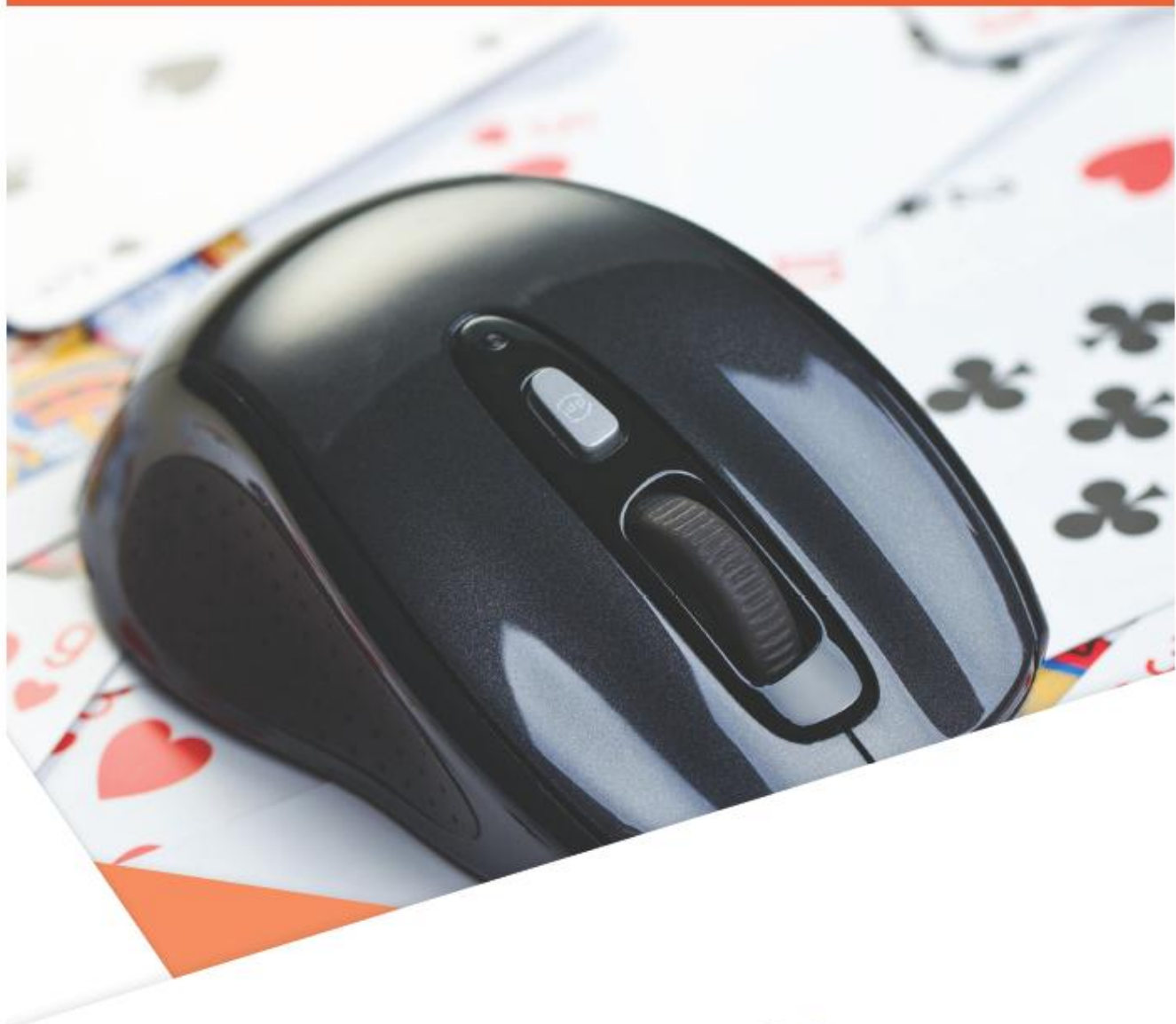




**The Norwegian Gaming Authority:  
Internett Gambling Report 2012**





## Preface

The Norwegian Gaming Authority updates the Remote Gambling Report at regular intervals. The purpose of the report is to provide an objective, impartial and concentrated presentation of the key traits of the legal situation regarding Internet gambling, both nationally and internationally. The Remote Gambling Report summarises the regulations concerning Internet gambling.

Gambling has existed all around the world for hundreds of years. The gambling market has traditionally been nationally regulated and comprised of state-operated and private enterprises that have offered cash gaming to their own citizens. Some of the revenue from gambling has gone to good causes through government taxes and duties, or by being directly earmarked for such causes, as happens in Norway.

Up until the mid-1990s, gambling was a land-based activity. The gambling market incorporated few cross-border elements and the distinctions between legal and illegal gambling were well-defined. Once the Internet arrived in Norwegian homes, gambling opportunities increased enormously. Under Norwegian law, only Norsk Tipping and Norsk Rikstoto are permitted to offer Internet gambling. This means that the vast majority of online gaming companies accessible to Norwegians on the Internet are offering gambling in breach of Norwegian law, and they are effectively outside of Norwegian control. This presents the national authorities with certain challenges.

Førde, 23 November 2012

Atle Hamar  
Director of the Norwegian Gaming and Foundation Authority



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**The basis for the Remote Gambling Report is the pervasiveness of the Internet as a distribution channel for gambling, the development of new games, and the challenges this entails for national enforcement and control of the gambling market. The report gives an account of Norwegian legislation relating to gambling. As a matter of principle, under Norwegian law, gambling and lotteries are prohibited, but the authorities may allow gambling under closely defined conditions,**

**Technological advances have led to an increase in gambling opportunities on the Internet. In some instances, the gaming company has closed the games to participation from specific countries where national legislation prohibits online gambling in the absence of a national licence. Many other companies have gambling websites open to all users, and some of them also target their games specifically at Norway and Norwegians. The Internet is borderless and, in practice, much of the gambling market is beyond Norwegian jurisdiction and the Norwegian authorities' control.**

**Because of Norway's obligations under the EEA Agreement, developments in the EU have a large impact on our Norwegian legislation. In the absence of pan-European legislation, over the last twenty years, the European Court of Justice has made a number of rulings concerning national schemes for gambling activities. These rulings are very important when assessing which schemes are permissible for countries at national level. The ECJ's rulings will, in practice, determine how the EEA Agreement is to be interpreted. The report reviews which rules we can deduce from the ECJ's case law.**

**At European level, political efforts are also being made to deal with the problems associated with the gambling market. The EU is addressing challenges relating to online gambling and the member states' different, and at times deficient, regulation of the area. Work is also ongoing in the Council of Europe concerning in particular the problems of match fixing. Norway is contributing to these activities through different working groups in the EU and the Council of Europe. Because gambling has now acquired an international and global perspective, the report provides an overview of legal and political developments in the Nordic region, Europe and various other parts of the world.**

**The last section of the report deals with the rapid technological advances linked to remote gambling. Gambling is now being offered on increasingly more platforms. We have seen strong growth in the availability of gambling on mobile devices, and anticipate further growth in gaming opportunities in social media. This is largely unregulated gaming, but which has many parallels with ordinary gambling. The authorities therefore have an important task in following this trend and implementing measures as necessary. The youth survey carried out for us by NOVA in 2010 (NOVA report 18/10) shows a correlation between young people's use of social media and their participation in gaming. Around 40% of young people play games on Facebook at least once a month. Since we recognise the industry's ability to easily convert "innocent fun" on Facebook into cash gaming, it is important for the authorities to take a considered stance on the issue of regulation.**

## 1. Introduction

The technological development and growth of the Internet as a distribution channel for cash gaming has globalised the gambling market, since games are now offered across national borders. New types of cash games have come onto the scene, and a new and powerful private-sector gambling industry has emerged. This development has created problems relating to the national administration and enforcement of national laws on gambling. It has also put extra pressure on the traditional gambling market and reduced individual countries' opportunities for controlling the revenues from gambling.

The development has put gambling onto the agenda in many countries, in the EU and in other international organisations. At the political level, the key question is how to regulate nationally these cross-border cash games, and whether there needs to be international harmonisation and co-ordination of gambling regulations. In respect of enforcement of the regulations, the issue is the extent to which different countries can apply national laws to gambling that is offered from abroad.

In the absence of harmonised rules for the area, individual countries can largely lay down their own gambling regulations. Cultural, moral and religious differences between the countries entail different approaches to such regulations and have resulted, in practice, in gambling being regulated very differently in individual countries of the world, including within the EU/EEA.

For remote gambling<sup>1</sup>, we can, in this context, distinguish between countries which:

- prohibit all organisation of Internet lotteries and cash gaming
- allow restricted exclusive rights for Internet lotteries and cash gaming
- offer licence schemes for Internet cash gaming

The trend is for increasingly more countries to allow Internet gambling. There is a distinction to be drawn between those countries that seek to limit gambling opportunities to their own residents and those that allow gambling to also be offered outside of the country.

