

English translation of section 10 of the Tips- og Lottoloven (the Games, Lotteries and Betting Act)(passed on 25 March 2003) and the relevant explanatory notes

”10.-Any person who intentionally or grossly negligently

- (i) provides games, lottery or betting in Denmark without a licence pursuant to section 1 of this Act,
- (ii) facilitates access to games, lotteries or betting outside the scope of a licence pursuant to section 1 of this Act,

shall be punishable by fine or imprisonment up to 6 months.

(2) At aggravating circumstances, included herein especially repetition or where the offence has been particularly grave, the penalty pursuant to subsection (1) may increase to 12 months' imprisonment.

(3) Any person who intentionally or grossly negligently

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

shall be punishable by fine.

(4) The tax evaded the State, cf. section 1 A, shall be compensated.

(5) Criminal liability pursuant to the provisions in Part 5 of the Danish Criminal Code may be imposed on companies etc. (legal persons).

(6) The Minister of Taxation is authorised to monitor the gaming market in order to ensure the observance of the rules in subsections (1) to (3). Detailed rules pertaining to monitoring of the gaming market can be fixed. The costs of the monitoring shall be borne by the company mentioned in section 2(1), first sentence, and the Minister of Taxation shall be authorised to lay down specific rules on the fees which shall cover the costs.

11. – Where it is deemed that an offence will not result in a severer sentence than a fine, the Minister of Taxation, or the person authorised by the Minister to do so, may propose that the case be settled outside the courts if the person in question pleads guilty to the offence and concomitantly declares himself willing, within a specified time limit, which can be extended upon request, to pay the fine fixed in the proposal.

(2) In respect of the proposed settlement mentioned in subsection (1) the provision on charging, as stated in section 831 of the Danish Administration of Justice Act, is similarly applicable.

(3) If the fine is paid in due time, or if it is collected or served according to agreement, further prosecution will abate.

12. - The execution of searches in cases concerning breach of the provisions in this Act shall be consistent with the Danish Administration of Justice Act's rules on searches in cases which according to the law may result in a custodial sentence.

Explanatory notes

Section 10

Subsection (1)

The Act is a compilation of Væddeløbsloven (the Danish Horse Racing Act) and the Tips-og lottoloven (the Games, Lotteries and Betting Act). To a great extent it is proposed that the provisions in section 12 of the Danish Horse Racing Act are continued in the Games, Lotteries and Betting Act. Section 12 in the Danish Horse Racing Act has the same objective as the prevailing section 10 in the Games, Lotteries and Betting Act, but is more recent and has a more accurate wording. The provisions of the Act are extended and modernised with the intention of adapting the Act to its scope.

Furthermore, it is proposed that lotteries and other games than betting be included in the scope of the provision, which is concordant with the scope of the Act in section 1. The proposal is motivated by the fact that the Internet gaming offers, targeted directly at Danish consumers, have become very diverse within the last couple of years as the gaming offers, in addition to bookmaking, include many more or less uncontrolled gaming types etc. The intent of the broader wording is to safeguard the permitted gaming and the companies which are subjected to demands on safety, payment of prizes and allotment of money for benevolent purposes against gaming and companies that are not subjected to the same type of demands.

The intention of this Act is not to amend Lotteriforbudsloven, cf. the Lottery Prohibition Act dated 6 March 1869. In the event that an offence is covered by the Lottery Prohibition Act as well as the Games, Lotteries and Betting Act, the provisions in the Lottery Prohibition Act shall prevail.

(i)

By continuing the provision in section 12 of the Danish Horse Racing Act, the expression "instigation of gaming" will be replaced by "Game Provider". According to the current provisions in the Games, Lotteries and Betting Act facilitation of betting by others than the licensee is illegal. The said provision clearly makes facilitation of gaming illegal if a foreign gaming company uses sales channels to sell the actual game in Denmark. However, it is doubtful whether the provision covers foreign gaming sold from abroad directed at Danish players. Consequently, it is necessary to make clear that these games are covered by the scope of the provision.

