



Institut suisse de droit comparé
Schweizerisches Institut für Rechtsvergleichung
Istituto svizzero di diritto comparato
Swiss Institute of Comparative Law

DENMARK

I. INTRODUCTION

1. Danish position on gambling:

In Denmark there is a **general prohibition against lotteries, which can be found in the Act on Lottery Prohibition.**⁹⁰ This prohibition can be **excepted by an authorization.** According to the Act on Lottery Prohibition the authorization can only be given to **lottery organizers who promote good causes**, while the **Act on Certain Games, Lotteries and Betting**⁹¹ contains a specific **exception for one single company.** The company set up according to this act is the **Dansk Tipstjeneste A/S.**

Today the **Danish gambling market** is in principal **run by two main societies, Dansk Tipstjeneste A/S and Det Danske Klasselotteri A/S** (the Danish state lottery). Det Danske Klasselotteri has been set up by the Minister of Taxation, while the state owns 80% of the Dansk Tipstjeneste. The rest is owned by two Danish sports organizations. Currently Dansk Tipstjeneste runs lotteries, betting and has a wholly owned subsidiary that operates gaming machines outside casinos. With the Dansk Tipstjeneste and the Danish state lottery, **the Danish state ensures that the profit from the market is channelled to public benefit purposes.** In addition the market includes a number of private gaming providers who, like the state, either donate the profit to public benefit or, in return for their licenses and permits, pay a high duty to the State Treasury.

The objectives for the current system and legislation are on one hand security, as in **consumer protection and the battle against crime** and on the other hand social politics, as in **ensuring that the profits from the gambling market are put into the public's general interests.** The establishment of Dansk Tipstjeneste in 1948 was conditional upon the profit going directly to sports and other activities of general benefit for the public or to the State Treasury.⁹²

The gaming market is supervised by three ministries (finance, justice and commerce and industry) and a Gaming Authority has been established. A breach of the acts will be sanctioned by a fine or prison according to the Criminal Code.

2. Definitions

Lottery

An arrangement where the participants, against the payment of a stake, obtain a chance to win and where the winning depends on the hazard.⁹³

Casino gaming

Casino gaming involves roulette (both French and American), baccarat and black jack. Casino gaming requires a permit from the Minister of Justice.⁹⁴ The Minister of Justice can allow other kind of games, as well as limit the number of games in a casino.⁹⁵

⁹⁰ Lov 06/03/1869 om Forbud mod lotteri m.m.

⁹¹ Lovbekendtgørelse 2003-12-11 nr 1077 om visse spil, lotterier og væddemål

⁹² The Future Gaming in Denmark brief version, published by the Ministry of Taxation, 21/8 2003, p. 3. Can be found on www.skat.dk/publikationer/udgivelser/1695/1913/.

⁹³ Cirkulære om bortlodning CIR nr 147 af 01/08/1994, art. 1 sec. 3.

Machine gambling outside casinos

Prizewinning gambling machines include mechanic or electric machines that can be used for games where the gambler, against an **economical stake**, can **win a prize containing money in cash or gambling money**.⁹⁶

gaming with money is understood as games where the prize is paid out in cash or in gaming money with the possibility to exchange it for cash.

gaming with gambling money is understood as games where the prize is paid out in gambling money that can be exchanged for goods or services.

a gaming hall is understood as manned premises where prizewinning gambling machines can be placed.

Betting

Betting can be made on dogs, horses, pigeon racing, track cycling etc.⁹⁷ Regarding dogs and horses the bets can be placed on fixed odds (bookmaker betting) and on bets with current odds (totalizator betting).⁹⁸

Bingo

An arrangement where the participants, against the payment of a stake, obtain a chance to win and where the division of the winning depends on the hazard.⁹⁹ **The prize cannot be money**, securities or similar, though this restriction can be **exempted** from in a specific area **authorized by the police**.¹⁰⁰ Gift vouchers can constitute a bingo prize as long as they can't be exchanged for money.

Media gambling services

There is no legal definition of media gambling services.¹⁰¹

Promotional games

There is no legal definition of promotional games.¹⁰²

⁹⁴ Lovbekendtgørelse 1994-10-10 nr. 861 om spillekasioner, ch. 1 art. 1 and ch. 2 art. 2 sec. 1.

⁹⁵ Lovbekendtgørelse 1994-10-10 nr. 861 om spillekasioner, ch. 1 art. 1 and ch. 2 art. 2 sec. 2.

⁹⁶ Lovbekendtgørelse 2002-07-25 nr. 631 om gevinstgivende spilleautomater, ch. 1 art. 2.

⁹⁷ Lovbekendtgørelse 2003-12-11 nr. 1077 om visse spil, lotterier og vaeddemal, art. 1.

⁹⁸ Lovbekendtgørelse 2003-12-11 nr. 1077 om visse spil, lotterier og vaeddemal, art. 1A sec. 2 and 3.

⁹⁹ Cirkulære om bortlodning CIR nr 147 af 01/08/1994, art. 1 sec. 3.

¹⁰⁰ Cirkulære om bortlodning CIR nr 147 af 01/08/1994, art. 5.

¹⁰¹ See information in a letter from Skatteministeriet.

¹⁰² See Bekendtgørelse af lov 2000-07-17 nr 699 om markedsføring (*The Marketing Practices Act*, consolidated Act n°699 of 17 July 2000).

3. Taxes

Danish games of chance are not subject to VAT.

The profits on games, lotteries and betting on the Faroe Islands and in Greenland accrue to the Faroe Islands and Greenland respectively.¹⁰³

Lotteries

For lotteries 16% of the total stake shall be paid as tax.¹⁰⁴ This means that Dansk Tiptjeneste pays 16% of the total stake as tax. **The profit** generated after payment of tax to the Danish State, the prizes and administrative expenses, depreciations, provisions etc. and dividend **goes to charitable causes and no-profit purposes.**¹⁰⁵

On the other hand, according to specific regulations, Danske Klasselotteri only pays 6% of the total stake as tax.¹⁰⁶

The prizes from the Landbrugslottery and the Varelottery as well as prizes in cash are subject to a 15% tax on the part that exceeds EUR 26 (DKK193.9).¹⁰⁷ Other prizes are charged with a 17,5% tax on the part that exceeds EUR 26 (DKK193.9).

Casinos

The tax for casino gaming¹⁰⁸ when the gross gaming revenue is:

under EUR 517.868 (DKK 3863.21) is 45%.

above EUR 517.868 (DKK 3863.2) is 233.041 (DKK 1737.96) of the 517.868 (DKK 3863.21) and 75% on the rest.

Machines outside casinos

There is a fixed tax of EUR 98 (DKK 730.912) per machine per year.¹⁰⁹

For gaming machines containing prize money the tax is 40% on the gross gaming revenues.¹¹⁰

Restaurants with gaming machines also have to pay an extra 30% tax on the gross gaming revenues that exceed EUR 3.884 (DKK 28 971.25).

Gaming halls have to pay an extra 30% tax on the gross gaming revenues that exceed EUR 32.367 (DKK 241 429. 55). There is an additional tax (for gaming halls) on EUR 389 (DKK 2

¹⁰³ Lovbekendtgørelse 2003-12-11 nr. 1077 om visse spil, lotterier og væddemal, art. 6A sec. 2.

¹⁰⁴ Lovbekendtgørelse 2003-12-11 nr. 1077 om visse spil, lotterier og væddemal, art. 1A.

¹⁰⁵ Lovbekendtgørelse 2003-12-11 nr. 1077 om visse spil, lotterier og væddemal, art. 6A.

