European Union Law, Online Gambling and Emerging Markets

Pocket Guide

Infringement proceedings, rulings by the European Court of Justice (ECJ), the lack of online gambling regulation at EU level, as well as competition law disputes and die-hard monopolies on the defensive, may make the availability of the following guide to EU Law and to the recent approaches taken by EU member states a welcome resource for those who are interested in the main trends in online gambling and the latest developments in emerging markets across EU member states

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Summary of key rulings on online gambling

WHAT THE EUROPEAN COURT OF JUSTICE HAS TO SAY ABOUT….

Gambling as a restricted commercial activity

- Gambling can have harmful consequences and member states therefore have a margin of discretion to limit gambling activities;
- In the absence of EU harmonisation, each member state may determine what is required to ensure that their interests are protected, provided that any restrictive measures do not go beyond what is necessary and are applied without discrimination.;
- the principle of mutual recognition does not apply in the gambling sector: operators licensed within one member state are not automatically permitted to provide the same services in other member states;

Monopolies

- Restrictions are unlawful if these are based on purely financial grounds. Restrictions can only be justified on public policy grounds where the protection of the public is their main purpose;
- Restrictions on the number of operators must reflect a "genuine diminution of gambling opportunities"; however the limitation must be consistent and systematic;
- A monopoly system may be compatible with EU law where justified (with the objective of combating fraud and crime) and proportionate;
- Regarding single-operator licensing schemes, member states have sufficient discretion to determine the level of protection sought in relation to games of chance.

Proportionate and Objectively Justifiable Restrictions

- Restrictions must be proportionate to the purpose. The proportionality test entails examining whether the rule is "suitable or "appropriate" in achieving its aim;
- national legislation must be genuinely directed at limiting the harmful effects that are given as reasons to justify restrictions;
- A member state undermines its consumer protection argument by letting state run gambling companies engage in intensive advertising campaigns thereby undercutting the argument that its monopoly is limiting addiction. A member state, which pursues the objective of preventing incentives to squander on gambling and of combating gambling addiction, but fails to pursue this objective in a consistent and systematic manner, acts in violation of EU law.
- The obligation on persons to have their seat in a particular member state is disproportionate. There are less restrictive measures available to monitor activities and accounts of EEA based operators.

Equality/ Non-Discrimination

- The restriction must be one that is equally applicable to persons established within the State, and which must be applied without discrimination;
- The obligation on persons to have their seat in one member states constitutes a restriction on the freedom to provide services and discriminates against companies which have their seat in another member state;
- The absence of a competitive gambling licensing procedure does not comply with freedom of establishment and freedom of services. The absence of transparency is contrary to the principle of equal treatment and the prohibition of discrimination on grounds of nationality and is therefore prohibited by EU law.

National Licensing Regimes

NATIONAL LICENSING REGIMES – THE RIGHT APPROACH?

Online gambling in Europe has come a long way: from initial outright rejection, to the first signs of liberalisation and legitimisation, but with EU law principles on the freedom to provide services still challenging the legality of national monopolies across EU member states.

This battle has resulted in some gambling monopolies crumbling under the pressure of EU law (such as the ones in France and Italy), while others (such as in Germany) are currently witnessing a Götterdämmerung -style twilight, of which even Wagner (that's Richard Wagner, not X-factor Wagner) would have been proud.

There are also some die-hard bastions that are still playing monopoly, unwilling or unable to surrender to economic realities and the changes caused by the Internet.

Gambling reform discussions are taking place in more than 15 member states. France and Italy have set the tone and Spain, Belgium and Denmark are following suit. In addition, the UK is going through the pains of contemplating the introduction of a remote gambling licence for overseas operators and Ireland has recently announced that it will raise 1% tax on all bets placed by online gambling operators. The European Commission has endorsed this multiple licensing model whereby each member state can issue its own gambling licences and set its own rules and taxes with the result that operators will have to apply for a gambling licence in each jurisdiction in order to offer their services legally.

Gone are the days when gambling operators could rely on EU law and enter monopoly markets with the full knowledge that these monopolies were "illegal" and therefore restrictions cannot apply. Also gone are the days where no local taxes had to be paid and no local restrictions and (some might say) ludicrous technical, administrative and regulatory standards were imposed. The new licensing regimes, deemed legal by European institutions, will cost operators dearly and will result in financial losses and a reduced appetite to enter these markets in the first place. Publicly listed gambling operators must satisfy their listing authorities that they are not conducting unlawful business and it assists their argument if local laws are contrary to EU law. This line of argument can no longer be applied to new national licensing regimes which received EU blessing and where local high taxes must be paid. It is therefore no surprise that many operators derive a significant percentage of their turnover from current monopolies where the EU law defence still works – and where no taxes are paid.

