



international betting  
integrity association

IBIA response: Notification  
of the Lower Austrian  
Betting Act - 2019/394/A  
(Austria)

September 2019



## IBIA response: Lower Austrian Betting Act - 2019/394/A (Austria)

1. The International Betting Integrity Association (IBIA)<sup>1</sup>, a not-for-profit body representing the betting integrity interests of many of the largest licensed retail and online betting operators in the world, would like to draw your attention to a number of issues and concerns with regard to the notified draft law entitled the Lower Austrian Betting Act - 2019/394/A (Austria)<sup>2</sup>. In particular, the draft law's adverse impact and its compatibility with European Union (EU) law.<sup>3</sup>
2. The association and its members welcome the decision of the Lower Austrian authorities to license retail and online betting, but have concerns regarding the effectiveness and the underlining reasoning and impact of the proposals to restrict consumers from engaging in, and licensed retail and online betting operators from offering, the following products and services:
  - a) limiting online betting licences to a maximum of two years;
  - b) restricting consumers to a €350 maximum stake per bet; and
  - c) a ban on many live (or in-play) sports betting products.
3. Taking the issue of the online licence duration limitation first, and whilst noting that licence holders may apply for a renewal of their licence, it is clearly unattractive for long-term business investment, operational activities and planning (e.g. infrastructure, advertising and so on) to have such a short (two year maximum) restriction on the life of an online betting licence. Especially when a renewal licence will also be limited to a maximum of two years. In comparison, the licensing for retail envisages an initial two years followed by a renewal of up to ten years.
4. The Lower Austrian authorities attempt to justify this by stating that "the online area is subject to fast-paced changes and approval for a maximum period of ten years would not take into account current changes and developments."<sup>4</sup> However, IBIA believes that the differentiation between the licensing durations for retail and online betting is unwarranted and discriminatory. There is no reason why a licensing system for online betting cannot be flexible and amendable.
5. This is commonplace in other regulatory frameworks. For example, the British Gambling Commission's licence conditions, which all licensees must adhere to, are regularly reviewed and amended.<sup>5</sup> Licensing durations are also much longer in other EU jurisdictions. In Denmark and Sweden an online betting licence is valid for up to five years.<sup>6</sup> In Spain licences are valid for ten years and extendable for another ten years.<sup>7</sup> Whilst in the UK, there is no licence duration limit.<sup>8</sup>
6. It has been reported that the European Commission's response to the German authorities regarding the revised State Treaty specifically focuses on the short licensing duration for online betting.<sup>9</sup> That questions the regime's attractiveness for operators and its effectiveness in driving consumers to a regulated market within a proposed licensing period that could last only 18 months, even with a potential extension for a further three years.<sup>10</sup> IBIA contends that similar

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<sup>1</sup> <https://ibia.bet/>

<sup>2</sup> <https://ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaction=search.detail&year=2019&num=394&mLang=EN> & <https://www.igamingbusiness.com/news/lower-austria-submits-sports-betting-regulations-ec>

<sup>3</sup> [https://europa.eu/european-union/law\\_en](https://europa.eu/european-union/law_en)

<sup>4</sup> Impact Assessment Page 12 <https://ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaction=search.detail&year=2019&num=394&mLang=EN>

<sup>5</sup> <https://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/LCCP/Licence-conditions-and-codes-of-practice.aspx>

<sup>6</sup> <https://www.spillemyndigheden.dk/en/betting#how-to-obtain-a-licence> & section 8 [https://www.spelinspektionen.se/globalassets/dokument/engelsk/oversatt-spellagen/english-spellagen-sfs-201\\_1138.pdf](https://www.spelinspektionen.se/globalassets/dokument/engelsk/oversatt-spellagen/english-spellagen-sfs-201_1138.pdf)

<sup>7</sup> <https://www.ordenacionjuego.es/en/licencias-de-juego>

<sup>8</sup> There is no licence duration, albeit there are annual licence fees depending on the category of licence and operator's gross gambling yield <https://www.gamblingcommission.gov.uk/for-gambling-businesses/Do-I-need-a-licence/Types-of-operating-licence.aspx> & [https://uk.practicallaw.thomsonreuters.com/6-634-9345?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1#co\\_anchor\\_a427824](https://uk.practicallaw.thomsonreuters.com/6-634-9345?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1#co_anchor_a427824)

<sup>9</sup> <https://www.igamingbusiness.com/news/european-commission-criticises-german-state-treaty>

<sup>10</sup> Ibid.

