets concerning the existence of a bet and differentiating between (sporting) bets and games of chance. As before, so-called "entertainment bets" are included in the scope of the Act.

Re subparagraph 4:

A betting outlet is characterised in that the betting customer proceeds to the betting outlet in order to place bets there at the counter. This room need not necessarily be used exclusively by a betting operator in the performance of his/her activity. Betting terminals in betting outlets shall

also be subject to the duty of disclosure as per § 6. A betting outlet may also be operated jointly by several betting operators.

Re subparagraphs 6 and 7:

A technical installation which may be operated by a betting customer, in which connection payment of the stake amount, placement of the bet and issuance of the betting slip takes place directly at the terminal, constitutes a betting terminal. Therefore, this definition does not include computer terminals at which bets may not be placed. The computer terminals referred to by the designation "tipinbox", which can often be found at tobacconists, therefore only constitute input devices in accordance with subparagraph 7. Technical, computer-aided devices which may be operated exclusively by the staff of the betting operator and which are installed at a betting outlet in an area not accessible to customers do not, however, constitute either betting terminals or input devices as defined by this Act. Betting terminals may only be installed in approved betting outlets and are subject to the duty of disclosure pursuant to § 6. Input devices may likewise only be installed and operated in approved betting outlets and must be disclosed within the framework of licensing of the outlet.

Re subparagraph 8:

The transposition of Article 3 subparagraphs 6 and 9 of Directive 2015/849/EU, expands the term "beneficial owner" and its legal definition.

Re § 4:

Any activity undertaken by a betting operator requires a licence. In the case of brokering a bet or the brokering of betting customers, both the "broker" as well as the betting operator with whom the bet is placed require a licence. Hence, in Styria in future, there should not be any activities associated with betting which are practised outside the scope of the Betting Act. As regards tobacconists, it is the case that the betting operator with whom the bet is placed must make arrangements for the tobacconist to be licensed as a betting outlet if the bet is placed by the tobacconist's staff. The tobacconist is not thereby a betting operator but is acting on behalf of the betting operator.

The concept of the "commercial" performance of the activity must be understood within the meaning of the Industrial Code 1994.

Performing the activity of a betting operator is not possible in Styria without at least one licensed outlet.

Re § 5:

This provision sets out the preconditions for the site licence. The model for this provision is § 11 of the Styrian Gaming and Slot Machine Act 2014 [German designation: StGSG].

Re § 6:

Betting terminals may only be installed and operated in approved outlets and are subject to the duty of disclosure.

Re § 7:

This provision cites the reasons for the termination and revocation of outlets' site licences.

Re § 8:

In terms of child protection, the key obligation here is to clearly point out the ban on brokering to children and young people as betting customers and the ban on placing bets with children and young people. This labelling obligation increases the publicity of the ban set out in § 11 subparagraph 7.

Paragraph 3 stipulates that betting terminals may only be activated in any event using a betting customer card. An over-the-counter bet may only be placed with a betting customer card in the case of bets where the full amount exceeds EUR 50. In order to establish a person's identity, betting customers must present a photo ID when the betting company issues the betting customer card.

Paragraph 4 lays down the requirements for a valid betting customer card.

Paragraphs 5 to 8 stipulate the key obligations incumbent upon a betting operator in connection with the protection of customers: self-exclusion, counselling sessions, exclusion by third parties, training obligation for the persons responsible.

Re § 9:

This provision lays down measures designed to counteract money laundering and combat terrorism.

Re § 10:

Betting requirements constitute the general basis of a transaction concerning the contractual relationship between the betting operator and its customers. The obligation to submit betting requirements within the framework of the licensing procedure (§ 4(5) subparagraph 2), and the obligation to notify (subsequent) amendments to the betting requirements, to the provincial government (§ 10(5)) is designed to ensure that no changes are made without the knowledge of the authorities.

Re § 11:

This provision determines those bets which may not be offered, placed or brokered.

Re subparagraph 1:

"Live bets" have a particular potential to foster addiction. In addition to the particular addiction potential, 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.

Re subparagraph 3:

The background to this is the verdict of the Supreme Administrative Court of 25 September 2012 (number 2011/17/0299) in which the court of justice stated that "a sporting bet is not present if it is not possible to bet on a future sporting event, but the outcome of the match depends on which race, which has already taken place in the past, was played back". In the past, this type of betting in particular, as the extensive case law of the Supreme Administrative Court relating to the topic of "dog racing" demonstrates, has always resided in a grey area between games of chance and betting. Although, in the verdict cited, the Supreme Administrative Court concludes that a game of chance took place in the case underlying the complaint, it cannot be ruled out that such events – with a corresponding "adjustment" of the model in line with the case law of the Supreme Administrative Court – should nevertheless be qualified in individual cases as bets which do not fall under the scope of the Gaming Act. In the interest of protecting betting customers, it is advisable, also on the part of the provincial legislator, to make a clear point in the context of a ban regarding these types of bets equally from the viewpoint of the betting system. The same applies in the case of bets on pre-recorded or virtual weather events.

Re § 12:

As before, the provincial government is envisaged as the competent authority.

Re § 16:

Paragraph 2 standardises the exclusion of the suspensive effect of a complaint against a prohibition notice. According to the legal opinion advocated by the Constitutional Service of the Federal Chancellor's Office in the evaluation procedure, it must be outlined in the explanatory notes why this provision is imperative within the meaning of the case law enacted in relation to Article 11(2) and Article 136(2) of the Federal Constitution. The necessity of the provision is justified in that the effectiveness of an immediate ban on operating as a betting operator or a closure of the outlet, or an order to remove a betting terminal, should not be delayed by bringing a complaint. The suspensive effect of complaints lodged against notifications of closure is also excluded in § 56a(5) of the Gaming Act.

The

motion

is therefore brought forward:

The provincial parliament wishes to pass the following:

Act on the offering, placement and brokering of bets and the brokering of betting customers (Styrian Betting Act 2017 [German designation: StWttG])
(see the enclosed text of the Act)

Signature(s):

MP Mag. Alexandra Pichler-Jessenko (Austrian People's Party)