¹⁰⁶ Bevilling til Det Danske Klasselotteri A/S til at drive klasselotteri i Danmark, art. 2.

¹⁰⁷ Lovbekendtgørelse 1993-07-27 nr. 636 om afgift af gevinster ved lotterispil mv., art. 2.

¹⁰⁸ Lovbekendtgørelse 2002-05-27 nr. 337 om afgift af spillekasinoer.

¹⁰⁹ Lovbekendtgørelse 2002-07-25 nr. 631 om gevinstgivende spilleautomater, ch. 2 art. 3 sec. 3.

¹¹⁰ Lovbekendtgørelse 2002-07-25 nr. 631 om gevinstgivende spilleautomater, ch. 3 art. 23.

901.03) per machine for the first 50 machines and EUR 195 (DKK 1 454. 24) per machine for the rest of the machines.¹¹¹

Gaming machines, with other prizes than money, positioned in gaming halls that belong to travelling amusement parks, markets, animal expositions and other similar places pay a tax of 20% on the gross gaming revenues.¹¹²

Betting

For betting:¹¹³

16% of the total stake shall be paid as tax.

30% of the amount by which the stake in bookmaker betting exceeds the prizes (the gross revenue) shall be paid as tax.

11% of the amount by which the stake in totalizator betting on horse and dog racing exceeds the prizes (gross revenue) shall be paid as monthly tax and 19% of the monthly gross revenue exceeding EUR 2.162.098 (DKK 16 124 445. 42) shall be paid as an additional tax.

Dansk Tipstjeneste A/S has a license to organise betting. The profit generated by totalizator betting on the individual horse racing track shall accrue to the track in question. This profit shall be computed to 21,25 % of the revenue from the totalizator betting on the individual horse racing track.¹¹⁴

At **local totalizator games** in connection with dogs and horses the tax is 1% of the part of the stake that belongs to a prize-game or betting-game and 11% for the part of the stake that belongs to other kinds of games.¹¹⁵ V5 and V6 games are exempted they always pay 16% tax.

A deduction can be made for certain games. A fixed amount of EUR 1.379 (DKK 10 285. 55) per gameday can be exempted for local totalizator games.¹¹⁶ For totalizator games in connection with dogs a fixed amount of EUR 196 (DKK 1461.71) per gameday can be exempted.

Totalizator games in connection with other forms of betting are taxed as follows when:¹¹⁷

the stakesum is not over EUR 3.253 (DKK 24.2597) then 10% tax.

the stakesum is under EUR 6.505 (DKK 48.5143) then EUR 326 (DKK 2430.94) of EUR 3.253 (24 262.85) and 15% of the rest.

the stakesum is under EUR 13.010 (DKK 97,0260) then EUR 814 (DKK 6.072.30) of EUR 6.505 (DKK 48.5128) and 20% of the rest.

the stakesum is over EUR 13.010 (DKK 97.0160) then EUR 2.114 (DKK 15.7670) of EUR 13.010 (DKK 97.0160) and 25% of the rest.

The tax can not exceed 25% of the total sum of the stakes.

¹¹¹ Lovbekendtgørelse 2002-07-25 nr. 631 om gevinstgivende spilleautomater, ch. 3 art. 23.

¹¹² Lovbekendtgørelse 2002-07-25 nr. 631 om gevinstgivende spilleautomater, ch. 3 art. 24.

¹¹³ Lovbekendtgørelse 2003-12-11 nr. 1077 om visse spil, lotterier og vaeddemal, art. 1A.

¹¹⁴ Lovbekendtgørelse 2003-12-11 nr. 1077 om visse spil, lotterier og vaeddemal, art. 3A.

¹¹⁵ Lovbekendtgørelse 2002-05-08 nr. 286 om locale totalisatorspil, art. 2A.

¹¹⁶ Lovbekendtgørelse 2002-05-08 nr. 286 om locale totalisatorspil, art. 2A sec. 2.

¹¹⁷ Lovbekendtgørelse 2002-05-08 nr. 286 om locale totalisatorspil, art. 2B.

If the **profit from the totalizator is significantly higher** than can be assumed reasonable for the use of the permit holder's own purposes or for the purposes that he naturally supports, **the Minister of Taxation can demand**, after negotiations, that the **permit holder gives a certain amount to charitable causes** or other good causes.¹¹⁸

Bingo

Regarding bingo there is **no tax on the turnover**. Prizes in cash are subject to a 15% tax on the part that exceeds EUR 26 (DKK 193.954). On the other prizes there is a 17,5% tax on the part that exceeds EUR 26 (DKK 193.954). These taxes are only paid when the bingo is public.¹¹⁹

Charity

A gaming hall can arrange a gamble with money that goes to charitable purposes. This will reduce his tax (see machine gambling outside casinos) with 95% on the part that according to art. 23 exceeds 30% of the gross gaming revenues.¹²⁰

¹¹⁸ Lovbekendtgørelse 2002-05-08 nr. 286 om locale totalisatorspil, art. 5.

¹¹⁹ Lovbekendtgørelse 1993-07-27 nr. 636 Gevinstafgiftsloven art. 1 sec. 1 p. e and art. 2 and Bekendtgørelse om afgift af gevinster ved offentlige bortlodninger m.v. and Skatteministeriet publication about the future gambling, chapter on taxes p. 4

¹²⁰ Lovbekendtgørelse 2002-07-25 nr. 631 om gevinstgivende spilleautomater, ch. 3 art. 25 and art. 38.

II. LISTING

A) LEGISLATION ENACTED

- Lov nr 18027 06/03/1869 om Forbud mod lotteri m.m. (*Lottery prohibition act*)
- Lov nr 63 af 01/04/1913 om Indskrænkning i Adgangen til Omsætning af Lotterisedler m.m. (*Restricted access of the Circulation of Lottery Tickets Act*)
- Bekendtgørelse 1956-02-13 nr 29 om afgift af gevinster ved offentlige bortlodninger m.v. (*Regulation on duties from lotteries*)
- Lovbekendtgørelse 1993-07-27 nr 636 om afgift af gevinster ved lotterispil m.v. (*Prize duty act*)
- Bekendtgørelse 1994-06-13 nr 496 om spillekasinoer (*Casino Act Regulation*)
- Bekendtgørelse af lov 1994-10-10 nr 861 om spillekasinoer (*Casino act*)
- Bekendtgørelse 1999-12-03 nr 878 om indbetaling af afgift af totalisatorspil (*Payment of Duty from Totalizators Regulation*)
- Bekendtgørelse af lov 2000-07-17 nr 699 om markedsføring (*Marketing Practices Act*)
- Lovbekendtgørelse 2002-05-08 om lokale totalisatorspil (*Local totalizator act*)
- Lovbekendtgørelse 2002-05-27 nr 337 om afgift af spillekasinoer (*Casino duty act*)
- Bekendtgørelse af lov 2002-07-25 nr 631 om gevinstgivende spilleautomater (*Regulation under the Slot machines act*)
- Bekendtgørelse 2003-05-26 nr 408 om kontrol og overvågning i medfør af lov om Det Danske Klasselotteri A/S (Klasselotterilove) og lov om visse spil, lotterier og væddemål (tips- og lottoloven) (*Regulation under the Pools and Lottery act*)
- Bekendtgørelse 2003-11-12 nr 901 af Lov om Det Danske Klasselotteri A/S (*State lottery act*)
- Lovbekendtgørelse 2003-12-11 nr 1077 om visse spil, lotterier og væddemål (*Pools and Lottery act*)
- Bekendtgørelse nr 960 af 21/09/2004 af straffeloven (*Criminal Code*)
- Bekendtgørelse nr 1152 af 16/12/1994 om fastættelse af beløbsgrænser i konkurrencer (*Regulation on the determination of authorized winnings through draws and prize competition*)
- Lov 2005-05-18 nr 325 om ændring af visse skatte- og afgiftslove, arbejdsmarkefondsloven, opkrævningsloven og miljøbeskyttelsesloven (*Amendment act of certain Tax and Duty Laws, Labour Market Funds Law, Collection Money Order Law, Environmental Protection Law*)
- Cirkulære om afgift af gevinster ved offentlige bortlodninger (CIR nr 21 20/02/1956) (*Circular on taxes of profit from public lotteries*)
- Cirkulære om bortlodning (CIR nr 147 af 01/08/1994) (*Circular under the Lottery prohibition act*)
- Cirkulære om Spilleautomatloven sagsudlægning (CIR nr 207 af 22/12/2000) (*Circular on Slot Machines Act*)
- Cirkulære om administrative bødefastsættelser ved overtrædelse af spilleautomatloven (CIR nr 39 af 30/04/2002) (*Circular on Stipulation of Fines for Violation of the Slot Machines Act*)
- Cirkulæreskrivelse om bortlodninger (vejledende retningslinjer for bladkonkurrencer og lotterier set i relation til Markedsføringslovens § 8) (CIS nr 11450 af 30/07/1982) (*Circular Letter on Lotteries (Guidelines for newspaper contests and lotteries related to the Marketing Practices Act)*)
- Cirkulæreskrivelse om bankospil ved brug af privatradioanlæg (CIS 11705 af 13/11/1986) (*Circular Letter on Bingo at Private Broadcasting*)

