National Police Board's guidelines on the marketing of gambling services

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Introduction

The National Police Board's previous guidelines on the marketing of gambling services were issued in 2015. The preparation of position statements guiding and regulating the marketing of the exclusive operator has been ongoing since the new Lotteries Act entered into force. The National Police Board has assessed that updating the guidelines was timely with the 2022 legislative amendment, even though the changes to the marketing provisions were in line with the National Police Board's interpretative framework. According to Section 42 of the Lotteries Act, the Police Board may issue statements and instructions concerning running lotteries and supervising the running of lotteries. A public authority may, in the course of its statutory duties, issue instructions even without a specific mandate.[1]

This document is primarily a compilation of the National Police Board's positions on the marketing of gambling services, which have formed its guidelines on the marketing of gambling services. These guidelines are the interpretations of the authority supervising the marketing of gambling regarding how the gambling operator Veikkaus Oy, which legally offers gambling services in Finland, may market its gambling services based on the existing regulations on gambling marketing and what kinds of gambling marketing by other operators violate the Lotteries Act. Changes to the National Police Board's statements are possible. Such changes may arise due, for example, to the decisions of the European Court of Justice (ECJ) or national courts. Additionally, the constant and often rapid changes in gambling activities may engender new phenomena connected to gambling services and activities. Such changes may bring about a reassessment of various means of marketing. On the other hand, if any marketing method, practice or any other similar aspect has not been mentioned in this context, it does not mean that the marketing in question and its implementation method are allowed under the Lotteries Act.

At the time of writing this policy document, a gambling system project[2] is under way to examine the reform of the gambling system in line with the Government Programme and to prepare a proposal for a regulatory basis for transitioning to a licensing system. In accordance with the Government Programme, the Finnish gambling system will be reformed to a licence-based system. The reform aims to prevent and reduce the health, economic and social harms caused by gambling and to improve the channelling rate of the gambling system.[3]

In this context, the National Police Board's guidelines are primarily directed at the marketing of the gambling operator with exclusive rights under the Lotteries Act, but also at gambling and its marketing that is carried out in Finland illegally. The National Police Board emphasises that it is not a preventive censorship authority; it will only take action

[1] E.g., PeVL 30/2005 vp, PeVL 20/2004 vp and PeVL 6/2003 vp
[2] Project page: https://valtioneuvosto.fi/hanke?tunnus=SM053:00/2023
[3] A strong and committed Finland: Programme of Prime Minister Petteri Orpo's Government 20 June 2023, p. 108. Publications of the Finnish Government 2023:58.

in cases of marketing that it considers to be problematic in the light of the marketing regulations.

Provisions on offering gambling services in Mainland Finland are laid down in the Lotteries Act (1047/2001). Åland makes independent decisions on the offering of gambling services in its area, which also means that gambling services offered under Åland legislation may not be offered in mainland Finland. In order to make reading this document easier, the term *Finland* will hereinafter be used to refer to the area of Mainland Finland.

In Finland, the exclusive rights system for offering gambling services was last reinforced with regulations that came into force at the beginning of 2022. Since 2017, the offering of gambling services has been legislated to be the exclusive right of Veikkaus Oy. Prior to this, the exclusive right was held by Fintoto Oy, Finland's Slot Machine Association and Veikkaus Oy.

Within the European Union, the content of national gambling policies has largely been left to the discretion of the Member States. The offering of gambling services is not covered by the principle of free movement of services and Member States do not need to follow the principle of mutual recognition. A Member State's legislation on gambling services and its enforcement must, however, follow the principles that the European Court of Justice (hereinafter the 'ECJ') in particular has required in its relatively extensive precedents.

The European Commission has assessed that the Finnish legislation consistently and systematically considers the objective pursued by introducing a monopoly gambling system in a Member State and that the law meets the requirements set by the ECJ for such an introduction. The Finnish authorities have sufficiently demonstrated that the amended law and its implementation and application meet these requirements.

The Commission initiated discussions with the Member States on the regulation of gambling services and their social and technical issues in the internal market. The marketing of gambling services played a significant role in these discussions as well. Due to the said discussions, the Commission published its recommendation on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling.[4]

The European Parliament commented on the marketing of gambling services in its report, published in the summer of 2013[5],in which the Parliament calls on the Member States and on gambling operators to encourage responsible advertising in relation to online gambling, and calls for advertising to be permitted only for gambling products which are legal.

Maintaining the exclusive rights system chosen by Finland for offering gambling services requires compliance with EU legislation in all gambling activities. In order to implement a consistent system, the regulations of the Lotteries Act applying to the marketing of

[4] 2014/478/EU: Commission recommendation of 14 July 2014 on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online
[5] European Parliament report on online gambling within the internal market (2012/2322(INI)), 11 June 2013.

gambling services have been in force since 1 October 2010, and the revised regulations have been in force since 1 January 2022. The National Police Board monitors compliance with the provisions of the Lotteries Act and the Consumer Protection Act.