Germany with all its Teutonic prohibitions was a very profitable playground for gambling operators until now, however, with the end of its monopoly in sight, it is left to be seen if playing on German turf is still profitable in the long term. In addition, with the continuing lack of EU regulation, the various new licensing regimes appear to place different degrees of control and requirements on online gambling operators, making it more difficult for players and companies alike to provide their services across member states.

Until now, regulators are reluctant to cooperate to set "common rules" and thereby facilitate the new multiple licensing model. A fully approved and UK online gambling operator will have to go through similar procedures in France, including software testing, to qualify for a French licence as well.

EU Harmonisation

EU HARMONISATION OF ONLINE GAMBLING?

The EU has agreed a common definition of “illegal gambling”. According to the Spanish EU Presidency Report (the "Report") of 11 May 2010, “illegal gambling may be defined as: “gambling in which operators do not comply with the national law of the country where the services are offered, provided those national laws are in compliance with EU treaty principles”. The Spanish Report is not about legalising online gambling, but is about “serious concerns about illegal gambling and its negative impact on European citizens”. The definition of “illegal gambling” does not differentiate between licensed and unlicensed operators. Internal Market Commissioner Michel Barnier announced a public consultation on this issue, with a Green Paper that was due to be launched in Autumn 2010. This date has been postponed twice and it is yet unknown when the Green paper will be published.

Following the EU Presidency Report on illegal gambling and Mr Barnier’s announcement (and postponement) of a Green Paper on gambling, the Council of the European Union has unanimously backed EU online gambling regulation. This means that all the main EU institutions, the Council, the Commission and the Parliament, now back the regulation of online gambling at EU level. This development was also welcomed by the European Parliament, sports bodies and online gambling operators.

This harmony amongst all parties is encouraging at first sight. However, all parties have different, sometimes incompatible, interests to protect and the Green Paper will be decisive in setting the direction of any future EU wide legislation or policy on online gambling. As a first indicator of things to come, it should be borne in mind that the Commission’s move to launch the Green Paper followed pressure from EU member states and the EU Parliament, not from gambling operators…

In addition, the sports industry has ensured that it will be included in the Green Paper on gambling to formalise its requests at EU level and to obtain a larger share of gambling profits, including the introduction of sports organisers' intellectual property rights. This point has not received much coverage in online gambling circles, but it has been emphasised throughout sports bodies across Europe and their representative lobbying groups in Brussels, all of whom welcome the definition of illegal gambling and the Green Paper.

With a Report and a Green Paper on online gambling being fully supported and called for by the EU Parliament, member states and sports bodies, one must but wonder why gambling operators have received these announcements so favourably, while the liberal jurisdictions in which they operate have taken a far more cautious approach. The intentions of both sides are clear: one wants to protect its gambling monopolies, impose restrictions, national licences, taxation and introduce new sports rights, while the other wants the EU “blessing” to enter gambling markets throughout the EU. Can the Green Paper cater for all these needs?

The main question to ask however, is what, if any, will be harmonised at EU level? Looking at the main issues for online gambling operators, it will already be helpful to have a degree of harmonisation on information technology, platforms, servers and software testing, as well as age verification procedures and requirements. Considering the EU’s technology-free approach so far however, it is more likely that any “harmonisation” will be governed by consumer protection issues instead, which may in fact lead to more restrictions and higher obligations.

WHAT NEXT….. ?

COMPETITION LAW AND THE NEW CHALLENGES AHEAD

With freedom to provide services and the freedom of establishment tried and tested, the “new elephant in the room” is competition law. In a way, this is a natural consequence of “emerging” markets, where previous monopolies have to compete in a newly liberalised online gambling market:

- First, once previous monopolies liberalise their gambling markets (whether through national licensing regimes or otherwise), the on-going monopolies will doubtlessly be in a dominant position which may in itself lead to anti-competitive behaviour;

- Second, if online gambling and land based gambling have very different taxation regimes, this may give rise to further anti-competition claims by either party, and

- Third, with the on-going debate on sports rights, coupled with the introduction of a new IP right for sports bodies, this may in fact be construed as a type of state aid, which in turn be in breach of EU state aid rules and competition law.