Vejledning til brug for politiet ved overgangen til det nye bortlodningscirkulære (VEJ nr 11032 af 31/01/1984) (*Guidelines for Police Officials during the Transition to the New Lottery Circular*)

Bevilling till Dansk Tipstjeneste A/S til at afholde visse spil, lotterier og væddemål. (*Licence granted to Dansk Tipstjeneste A/S to supply certain Games, Lotteries and Betting*)

Bevilling till Dantoto A/S til at foranstalte væddemål i forbindelse med heste- og hundeløb. *Licence granted to Dantoto A/S to organize Betting on Horse - and Dog Racing*

Bevilling till det Danske Klasselotteri A/S til at drive klasselotteri i Danmark. (*Licence granted to Danske Klasselotteri to organize class-lottery in Denmark*)

Bevilling till Landbrugslotteriet 24/3 1994 (*Licence of the Lottery for the benefit of farmers*)

Bevilling till Vare- og Industrielotteriet 30/10 1996 (*Licence granted to the Products- and Industry Lottery*)

B) DRAFT LEGISLATION

Our research did not reveal any relevant information.

C) SELF REGULATION

Our research did not reveal any relevant information.

D) JURISPRUDENCE

Østre Landsret 14th of September 2000 Gerhard & Jörg Schindler v. the Danish Ministry of Justice and Ministry of Taxation.

III. BARRIERS

a) Panorama

1. General

Our research did not reveal any relevant information.

2. Lotteries

A lottery is an arrangement where the participants, against the payment of a stake, obtain a chance to win and where the winning depends on the hazard.¹²¹

The Lottery Prohibition Act states a **general prohibition against any lotteries** organized in Denmark or abroad.¹²² An **exception** is made if **an authorization has been obtained**. An authorization can be obtained for lotteries with a **charitable cause and where the clientele is restricted to a city** or similar.

According to the **Act on Certain Games, Lotteries and Betting** article 1, the Minister of Taxation shall also be authorized to issue licenses for offering lotteries against payment of tax to the state:

The Minister of Taxation shall be authorized to issue licenses for offering games, lotteries and betting against payment of tax to the state.

Article 2 stipulates that the **license** mentioned above only shall be **granted to one company**:

- (1) A license pursuant to section 1 of this Act shall only be granted to one company. Any company in which the share capital is subscribed by the company mentioned in the first sentence hereof may, however, be granted a betting license as mentioned in section 1 a. (3) of this Act.
- (2) A license can be granted for a period of up to five years at a time. Renewal of the license requires the approval of the Danish parliament's Finance Committee.
- (3) The companies mentioned in subsection (1) hereof shall be set up as limited companies. The Danish Companies Act shall apply to the companies unless otherwise is stated in this Act. The Articles of Association of the companies and changes to such Articles, if any, shall be approved by the Minister of Finance.

Further on it is regulated that the company set up shall be a limited company with a share capital of at least EUR 65.056 (DKK 485.276).¹²³ The state shall subscribe to 80 % of the share capital, while the Danish Sports Association and the Danish Gymnastics and Sports Associations subscribe to 10 % each.

The company that has been set up according to the regulations mentioned above is the **Dansk Tipstjeneste A/S**.¹²⁴ Dansk Tipstjeneste A/S must pay the costs for the Minister of

¹²¹ Cirkulære om bortlodning CIR nr 147 af 01/08/1994, art. 1 sec. 3.

¹²² Lov 1869-03-06 om forbud mod lotteri m m, art. 2.

¹²³ Lovbekendtgørelse 2003-12-11 nr 1077 om visse spil, lotterier og væddemål, art. 3 sec. 1.

¹²⁴ Bevilling till Dansk Tipstjeneste A/S til at afholde visse spil, lotterier og væddemål.

Taxation s supervision and inspection of its activities.¹²⁵ According to article 5 no less than 45% of the stakes shall be paid out as prizes.

In the license granted to Dansk Tipstjeneste A/S, the Danish Ministry of Taxation stresses that Dansk Tipstjeneste A/S has an obligation to supply attractive games. This is mainly to attempt to avoid Danish punters demanding games from games suppliers operating illegally in Denmark, including via the internet.¹²⁶ Further on the Ministry states that **Dansk Tipstjeneste A/S**, in its marketing and development of products, **shall attempt** to channel Danes betting activities into legal, controlled games while **keeping consumption at a moderate level** in relation to a free market situation .

The company s **profit** generated, after payment of tax to the Danish State, the prizes and administrative expenses, depreciations, provisions etc. and dividend, **goes to charitable causes and no-profit purposes**.¹²⁷ It is apportioned in the following way:

- 1) 66,44 % to the Ministry of Culture
- 2) 12,67 % to the Ministry of Education
- 3) 3,39 % to the Ministry of Environment
- 4) 10,42 % to the Ministry of Social Affairs
- 5) 2,95 % to the Ministry the Interior and Health
- 6) 0,39 % to the Ministry of Science, Technology and Innovation
- 7) 3,74 % to the Ministry of Finance

There are also specific regulations on how the different ministries shall apportion their share to the Danish sports organizations.¹²⁸

There are **three regular lotteries operating on a national scale** that have been given an authorization, **Landsbrugslotteriet, Varu- og Industrielotteriet and Danske Klasselotteriet**. The authorizations for Landsbrugslottery and the Varu- og Industrielottery have been granted by the Minister of Justice in accordance with article 2 section 2 in the **Act on Lottery Prohibition**:¹²⁹

All of the special permits given for lotteries shall, nevertheless, continue to be valid during the time, for which they have been granted, and there will in the future be possible to grant permissions **for lotteries with exclusively charitable causes**.

In the **Public Notice on Lotteries** it is stipulated that **organisations domiciled in Denmark** can receive a license to hold a lottery:¹³⁰

Lottery permit is granted by the director of the police to a, in this country, domiciled organisation, institution or committee that is composed of at least three, in this country, domiciled persons.

