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AUSTRIA

I. INTRODUCTION

1. The Austrian approach to gambling

The Austrian system of legislation distinguishes between **federal** (*Bundesgesetze*) and **state** (*Landesgesetze*) laws. Gambling issues are therefore regulated both on a federal and state level.

In Austria, land-based and interactive Gambling Services are a monopoly regulated by the federal **Law on Games of Chance**, *Glücksspielgesetz-GSpG*. The **one** and only **license for Lottery Games**, which is **limited to 15 years**, has been allocated to the Österreichische Lotterien Gesellschaft mbH until 2012. Such a licensee must be **domiciled in Austria**. All of the **licenses for Casino Games** (which are limited to **twelve**) are allocated to one Austrian company, Casinos Austria AG. The licensee must be **domiciled in Austria** and the validity of a license is limited to a **period of 15 years**. Moreover, the **operation** and **advertisement** of gambling **without a licence**, as well as the **participation** in, and **offering** and **advertisement of foreign gambling services** in Austria, are prohibited under the **Penal Code**.

Betting is not covered by the federal gaming monopoly, as it is an issue of state legislation: a sports betting operator must obtain a **license** from the authorities in the state of operation. With the exception of Vienna, Styria and Carinthia, the operation of **Gambling Machines** offering cash prizes or merchandise is prohibited.

Media Gambling services and **promotional gambling** services are regulated by the GSpG and by the **Law on Unfair Competition**. **Charity gambling** is not covered by any detailed legislation, but is referred to in the GSpG whereby several specified types of games can be organised for a charitable purpose under certain conditions.

2. Definitions

Federal Law of November 28, 1989 on the Organisation of Games of Chance, (Law on Games of Chance, *Glücksspielgesetz-GSpG*), BGBl. Nr. 620/1989 as amended BGBl. I Nr. 143/2005. [The English translation below was provided by Casinos Austria AG]

- § 1. (1) Games of chance in the sense of the Federal Law are games in which winning and losing are dependent exclusively or predominantly on chance.
- § 2. (1) Prize games are games of chance in which the operator (organiser) of the games proposes a pecuniary prize in return for a pecuniary stake.
- (2) A lottery drawn by means of a gaming apparatus exists when the decision concerning winning and losing is carried out by the mechanical or electronic equipment of the apparatus itself, i.e. is not brought about or made available centrally.
- (3) An automatic gaming machine is a gaming machine in which the win/lose decision or the payment of the prize are performed automatically by the machine itself.
- (4) Prize games shall also be deemed existent if the possibility of a return (ss 1) is not provided by the company (organiser), but is arranged, organised or offered by them or a third party.
- § 6. Lotto is a prize game in which an organiser accepts and runs bets on the chances of winning of several numbers from a defined series of numbers. The winning numbers are determined by public draw. The prize money is divided into several win categories and equally apportioned among the winners within each of these categories.
- § 7. Toto is a prize game in which an organiser accepts and runs bets on the results of various sporting events (pool bet). The prize money is divided into several win categories.

ries and equally apportioned among the winners within each of these categories. The results of events which are cancelled, do not take place at the specified time or are changed in their competitive nature are to be substituted by a public draw (substitute draw).

Additional game («Zusatzspiel»)

§ 8. The additional game (Zusatzspiel) is a prize game which can only be carried out in conjunction with other games of chance organised by a Licensee. A winning number is determined by public draw; the winners are those whose tickets bear all or part of this number. The prize money is divided into several win categories and equally apportioned among the winners within each of these categories.

Instant Lotteries («Sofortlotterien»)

§ 9. (1) Instant lotteries are prize games in which the participants can determine immediately whether they have won by examining their lottery tickets to see whether a prize has been printed on the ticket.

(2) Other instant lotteries are prize games in which the participants can be informed of winnings within 24 hours of placing bets on the winning chances of symbols or number combinations.

Class Lottery («Klassenlotterie»)

§ 10. The class lottery is a prize game in which the lottery tickets offer chances of winning in several successive sections. Winners are determined by public draw.

Digit Lotto («Zahlenlotto»)

§ 11. Digit lotto is a prize game in which an organiser accepts and runs bets on the chances of winning of one or more numbers or symbols from a defined group of numbers or symbols. The winning numbers or symbols are determined by public draw. The individual prize is a fixed multiple of the stake.

Number Lotteries («Nummernlotterien»)

§ 12. Number Lotteries are prize games in which the lottery tickets are given serial numbers. Winners are determined by public draw.

Electronic lotteries, Bingo and Keno («Elektronische Lotterien, Bingo und Keno»)

§ 12a. Electronic lotteries are lotteries in which the gaming contract is made via electronic media, the decision concerning winning and losing is taken and made available centrally and those taking part in the lottery can obtain information about the result of the decision immediately after they have taken part.

§ 12b. Bingo and Keno are lotteries in which the organiser accepts and places bets concerning the chances of combinations of numbers winning, whereby the winnings of the lottery players depend on the correspondence of the respective combination of numbers with the communicated winning numbers.

Multiple prize games («Mehrstufige Ausspielungen»)

§ 13. (1) Multiple prize games are games of chance in which the participants may win an additional chance to win as well as a prize.

(2) Prize games as defined in §§ 6 to 12 can be organised as multiple games.

Transfer of rights to conduct other prize games

§ 36. (1) The state can transfer its right to conduct other number lotteries (§32), tombola games (§33), lucky harbours (§34) and joke games (§35) by granting authorisation to other persons.

(2) Authorisation as per sec. 1 is only permitted: 1) for the conduct of tombola games, lucky harbours and jokes games with prizes of up to and including 15.000 Euro by legal persons domiciled in Austria if the event is not for commercial purposes; 2) for the conduct of tombola games, lucky harbours and joke games with prizes up to and including 15,000 Euro, as well as other number lotteries, by legal persons domiciled in Austria and who are deserving of support owing to their activities being beneficial for the public well-being, if the event is designed to achieve individual goals of a charitable, ecclesiastical or philanthropic nature in Austria.

3. Taxes

The GSpG contains tax regulations which apply to all types of games falling under the purview of this Act. A federal licence levy of from 2 to 27,5% calculated in accordance with the stakes, applies to **Lotteries**, but for electronic games, as that term is defined in §12a GSpG, the tax is calculated based on the stakes less the winnings (§ 17 GSpG). In addition a federal tax of 16% applies to lottery games generally, calculated based on the stakes and for electronic games based on the stakes less the winnings (§ 33 Tarifpost 17 Gebührengesetz 1957 as amended BGBl. I Nr. 112/2005). For **Casino Games** a progressive scale of taxes of 35% to 80% based on stakes minus winnings is levied (§ 28 GSpG). For **games of chance not falling under the GSpG** a federal tax of 12% of the stakes and 12 to 25% of the winnings is levied (§ 33 Tarifpost 17 Gebührengesetz).