This new phenomenon is already manifesting itself in most emerging markets, with the EU Commission and the ECJ this time having to look at the behaviour of previous state monopolies and not of the “legality” of online gambling operators.

Competition is a new way to look at emerging markets and gambling regulations across EU member states, any future EU consensus on gambling regulation will increasingly need to recognise the importance of competition concerns in newly regulated markets. If the EU Green Paper results in an EU ‘minimum harmonisation directive’, then in due course the Directorate General of Competition will issue guidelines of competition rules for the gambling sector on a European level.

WHAT DOES THIS MEAN FOR GAMBLING OPERATORS AND B2B PROVIDERS?

In the absence of gambling regulations on an EU level, online gambling will continue to be regulated by EU member states, which must observe the freedom to provide services and comply with EU Competition Law. Continued uncertainty makes it difficult for online operators to plan workable risk strategies. They are assisted if local laws are contrary to EU law, but it is becoming more difficult to rely on this argument:

- if a member state gets the “permitted restrictions” right, a restrictive monopoly can be more easily established;

- recent ECJ gambling judgments give member states more room to manoeuvre;

- in the absence of mutual recognition of gambling licences, a national licence may not assist in assessing regulatory risks for other jurisdictions;

- the definition of “illegal gambling” does not differentiate between licensed and unlicensed operators.

Online gambling operators today can choose between the lesser of two evils: “legal and licensed” but less profitable multiple licensing regimes v. entering restricted markets “illegally” with a well formulated EU law defence and the prospect of substantial profits without local taxation or additional licensing restrictions. Interestingly enough, large operators who are publicly listed today and who were only able to grow and become profitable because they entered restricted markets under an EU law defence would today need to be more cautious of going down that route than smaller operators, because they have to account to their shareholders and regulators for acting “legal” in all jurisdictions. With the continued uncertainty of what is in fact “legal” when it comes to online gambling in the EU, this seems to be an enormous task that will undoubtedly reduce potential profits and make today’s big operators less flexible to manoeuvre.

COUNTRY UPDATE

Austria

There are no reported incidences of criminal prosecution against EEA online gambling operators. However, the instruments available for use against illegal operators have been extended in recent years and the Minister and police have announced they intend to enforce the law more vigorously. The draft Gambling Amendment Act 2010 also includes powers to tax unlicensed (illegal) EEA based gambling operators on profits made in Austria.

In 2006, the European Commission officially requested Austria to provide information on its gambling restrictions. However, this request was only concerned with the prohibition on advertising licensed casino operators in EU member states and triggered the Gambling Amendment Act 2010, which is currently awaiting approval by the Federal Council.

On 9 September 2010 the ECJ delivered its findings in the "Engelmann case" and found that Austrian gambling law is in breach of EU law for the following reasons: (1) The obligation to have a legal presence in Austria constitutes a disproportionate restriction on freedom of establishment and freedom to provide services and discriminates against EU based companies; and (2) the absence of a competitive procedure and the lack of transparency does not comply with EU Law. The decision did not address the aggressive marketing activities of the gambling monopoly which has the third largest advertising budget in Austria. Such marketing is contrary to previous ECJ rulings, according to which a member state may not "incite and encourage" its consumers to participate in games of chance if it has monopolised these. In the wake of the Engelmann case, updates to the gambling legislation included in an October 2010 bill, recently signed into law, no longer state that applicants need to be based in Austria to be granted a licence. However, applicants must already hold a licence in their own EU member state and the licensing process remains more onerous for overseas applicants. It could be argued that these requirements are still in breach of EU law, let alone reduce competition between online gambling operators, depending on where they are based in the EU.

The current state of uncertainty will encourage online gambling operators to enter the Austrian market, due to the limited enforceability of current restrictions.

Belgium

New gambling legislation will came into force on 1 January 2011 which requires all online gambling operators to apply for a Belgian land based gambling licence before accepting wagers online from Belgian residents. Operators will be able to apply for online gambling licences from March 2011 and the necessary land based licence can be applied for now.

Under the new regulatory framework, a licensing regime will be established for all types of games of chance, with the exception of lotteries, which remain a state owned monopoly "La Loterie Nationale". The main requirements of the New Gaming Law can be summarised as follows: (1) EEA online gambling operators must first apply for a land based gambling licence in Belgium, (2) Servers and other main gambling equipment of EEA online gambling operators which knowingly participate in or contribute to the operation of unlicensed gambling, must be relocated to Belgium. The new Gaming Law also includes criminal and civil actions as well as administrative fines. In addition, the Belgian Government is considering introducing ISP and financial blocking.

