

REGULATION OF AUSTRIA'S CASINO INDUSTRY: POLITICS, PROTECTIONISM, AND PROFITEERING

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ABSTRACT

The regulation of casinos in Austria is unique because of the gambling monopoly vested into the Austrian Government by the *Gambling Act*. By law and regulation, casino operations and politics are uniquely intertwined in Austria. The Ministry of Finance is the sole federal gambling authority and responsible not only for the distribution of casino licenses but also for the implementation of measures to protect gamblers and prevent money laundering and fraud in casinos. On the surface, the design of this system appears to be set up for conflicts of interest to arise.

This article critically outlines the evolution and operation of Austria's laws relating to casinos, drawing particular attention to the concerns arising from political participation and interference in Austria's casino industry and the federal Ministry of Finance's obligation to regulate casino operations and raise taxes whilst protecting problem gamblers and other vulnerable groups. The article first explains the historical development of casino gambling in Austria, outlines the legal framework of the State's gambling monopoly, before turning to the licensing procedure and governance of Austrian casinos, and lastly to regulations concerning the protection of casino gamblers. The article closes with a summary of observations and a reflection on the way ahead.

I. INTRODUCTION

The regulation of casinos in Austria is unique in the European Union and worldwide because of the gambling monopoly vested into the Austrian

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Government by the *Gambling Act*.¹ There are, however, no fully state-owned casinos; instead the right to operate casinos has been granted to a sole business enterprise, the partly state-owned, publicly listed Casinos Austria AG.

Through shares and regulation, casino operations and politics are uniquely intertwined in Austria. The Ministry of Finance is the sole federal gambling authority and responsible not only for the distribution of casino licenses but also for the implementation of measures to protect gamblers and prevent money laundering and fraud in casinos.² On the surface, the design of this system appears to be set up for conflicts of interest to arise, also considering that the Austrian Government financially benefits from casino revenues and through taxation.

The list of concerns and scandals attributed to this casino-government nexus is long-standing and growing. Most recently, during the conservative-far right Coalition Government that ended in May 2019, a highly controversial appointment of the financial director of Casinos Austria was made by the far right Freedom Party of Austria (Freiheitliche Partei Österreich, FPÖ) despite a headhunter describing the candidate as unqualified for the position due to his lack of experience in managing a big company.³ The so-called ‘casino affair’ that followed this appointment once more raised concerns about political interference in the management of Austrian casinos and brought Austria’s casino regulation into the international spotlight.⁴

This article critically outlines the evolution and operation of the regulation and management of Austria’s casinos, drawing particular attention to the concerns and conflicts arising from political participation and interference in Austria’s casino industry and the federal Ministry of Finance’s obligation to regulate casino operations and raise taxes whilst protecting problem gamblers and other vulnerable groups. In order to examine Austria’s casino regulation and to make the content of this paper more accessible to an international audience, the article first explains the historical development of casino gambling in Austria (Part II), outlines the legal framework of the State’s gambling monopoly (III), before turning to the licensing procedure and governance of Casinos Austria AG

¹ GLÜCKSSPIELGESETZ [GSPG] [GAMBLING ACT] BUNDESGESETZBLATT [BGBl] No. 620/1989, as amended, https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1989_620/ERV_1989_620.pdf (hereinafter “Gambling Act”).

² GLÜCKSSPIELGESETZ-NOVELLE 2010 [GSPG-NOVELLE 2010] [GAMBLING ACT AMENDMENT 2010] BUNDESGESETZBLATT I [BGBl I] No. 73/2010, § 5, ¶ 5, https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBlA_2010_I_73/BGBlA_2010_I_73.html.

³ Josef Redl & Nina Horaczek, *Dem Glück Auf Die Sprünge Geholfen?*, FALTER (Aug. 20, 2019), <https://www.falter.at/zeitung/20190820/dem-glueck-auf-die-spruenge-geholfen>.

⁴ Sam Jones, *Austria Prepares to Give Casino Scandal Probe Sweeping Powers*, FIN. TIMES (Nov. 26, 2019), <https://www.ft.com/content/d5c6876c-1023-11ea-a7e6-62bf4f9e548a>.

(IV), and lastly to regulations concerning the protection of casino gamblers. The article closes with a summary of observations and a reflection on the way ahead in the concluding part V.

II. HISTORICAL DEVELOPMENT OF THE AUSTRIAN CASINO INDUSTRY

Public gambling was a rare occurrence in Austria up until the 18th century. For the most part, public gambling was considered to be an offence against public order and safety.⁵ Only privileged individuals and the state-owned 'Oriental Compagnie' trading company were allowed to offer lottery games; the latter offered gambling to the public commercially as a way to raise revenue, especially for the State.⁶ While public gambling was widely prohibited, the lottery became a financial success, much to the benefit of state coffers.⁷

A. *Origins of the gambling monopoly.*

Empress Maria Theresa of Austria (Marie Thérèse d'Autriche) changed gambling laws to set up a monopoly over gambling for the State in a manner that continues to exist in Austrian law today. In 1751, she issued a lease over the right to operate the existing lottery to an Italian company led by Conte Ottavio di Cattaldi who had earned himself a reputation for successfully — and profitably — operating lotteries in Italy.⁸ Payments for this lease generated considerable income for her government and later served as the model for today's casino levy.⁹ Cattaldi held the lease until 1770 when Andre Baratta & Comp took over the company.

In 1787, emperor Joseph II nationalized the lotteries and formed a state-owned oversight entity (called the 'Lottogefälligkeitsdirektion') to ensure more effective control over existing gambling operations.¹⁰ Furthermore, the new regulations permitted private companies to obtain the right to organize games of chance if they agreed to pay 10 percent of their revenue to the State.¹¹

Lotteries thus became the first type of state-controlled gambling in Austria. This system was established purely for fiscal reasons, in particular to prevent

⁵ ERNST SEELIG, *DAS GLÜCKSSPIELSTRAFRECHT* 133–134 (1923).

⁶ HERMINE BREITSCHÄDEL, *DAS GLÜCKSSPIELWESEN UND DAS GLÜCKSSPIELMONOPOL IN ÖSTERREICH* 7 (1961).

⁷ WALTER SCHWARTZ, *STRUKTURFRAGEN UND AUSGEWÄHLTE PROBLEME SES ÖSTERREICHISCHEN GLÜCKSSPIELRECHTS* 8–9 (1998).

⁸ JULIA KOHL, *DAS ÖSTERREICHISCHE GLÜCKSSPIELMONOPOL* 8 (2013); PETER ERLACHER, *GLÜCKSSPIELGESETZ* 139 (1997); MARK LUTTER, *MÄRKTE FÜR TRÄUME: DIE SOZIOLOGIE DES LOTTOSPIELS* 42 (2010).

⁹ WALTER SCHWARTZ, *STRUKTURFRAGEN UND AUSGEWÄHLTE PROBLEME SES ÖSTERREICHISCHEN GLÜCKSSPIELRECHTS* 10–11 (1998).

¹⁰ *Id.*; KOHL, *supra* note 8 at 8–9; ERLACHER, *supra* note 8 at 139.

¹¹ KOHL, *supra* note 8 at 8–9.

Austrians from going to another country to gamble and thus increase state revenue.¹² Moreover, lotteries were the only legalized game of chance. Casino games that are common today, such as poker, baccarat or roulette were prohibited. Offering games of chance to the public was a criminal offence¹³ as was allowing a venue to be used for gambling and participating in a prohibited game (i.e. gambling).¹⁴

B. A short history of Austria's casinos

It was not until the inter-war years that games that are commonly played in casinos today were first offered legally when in 1933 the *Regulation over Exercising the Exclusive Right under Federal Law to Operate Casinos and 'Kursaal' Entertainment Halls* (Verordnung über die Ausübung des ausschließlichen Rechts des Bundes zum Betriebe von Spielbanken und Kursaalhallen) was enacted.¹⁵ Much like the regulations established under the reign of Maria Theresa in 1751, the right to operate casinos was vested in the Austrian Federal Government who was authorized to transfer this right to private entities by way of licensing.¹⁶

The Österreichische Casino AG obtained the first casino license under the *Casino Regulations 1933* and opened its first casino in 1934 in the exclusive Panhans Hotel located in the Semmering mountain area, a popular holiday spot some 80 kms south of the capital Vienna. By 1937, Österreichische Casino AG had opened seven more casinos, most of them in popular tourist destinations across Austria, including Baden in Lower Austria, Salzburg City, Kitzbühel in Tyrol, and Bad Gastein in Salzburg State. During the summer months, additional casinos were operating in Pörtschach in Carinthia, and in Ischgl and Igls in Tyrol.¹⁷ Unlike the *Gambling Act* of 1989, which remains in operation today, the *Casino Regulations 1933* did not limit the number of casino licenses that can be issued.¹⁸

The *Casino Regulation 1933* gave the Ministry of Finance a central role in the enforcement of the rules under the Regulations, a role the Ministry continues to exercise today. This includes full supervisory powers over casino operations

¹² HERMINE BREITSCHÄDEL, DAS GLÜCKSSPIELWESEN UND DAS GLÜCKSSPIELMONOPOL IN ÖSTERREICH 7 (1961).

¹³ STRAFGESETZ ÜBER VERBRECHEN, VERGEHEN UND UEBERTRETUNGEN [STG] [ACT ON CRIMES, MISDEMEANORS AND TRANSGRESSIONS] § 522 (1852).

¹⁴ *Id.*

¹⁵ VERORDNUNG DES BUNDESMINISTERS FÜR FINAZEN [ORDINANCE OF THE FEDERAL MINISTER OF FINANCE] BUNDESGESETZBLATT [BGBl] No. 463/1933 (hereinafter "Casino Regulation 1933").