## IBIA response: Lower Austrian Betting Act - 2019/394/A (Austria)

issues arise with regard to the Lower Austrian licensing duration for online betting and the differentiation with retail where, in general, the same products are being offered through both.

7. With regard to the issue of the restriction of the value of stakes, there does not appear to be any clear rationale for this limitation, in general, or the level at which it has been set. Indeed, the level (not to exceed €350 per bet) appears to be an arbitrary and unevidenced restriction. Many countries around Europe, such as the UK and Denmark, offer betting markets without such consumer and trade restrictions and do not suffer from increased levels of addiction as a result.
8. Operators work closely with regulators to set clear parameters, including self-exclusion policies tailored to each customer, whilst allowing responsible consumers access to a wide variety of regulated products. It is not in the interests of responsible regulated operators to encourage or facilitate social problems from gambling, in fact quite the contrary. Such adverse behaviour is to the detriment of responsible operators and the reputation of the industry; regulatory authorities would also impose new regulatory measures and increased cost burdens on operators.
9. The second issue - the restriction of live betting - is often attempted to be justified on two (albeit flawed) points, namely that: a) live (in-play) betting has the potential to foster addiction; and b) that it may facilitate the manipulation of sports matches, and hence, betting fraud.
10. As with the stake limitation issue discussed above, it is important to assess these betting market and product restrictions on the basis of EU law and case law, notably that any restriction to the freedom to provide services be justified by imperative requirements in the general interest, be suitable for achieving the objective and not go beyond what is necessary in order to attain it.<sup>11</sup>
11. On the first point, there is no validity to assertions that potential addiction associated with live (in-play) betting is greater than other forms of betting permissible under the legislation. Nor any reason, if that was the case (which is unproven), why less restrictive mitigating provisions could not be included in the draft legislation to adequately cater for such potential addiction concerns.
12. According to research by Harvard Medical School, there is no indication that live betting is more prone to addiction in contrast to other types of betting.<sup>12</sup> It is also of significant importance that no proof of an increased danger from live betting has been determined in prevalence studies carried out in Austria or in other EU states, such as the UK for example.<sup>13</sup>
13. The British Gambling Commission, which covers one of the largest and most mature betting markets in the world, and which regulates live betting without any restrictions, published a policy paper on the issue in 2016.<sup>14</sup> That paper assessed the potential dangers of addiction from live betting and concluded that: “We do not consider that someone who bets in-play is automatically at increased risk of harm from gambling, but expect that licensees will monitor all bettors for signs of risk as required by our Licence conditions and codes of practice.”<sup>15</sup>

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<sup>11</sup> Case C-243/01, paragraphs 64 & 65

[http://curia.europa.eu/juris/showPdf.jsf?sessionid=9ea7d0f130d55d280685d10844e18476fc236edff9ad\\_e34KaxiLc3eQc40LaxqMbN4PaN8ReQ?text=&docid=48383&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=537316](http://curia.europa.eu/juris/showPdf.jsf?sessionid=9ea7d0f130d55d280685d10844e18476fc236edff9ad_e34KaxiLc3eQc40LaxqMbN4PaN8ReQ?text=&docid=48383&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=537316)

<sup>12</sup> LaBrie, R. A., LaPlante, D. A., Nelson, S. E., Schumann, A., & Shaffer, H. J. (2007). Assessing the playing field: A prospective longitudinal study of Internet sport gambling behavior. *Journal of Gambling Studies*, 23(3), 347-362.

<sup>13</sup> Kalke, J., Buth, S., Rosenkranz, M., Schütze, Ch., Oechler, H., & Verthein, U. (2011). Glücksspiel und Spielerschutz in Österreich. Freiburg: Lambertus. Kalke, J., Wurst, F.M. (2015). Glücksspielverhalten und Glücksspielprobleme in Österreich. Hamburg: Institut für interdisziplinäre Sucht- und Drogenforschung.

<sup>14</sup> British Gambling Commission In-play (in-running) betting: position paper (September 2016)

<sup>15</sup> British Gambling Commission In-play (in-running) betting: position paper (September 2016) paragraph 2.4