By using the expression "provides" the amended provision will get a wider scope than before, as the provision will also cover foreign games, lotteries and betting targeted directly at and made available for Danish players. The intent of the amendment is to

make clearer that it according to Danish law is illegal for foreign game providers to offer gaming, which by its marketing methods, choice of language or selection of games can be said to be targeted directly at Danish players.

Games offered via the Internet should be considered to be offered in Denmark if the offer is directed at the Danish market. The latter is e.g. the case if the game provider's homepage is written in Danish, if the players are given advice and guidance in Danish (Danish customer service), or if the game provider's offering of betting makes it clear that the gaming is directed at Danish players.

Even though it is assessed that it will be difficult to proceed against game providers residing outside Denmark, the provision will send a clear message internationally. Going forward the provision will make it easier for the Danish authorities to enter into agreements with authorities in other countries on impeding offering of gaming from these countries to Denmark.

Furthermore, the provision will make it possible to punish persons living in Denmark who have established gaming companies outside Denmark with the intention of circumventing Danish legislation by offering gaming directly to Danes via the Internet.

(ii)

The expression "facilitation" is maintained in subsection (1) (ii). In this Act "facilitation" is to be understood as any activity intended to establish gaming or to increase the participation in illegal gaming, offered electronically or in any other way. In case an activity is defined as advertising, such activity is independently regulated by section 10(3) (iii), and hence falls outside "facilitation" as defined in section 10(1).

For instance it will be deemed to be facilitation if links to homepages to game providers, who do not have a licence to offer gaming in accordance with this Act, are used. This means that the provision makes it illegal to help players in Denmark, physically or digitally, to play by game providers without a licence.

Moreover, banks' setting up of bank accounts in Denmark for gaming providers who cannot legally offer gaming in Denmark will be considered to be facilitation within the meaning of this Act. However, banks are not under obligation to check their customers' bank accounts and how these are used, and can therefore normally not be punished unless the bank already was or should have been aware of the offence.

Actual information offices for gaming providers without licences in Denmark will also be covered by the term "facilitation of participation" in case the office runs a business based upon advertising or distribution of information about the gaming possibilities offered by the gaming providers. Editorial mention of illegal gaming in printed or digital news media will, however, not be covered.

Assisting to breach of the provisions will be punishable in pursuance to the general rules in section 23 of the Danish Criminal Code.

For example, persons who work for illegal gaming providers and who have contributed significantly to the company's business may be regarded as assisting in a breach. Such persons could e.g. be sales agents and persons who collect information about Danish sports events for the gaming providers' betting.

Private persons or companies whose servers contain homepages that contravene the ban in the provision may also be covered by the assisting to breach provision. To punish the so-called "hosts", it is normally required that the authorities have contacted the "host" with an order on deletion of the illegal homepage, and that the "host" does not act immediately in accordance with the order.

Subsection (2)

It is proposed that the sentence pursuant to subsection (1) can increase to 12 months' imprisonment. According to the proposal imprisonment for 12 months could be relevant at aggravating circumstances, especially at repeated breach or when the offence is especially grave.

The proposal is identical to the current provision in section 10(1), second sentence.

Subsection (3)

Actually, (i) and (ii) are equivalent to the current provisions in section 12 (3) (i) and (ii), of the Danish Horse Racing Act, but the wording of the provision has been adapted in connection with the compilation of the two acts. It is, however, proposed to make it clear that in order for breach of the ban in (i) to be punishable, the breach shall be for commercial purposes. This amendment is made to ensure that chairmen of betting clubs etc. are not criminalized for facilitating participation in legally offered games.

It is suggested to add a ban on advertising for games, lotteries and betting which do not have a licence in accordance with this Act.

The amendment is consistent with the current ban in section 12(3) of the Danish Horse Racing Act, but is a clarification of section 10(4) of the current Games, Lotteries and Betting Act.

The aim of the ban is to protect gaming providers, who have a licence from the Danish authorities, against competition from companies without such a licence and who cannot, hence, legally offer or facilitate participation in gaming in Denmark.

In this Act advertising is taken to mean any kind of advertisement or other passing on of information about the gaming provider's business or gaming range. However, the ban does not apply to editorial mention in printed or digital news media.

The ban is effective independent of the type of medium used. Consequently, advertising in printed media, on the radio, on TV and digital media, e.g. in the form of banner advertisements, is not allowed.