The "New Gaming Law" has been passed despite objections by the European Commission in relation to core provisions of the legislation which appear to be in breach of EU law. The New Gaming Law could be challenged on the basis that it is contrary to the EU law principles of freedom of establishment and freedom to provide services, as well as in breach of EU competition law.

In fact, the Remote Gambling Association (RGA) and the European Gaming and Betting Association (EGBA) have recently lodged a joint complaint to the European Commission on the basis that the recently adopted Belgian gambling legislation is not compliant with EU law. A number of elements of the Belgian legislation are designed to protect the domestic Belgian gambling market from legitimate competition by putting in place unacceptable barriers to new entrants seeking to offer online gambling.

Denmark

Denmark has already seen a state aid case stall the launch of its online sector by several months, and speculation is growing that the same could happen in Belgium as well.

Following pressure from the European Commission, *Denmark* confirmed on April 21, 2009 that the country will partially liberalise its online gambling market and declared this liberalisation would extend to online sports betting, poker and casino games, which would be open to a licensing process for the first time.

The new law was originally planned to come into force on 1 January 2011. However, various developments delayed its application. Most notably, land based casinos and slot operators complained that the different tax regimes (up to 79% land based vis a vis 20% online) amount to state aid and are therefore incompatible with EU law. The Danish government has therefore agreed to re-submit the draft law to the European Commission. The European Commission opened formal investigations on this matter and it is estimated that this may last up to nine months. The outcome of this investigation will have important repercussions across Europe, as many jurisdictions apply a different rate of tax online and land based gambling.

In the meantime, the current monopoly Denska Spel can offer its services online (after applying and setting up a separate company). It is therefore also argued that this will lead to an unfair competitive advantage of Denska Spel who can continue promoting their brand on the market. However, following France's "debacle" in 2010 on the same issues, it is unlikely that Denska Spel will indeed offer any services online before the European Commission has reached a decision on this matter.

France

In response to the European Commission's infringement proceedings, France liberalised its online gambling market in 2010 and introduced the new Gambling Law which now legalises online gambling. EEA gambling operators can accept wagers from French residents, as long as they apply for a French gambling licence and agree to be regulated by the French gambling regulatory body "ARJEL". All activities are legal, as long as the gambling operator holds a French gambling licence or has a business arrangement with a French licence holder. Without a French licence, gambling is deemed illegal with no recourse or justification under EU law.

The European Commission has – after some reservations - also approved the new French licensing regime in its current state, thereby sanctioning the existence of multiple national gambling licences in member states.

However, there are further new challenges for the French gambling industry on two fronts, both of which relate to competition law:

- First: with the long-running legal battle between Zeturf and PMU successfully raising competition questions in the European Court of Justice (whereby land based French monopolies have a tax advantage over online operators); and
- Second: The European Commission has also announced it had serious concerns over whether France's 'betting right' for horseracing constitutes illegal state aid, and has opened a formal consultation process.

Germany

The German federal states signed the Interstate Gambling Treaty (the Treaty) in 2008 which will only remain in force until 2012. The Treaty in effect prohibits all forms of online gambling in the name of consumer protection, while at the same time allowing the State controlled lotteries run by 16 regional governments and their online sports betting operations to offer online gambling services. All other forms of online gambling by commercial operators are strictly prohibited.

On 8 September 2010, the ECJ ruled that Germany's Interstate Gambling Treaty is in breach of the fundamental principles of EU law. In its ruling, the ECJ held: (1) The German Government had undermined its consumer protection argument by letting state run gambling companies engage in intensive advertising campaigns, (2) betting at race tracks has been in commercial hands since 1920 and there is a continuous expansion of land based casinos and slot machines, which also undermines the argument of consumer protection which must be applied in a consistent and systematic manner, (3) a German court is not obliged to apply the Interstate Gambling Treaty if it comes to the conclusion that the monopoly is not justified in the particular case. However, that ECJ has no jurisdiction to disapply national law and it therefore confirmed that the prohibitions in the Interstate Gambling Treaty must continue to be observed by gambling operators even after the current judgments (until Germany and the German courts agree on suitable amendments).

The German minsters of the Länder have met on various occasions to reach a satisfactory settlement on this issue; however, there is no clear majority for liberalising the German online gambling market yet. According to German law, a majority of 13 out of 16 Länder is required to approve the continuation of the current Treaty. However, six Länder have indicated that they are against the renewal of the Treaty, while only two of these are clearly in favour, three other Länder appear to favour an even stricter monopoly than is currently in place.