For **Betting** services a federal tax on stakes of from 1,5% to 5,7% depending on the type of bets, and on the winnings of up to 25% is levied (§ 33 Tarifpost 17 Gebührengesetz). §13 of the Finanzausgleichsgesetz 2005, as amended by the BGBl. I Nr. 105/2005, provides for provincial supplements on totalisator and bookmaker betting charges (betting charge supplements) of up to a maximum of 90% of the stakes and 30% of the winnings. *Vienna* and *Lower Austria* have regulations on the state law level concerning such supplements: *Vienna* - 90% of the charge on bets placed and 30% of the charge on winnings; *Lower Austria* - 60% of the charge on bets placed and 20% of the charge on winnings. Furthermore, state legislation of the *Länder* regulates licence fees for betting services in differing amounts and depending on the period for which the licence is granted (for specific rates see the list in the synthesis report). State legislation regulates licence fees for operating **gambling machines** in differing amounts and depending on the period for which the licence is granted (for specific rates see the list in the synthesis report).

The following state legislation is relevant and referred to in the table concerning taxes:

Zuschlagsabgabengesetz zu den Bundesgebühren von Totalisateur- und Buchmacherwetten für **Wien** 1983, LGBl. Nr. 23/1983.

Verordnung der Wiener Landesregierung über Verwaltungsabgaben und Kommissionsgebühren, **Wien**, LGBl. Nr. 49/2004.

Vergnügungssteuergesetz 1987, **Wien**, LGBl. Nr. 9/2002.

Gesetz vom 28. Juli 1919, betreffend Gebühren von Totalisateur- und Buchmacherwetten sowie Massnahmen zur Unterdrückung des Winkelwettwesens, **Burgenland**, LGBl. Nr. 13/1992.

Lustbarkeitsabgabegesetz 1969, **Burgenland**, LGBl. Nr. 32/2001.

Landesverwaltungsabgabenverordnung 2002, **Kärnten**, LGBl. Nr. 120/2001.

Gesetz vom 22. Mai 1997 über eine Landes-Vergnügungssteuer, **Kärnten**, LGBl. Nr. 91/2001.

Vergnügungssteuergesetz 1982, **Kärnten**, LGBl. Nr. 80/2001.
Gemeindevergnügungssteuergesetz, **Vorarlberg**, LGBl. Nr. 58/2001.
Verwaltungsabgabenverordnung, **Vorarlberg**, LGBl. Nr. 13/2005.
Gesetz über die Einhebung einer Kriegsopferabgabe im Lande **Vorarlberg**, LGBl. Nr. 58/2001.
Vergnügungssteuergesetz 1959, **Tirol**, LGBl. Nr. 112/2001.
Landesverwaltungsabgabenverordnung 2001, **Tirol**, LGBl. Nr. 50/2001.
Landes-Lustbarkeitsabgabengesetz, **Steiermark**, LGBl. Nr. 110/2002.
Lustbarkeitsabgabengesetz 2003, **Steiermark**, LGBl. Nr. 50/2003.
Landesverwaltungsabgabenverordnung 2002, **Steiermark**, LGBl. Nr. 11/2002.
Vergnügungssteuergesetz 1998, **Salzburg**, LGBl. Nr. 46/2001.
Landes- und Gemeinde-Verwaltungsabgabenverordnung 2005, **Salzburg**, LGBl. Nr. 16/2005.
Gesetz über die Einhebung von Landeszuschlägen zu den Gebühren des Bundes von Totalisateur- und Buchmacherwetten, **Niederösterreich**, LGBl. Nr. 58/1979.
Landesverwaltungsabgabenverordnung 2001, **Niederösterreich**, LGBl. Nr. 103/2004.
Lustbarkeitsabgabengesetz, **Niederösterreich**, LGBl. Nr. 79/2001.
Landesverwaltungsabgabenverordnung 2001, **Oberösterreich**, LGBl. Nr. 57/2005.
Lustbarkeitsabgabengesetz 1979, **Oberösterreich**, LGBl. Nr. 90/2001.

II. LISTING**A) LEGISLATION ENACTED****a) Federal****1. General**

Penal Code, BGBl.¹ Nr. 60/1974 as amended BGBl. I Nr. 68/2005.

– **Law on fees**, *Gebührengesetz 1957*, BGBl. Nr. 267/1957 as amended BGBl. I Nr. 112/2005.

2. Lotteries

Federal Law of November 28, 1989 on the organisation of games of chance, (Law on Games of Chance, *Glücksspielgesetz-GSpG*), BGBl. Nr. 620/1989 as amended BGBl. I Nr. 143/2005.

3. Casino Gaming

Federal Law of November 28, 1989 on the organisation of games of chance, (Law on Games of Chance, *Glücksspielgesetz-GSpG*), BGBl. Nr. 620/1989 as amended BGBl. I Nr. 143/2005.

4. Machine Gambling Outside Casinos

Federal Law of November 28, 1989 on the organisation of games of chance, (Law on Games of Chance, *Glücksspielgesetz-GSpG*), BGBl. Nr. 620/1989 as amended BGBl. I Nr. 143/2005.

5. Betting

Federal Law of November 28, 1989 on the organisation of games of chance, (Law on Games of Chance, *Glücksspielgesetz-GSpG*), BGBl. Nr. 620/1989 as amended BGBl. I Nr. 143/2005.

6. Bingo

Federal Law of November 28, 1989 on the organisation of games of chance, (Law on Games of Chance, *Glücksspielgesetz-GSpG*), BGBl. Nr. 620/1989 as amended BGBl. I Nr. 143/2005.

¹ Bundesgesetzblatt = Federal Law Gazette

7. Media Gambling Services

Federal Law of November 28, 1989 on the organisation of games of chance, (Law on Games of Chance, *Glücksspielgesetz-GSpG*), BGBl. Nr. 620/1989 as amended BGBl. I Nr. 143/2005.

Federal Law on unfair competition, *Bundesgesetz gegen den unlauteren Wettbewerb-UWG*, BGBl. Nr. 448/1984 as amended BGBl. I Nr. 136/2001.

8. Sales Promotional Gambling

Federal Law on unfair competition, *Bundesgesetz gegen den unlauteren Wettbewerb-UWG*, BGBl. Nr. 448/1984 as amended BGBl. I Nr. 136/2001.

9. Charity Gambling

Federal Law of November 28, 1989 on the organisation of games of chance, (Law on Games of Chance, *Glücksspielgesetz-GSpG*), BGBl. Nr. 620/1989 as amended BGBl. I Nr. 143/2005.

b) Provincial

1.-3. no legislation on provincial level.

4. Machine Gambling Outside Casinos

Events Act Burgenland, *Veranstaltungsgesetz*, LGBl.² Nr. 32/2001.

Events Act Kärnten, *Veranstaltungsgesetz 1997*, LGBl. Nr. 138/2001.

Events Act Wien, *Veranstaltungsgesetz*, LGBl. Nr. 51/2005.