Article 2 specifies the conditions for a permit to be granted:

- (1) A lottery permit can be given in the benefit for charity or other causes that are for the public good.
- (2) Lottery permit cannot be given in the benefit for political purposes.

¹²⁵ Lovbekendtgørelse 2003-12-11 nr 1077 om visse spil, lotterier og væddemål, art. 4.

¹²⁶ Bevilling till Dansk Tipstjeneste A/S til at afholde visse spil, lotterier og væddemål.

¹²⁷ Lovbekendtgørelse 2003-12-11 nr. 1077 om visse spil, lotterier og væddemål, art. 6A sec. 1.

¹²⁸ Lovbekendtgørelse 2003-12-11 nr. 1077 om visse spil, lotterier og væddemål, art. 6B-6H.

¹²⁹ Lov 1869-03-06 om forbud mod lotteri m m.

¹³⁰ Cirkulære om bortlodning CIR nr 147 af 01/08/1994, art. 1 sec. 1.

- (3) Lottery permit cannot be given where the prize will be won due the gambler's choice of individual numbers or indications.
- (4) Lottery permit for machines or electronic terminals cannot be given.

There is also **the state lottery Danske Klasselotteri that has permission to organise lotteries.**¹³¹ According to the Act on the Danish Class-lottery the **license is valid for 10 years** at a time.¹³² In article 4a it is stipulated that **anyone who sells or facilitates participation in class-lotteries which don't have a Danish license shall be punished with a fine or prison** up to 6 months. According to article 4a section 5 the breach can also be punished according to the Danish **Criminal Code** chapter 5 and 22.¹³³ **The Gaming Authority will supervise the gaming market.**¹³⁴

In the Lottery Prohibition Act against lotteries there is also article 5 which regards **advertisements for lotteries**:

Publications in national papers of foreign lottery-plans and of advertisements regarding the, according to §§ 2-4 here in the Country, other prohibited societies and offers are punishable by fine, The same punishment will be ordered for the one who, in another way, spread plans for foreign or non authorized national lotteries.

Article 5 prevails other acts, but if article 5 is not applicable there is also article 10 section 1 of the Act on Certain Games, Lotteries and Betting which states that:

- (1) Any person who intentionally or grossly negligently
 - (1) **provides games, lottery or betting in Denmark without a license** pursuant to section 1 of this Act; or
 - (2) **facilitates access** to games, lotteries or betting outside the scope of a license pursuant to section 1 of this Act,

shall be **punishable** by fine or imprisonment of up to six months.

- (2) Where aggravating circumstances exist, includes especially repeat of offences or where the offence was particularly grave, the penalty pursuant to subsection (1) may increase to 12 months imprisonment,

- (3) Any person who intentionally or grossly negligently

- (1) for commercial purposes facilitates access to the licensee's games, lotteries and betting without the licensee's approval;
- (2) offers any kind of games, lotteries, betting or competition by using the licensee's gambling coupons, gambling results, equipment etc. without the licensee's approval; or
- (3) **advertises for games, lotteries or betting outside the scope of a license** issued in pursuance to section 1 of this Act

shall be punishable by fine.

¹³¹ Bekendtgørelse af Lov om Det Danske Klasselotteri A/S (LBK nr 901 af 12/11/2003) and Bevilling till det Danske Klasselotteri A/S til at drive klasselotteri i Danmark.

¹³² Bekendtgørelse af Lov om Det Danske Klasselotteri A/S (LBK nr 901 af 12/11/2003), art. 2 sec. 2.

¹³³ LBK nr 960 af 21/09/2004 Bekendtgørelse af straffeloven ch. 5 and ch. 22 art. 203 and 204.

¹³⁴ Bekendtgørelse af Lov om Det Danske Klasselotteri A/S (LBK nr 901 af 12/11/2003), art. 4a sec. 6. Bekendtgørelse om kontrol og overvågning i medfør af lov om Det Danske Klasselotteri A/S og lov om visse spil, lotterier og væddemål (BEK nr 408 af 26/05/2003).

The word provides in section 1 number 1 is to be interpreted broadly.¹³⁵ **The provision covers national and foreign games, lotteries and betting targeted directly at and available for Danish players.** This involves that it is illegal for foreign game providers to offer gaming, which by its marketing methods, choice of language or selection of games can be said to be targeted directly at Danish players. **Games offered via the internet should be considered as offered in Denmark if the offer is directed at the Danish market.** This includes that the game provider's homepage is written in Danish, has a Danish customer service or it's in other ways clear that the gaming is directed at Danish players. The expression facilitates in section 1 number 2 is to be understood as any activity intended to establish gaming or to increase the participation in illegal gambling, offered electronically or in any other way.¹³⁶ One example is having a link to a homepage to a game provider without a Danish license.

The Gaming Authority has given some guidance on what is included in advertises in article 10 section 3 number 3.¹³⁷ The following list is independent of the type of medium used and is not exhaustive:

Publicities/advertisements: All ads that are advertising unlawful gambling societies or their products.

Protest advertisements: Ads that are worded as a political message (example as a protest against the Danish gaming monopoly), if the ad is paid of and originates from an unlawful gaming society and the gaming society's name or logo are mentioned.

Job advertisements: When the ad, in the design and exposure, undoubtedly has a marketing value or if the ad encourages unlawful actions.

Sponsoring/Donations: If the sponsoring/donation contributes to information regarding/reports on the unlawful game or gaming society or in another way has some clear marketing value.

The Gaming Authority is responsible for monitoring the gaming market¹³⁸ and article 10 continues stating in section 5 that **criminal liability** pursuant to the provisions in Part 5 of the Danish Criminal Code **may be imposed on companies etc (legal persons)**.¹³⁹

The rules mentioned above may all constitute a barrier to the free movement of services and goods within the European Union. Though such barriers can be justified by certain purposes. The European Court of Justice has, in several cases, ruled that national barriers in the gaming market are justified.¹⁴⁰

The objectives for the current system and legislation are on one hand security, i.e. **consumer protection and the battle against crime** and on the other hand social politics, i.e. **ensuring that the profits from the gambling market are put into public's general interests.**

The Danish High Court has treated a case regarding the motives behind the Danish legislation.

¹³⁵ Explanatory notes to article 10 of the Games, Lotteries and Betting Act.

¹³⁶ Explanatory notes to article 10 of the Games, Lotteries and Betting Act.

¹³⁷ Information from the Department for Gambling 18 February 2004.

¹³⁸ Lovbekendtgørelse 2003-12-11 nr. 1077 om visse spil, lotterier og væddemål, art. 10 sec. 6. Bekendtgørelse om kontrol og overvågning i medfør af lov om Det Danske Klasseslotteri A/S og lov om visse spil, lotterier og væddemål (BEK nr 408 af 26/05/2003).

¹³⁹ LBK nr 960 af 21/09/2004 Bekendtgørelse af straffeloven ch. 5 and ch. 22 art. 203 and 204.

¹⁴⁰ See Schindler case (C-275/92), Läärä case (C-124/97) and Zenatti case (C-67/98).

In a case from 2000 the question whether the Danish legal barriers are justified or not was treated. A Danish High Court had to take a position on whether the prohibition against advertising and selling lotteries is based on justified social matters that would mean that the restrictions don't go against the EU-regulations. In the case the S ddeutsche Klassenlotterie wanted to sell and advertise lots to lotteries in Denmark. **The Ministry of Justice refused to grant a license with reference to the law on prohibition of lotteries.** Both the Ministry of Justice, the Ministry of Taxation and the S ddeutsche Klassenlotterie made references to the decisions in Schindler, L ar  and Zenatti.