## 2. Norway - national legislation

Gambling is regulated at the national level. It ensues from the sovereignty principle<sup>2</sup> of international law that the individual state has exclusive jurisdiction over its own territory. For gambling, this means that the state is fundamentally free to decide whether it shall permit gambling in the country, and if so, what kinds of gambling shall be permitted.

The fundamental principle in Norwegian legislation is that cash games and lotteries are prohibited. The principle is laid down in section 298 of Norway's General Civil Penal Code, which states that "gambling that is not permitted by a special Act" is prohibited. This prohibition has been a principle in Norwegian

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<sup>1</sup> Remote gambling denotes gambling where the gambler is not located where the game actually and physically takes place. Remote gambling is a technology-neutral term, covering all gambling that is currently offered via the Internet, TV, mail and by phone. The term is also used to refer to the cash games that Norsk Tipping and Norsk Rikstoto offer online from commission agents' premises. In the present Remote Gambling Report, we restrict our use of the term to gambling offered via the Internet.

<sup>2</sup> The sovereignty principle means that all states are sovereign and not subject to any will other than their own. One consequence of this is that there is no international authority to issue rules, resolve conflicts or impose solutions comparable to what exists in national jurisdictions. In the absence of a central legislative authority, states are free to choose which binding legal arrangements they will subject themselves to through treaties.

legislation for several centuries. The authorities have nonetheless wished to permit lotteries and cash gaming under certain conditions, and this has been enacted through the following statutes:

- Act of 1 July 1927 no. 3 relating to betting using a totalisator system (Totalisator Act)
- Act of 28 August 1992 no. 103 relating to Cash Gaming etc. (Gaming Act)
- Act of 24 February 1995 no. 11 relating to Lotteries etc. (Lottery Act)

In addition to the prohibition against organising cash gaming without a licence, it is also prohibited to mediate and market such gambling. The prohibition against unlicensed gambling ensues from the Lottery Act, the Gaming Act and the Totalisator Act. The prohibition against marketing and mediation ensues directly from the Lottery and Gaming Acts. Through the regulations of 26 August 2007 appurtenant to the Totalisator Act, there is now also a prohibition against marketing totalisator gambling that is unlicensed. It is not prohibited to play cash games on the Internet.

Of these three special Acts, the Lottery Act provides for general regulation of cash gaming and lotteries in Norway, while the Totalisator Act and Gaming Act regulate the monopoly gambling permissions accorded to, respectively, Norsk Rikstoto (horse-race betting) and Norsk Tipping AS (other sports betting and certain number games). The Totalisator Act and the Gaming Act (with the exception of paras 1 and 3 of section 2) are administrated by the Ministry of Agriculture and Food and Ministry of Culture respectively. The Gaming Authority, which is subject to the Ministry of Culture, administrates the Lottery Act and paras 1 and 3 of section 2 of the Gaming Act.

The Gaming Authority oversees Norsk Tipping's and Norsk Rikstoto's gambling propositions and is empowered to exercise administrative control and follow-up of gambling offerings that are mediated and marketed in breach of the Gaming Act. The Ministry of Agriculture and Food has granted the Gaming Authority the authority to react by stopping illegal totalisator gambling and marketing of such gambling through the regulations of 24 August 2007 concerning totalisator gambling.

In summary, cash gaming, lotteries and totalisator gambling can be defined as “activities where participants can, against payment of a stake, win prizes resulting from a random draw, guessing or other method that in whole or part results in a random outcome”. Different types of lotteries and cash gaming are more precisely regulated in provisions and gaming rules.

The purpose of Norwegian lottery and gaming legislation is "to ensure that cash gaming is provided by satisfactory mechanisms under State supervision, with a view to preventing the negative consequences of cash gaming, while simultaneously allowing for the proceeds from the gaming activities to go to socially beneficial causes". The purpose is set out explicitly in

- section 1 a of the Lottery Act
- section 1 para 3 of the Gaming Act
- section 2 of the Totalisator gambling regulations

This means that gambling offered to Norwegian gamblers

- must be responsible
- must be moderate
- must safeguard adequate consumer protection
- must not have invidious social consequences
- must not contribute to criminal activity



## 2.1 The emergence of remote gambling

Growth in remote gambling is leading to globalisation of the lottery and cash gaming market. Today, a gaming company located anywhere in the world can offer Norwegians online gambling from servers installed abroad. This trend is reducing the Norwegian authorities' opportunities to administrate and control the national gambling market. Norwegians who choose to gamble with unregulated providers of online gaming have far weaker legal protection in Norway when they encounter problems with the gambling operator. Growth in remote gambling may also, in the longer term, reduce the organisations' revenue potential from traditional Norwegian gaming.

The Norwegian authorities have not, for the time being, given permission for lotteries on the Internet and other remote gambling platforms. Norsk Tipping and Norsk Rikstoto have permission to distribute their Internet cash gaming, via Internet tablets and mobile phones. In 2011, Norsk Tipping was granted permission to offer interactive gaming, and work on this initiative is in progress. The new online games are planned to be launched in the autumn of 2013.

In spite of national regulation and restriction of gambling offerings, there is a clear trend for many actors to arrange, market and act as intermediaries for a large number of unlicensed gambling propositions across national borders on the Internet. The statistics indicate however that Norwegians' participation in foreign online gaming is stable and, by our estimates, was around five billion Norwegian kroner in 2011.

Cross-border Internet gaming represents a real threat to nationally regulated and controlled gambling.

## 2.2 Guidelines from the Ministry of Culture concerning enforcement of the regulations

In a letter of 16 February 2007, the Ministry of Culture issued guidelines to the lottery authorities with regard to enforcement of applicable rules pursuant to the lottery and gaming legislation. The Ministry's view is that certain types of remote gambling activities are subject to Norwegian rules even where the remote gambling enterprise is operated wholly or in part from abroad or via servers located abroad.

The Ministry's letter states:

"In addition, operators whose enterprise is in the main based outside of Norway will also be comprised by Norwegian rules if the operator specifically adapts his operations to customers in Norway.

(...) Remote gambling activity from abroad subject to Norwegian rules is typically adapted so as to attract Norwegian gamblers and designed so as to enable Norwegian gamblers to make use of the remote gambling opportunities. Adapting and designing activities to appeal to Norwegian gamblers may, for example, involve the activity being communicated in the Norwegian language, with customer support available in Norwegian, set up to facilitate payment processing from and to gamblers in Norway, with Norwegian events as betting subjects and the proceeds from the operations being earmarked for Norwegian organisations."

The Ministry then points out some situations where the remote gambling offering may be comprised by Norwegian rules, and here:

"In the case of remote gambling activities that are adapted and designed for gamblers in Norway, but which are operated by a remote gambling operator based abroad and via a foreign server, the Ministry holds that these would also be subject to the hosting and mediation prohibition in the Norwegian rules, even if the proposition is also aimed at gamblers in other countries."

The letter makes the following request of the Authority: "The Ministry requests that the Norwegian Gaming and Foundation Authority base its further enforcement of applicable rules under lottery and gaming legislation on the foregoing concerns."

Consequently, the Authority has worked further on this issue in various cases, and has accordingly proceeded against a number of entities that have acted in breach of the prohibition laid down in lottery and gambling legislation against hosting, advertising, marketing and mediating unlicensed lotteries.

Factors of significance in assessing whether remote gambling can be considered as targeted at Norwegians may include

- whether the gaming is presented in the Norwegian language and is open to Norwegians to participate in
- whether customer support in Norwegian is available
- whether the gaming provider has personal representatives in Norway
- whether the cost of participation and potential winnings are stated in the Norwegian currency
- whether payment of stakes and winnings takes place in Norway or is paid to Norwegian accounts
- whether one must provide personal details that are linked to Norwegian registration schemes or similar
- whether, in respect of their nature, the games are targeted at Norway, whether the gamblers can bet on Norwegian football matches, etc.
- whether the revenues or parts of the profit from the gaming devolve to Norwegian citizens, companies or organisations
- whether the gaming provider explains how gamblers can circumvent the payment processing prohibition
- whether the gaming provider actively targets its gambling offerings at Norwegians through its choice of advertising channels, use of Norwegian celebrities or Norwegian organisations in its marketing

From this, we deduce that

1. Norwegian law does not apply to foreign gaming that is only targeted at the foreign state's own citizens
2. Norwegian law may apply to foreign gaming that is targeted at the populations of several countries and also to some extent at Norwegians
3. Norwegian law does apply to foreign gaming that is targeted at Norwegians to a particular degree

The Gaming Authority has proceeded against both Norwegian and foreign entities which offer remote gambling. The two main case-law precedents in this area concerned online gaming offered by [www.trottingbet.com](http://www.trottingbet.com) and [www.trendybingo.com](http://www.trendybingo.com), and Internet gambling and marketing by [www.eurolotto.com](http://www.eurolotto.com).