Events Act Tirol, *Veranstaltungsgesetz 2003*, LGBl. Nr. 72/2004.

Events Act Steiermark, *Veranstaltungsgesetz*, LGBl. Nr. 87/2005.

Events Act Niederösterreich, *Veranstaltungsgesetz*, LGBl. Nr. 183/2001.

Gambling Machines Act Niederösterreich, *Spielautomatengesetz*, LGBl. Nr. 184/2001.

Events Act Salzburg, *Veranstaltungsgesetz 1997*, LGBl. Nr. 58/2005.

Gambling Machines Act Vorarlberg, *Spielapparategesetz*, LGBl. Nr. 27/2005.

Gambling Machines Act Oberösterreich, *Spielapparategesetz*, LGBl. Nr. 53/1999.

5. Betting

Betting Act Burgenland, *Gesetz vom 28. Juli 1919, betreffend Gebühren von Totalisateur- und Buchmacherwetten sowie Massnahmen zur Unterdrückung des Winkelwettwesens*, StGBI.³ Nr. 388/1919 as amended LGBl. Nr. 13/1993.

Betting Act Wien, *Gesetz betreffend Gebühren von Totalisateur- und Buchmacherwetten sowie Massnahmen zur Unterdrückung des Winkelwettwesens*, StGBI. Nr. 388/1919 as amended LGBl. Nr. 24/2001.

Betting Act Vorarlberg, *Gesetz über den Abschluss und die Vermittlung von Wetten*, LGBl. Nr. 27/2005.

² Landesgesetzblatt = State Law Gazette

³ Staatsgesetzblatt = former Federal Law Gazette

Betting Act Kärnten, Gesetz vom 13. Juni 1996 über die Tätigkeit der Totalisateure und Buchmacher, LGBl. Nr. 63/2001.

Betting Act Niederösterreich, Gesetz über die Tätigkeit der Totalisateure und Buchmacher, LGBl. Nr. 181/2001.

Betting Act Steiermark, Gesetz vom 1. Juli 2003 über den Abschluss und die Vermittlung von Wetten im Land Steiermark, LGBl. Nr. 79/2003.

Betting Act Salzburg, Gesetz vom 15. Dezember 1994 über die Tätigkeit der Buchmacher und Totalisateure, LGBl. Nr. 46/2001.

Betting Act Tirol, Gesetz vom 20. März 2002 über die Tätigkeit der Buchmacher und Totalisateure, LGBl. Nr. 89/2002.

Events Act Oberösterreich, Veranstaltungsgesetz 1992, LGBl. Nr. 61/2005.

6.-9. no legislation on provincial level.

B) DRAFT LEGISLATION

a) Federal

1.-9. no specific projects.

b) Provincial

1.-9. no specific projects.

C) SELF-REGULATION

a) Federal

1.-9. no specific instruments foreseen.

b) Provincial

1.-9. no specific instruments foreseen.

D) JURISPRUDENCE**a) Federal****1. General**

Decision of the Administrative Court, 23.12.1991, 88/17/0010.

2. Lotteries

Decision of the Administrative Court, 21.12.1998, 97/17/0175.

Decision of the Constitutional Court, 8. 6. 2004, G208/03.

Decision of the Constitutional Court, 23.2.2004, B 615/02-19, B616/02-19.

3. Casino Gaming

Decision of the Constitutional Court, 30.9.1989, Slg. 12.165.

Decision of the Constitutional Court, 28.2.2005, B 1244/04-3.

4. Machine Gambling Outside Casinos

Decision of the Constitutional Court, 9.6.1998, Slg. 15.163.

Decision of the Constitutional Court, 10.6.2003, G55/01.

5. Betting

Decision of the Highest Court, 14.3.2005, 4Ob255/04k.

6. Bingo

no specific case law.

7. Media Gambling Services

Decision of the Highest Court, 16.7.2002, 4Ob67/02k

Decision of the Administrative Court, 26.11.2002, G 99/15/0240.

- Decision of the Highest Court, 18.2.2003, 4Ob5/03v.

- Decision of the Highest Court, 10.2.2004, 4Ob233/03y.

8. Sales Promotional Gambling

Decision of the Highest Court, 25.6.1974, 4 Ob 325/74.

Decision of the Highest Court, 10.5.1994, 4 Ob 6/94.

Decision of the Highest Court, 11.11.1998, 3Ob92/98w.

Decision of the Highest Court, 14.12.1999, 4 Ob 290/99x.

9. Charity Gambling

no specific case law.

b) Provincial

1.-9. The court system in Austria is regulated by federal legislation and all court decisions are effective in the whole territory. Consequently there are no courts on a provincial level. Therefore relevant case law is cited under point D.a).

III. BARRIERS

a) Panorama

1. General

As we will see in the following points, the Austrian model for regulation of gambling is a **quasi state monopoly**. The motivation behind the creation of a state monopoly was expressed by the legislator in the supporting documents⁴ to the **GSpG** in 1989 in connection with a new version of the GSpG. The two main aims of the law are, on the one hand, **to promote public order and obtain socio-politically related objectives** and, on the other hand, to increase **fiscal** revenues for the purposes of promoting public order. The legislator's aim is also to confine mankind's seemingly inherent desire to gamble within more controlled channels. Instead of a complete prohibition of games of chance - which would be inefficient as it would only confine gaming to an illegal activity and therefore removing it from any form of government supervision or control, a state monopoly was created to allow the government to intervene for the protection of players.

This approach is also confirmed by the **jurisprudence**. Under constitutional law, the restriction of the freedom of trade inherent in a state monopoly⁵ is justified by the very important public interests in the gambling sector. Therefore, the **aspects of public order and player protection**, especially in the field of **consumer protection and prevention of gambling addiction** and their socially negative and destructive effects, are the main goals of all regulations in the gambling sector.

The **Ministry of Finance**⁶ in its capacity as the Supervisory Body for gambling service providers under the GSpG, confirms that the concession system installed by the legislator is justified by the above-mentioned aspects.

The **doctrine confirms**⁷ the position of the legislator. But **dissenting**⁸ opinions also are expressed by some authors who doubt the validity of consumer protection and social order as justifications for this regulation, especially given the fact that in order to protect consumers, it would be logical to assume that gambling opportunities should be reduced, whereas in reality the range of gambling services is being constantly broadened and intensively advertised, at least in part in order to generate higher tax revenues for the state. With the exception of a sum fixed by the GSpG which is to be dedicated to sports sponsorship, gambling tax revenues are allocated to the general state budget.

⁴ Parliamentary materials, GP XVII RV 1067.

⁵ Decision of the Administrative Court of 23.12.1991, ZI. 88/17/0010; Decision of the Constitutional Court, VfSlg. 12.165.

⁶ Statements of the Austrian Ministry of Finance, 30 May 2005 and 7 July 2005.