The High Court found that the plaintiff had not presented evidence that would allow the court to make a judgment on the question, whether the stated public reasons (protection of players, prevention of crime, public order and the non-stimulation of demand) **were in fact real motives behind the legislation.** Following the case-law of the ECJ, which allows member states to exercise considerable discretionary powers if the restrictions can be said to be justified, the **court ruled in favor of the Danish Government.** The ruling was not appealed.

Another case is still underway in the Danish High Court. The company **Ladbrokes Worldwide Betting filed a complaint** against the Danish Government (The Ministry of Taxation) on the 1st of July 2004 after having been **denied a license to provide betting** and other fixed odds gambling services. In this area there is a state-controlled monopoly and only Dansk Tipstjeneste A/S has a license to operate. **Ladbrokes has argued that the real reason for the monopoly is a fiscal one and that therefore the legislation is not in conformity with the EC-treaty.** The case is still pending in the court.

Dansk Tipstjeneste has clarified that the **Danish State holds the view that a monopoly structure is better than both a total ban and a more or less liberalized market.** A complete ban has long been an outdated measure and an impossible solution if an extensive black market for games with financial stakes is to be avoided. On the other hand, the introduction of a regulated liberalized market is bound to result in increased competition and consequently increasing gaming and betting activities. One main reason why Denmark has a gaming monopoly is precisely that the lack of competition limits the market.¹⁴¹

3. Casino Gaming

According to **the Casino Act the Ministry of Justice grants the license** to run a casino in Denmark.¹⁴² Currently there are six casinos in Denmark. Following that there is **no monopoly** on this market there are no limits as to who can run a casino,¹⁴³ though a casino must be run in a good way.¹⁴⁴ Article 1 stipulates that:

- (1) The Minister of Justice can give permission to the establishment and running of a gaming casino.
- (2) The permit can be given for 10 years at a time.
- (3) At the decision of whether a permit can be given, attention shall be paid to, that the person who wishes to receive the permit, can be assumed to want to run the gaming casino in a completely good way.
- (4) There can be conditions set up for the permit.

¹⁴¹ Information received in a letter from Dansk Tipstjeneste Group.

¹⁴² Bekendtg relse af lov 1994-10-10 nr 861 om spillekasinoer, ch. 1 art. 1 sec. 1.

¹⁴³ Karnow comment no 1 to ch. 1 art. 1 the law on casinos.

¹⁴⁴ Bekendtg relse af lov 1994-10-10 nr 861 om spillekasinoer, ch. 1 art. 1 sec. 3.

Casino gaming involves roulette (both French and American), baccarat and black jack. The casino requires a permit from the Minister of Justice.¹⁴⁵ The Minister of Justice can allow other kind of games, as well as limit the amount of games in a casino.¹⁴⁶

The Ministry can also decide on different things such as the maximum and minimum stakes¹⁴⁷ and there is an age limit at 18 years to enter a casino.¹⁴⁸ There are several obligations that a casino must follow to be lawful, for example register information about their customers, regulations regarding the gaming money, their staff etc. It is the police that supervise the casinos.¹⁴⁹

4. Machine Gambling Outside Casinos

In year 2002 a specific law for machine gambling, **the Act on Gaming Machines Offering Cash Winnings**, was passed and one of its principal objectives was to **combat the illegal market** for slot machines by channeling gambling on slot machines into legalized, controlled forms and to **limit gambling addiction**.¹⁵⁰ The law states that the Gaming Authority shall supervise the market.¹⁵¹ Article 6 specifies the conditions for a permit:

Placement and running of gambling machines can take place with a permit from the Gaming Authority.

The **permit** for placement and running of **gambling machines can be given to restaurant, with an alcohol permit**, with up to 3 gambling machines or for placement and running of gambling machines in a **gaming hall**.

The permit can be given for a maximum of 5 years¹⁵² and article 8 makes it clear that:

Permits for placement and running of gambling machines can be given, if one can assume, that the applicant will **run the activities** with gambling machines **in a good defensible way**,

At the decision if permission for placing and running gambling machines in a gaming hall shall be given, importance can also be attached to the size of the gaming hall, its placement etc.

For the interpretation of **good defensible way** one shall specifically pay attention to the applicant's earlier businesses, economical relations and any earlier breaches of the law.¹⁵³

One percent of the gross revenue from machine gambling is transferred in favor of the treatment of ludomania (two third) and in favor of ludomania researches (one third) ¹⁵⁴.

According to article 10 an individual can only receive a permit if he, among other things, is resident in Denmark. Though this restriction only applies if the European regulations or other international obligations do not state something else. For a **company to receive a permit**, it

¹⁴⁵ Lovbekendtgørelse 1994-10-10 nr. 861 om spillekasioner, ch. 1 art. 1 and ch. 2 art. 2 sec. 1.

¹⁴⁶ Lovbekendtgørelse 1994-10-10 nr. 861 om spillekasioner, ch. 1 art. 1 and ch. 2 art. 2 sec. 2.

¹⁴⁷ Bekendtgørelse af lov 1994-10-10 nr 861 om spillekasinoer, ch. 2 art. 5.

¹⁴⁸ Bekendtgørelse af lov 1994-10-10 nr 861 om spillekasinoer, ch. 3 art. 8.

¹⁴⁹ Bekendtgørelse af lov 1994-10-10 nr 861 om spillekasinoer, ch. 6 art. 20

¹⁵⁰ Information received from Dansk Tipstjeneste Group.

¹⁵¹ Lovbekendtgørelse 2002-07-25 nr. 631 om gevinstgivende spilleautomater, ch. 2 art. 3 and Cirkulære om Spilleautomatloven sagsudlægning (CIR nr 207 af 22/12/2000).

¹⁵² Lovbekendtgørelse 2002-07-25 nr. 631 om gevinstgivende spilleautomater, ch. 2 art. 7.

¹⁵³ Westlaw Danmark art. 8 sec. 1 comment no 10.

¹⁵⁴ Lovbekendtgørelse 2002-07-25 nr. 631 om gevinstgivende spilleautomater, ch. 3 art. 26 (Consolidating regulation concerning prize winning gambling machines).

must be registered with the Danish Commerce and Companies Agency.¹⁵⁵ Though this restriction only applies if the European regulations or other international obligations do not state something else.

Dansk Automatspil A/S, which is a wholly owned subsidiary to Dansk Tipstjeneste A/S, is one of the operators on this competitive market.

5. Betting

For betting the same rules apply as for lotteries.¹⁵⁶ According to the **Act on Certain Games, Lotteries and Betting** article 1 the Minister of Taxation shall be authorized to issue licenses for offering lotteries against payment of tax to the state. Article 2 stipulates that the **license** mentioned above only shall be **granted to one company**. In the law it is stated that the company shall be a limited company with a share capital of at least EUR 65.056 (DKK 485.276). The state shall subscribe to 80 % of the share capital, while the Danish Sports Association and the Danish Gymnastics and Sports Associations subscribe to 10 % each.

The company that has been set up according to the regulations mentioned above is the **Dansk Tipstjeneste A/S**.¹⁵⁷

The profit generated, after payment of tax to the Danish State, the prizes and administrative expenses, depreciations, provisions etc. and dividend, **goes to charitable causes and no-profit purposes**.¹⁵⁸

Denmark and Sweden organize cross-border horse betting. Its results from an agreement between the Danish and Swedish licensed companies. Each one acts in its own country. Danish punters place their bets in Denmark and Swedish in Sweden.