In the spring of 2010, the Gaming Authority decided to issue an order for the cessation of gambling offerings on the websites [www.trendybingo.com](http://www.trendybingo.com) and [www.trottingbet.com](http://www.trottingbet.com). These websites offered and marketed lotteries, cash gaming and totalisator gambling on the Internet targeted at Norwegians. The Lottery Complaints Board, the Ministry of Culture and the Ministry of Agriculture and Food confirmed the Gaming Authority's order on 10 November 2010, on the grounds that the gambling proposition was targeted at Norwegians. The Lottery Complaints Board and the Ministry of Culture also cited the Supreme Court of

Norway's ruling of 13 October 2010<sup>3</sup>. The Supreme Court case concerned the question of place of jurisdiction and it was determined that the principles set out by the Supreme Court must also be applicable to the Lottery Act.

In the spring of 2011, the Gaming Authority decided to issue an order for the cessation of illegal gaming and lotteries against Cherryföretagen AB for hosting, mediating and marketing online gaming at [www.eurolotto.com](http://www.eurolotto.com). Both the Ministry of Culture and the Lottery Complaints Board confirmed the Authority's decision.

### 2.3 Prohibition against “marketing” unlicensed gambling

Under gambling legislation, it is prohibited to *market* lotteries that are not licensed pursuant to the Lottery Act. It is therefore, with the exception of those games that are legally offered by Norsk Tipping and Norsk Rikstoto, illegal to market gaming that is offered on the Internet.

The prohibition against *marketing* encompasses essentially all activity undertaken to promote turnover in unlicensed gaming. This includes both statements and actions aimed at encouraging or stimulating purchases of the online gaming providers' services.

The scope of the marketing prohibition is restricted by other laws and principles. Editorial discussion of lotteries and cash gaming is protected by section 100 of the Norwegian Constitution, on freedom of expression. Such media mention of lotteries and cash gaming in newspapers, magazines, periodicals, on the Internet etc. therefore falls outside of the prohibitions in section 11 of the Lottery Act and section 2, para 3 of the Gaming Act. An operator may not plead that something is editorial material unless there is editorial freedom. This means that media mention of lotteries and cash gaming must be assessed and presented by an independent editorial board. Discussion of the games must be neither initiated nor financed by an operator.

The marketing prohibition will encompass anyone who *markets* cash gaming without a licence. This will clearly include the gaming operator, but the prohibition also applies to other agents such as newspapers, radio, TV and advertising agencies if, in their activities, they engage in marketing of unlicensed gambling.

As concerns the scope of gambling legislation, the marketing prohibition clearly encompasses all marketing of remote gambling that is unlicensed in Norway. Examples of this include advertisements in Norwegian media (Norwegian newspapers, Norwegian TV and radio stations, Norwegian websites) and banners in public spaces. The prohibition also encompasses marketing of remote gambling from abroad that is intended to have an effect in Norway if the marketing is targeted at Norwegians.

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<sup>3</sup> HR-2010-1734-A: The case concerned the question of which country held jurisdiction in an Internet-gambling damages case. In this judgment, the Supreme Court decided that if A had gambled from Norway, it would be obvious that the link to Norway would be sufficient for proceedings to be brought before the Norwegian courts. The losses A incurred are not linked to foreign residence. When gambling over the Internet, it is of no significance which country the gambler is resident in when gambling. The key point is that he registered on a Norwegian-language website using a Norwegian user profile. The website had Norwegian customer service and Norwegian consultants and A used his Norwegian bank. The website/gambling operator had an account in Norway during some of the period during which the gambling occurred.

Factors of significance in assessing whether the marketing of remote gambling can be considered to be targeted at Norwegians may include

- whether the advertisement is presented in media specially targeted at Norwegians
- whether the advertisement is in the Norwegian language
- whether the advertisement is targeted at Norwegians through a Norwegian postal address or e-mail address

TV advertising is specially regulated by the EU's Audiovisual Media Services Directive (AVMSD), which states that it is the regulations in the broadcaster's country of origin that determine what type of advertising the television channel can broadcast. This means that advertising broadcast on Norwegian TV channels transmitted from the UK must comply with UK marketing rules, and advertisements for cash gaming are largely permitted there.

The Gaming Authority has proceeded against Norwegian media that have carried ordinary advertisements from remote gambling providers, against displays of logos for well-known remote gambling providers in advertisements for activities other than remote gambling, and against job advertisements from remote gambling providers where the remote gambling provider's identity is highly prominent. We have noted great creativity in the marketing industry in terms of attempts to circumvent the marketing prohibition. The Gaming Authority has proceeded against several instances of marketing camouflaged as press releases, and there have been instances of sports kit advertising that are on the margins of being subject to the marketing prohibition.

It is common among Internet gambling providers to enter into agreements with partners, so-called affiliate agreements. An affiliate agreement is an agreement on a performance-based percentage payout. There are several ways of doing this. The most common is for an entity that has an affiliate agreement with a gaming company to link to the gaming company's website from its own. Whenever anyone clicks the affiliate links and gambles with the gaming company, the website owner receives a certain percentage of the total which the gambling via the links generates. Norwegian affiliate agreements will be in breach of section 11 of the Lottery Act, which defines a prohibition against marketing and mediating cash gaming without a licence.

The Gaming Authority has been reticent in acting against marketing of gambling from abroad. This is partly because much of this marketing consists of TV commercials which are protected by the AVMSD and partly because the marketing has had limited scope in Norway. In addition, enforcement of Norwegian regulations is problematical beyond national borders. The trend we are seeing of increasing use of direct advertising by e-mail may also entail a need to take action.

It is also prohibited to market lotteries and cash gaming targeted at Norwegians on the Internet. This is true regardless of whether those behind the offering are Norwegian organisations, Norwegian companies, Norwegian-registered foreign businesses or solely foreign businesses. The decisive factor is whether the marketing is clearly targeted at the Norwegian market.

### **2.3 Prohibition against “mediating” unlicensed gambling**

Under gambling legislation, it is prohibited to *mediate* lotteries that are not licensed.

The prohibition against *mediation* encompasses all activity for distributing gaming that does not have a Norwegian licence. This includes the use of commission and other agents, distributors and other intermediaries which deliver the gaming to the gamblers, including affiliate agreements (the remarks on affiliate agreements in the preceding section will apply similarly to the prohibition against mediation). The

prohibition will apply, above all, to direct intermediaries, but also to more indirect ones such as payment processors and IT providers.

#### ***2.4.1 The payment processing prohibition***

Bill to the Odelsting no. 80 (2007-2008) clarifies the legal status in respect of payment processing and the financial institutions' role. The financial institutions' provision of payment services in connection with illegal gaming is encompassed by the prohibition against the mediation and hosting of such gaming. The prohibition against transferring money to foreign gaming companies was introduced on 1 June 2010. The objective was to reduce the accessibility of gambling that it is illegal to offer in Norway.

The Gaming Authority's evaluation report of January 2012 showed that the prohibition against processing payments to foreign gaming companies was less effective than intended. Nonetheless, access to gaming without a Norwegian licence has become slightly more difficult according to a report which the Gaming Authority has prepared for the Ministry of Culture.

The Gaming Authority has followed developments and it appears that many gaming companies have third-party solutions available, which most gamblers experience as no different than a direct transfer of funds from themselves to the gaming company.

Our assessment is that the prohibition against payment processing may have a certain impact on the recruitment of new gamblers and this has led to some foreign gaming companies no longer offering gaming targeted at Norwegian customers. Similarly, the Gaming Authority's estimate for 2011 shows that the number of Norwegians gaming on foreign websites is stable. The Gaming Authority estimates that Norwegians are targeted roughly equally as much in the unregulated gaming market in 2011 as in 2010. The Gaming Authority believes that the Ministry of Culture should assess making the prohibition against payment processing more effective and has proposed the following measures

- closer cooperation with the banking industry
- access to the Norwegian Customs and Excise's Foreign Exchange Register
- rejection of transactions based on the name of the gaming company
- a reporting obligation on the banks

The Gaming Authority is currently awaiting the Ministry of Culture's feedback on the report.

#### ***2.4.2 Distribution of online gaming through Internet terminals***

With regard to other types of mediation comprised by the prohibition on mediation, the Gaming Authority has acted against the deployment of Internet terminals offering remote gambling in Norway.

In the spring of 2010, the Gaming Authority was made aware that a Czech company was entering the Norwegian market. The company was called Scandic Gaming/JENSI Game and had deployed gaming machines illegally in Sweden for a number of years.

We provided the company with an account of Norwegian regulations and informed them that the Gaming Authority would report to the police all operators of venues who installed these machines in their premises. Despite this, it soon came to our attention that there were a number of illegal gaming terminals in operation. The Gaming Authority followed up the tip-offs and reported to the police a number of venue operators who had signed agreements on the installation of the terminals. The police confiscated a number of terminals. As far as we are aware, all the terminals have now been removed from the Norwegian market.

The Gaming Authority takes a very serious view of entities trying to establish an illegal gaming machine market in Norway and will act immediately on any tip-offs about illegal terminals that we receive.

## 2.5 Administrative sanctions and penalties

A breach of the Lottery Act may entail administrative sanctions or penalties. A new provision on totalisator gambling of 26 August 2007 has given the Gaming Authority the option of ordering a cessation of activity (administrative sanction).