¹⁶ *Id.* at §1.

¹⁷ MARLENE HAARKAMM, MACHEN SIE IHR SPIEL! EINE UNTERSUCHUNG ZUR ENTWICKLUNG DES GLÜCKSSPIELS MIT BESONDERER BERÜCKSICHTIGUNG DER CASINOS AUSTRIA AG 76 (2007).

¹⁸ Gambling Act § 21(5).

and the authority to determine the amount and set the rules for the collection of the casino levy.¹⁹ While more recent gambling laws in Austria seek to balance fiscal motivations with the protection of gamblers,²⁰ the central role and influence of the Ministry of Finance over casino regulations and the gambling industry has not changed.

In their early years of operation, Austrian casinos were only open to foreign tourists while Austrian citizens were barred from entry.²¹ Nazi-Germany's decision to impose a fee of 1,000 Reichsmark on German nationals wanting to enter Austria (known as the 'Tausend Mark Sperre') deterred most travelers from visiting Austria with the result that government revenue from casinos greatly decreased.²² As a response, the Austrian legislator amended the *Casino Regulations 1933* to give the well-heeled members of the exclusive 'Austrian Cercle' club permission to enter and gamble in casinos.²³ Casinos had to close their doors altogether after annexation of Austria by Nazi-Germany in 1938.²⁴

After the end of World War II, in 1949 the Österreichische Casino AG regained its casino licenses which it held until December 31, 1966.²⁵ A new *Gambling Act* of 1962²⁶ perpetuated the general view that casinos were leisure facilities set up primarily for tourists.²⁷ To obtain a casino license, applicants needed to provide proof of how to achieve the best financial outcome of running a casino and were under an obligation to run (and build where necessary) casinos

¹⁹ Casino Regulation 1933 § 5.

²⁰ GLÜCKSSPIELGESETZ-NOVELLE 2010 [GSPG-NOVELLE 2010] [GAMBLING ACT AMENDMENT 2010] BUNDESGESETZBLATT I [BGBl I] No. 73/2010, https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2010_I_73/BGBLA_2010_I_73.html.

²¹ Casino Regulation 1933 § 9(1).

²² Haarkamm, *supra* note 17 at 77.

²³ Casino Regulation 1933 as amended by KUNDMACHUNG VOM 2. JULI 1934 BETREFFEND DIE ZULASSUNG ZUM SPIELE IN SPIELBANKEN UND BEI KURSAALSPIELEN [ANNOUNCEMENT OF JULY 2, 1934 REGARDING THE ADMISSION TO GAMING IN CASINOS AND AT KURSAAL GAMES] BUNDESGESETZBLATT [BGBl] No. 06/1934; Rainer Fleckl et al., *Wo die Kugel deit 1934 Rollt*, ADDENDUM, Oct. 12, 2017), <https://www.addendum.org/gluecksspiel/geschichte-casinos-austria/>.

²⁴ Haarkamm, *supra* note 17 at 77.

²⁵ GLÜCKSSPIELGESETZ [GSPG] [GAMBLING ACT] BUNDESGESETZBLATT I [BGBl I] No. 171/1965, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1965_171_0/1965_171_0.pdf.

²⁶ GLÜCKSSPIELGESETZ [GSPG] [GAMBLING ACT] BUNDESGESETZBLATT I [BGBl I] No. 169/1962, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1962_169_0/1962_169_0.pdf (hereinafter "Gambling Act 1962").

²⁷ GLÜCKSSPIELGESETZ [GSPG] [GAMBLING ACT] BUNDESGESETZBLATT I [BGBl I] No. 407/1974, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1974_407_0/1974_407_0.pdf

in areas with high numbers of international visitors.²⁸ As a result, to this day nearly all Austrian casinos are located in or near popular tourist destinations.²⁹

As the expiry of the post-war casino licenses drew closer, then Chancellor (Prime Minister) Josef Klaus instructed his chief economic advisor Leo Wallner to garner ideas to revamp Austria's casino sector. This led to the establishment of the Österreichische Spielbanken AG, which operates as Casinos Austria AG since a name change in 1985.³⁰ On January 1, 1968, the Österreichische Spielbanken AG obtained the licenses to run all existing casinos across Austria and took over the casino venues of the Österreichische Casino AG.³¹ Ever since, Casinos Austria has been the only company operating casinos in Austria. Casinos Austria presently operates twelve casinos across the country.

III. GAMBLING MONOPOLY

A. Legislative basis.

Section 3 of the *Federal Act of 28 November 1989 to Regulate the Gambling Sector*, or *Gambling Act* for short, grants the Austrian Government the exclusive right to conduct games of chance. The term 'gambling monopoly' (Glücksspielmonopol) is expressly used in this context. The legislative material to the Act argues that it is in the community's best interest to have a state-regulated gambling industry and for the State to have full control over existing legal gambling options in order to protect gamblers and to be able to effectively monitor the gambling industry.³²

Games of chance are defined in s 1(1) of the *Gambling Act* to mean 'a game in which the result of the game is decided only or predominantly by chance'. Subsection 1(2) sets out a non-exhaustive list of games of chance for the purposes of this Act which includes, inter alia, roulette, poker, blackjack, two aces, bingo, keno, baccarat, as well as common variations of these games. Section 3 notes that the *Gambling Act* may make exceptions to the monopoly, which are further set out in Sections 4 and 5. They include, firstly, games of chance offered privately (Section 4(1)). The goal here is to decriminalize private

²⁸ Gambling Act 1962 § 21.

²⁹ PETER ERLACHER, GLÜCKSSPIELGESETZ 141-42 (1997).

³⁰ Haarkamm, *supra* note 17 at 78.

³¹ GLÜCKSSPIELGESETZ [GSPG] [GAMBLING ACT] BUNDESGESETZBLATT I [BGBl I] No. 226/1972, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1972_226_0/1972_226_0.pdf.

³² Nationalrat [NR] [National Assembly] [Gesetzgebungsperiode] [GP] Beilage [Blg] No. 1067 15, https://www.parlament.gv.at/PAKT/VHG/XVII/I/I_01067/imfname_265403.pdf

gambling which is conducted for merely for low-value entertainment.³³ Secondly, exceptions are made for the operation of ‘automated gambling machines’ (commonly referred to as poker or slot machines) which are regulated under the laws of Austria’s nine States (Section 5).

Despite the term ‘gambling monopoly’, the Austrian State does not itself offer or organize any kind of gambling or own or run any gambling venues. Casinos as well as the lottery (Sections 6–12) are run by private entities, some of which are part-owned or partly controlled by the State. The Austrian Government maintains full control over the scope of the gambling monopoly and over the right to transfer the operation of certain games of chance to other entities, as provided for in the *Gambling Act*.³⁴ Sole responsibility has been vested in the Ministry of Finance which can transfer the right to operate casinos and entrust a private entity with organizing games of chance by way of licensing (Section 21). That right has been transferred, as mentioned, to Casinos Austria, a company that operates all of Austria’s 12 casinos, that generates considerable income for state coffers,³⁵ and that, operating as Casinos Austria International (CAI), has grown into one of the ‘leading players in the global gaming industry’.³⁶

B. Constitutional issues

By definition, a monopoly held by the State excludes private entities from offering the services captured by that monopoly.³⁷ Nevertheless, a private entity manages the casino business across Austria; a market that is presently limited by the State to fifteen casino licenses each valid for a period of fifteen years.³⁸ Twelve of these licenses are currently held by Casinos Austria; the remaining three licenses are currently dormant after their last allocation had to be annulled.

The creation of a monopoly over an industry such as gambling, and the decision by the Ministry of Finance over whether and to whom to issue licenses, limits the constitutionally enshrined right to freely choose and pursue his or her occupation under article 18 of the *Basic Law on the General Rights of Nationals*.³⁹ Restrictions of this right are permissible only if they are in the public

³³ Ronald Bresich, Alexander Klingenbrunner, & Gernot Posch, § 4 *Ausnahmen aus dem Glückspielmonopol* in GLÜCKSSPIELGESETZ 116 [4]–[5] (Gerhard Strejcek & Ronald Bresich eds., 2d ed. 2011).

³⁴ HEINZ MAYER, STAATSMONOPOLE 265 (Springer 1976); PETER ERLACHER, GLÜCKSSPIELGESETZ 114 (2d ed. 1997).

³⁵ PETER ERLACHER, GLÜCKSSPIELGESETZ 143–46 (2d ed. 1997).

³⁶ CASINOS AUSTRIA INTERNATIONAL, *Four Decades of Success*, <https://www.casinosaustriainternational.com> (last visited on Apr. 7, 2021).

³⁷ HEINZ MAYER, STAATSMONOPOLE 6 (Springer 1976).

³⁸ Gambling Act § 21(5), (7).