There is a possibility for **organizations and companies to operate local totalizator games** in connection with dogs, cycle races and pigeon races.¹⁵⁹ They **have to be attached to the sports central organization or association**. A license valid for a maximum of 3 years is granted by the Minister of Taxation.¹⁶⁰

Holding a totalizator game or similar without a license and facilitating participation in a foreign totalizator game is punishable by fine or prison.¹⁶¹

6. Bingo

In the **Public Notice on Lotteries** it is stipulated that **organisations domiciled in Denmark can receive a license** to hold a lottery:¹⁶² Article 1 defines that:

- (1) Lottery permit is granted by the director of the police to a, in this country domiciled organisation, institution or committee that is composed of at least three, in this country, domiciled persons.

¹⁵⁵ Lovbekendtgørelse 2002-07-25 nr. 631 om gevinstgivende spilleautomater, ch. 2 art. 11.

¹⁵⁶ For further information see chapter 2 Lotteries.

¹⁵⁷ Bevilling till Dansk Tipstjeneste A/S til at afholde visse spil, lotterier og væddemål.

¹⁵⁸ Lovbekendtgørelse 2003-12-11 nr. 1077 om visse spil, lotterier og væddemål, art. 6A sec. 1.

¹⁵⁹ Lovbekendtgørelse 2002-05-08 nr. 286 om locale totalisatorspil, art. 1A.

¹⁶⁰ Lovbekendtgørelse 2002-05-08 nr. 286 om locale totalisatorspil, art. 1.

¹⁶¹ Lovbekendtgørelse 2002-05-08 nr. 286 om locale totalisatorspil, art. 8.

¹⁶² Cirkulære om bortlodning CIR nr 147 af 01/08/1994, art. 1 sec. 3.

- (3) With a lottery, in this public notice, is understood an arrangement where the participant, against the payment of a stake, obtain a chance to win and where the winning depends on the hazard.

Article 2 specifies the conditions for a permission to be granted:

- (1) A lottery **permit can be given in the benefit for charity** or other causes that are for the public good.
- (2) Lottery permit cannot be given in the benefit for political purposes.
- (3) Lottery permit cannot be given where the prize will be won due the gambler's choice of individual numbers or indications.
- (4) Lottery permit for machines or electronic terminals cannot be given.

Further on in article 5 the public notice states that **at a bingo game the prizes must not be in cash, shares or similar.**¹⁶³ Gift vouchers can be given away as prizes, but only as long as they can't be exchanged for money. There is an **exception** to this if the permission of the **bingo is restricted to the police district which has given the permit.**¹⁶⁴ The police will then decide what is suitable. Sometimes an exception can be made for several police districts.¹⁶⁵

For certain bingo games permission is not needed.¹⁶⁶ These games are when the bingo is **organized by an association where only members can participate**, the individual prizes do not exceed the amount of EUR 651 (DKK 4854.72) and that the total sum of sales does not exceed EUR 13.012 (DKK 97.0333) etc. It is also important that **the purpose of the association cannot exclusively be to organize bingo games.**

7. Media Gambling Services

Media games have not yet been officially recognized as being gambling services and therefore there is little information available.¹⁶⁷ At the moment these media gambling services fall under the jurisdiction of the legislation regulating gambling services. In principle the media is not allowed to provide gambling services.

However, the article 9 (3) of the Marketing Practices Act, consolidated Act No. 699 of 17 July 2000 states that:

The publisher of a periodical may arrange draws for the distribution of winnings in connection with the solving of prize competition .

According to the consumer Ombudsman, the Marketing Practices Act is a general statute regulating the marketing practices and which, as such, includes all forms of purchase related games (including betting, lotteries and casinos games). He points out that it cannot be excluded that competitions or games which are legally arranged by editors of periodicals according to the Marketing Practices Act, art. 9 (3), contradict other specific legislations devoted to gambling services¹⁶⁸.

¹⁶³ Cirkulære om bortlodning CIR nr 147 af 01/08/1994, art. 5 sec. 1.

¹⁶⁴ Cirkulære om bortlodning CIR nr 147 af 01/08/1994, art. 5 sec. 2.

¹⁶⁵ Cirkulære om bortlodning CIR nr 147 af 01/08/1994, art. 5 sec. 3.

¹⁶⁶ Cirkulære om bortlodning CIR nr 147 af 01/08/1994, art. 9.

¹⁶⁷ Information received from the Danish Ministry of Taxes.

¹⁶⁸ <http://www.skm.dk/publikationer/udgivelser/1695/1704/#LEV3-2>

8. Sales Promotional Gambling

The article 9 (1) of the Marketing Practices Act, consolidated Act No. 699 of 17 July 2000 states:

No attempt may be made to promoted the sale of goods or services by means of possible winnings through participation in a draw, prize competition or other form of arrangement whose outcome depends wholly or partly on chance, if such depends on a purchase

However, the article 9 (2) sets a limit to this general principle of prohibition:

Subsection 1 does not apply if the amount of the individual prize and the overall winnings value is within limits laid down by the Minister of Economic and Business Affairs. Such amount limits may be determined by product and recipient types .

The regulation on the determination of authorized winnings through draws and prize competition (*Bekendtgørelse nr 1152 af 16/12/1994 om fastaettelse af beløbsgrænser i konkurrencer*) states that the Article 9§1 does not apply if the amount of each individual prize does not exceed DKR. 100 (EUR 13.4077) and the overall winning value does not exceed DKR. 1000 (EUR 134.077) (§1). It also states that, when draws and prize competitions are principally destined to young people under 15, the amount of each individual prize does not exceed DKR. 5 (EUR 0.670436) and the overall winning value does not exceed DKR. 50 (EUR 6.70532) (§2).

9. Charity Gambling

There is no specific legislation regarding charity gambling, except in the situation where a gaming hall chooses to arrange gambling with money that goes to charitable purposes. This will reduce the gaming hall s tax (see the chapter on taxes).¹⁶⁹

¹⁶⁹ Lovbekendtgørelse 2002-07-25 nr. 631 om gevinstgivende spilleautomater, ch. 3 art. 25 and art. 38.

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><i>Regulations applicable on lotteries</i></p> <p>The Lottery Prohibition Act Articles 2 and 5</p> <p>Article 2 General Prohibition Art 2 states a general prohibition against any lotteries organized in Denmark or abroad.</p> <p>Exception if authorization An exception is made if an authorization has been obtained. An authorization can be obtained for lotteries with a charitable cause and where the clientele is restricted to a city or similar.</p> <p>Article 5 Prohibits advertising “Publications in national papers of foreign lotteryplans and of advertisements regarding the, according to §§ 2-4 here in the Country, other prohibited societies and offers are punishable by fine,... The same punishment will be ordered for the one who, in another way, spread plans for <i>foreign or non authorized national lotteries.</i>”</p> <p>Act on Certain Games, Lotteries and Betting Articles 1, 2, 3 section 1, 4, 5, 6A sections 1 and 2, 6B – 6I and 10.</p> | <p>The principle is that lotteries are prohibited. There is an exception to this prohibition if an authorization has been granted. There are regulations that stipulates who can be granted an authorization:</p> <p>Lotteries: The Lottery Prohibition Act art. 2 Act on Certain Games, Lotteries and Betting art. 2 Public notice on Lotteries art. 2 Act on the Danish Classlottery art. 1</p> <p>Casino: The Casino Act art. 1</p> <p>Betting: Act on Certain Games, Lotteries and Betting art. 2</p> <p>Machine gambling outside casino: the Act on Gaming Machines Offering Cash Winnings art. 6</p> <p>Bingo: Public Notice on Lotteries art. 2</p> | <p>The objectives for the current system and legislation are on one hand security: consumer protection and the battle against crime and on the other hand social politics: ensure that the profits from the gambling market are put into public’s general interests.</p> <p>With the Dansk Tipstjeneste and the Danish state lottery, the state ensures that the profit from the market is channelled to public benefit purposes. In addition the market includes a number of private gaming providers who, like the state, either donate the profit to public benefit or in return for their licenses and permits pay a high duty to the State Treasury.</p> <p>Dansk Tipstjeneste has clarified that the Danish State holds the view that “a monopoly structure is better than both a total ban and a more or less liberalized market. A complete ban has long been an outdated measure and an impossible solution if an extensive black market for games with financial stakes is to be avoided. On the other hand, the introduction of a regulated liberalized market is bound to result in increased</p> |