The penalties vary according to the different Acts. The Lottery Act's penalties are the most severe and a gross breach of the Lottery Act may entail a prison sentence of up to three years. The Gaming Act allows for a penalty of up to three months, while a breach of the Totalisator Act only allows for a fine. The differences in penalties may influence the police's prioritisation and choice of criminal procedure remedies that are considered necessary for detecting crimes. Due to the light penalties, searches are not permitted in the event of suspicion of a breach of the Totalisator Act. For the same reason, it is not possible to arrest or imprison people for a breach of the Gaming Act. The Gaming Authority is unable to see good reasons for maintaining these differences in penalties.

An administrative action against a remote gambling operator will be an administrative law decision. Such administrative law decisions concerning actors in other states are not regulated by the Lugano Convention and to a slight extent by other conventions or agreements on jurisdiction and legal venues. The Norwegian authorities' decisions are made in Norway in accordance with Norwegian law. One then assesses if the action one wishes to sanction is taking place in Norway. As for marketing restrictions, one should therefore be able to start from the position that Norwegian supervisory authorities may make decisions against foreign remote gambling operators who are clearly targeting their activities at the Norwegian market with a view to achieving turnover here. In this connection, we refer to NOU 1995:2 item 7.2 and the Market Council's prohibition decision of 21 November 1994 against foreign operators in the Benetton case (MR-22/94) and of 6 February 2006 in the Ryanair case (MR-22/05). Implementation of the decision will however be problematical in the absence of international conventions on such implementation.

Where penalties are involved, there will be a greater degree of international cooperation and recognition, and enforcement in respect of foreign offenders may be more realistic.

## 3. The EU

It is the Norwegian Parliament that makes laws on gambling, and these become binding regulations that apply in Norway. Through the EEA Agreement, Norway is obliged to incorporate EU law into Norwegian law. It is therefore important for the Norwegian authorities to follow what happens in the EU, both politically and legally, through the rulings that ensue from the Court of Justice of the European Union (ECJ)<sup>4</sup>. The Norwegian authorities read ECJ judgments with great interest, and the courts have direct significance for how the authorities shape and enforce Norwegian gambling legislation.

### 3.1 The ECJ's rulings

Norway is not a member of the EU and is therefore not directly bound by the ECJ's rulings. The EFTA states are subject to the EFTA Court's rulings. But it is clear that in practice the ECJ's rulings are determinative for the interpretation of many of the provisions in the EEA Agreement. It is therefore important to understand how EU law affects Norwegian law, including how the ECJ's rulings on gambling influence Norwegian legislation and administration.

The EEA Agreement of 1992 regulates the relationship between the EFTA and EU member states within trade and a number of other economic relations. This applies, for instance, to the rules on the free movement of goods, services, persons and capital. The preamble to the EEA Agreement states that cooperation in the

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<sup>4</sup> The court changed its official name on 1 December 2009 (entry into force of the Treaty of Lisbon), but it is still commonly referred to as the European Court of Justice.

EEA is to be "dynamic and homogeneous"<sup>5</sup>. Dynamism in this respect implies that the Agreement is intended to develop over time in line with the development of EU law<sup>6</sup>. This also means that new EU legislative acts<sup>7</sup> that are relevant to the EEA Agreement shall be incorporated into the EEA Agreement, and that case law from the ECJ shall be significant for the interpretation of the EEA Agreement.

Today there is broad agreement that EU judgments in areas regulated equally in the EU Treaties and the EEA Agreement shall have direct significance for the wording and interpretation of Norwegian regulations. This also applies to ECJ rulings passed *after* 1992. In *Norsk Retstidende*<sup>8</sup> 2002 page 391, the Supreme Court of Norway confirms that rulings from the ECJ "shall be accorded great weight in the interpretation of Norwegian law". This view has broad support in legal theory and is underpinned by consistent practice on the part of Norwegian courts.

### 3.2 What practice can we deduce from the ECJ's rulings?

There is no common regulation of the gambling market in the EU and EEA. The EU Commission has expressed a desire to harmonise the regulations in the different countries.

The main principles are freedom of establishment and free movement of services within the area<sup>9</sup>. In practice, gambling is considered to be a service<sup>10</sup>. The question has been as to whether the individual countries should be able to impose restrictions on the free movement of services, and if so which restrictions may they impose and what can justify the restrictions. One example of a restriction might be a monopoly scheme. The question is in dispute, with concern for internal self-determination on the one hand, and the principle of free movement of services on the other.

To date, the courts have made only preliminary rulings<sup>11</sup> in cases concerning gambling. Some of the rulings have been made by the Grand Chamber, and these have greater weight than other rulings. Examples of such Grand Chamber rulings on gambling are *La Liga*, *Carmen Media*, *Placanica*, *Stoss* and *Winner Wetten GmbH*. Pronouncements in both Grand Chamber rulings and other rulings are nonetheless evidently made on specific cases, and there is variation in the extent to which rulings affect subsequent cases.

Any regulation that affects or limits the trade in gambling services within the EU/EEA (restrictions) must, under EU law

- be non-discriminatory
- be justified in the overriding general interest
- be suitable for achieving their purpose
- be necessary for achieving their purpose
- be proportionate

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<sup>5</sup> The main text of the EEA Agreement, para 4 of the preamble; see the Norwegian EEA Act of 27 Nov. 1992 no. 109 section 1.

<sup>6</sup> Sejersted, Fredrik. *EØS-rett [EEA law]*. Fredrik Sejersted, Finn Arnesen, Ole-Andreas Rognstad, Sten Foyn and Olav Kolstad. 3rd edition Oslo, 2011 p. 87

<sup>7</sup> A legislative act in the EU is a decision or a resolution made pursuant to the EU's fundamental treaties

<sup>8</sup> *Norsk Retstidende* is a legal publication published by the Norwegian Bar Association and which contains the vast majority of judgments of the Supreme Court and its appeals committee

<sup>9</sup> The Treaty on the Functioning of the European Union (TFEU) articles 49 and 56 (corresponding to EEA Agreement articles 31 and 36)

<sup>10</sup> In accordance with TFEU article 57 on services

<sup>11</sup> A national court may submit a question of interpretation relating to EU law or EEA law to the ECJ or EFTA Court respectively, before the national court deals with the case and gives judgment.



These are general principles ensuing from EU law and are determinative for the regulation and administration of gambling. It is not contrary to EU law to grant a monopoly to a single operator to offer online gambling, as long as certain conditions are met. It is important to implement measures to protect gamblers and ensure regulation of the market<sup>12</sup>. One overriding purpose of the various states' gambling regulation is to channel gamblers to the legal market, where the state controls the operators and the games that are offered. The state can thereby ensure that the games are offered in controlled formats.

### **3.2.1 The restrictions must not be discriminatory**

Since its basis is the free movement of services and the EU has a market economy, EU law requires that individual restrictions shall not be discriminatory. There shall as a rule be free competition and all enterprises shall be able to establish themselves freely without discrimination. For example, it would be discriminatory to punish foreign illegal marketing more severely than illegal marketing from gambling providers in the home country.<sup>13</sup>

### **3.2.2 The restrictions must be justified in the overriding general interest**

In ECJ case law, the court has accepted the following interests as a basis for restrictions:

- preventing criminality and fraud
- countering problem gambling behaviour
- securing revenues for national purposes
- preventing private profit
- safeguarding consumer protection

On some occasions the ECJ has used one interest, on others a combination of several interests<sup>14</sup>, to justify its decisions. To ensure revenues for state or social purposes is not a legitimate interest in itself.

### **3.2.3 Restrictions must be suitable for achieving their objectives**

In order for a restriction to be suitable for achieving the objective, it must be part of a systematic and consistent gambling policy. EU law also imposes requirements on the implementation of the restriction. In countries that issue licences for gambling, the award must be based on objective, non-discriminatory and established criteria, so that national authorities' assessments do not have arbitrary outcomes. It is largely up to the national courts to evaluate whether a restriction is suitable or not, and the burden of proof is low.

The interests most commonly invoked as support for restrictions (for example, for monopoly schemes) are of preventing crime and fraud, and of safeguarding consumer protection and preventing problem gambling behaviours.

#### **3.2.3.1 What is suitable for safeguarding the interest of preventing crime and fraud?**

The interest of preventing crime and fraud is broad and flexible and a number of restrictions have been accepted as suitable for this purpose. The gambling market has on occasion invited criminality such as fraud and money laundering. Online gaming is considered to be particularly risk-prone, and it is therefore also accepted that the Internet gambling market should be regulated<sup>15</sup>. It is also assumed that each state, under given conditions, must regulate its own market and it shall not be simply sufficient for a gaming provider to

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<sup>12</sup> Schindler

<sup>13</sup> Sjöberg

<sup>14</sup> Van den Bogaert & Cuyvers, Common Market Law Review 2011 p. 1192

<sup>15</sup> Idem, p. 1197.



be subject to another country's control<sup>16</sup>. A state may therefore refuse or restrict a gaming provider with a licence for another country access to the national gambling market<sup>17</sup>.