Greece

In June 2010, Greece announced that it would open its online sports betting market by May 2011 and follow the regulatory models offered by France and Italy. The Greek Ministry of Finance subsequently published legislative proposals to offer a maximum of four licences to provide online betting services via a dedicated Greek website. Licensed operators would also need to establish their servers within Greece. At the end of August, public consultations concerning the regulation of gambling got under way. If passed by the Greek parliament, the legislation will require the European Commission's approval before being implemented.

Greece's five-day consultation (apparently the shortest in history) on the new draft bill that would license online gambling and regulate Video Lottery Terminals (VLTs) ended on 31 January 2011. The draft law envisages handing over 25,000 machines to only 4 to 10 large-scale licensees, while small and medium-sized businesses will be limited to 5 machines per licence with the total number of machines capped at 5,000. Competition law here I come…

In addition, a Trojan Horse in the form of taxation was introduced, which envisages a 6% turnover tax, making the Greek market not viable to compete in. In addition, there are some clear EU law breaches when it comes to various requirements, including necessity of permanent establishment in Greece, server location and the use of the "dot.gr".

Italy

Following the European Commission's infringement proceedings against Italy, the Italian Government decided to liberalise its online gambling market in 2006. EEA gambling operators can accept wagers from Italian residents, as long as they apply for an Italian gambling licence. The regulatory body awarding online gambling licences is AAMS. An AAMS remote gambling licence currently includes the following: Sports betting, Horse race betting, Skill gaming (including online poker tournaments, and online lotteries. However new remote gaming regulations are expected shortly, expanding the current licences to cover also real money fixed odds games of chance (such as online poker and casino online slots) and online bingo. All activities are legal, as long as the gambling operator holds an Italian gambling licence or has a business arrangement with an Italian licence holder. Without an Italian licence, gambling is deemed illegal with no recourse to or justification under EU law. Operators based in EEA member states can apply for an Italian gambling licence. However operators based in white listed jurisdictions are not permitted to do so, until Italy enters into bi-lateral agreements with these jurisdictions. Negotiations with several white listed jurisdictions are on-going. Accepting wagers from Italian residents without an Italian gambling licence is illegal. Italian authorities have introduced ISP blocking and have successfully blocked various unlicensed operators. Although the internet blocking measures were challenged in court by the ISPs, they were not repealed nor otherwise lifted or frozen by judicial order and therefore still remain in fully in force.

Italy has recently put pressure on licensed operators who also operate offshore licensed sites and allow Italian residents to gamble on these sites. Betfair faces the suspension of its licence for allegedly accepting bets from Italian residents from its .com site rather than its licensed .it site and tax legislation has been amended so that tax is payable on Italian bets made with operators' offshore sites.

Netherlands

Netherlands legislation is based on a system of exclusive licences. Only one licence is granted by the national authorities in respect of each kind of game of chance which is authorised. The offering and advertising of online gambling is illegal without a Dutch licence. However, no licences have been granted to authorise online gambling, so only holders of a Dutch permit for land-based operations are permitted to advertise their services via the internet.

On the face of it, Dutch gambling regulations appear to be in breach of EU law because they favour Dutch land based gambling operators over EEA based operators. However, after the "Ladbrokes and Betfair cases" there are limited grounds to challenge current gambling legislation. The ECJ decisions also confirm that a restricted (single) number of licences is permissible, where it is justifiable for the protection of consumers. Betfair has recently announced its intention to re-apply for a licence in the Netherlands.

The Government is now considering licensing all forms online gambling. This goes beyond the recommendations of the Jansen report, which concluded that future gambling legislation should be confined to licensing poker, which has an existing demand. As a new coalition Government is still in the process of being formed, it is unclear what the plans or their timescale is likely to be.

Norway

Norway is not a member of the EU; however it is a member of the EEA (European Economic Area) and EFTA (European Free Trade Association) which entitles it to enter and participate in the European single market. Norway therefore has to follow the underlying principles of the single market, including the freedom to provide services between member states.

Norwegian gambling legislation only allows gambling where profits are dedicated to non-commercial, humanitarian or other socially beneficial purposes and prohibits the organisation, marketing and mediation of unauthorised gambling. It also prohibits the transfer of money between unauthorised gambling providers and players within Norway. Advertising and marketing of gambling products is strictly prohibited and may lead to fines, criminal prosecution and imprisonment. All forms of authorised gambling are conducted by the State monopolies Norsk Tipping and Norsk Risktoto (horse race betting) which are obliged to spent all profits on social, charitable or sports related purposes.