³⁹ STAATSGRUNDGESETZ VOM 21. DEZEMBER 1867, UBER DIE ALLGEMEINEN RECHTE DER STAATSBURDER FÜR DIE IM REICHSRATHE CERTRETENEN KÖNIGREICHE UND LÄNDER – STGG [Basic Law of December 21, 1867 on the General Rights of

interest and are able to meet their purpose adequately and proportionately.⁴⁰ In the context of the Austrian gambling monopoly, that purpose is to prevent problem gambling and crimes committed in connection with gambling.⁴¹

It has been argued that the more restrictive the regulation imposed on gambling, the easier it is to contain and reduce so-called ‘external costs’, such as problem gambling and gambling-related criminal activity.⁴² These cost factors, problem gambling in particular, do not only affect those gambling or otherwise frequently visiting gambling venues, but also their families, their place of employment and wider social environments, and the general public that has to bear the costs and provide services and infrastructure to deal with the consequences of problem gambling and criminal activities. On this basis, Austria’s Constitutional Court (Verfassungsgerichtshof (VfGH)) in 1989 declared the limitations placed on the availability of casino licenses to be in conformity with the *Austrian Constitution*, arguing that this set-up ensures effective monitoring of the casino industry by the Austrian Government.⁴³

In this context it is worth noting that the number of available casino licenses under Austria’s casino laws was limited by Section 21(5) of the *Gambling Act* of 1962. In 1965, that number was set at seven;⁴⁴ in 1972, an eighth license was added ‘for the purpose of promoting tourism.’⁴⁵ The number of licenses has since increased to a total of fifteen, a number that has not changed since 2010 (s 21(5) *Gambling Act 1989*). This increase has been justified by the legislator by the growing wealth of the Austrian population which, in turn, has led to a rise in demand for casino gambling.⁴⁶ It is thus evident that fiscal interests drive the size

Nationals in the Kingdoms and Lander represented in the Council of the Realm] REICHSGESETZBLATT [RGBL] No. 142/1867, as enacted in BUNDESGESETZBLATT [BGBl] No. 684/1988, art. 18, <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/84888/94739/F1929157981/AUT84888.pdf>.

⁴⁰ THEO ÖHLINGER & EBERHARD HARALD, VERFASSUNGSRECHT 885–93 (12th ed. 2019).

⁴¹ Bresich, et al., *supra* note 33 at 89.

⁴² *Id.* at 243–44.

⁴³ Nationalrat [NR] [National Assembly] [Gesetzgebungsperiode] [GP] 17 Beilage [Blg] No. 1067 15, https://www.parlament.gv.at/PAKT/VHG/XVII/I/I_01067/imfname_265403.pdf; Verfassungsgerichtshof [VfGH][Constitutional Court] Sept. 30, 1989, B1278/88, https://www.ris.bka.gv.at/Dokumente/Vfgh/JFR_10109070_88B01278_01/JFR_10109070_88B01278_01.pdf.

⁴⁴ GLÜCKSSPIELGESETZ [GSPG] [GAMBLING ACT] BUNDESGESETZBLATT I [BGBl I] No. 171/1965, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1965_171_0/1965_171_0.pdf.

⁴⁵ Nationalrat [NR] [National Assembly] [Gesetzgebungsperiode] [GP] 10 Beilage [Blg] No. 280 1–2, https://www.parlament.gv.at/PAKT/VHG/XIII/I/I_00280/imfname_318538.pdf.

⁴⁶ Nationalrat [NR] [National Assembly] [Gesetzgebungsperiode] [GP] 17 Beilage [Blg] No. 1067 19, https://www.parlament.gv.at/PAKT/VHG/XVII/I/I_01067/imfname_265403.pdf

and expansion of Austria's gambling monopoly. This raises concerns since problem gamblers contribute substantially to casino revenues.⁴⁷ On the surface, this appears to contradict the Constitutional Court's view that the monopoly and restrictive licensing predominantly serves protection and monitoring purposes.

C. Profit vs. protection.

The legislator's primary intention to prevent problem gambling and protect gamblers⁴⁸ appears to be at odds with the financial benefits the State receives from casinos, in particular the taxes, fees, and social security contributions paid by Casinos Austria. Casino operators must pay an annual levy of 30% of its revenue to the Ministry of Finance.⁴⁹ In addition, the State profits from casino revenue as one of the principal shareholders of Casinos Austria. Accurate, up-to-date, and complete figures documenting the income generated by the State from casino operations in Austria are, regrettably, not available.

Unlike income generated by Austria's national lotteries (Österreichische Lotterien), casino revenues earned by the State need not be used for specific, in particular charitable, purposes. Austrian lotteries, for instance, must by law contribute EUR 80 million annually to sporting events pursuant to section 20 of the *Gambling Act*. It is not immediately clear from the available sources why casino revenue is historically (and not only in Austria) not used in a similar way to support, for instance, cultural events or invest in research into problem gambling.

D. Compliance with European Union law.

The design and set up of Austria's gambling monopoly raise several concerns about compliance with European Union (EU) law. Although nothing bars companies based outside Austria from applying for a casino license, restrictions associated with the monopoly may conflict with the freedom of establishment and the freedom to provide services enshrined in articles 16, 49 to 55, and 56 to 62 of the *Treaty of the Functioning of the European Union*.⁵⁰ These freedoms guarantee mobility of businesses and professionals within the EU. The freedom of services provides a person with the right to provide services

⁴⁷ Oliver Scheibenbogen, *Spielsuchtprävention Im Spannungsfeld Zwischen Wirtschaftlichen Interessen Und Aktivem Spielerschutz* in RAUSCH at 35 (2012); INGO FIEDLER ET AL., *WIRKSAMKEIT VON SOZIALKONZEPTEN BEI GLÜCKSSPIELANBIETERN* 35–44 (2017).

⁴⁸ Nationalrat [NR] [National Assembly] [Gesetzgebungsperiode] [GP] 24 Beilage [Blg] No. 657 3, https://www.parlament.gv.at/PAKT/VHG/XXIV/II_00657/fnameorig_183805.html.

⁴⁹ *Gambling Act* § 28.

⁵⁰ Bresich, et al., *supra* note 33 at 95.

throughout the EU without setting up a company.⁵¹ Freedom of establishment involves the right to carry out economic activity in another EU Member State.⁵²

Concerns over violations of these freedoms brought Austria's gambling monopoly to the attention of the European Court of Justice (ECJ). Since, by nature, any monopoly limits these basic freedoms, in a 2003 decision, the ECJ held that a gambling monopoly can only be justified if its main purpose is to set up the specific industry, which in the context of gambling involves the protection of gamblers and the prevention and suppression of fraud, money laundering, and other crime. Financial benefits for the State (or any other provider) may be a side-effect of the monopoly but must not be its main purpose.⁵³ The ECJ further requires that the regulation of the monopoly must be implemented in a coherent and systematic manner by Member States.⁵⁴

In its decision, the ECJ noted that a coherent and systematic regulatory framework designed to effectively monitor the casino industry appears to be at odds with measures to grow revenue, expand the casino industry, and engage in aggressive advertising.⁵⁵ The ECJ further held that the coherence of gambling laws and policies must be viewed in context of the entire gambling sector and should not be looked at in isolation, i.e. by focusing on individual industries, such as casinos.⁵⁶ It is further required that the gambling industry is monitored effectively and independently by a gambling authority.⁵⁷

In sum, the ECJ found the Austrian gambling monopoly to be a legitimate way to set up the casino industry and thus reduce lawful gambling options.⁵⁸ The ECJ made no final ruling on the question of whether this system provides a coherent and systematic way to protect gamblers; the determination of this question was left to national courts.⁵⁹

In 2016, Austria's Constitutional Court and the Administrative Court (Verwaltungsgerichtshof (VwGH)) found the gambling monopoly to be in

⁵¹ *Treaty on the Functioning of the European Union*, 2012 O.J. Consol. 326.

⁵² *Id.* at art. 49.

⁵³ Case C-243/01, Gambelli 2003 E.C.R. I-13031, paras. 60–62; Case C-347/09, Dickinger/Ömer 2011 E.C.R. I-8185, para. 6.

⁵⁴ Case C-375/17, Stanley International Betting/Stanleybet Malta, ECLI:EU:C:2018:1026, para. 27.

⁵⁵ *Id.*; Case C-243/01, Gambelli, 2003 E.C.R. I-13031, paras. 60–62.

⁵⁶ Case C-46/08, Carmen Media Group Ltd v. Schleswig-Holstein, 2010 E.C.R. I-8149, para. 67.

⁵⁷ Case C-375/17, Stanley International Betting/Stanleybet Malta, ECLI:EU:C:2018:1026, paras. 33–35.

⁵⁸ *See, for example*, Case C-64/08, Engelmann, 2010 E.C.R. I-8219; Case C-347/09, Dickinger/Ömer 2011 E.C.R. I-8185, para. 6; Case C-46/08, Carmen Media Group Ltd v. Schleswig-Holstein, 2010 E.C.R. I-8149, para. 67.

⁵⁹ Case C-375/17, Stanley International Betting/Stanleybet Malta, ECLI:EU:C:2018:1026, 33–34.

conformity with EU Law.⁶⁰ The Administrative Court argued that gamblers are better protected in a state-controlled gambling industry and that comprehensive monitoring mechanisms—which are discussed later in this piece—have been put in place to enforce protection measures for gamblers in Austria's casinos.⁶¹ The Constitutional Court further noted that while the number of casinos operating in Austria had risen over the years, the scale of problem gambling had not markedly increased since 2009.⁶² Indeed, the Court found that that the growing number of available licenses for casinos and major advertising for legal gambling venues had the effect that more people chose to engage in legal rather than illegal activities.⁶³

These positions have found little support in the literature and the prevailing scholarly opinion is that Austria's gambling monopoly is at odds with EU law.⁶⁴ This view is based, firstly, on the fact that automated gambling machines fall under the mandate of State rather than federal law in Austria, thus contradicting the claim that gambling regulations are consolidated and uniform across the country.⁶⁵ A second point is that when the Austrian legislator increased the number of available casino licenses in 2010, this was done without any explanation showing how effective monitoring of a greater number of casinos, and presumably a greater number of (problem) gamblers, can be ensured.⁶⁶ While the Ministry of Finance never fully exhausted the limit of available licenses, the statutory increase of the number of available licenses alone might be seen as an expansion of the casino industry in contravention of the 2003 ECJ ruling.⁶⁷

⁶⁰ VERWALTUNGSGERICHTSHOF [VwGH] [ADMINISTRATIVE COURT OF JUSTICE], Mar. 16, 2016, 2015/17/022-7, https://www.ris.bka.gv.at/Dokumente/Vwgh/JWR_2015170022_20160316J06/JWR_2015170022_20160316J06.pdf; VERFASSUNGSGERICHTSHOF [VfGH] [CONSTITUTIONAL COURT], Oct. 15, 2016, E945/2016-24, https://www.ris.bka.gv.at/Dokumente/Vfgh/JFT_20161015_16E00945_00/JFT_20161015_16E00945_00.pdf.

