

**International  
Comparative  
Legal Guides**



Practical cross-border insights into gambling law

# **Gambling 2022**

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## Austria

BRANDL TALOS



Thomas Talos



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## 1 Relevant Authorities and Legislation

## 1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Austrian Ministry of Finance ( <i>Bundesministerium für Finanzen</i> , “BMF”) and the Austrian Tax Office ( <i>Finanzamt Österreich</i> ).	BMF, competent government authority in <i>Bundesländer</i> , and the Austrian Tax Office.
	Poker	BMF and the Austrian Tax Office.	
	Bingo		
Betting	Betting	Competent government authority in the nine Austrian federal states ( <i>Bundesländer</i> ).	Competent government authority in <i>Bundesländer</i> .
	Sports/horse race betting (if regulated separately to other forms of betting)	Competent government authority in <i>Bundesländer</i> .	
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	Not expressly defined by Austrian law.	

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Lotteries	Lotteries	BMF and the Austrian Tax Office.	
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Not expressly defined by Austrian law.	
	Skill games and competitions with no element of chance	Not expressly regulated; depending on the product this may be subject to trade law.	

## 1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

The most important set of Austrian laws applicable to all types of gaming and betting activities is the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*). The E-Commerce Act (*E-Commerce Gesetz*) is relevant for the provision of online gambling and betting.

The Unfair Competition Act (*Bundesgesetz gegen den unlauteren Wettbewerb*, “UWG”), which is based on the EU Unfair Commercial Practices Directive, contains a blacklist of trade practices that are prohibited in all circumstances *per se*, including in the gambling and betting sector.

The federal Gambling Act (*Glücksspielgesetz*, “GSpG”) regulates games of chance and, in particular, applies to lotteries, land-based casinos, online gambling (“electronic lotteries”) and poker (which, despite the ongoing international debate on whether this is a game of skill or a game of chance, is expressly defined as a game of chance in the GSpG), and sets the framework for the regulation of slot machines at the level of the *Bundesländer*.

According to Section 1 GSpG, a game of chance is a game “in which the decision on the outcome of the game depends **solely or predominantly** on chance”. In order to trigger the licensing requirements under the GSpG, the game must further be played against monetary consideration (pay in) in order to acquire the chance of winning money or money’s worth (pay out) and be organised by an entrepreneur.

**Sports betting** is regulated at the level of the *Bundesländer*, whereby each state has its own local betting act and a local competent regulatory authority. Similarly, **slot machines** operated outside casinos are regulated at the level of the *Bundesländer*, under local and competent authorities. The key difference is that, unlike sports betting, not all Austrian states allow slot machines outside casinos. **VLTs**, on the other hand, fall under the lottery monopoly and are regulated at the federal level.

The Capital Markets Anti-Money Laundering Act (*Finanzmarkt-Geldwäschegesetz*, “**FM-GWG**”) was lastly updated on 29 May 2021. The application of the FM-GWG to gaming is by virtue of a reference in the GSpG.

The UWG sets certain limitations for operators, such as prohibiting advertising directed at minors or promotional pyramid games where a consumer pays a consideration for the opportunity of receiving compensation that is derived from the introduction of new consumers into the gaming scheme. In addition to those activities that are considered unfair in all circumstances *per se*, certain trade practices, such as advertising campaigns, can also be prohibited under the UWG if they are considered unfair due to, for example, their aggressive nature. It must be noted, though, that Section 56 para 1 GSpG excludes any proceedings under the UWG being initiated against the holders of licences and concessions under the GSpG as regards their compliance with the requirement to advertise their products in a responsible manner.

While the GSpG prohibits minors from entering land-based casinos and slot machine arcades, as well as using slot machines outside arcades, protection of minors is, in principle, regulated by the *Bundesländer* in local minor-protection laws (*Jugendschutzgesetz*) and local betting acts. According to these laws, in general, minors are banned from entering betting premises. It should be noted that many local laws, however, do not restrict minors from participating in lotteries or exempt lotteries offered by the lottery monopoly from age restrictions. In Upper Austria, the legal age for gambling is 18, save for lotteries offered by the lottery monopoly (16 years).