Any breach of the Acts, whether wilful or accidental, can lead to administrative fines and imprisonment. In addition, Norway introduced “UIEGA style” provisions on 1 June 2010. According to the new law, banks and other financial service providers in Norway are prohibited from arranging payments of stakes and winnings from gambling companies that do not hold the required Norwegian permit/ authorisation. The new law applies to all gambling referred to in the Acts. Norway has recently agreed that an Australian operator (which offered its services to Norwegian residents on a Norwegian homepage and allowed deposits in the local currency) can be prosecuted in Norway for failing to safeguard a disabled Norwegian resident from losing €3m.

Portugal

Portuguese gambling laws regulate land based gambling. However all gambling activities not expressly permitted by law are deemed illegal. The only exception to this total ban was created for the State monopoly Santa Casa da Misericórdia de Lisboa. Portuguese laws include a range of penalties, including administrative fines, seizure of gambling equipment and closure of illegal gambling establishments.

The question of compatibility with EU law arose when Santa Casa was challenged by online gambling operator Bwin’s sponsorship of a local football club . The ECJ ruled in favour of the State-run monopoly, stating that the prohibition imposed on operators such as Bwin may be regarded as justified by the objective of combating fraud and crime and may therefore be compatible with the principle of the freedom to provide services. Santa Casa has recently issued further administrative proceedings against Bwin in relation to its sponsorship of the Portuguese football league cup, to be known as the “Bwin Cup”.

B2C operators, regardless of location, are deemed to be conducting an illegal activity if they accept wagers from Portuguese residents. However there have been no enforcement proceedings taken against foreign B2C operators for offering online gambling (as opposed to sponsorship deals). There are also no clear measures, such as ISP blocking, preventing unlicensed/ foreign online gambling.

All marketing of online gambling is strictly prohibited. However, there are no significant prosecutions reported to date. Even when the courts found that Bwin was violating Portuguese regulations by sponsoring the Portuguese football team, no actions have been taken and main TV stations continue to broadcast gambling sponsored advertisements.

Spain

The existing Spanish gambling laws only regulate land based gambling, however Spain is currently in the process of regulating online gambling. According to Spanish law, any activity that is not explicitly prohibited is automatically permitted. As the online gambling legislation is still not in force and no other current legislation regulates online gambling, EEA online gambling operators are legally allowed to accept wagers from Spanish citizens in accordance with the freedom to provide services across member states.

However, Spanish regions have already introduced their own gambling legislation and are issuing regional licences and online operators accepting wagers from residents in these regions will need to apply for a licence and will be subject to these regional regulations.

In addition, the proposed new online gambling law envisages a substantive turnover tax which will limit the ability of remote gambling operators to run economically viable businesses in France, and a major reason for that is the turnover based tax regime.

Sweden

The Swedish Government restricts gambling licences to (1) non-profit organisations, (2) the horse racing industry, and (3) the Swedish State monopoly Svenska Spel (which also holds a licence to arrange sports betting).

In 2008 the Swedish Government released a report on gambling with a view to amending the existing legislation. The Report proposed a partially new lottery system, which would make it possible for new operators to secure permits from the Government. The Report also proposed types of gambling that could be opened up to new operators. However, the Report was heavily criticised by gambling operators for being limited with regards to the types of games and not including, for instance, online poker.

Unlike Norwegian law, however, Swedish legislation only applies to and restricts Swedish based gambling operators. Consequently, the prohibition on organising gambling in Sweden does not include a prohibition on foreign gambling operators from accepting bets and/or wagers from Swedish residents. Furthermore, the Act does not prohibit Swedish consumers from participating in online gambling organised abroad. However, Swedish legislation prohibits and penalises the promotion, advertising and marketing in Sweden of gambling organised outside of Sweden. In other words, while Sweden does not prohibit foreign based B2C or B2B operators from accepting wagers from Swedish residents, Swedish law explicitly prohibits the marketing and promotion of these services in Sweden. This has led to various court proceedings against Swedish newspapers and advertisers, including TV sports commentators.

It is worth noting, however, that the Swedish state has continuously prosecuted Swedish based advertisers direct and not B2C or B2B operators. How Sweden would react to a marketing campaign organised outside of Sweden but targeting Swedish residents is yet to be seen - place your bets now (but don't advertise that you have done so in Sweden!)

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