The ECJ has accepted measures that involve

- a total prohibition against marketing of cross-border gambling
- a licensed gambling monopoly
- a controlled market with extensive marketing and gaming development

### **3.2.3.2 What is suitable for safeguarding the interests of consumer protection and preventing problem gambling?**

The Court has highlighted that the distance between consumers and gaming operators on the Internet who hold licences in other countries increases the risk of fraud. Competition can lead to gambling providers becoming more aggressive in their hunt for new customers. From a gambling addiction viewpoint, this may be harmful to consumers<sup>18</sup>.

A controlled expansion of the gambling offering may be consistent with the purpose of channelling gambling activity since legal operators may be able to offer a responsible, but still attractive, alternative to the illegal market. But it is important for the objective of earning money for social purposes or for the state to not overshadow the objective of preventing gambling addiction. This can be ensured, for example, by restricting marketing to what is necessary to channel consumers towards legal provisions.

### **3.2.4 What restrictions are proportionate and necessary?**

National authorities have a wide discretionary margin when assessing if it is necessary to prohibit gambling and introduce restrictions on gambling. The authorities can also evaluate which measures are necessary<sup>19</sup>.

The restrictions must also be proportionate. This means that the authorities' measures or restrictions must not have a greater effect or be more extensive than is necessary to achieve the objective of the measure<sup>20</sup>.

National authorities also have great freedom here to make their own assessments, but the restrictions must fulfil the other conditions.

### **3.2.5 A specific example: the Ladbrokes case in Norway**

On 2 December 2004, Ladbrokes brought an action<sup>21</sup> before the Oslo District Court to have the rejection of its application to establish and operate the company's gambling activities in Norway declared invalid. The company based its action on a claim of Norway's obligation under EU/EEA law to open its market and introduce a licensing system for gambling.

In dealing with the case, the District Court obtained an advisory opinion from the EFTA Court on the interpretation of articles 31 and 36 on the EEA Agreement (corresponding to articles 49 and 56 of TFEU). Once the EFTA Court's opinion was available, the District Court's task was to perform the evidential assessments which the EFTA Court had given directions on.

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<sup>16</sup> La Liga.

<sup>17</sup> Ladbrokes and Betfair et al.

<sup>18</sup> La Liga and Betfair.

<sup>19</sup> Schindler.

<sup>20</sup> A key principle in EU law. The measure must be proportionate to the interest, and the question must be posed as to whether the same protection could be achieved through a less radical measure.

<sup>21</sup> TOSLO-2004-91873.

The District Court passed judgment on 3 October 2008. The Court found that the State had proved that Norwegian gambling legislation is built on legitimate interests, which are to

- counter crime
- prevent gambling addiction
- streamline control of the market
- protect consumers
- prevent the gambling market becoming subject to private profit

This last of the interests is a legitimate one if the gambling policy reflects a moral opposition to gambling. In its judgment, the Court placed great emphasis on the interest in channelling gambling activity. This means that gambling policy must reflect a desire to attract gamblers away from the illegal market and to the legal and controlled gambling opportunities.

The Court assessed the marketing and the controlled expansion of the gambling offerings of Norsk Tipping and Norsk Rikstoto. Based on the interest in channelling gambling activity, the Court found that this was a consistent gambling policy. The Court also included the channelling interest in the assessment of whether the restrictions were suitable and necessary. The State pleaded that gambling should not be a source of private profit. When assessing the interest of proportionality, the Court found that a licensing system would not cater for this interest. The Court therefore concluded that the Norwegian gambling monopoly complies with the guidelines drawn up by the EU and EFTA courts.

Ladbrokes appealed the judgment, and the case was planned to go before the Borgarting Court of Appeal on 15 September 2009, but, after the ECJ passed judgment in the case between Bwin and Santa Casa<sup>22</sup>, Ladbrokes withdrew its action against the Norwegian State on 10 September 2009.

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<sup>22</sup> La Liga.

## 4. Ongoing European proceedings

### 4.1 EU - Green Paper

In March 2011, the EU Commission took the initiative to gather information on the market for online gambling services in the internal market<sup>23</sup> based on the rapid growth in Internet gambling. Both the European Parliament and the Council had already put pressure on the Commission to take a lead in respect of Internet gambling.

The Commission describes two main models for regulating the gambling market in Europe. On the one hand, there are countries that allow private persons and companies to offer gambling services under licence, and on the other, countries that have monopoly arrangements for the gambling market. Following the considerable growth in the number of cross-border online gambling services available, there have, in practice, proved to be problems in the two models existing side-by-side. This is demonstrated, for instance, by the national courts repeatedly referring to the EU Court for preliminary opinions on whether national rules comply with EU law. Furthermore, many states are experiencing considerable difficulties in respect of enforcement and control of gambling services offered over the Internet from other countries.

Through the Green Paper, the Commission sought to gain an overview of regulation on online gambling in the different European jurisdictions, in order to identify whether national legislation is adequate for regulating gambling in Europe. The document deals with the various justifications and interests underpinning national regulation, and the measures implemented to protect the respective national markets. The Commission wanted information about how Internet gambling takes place in practice, and any criminal involvement in such activity. In addition, the Commission requested information concerning population studies, research and measures implemented for combating gambling addiction, as well as an overview of the financing of causes from gambling activities.

The Commission's Green Paper was a fact-finding document which was to provide a basis for a possible future procedure concerning cooperation within gambling in Europe. The consultation deadline was 31 July 2011.

#### 4.1.1 Questions to the member states

Based on a review and description of a series of topics linked to the market for gambling services, in the Green Paper, the Commission asked 51 questions. Norway has made important contributions to policy formulation in the EU, and the Ministry of Culture replied with an account of the Norwegian exclusive rights model, which only allows Norsk Tipping and Norsk Rikstoto to provide online gambling in Norway. Norway considers the exclusive rights (monopoly) model as the most suitable instrument for maintaining control of the development of the gambling market, while taking care of socio-political interests.

It emerged from the Ministry's response to the Commission that cross-border online gambling services complicate the right to self-determination and reduce the opportunities for administering and enforcing national laws. Norway also provided responses to questions on the marketing of gaming without Norwegian licences, gambling addiction problems, gambling profit allocation schemes, crime and experiences of the payment processing prohibition.

#### 4.1.2 Further developments

There is some disagreement on the effect the Green Paper will have. Some believe that this process will end up as "best practice" recommendations and be of little practical significance. This is due in part to the problems of getting the states to agree on a common regulatory framework, which at a more basic level is

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<sup>23</sup> COM (2011) p. 128 Green Paper on on-line gambling in the internal market.

caused by major differences in the regulations and the view of gambling regulation in the different countries. Others believe that the Commission's work will be capable of leading to Europe-wide agreement on the fundamental issues relating to gambling. Such agreement could then provide a basis for a mutually binding political approach to future regulation and control of cross-border gambling services on the Internet.

Some preliminary principles have nevertheless been established for further treatment of the issue in the EU. The nation states currently have self-determination in respect of gambling regulation. This ensues from fixed case law from the ECJ. It is accepted that there are very different regulatory models in the EU and that different countries' regulations are not harmonised. The states support the work of finding solutions and a common understanding of regulation schemes that can provide better control of the online gambling market,

As part of the follow-up on work on the Green Paper, in the winter and spring of 2012, the Commission held three meetings with representatives of the member states and Norway. The topic of the meetings was the challenges relating to cooperation between states that have different regulatory models. The member states also discussed potential initiatives at national and European levels.

The Commission is clear that it will not propose complete harmonisation of the regulations, and that national self-determination will be the basis for future proposals for regulation of the gambling market.

As an outcome of the meetings, the Commission will establish an expert group, in which Norway is invited to participate in further work on developing a common framework. In this round, the expert group will propose "best practice" in the form of a MOU – Memorandum of Understanding – in a number of areas, including

- preventing fraud and money laundering
- preventing match fixing
- consumer protection; protecting minors and other vulnerable groups from problem gambling behaviour

The expert group's work is planned to begin in the autumn/winter of 2012/2013.

#### **4.2 The Creutzmann report<sup>24</sup>**

The Creutzmann report is a document submitted to the European Parliament that refers to the Commission's Green Paper and gambling problems. Creutzmann argues that the EU must work further on regulating the gambling sector in order to channel gamblers towards legal gambling providers, to protect consumers and prevent crime.

From the ECJ's case law, we can deduce which guidelines apply to regulation of the gambling sector. Critics of the Creutzmann report question whether regulation of gambling at EU level is appropriate.

There is broad agreement that harmonisation and common regulation within the EU is desirable, but that it would be problematical to achieve. Under the subsidiarity principle, the EU may not regulate unless common regulation is more effective than the member states regulating themselves. In general, the states are encouraged to cooperate on cross-border agreements.

#### **4.3 The Council of Europe**

In parallel with the work in the EU, there is a process underway in the Council of Europe that addresses certain areas that are also topical for the EU. The Council of Europe is a cooperative organisation of 47

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<sup>24</sup> Report on online gambling in the Internal Market (2011/2084(INI)) – A7-0342/2011.

member states. It is headquartered in Strasbourg, France, but is not part of the EU, although all EU member states are also members of the Council of Europe.