14. The issue of match-fixing is often used to justify limiting the availability of live (or in-play) betting. However, this runs contrary to the available data. Firstly, law enforcement bodies such as INTERPOL and Europol have stated that match-fixing is not primarily focused on regulated betting operators (as in much of Europe) but unregulated operators mainly based in Asia.<sup>16</sup>
15. Secondly, corruptors are also known to focus on the more mainstream traditional betting markets, such as pre-match final result (permitted by the draft law), which have higher levels of liquidity and therefore offer greater opportunity to mask their illicit activities, rather than other live or side betting markets (many prohibited by the draft law) with much lower liquidity levels.
16. An independent report published by the ASSER Institute, which assessed the integrity risks of certain sports bets on the basis of quantitative empirical evidence, further supports this position.<sup>17</sup> Published in January 2015, the report analysed a detailed set of betting data covering football matches likely to have been manipulated for betting purposes over a period of five years (May 2009 - November 2014) to assess the impact of pre-match and live (in-play) betting.
17. The report shows that match-fixers primarily take advantage of high liquidity betting markets and that almost all suspicious betting patterns were observed in the main betting markets which relate to the final outcome of a match (with only 0.4% in side markets). The report therefore concluded that the evidence does not support the claim that live betting, in comparison to pre-match betting, significantly encourages corruption in sport. It found no correlation between live betting and possible instances of match-fixing that would justify a prohibition of these bet types.
18. The British Gambling Commission also considers match-fixing and betting issues in its policy papers. The regulatory authority, which adopts an evidence and risk-based approach regarding the availability of any product, including live betting, published its initial betting position paper in 2009 and has continually reassessed its policy position on this matter since that time.
19. The Gambling Commission, which has data from one of the largest betting markets in the world, “works on the principle of risk-based regulation and must act in a proportionate manner” and was “not persuaded that there is a sufficient case for restricting types of bets” such as live betting on integrity grounds.<sup>18</sup> It reiterated this stance in 2013 stating that “any threat to sports betting integrity can be managed without the need to ban what is a very popular activity.”<sup>19</sup>
20. In its 2019 position paper, it further commented that it is “familiar with methods used in other countries to promote betting integrity such as restricting the types of bets offered or approving sports governing bodies’ rules before allowing betting on those sports.”<sup>20</sup> The regulator “has the power to impose such restrictions” but “does not consider, based on the available evidence, that such intrusive or resource intensive methods are warranted or would be effective”.<sup>21</sup>

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<sup>16</sup> Page 11 Interpol Match-fixing in Football Training Needs Assessment 2013 & <https://www.europol.europa.eu/content/results-largest-football-match-fixing-investigation-europe>

<sup>17</sup> <http://www.asser.nl/media/2422/the-odds-of-matchfixing-report2015.pdf>

<sup>18</sup> Paragraph 3.2 <http://www.gamblingcommission.gov.uk/pdf/Betting%20Integrity%20policy%20position%20paper%20-%20March%202009.pdf> & Paragraph 1.5

<http://www.gamblingcommission.gov.uk/pdf/Betting%20Integrity%20policy%20position%20paper%20-%20March%202009.pdf>

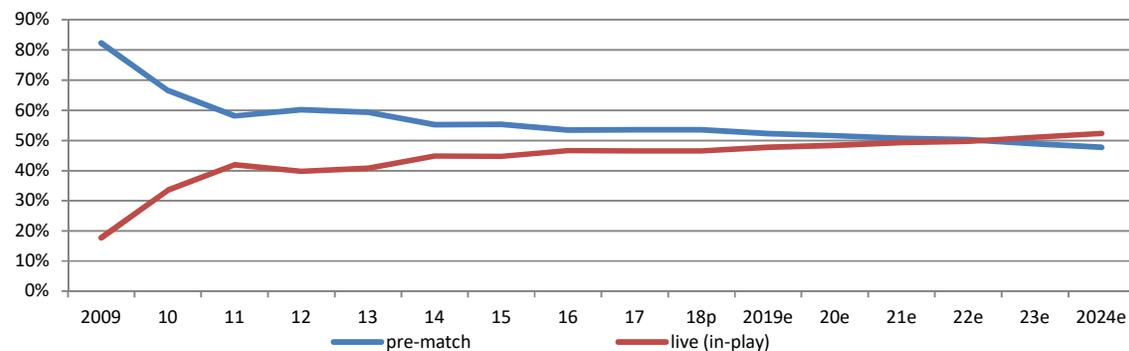
<sup>19</sup> [http://www.egrmagazine.com/news/gambling\\_commission\\_rejects\\_in-running\\_ban\\_proposal](http://www.egrmagazine.com/news/gambling_commission_rejects_in-running_ban_proposal)

<sup>20</sup> Paragraph 3.6 <https://www.gamblingcommission.gov.uk/PDF/Protecting-betting-integrity.pdf>

<sup>21</sup> Ibid.