Section 168 of the Austrian Criminal Code (*Strafgesetzbuch*, “**StGB**”) includes a prohibition on organising and/or promoting gambling without a licence according to the GSpG. Section 52 GSpG also contains a catalogue of administrative criminal offences subject to fines of up to EUR 22,000 or even EUR 60,000 in case of the provision of illegal gambling.

**Skill games:** Skill games do not fall under the definition of games of chance and, as such, are not subject to the GSpG. As noted above, **poker** is considered a game of chance, not a game of skill. While there is no sector-specific regulation of skill games, general customer protection laws, e-commerce provisions and the Austrian Civil Code apply to skill games, social games and e-sports, save for when such games consist of elements subjecting them to the legal regime of the GSpG (an element of chance, an element of consideration and a prize of money or money's worth). Traditional games of skill are considered “permitted games” under the federal Austrian Trade Act (*Gewerbeordnung*).

As regards prize draws/prize competitions, besides the applicable UWG, it must be noted that taxes apply and are regulated within the GSpG.

## 2 Application for a Licence and Licence Restrictions

2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, “Licences”) are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?

Austrian law requires only the operator to hold a licence.

Advertising is considered a licensee's accessory right and does not require a separate permit.

In addition to the requirements described in question 2.2 below, the applicant (and/or its directors, if applicable) has to be considered reliable by the authority.

There are no licence requirements for B2B activities in Austria.

As regards betting and slot machines outside land-based casinos, some *Bundesländer* require premises licences.

### 2.2 Where Licences are available, please outline the structure of the relevant licensing regime.

Games of chance are subject to a federal gambling monopoly stipulated in Section 3 GSpG. The operation of (i) lotteries, and (ii) land-based casinos can be licensed according to Sections 14 and 21 GSpG, respectively.

#### Lottery games, online gambling and VLTs

Lotteries are subject to a single licence pursuant to Section 14 GSpG – *de facto* constituting a monopoly. This licence may be granted to corporations established in the EU or EEA with a minimum share capital of EUR 109 million. A corporate seat in Austria is required unless the company has a comparable lottery licence in its state of incorporation, is subject to a comparable gambling supervision and such supervisory authority cooperates with the Austrian authorities. If the applicant provides evidence for these criteria, it is sufficient to have a mere local presence.

In October 2012, the single licence, valid for the maximum statutory duration of 15 years, was again granted to *Österreichische Lotterien GmbH*, the only lottery company ever to be licensed in Austria.

According to Section 12a GSpG, “electronic lotteries” are covered by the lotteries licence. Electronic lotteries cover all types of games of chance offered by electronic means, including casino-style online games. As such, the scope of Section 12a GSpG is considered to cover all types of online gambling save for online betting, and exceeds the scope of lottery-style games the single licensee (monopolist) may operate offline. The licence also covers the operation of VLT outlets.

#### Casino games and poker

According to Section 21 GSpG, a casino applicant must be a corporation established within the EU or EEA under the same circumstances and applying the same restrictions applicable to the lottery licence. The minimum share capital is EUR 22 million. In 2010, the total amount of land-based casino licences to be granted for a maximum duration of 15 years was increased from 12 licences to 15. Following the expiry of the 12 “old” licences that had all been held by *de facto* monopolist *Casinos Austria AG*, these licences were again granted to the same company in two “packages”, one including the “city” locations and one including the “rural” locations of the existing land-based casinos.

The three new licences were individually granted by the BMF in a separate licence tender in 2014. The licence decisions were cancelled by the Federal Administrative Court (*Bundesverwaltungsgericht*) in 2015, which found the licence tender to be in violation of the principle of transparency under EU law. The Supreme Administrative Court (*Verwaltungsgerichtshof*) confirmed this decision in 2016. It is currently unlikely that the Austrian Tax Office will start a new licensing procedure for these three licences. The 12 licences which were granted to *Casinos Austria AG* remain valid.