The Council of Europe approves conventions and recommendations in a variety of areas of social significance, of which the most important is the European Convention on Human Rights. This convention is also the basis for the creation of the European Court of Human Rights.

In May 2007, EPAS (Enlarged Partial Agreement on Sport) was established with the purpose of meeting the challenges and expectations associated with international sports and sporting events. On the basis of cooperation and dialogue between the member states in this forum, conventions have now been adopted on fair play and antidoping.

In late 2011, EPAS' secretariat was tasked with reviewing the legislation associated with sports betting in the EU. This remit was the outcome of sport having identified the need for such a review and the development of tools for monitoring the market. A ministerial meeting in EPAS in November 2011 discussed problems linked to match fixing, corruption, irregular betting and other types of economic crime linked to international sporting events.

The outcome of the meeting was an agreement to set up an expert group consisting of representatives of the regulatory authorities. The objective of the expert group was to ensure that betting on sports and horse-racing was not losing its integrity due to match fixing and other crime. There was also agreement on establishing a convention to apply to all member states.

## 5. Development of the gambling sector in selected countries

Legislative development is moving in different directions in the European countries. One common trait is that countries wish to strengthen their national markets and are choosing various approaches to this end. We can see a clear tendency in that many countries are in the process of changing their regulation of gambling. Some are doing this on the basis of opinions from the ECJ. Some have chosen to strengthen their monopolies, while others have allowed the licensing of gambling operators,

Italy, France and Belgium have all introduced licensing systems and tax rules for licensed gambling operators. Denmark has also decided to open up parts of its national market to the licensing of gambling providers, while Norway and Finland have taken the opposite path and retained monopolies. Some countries have signed cooperation agreements with the gambling sector and it appears that bilateral cooperation may become more common in the future. The sector has also asked for common standards across national borders, not least as concerns the technical requirements for online gambling.

### 5.1 The Nordic region

#### 5.1.1 Denmark

On 1 January 2012, Denmark implemented a new licensing system for the gambling sector. The liberalisation of the market was the result of a long process, in which Denmark had been under pressure from the EU to change its monopoly scheme for the Danske Spil organisation. They also registered that gambling offered over the Internet to Danish gamblers was growing quickly and this was leading to more competition and less turnover for Danske Spil. Political agreement was gradually reached that the solution to the problems was to liberalise the market. The Danish Gambling Authority was therefore tasked with developing a new model for a liberalised market. The overarching policy guidelines were that the Gambling Authority should develop a liberal, sustainable and responsible gambling market in which neither the operators nor the Danish State would lose money. The result was a comprehensive reform that allowed foreign gambling operators to apply for licences to offer gambling services in Denmark.

The licensing system in Denmark is based on a differentiation between fully liberalised, partially liberalised and monopoly gambling services. Both the market for online casinos and land-based gambling services are fully liberalised. Both companies and private persons can apply for licences to offer such services. Lotteries, including online bingo, lotto and scratchcards, as well as horse and dog racing, remain under Danish monopoly.

The Danish system has been developed on the gamblers' terms and in dialogue with the gambling operators. Gamblers want exciting games and high winning percentages. The Danish authorities believe that gamblers will choose the unlicensed market if the legal Danish gambling offering produces poorer conditions for gamblers, which will underline the Danish authorities' potential for controlling the activity.

In order to protect the legal operators and ensure effective control of the market, the Gambling Authority has three instruments:

1. a marketing prohibition against unlicensed gambling operators in any medium.
2. IP<sup>25</sup> blocking, through the use of DNS<sup>26</sup> blocking
3. a payment processing prohibition

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<sup>25</sup> Internet Service Provider

<sup>26</sup> Domain Name System

To protect the interests of especially vulnerable groups, Denmark has also developed a register which gamblers can join to exclude themselves from gaming. Named "ROFUS", it allows a gambler to register for one, three or six months, or permanently. Doing this makes it impossible for the gambler to use the licensed gambling services.

The Danish authorities reckon that this system will allow them to gain control of the unlicensed market and also ensure effective oversight of the licensed gambling market in Denmark.

### 5.1.2 Sweden

Sweden does not offer licensing schemes for Internet lotteries and cash gaming. Swedish regulation does however allow for limited exclusive rights for online gaming to be granted to specific gaming companies and organisations.

The Swedish government has given the state-owned company Svenska Spel, which corresponds to Norway's Norsk Tipping, permission to offer odds betting, number games, scratch cards and bingo on the Internet. Svenska Spel has a permit to offer Internet poker games. ATG, which corresponds to Norway's Norsk Rikstoto, has a permit to offer totalisator gambling on the Internet. In addition, the Swedish Gambling Authority grants permits to non-profit and charitable organisations to offer Internet lotteries. The Internet gaming is restricted to Swedish residents. Profit from the gaming goes to socially beneficial causes and the State, through taxes and charges, or direct earmarking.

It is prohibited to mediate and market online gaming without a permit in Sweden. In two new judgments, the Swedish Supreme Court has ruled that slot machines in Sweden with servers abroad must have Swedish permits to operate in Sweden. In addition, a lower court has judged that the Swedish marketing prohibition entails a prohibition against printing advertisements for foreign gaming companies in Swedish newspapers, and that this prohibition complies with EU law. The relationship to EU law was dealt with by the ECJ; see Sjöberg and Gerdin. The case is to go to the Supreme Court in November 2012.

A change in gambling policy to a licence system modelled on the Danish one has been proposed in Sweden. As at November 2012, it is uncertain whether this will proceed to a change in the law.

### 5.1.3 Finland

Finland does not offer licensing schemes for Internet lotteries and cash gaming. Finnish regulation does however allow for limited exclusive rights for online gaming to be granted to specific gaming companies. Internet lotteries and gaming are not specially regulated in Finland, but are considered to be encompassed by applicable lottery and gambling legislation. To the extent that permission is granted to mediate Internet lotteries and cash gaming, the permit must explicitly state that it covers online gambling.

The Finnish government has given the state-owned company Veikkaus permission to offer odds betting, number games, scratch cards and bingo on the Internet. Fintoto, which corresponds to Norway's Norsk Rikstoto, has a permit to offer totalisator gambling on the Internet. Finland's Slot Machine Association, RAY, which is union of several organisations, has a permit to offer casino games, poker, scratch cards and slot machines on the Internet. The online games are restricted to Finnish residents. Profit from the gaming goes to public-interest causes and the State, through taxes and charges, or direct earmarking.

New rules have come into force to prevent crime and social problems linked to lotteries and cash gaming in Finland. A minimum age limit for gaming of 18 years has been introduced, along with new rules for marketing of legal gaming. From 1 January 2012, rules came into force which entail a transition from a

licensing system to a system that gives the state-owned or state-controlled enterprises Veikkaus, Fintoto and RAY exclusive rights to offer lotteries and cash gaming.

## 5.2 Other European countries

### 5.2.1 United Kingdom

The UK has offered licensing schemes for Internet lotteries and cash gaming since 2007. The UK regulations allow gaming operators to obtain a permit to offer odds betting, bingo, casino games, slot machines and lotteries on the Internet, TV, radio, by phone or other communication channel.

In order to obtain a permit to offer Internet lotteries and cash gaming, some of the technical equipment must be located in the UK (database, server or similar), while the rest of the equipment may be held abroad.

Operators who have been granted a licence to offer Internet lotteries and cash gaming can offer and market their services in the UK and overseas. The regulations do not prevent residents of other countries outside the UK from participating in gambling. Operators who have a permit to offer Internet lotteries and cash gaming from another EU country must be approved by the UK authorities and entered on a white list in order to legally offer and market their gaming in the UK.

There is work in progress in the UK to change the regulations so that operators with a licence in another country must have a licence in the UK if they want to target or market their gambling offerings at UK residents. The new rules were planned to come into force in early 2011, but the proposal is still being debated.

### 5.2.2 Netherlands

The Netherlands partially allow Internet lotteries and cash gaming. Dutch regulation allows for limited exclusive rights for online gaming to be granted to state-owned and state-controlled gaming companies. Private operators cannot obtain permits. A number of gambling operators have made a legal challenge against Dutch gambling regulation in the ECJ, which has decided in the state's favour.

Following the change of government in 2010, the Dutch authorities have initiated work to change the existing regulation. The authorities have made a proposal for new rules that entail a liberalisation of the regulatory framework. It is proposed that the Netherlands should offer licensing schemes for online gambling such as poker, bingo and odds betting, and in order to increase competition, more licences are proposed. The proposal has encountered resistance from the gambling operators already on the market and from politicians worried about an increase in gambling problems. Work on a new draft law is in progress, but since there was an election on 12 September 2012 it is uncertain when or if it will be adopted.

### 5.2.3 Germany

Regulation of lotteries and cash gaming in Germany is primarily devolved to the 16 federal states. Beyond this, the gambling market is controlled by a joint federal agreement. Under this agreement, the gambling market in Germany has traditionally been organised with a state monopoly for lotteries and cash gaming, and with private operators who are permitted to offer casino games and horse-race betting.