21. This supports the Gambling Commission’s ‘In-play betting position paper’ from 2016, which states that: “Despite the concerns raised about the risks to integrity from in-play betting there is limited evidence to show that the risks are greater than those associated with pre-event betting.”<sup>22</sup> As such, restrictions on the type of bets regulated operators can offer to consumers “are not warranted at this time. Taking such action may also increase the risk that bettors would be driven to seek to place bets via grey and black markets, over which we have no oversight.”<sup>23</sup>
22. Removing the attractiveness of the offshore market and thereby increasing consumer oversight must be a key objective of any effective regulatory structure for gambling. However, the proposed approach of prohibiting live betting markets will prove counterproductive to achieving that aim. As data from leading market analyst H2 Gambling Capital shows, live betting represents an increasingly large proportion of all sports bets placed globally (Figure 1) and is therefore a key component of sports betting operators’ product catalogue.

**Figure 1: Global Pre-Match vs Live (In-Play) Interactive Sports Betting by Gross Win %**



Source: H2 Gambling Capital, August 2019

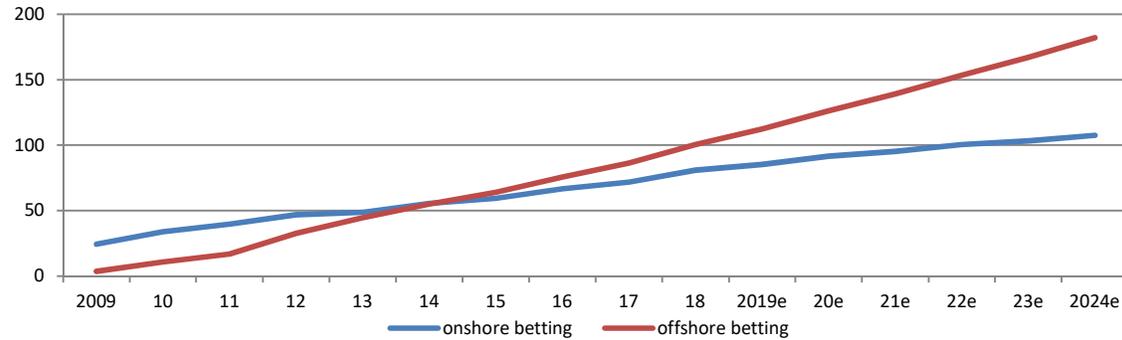
23. The draft law’s impact assessment states that: “Only [live] bets on partial results or the final result or on which person or team scores the next point or the next goal may be placed.”<sup>24</sup> This serves to significantly reduce the number of live betting markets that can be offered, albeit this restriction also appears to be open to a degree of interpretation. The proposed restriction is therefore compounded by a lack of clarity regarding the markets that can or cannot be offered.
24. It is important to note that it is increasingly commonplace around the world for licensed and regulated operators to offer over 100 live betting markets available on a single sporting event, many of which can also be offered pre-match (and which conversely won’t be prohibited by the law). Consumers are aware of this and will seek those live betting products from operators outside of the licensing system. Indeed, the Austrian market already suffers from a high level of consumer channelling to offshore betting operators, which is predicted to increase (Figure 2).

<sup>22</sup> Paragraph 4.4 <https://www.gamblingcommission.gov.uk/PDF/In-running-betting-position-paper.pdf>

<sup>23</sup> Paragraph 4.12 <https://www.gamblingcommission.gov.uk/PDF/In-running-betting-position-paper.pdf>

<sup>24</sup> Impact Assessment Page 18 <https://ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaaction=search.detail&year=2019&num=394&mlang=EN>

Figure 2: Austrian Consumer Onshore v Offshore Online Betting Turnover (€m)