⁶¹ *Id.* at 117–118.

⁶² *Id.* at 56.

⁶³ *Id.* at 115.

⁶⁴ *See, for example*, JULIA KOHL, DAS ÖSTERREICHISCHE GLÜCKSSPIELMONOPOL (2013) 199–200; Nicholas Aquilina & Markus Arzt, *Der Kampf um den Glücksspielmarkt geht in die nächste Runde* in ECOLEX at 1070, 1072 (2011); Franz Leidenmühler, *VfGH Locuta, Causa Finita? Warum das Österreichische Glücksspielgesetz vor dem Hintergrund seiner praktischen Anwendung und Auswirkungen auch weiterhin nicht unionsrechtskonform ist ...* in MEDIEN UND RECHT at 35, 39 (2018); Arthur Stadler & Nicholas Aquilina, *'Unionsrechtskonforme Regulierung: Ein Glücksspiel?'* in ECOLEX 389, 389 (2013).

⁶⁵ *See, in particular*, KOHL, *id.*

⁶⁶ Nationalrat [NR] [National Assembly] [Gesetzgebungsperiode] [GP] 24 Beilage [Blg] No. 657 7, https://www.parlament.gv.at/PAKT/VHG/XXIV/II_00657/fnameorig_183805.html.

⁶⁷ *See, for example*, Aquilina & Arzt, *supra* note 64.

Overall, the approach taken by Austria's *Gambling Act* reflects a highly protective if not protectionist approach which is instrumentalized through monitoring powers vested in a central gambling authority, the Ministry of Finance. A closer look, however, reveals other problems, especially the fact that the regulating authority is a part-owner of the sole operator of casinos in Austria, the Casinos Austria AG. It is highly doubtful that this set up makes for effective and independent monitoring, as required by the ECJ.⁶⁸ Neither the Constitutional Court nor the Administrative Court questioned this relationship between the Ministry of Finance and Casinos Austria or explored perceptions that this role of the Ministry of Finance might be seen as bias by design.⁶⁹

IV. LICENSING PROCEDURE

The process used to award a license to open and operate a casino in Austria must involve a public, transparent, and non-discriminatory tender for interested parties. The Ministry of Finance is in charge of this process all the way from calling for applications to awarding the license and proclaiming the award through an official administrative notice.⁷⁰ For license holders, the Ministry prescribes the games that may be offered in the casino, sets standards for the protection of gamblers, and even determines the opening hours and entry fees of casinos.⁷¹ The games offered in the casino must involve live games and cannot be limited to automated gambling machines only.⁷²

The procedure to award casino licenses starts with an announcement by the Ministry of Finance that it intends to distribute one or more licenses. This announcement has to specify the requirements that applicants must meet a deadline, which must be set in a manner allowing would-be applicants sufficient time to prepare their applications.⁷³ The announcement must be a gazette in the *Wiener Zeitung*, Austria's official daily,⁷⁴ a process that was approved and found to be sufficiently transparent by a decision of the Administrative Court in 2005.⁷⁵

⁶⁸ See also, Stadler & Aquilina, *supra* note 64 at 390–391.

⁶⁹ Case C-375/17, Stanley International Betting/Stanleybet Malta, ECLI:EU:C:2018:1026, para. 34; Case C-212/08, Zeturf Ltd. v. Premier Ministre, 2011 E.C.R. I-5633, para. 62.

⁷⁰ Gambling Act § 21(1); Walter Schwartz, *Ausschreibung von Glücksspielkonzessionen*, in Festschrift Heinz Mayer zum 65. Geburtstag 701, 705–706 (2011).

⁷¹ Gambling Act § 21.

⁷² Peter Erlacher, *Glücksspielgesetz 57* (1997).

⁷³ See Gambling Act, *supra* note 2, at 7.

⁷⁴ Bresich, et al., *supra* note 33 at 236–37.

⁷⁵ [VERWALTUNGSGERICHTSHOF] [VwGH] [ADMINISTRATIVE COURT OF JUSTICE] Aug. 4, 2005, 2004/17/0035, https://www.ris.bka.gv.at/Dokumente/Vwgh/JWR_2004170035_20050804X01/JWR_2004170035_20050804X01.pdf

A. *Requirements for Obtaining a License.*

By law, the number of casino licenses is presently limited to 15; each license, once granted, is valid for a period of 15 years.⁷⁶ Once all casino licenses have been awarded, no further application or licensing procedure may be started.

To be eligible to apply for and to be awarded a license, applicants must be incorporated as a joint stock company based in an EU Member State.⁷⁷ While it is not a prerequisite for the applicant company to be a registered business in Austria, it is necessary to demonstrate that the Member State in which the company is headquartered maintains laws and regulations over gaming operations equally as effective and comprehensive as Austria's *Gambling Act*.⁷⁸ To make this determination, the Ministry of Finance must be given information on any prior casino operation by the applicant company along with an agreement by the gambling authority of the other EU Member State showing that it will cooperate with Austria's Ministry of Finance in the sharing of information.⁷⁹ To ensure that license holders have adequate liquidity, the applicant company must have a share capital of at least EUR 22 million at its disposal.⁸⁰ This amount is seen as necessary for licensees to make investments and to cover them for financial losses that may stem from their gambling operations.⁸¹

Decisions about awarding the license are based on criteria relating to prior experience in the casino industry, infrastructure, and the implementation of mechanisms to prevent problem gambling, money laundering, and other criminal activities.⁸² The weighting of the selection criteria and the allocation of points for each criterion must be made transparent by the Ministry of Finance, as confirmed by the Administrative Court in a 2016 decision.⁸³

The ability of companies from outside Austria to apply for a casino license is a relatively recent development. For the longest time, Austria refused to accept applications from abroad arguing adequate monitoring could not be ensured if the applicant company was not based in Austria.⁸⁴ In 2010, the ECJ rejected this

⁷⁶ See *Gambling Act*.

⁷⁷ See *Gambling Act* § 21.

⁷⁸ *Id.*

⁷⁹ Nationalrat [NR] [National Assembly] [Gesetzgebungsperiode] [GP] 24 Beilage [Blg] No. 981 147, https://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_00981/index.shtml.

⁸⁰ See *Gambling Act* § 21(2).

⁸¹ Bresich, et al., *supra* note 33 at 237.

⁸² See *Gambling Act* § 21(2).

⁸³ VERWALTUNGSGERICHTSHOF [VWGH] [ADMINISTRATIVE COURT], June 28, 2016, Ra 2015/17/0082, https://www.ris.bka.gv.at/Dokumente/Vwgh/JWR_2015170082_20160628L01/JWR_2015170082_20160628L01.pdf

⁸⁴ See generally, Gerhard Strejcek, Lisa-Maria Satzinger & Julia Sautner, *Entwicklung des Glücksspielrechts in Österreich in den Jahren 2010 bis*, in ZEITSCHRIFT FÜR WETT- UND GLÜCKSSPIELRECHT 15, 16–17 (2015); Case C-64/08, Engelmann, 2010 E.C.R. I-8219.

position, forcing the Austrian legislator to introduce a transparency clause into the *Gambling Act* thus permitting applications from other parts of the EU.⁸⁵

Casinos Austria, a joint stock company (AG) incorporated in Austria, holds 12 casino licenses; the remaining three are currently not awarded. When they were awarded to another company in 2014,⁸⁶ Casinos Austria successfully filed a complaint saying that the procedure used to award these three licenses lacked transparency. The Administrative Court subsequently accepted this position and revoked these three licenses because the Ministry of Finance had failed to publicize the weighting of the selection criteria in sufficient detail.⁸⁷ Although several years have passed since this decision, no new application process to award the remaining licenses has yet been started. This is because the mandatory transparency clause has not yet been integrated into the Ministry of Finance's licensing procedure. A further practical hurdle to award these licenses stems from the fact that the awarding of licenses in so-called packages, which are discussed in the following section, appears to conflict with transparency requirement.⁸⁸

B. *Urban and regional casinos.*

The award of casino licenses in Austria has been clustered by the Ministry of Finance into two groups, or packages as they are referred to: one group (the 'Stadt paket') comprises six licenses for casinos in metropolitan, urban areas. The other (the 'Land paket') comprises a further six licenses for casinos located in regional, tourist destinations. The casinos located in the State capitals Bregenz, Graz, Innsbruck, Linz, Salzburg, and Vienna are part of the 'urban package'; the 'regional package' includes the casinos located in Baden, Kitzbühel, Kleinwalstertal, Seefeld, Velden, and Zell am See.⁸⁹

When these twelve licenses were last awarded in 2012 ('Stadt paket') and 2013 ('Land paket'), interested parties could only apply for one whole package of licenses; it was not possible to apply for and obtain a licence for a single

⁸⁵ See Gambling Act § 21. See Nationalrat [NR] [National Assembly] [Gesetzgebungsperiode] [GP] 24 Beilage [Blg] No. 783 1, https://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_00783/fname_188663.pdf; Cornelia Lanser, *Transparenzgrundsatz im Glücksspielrecht*, in *Ecolex* 644, 645–646 (2016).