⁷ Gerhard Strejcek/Dietmar Hoscher/Markus Eder, *Games of Chance in the EU and in Austria*, 2002; Gerhard Strejcek (Hrsg), *Lotto und andere Glücksspiele*, 2003; Heinz Mayer, *Das Glücksspiel im Spannungsfeld zwischen staatlicher Ordnungspolitik und Marktfreiheit*, *ecolex* 2000, p. 243.

⁸ Stefan Griller/Andreas Reindl, *Die Unvereinbarkeit des österreichischen Glücksspielgesetzes mit dem Europäischen Gemeinschaftsrecht*, *ZfV* 1998, p. 234; Franz Wohlfahrt, *Der Zweck heiligt nicht immer die Mittel*, *ecolex* 2000, p. 166; Walter Schwartz, *Glücksspielmonopol mit Ablaufdatum?*, *ecolex* 1999, p. 582; Georg Streit, *Glücksspiel ohne Grenzen im Binnenmarkt?*, *medien und recht* 6/99, p. 360.

As a general matter, under § 168 of the **Penal Code** the organisation of games of chance which may result in a pecuniary advantage is punishable by imprisonment for up to six months or a money fine, unless the game is played only for the purpose of raising money for charitable purposes or for entertainment only and for low stakes. Section 168a of the Penal Code specifically punishes the organisation of so called *Ketten- or Pyramidenspiele*. Sections 52 *et seq.* of the **penal provisions of the GSpG** also prohibit gaming activities not in compliance with the GSpG.

Section 56 of the GSpG contains administrative penal norms prohibiting the participation in or solicitation of, **foreign games of chance**. Pursuant to §56a GSpG, the competent authority may order the immediate complete or partial **closure of the business** if games of chance are organised or carried out in contravention of the GSpG.

2. Lotteries

Section 3 of the GSpG provides for a quasi **state monopoly** for the organisation of Lottery games. The State has licensed one private company - the *Österreichische Lotterien Gesellschaft mbH* - which holds the only license for Lottery games.

Pursuant to §14 ss 2 GSpG, a licensed corporation must be **domiciled in Austria**. Section 14 ss 5 GSpG provides for only **one single license** and no additional license may be granted as long as a previously granted license remains valid. Pursuant to §14 ss 3 GSpG the **period of validity of a license is limited to 15 years**. A licensee is **not permitted** to establish a **branch abroad**; nor may the licensee acquire a **qualified participation in a foreign company** if such acquisition would result in a reduction in revenue from the license fee (§15 ss 1 GSpG).

With regard to the conclusion of contracts for Lotto and Toto Services with players, tobacco kiosks are granted priority as authorised locations, in particular if such kiosks are operated by handicapped persons (§16 ss 14 GSpG).

Pursuant to §36 GSpG the state may transfer its rights to operate some **specific types of lotteries** (other number lotteries, tombola games, lucky harbours and jokes games) to a legal entity domiciled in Austria. Firstly, authorisation is only permitted for the conduct of tombola games, lucky harbours and joke games with prizes of up to and including 15.000 Euro by legal persons domiciled in Austria if the event is not for commercial purposes. Secondly, for the conduct of tombola games, lucky harbour and joke games with higher prizes, as well as other number lotteries by legal persons domiciled in Austria and who are deserving of support owing to their activities being beneficial for the public well-being, if the event is designed to achieve individual goals of a charitable, ecclesiastical or philanthropic nature in Austria.

3. Casino Gaming

Section 3 of the GSpG provides for a quasi **state monopoly** for the organisation of Casinos Games. The state has only licensed one private company - *Casinos Austria AG* - which holds all twelve licenses for Casino games in Austria.

In accordance with §21 ss 2 GSpG, the operator must be a public limited company (*Aktiengesellschaft*) **domiciled in Austria**. Pursuant to §21 ss 4 GSpG the number of **licenses** which may be granted is **limited** to twelve and currently all are allocated to one private company, Casinos Austria AG. Also the **period** of validity of the license is limited to **15 years** (§22 GSpG).

Under the terms of §24 GSpG, a licensee is not permitted to establish a **branch abroad** and acquisition of a **qualified participation in a foreign company** is prohibited if it would result in a reduction in revenue from the license fee.

4. Machine Gambling Outside Casinos

Prize games using a gaming machine are **not subject to the Gaming monopoly** if the amount of the player's stake does not exceed 0.50 Euro or its equivalent and the prize does not exceed the amount of 20 Euro or its equivalent. Games for non-cash prizes carried out using a gaming machine are not subject to the gaming monopoly if the amount of the stake or its equivalent does not exceed 1 Euro, otherwise §§3 & 4 of the GSpG are applicable.

Gaming machines outside of Casinos that do not fall under the monopoly of the GSpG are regulated by state law, either under the Events Acts or Gambling Machines Acts. **With the exception of Vienna, Styria and Carinthia, the operation of Gambling Machines which offer cash prizes or merchandise is prohibited.**

The respective state laws contain norms which can most likely be qualified as barriers to the free movement of services in the internal market. **Generally, the concession is granted for a limited number of gambling machines per location and for a limited period of time.** Additionally, in **Vienna**, a managing director resident in Austria must be appointed if the operator is not domiciled in Austria. In **Lower Austria**, an individual who applies for a license must be domiciled in Austria.

4.1. Carinthia

In accordance with § 7 ss 3 and 6 of the Events Act, a concession is granted for a maximum of eight gambling machines and the **concession period is limited** to three years.

4.2. Vienna

Under § 4 of the Events Act, a managing director resident in Austria must be appointed if the operator is not domiciled in Austria. The concession is granted for a maximum of two gambling machines per location: for more than three gambling machines specific structural conditions must be met (§ 15 ss 2 and 2b Events Act). Under § 15 ss 5 the **concession period is limited** to ten years.

4.3. Lower Austria

In accordance with § 7 ss 2 of the Events Act, the **concession period is limited** to a maximum of ten years.

Section 3 of the Gambling Machines Act prohibits the operation of Gambling Machines which offer cash prizes or merchandise.

Pursuant to § 5 of the Gambling Machines Act an individual who applies for a licence must be domiciled in Austria. Such a **license is limited to a period** of validity of two years (§ 4 ss 3 Gambling Machines Act). In accordance with § 6 ss 1 of the same Act, only three gambling machines may be installed in any one location outside of a specifically labelled gambling hall.

4.4. Vorarlberg

Under the terms of § 2 ss 4 and 5 Gambling Machines Act, the **concession period is limited** to three years and the concession is granted for a maximum of three gambling machines per location.

Section 4 of the Gambling Machines Act prohibits Gambling Machines which offer cash prizes or merchandise.

4.5. Upper Austria

Pursuant to § 4 ss 4 Gambling Machines Act the concession period is limited to three years. Section 3 ss 1 of the Gambling Machines Act prohibits Gambling Machines which offer cash prizes or merchandise.

4.6. Burgenland

Section 15 ss 1 nr. 5 of the Events Act prohibits Gambling Machines which offer cash prizes or merchandise.