Source: H2 Gambling Capital, September 2019

25. In 2018, betting with offshore operators equated to 55% of the total amount bet by Austrian consumers; that is predicted to reach 63% by 2024, leaving only 37% regulated in Austria. In comparison, other counties such as the UK and Denmark which do not impose such live betting restrictions have consumer channelling rates of 90-95%. They also impose a gross gambling revenue (GGR) tax in the range of 15-20%, which is in line with global norms.<sup>25</sup> The negative impact on consumer channelling to the Austrian licensed market from a restriction on live sports betting is further compounded by its comparatively burdensome turnover tax regime.<sup>26</sup>
26. Within a competitive global market, any restrictions on the types of bets or products offered (and available elsewhere) can have a detrimental impact on the market and the level of consumer channelling. It is fundamental to the viability of regulated betting operators and their markets that they are able to offer a wide range of products; imposing restrictions invariably leads to consumers seeking banned products through other channels, including unregulated.
27. This adversely impacts the evidence gathering and consumer protection capabilities of a regulatory authority and its associated ability to safeguard the integrity of its betting market. Whilst unregulated operators will continue to offer whatever types of products they chose without any regulatory limitation, oversight or possible sanctions and there is also no requirement on them to engage in responsible preventative actions to protect betting markets.
28. Imposing product restrictions on regulated betting operators therefore does not make it any less likely that the sporting events in that licensing jurisdiction will be any safer from betting related corruption, which can take place with a multitude of operators around the world. It could also be argued to be an incoherent and inconsistent policy to impose product restrictions on responsible operators on perceived integrity grounds, but not set out any integrity protection measures in the legislation. Especially given that Austria is a signatory to the Council of Europe Convention on the Manipulation of Sports Competitions which promotes such measures.<sup>27</sup>
29. A range of integrity provisions are readily available and utilised by regulatory authorities, including: obligation for licensed operators to report suspicious betting; information sharing; voiding suspicious bets; and suspension of betting markets. Utilising such widely promoted and

<sup>25</sup> Figures 10 & 11 <https://www.rga.eu.com/wp-content/uploads/REPORT-Regulation-of-online-betting-market-in-Poland.pdf>

<sup>26</sup> <https://icjg.com/practice-areas/gambling-laws-and-regulations/austria>

<sup>27</sup> <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/215>

## IBIA response: Lower Austrian Betting Act - 2019/394/A (Austria)

employed integrity protection provisions would prove to be a far more effective alternative to the unjustified and counterproductive ban on regulated live (in-play) sports betting products.

30. To complement this approach there is also clear value from betting operators being part of a wider international integrity monitoring and alert system, which also feeds data into the regulator. This adds an additional layer of protection both for operators' own businesses as well as the licensed framework and its operational integrity capacity and associated reputation. To this end, the Gibraltar Gambling Commissioner actively encourages its licenced betting operators to join a "properly structured and organized information sharing/alert mechanisms for managing suspicious bets" in its Remote Technical and Operating Standards documentation.<sup>28</sup>
31. The German state of Schleswig-Holstein requires its licensed operators to join an integrity monitoring body and this is also proposed through the wider German licensing regime in the amended German State Treaty.<sup>29</sup> New Jersey includes a similar stipulation and the Netherlands draft legislation also requires operators to be a member of an international monitoring system.<sup>30</sup> This approach supports the European Commission funded Betmonialert report which strongly recommends that public authorities should oblige all of their licensed betting operators to be "part of a betting monitoring system".<sup>31</sup> Both the report and the Netherlands legislation specifically refer to this association (in its previous identity as ESSA) as a best practice example.
32. The International Betting Integrity Association (IBIA) contends that the notified draft law includes an unjustified short licensing duration limitation for online betting, an unwarranted restriction on live (in-play) betting products and an arbitrary limit on consumer stakes. The Lower Austrian authorities have not provided any evidence that would justify such measures which will have a detrimental impact on the market and the level of consumer channelling. The association therefore requests that the Commission explore the appropriateness and compatibility of these unjustified product limitations and the related restriction of trade imposed on licensed betting operators and Austrian consumers in accordance with EU law.

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<sup>28</sup> [https://www.gibraltar.gov.gi/new/sites/default/files/HMGoG\\_Documents/RTOS%20Final%20Version%201.0.2012.pdf](https://www.gibraltar.gov.gi/new/sites/default/files/HMGoG_Documents/RTOS%20Final%20Version%201.0.2012.pdf) Page 40

<sup>29</sup> <https://www.gesetze-bayern.de/Content/Document/StVGluStV-21> & [https://www.im.nrw/sites/default/files/media/document/file/160129II\\_Leitlinien%20Sportwetten\\_.pdf](https://www.im.nrw/sites/default/files/media/document/file/160129II_Leitlinien%20Sportwetten_.pdf)

<sup>30</sup> <https://www.nj.gov/lps/ge/docs/SportsBetting/PublishedproposalJan7th2019.pdf> 13:69N-1.6 & Remote Games of Chance consultation version – Article 4.7 and related sections in the Explanatory Memorandum (Translated from Dutch to English)

<sup>31</sup> [http://ethisport.com/wp-content/uploads/2017/06/Betmonialert\\_Design-NB-DEF-2-06-2017.pdf](http://ethisport.com/wp-content/uploads/2017/06/Betmonialert_Design-NB-DEF-2-06-2017.pdf) Page 7



## Members



## Affiliates