The ECJ has criticised the German monopoly scheme since it believes it has been inconsistent, notably due to the state gambling monopoly's large expenditure on advertising. The EU has given signals that the licensing system must be continuously assessed, in order to ensure that it is not contrary to EU law.



The criticism has engendered debate on the future regulation of lotteries and cash gaming in Germany, and in the spring of 2011, 15 of the federal states decided to introduce a licensing scheme with restricted gambling permits. The licensing scheme came into force on 1 July 2012 after 14 of the states had ratified it. 20 operators are to be given permits, for a trial period of 7 years. It was not permitted to offer online gambling.

The state of Schleswig-Holstein went further than the others in its regulation and decided to liberalise the gambling market with no restriction on the number of licences. It will also allow Internet lotteries, poker and casino games to be held. The licensing scheme came into force on 1 January 2012 and the first licences were issued in May 2012.

#### 5.2.4 Belgium

On 1 January 2011, a new law came into force in Belgium that allowed permits for holding Internet lotteries and cash gaming to be granted. Under this new law, licence holders for land-based gambling in Belgium (casinos, slot machines and odds betting) will be able to obtain a permit to organise Internet lotteries and cash gaming. The server must be located in Belgium and the gambler must only have access to licensed games. Under the new regulation, the authorities can block unlicensed gambling and Belgian authorities have prepared a blacklist of unlicensed operators.

The new regulation also includes clear penalty provisions for those offering illegal gambling. In 2011, Unibet was fined NOK 75,000 for having operated gambling activities in Belgium without a permit and was prohibited from offering its gambling products to Belgian residents.

The amendment in the law has also made it an offence for gamblers to participate in illegal gambling. They also have a system that allows gamblers to exclude themselves from online gambling and set an upper limit for how much they can lose per hour.

#### 5.2.5 Italy

Italy has offered licensing schemes for Internet lotteries and cash gaming for a number of years, and is currently the largest market for this type of gambling in Europe.

Regulation also allows for the blocking of websites and obliges Internet service providers to block access to specified websites of foreign gambling operators, and only allows Italian residents access to online gambling that is permitted by the Italian authorities. The restrictions against foreign gambling operators has met resistance in the EU, and in recent years the law has been amended so that Italian residents have more extensive access to foreign lotteries and cash gaming on the Internet.

#### 5.2.6 France

France has offered licensing schemes for lotteries and cash gaming since 2010 and has issued licences for odds betting, totalisator gambling and online poker to many operators. As at 7 February 2012, 46 licences had been issued to 34 operators<sup>27</sup>. It remains prohibited to offer other lotteries and casino games on the Internet.

French regulation also entails a prohibition against offering unlicensed Internet gaming to French residents and the French authorities have proceeded against 550 websites.

The new regulation has opened up a discussion about France's two gambling monopolies that retain monopolies on offering land-based odds betting and totalisator gambling. The competition authorities have

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<sup>27</sup> 2011 Report of the online gambling market in France (Arjel – Autorité de régulation des jeux en ligne).

also expressed unease over the advantages these companies have in their online gaming compared with new operators, in that, for example, they can use their existing customer bases and kiosks to grow their Internet activities.

### **5.2.7 Spain**

On 1 January 2012, new rules came into effect which mean that gambling operators can acquire licences to offer odds betting, casino games and poker on the Internet.

The regulation incorporates no restrictions on the number of licences that may be issued, but the government has signalled 30-50 licences depending on the size of the Spanish gambling market. Efforts are also being made to implement regulation that can effectively prevent Spanish residents from participating in online gaming beyond Spain's borders.

### **5.2.8 Estonia**

Estonia offers licensing schemes for Internet lotteries and cash gaming. The rules came into force in 2010.

Licensing is predicated on the server being located in Estonia. Estonia has granted two operators licences to offer Internet lotteries and cash gaming. Five operators have been granted permits for offering both land-based gambling and Internet gambling.

The new regulation also allows for blocking of payment transactions and of websites (IP blocking) for illegal gambling operators.

### **5.2.9 Poland**

Poland has adopted amendments to its gambling regulations that entail a prohibition against offering Internet gambling without permission. It is also prohibited to take part in such gambling. Breaches of the regulations are penalised. Among the conditions for acquiring a permit are that the servers must be located in an EU member state and that the national domain name (.pl) must be used. Gamblers must be over 18.

In June 2011, the Polish authorities sent a letter to the different gambling regulators in the European countries, asking them to ensure that gambling operators licensed in their countries did not offer gambling in Poland contrary to the Polish regulations. The first licences were issued in January 2012.

## **5.3 Other parts of the world**

### **5.3.1 USA**

In the USA it is prohibited to offer Internet lotteries and cash gaming, except in the state of Nevada which, from 2012, offers licensing schemes for online poker. Other states are also working on bills relating to online poker, and many people believe that, in time, this will lead to the legalisation and regulation of online gambling in the USA. New Jersey wants to offer other online gaming in addition to poker, but this has not yet been decided on.

A major event in 2011 was Black Friday when federal authorities in the USA went into action and prosecuted a number of individuals for having operated illegal poker on the Internet through the Poker Stars, Full Tilt and Absolute Poker gaming companies.

### 5.3.2 South Africa

South Africa is divided into ten zones, where each zone has its own regulation of the gambling sector. South Africa offers casinos and cash gaming, but not Internet gaming. The authorities have not yet taken a position of whether to permit online gaming. For the time being, they have prohibited gaming on the Internet and it is an offence to participate.

### 5.3.3 Asia

In Asia, Macau has really confirmed its position as the Monte Carlo of the East. Macau is now the world's largest casino city, and its turnover surpassed that of Las Vegas back in 2007. Singapore is a newcomer to the Asian casino sector, where the authorities have granted licences for two casinos. Singapore differs from other casino cities in that the casinos are intended as amenities for tourists and not for the local population. Local residents are allowed in, but have to pay for entry. The concept is for the casinos to be just one component of a broader family package for tourists, so-called integrated resorts, with luxurious casino hotels and an extensive offering of activities and entertainment.

Malaysia, Laos, The Philippines and South Korea permit casino operations and there are movements towards liberalisation in Japan and Vietnam too.

## 6. Remote gambling and technological advances

The Internet and online gambling are becoming more and more accessible to everyone. Most Norwegians currently have one or more mobile Internet platforms available to them. We now have free or paid-for wireless Internet access almost regardless of where we are: at home, in our holiday homes, at work, at the library, at airports and train stations, in hotels, on boats and now also on aeroplanes.

Norsk Tipping informed the Spillkonferansen meeting in February 2012 that the gambling industry's global turnover was more than US\$ 400 billion per annum<sup>28</sup>. Provisional figures from the Gaming Authority indicate that in 2011, Norwegians gambled NOK 26.5 billion in the regulated Norwegian market. Our investigations show that around 400,000 Norwegians gambled on the Internet, depositing NOK 3.2 billion with Norsk Tipping and Norsk Rikstoto, and around NOK 5 billion with unregulated online gambling operators<sup>29</sup>.

Many games are available on the Internet, either free or paid. Some Internet stores pack the goods and send them to the purchaser by ordinary post, while others offer the games through different applications that the player can download to his or her gaming device. Once the game has been purchased, the player can play using a gaming device such as Xbox, Playstation, various handheld consoles, traditional computers, tablets and mobile phones/smartphones.

### 6.1 Rapid growth – mobile gaming and social gaming

Technological developments are moving fast, and TVs, mobile phones and the Internet are in the process of merging. Many TV sets are now equipped with a web browser, and are often referred to as smart TVs. A smart TV has wireless Internet access, which makes it possible to bring up social media windows in a small area of the TV screen.

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<sup>28</sup> [www.spillkonferansen.no](http://www.spillkonferansen.no)

<sup>29</sup> The Gaming and Foundation Authority's annual report for 2011. The figure for Norsk Tipping and Norsk Rikstoto is derived from those reported by the operators. The figure for unregulated gambling operators is the Gaming Authority's estimate.

Applications are small programs that were previously only available on smartphones and tablets. It is now possible to purchase and download applications for smart TVs too. There are many different applications, some of them including cash gaming and other gambling services. Norsk Tipping has launched one such application, where the player can be sent coupons to check and get updated lists of winning coupons.

Through a combination of gaming consoles and smart TV with a network connection, one can envisage organised odds betting or major international tournaments of traditional console games, where players pay to take part and can win monetary prizes. There are many websites that offer to set up betting between players who want to wager money that they will win the game they wish to compete in. The website takes the bets and pays out the prize.

In the last year, the Gaming Authority has become more aware of gaming on social media (Facebook and others), and gaming offered via smartphone applications. We note that such games can easily be altered from relatively innocent, legal free games into cash games, and will be watching developments in the area carefully.

## **6.2 Social media – entertainment and cash gaming merge**

Social gaming and gaming on social media are new concepts in the online gaming context. The question as to whether this type of gaming falls within current regulation, or should be regulated, is being increasingly discussed.