4.7. Salzburg

Section 21 ss 1 lit. b) of the Events Act prohibits Gambling Machines which offer cash prizes or merchandise.

4.8. Tyrol

Section 19 ss 1 lit. b) of the Events Act prohibits Gambling Machines which offer cash prizes or merchandise.

5. Betting

Betting is not covered by the federal gaming monopoly as it is an issue of state legislation. Operators of betting are required to obtain a **license** in accordance with the norms of the respective state (Land). There appear to be no specific barriers to the internal market regarding the conditions for obtaining a license. One norm in Lower Austria (§ 3 of the Betting Act Niederösterreich) might be considered to be a barrier since a **location in the territory** of that *Land* is required which could be a disadvantage for operators from other EU-member states offering betting services on the Internet.

It should be noted that a specific form of sports betting called «Toto» is regulated by the **GSpG**. Section 7 GSpG legally defines «Toto» as a prize game in which an organiser accepts and runs bets on the results of various sporting events (pool bet). The prize money is divided into several win categories and equally apportioned among the winners within each of these categories. The results of events which are cancelled, do not take place at the specified time or are changed in their competitive nature are to be substituted by a public draw (substitute draw).

6. Bingo

The state has only licensed one private company - the *Österreichische Lotterien Gesellschaft mbH* - which holds the only license for Lottery games. This license also covers Bingo.

For further details refer to point III. a) 2.

7. Media Gambling Services

The case law⁹ provides that **in every single case the court must determine whether** the offered service is to be qualified as a **gambling service** and therefore falls under the GSpG including the restrictions described above. Sweepstakes and prize-draws are generally not games of chance against payment if the chance to win depends on answering a question or sending a postcard. If the player does not provide a pecuniary stake, the game of chance does not fall under the GSpG. Nonetheless, the participation in a **prize-draw through the use of a value-added telephone number** where not only does the telecommunication company receive a part of the telephone fees but, in addition, the organiser gets the greater part of these fees is considered to be a game of chance under the GSpG.¹⁰ Also a prize-draw for a journey that requires a call to a value-added number is considered to be a game of chance under the GSpG because there is a pecuniary stake.¹¹

For Media Gambling services, the **Law on Unfair Competition, UWG**, is also relevant. Pursuant to § 28 UWG, the sale of goods or services in such a manner that the delivery of the goods or the performance of the service depends on the result of a lottery or another coincidence, is prohibited. The administrative penal provision of § 29 UWG also prohibits the solicitation of the activities described in § 28 UWG. Violators are subject to a fine of up to 2.900 Euro.

Furthermore, it is prohibited to offer a **«premium»**¹² free of charge to purchasers of products and services unless there is a specific exemption by law from this prohibition. This exemption is granted for prize games for which the price of a ticket does not exceed 0.36 Euro and the total amount of prizes does not exceed 21.600 Euros. This exception is not valid for premiums offered to purchasers of periodicals (§ 9a ss 1 and ss 2 no. 8 UWG).

8. Sales Promotional Gambling

The case law provides for a **determination on a case-by-case basis whether** the offered service is to be qualified as a **gambling service**, thereby falling under the GSpG and the above-described restrictions thereof.¹³

The **Law on unfair competition, UWG**, is also relevant to Sales Promotional Gambling. Pursuant to § 28 UWG, the sale of goods or services in such a manner that the delivery of the good or the performance of the service depends on the result of a lottery or another coincidence is prohibited. The administrative penal provision of § 29 UWG also prohibits solicitation such sale of goods or services; in accordance with § 28 UWG, violations are punishable by a fine of up to 2.900 Euro.

⁹ Decision of the Administrative Court, 26.11.2002, 99/15/0240, The determination of whether a game is to be qualified as a game of chance or a game of skill must be made individually in every single case, if necessary by obtaining an expert opinion.

¹⁰ Decision of the Highest Court, 18.2.2003, 4Ob5/03v.

¹¹ Markus Deisenberger, «*Rufen Sie 0900 und gewinnen Sie* », MR 2/03, p. 71.

¹² Decision of the Highest Court, 16.7.2002, 4Ob67/02k, A premium («Zugabe») is an additional advantage without additional charge which is accorded or announced upon the purchase of the main good to be sold to encourage the sale of the main good. If such an offer is repeatedly announced to the target audience, thereby creating the expectation with that audience that the offer will continue to be made in the future on a regular basis, the offer is deemed to be conclusively announced as a premium.

¹³ See above III. a) 7.

Furthermore offering premiums free of charge to purchasers of products and services is prohibited except where specifically permitted by law. This exemption is granted for prize games for which the price of a ticket does not exceed 0.36 Euro and the total amount of prizes does not exceed 21.600 Euros.

The Highest Court¹⁴ has held that prize games are not premiums offered by the periodical print media if the company does not advertise such premiums on the front page. Since purchasers of papers and periodicals read only the front page before buying the issue, they only discover the existence of the prize game by reading the paper after they have purchased it, but are not required to purchase additional issues of the periodical in order to participate. To be more precise, the Court has held that a prize game is considered to be a prohibited premium only if the premium can be linked to a significant increase of demand of the periodical.

9. Charity Gambling

The state can transfer its right to conduct **other number lotteries, tombola games, «lucky harbours» and «joke games»** to other persons by granting them authorisation to do so. First, this is only permitted in the case of the aforementioned games (exception for other number lotteries) which are conducted for prizes of up to 15.000 Euro by **legal entities domiciled in Austria** and provided that the event is not organised for commercial purposes. For games with prizes exceeding 15.000 Euro, and other number lotteries an authorisation may be granted if the event is designed to achieve individual goals of a charitable, ecclesiastical or philanthropic nature in Austria (§ 36 GSpG).

¹⁴ Decisions of the Highest Court of 10.5.1994, 4 Ob 6/94 and 11.11.1998, 3 Ob 92/98w and 14.12.1999, 4 Ob 290/99x.

b) Table

A) LEGISLATION ENACTED

Applicable Laws and specifically relevant provisions	Barriers to the Free Movement of Gambling Services	Justifications for Continuation of Barriers
<p>§ 3 GSpG: Unless otherwise provided in this federal law the federal government has the exclusive right to organise games of chance (gaming monopoly).</p>	<p>State gaming monopoly</p>	<p>As set forth in the Parliamentary materials¹⁵ to the GSpG, the justifications for this law are public order and socio-politically related objectives, player protection; complete prohibition would render gaming illegal and no longer subject to government oversight, so it must be allowed but clearly regulated and controlled by the state, fiscal political aspect: to achieve tax income as high as possible</p> <p>The Ministry of Finance¹⁶ as Supervisory Body of the gambling service providers under the GSpG confirms that the concession system installed by the legislator is justified by the above mentioned aspects.</p> <p>The Jurisprudence confirms the legislator's position.</p>

¹⁵ GP XVII RV 1067.