Advertisement for the gaming provider's company, herein included the gaming provider's homepage, address etc. is also illegal pursuant to section 10(3) (iii).

The current Games, Lotteries and Betting Act contains a ban on participation in betting which is instigated or facilitated illegally. It is proposed that this ban is lifted and that participation in illegal gaming, whether offered in the traditional way or via the Internet, shall be exempted from punishment. In that way the authorities' endeavours can focus on the providers and facilitators of illegal gaming who profit from the players' participation.

Subsection (4)

According to the bill the amount evaded the State, cf. Section 1 A, shall be compensated. The proposal is consistent with the provision in the current section 10(3).

Subsection (5)

According to the bill, criminal liability can be imposed on companies etc. (legal persons) pursuant to the provisions in Part 5 of the Danish Criminal Code. The bill is consistent with the current provision in section 12(4) of the Danish Horse Racing Act.

Subsection (6)

Today there is no organised monitoring of the ban in this Act, which among other things is aimed at limiting economic crime, protecting the consumers against gaming that is not subjected to identical requirements, and protecting the licences issued in pursuance to this Act.

According to the proposed amendment, the Minister of Taxation is authorised to monitor the gaming market and to fix specified rules in that respect.

The thought is to delegate the competency to monitor the market to the Danish Gaming Board, which is an entity under the Central Customs and Tax Administration. It is estimated that one to two full-time equivalents corresponding to DKK 0.5 to 1m will have to be spent on monitoring of the gaming market.

In consistence with this proposed amendment and amendment no. 5, the costs of monitoring shall be borne by Dansk Tipstjeneste Group and the Danish state lottery. The Minister of Taxation shall be authorised to fix detailed rules on fees covering these costs which are to be divided between Dansk Tipstjeneste Group and the Danish state lottery.

The Danish Gaming Board's monitoring of the gaming market will constitute an aggregate cost for Dansk Tipstjeneste Group and the Danish state lottery of DKK 0.5 to 1.0m annually, equivalent to the Danish Gaming Board's costs vis-à-vis the monitoring.

EU legislation

It has been concluded by the European Court of Justice in a number of cases that due to the special circumstances applying to the offering of gaming, the national authorities should have discretionary influence when legislation is formulated in the field. The discretionary influence includes stipulation of the required rules and regulations which on a specific level are to protect the participants of gaming and on a more general level are to protect the “ordre public” taking into consideration the socially and culturally determined differences of the individual member states. The discretionary influence covers the specific rules on arrangement of the games, the size of the stakes and use of the profit the games yield. So not only are the national authorities entitled to decide whether it is necessary to restrict a game but also whether the games should be prohibited – conditional upon such limitations not being discriminatory. References are made to the sentences passed by the European Court of Justice in the Schindler case (case C-275/92), in the Läärä case (case C124/97) and the Zenatti case (Case C-67/98).

These sentences imply that even if business, based on giving persons the possibility of participating in money gambling against payment, is covered by the EU Treaty’s rules on free provision of services, and national legislation on lotteries and other money gambling consequently must be consistent with the EU Treaty’s Article 49 on ban on restrictions in the free provision of services between the member states, national legislation that limits or prohibits lotteries and money gambling can be legal, when it is motivated by the considerations which the European Court Justice recognises in the sentences and is not discriminatory.

The proposed ban on offering, facilitation of participation in and marketing of games, lotteries and betting, which cannot legally be offered in Denmark, includes any game which has not been granted a licence. The ban is not dependent of the provider’s nationality or the origin of the game and therefore cannot be said to be discriminatory.

The overall objective of the proposed ban is to limit the spread of pathological gambling and the economic crime which is often the result of money gambling and to protect the consumers against participation in games not subjected to the same demands to safety and payment of prizes as the games that have been granted a licence. Furthermore, the intention of the ban is to protect the legal games, which must transfer money to benevolent purposes, against competition from games that are purely commercial and not subjected to the same requirements. In accordance with the European Court of Justice’s practice these considerations can be made legally by fixing of national rules in the field and therefore the bill is deemed to be consistent with EU legislation.