⁸⁶ *Id.* at 150.

⁸⁷ VERWALTUNGSGERICHTSHOF [VWGH] [ADMINISTRATIVE COURT], June 28, 2016, Ra 2015/17/0082, https://www.ris.bka.gv.at/Dokumente/Vwgh/JWR_2015170082_20160628L01/JWR_2015170082_20160628L01.pdf

⁸⁸ Heinz Mayer, 'Spielbanken im "Paket"' (2012) 174(2) *Ecolex* 174, 174; Jeannine Weissel and Manuel Vogelsberger, 'Zur Zulässigkeit der Ausschreibung von Spielbanken-Konzessionen in "Paketen"' (2012) 181(2) *Ecolex* 181, 181.

⁸⁹ Jeannine Weissel and Manuel Vogelsberger, 'Zur Zulässigkeit der Ausschreibung von Spielbanken-Konzessionen in "Paketen"' (2012) 181(2) *Ecolex* 181, 181.

location only.⁹⁰ The clustering of licenses in this way was done mostly for reasons of efficiency and economy. It has been argued that a lower number of casino gambling providers makes monitoring of their management and operation much easier and lowers the costs for the authorities. It can also ensure greater consistency between the measures taken in different locations and makes it easier to award licenses for locations that, on their own, may be less attractive and less profitable.⁹¹

The ‘packaging’, however, raises concerns about transparency and legality. It is essential that licenses are distributed in a fair and reliable manner and that applicants have fair and equal chances to obtain a casino license.⁹² Section 21(1) of the *Gambling Act* makes no mention of awarding licenses in packages and only refers to the award of a single license by the Ministry of Finance to a private operator/licensee.

Awarding licenses in groups greatly increases the amount of capital necessary to obtain a casino license thus disqualifying smaller companies that do not have the financial resources to pay for more than one (or less than six) licenses and set up casino operations in more than one location. The pool of applicants sufficiently resourced to open and operate six casinos at the same time is considerably smaller than it would be otherwise.⁹³ The application fee for one license alone is EUR 10 000 and the licensing fee a further EUR 100 000. Put simply, there are many applicants that will be deterred by or unable to pay these fees when multiplied by six.⁹⁴ In addition, a minimum deposit of ten percent of the share capital (thus currently amount to EUR 2.2 million) needs to be paid when the license is granted, thus increasing the financial burden on casino operators. It makes no difference, however, whether the licensee holds one or more casino licenses; the required stock capital remains the same.⁹⁵

It is also worth noting in this context that the Austrian Audit Office (Rechnungshof) estimates the value of the ‘urban package’ to be about three times higher than the value of ‘regional package’,⁹⁶ yet the conditions and costs for both packages are the same. There is no information on whether the Ministry of Finance considered or was aware of these circumstances at the time it called for applications for both packages, yet it is perhaps not surprising that only one

⁹⁰ Heinz Mayer, ‘Spielbanken im “Paket”’ (2012) 174(2) *Ecolex* 174, 174.

⁹¹ See also RECHNUNGSHOF, VERGABE DER GLÜCKSSPIELKONZESSIONEN DES BUNDES 2015 [COURT OF AUDITORS REPORT 2015] 150 (2016).

⁹² Case C-64/08, Engelmann, 2010 E.C.R. I-8219.

⁹³ Mayer, *supra* note 88 at 175–76.

⁹⁴ *Id.*

⁹⁵ Mayer, *supra* note 88 at 174 ; Jeannine Weissel and Manuel Vogelsberger, ‘Zur Zulässigkeit der Ausschreibung von Spielbanken-Konzessionen in “Paketen”’ [On the Admissibility of the Tendering of Casino Licenses in “Packages”] 2 *ECOLEX* 181, 183 (2012).

⁹⁶ RECHNUNGSHOF, VERGABE DER GLÜCKSSPIELKONZESSIONEN DES BUNDES [COURT OF AUDITORS REPORT 2015] 2015 169 (2016).

company applied for the licenses in the ‘regional package’’: that is Casinos Austria.⁹⁷ The ‘urban package’ only attracted applicants from two competitors: Casinos Austria and Novomatic,⁹⁸ an Austria-based, international gambling company operating casinos in forty-three countries worldwide (and with its own share of controversies, including ties to many (ex-)politicians in Austria).⁹⁹

The costs and process of the application and licensing procedure has evidently deterred many smaller and foreign companies from applying for licenses when the latest call for applications was made in 2011. It has been reported that several applicants were interested in applying for one license or for particular locations only but were unable to do so under the package system.¹⁰⁰ For example, Swiss Casinos Holding, a Zurich-based company operating five casinos in northern Switzerland sought to apply for a license to run the Bregenz casino only but was disqualified by the way the licenses were clustered, leading a Swiss newspaper to suggest that the call for applications was not only designed specifically for, but written by the semi-state owned Casinos Austria company.¹⁰¹ Right from the start of the 2011 process, it was clear that Casinos Austria would be much better positioned than any other applicant, having the necessary infrastructure and experience of simultaneously running multiple casinos across Austria. It is also for this reason, that Casinos Austria outbid the Novomatic application for the urban package as it used its pre-existing infrastructure, marketing, and measures to prevent problem gamblers and protect gamblers as a main advantage over other contenders, as was noted by the Austrian Audit Office in a 2016 report.¹⁰²

In sum, there are serious concerns over the current licensing practice with regards to transparency and non-discrimination as mandated by section 21(1) of the *Gambling Act*. It would be highly desirable to design future application procedures more competitive and allow other operators, including smaller companies to apply for individual licenses. Furthermore, it may be worth

⁹⁷ *Id.* at 141.

⁹⁸ *Id.*

⁹⁹ Andreas Schnauder, *Novomatic: Beste Kontakte in die Parteien beflügeln das Glück* [*Novomatic: The Best Contacts in the Parties Inspire Happiness*], DER STANDARD (Aug. 16 2019, 6:00 AM), <https://www.derstandard.at/story/2000107444759/novomatic-und-das-spiel-mit-der-politik>; Josef Redl, *Verdächtige Geschenke* [*Suspicious Gifts*], FALTER (July 15 2020), https://www.falter.at/zeitung/20200715/verdaechtige-geschenke/_f4bee038e6?ver=b.

¹⁰⁰ See also Jeannine Weissel and Manuel Vogelsberger, ‘Zur Zulässigkeit der Ausschreibung von Spielbanken-Konzessionen in “Paketen”’ [*On the Admissibility of the Tendering of Casino Licenses in “Packages”*] 2 ECOLEX 181, 183 (2012).

¹⁰¹ Matthäus Kattinger, *Als ob Casinos Austria ausgeschrieben hätte*, NEUE ZÜRCHER ZEITUNG (Dec. 22, 2011), https://www.nzz.ch/als_ob_casinos_austria_ausgeschrieben_haette-1.13768875.

¹⁰² VERGABE DER GLÜCKSSPIELKONZESSIONEN DES BUNDES 2015, BERICHT DES RECHNUNGSHOFES [COURT OF AUDITORS REPORT 2015] 119, 182 (2016).

revisiting the fees and levies associated with the application for and award of casino licenses, taking into account the actual and potential value of different locations, their scale of operations, number and types of visitors et cetera. At a minimum, any future ‘packaging’ should involve smaller ‘packages’ of comparable size and value, for instance by combining or pairing licenses for urban and regional locations, thus boosting casinos in regional tourist destinations. This would be a first step yet go a long way towards greater transparency, fairness, and competitiveness in the licensing process.

C. Casinos Austria AG

Casinos Austria is the only company operating casinos in Austria and thus has a quasi-monopoly over casino gambling in this country.¹⁰³ In addition to operating all 12 existing casinos across Austria, the company owns a share of the national lotteries, the Österreichische Lotterien, and is involved in the online gaming industry, partially owning the ‘win2day’ brand and several video lottery terminals operated by WinWin.¹⁰⁴ Casino Austria’s parent company, Casinos Austria International, operates 23 other casinos around the world.¹⁰⁵

As mentioned, all 12 casinos in urban and regional Austria are presently owned and operated by Casinos Austria. The six licenses for the casinos in the State capitals are valid until 21 December 2027; the licenses for the six casinos in regional Austria expire on 31 December 2030.¹⁰⁶ The biggest casino in size is located in Baden, Lower Austria, a short distance from the nation’s capital Vienna. In 1995, Baden was the largest casino operating in Europe.¹⁰⁷ In terms of revenue, the casino located in Vienna’s city centre has the highest turnover, followed by the casino in Bregenz located on the shores of Lake Constance in Vorarlberg.¹⁰⁸

¹⁰³ WALTER SCHWARTZ, STRUKTURFRAGEN UND AUSGEWÄHLTE PROBLEME DES ÖSTERREICHISCHEN GLÜCKSSPIELRECHTS 63 (1998).

¹⁰⁴ CASINOS AUSTRIA, ANN. REP. 2019 1 (2020), <https://casinosaustriainternational.s3-eu-west-1.amazonaws.com/reports/Casinos-Austria-Group-Annual-Report-2019.pdf>.

¹⁰⁵ *Id.* at 58; *Company*, CASINOS AUSTRIA INT’L., <https://www.casinosaustriainternational.com/company> (last visited Apr. 5, 2021).

¹⁰⁶ Casinos Austria, *supra* note 104, at 27.