¹⁶ Statements of the Austrian Ministry of Finance, 30 May 2005 and 7 July 2005.

		<p>The doctrine is divided. Some commentators confirm¹⁷ the position of the legislator, but others¹⁸ doubt the validity of justification by protection of consumers and social order. They cite in particular the fact that in order to protect consumers, gambling opportunities should be reduced, but in reality the range of gambling services is constantly broadening and is advertised intensively, also to achieve a higher tax income for the state budget. That seems to be contradictory and only theoretically adequate for achieving the aim of protection of consumers and social order. With the exception of a sum fixed by the GSpG which is dedicated to sports sponsoring, gambling taxes go into the general state budget.</p>
<p>§ 14 ss 2 no.1 GSpG: The license for lotteries may only be granted to a licensee who is a public company or private limited company domiciled in Austria.</p>	<p>Domicile in Austria</p>	<p>See above</p>
<p>§ 14 ss 3 no. 1 GSpG: In the notification of licence for lotteries it shall be in particular defined that the term of the licence may not exceed 15 years.</p>	<p>Limited period of licence of 15 years</p>	<p>See above</p>
<p>§ 14 ss 5 GSpG: As long as license granted for lotteries is valid,</p>	<p>Limited number of one license</p>	<p>See above</p>

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Gerhard Strejcek/Dietmar Hoscher/Markus Eder, *Games of Chance in the EU and in Austria*, 2002; Gerhard Strejcek (Hrsg), *Lotto und andere Glücksspiele*, 2003; Heinz Mayer, *Das Glücksspiel im Spannungsfeld zwischen staatlicher Ordnungspolitik und Marktfreiheit*, ecolex 2000, p. 243.

18

Stefan Griller/Andreas Reindl, *Die Unvereinbarkeit des österreichischen Glücksspielgesetzes mit dem Europäischen Gemeinschaftsrecht*, ZfV 1998, p. 234; Franz Wohlfahrt, *Der Zweck heiligt nicht immer die Mittel*, ecolex 2000, p. 166; Walter Schwartz, *Glücksspielmonopol mit Ablaufdatum?*, ecolex 1999, p. 582; Georg Streit, *Glücksspiel ohne Grenzen im Binnenmarkt?*, medien und recht 6/99, p. 360.

<p>no further license may be granted. If several applicants who meet the required conditions apply for a license at the same time, the federal minister of finance shall decide on the basis of § 14 ss 2 no.5 GSpG, that it can be expected to achieve the optimum yield for the federal government (license fee and betting charge).</p>		
<p>§ 15 GSpG: (1) The licensee may not establish branches outside Austria. The acquisition of qualified interests by the licensee requires the consent of the Federal Minister of Finance. A qualified interest in the sense of this provision is the direct or indirect holding of a share in the equity of another company whose annual report is to be included in the consolidated annual report of the licensee in accordance with § 224 in the Code of Commercial Law. Such permission is to be granted if no reduction in the license fee or betting tax for the federal government is to be expected and the qualified interest outside Austria – in countries with which there is no double taxation agreement – is held directly by the licensee or indirectly by a holding company domiciled in Austria. (2) The licensee must immediately notify the Federal Minister of Finance in writing whenever more than 25 percent of voting rights or 25 percent of capital are held directly or indirectly in a participation. The Federal Minister of Finance can demand that these interests are relinquished within a reasonable period if a reduction in revenue from the license fee or betting tax is to be expected.</p>	<p>Prohibition of establishing branches abroad and qualified participation in foreign companies, if a reduction in revenue from the license fee is to be expected</p>	<p>See above</p>

<p>§ 16 ss 14 GSpG: When concluding agreements for Lotto, Toto and Additional games, tobaccos shops are to be given priority provided that they are operated by e.g. war victims, widows of victims, invalids or disabled persons. When concluding such agreements, particular care is to be taken that the outlet has the necessary business capability to ensure satisfactory operation, that the premises are completely adequate and that the location is favourable.</p>	<p>For conclusion of agreements for Lotto, Toto and Additional Games tobacco shops run by handicapped persons have priority</p>	<p>See above</p>
<p>§ 21 ss 2 no. 1 GSpG: A licence to operate a Casino may only be granted if the applicant is a public limited company domiciled in Austria.</p>	<p>Domicile in Austria</p>	<p>See above</p>
<p>§ 21 ss 4 GSpG: A maximum of 12 licenses for Casino games may be granted. Only one licence may be granted for the area of a single commune.</p>	<p>Limited to twelve licences</p>	<p>See above</p>
<p>§ 22 no. 1 GSpG: The term of the licence for Casino games may not exceed 15 years.</p>	<p>Limited period of licence of 15 years</p>	<p>See above</p>
<p>§ 24 GSpG: (1) The licensee may not establish any branches outside Austria. The acquisition of qualified interests (§ 15 ss 1) by the licensee requires the consent of the Federal Minister of Finance. Permission shall be granted if no reduction in revenue from gaming</p>	<p>Prohibition of establishing branches abroad and qualified participation in foreign companies, if a reduction in revenue from the license fee is to be expected</p>	<p>See above</p>

<p>establishment taxes is to be expected and the qualified interest outside Austria in countries with which there is no double taxation agreement is held directly by the licensee or indirectly through a holding company domiciled in Austria.</p> <p>(2) The licensee must immediately notify the Federal Minister of Finance in writing whenever more than 25 percent of voting rights or 25 percent of capital are held directly or indirectly in a participation. The Federal Minister of Finance can demand that these interests are relinquished within a reasonable period if a reduction in revenue from the gaming establishment taxes is to be expected.</p>	
<p>§ 36 GSpG:</p> <p>(1) The state can transfer its right to conduct other number lotteries (§32), tombola games (§33), lucky harbours (§34) and joke games (§35) by granting authorisation to other persons.</p> <p>(2) Authorisation as per sec. 1 is only permitted:</p> <p>1) for the conduct of tombola games, lucky harbours and jokes games with prizes of up to and including 15.000 Euro by legal persons domiciled in Austria if the event is not for commercial purposes; 2) for the conduct of tombola games, lucky harbours and joke games with prizes up to and including 15,000 Euro, as well as other number lotteries, by legal persons domiciled in Austria and who are deserving of support owing to their activities being beneficial for the public well-being, if the event is designed to achieve individual goals of a charitable, ecclesiastical or philanthropic nature in Austria.</p>	<p>Domicile in Austria</p> <p>See above</p>