Section 1 GSpG expressly defines poker as a game of chance. Poker is generally permitted only in casinos. Until 31 December



2019, poker casinos operated under licences issued on the basis of the Austrian Trade Act had been allowed.

### Betting and slot machines outside land-based casinos

As previously stated, betting and slot machines are regulated at *Bundesländer* level. Due to the varying ages (some dating back to as early to 1919, others entering into force in 2019) and the quality of the local laws, licensing requirements as well as the exact product scope and licence term differ significantly. **Betting licences** are generally available without quantitative restrictions. In general, applicants have a **right to be granted a betting licence** after having fulfilled all legal requirements. Betting licences may be granted to natural persons as well as to companies. As for slot machines outside casinos, an applicant must be based in the EU or EEA. Further, the applicant must be a company with a supervisory board and a registered office in Austria and it needs to fulfil certain stock capital requirements.

### 2.3 What is the process of applying for a Licence for a Relevant Product?

As regards lotteries and casinos, the Austrian Tax Office is required to grant licences based on a transparent tender procedure. Applicants have to prove that they fulfil the licensing criteria mentioned in Sections 14 (for a lottery licence) or 21 GSpG (for casino licences), respectively. There is an application fee of EUR 10,000 and a fee of EUR 100,000 payable when receiving a licence.

Licensing procedures and requirements for the operation of slot machines outside casinos and betting depend on *Bundesländer* laws.

### 2.4 Are any restrictions placed upon licensees in your jurisdiction?

Restrictions are generally product-specific (please refer to question 2.6 below).

### 2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.

**Lottery games:** The lotteries licence was granted in 2012 and is valid until 2027.

**Casino games:** There are, in principle, up to 15 licences available, each with a maximum duration of 15 years. Six licences were granted to *Casinos Austria AG* in December 2012 and another six to the same operator in September 2013.

**Slot machines outside casinos:** Maximum duration of 15 years.

**Betting:** Varies according to local laws at *Bundesländer* level.

A lottery or casino licence can be withdrawn by the authority if the licensee violates provisions of the GSpG or decisions by administrative authorities. The violation of licensing obligations can be sanctioned with fines of up to EUR 22,000. Withdrawing the licence is applied only as *ultima ratio*, if all other means (e.g. administrative penalties) fail. Essentially, the same applies for sports betting licences under *Bundesländer* laws. According to Section 53 GSpG, the authorities have the right to confiscate slot machines operated in violation of applicable legislation.

Decisions of the authority to withdraw a licence can be appealed before the Federal Administrative Court (*Bundesverwaltungsgericht*); the withdrawal of a sports betting or slot machine licence can be appealed before the relevant Regional Administrative Court (*Landesverwaltungsgericht*).

### 2.6 By Relevant Product, what are the key limits on providing services to customers? Please include in this answer any material promotion and advertising restrictions.

#### Betting

The product scope varies according to local laws; while some *Bundesländer* allow only sports betting, others (e.g. Vorarlberg, Salzburg and Tyrol) also allow social bets (e.g. on political or cultural events). Most *Bundesländer* have introduced restrictions on betting on certain events, including virtual events, restrictions on the maximum stakes (e.g. EUR 500 in Salzburg and Upper Austria) and restrictions on live betting or certain maximum opening hours for betting shops. A number of *Bundesländer* have limited anonymous play by introducing a requirement to use personalised customer cards for all bets with stakes that reach certain thresholds (e.g. EUR 70 in Carinthia). For instance, Vienna allows live betting only on end results and partial results. Vorarlberg has introduced minimum distance requirements for betting locations.