| | | |
|---|--|---|
| <p>Article 1 License “(1) The Minister of Taxation shall be authorized to issue licenses for offering games, lotteries and betting against payment of tax to the state. (2) This Act does not authorize the Minister of Taxation to issue licenses for betting on pigeon racing and track cycling, offering of state lottery etc., setting up of casinos, prize slot machines or prize draw savings accounts. (3) With the Minister of Taxation’s approval, the licensee shall be authorized to lay down rules for establishment of replacement results which, if need be, can serve as basis in connection with the games and betting covered by subsection (1) above.”</p> <p>Article 2 To whom permits may be granted “(1) A license pursuant to section 1 of this Act shall only be granted to one company. Any company in which the share capital is subscribed by the company mentioned in the first sentence hereof may, however, be granted a betting license as mentioned in section 1 a. (3) of this Act. (2) A license can be granted for a period of up to five years at a time. Renewal of the license requires the approval of the Danish parliament’s Finance Committee. (3) The companies mentioned in subsection (1) hereof shall be set up as limited companies.”</p> | <p>The company that has been set up according to the regulations in the Act on Certain Games, Lotteries and Betting art. 2 is the Dansk Tipstjeneste A/S.</p> <p>The acts inflict criminal sanctions on those who breach them: Act on Certain Games, Lotteries and Betting art. 10 where any person who intentionally or grossly negligently provides or facilitates games, lottery or betting in Denmark without a license pursuant to section 1 of this Act shall be punishable by fine or imprisonment of up to six months. The provision is to be interpreted broadly and covers both national and foreign games, lotteries and betting targeted directly at and available for Danish players.</p> <p>Games offered via the internet should be considered as offered in Denmark if the offer is directed at the Danish market. A similar provision to art. 10 can be found in the Act on the Danish Classlottery art. 4a. Publications in national papers of foreign lotteryplans and of advertisements regarding prohibited societies and offers are punishable by fine according to The Lottery Prohibition Act art. 5. It is also prohibited to advertise for games,</p> | <p>competition and consequently increasing games and consequently increased gaming and betting activities. One main reason why Denmark has a gaming monopoly is precisely that the lack of competition limits the market”.¹⁷⁰</p> <p>In the license granted to Dansk Tipstjeneste A/S, the Danish Ministry of Taxation stresses that Dansk Tipstjeneste A/S has an obligation to supply attractive games. This is mainly to “attempt to avoid Danish punters demanding games from games suppliers operating illegally in Denmark, including via the internet”.¹⁷¹ Further on the Ministry states that Dansk Tipstjeneste A/S, in its marketing and development of products, shall attempt “to channel Danes’ betting activities into legal, controlled games while keeping consumption at a moderate level in relation to a free market situation”.</p> <p>Dansk Tipstjeneste’s profit, generated after payment of tax to the Danish State, the prizes and administrative expenses, depreciations, provisions etc. and dividend, goes to charitable causes and no-profit purposes.¹⁷² It is apportioned in the following way:</p> <ol style="list-style-type: none"> 1) 66.44 % to the Ministry of Culture 2) 12.67 % to the Ministry of Education 3) 3.39 % to the Ministry of Environment 4) 10.42 % to the Ministry of Social Affairs 5) 2.95 % to the Ministry the Interior and Health 6) 0.39 % to the Ministry of Science, Technology and Innovation |
|---|--|---|

¹⁷⁰

Information received in a letter from Dansk Tipstjeneste Group.

¹⁷¹

Bevilling till Dansk Tipstjeneste A/S til at afholde visse spil, lotterier og væddemål.

¹⁷²

Lovbekendtgørelse 2003-12-11 nr. 1077 om visse spil, lotterier og væddemål, art. 6A sec. 1.

| | | |
|---|---|--|
| <p>The Danish Companies Act shall apply to the companies unless otherwise is stated in this Act. The Articles of Association of the companies and changes to such Articles, if any, shall be approved by the Minister of Finance.”</p> <p>Article 3 Restrictions for the company “(1) The share capital in the company mentioned in section 2(1), first sentence, of this Act, shall be at least EUR 65.056 (DKK 485.181). The state subscribes to 80% of the share capital, while the Danish Sports Association (DIF) and the Danish Gymnastics and Sports Associations subscribe to 10% each. The shares may only be transferred subject to approval by the board of directors of the company.”</p> <p>Article 4 Supervision “The Minister of Taxation shall supervise the business of the companies mentioned in section 2(1) of this Act. Specific rules in this respect may be included in the license. The costs of the supervision and inspection shall be borne by the companies and the Minister of Taxation shall be authorized to lay down provisions on the charges to cover these costs.</p> <p>Article 5 The prizes (1) No less than 45% of the stakes shall be paid out in prizes. (2) As regards betting with fixed odds, the annual average of the prize share shall exceed the limit stated in subsection (1) above.</p> | <p>lotteries or betting outside the scope of a license issued in pursuance to section 1 of this Act. This breach will be punishable by fine according to the Act on Certain Games, Lotteries and Betting art. 10 sec. 3 p. 3.</p> | <p>7) 3,74 % to the Ministry of Finance</p> <p>There are also specific regulations on how the different ministries shall apportion their share to different Danish sports organizations.¹⁷³</p> |
|---|---|--|

173

Lovbekendtgørelse 2003-12-11 nr. 1077 om visse spil, lotterier og væddemål, art. 6B-6H.

| | | |
|--|--|--|
| <p>Article 6A Profit apportionment “(1) The profit, cf. but, subss. (2) to (5) less the tax, prizes and administration costs, depreciations, provisions etc. and dividends shall be apportioned in the following way: 1) 66,44 % to the Ministry of Culture 2) 12,67 % to the Ministry of Education 3) 3,39 % to the Ministry of Environment 4) 10,42 % to the Ministry of Social Affairs 5) 2,95 % to the Ministry the Interior and Health 6) 0,39 % to the Ministry of Science, Technology and Innovation 7) 3,74 % to the Ministry of Finance</p> <p>(2) The profit mentioned in subsection (1) hereof does not include profit from games taking place on the Faroe Islands and in Greenland. Profits from such games shall accrue to the Faroe Islands and Greenland, cf. section 6i.”</p> <p>Articles 6B – 6I Specify how the ministries shall apportion their share of the profit to different associations etc.</p> <p>Article 10 Breach of the regulations “(1) Any person who intentionally or grossly negligently 1) provides games, lottery or betting in Denmark without a license pursuant to section 1 of this Act; or 2) facilitates access to games, lotteries or betting outside the scope of a license pursuant to section 1 of this Act,</p> | | |
|--|--|--|