¹⁰⁷ *Milestones in the History of Casinos Austria AG*, CASINOS AUSTRIA, <https://www.casinos.at/de/casinos-austria/unternehmen/ueber-uns/geschichte> (last visited Apr. 5, 2021).

¹⁰⁸ Casinos Austria, *Annual Report 2016* 85 (2017), <https://casinosaustriainternational.s3-eu-west-1.amazonaws.com/reports/Casinos-Austria-Annual-Report-2016.pdf>.

1. Management.

As a publicly listed company, corporate structures and management of Casinos Austria are regulated by the *Stock Companies Act* of 1965.¹⁰⁹ The chairperson of the company is appointed and his or her activities are supervised by a supervisory board which is appointed by the company's shareholders.¹¹⁰

Concerns have been raised about political ties of members of the supervisory board to political figures and, vice versa, about political influence exercised over the management of Casinos Austria, not least because the supervisory board decides the appointment of the chairperson of Casinos Austria.¹¹¹ This concern is augmented by the fact that the Ministry of Finance represents the Austrian Government on the supervisory board and has influence over ÖBAG, one of the main shareholders of the company. A recent media report reveals examples of how the Ministry of Finance influence decisions of the supervisory board and demonstrates how political control over the company may be exercised, especially if politicians seek to influence board members by promising benefits to them in return for favorable decisions.¹¹²

Section 31b(8) of the *Gambling Act* stipulates several requirements to carry out management positions of Casinos Austria. Persons in these positions have to be of fit and proper character and suitable for the position based on their qualifications and prior experience.¹¹³ If a person is later found to be unsuitable, the Ministry of Finance has the power to issue a notice suspending the voting rights of that person.¹¹⁴

2. Shareholders.

In 2019, the biggest shareholder of Casinos Austria was the SAZKA Group followed by the Austrian Government. Shares held by the Austrian Government are administered by the Österreichische Beteiligungs AG (ÖBAG), a holding company administering State investments and holdings, such as Post AG (Austria's postal service) and OMV, an Austrian oil and gas company. Novomatic was the third biggest shareholder until it decided in 2019 to sell its

¹⁰⁹ BUNDESGESETZ ÜBER AKTIENGESELLSCHAFTEN [AKTG] [STOCK COMPANIES ACT] BUNDESGESETZBLATT I [BGBl. I] No. 98/1965, as enacted in BGBl. I. No. 63/2019, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1965_98_0/1965_98_0.pdf.

¹¹⁰ *Id.* §§ 75, 87, 95.

¹¹¹ *Id.* § 75.

¹¹² Florian Klenk, *Dann erzähl ihm halt, wie toll ich bin - "ok! :-)*, FALTER (Nov. 19, 2019), <https://www.falter.at/zeitung/20191119/erzaehl-ihm-halt-wie-toll-ich-bin>.

¹¹³ *Gambling Act* § 31b(8).

¹¹⁴ *Gambling Act* § 31b(9).

shares to the SAZKA Group, thus making SAZKA the majority shareholder.¹¹⁵ This sale was made public only a week after Casinos Austria dismissed its financial director whose appointment attracted much criticism and controversy.¹¹⁶

The SAZKA Group is a lottery, online gaming, and sports betting operator headquartered in Prague, Czech Republic. The group of companies' operation span across Europe, with their main lottery and sports betting market in Italy (where they own Lotto Italia), Croatia (Super Sport), Greece and Cyprus (Opap).¹¹⁷ The SAZKA Group's shares in Casinos Austria are held by a subsidiary called Medial Holding (Media), a company of which Casinos Austria owns some shares.¹¹⁸ The impact and influence of Casinos Austria on Medial is not publicly documented and the SAZKA Group decided to place the shares bought from Novomatic into another subsidiary,¹¹⁹ thus bringing them out of the influence of Casinos Austria.

While SAZKA is the majority shareholder of Casinos Austria, its influence has been curtailed by an arrangement made between the SAZKA Group and ÖBAG in order to protect and strengthen the position of the Austrian Government as minority shareholder. The agreement, inter alia, reserves the right to appoint some leading positions such as the chair and some members of the supervisory board for ÖBAG.¹²⁰ SAZKA entered into this agreement after ÖBAG agreed to waive its preemptive right to purchase part of the shares sold by Novomatic.¹²¹

¹¹⁵ Hanna Kordik, *Novomatic steigt aus Casinos Austria aus*, DIE PRESSE (Dec. 10, 2019), <https://www.diepresse.com/5736143/novomatic-steigt-aus-casinos-austria-aus>.

¹¹⁶ *Novomatic AG and Sazka Group Agreed on Sale of Novomatic's Shares in Casinos Austria AG*, NOVOMATIC (Oct. 12 2019), <https://www.novomatic.com/en/explore-novomatic/press/press-releases/novomatic-ag-and-sazka-group-agreed-on-a-sale-of-novomatic-s>; Florian Klenk, "Dann erzähl ihm halt, wie toll ich bin" – "Ok! ☺", FALTER (NOV. 19, 2019), <https://www.falter.at/zeitung/20191119/erzaehl-ihm-halt-wie-toll-ich-bin>

¹¹⁷ SAZKA GROUP, ANN. REP. 2018 11 (2019), https://www.sazkagroup.com/data/file_items/6go2d-Annual-report-Sazka-2018.pdf.

¹¹⁸ CASINOS AUSTRIA, ANN. REP. 2019 13 (2020), <https://casinosaustriainternational.s3-eu-west-1.amazonaws.com/reports/Casinos-Austria-Group-Annual-Report-2019.pdf>.

¹¹⁹ *Id.*

¹²⁰ Press Release, ÖBAG and Sazka Group, *ÖBAG – Sazka Group: Gemeinsame Führung der CASAG AG* (Dec. 17, 2020), https://www.oebag.gv.at/wp-content/uploads/2021/02/Presseaussendung-OeBAG_CASAG-Aufsichtsrat-final.pdf.

¹²¹ *Casinos Austria: ÖBAG verzichtet auf Vorkaufsrecht*, WIENER ZEITUNG (Mar. 6, 2020, 2:37 PM), <https://www.wienerzeitung.at/nachrichten/wirtschaft/oesterreich/2053434-Casinos-Austria-OeBAG-verzichtet-auf-Vorkaufsrecht.html>.

3. Governmental Participation.

ÖBAG is the de-facto representative of the Austrian Government in Casinos Austria and is meant to act in the best interest of the country. The Austrian Government does not directly participate in the decision-making of Casinos Austria. The Secretary-General of ÖBAG sits in the shareholders' meeting of Casino's Austria.¹²² The Ministry of Finance represent the Austrian Government in the shareholders' meeting of ÖBAG.¹²³ Through ÖBAG, the Austrian Government indirectly exercises further influence on the management and strategies of Casinos Austria. The management of ÖBAG is obliged to issue quarterly reports to the Minister of Finance and annual reports to the Austrian Government about decisions made by the state holding company. The Ministry can request additional information at any time.¹²⁴

The Ministry of Finance thus exercises two function and pursues goals that may be contradictory: On the one hand, it acts as the monitoring authority of Austria's casinos industry and seeks to keep the industry 'clean', transparent, working to high standards, and protecting gamblers. On the other hand, directly and indirectly, it seeks to increase and benefit from casino revenue through levies, taxes, and profits. On the surface, this raises concerns about how the Ministry of Finance can balance or reconcile these seemingly conflicting goals and execute its functions and powers under the *Gambling Act* fairly and objectively. This conflict is particularly evident in the procedures used to license casinos and in the implementation of measures to protect persons gambling in Austrian casinos.

¹²² BÖRSEGESETZ 2018 [STOCK EXCHANGE ACT 2018] [BUNDESGESETZBLATT I] [BGBl I] No. 107/2017, as amended, § 104(2), https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2017_I_107/BGBLA_2017_I_107.pdf;
GLÜCKSSPIELGESETZ [GSPG] [GAMBLING ACT] BUNDESGESETZBLATT I [BGBl I] No. 171/1965, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1965_171_0/1965_171_0.pdf.

¹²³ BUNDESGESETZ ÜBER DIE NEUORDNUNG DER RECHTSVERHÄLTNISSE DER ÖSTERREICHISCHEN INDUSTRIEHOLDING AKTIENGESELLSCHAFT UND DER POST UND TELEKOMMUNIKATIONSVERWALTUNGSGESELLSCHAFT [ÖIAG-GESETZ 2000] [ÖIAG LAW] [BUNDESGESETZBLATT I] BGBl I. No. 23/2000, as enacted in BGBl I. No. 96/2018, § 2, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20000660>.

¹²⁴ *Id.* at § 6(4).

V. PROTECTION OF GAMBLERS

A 2015 report suggests that about 1.1 percent of the Austrian population (or some 64,000 people) are pathological gamblers.¹²⁵ To prevent and reduce problem gambling, governments are obliged to legislate and implement comprehensive gambler protection measures in their casino industry; this approach has been mandated for EU Member States by decisions of the European Court of Justice.¹²⁶ When designing relevant regulations to fulfill this obligation, States must also take into account external costs, such as implications for social security and welfare. These costs must be balanced against the benefits for the States including, inter alia, tax revenue, job creation, and profits from shares in the casino industry.¹²⁷ The idea here is to keep problem gambling and associated external costs low while maximizing other gains. Austria's *Gambling Act* seeks to strike this balance by including several measures to prevent problem gambling in its casino industry.¹²⁸

A. Preventive monitoring

Casino operators in Austria have an obligation to closely monitor the gambling behavior of its patrons and must report the measures adopted in the casino to prevent problem gambling to the Ministry of Finance each year.¹²⁹

By observing the frequency of their visits and the amounts spent on gambling, casino operators need to determine whether gamblers put their livelihoods (and those of their families and dependents) at risk. This is mandated by section 25 of the *Gambling Act* which has been interpreted by the Supreme Court of Austria as a requirement to record and count how often individual patrons visit casinos.¹³⁰ Accordingly, names and other personal details of patrons are recorded upon entry into an Austrian casino at each visit. In a further

¹²⁵ Rainer Fleckl, *Spielsucht macht nicht nur Gambler zu Verlierern*, ADDENDUM (Oct. 10, 2017), <https://www.addendum.org/gluecksspiel/spielsucht-verlierer/>.