<p>§ 56 GSpG: (1) The following activities are prohibited: 1. receiving winnings from foreign games of chance in Austria or transferring such winnings from Austria; 2. providing the means to receive winnings from foreign games of chance from within Austria or allowing winnings to be received in any other way; 3. soliciting or allowing to be solicited foreign games of chance. (2) Violations of the prohibitions contained in Sec. 1 are punishable by a fine of up to 22.000 Euro if committed intentionally, or in other cases, by a fine up to 3.000 Euro. (3) It is also forbidden to take part in foreign games of chance if the required stake is performed from within Austria. Violation of this prohibition is punishable by a fine of up to 7.500 Euro if committed intentionally, or in other cases by a fine of up to 1.500 Euro.</p>	<p>Prohibition of participation in foreign games</p>	<p>§ 56 ss 1 GSpG was reformulated by the legislator on 19.12.2003 for the purpose of clarification and was motivated by the following: The overflow of non-licensed games of chance is attended by strong advertisement. Therefore a clear prohibition of forbidden games of chance according to the GSpG shall be explicitly enacted. The newly-enacted prohibition of advertising is necessary for public order as well as for player protection to prevent the participation in illegally offered or operated games of chance. On the other hand advertising for licensed games is allowed by § 17 ss 7 GSpG.</p>
<p>§ 56a GSpG: (1) If there is justified suspicion that games are being held or organised within the framework of business activities in violation of the provisions of this Act, and there are grounds for supposing that there is a danger that these activities will continue, the authority may, without any prior proceedings, but not without first having demanded the cessation of the games of chance organised or carried out in contravention of the provisions of this Act, order the immediate complete or partial closure of the business. A closure of the business shall be refrained from if a further threat to the interests of the gaming</p>	<p>Closure of the business by the competent authority if operation of games of chance contravene the provisions of the law</p>	<p>See above</p>

<p>monopoly can be ruled out with certainty through other suitable precautions such as shutting down installations, seizure or other measures.</p>		
<p>§ 168 Penal Code: The organisation of games of chance for the purpose of pecuniary advantage is punished by imprisonment for up to six months or a fine, unless the game is played only for charity purposes or only for entertainment and for low stakes.</p>	<p>Prohibition of organising games of chance (except for charities or low stakes)</p>	<p>See above</p>
<p>§ 7 ss 3 and 6 Events Act (Carinthia): The license is granted for a maximum of eight gambling machines per location and the period of the license is limited to three years.</p>	<p>Limited number of gambling machines to eight per location Limited period of license to three years</p>	<p>In general, the justification of the restrictions on the state law level are based on the same arguments as for the GSpG.</p>
<p>§ 4 Events Act (Vienna): A managing director must be appointed in Austria if the operator is not domiciled in Austria. § 15 ss 2 and 2b Events Act (Vienna): The license is granted for a maximum of two gambling machines per location; for more than three gambling machines, there are provisions for specific structural conditions. § 15 ss 5 Events Act (Vienna): The licence period is limited to ten years.</p>	<p>Managing director in Austria, if no domicile in Austria Period of licence limited to two or ten years Limited number of gambling machines under certain conditions</p>	<p>In general, the justification of the restrictions on the state law level are based on the same arguments as for the GSpG.</p>
<p>§ 7 ss 2 Events Act (Lower Austria): The licence can be granted for determined periods, but for a maximum of ten years.</p>	<p>Period of licence limited to ten years</p>	<p>In general, the justification of the restrictions on the state law level are based on the same arguments as for the GSpG.</p>

<p>§ 3 Gambling Machines Act (Lower Austria): Gambling Machines operated with money and for cash-prizes are prohibited.</p> <p>§ 5 Gambling Machines Act (Lower Austria): An individual who applies for a license must be domiciled in Austria.</p> <p>§ 4 ss 3 Gambling Machines Act (Lower Austria): A license is limited to a period of two years.</p> <p>§ 6 ss 1 Gambling Machines Act (Lower Austria): Only three gambling machines may be installed in one location outside of a specifically labelled gambling hall.</p>	<p>Prohibition of cash-prize gambling machines</p> <p>Domicile in Austria</p> <p>Period of licence limited to two years</p> <p>Limit of three gambling machines per location</p>	<p>The Gambling Machines Act states in its § 4 that a license is only granted if there is no violation of public interests, especially protection of minors, is apprehended.</p>
<p>§ 2 ss 4 and 5 Gambling Machines Act (Vorarlberg): The licence is granted a maximum of three years and for only three gambling machines per location. The authority must also guarantee by adequate measures and conditions that the public interest is not violated.</p> <p>§ 3 Gambling Machines Act (Vorarlberg): Gambling Machines operated with money and for cash-prizes are prohibited.</p>	<p>Limited period of licence of three years</p> <p>Limited number of gambling machines of three per location</p> <p>Prohibition of cash-prize gambling machines</p>	<p>In general the justification of the restrictions on the state law level are based on the same arguments as for the GSpG.</p>
<p>§ 4 ss 4 Gambling Machines Act (Upper Austria): The licence for gambling machines must be allocated for a maximum of three years.</p>	<p>Limited period of licence of three years</p>	<p>In general the justification of the restrictions on the state law level are based on the same arguments as for the GSpG.</p>

<p>§ 3 ss 1 Gambling Machines Act (Upper Austria): Gambling Machines operated with money and for cash-prizes are prohibited.</p>	<p>Prohibition of cash-prize gambling machines</p>	<p>Additionally § 4 ss 5 Gambling Machines Act (Upper Austria) refers explicitly to the protection of public interests, especially of young people, the maintenance of public order and security as well as to avoid any disturbances to the community life.</p>
<p>§ 15 ss 1 nr. 5 Events Act (Burgenland): Gambling Machines operated with money and for cash-prizes are prohibited.</p>	<p>Prohibition of cash-prize gambling machines</p>	<p>In general the justification of the restrictions on the state law level are based on the same arguments as for the GSpG.</p>
<p>§ 21 ss 1 lit. b) Events Act (Salzburg): Gambling Machines operated with money and for cash-prizes are prohibited.</p>	<p>Prohibition of cash-prize gambling machines</p>	<p>In general the justification of the restrictions on the state law level are based on the same arguments as for the GSpG.</p>
<p>§ 19 ss 1 lit. b) Events Act (Tyrol): Gambling Machines operated with money and for cash-prizes are prohibited.</p>	<p>Prohibition of cash-prize gambling machines</p>	<p>In general the justification of the restrictions on state law level are based on the same arguments as for the GSpG.</p>
<p>§ 28 UWG: The sale of goods or services in such a manner that the delivery of the good or the performance of the service depend on the result of a lottery or another coincidence, is prohibited.</p> <p>§ 29 UWG: Soliciting activities prohibited under § 28 UWG is punishable by a fine of up to 2.900 Euro.</p>	<p>Prohibition of subjection of sale of goods to lottery</p>	<p>Decision of the Highest Court, 25.6.1974, 4 Ob 325/74</p> <p>§ 28 UWG wants to prevent that gambling addiction of the public - the willingness to win by chance - is the motivator for fulfilment of demand and thereby an uneconomic and unsound moment is brought into the sale of goods.</p>

B) DRAFT LEGISLATION

no specific projects.

C) SELF-REGULATION

no specific instruments are foreseen.