There is a lot to indicate that the gaming sector wants to offer more gambling-related gaming products. We are now seeing the social gaming sector offering virtual slot machines, and there is a widespread perception that the interface between casino games and social media is becoming the sector's next focus area. The question as to whether prizes consisting of virtual cash or credits/points have an economic value is difficult and unresolved. Along with other lottery authorities, the Gaming Authority is worried that it is just a short step to offering cash gaming on social media, and that this could happen before any regulation is in place.

Social gaming occurs where two or more individuals are involved in a game. The winner may receive some type of prize or reward, but this is not always the case. Often the game will be visible to others through social media and they can also participate in the game. In practice, very many games will come under the rubric of social gaming. The term "social gaming" is also used of traditional games where several people play with or against each other, but what we mean here are social games that take place on the Internet.

### **6.2.1 Social gaming in social media**

Facebook was originally intended to be an in-house program for university students. In September 2006, the network was opened up to anyone with a valid e-mail address, and there are now thousands of Facebook applications, with various games among the site's most popular. Other social platforms have been launched more recently and also include social gaming.

The report "iGaming Social Marketing and Strategy Report"<sup>30</sup> reveals that more than half of Facebook's users use their Facebook account for some kind of social gaming. The average Internet user spends up to 10% of his or her time online on social gaming.

Social games are powerful marketing tools than can assist with brand building, as well as recruiting new and retaining existing players. There is no doubt that Facebook is an attractive market for gaming companies. The success of companies that have targeted social gaming has shown that it is possible to earn money from

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<sup>30</sup> The report was published by iGaming Business in 2012

poker, bingo and casino games where the player does not stake anything, that players can be motivated to play without monetary prizes, and that entertainment games without cash prizes have a broad reach.

In August 2012, Norwegian media reported that Facebook is to focus on gambling. The Gaming Authority contacted Facebook for assurance that such gaming would not be made available to Norwegian Facebook users. In a letter of 30 August 2012, Facebook Ireland Ltd confirmed that they would start offering bingo with stakes and cash prizes, but only to UK Facebook users aged 18 or over. Norwegian Facebook users would not have access to such games, nor would they be able to see their UK friends' gambling activity on Facebook. The Gaming Authority will be looking more closely at problems associated with this. We have provisionally taken note of Facebook Ireland Ltd's response, but will be following developments closely.

### **6.2.2 What distinguishes social games from other online games?**

Social games are often simple games. All the same, users spend a lot of time playing them. Players can purchase virtual chips or points to progress more quickly through the game and reach higher levels.

A number of factors may characterise social games <sup>31</sup>.

1. **playing with or against someone:** In social games, the player usually plays against, or with, other players. It is difficult to see how a game can be social unless the player relates to other players
2. **based on social platforms:** On social platforms there will be many existing users who will also be potential players. The player will have already registered and identified himself/herself on the social platform, and contact with other players is provided for by the messaging functions.
3. **awareness of friends' gaming activity:** In social games, players can follow what their friends are doing in the game. When playing via social media, the player can see what has just happened in friends' games and prepare his/her next move
4. **informal gaming:** Social gaming is not for the serious, hardcore gamers. Social gaming is for the average player who plays occasionally, and not for extreme players who want to play all day long.

There are many types of social gaming.



Cityville, Farmville and the Smurfs are examples of social gaming in small online communities where the point is to cultivate the soil or produce good crops or otherwise get the online community to work in accordance with defined rules of the game. You can do this by solving tasks in the game. Players can also ask their friends for help in achieving their goals, or pay for extra assistance to get the tasks solved more quickly. Social interaction is important and the rewards for success are usually just honour and respect. In some of these games, you can increase the chances of winning by playing virtual slot machines, with no stake other than the virtual money/points you have won in the game. Since such money cannot usually not be converted into real money, the game will normally not be comprised by existing regulation.

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<sup>31</sup> Source: [www.socialtimes.com](http://www.socialtimes.com)



The games at [www.King.com](http://www.King.com) represent games of skill where players play against each other and can bet and win money. Here it is the player's skill that determines who wins, and the game therefore comes under the existing regulation.



Double Down Casino is a virtual casino where you pay a small amount to participate but cannot win money prizes.

### *6.2.3 Why regulate this market?*

The question as to whether the authorities should regulate social gaming is currently a major topic in discussion in international forums, both in the industry and among regulators.

As in most other countries, social gaming is not specially regulated under Norwegian law, but comes under applicable law if it is possible to win a prize of financial worth, it costs money to participate in the game and the game has a completely or partly random outcome. This means that social games are legal if they are not in direct competition with games regulated under the Gaming Act (Norsk Tipping's games) or meet the definition of a lottery in para 1a of section 1 of the Lottery Act. In practice, social games will normally fall outside of the lottery concept, since there are rarely prizes of financial worth in these games.

Gaming in social media now has a worldwide turnover of several billion kroner, and is the part of the commercial gaming market that is growing fastest. Among social media games, it is casino-like games that are growing most. The prizes have consisted of digital credits (bonus points with a value within the game), virtual cash that can only be used in the game, or similar. As long as no money can be won in the game, the sector, as currently regulated, can freely offer this type of game. At the same time, in certain cases, we are seeing that there is a market for the sale of points and virtual money, and this raises new and interesting problems concerning the concept of winnings.

Both online gaming companies and social gaming companies are showing an increasing interest in offering more gambling-related gaming products, such as casino-like games. Many believe that the interface between casino games and the social media will be the industry's next big focus area and it is then a short step to offering money gaming in our social media. A completely different side of the issue is that casino games in social media are suited to recruiting children and other vulnerable groups to cash gaming, which the Gaming Authority sees as extremely unwelcome.

Social gaming has now reached many Norwegian players and the Gaming Authority recognises that, in the time ahead, gaming in social media will require supervision and control in line with other lotteries and cash gaming. The Gaming Authority believes that Norwegian gambling regulation must be flexible and take account of rapid technological developments. We will work to ensure that any amendments to the Norwegian regulations are designed both to be adapted to existing games and to be adaptable to new games that come



out. It is perhaps time to take a broader perspective and look at the gaming market as a whole, without drawing the traditional distinction between cash gaming and other gaming.

### 6.3 Unregulated areas

Free games, games of skill and games without prizes are not currently regulated under cash gaming legislation. The Lottery Act only regulates gaming where the outcome is beyond the participant's control (completely or partly random outcome)<sup>32</sup>, and not gaming where the outcome rests fully and entirely on the player's abilities and skills. The Gaming Authority has not evaluated the many different console games in terms of whether the outcome is completely or partly random, but we nonetheless consider that most of them are likely to be games of skill which fall outside of the concept of randomness in the Lottery Act. This is also likely to apply to very many other games such as online games, role-play games and strategy games.

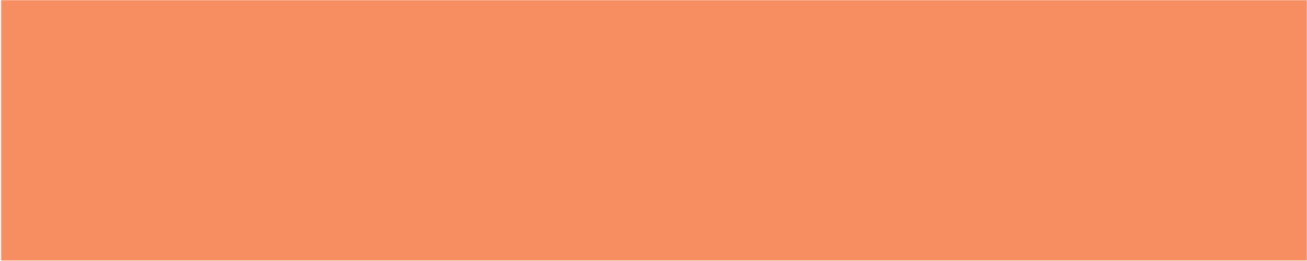
In practice, it has proved problematical that many games now available fall outside of the Lottery Act. In most cases, this is because the lottery definition of completely or partly random outcome is not fulfilled. Other games are in a grey zone, for example online communities where games are offered with bets and winnings in the form of play money. One can imagine cases where players could purchase play money and later convert it into real money, which instantly creates conditions that are closer to the Lottery Act. NOVA's 2010 youth survey shows a correlation between young people's use of social media and their participation in cash gaming. Around 40% of young people play games on Facebook at least once a month. Since we recognise the industry's ability to easily convert "innocent fun" on Facebook into cash gaming, it is important for the authorities to take a considered stance on the issue of regulation.

Many people contact the Gaming Authority concerning other games which, for various reasons, are found to be problematical, without these games falling within the definition of a lottery. Over a number of years, we have had contact with other administrative agencies with related areas of responsibility, including the Norwegian Media Authority and the Consumer Ombudsman, and the Gaming Authority has the impression that gaming that does not come under lottery legislation is not regulated by other laws either. There is therefore a legal vacuum for games that are outside of the lottery definition.

The technological opportunities available to the gambling market are nearly unlimited, which points to the problems we will face in the near future. The lottery and gambling authorities must therefore place great emphasis on keeping abreast of technological developments in the gambling sector.

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<sup>32</sup> Act of 24.02.1995 on lotteries etc. section 1, paragraph 1 a



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