#### Slot machines outside casinos

Subject to Section 5 GSpG, the maximum stake per game is EUR 1 (EUR 10 in cases where the operator holds a casino licence). Winnings per game are limited to EUR 1,000 (EUR 10,000 for casino licensees). Players must not be able to play games simultaneously. After two hours of playing, the machine has to shut down automatically. There are also requirements on minimum distances between gaming halls and provisions on how many machines may be installed in one location (10 to 50 machines in gaming halls, and one to three machines outside gaming halls, e.g. in restaurants). According to the GSpG, the number of slot machines outside casinos is limited to a maximum of three licences per *Bundesland*. Further, there is a restriction of a maximum of one machine per 1,200 inhabitants. A number of further restrictions include, e.g., minimum distance requirements between gaming machines.

#### VLTs

The operation of VLTs is subject to the lottery monopoly. The main legal restrictions regarding licensees are stipulated in the GSpG. According to the GSpG, in municipalities of more than 500,000 inhabitants, there must be at least two kilometres between a VLT outlet with more than 15 machines and a casino. Otherwise, the distance between venues with more than 15 machines must be 15 kilometres.

#### Casinos and lotteries

There are no restrictions on maximum stakes or pay-outs. Section 56 GSpG obliges casino and lotteries licensees to restrict their advertising to a “responsible scale” (*verantwortungsvoller Maßstab*); however, non-compliance with this provision effectively remains unsanctioned, in particular as the UWG does not apply. Advertising illegal gambling carries an administrative penalty of up to EUR 22,000.

### 2.7 What are the tax and other compulsory levies?

Gaming and betting taxes are levied at the point of consumption and apply irrespective of whether or not the operator holds a licence in Austria. Further, according to Section 6 para 9 of the Austrian VAT Law (*Umsatzsteuergesetz*), betting and games of chance are exempt from 20% VAT, save for draws placed on slot machines outside casinos and VLTs under the lotteries licence. Operators have to pay the following taxes:

Product	Tax rate
Betting (offline and online)	2% tax on stakes
Online gambling (“electronic lotteries”)	40% on gross gaming revenue (“GGR”) (stakes minus winnings)
Lottery games	2–27.5% on stakes
Slot machines outside casinos and VLTs under the lotteries licence	10% on net gaming revenue (“NGR”) + municipal fees
Land-based casinos	30% GGR (stakes minus winnings minus bonuses); slot machines in casinos: 30% on NGR (stakes minus winnings minus VAT)
Other slot machines and VLTs	30% on NGR
Other offline games of chance	16% on stakes

## 2.8 What are the broad social responsibility requirements?

Social responsibility measures mainly include providing staff with responsible gaming training.

The GSpG provides for a number of player protection requirements, most of which have to be fulfilled by an operator in order to receive a licence. The GSpG also contains provisions regarding the protection of minors. Some of the *Bundesländer* betting acts provide that players must be able to self-exclude. Further, operators are obliged to observe anti-money laundering (“AML”) rules (see question 2.9 below).

## 2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

The AML provisions in the GSpG largely refer to the FM-GWG, which was amended in 2021. The latest amendment included provisions regarding transaction monitoring using artificial intelligence. According to the AML provisions applicable to gambling operators who are licensed under the GSpG, operators must adhere to enhanced due diligence obligations, e.g. stricter customer identification regarding suspicious financial transactions or customers from high-risk jurisdictions.

In 2020, several *Bundesländer* amended local betting acts to reflect the new, stricter AML requirements, and thus fully comply with the EU’s 5<sup>th</sup> AML Directive. The amendments brought a significant tightening of requirements towards player verification and betting documentation. Furthermore, each betting operator is required to perform a risk assessment and produce a report, which in some *Bundesländer* must be delivered to the local authority. The amendments also broadened the definition of a betting intermediary, and introduce stricter player protection measures and licensing requirements. All suspicious activities must be reported to the Financial Intelligence Unit. Since April 2021, all reports to the Financial Intelligence Unit must be made via the new platform “go-AML”. Moreover, licensees must nominate an AML officer and train their employees regarding AML risks and AML risk avoidance. Special provisions apply

to accepting PEPs and persons from high-risk countries. Land-based casinos and slot machine operators are obliged to check the identity documents of all customers.