¹²⁶ See generally, *Zenatti*, C-67/98, European Court of Justice, (Oct. 21, 1999) 36; *Gambelli*, C-243/01, European Court of Justice, (Nov. 6, 2006) 62.

¹²⁷ Michael Adams & Ingo Fiedler, *Die Sozialen Kosten Von Glücksspielen*, in, *Glücksspiel: Ökonomie, Recht, Sucht* 133, 135 (2018); William R Eadington, *Measuring Costs from Permitted Gaming: Concepts and Categories in Evaluating Gambling's Consequences*, 19(2) J. OF GAMBLING STUDIES 185, 186–189. (2003).

¹²⁸ See, for example, BÖRSEGESETZ 2018 [STOCK EXCHANGE ACT 2018] [BUNDESGESETZBLATT I] [BGBl I] No. 107/2017, as amended, § 25, https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2017_I_107/BGBLA_2017_I_107.pdf.

¹²⁹ AUSTRIA, FEDERAL MINISTRY OF FINANCE, GLÜCKSSPIELBERICHT 2014-2016 22–23 (2017).

¹³⁰ Oberster Gerichtshof [OGH] [Supreme Court] Dec. 21, 2004, 5 Ob 112/04p, https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_20041221_OGH0002_0050OB00112_04P0000_000/JJT_20041221_OGH0002_0050OB00112_04P0000_000.pdf.

decision, the Supreme Court held that casinos must bar gamblers permanently or for a period of time if the gambler's income or personal wealth does not sufficiently cover the frequency and spending of their casino gambling.¹³¹

If a casino operator forms the view that an individual gambler jeopardizes his or her livelihood through his or her casino visits, section 25(3) of the *Gambling Act* authorizes casinos to conduct credit checks on the gambler. To obtain this information, the casino operator can transmit the gambler's personal details to Bisnode Austria Holding, a data processing company working closely with government, and to KSV Kreditschutzverband, an Austrian company, to run credit checks and conduct credit monitoring.¹³² If these checks do not provide sufficient information to make a determination of the financial implications of the patron's gambling behavior, employees of the casino are required to conduct a counselling interview with the relevant patron.¹³³ These assessments may result in patrons having a limit imposed on their gambling spending or they may even be barred from entering the casino for a period of time.¹³⁴ If a casino fails to implement these protection measures, affected patrons (problem gamblers) may claim damages if it can be shown that the casinos acted grossly negligent or knowingly engaged in misconduct.¹³⁵

While the intention and design of section 25(3) serve laudable purposes, there has been some criticism of this provision for lacking certainty and transparency. In particular, it is not clear at what point a casino's obligation to run credit checks or otherwise engage with the patron are triggered.¹³⁶ While thresholds relating to frequency and spending will necessarily vary between patrons, it is difficult to see when and how a casino would fail in its preventive monitoring obligations and under what circumstances a casino would be seen to act grossly negligently.

¹³¹ Oberster Gerichtshof [OGH] [Supreme Court], Mar. 18 2004, 1 Ob 52/04k, https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_20040318_OGH0002_0010OB00052_04K0000_000/JJT_20040318_OGH0002_0010OB00052_04K0000_000.pdf.

¹³² *Datenschutzerklärung der Casinos Austria Aktiengesellschaft und Österreichische Lotterien GmbH Unternehmensgruppe*, CASINOS AUSTRIA, <https://www.casinos.at/de/casinos-austria/unternehmen/datenschutz#anchor19> (last visited May 24, 2021).

¹³³ *Gambling Act* § 25(3)(1)(a).

¹³⁴ Oberster Gerichtshof [OGH] [Supreme Court], Mar. 18 2004, 1 Ob 52/04k, https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_20040318_OGH0002_0010OB00052_04K0000_000/JJT_20040318_OGH0002_0010OB00052_04K0000_000.pdf.

¹³⁵ *Gambling Act* § 25(3). For a discussion about the restricted access to claim for damages, see Karl Weber, *Glücksspiel Und Spielsucht: Die Novellierung Des § 25 Glücksspielgesetz Im Spannungsfeld von Fiskalpolitischen Interessen Und Konsumentenschutz* in RECHT, POLITIK, WIRTSCHAFT, DYNAMISCHE PERSPEKTIVEN: FESTSCHRIFT FÜR NORBERT WIMMER at 693 (2008).

¹³⁶ Jakob Winter, *Wie die Casinos Austria den Spielerschutz vernachlässigen*, PROFIL (Nov. 18, 2019), <https://www.profil.at/oesterreich/casinos-austria-spielerschutz-11220134>.

B. Gambler protection v data protection.

The way in which personal data of casino patrons is collected, stored, and shared raises questions about privacy and data protection. The data collected of patrons and potentially transmitted to other companies for credit checking include information such as names, residential addresses, and dates of birth.¹³⁷ Under standard data protection rules, the processing of such personal data is permitted only if, for instance, the patron has given express consent or if this is necessary to comply with legal obligations of the company collecting that data.¹³⁸

For Austrian casinos, this obligation arises from section 25(3) under the *Gambling Act*. To fulfil the purpose of this provision, it is necessary for the casino to collect sufficient information about its patrons in order to instigate steps designed to protect problem gamblers. The transmission of personal data is, however, only permissible by law if that purpose cannot be reasonably fulfilled by other means.¹³⁹ It is thus debatable whether this purpose can be achieved through less far-reaching measures that greater protect the data of patrons and ensure some degree of privacy.

One way which has been discussed extensively by the Ministry of Finance in a 2014 paper would be to issue electronic cards equipped with a chip to each patron that anonymously records the gambling activity in the casino of any one person (a 'Spielerkarte' or gambler card) and saves that data encrypted on a server. This may allow casinos to better detect and flag gambling levels and intervene when set limits or frequencies are reached. It may also serve as a better way to identify patrons who have been barred because of their gambling addiction (or for other reasons).¹⁴⁰ Keeping these cards anonymous (and transferable), however, shifts some of the responsibility to prevent problem gambling from casinos to patrons and may not be an effective way to achieve that stated goals.

Striking the right balance between the prevention of problem gambling on the one hand and the protection of patron's personal data on the other is a difficult feat for legislators. Greater data protection may compromise the protection of problem gamblers, and vice versa.

¹³⁷ Bresich, et al., *supra* note 33 at 278; *Datenschutzerklärung der Casinos Austria Aktiengesellschaft und Österreichische Lotterien GmbH Unternehmensgruppe*, CASINOS AUSTRIA, <https://www.casinos.at/de/casinos-austria/unternehmen/datenschutz#anchor19> (last visited May 24, 2021).

¹³⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), OJ 2016 L 119/1, art. 6.

¹³⁹ *Id.* at Principles of Data Processing Recital 39.

¹⁴⁰ See also AUSTRIA, FEDERAL MINISTRY OF FINANCE, ZWEITER BERICHT AN DEN NATIONALRAT ÜBER EINE BETREIBERUNABHÄNGIGE SPIELERKARTE (2014).

In addition to the legislative requirements, Casinos Austria has implemented several other prevention measures which requires the company and its employees to take action if they suspect instances of problem gambling. This includes, inter alia, formal registration and screening of patrons upon entry of the casino using government-issued identity documents.¹⁴¹ The company also offers patrons to ask for exclusion or restrictive access to casinos.¹⁴²

In 2018, across all 12 of its venues, Casinos Austria imposed a total of 7,484 ‘restrictive measures’ and conducted 620 counselling interviews with potential problem gamblers.¹⁴³ In addition, 2,501 persons registered for self-imposed access restrictions.¹⁴⁴

C. Responsible advertising.

The conflict between maximizing financial gains from casino operations on the one hand and protection of vulnerable patrons on the other is perhaps best manifested in the rules around advertising. Put simply, aggressive promotion of the casino industry and advertisements suggesting high wins and luxury lifestyles are at odds with the objective to prevent problem gambling.¹⁴⁵ This may require limiting the type, content, and channels of advertising casino gambling and ensuring that gambling, especially problem gambling, does not veer to illegal venues and other forms of illegal, uncontrolled gambling.¹⁴⁶ It is thus perhaps surprising that in Austria gambling is one of the sectors with the highest expenditure on advertising.¹⁴⁷

In a 2016 decision, Austria’s Constitutional Court made a ruling to ensure that advertising for casino gambling by Casinos Austria does not lead to an expansion of the casino market and does not increase the public’s desire to gamble for money.¹⁴⁸ Somewhat contrary to that decision, section 56(1) of the *Gambling Act* expressly prevents patrons and competitors to take any action or make claims if they are of the view that Austria’s casinos do comply with responsible advertising guidelines.¹⁴⁹ Restrictions on advertising may only be

¹⁴¹ *Casinos Austria, SPIELE MIT VERATWORTUNG*, <https://www.smv.at/de/spielerschutz/casinos-austria> (last visited May 24, 2021).

¹⁴² *Id.*

¹⁴³ *Corporate Social Responsibility Report*, CASINOS AUSTRIA, <https://csr-bericht.cal.at/index.php?id=330> (last visited May 24, 2021).