D) JURISPRUDENCE

Court Decisions and specifically relevant passages	Barriers to the Free Movement of Gambling Services	Justifications for Continuation of Barriers
<p>Decision of the Constitutional Court (VfGH, 30.9.1989, Slg. 12.165) The constitutional court is of the opinion that the requirement of a licence to operation a casino does not violate the requirements of objectivity and proportionality with respect to the freedom of trade. Both the nature and the possible effects of the operation of a Casino mean that this activity cannot be equated with other trade activities. The specific requirements concerning the reliability and economic power of a Casino operator – as well as the necessity of government supervision of this activity - justify such a system, including the limited number of the gaming licences.</p>	<p>Limited number of Casino licenses</p>	<p>The court states: The potentially negative side effects and dangers linked to the operation of a casino e.g. economic dangers for individuals resulting from a passion for gambling, the possible illegal activities of gambling operators or the infiltration of criminal elements in this domain, justify the limitation of the number of licensed casinos. In addition, the aforementioned circumstances require intensive supervisory control which must be economically efficient as it is of specific public interest in the gambling sector.</p>
<p>Decision of the Constitutional Court, 28.2.2005, B 1244/04-3 The court rejects applicant's complaint of violation of the right of equality of all nationals before the law and freedom of trade. Based on the Federal Minister of Finance's refusal to grant a casino license the court found that the applicant's rights were not so violated.</p>	<p>Limited number of Casino licenses</p>	<p>The court states that the legislation's requirement of a high paid-in share capital in order to guarantee the casino operator's ability to pay out winnings and to recover its costs cost for by fixing the paid-up share capital did not violate the requirement of objectivity. In this respect a comparison with other economic branches is not appropriate because of the risky nature of this business.</p>

<p>Decision of the Administrative Court (VwGH, 21.12.1998, Gz. 97/17/0175) § 3 GSpG provides for a monopoly for the operation of games of chance and as such monopolises a service which is then reserved to the federal government. The government does not perform this service itself but it assigns it through license. Since the license for lottery services can only be allocated to one single applicant, that company will then have the exclusive permission and obligation to operate in Austria the lotteries specified in the license. The license must only be allocated to the applicant who is expected to achieve the best yield for the federal government (license fees and betting charge, § 14 ss 2 no. 5 GSpG).</p>	<p>Limited number of Lottery licenses</p>	<p>Refers to prevailing case law of Const. Court Dec. 12.165 The allocation of one single license, thereby preventing competition is aimed at assuring a special income to the federal budget. In addition, there are the existing purposes of political order, in particular, the protection of the player and the social order.</p>
<p>Decision of the Constitutional court, 23.2.2004, B 615/02-19, B616/02-19: The court rejects the complaint of the applicant claiming violation of his rights to equality of treatment, freedom of trade and to due process. The court referred to its decision of 30.9.1989, Slg. 12.165 mentioned above, in which based on the Federal Minister of Finance's refusal to grant a casino license the court found that the applicant's rights were not so violated.</p>	<p>Limited number of lottery licenses</p>	<p>The court states that the legislation's requirement of a high paid-in share capital in order to guarantee the casino operator's ability to pay out winnings and to recover its costs cost for by fixing the paid-up share capital did not violate the requirement of objectivity. In this respect a comparison with other economic branches is not appropriate because of the risky nature of this business.</p>
<p>Decision of the Constitutional Court, 8. 6. 2004, G208/03. The application process for a Lottery license is considered to be a reasonable procedure although it has no chance of success as long as another license is valid. The is the case</p>	<p>Limited number of Lottery licenses</p>	<p>The court states: No provision of the GSpG excludes an application for a lottery license, notwithstanding the fact that any such application will have no chance of success during the period</p>

<p>notwithstanding the conditions which would need to be fulfilled (Austrian company with paid-in capital of 109 million Euro) in order to obtain a license.</p>		<p>of validity of any other such license.</p>
<p>Decision of the Highest Court, 18.2.2003, 4Ob5/03v The fee for connecting to a value added telephone number is qualified as a pecuniary stake within the meaning of § 2 ss 1 GSpG. By dialling such a number, a caller participates in a prize game and is deemed to know by the special character of the number that a small part of the telephone fee goes to the telecommunication operator whereas the larger remaining portion of the fee goes to the gaming operator.</p>	<p>Special form of media gambling which falls under the GSpG and the restrictions thereof</p>	<p>As the GSpG is applicable, see justifications therefore, <i>supra</i>.</p>
<p>Decision of the Highest Court, 10.2.2004, 4Ob233/03y The organisational amount of 50 Euro paid by each participant of a prize game by letter («Briefgewinnspiel») is qualified as a pecuniary stake in the sense of § 2 ss 1 GSpG. In exchange for this payment, the operator promises a pecuniary prize to the players. The fact that every player receives a prize does not change the inadmissibility of the prize game, if at the moment the player pays the organisational amount it has not yet been determined which of the prizes of differing values the participant will receive.</p>	<p>Special form of media gambling which falls under the GSpG and the restrictions thereof</p>	<p>As the GSpG is applicable, see justifications therefore, <i>supra</i>.</p>

<p>Decision of the Constitutional Court, 9.6.1998, Slg. 15.163 In accordance with the provisions of §§ 16ss Events Act (Vienna) a procedure must be performed after an applicant's written application for a gambling machines license. During this procedure the authority must examine whether the personal conditions are fulfilled and whether the proposed project will comply with the Events Act.</p>	<p>License for gambling machine</p>	<p>In line with the prevailing case law of the constitutional court, the reasonability of a procedure does not depend on the chance of success of the parties in the matter.</p>
<p>Decision of the Constitutional Court, 10.6.2003, G55/01 It was the applicant company's obligation to apply for a license for gambling machines as defined in § 4 of the Gambling Machines Act (Upper Austria). The fact that such an application has no reasonable chance of success does not alter the reasonability of this procedure. The determination that this procedure is reasonable shall not depend on the prospects of the parties in the matter; the fact that there is no chance that the application will be successful will not render the procedure unreasonable.</p>	<p>Application for a license to install gambling machines</p>	<p>It is a consequence of the case law of the constitutional court cited in this particular decision that the giving effect to a decision of the authority, even if the decision is to reject the application for a license, must nevertheless be qualified as a reasonable procedure.</p>
<p>Decision of the Highest Court, 14. 3. 2005, 4 Ob 255/04k The Austrian Court was required to apply German law in a case concerning advertising cross-border betting services as a result of the rule in § 48 Austrian International Private Law. German penal law provides that the foreign operator advertising gambling services over the Internet must have a German license, but in fact</p>	<p>German license necessary for operator already licensed in Austria if he advertises betting services via the Internet</p>	

III. BARRIERS Table

JURISPRUDENCE

AUSTRIA

<p>the operator was only licensed in the state of Upper Austria (<i>Land of Austria</i>). The operator licensed in Austria also advertised his services via the Internet in Germany.</p>		
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