## 2.10 What (if any) restrictions were placed during the COVID-19 pandemic? Are they still in force?

During the COVID-19 pandemic general restrictions, such as lockdowns, obligations to wear face masks, minimum distance requirements and entry requirements (only those that have been vaccinated, tested and have recovered from COVID-19 are permitted) applied and still apply to retail casinos, slot machine halls and betting shops. However, up to now there have not been any special COVID-19 provisions in place for the gaming industry. The general COVID-19 restrictions vary according to the current infection situation and are continuously adjusted. In some areas with particularly high infection rates, special restrictions may apply.

Online gambling and betting activities are not and have not been subject to any restrictions due to the COVID-19 pandemic.

## 3 Online/Mobile/Digital/Electronic Media

### 3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?

**Online gambling:** The GSpG mentions online activity in Section 12a, defining so-called “electronic lotteries” as games “in which the player participates directly using electronic media and the outcome is decided centrally and provided on electronic media”. The operation of “electronic lotteries” is subject to the single lottery licence, thereby constituting a *de facto* monopoly for online gambling. Section 12a GSpG does not further describe the product scope. The BMF (and the current *de facto* monopoly holder, *Österreichische Lotterien GmbH*) consider the licence to cover all games of chance offered online, including online casino games, which are outside the scope of the products that *Österreichische Lotterien GmbH* may offer offline. As regards the compliance of the (online) gambling monopoly with EU law, please see question 4.3 below.

In general, Austrian law currently does not contain provisions on the blocking of Internet service providers or payment service providers. However, according to a paper issued by the BMF in February 2021 (*Vortrag an den Ministerrat*), the BMF intends to draft an amendment to the GSpG, which shall, *inter alia*, include DNS blocking of operators that are not licensed in Austria. While the amendment had been announced for April 2021, no draft amendments have been published as of 16 August 2021.

**Online betting:** Licences for (in general, land-based) sports betting are granted by the *Bundesländer*, which apply if sports betting is offered in the territory of a certain province (e.g. in a betting shop). Some Austrian states have extended the applicability of their legislation to cover also online sports betting. Betting legislation at *Bundesländer* level is not considered to apply to operators located outside the respective territory; neither does it subject them to any local licensing obligation.

### 3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?

Sanctions provided for the illegal offer of land-based gambling

also apply to online gambling. This applies, in particular, to the administrative fines described in question 1.2 above.

Blacklisting websites, Internet blocking and financial blocking are currently not part of the sanctioning measures of Austrian law (for details regarding intended changes regarding DNS blocking measures, please refer to question 3.1). Despite doubts as regards compliance of the (online) gambling monopoly with EU law, the BMF firmly considers it illegal to offer online gambling without an Austrian licence.

### 3.3 What terminal/machine-based gaming is permitted and where?

The GSpG contains basic provisions regarding the operation of slot machines and VLTs. Further details regarding slot machines are provided in the laws of the *Bundesländer*. There are several technical requirements concerning slot machines, including adequate warning and data protection systems in case of technical failures. Further, there is a minimum duration for certain games and players are only allowed to play for a maximum amount of time, after which the slot machine must automatically switch off for a cool-off period. Further, certain pay-out ratios must be applied. The technical requirements must be evidenced by a technical expert opinion. Slot machines must be connected to the Federal Computing Centre (*Bundesrechenzentrum*).

Some *Bundesländer* have added technical requirements for betting terminals to their laws, including that terminals must not enable placement of bets by more than one person (including by connecting terminals with other terminals or gadgets via Bluetooth or WiFi). Betting terminals must have a serial number that needs to be submitted to the authorities. In some *Bundesländer*, betting terminals may only be operated if a specifically trained responsible person is present, and the terminal must be able to store all data on placed bets in a so-called “electronic betting book” or database. In some *Bundesländer*, stake limits for betting terminals apply.