¹⁴⁴ *Id.*

¹⁴⁵ Bresich et al, *supra* note 33 at 374 (2011).

¹⁴⁶ Case C-347/09, Dickinger & Ömer, 2011 E.C.R. 68.

¹⁴⁷ Clemens Usner, *Zur Ökonomie des Glücksspiels und der Spielsuchtbekämpfung*, in DIPLOMARBEIT AO UNIV 80-81(2008).

¹⁴⁸ VERFASSUNGSGERICHTSHOF [VFGH] [CONSTITUTIONAL COURT], Oct. 15, 2016, E945/2016-24 et al., https://www.ris.bka.gv.at/Dokumente/Vfgh/JFT_20161015_16E00945_00/JFT_20161015_16E00945_00.pdf.

¹⁴⁹ See also ARTHUR STADLER & NICHOLAS AQUILINA, UNIONSRECHTSKONFORME REGULIERUNG : EIN GLÜCKSSPIEL? 389, 391 (2013).

imposed by the gambling authority,¹⁵⁰ which, as outline above, may have a conflict of interest in these circumstances.¹⁵¹

D. Monitoring casinos in relation to protection of gamblers.

Besides licensing Austrian casinos, the Ministry of Finance also has responsibility to monitor casino operations, ensure they comply with the *Gambling Act*, and oversee their implementation of measure to protect gamblers. To carry out these functions, the Ministry appoints state commissioners ('Staatskommissär') to participate in decision-making procedures of each casino. These commissioners have the power to object decisions by the supervisory board and shareholder meetings if they form the view that the decision would violate relevant regulations any decision.¹⁵² The objection by a State commissioner effectively suspends the decision until the objection has been resolved.¹⁵³ As last resort, the Ministry of Finance can suspend a casino license if the operator fails to implement adequate measures to protect problem gamblers.¹⁵⁴

Questions have been raised for some time about the appropriateness of this set-up and whether the Ministry of Finance's position is one where it can fully determine the terms under which casinos in Austria—i.e. Casinos Austria, a company in which the Ministry has a major stake—can operate. Because of its financial interest in Casinos Austria, it is questionable whether the Ministry is best positioned to effectively monitor the implementation of measures to protect gamblers at the same time.¹⁵⁵

One alternative that has been discussed is the creation of an independent entity to monitor the implementation of prevention and protection measures, thus separating the authority over financial aspects of the gambling industry from the authority charged with monitoring compliance and protection, a set-up that can be found, for instance, in Germany.¹⁵⁶ In March 2020, the then Minister of

¹⁵⁰ See generally Bresich *supra* note 33, at 375.

¹⁵¹ Case C-212/08, *Zeturf Ltd. v. Premier Ministre*, 2011 E.C.R. I-5633.

¹⁵² GLÜCKSSPIELGESETZ [GSPG] [GAMBLING ACT] BUNDESGESETZBLATT [BGBl] No. 620/1989, § 31 ¶ 2 <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=1000461>.

¹⁵³ *Id.*

¹⁵⁴ *Id.* § 23

¹⁵⁵ Arthur Stadler & Nicholas Aquilina, *Unionsrechtskonforme Regulierung: Ein Glücksspiel?*, 389(4) *ECOLEX* 389, 390–91 (2013). See *id.* § 49.

¹⁵⁶ GLÜCKSSPIELSTAATSVERTRAG [GLÜSTTV] [STATE TREATY ON GAMBLING], Dec. 15, 2011, *GESETZ- UND VERORDNUNGSBLATT [GVBl]* at 2020, § 19–20, as amended.

Finance announced that such a set-up would be considered,¹⁵⁷ though further details have yet to be released.

VI. CONCLUSION

Austria's casino gambling monopoly and the regulatory and institutional arrangements around it create the impression that the Austrian Government 'gets to bake the casino gambling cake and eat it, too'. Surely, the monopoly puts Austrian authorities into a uniquely privileged position to tightly control the types and scope of legal gambling options, taking into account fiscal considerations, demand, and the need to protect vulnerable patrons.¹⁵⁸ This level of control and oversight would not be possible in a more liberalized, competitive casino market.¹⁵⁹ The Austrian legislator has used its monopoly to strictly limit the number of available casino licenses and give the Ministry of Finance nearly full control over casino operations, compliance, revenue, and the protection of gamblers. It is difficult to see how the Ministry can juggle these often conflicting roles fairly and effectively.

The Ministry of Finance is responsible for the transparent and fair distribution of casino licenses and for the monitoring of compliance by casinos with the license conditions and with the provisions stipulated by the *Gambling Act*. At the same time, the Ministry is a major beneficiary of high casino revenues and has a vested interest to increase the profits made by Casinos Austria, the sole company operating casinos in Austria. In addition, the Ministry of Finance is required to conduct comprehensive monitoring of casinos to ensure that gamblers, problem gamblers in particular, are protected and that Austrian casinos are not used to launder proceeds of crime or for other illicit activities.

It is difficult to reconcile the latter role with its position as a beneficiary and significant shareholder of Casinos Austria. This set up has been criticized for obscuring and obstructing independent monitoring of casino operations.¹⁶⁰ From the perspective of Casinos Austria, so long as the overseeing authority partially owns the company, there is little need to fear losing a casino license if gambler protection measures are implemented poorly.¹⁶¹ While Casinos Austria may be on the same page as Austrian authorities in their desire to prevent money

¹⁵⁷ Herbert Neubauer, *Finanzminister Blümel kündigt unabhängige Glücksspielbehörde an*, DIE PRESSE (Mar. 1, 2020, 1:48 PM), <https://www.diepresse.com/5777445/finanzminister-blumel-kundigt-unabhangige-glucksspielbehörde-an>.

¹⁵⁸ Bresich et al., *supra* note 33, at 245.

¹⁵⁹ See CLEMENS USNER, ZUR ÖKONOMIE DES GLÜCKSSPIELS UND DER SPIELSUCHTBEKÄMPFUNG 74–76 (2008), *available at* http://othes.univie.ac.at/568/1/03-12-2008_0052708.pdf.

¹⁶⁰ See Stadler & Aquilina, *supra* note 64 at 389; *see also* Case C-212/08, Zeturf Ltd. v. Premier Ministre, 2011 E.C.R. I-5633.

¹⁶¹ See FIEDLER ET AL, *supra* note 47, at 35–44.

laundering and other crimes committed in casinos, measures to prevent problem gambling and protect other vulnerable gamblers are squarely at odds with the desire to increase casino revenue and thus grow company profits and fill State coffers.¹⁶²

The legal framework along with its operation in practice clearly work in favor of Casinos Austria, much at the expense of other competitors from within and outside the country. The monopoly vested in the Ministry of Finance and the execution of the resultant powers have put Casinos Austria in a uniquely privileged position with little to fear from other competitors. This is particularly evident in the allocation of the 'packaged' casino licenses, which make it nearly impossible for other companies to enter Austria's casino gambling market. The allocation of licenses clearly disadvantages smaller companies and discourages them from applying for a casino license,¹⁶³ but comes in handy for the shareholders of Casinos Austria and thus the Austrian Government.

Recent suggestions to create an independent gambling authority is a small first step to remedy some of these long-standing concerns and reduce the nearly unlimited power of the Ministry of Finance over Austria's gambling and casino industry. Importantly, an independent gambling authority may be better placed to protect the data and privacy of casino patrons and develop and monitor measures to prevent problem gambling and protect vulnerable gamblers. Separating prevention and protection from profit-seeking can be a useful tool to raise industry standards in the medium and long term.

In December 2019, Austria's National Assembly discussed a concrete proposal to sever the authority to grant casino licenses from the power to monitor casino operators.¹⁶⁴ Attempts to vest the power to monitor the implementation of gambler protection measures in the Ministry of Health were, however, rejected by parliament.¹⁶⁵ Recent acknowledgments by the Coalition Government comprising the Conservative and Greens parties of the Ministry of Finance's inflated role in Austria's casino market and announcements that its powers may be curtailed and shifted in part to an independent authority have yet to translate into concrete proposals and plans of action.¹⁶⁶

¹⁶² *Id.* at 25–26.

¹⁶³ See Mayer, *supra* note 88, at 174; Kattinger, *supra* note 101; Weissel & Vogelsberger, *supra* note 88, at 181.

¹⁶⁴ Dringlicher Antrag an den Nationalrat (110/A (E), Nov. 11, 2019, https://www.parlament.gv.at/PAKT/VHG/XXVII/A/A_00110/imfname_774816.pdf).

¹⁶⁵ Parlamentskorrespondenz No. 1186, *Spielerschutz: Nationalrat lehnt dringlichen Antrag der Neos*, PARLAMENT (Dec. 11, 2019), https://www.parlament.gv.at/PAKT/PR/JAHR_2019/PK1186/.

¹⁶⁶ Die neue Volkspartei und Die Grüne Alternative, *Regierungsprogramm 2020-2024*, 70 (2019); Gabriele Scherndl, Fabian Schmid & Stefan Mey, *Glücksspiel-Agenden werden aus Finanzministerium herausgelöst*, DER STANDARD (Feb. 24,

What is less clear is whether a new independent gambling authority would make it harder for politicians to push for gambling policies along party lines and to be more accountable for political favors asked by party clientele and big donors. While the *Gambling Act* contains strict rules for the award of casino licenses and for casino monitoring, this has not stopped the type of political scandals and trading of political appointments in casinos in Casinos Austria seen in the past.

2021), <https://www.derstandard.at/consent/tcf/story/2000124435673/gluecksspiel-agenden-werden-aus-dem-finanzministerium-geloest>.