| | | |
|---|--|--|
| <p>shall be punishable by fine or imprisonment of up to six months.</p> <p>(2) Where aggravating circumstances exist, includes especially repeat of offences or where the offence was particularly grave, the penalty pursuant to subsection (1) may increase to 12 months' imprisonment,</p> <p>(3) Any person who intentionally or grossly negligently</p> <p>1) for commercial purposes facilitates access to the licensee's games, lotteries and betting without the licensee's approval; and</p> <p>2) offers any kind of games, lotteries, betting or competition by using the licensee's gambling coupons, gambling results, equipment etc. without the licensee's approval; or</p> <p>3) advertises for games, lotteries or betting outside the scope of a license issued in pursuance to section 1 of this Act</p> <p>shall be punishable by fine."</p> <p>(4) The tax evaded the state, cf. section 1A shall be compensated.</p> <p>(5) Criminal liability pursuant to the provisions in Part 5 of the Danish Criminal Code may be imposed on companies etc. (legal persons).</p> <p>Article 10 (6) Supervision The Minister of Taxation is authorised to monitor the gaming market in order to ensure the observance of the rules in subss. (1) to (3).</p> | | |
|---|--|--|

| | | |
|--|--|--|
| <p>Public notice on lotteries Articles 1 section 1, 2 and 3.</p> <p>Article 1 conditions for a permit (1) Lottery permission is granted by the director of the police to a, in this country, domiciled organisation, institution or committee that is composed of at least three, in this country, domiciled persons.</p> <p>Article 2 conditions for a permit (1) A lottery permission can be given in the benefit for charity or other causes that are for the public good. (2) Lottery permission cannot be given in the benefit for political purposes. (3) Lottery permission cannot be given where the prize will be won due the gambler's choice of individual numbers or indications. (4) Lottery permission for machines or electronic terminals cannot be given.</p> <p>Article 3 Restriction in time The permit can be given to a lottery restricted in time. This time can be between 2 and 6 months.</p> <p>Act on the Danish Classlottery Articles 1, 2 section 2 and 4a.</p> <p>Article 1 “(1) The Minister of Taxation will start a limited company, with the purpose to run a classlottery.”</p> <p>Article 2 section 2 Time restriction “(2) The permit is valid for 10 years at a time.”</p> | | |
|--|--|--|

| | | |
|--|--|--|
| <p>Article 4a Breach of the rules Anyone who sells or facilitates participation in classlotteries that don't have a Danish license shall be punished with a fine or prison up to 6 months.</p> <p>According to article 4a section 5 the breach can also be punished according to the Danish Criminal Code chapter 5 and 22.</p> | | |
| <p>Regulations applicable on machines outside casinos</p> | | |
| <p>The Act on Gaming Machines Offering Cash Winnings Articles 6, 7, 8, 10 and 11.</p> <p>Article 6 Conditions for permit Placement and running of gambling machines can take place with a permit from the Gaming Authority.</p> <p>The permit for placement and running of gambling machines can be given to restaurant, with an alcohol permit, with up to 3 gambling machines or for placement and running of gambling machines in a gaming hall.</p> <p>Article 7 Restriction in time The permit can be given for a maximum of five years.</p> <p>Article 8 Conditions for permit (1) Permits for placement and running of gambling machines can be given, if one can assume, that the applicant will run the activities with gambling machines in a good defensible way,</p> | <p>There is a residential restriction for companies. To receive a permit they must be registered with the Danish Companies and Commerce Agency.</p> | <p>Combat the illegal market for slot machines by channeling gambling on slot machines into legalized, controlled forms and to limit gambling addiction</p> |

| | | |
|---|---|--|
| <p>(2) At the decision if permission for placing and running gambling machines in a gaming hall shall be given, importance can also be attached to the size of the gaming hall, its placement etc.</p> <p>Article 10 Residential Restriction An individual can only receive a permit if he, among other things, is resident in Denmark. Though this restriction only applies if the European regulations or other international obligations do not state something else.</p> <p>Article 11 Residential Restriction For a company to receive a permit, it must be registered with the Danish Commerce and Companies Agency. Though this restriction only applies if the European regulations or other international obligations do not state something else.</p> | | |
| <p>Regulations applicable on betting</p> | | |
| <p>Act on Certain Games, Lotteries and Betting See the relevant dispositions under lotteries.</p> | <p>The same barriers as for lotteries apply. The betting industry in Denmark is run by Dansk Tipstjeneste A/S.</p> | <p>The same justifications as for lotteries apply.</p> |
| <p>Regulations applicable on bingo gaming</p> | | |
| <p>Public notice on Lotteries Article 1 section 1 and 3, 2</p> <p>Article 1 Conditions for permit (1) Lottery permit is granted by the director of the police to a, in this country domiciled organisation, institution or committee that is composed of at least three, in this country, domiciled persons.</p> | <p>A lottery permit is only granted to an organisation, institution or committee resident in Denmark. This organisation etc has to be composed of at least three persons resident in Denmark. Article 2 limits the lottery permits to the benefit for charity or other causes that are for the public good.</p> | <p>The objectives for the current system and legislation are on one hand security: consumer protection and the battle against crime and on the other hand social politics: ensure that the profits from the gambling market are put into public's general interests.</p> |

| | | |
|---|--|--|
| <p>(3) With a lottery, in this public notice, is understood an arrangement where the participant, against the payment of a stake, obtain a chance to win and where the winning depends on the hazard.</p> <p>Article 2 conditions for a permit</p> <p>(1) A lottery permit can be given in the benefit for charity or other causes that are for the public good.</p> <p>(2) Lottery permit cannot be given in the benefit for political purposes.</p> <p>(3) Lottery permit cannot be given where the prize will be won due the gambler's choice of individual numbers or indications.</p> <p>(4) Lottery permit for machines or electronic terminals cannot be given.</p> <p>Article 5 No cash prizes</p> <p>Article 5 states that at a bingo game the prizes must not be in cash, shares or similar. Gift vouchers can be given away as prizes, but only as long as they can't be exchanged for money. There is an exception to this if the permit of the bingo is restricted to the police district which has given the permission. The police will then decide what is suitable. Sometimes an exception can be made for several police districts.</p> | | |
|---|--|--|

B) DRAFT LEGISLATION

Our research did not reveal any relevant information

C) SELF REGULATION

Our research did not reveal any relevant information.

D) JURISPRUDENCE

| Court Decisions and specifically relevant passages | Barriers to the Free Movement of Gambling Services | Justifications for Continuation of Barriers |
|---|--|--|
| <p><u>Østre Landsret 14th of September 2000 Gerhard & Jörg Schindler v. the Danish Ministry of Justice and Ministry of Taxation.</u></p> <p>In this case the question whether the Danish legal barriers are justified or not was treated. A Danish High Court had to take a position on whether the prohibition against advertising and selling lotteries is based on justified social matters that would mean that the restrictions don't go against the EU-regulations. In the case the <i>Süddeutsche Klassenlotterie</i> wanted to sell and advertise lots to lotteries in Denmark. The Ministry of Justice refused to grant a license with reference to the law on prohibition of lotteries. Both the Ministry of Justice, the Ministry of Taxation and the <i>Süddeutsche Klassenlotterie</i> made references to the decisions in <i>Schindler, Läärä</i> and <i>Zenatti</i>.</p> <p>The High Court found that the plaintiff had not presented evidence that would allow the court to make a judgment on the question, whether the stated public reasons (protection of players, prevention of crime, public order and the non-stimulation of demand) were in fact real motives behind the legislation. Following the</p> | <p>The prohibition against advertising and selling lotteries in Denmark.</p> | <p>The public reasons for the barriers are protection of players, prevention of crime, public order and the non-stimulation of demand.</p> |

II. BARRIERS Table

JURISPRUDENCE

DENMARK

| | | |
|---|--|--|
| <p>case-law of the ECJ, which allows member states to exercise considerable discretionary powers if the restrictions can be said to be justified, the court ruled in favor of the Danish Government. The ruling was not appealed.</p> | | |
|---|--|--|