The main legal and technical requirements for operating VLTs are stipulated in the GSpG. VLT outlets require a location permit. Further, VLTs must be connected to a central server operated by the Federal Computing Centre.

## 4 Enforcement and Liability

### 4.1 Who is liable under local law/regulation?

In the first place, the operators are held liable for violations of the GSpG. However, directors and other legal or natural persons supporting illegal activities carried out by the entity in connection with gambling (e.g. advertising illegal gambling) can also be subject to sanctions under the GSpG and/or Section 168 StGB.

Further, participation in illegal gambling as a regular source of income may be sanctioned under Section 168 StGB. A similar provision is also included in the GSpG, sanctioning the participation in unlicensed “electronic lotteries” by means of administrative fines.

With regard to civil liability, online gambling operators offering their services to Austrian customers based on a licence from another EU Member State and relying on the freedom to provide services are currently experiencing an increased number of civil claims brought by players reclaiming their losses from online casino and poker. Litigation financing companies have been soliciting players to bring claims against operators. These claims are based on the alleged illegality of such private offers

that are claimed to be infringing the *de facto* monopoly. As regards the compliance of the (online) gambling monopoly with EU law, please see question 4.3 below.

### 4.2 What form does enforcement action take in your jurisdiction?

Recently, enforcement measures have been heavily concentrated on the allegedly illegal provision of slot machines. Besides fines, sanctions include the confiscation of slot machines.

Most local authorities have also consistently taken a strict approach towards the operation of allegedly illegal offers in retail betting shops. For example, the authority of Vienna has closed licensed betting shops and confiscated betting equipment, arguing that the operators do not observe restrictions on the betting offer, such as certain restrictions on live betting.

Given the remaining doubts on the compliance of the gambling monopoly with EU law (see question 4.3 below), Austrian authorities currently still seem reluctant to take enforcement measures against online gambling operators offering their products under the EU market freedoms. However, the BMF has recently launched a whistleblowing platform regarding gambling and betting activities. Via such platform anyone can (anonymously) report on money laundering and financing of terrorism as well as prohibited business operations in the field of betting and gambling. This might be an indication that the BMF intends to start enforcement measures also against online gaming operators not holding an Austrian licence. Due to the point of consumption taxation, the tax authorities also enforce tax provisions against operators which do not hold an Austrian licence.

In particular, criminal sanctions under Section 168 StGB are being applied only very rarely, which is due to the administrative sanctions stipulated in the GSpG taking precedence over Section 168 StGB in case an offence could be sanctioned under both provisions.

There is no case law on authorities applying sanctions against players taking part in unlicensed gambling or betting offers.

### 4.3 Do other non-national laws impact upon liability and enforcement?

As Austria is a Member State of the EU, Austrian law is heavily influenced by EU law, including case law from the Court of Justice of the European Union (“CJEU”). According to the CJEU, any national measure hindering the exercise of the EU market freedoms or rendering the exercise of these rights less attractive must: be justified by overriding public interest objectives; be suitable for securing the attainment of these objectives; not go beyond what is necessary to achieve these objectives; and be applied in a non-discriminatory manner.

Conformity of Austrian gaming legislation with EU law has often been tested in national court proceedings, with several cases having been referred to the CJEU (in particular *Engelmann, Dickinger and Ömer, HIT and HIT Larix, Pfleger, Admiral Casinos and Online Games, Fluctus and Fluentum*). These decisions have led to various reforms of the GSpG (including the introduction of the requirement for transparent licensing procedures). The CJEU concluded that the Austrian *de facto* monopoly “appears to be disproportionate”. The Austrian case law is currently not consistent as regards the compatibility of the Austrian *de facto* monopoly with EU law. In August 2016, the Austrian Constitutional Court was dealing with a request put forward by the Supreme Court (*Oberster Gerichtshof*) to rule on the compatibility of the Austrian gambling monopoly with the Austrian Constitution, given that the Supreme Court’s



4<sup>th</sup> Chamber had held the gambling monopoly to be contrary to EU law. The Constitutional Court (*Verfassungsgerichtshof*) rejected the Supreme Court's referral for formal reasons but ruled on a number of administrative complaints filed by slot machine operators, which were based on the same arguments as the referral of the Austrian Supreme Court, confirming the compliance of the GSpG with EU law and the Austrian Constitution. In November 2016, the Supreme Court issued its final decision on the case it had referred to the Constitutional Court, stating that the questions regarding the monopoly's compliance with EU law had been sufficiently clarified. In May 2017 as well as in 2021, the Supreme Court again issued decisions reiterating its view that the GSpG is in line with EU law.

Although the three Austrian high courts appear to take a similar approach as regards the compatibility of the GSpG with EU law, this judiciary stance is being criticised in Austrian academic literature, with certain legal questions regarding the compatibility of the GSpG with EU law still remaining open. Moreover, the CJEU again mentioned in its reasoned order in the *Fluctus and Fluentum* case that each national court is obliged to autonomously assess the compatibility of the gambling monopoly with EU law, irrespective of pre-existing case law from national highest courts having confirmed the monopoly's compliance with EU law.

#### 4.4 Are gambling debts enforceable in your jurisdiction?

Section 1271 of the Austrian Civil Code provides that, in general, gambling debts are unenforceable. A gambling debt is considered *obligatio naturalis* and cannot be enforced before the court. However, Section 1274 of the Austrian Civil Code provides an exception for operators licensed in Austria.

#### 4.5 What appetite for and track record of enforcement does your local regulatory authority have? Have fines, licence revocations or other sanctions been enforced in your jurisdiction?

#### Sports betting

As each federal state has its own competent regulator, the level of enforcement activity varies from state to state. For example, the regulator for Vienna is known for its keen enforcement appetite; whereas Styria, to take another example, is known to take a more liberal approach.

#### Online casino

There is no consistent practice of active enforcement against online casino operators.

#### Tax

The Austrian Tax Office actively enforces failure to pay gaming and betting taxes.

## 5 Anticipated Reforms

### 5.1 What (if any) intended changes to the gambling law/regulations are being discussed currently?

As noted above in question 2.9, local betting acts have been amended in 2020, mainly to implement AML provisions as required by the EU's 5<sup>th</sup> AML Directive. On 1 August 2020, a new Lower Austrian Betting Act entered into force. Moreover, it is likely that in the course of 2022, Burgenland will also publish a draft for a completely new betting act, as the current betting act still dates back to 1919.

In February 2021, the BMF issued a paper (*Vortrag an den Ministerrat*), according to which it intends to amend the GSpG. The amendment should, *inter alia*, address the following: (i) establishing a new and independent gambling authority competent for issuing federal gambling licences that are subject to the GSpG; (ii) the implementation of a cross-operator player exclusion database; (iii) DNS blocking measures against online gambling operators that do not hold an Austrian licence; (iv) implementation of a regulatory regime for lootboxes; and (v) amendment of tax provisions. While the amendment had been announced for April 2021, no draft amendments have been published as of 16 August 2021.



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The team has been advising clients in the gaming and betting industry **for more than 20 years** and gained significant experience through advising bwin from its early days as a start-up to its IPO and becoming one of the world's leading publicly listed online gaming companies. BRANDL TALOS accompanied bwin through its merger with PartyGaming and the subsequent takeover by GVC (now Entain) and to date maintains its role as lead regulatory advisor.

The firm advises several **major players** in the gaming and betting industry, including Entain, Tipico, Sportradar, BetVictor, EveryMatrix and the European Betting and Gaming Association. BRANDL TALOS provides a

combination of corporate, gaming law and strategic advice, covering both **transactional and regulatory aspects**.

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