The starting point of the provisions on marketing in the Lotteries Act is clear. Only the exclusive operator specified in the Act may market themselves or their gambling services within the restrictions laid down in the Lotteries Act. All other marketing of gambling is forbidden. In order to prevent problems related to the offering of gambling services, it has been considered to be justifiable to prescribe restrictions on the marketing of gambling services, although this interferes with constitutional freedom of speech. The restrictions on marketing do not, however, interfere with civil dialogue or the expression of opinions. When assessing the use of freedom of speech, however, it must be taken into consideration that freedom of speech may not be misused for the purpose of marketing gambling services.

The 2022 reform of the Lotteries Act strengthened the powers of the authority supervising the offering and marketing of gambling services by giving the authority broader abilities to prohibit the offering or marketing of gambling services. With the reform of the Lotteries Act, the National Police Board will be able to impose a prohibition on the marketing of gambling in violation of the Lotteries Act on natural persons and to propose penalty payments to the Market Court for marketing in violation of the Lotteries Act. The reform was considered necessary to combat gambling harms more effectively.

Violation of the Lotteries Act is also criminalised in the Criminal Code as a '*gambling offence'*. The offering and marketing of gambling services in violation of the Lotteries Act is now punishable as a gambling offence. The offence is punishable by a fine or a maximum of two years of imprisonment.[6]

Despite the clear premise of the marketing provisions, the content of the marketing provisions is not always unambiguous or easily understood solely from the wording of the law and the drafting documents. Marketing is a rapidly changing and diverse sector, which has given rise to a large number of legal interpretations. Interpretation is guided not only by the unique nature of gambling as a business activity, but also by the exclusive rights system.

[6] The proceeds of illegal gambling marketing can also be forfeited to the state as financial gain from the offence. On 6 June 2023, the District Court of Itä-Uusimaa sentenced a natural person who had marketed gambling games unlawfully for a gambling offence. The District Court sentenced the person to a conditional prison sentence and the forfeiture of EUR 51,300 to the state as the financial gain from the offence.

Regulations of the Lotteries Act (1047/2001)

Section 2: Definition of a lottery

In this Act, a lottery means an activity in which participants may win a prize of monetary value based in full or in part on chance and in which there is a charge for participation. Postal costs, local or long-distance telephone costs or similar costs incurred by participants in registering their participation in a lottery which do not benefit the lottery operator are not considered charges.

The provisions of this Act concerning lotteries also apply to running casino activities and making casino games, slot machines, non-money prize machines and other game machines as well as game equipment available for public use against a charge where players can win a prize of monetary value partially or wholly based on chance. (22.12.2021/1284)

The provisions of this Act concerning lotteries also apply to

1) lotteries which are run abroad, to the extent that their tickets are sold or resold in Finland and

2) lotteries which are run in Åland, to the extent that their tickets are also sold or resold elsewhere in Finland.

Section 3: Definitions of gambling games and forms of running them

In this Act, gambling games means a lottery in which players can win money.

In this Act:

1) *money lottery* means gambling games in which money can be won in a draw;

2) *betting* means gambling games in which players have the opportunity to receive a share of the winnings determined according to the product of the stake placed by the player and the odds indicating the probability of an outcome on the basis of a guess made about the events in or results of a sporting or other competition, including a horse race, or a gambling game; in the case of betting, the player can claim all or part of the winnings, even if the subject of the betting does not yet have a result; (22.12.2021/1284)

3) *pools* means gambling games other than those referred to in paragraph 2 in which players have the opportunity to receive a share of the winnings determined on the basis of a guess made about the events in or results of a sporting or other competition, including a horse race, or on the basis of a draw of numbers, symbols or other markings;

4) *slot machine* means a game machine or game equipment which persons can play to win money;

Paragraph 5 was repealed by Act 17.5.2019/677.

6) *casino game* means roulette, card and dice or other comparable gambling games;

7) *totalisator betting* means gambling games in which players have the opportunity to receive a share of the winnings determined on the basis of a guess about the results of a horse race;

8) *combination game* means gambling games in which features of gambling games referred to in paragraphs 1–7 are combined.

The gambling games referred to in subsection 2 can also be run virtually, in which case winnings are determined by a draw.

Section 4: Other definitions

In this Act:

1) *ticket* means a printed slip or a receipt in an equivalent electronic or other comparable form, which gives the right to take part in a lottery;

2) *gambling services* means the running of gambling games;

3) *online gambling games* means gambling games which are provided remotely, by electronic means or by any other technology for facilitating communication;

4) *player account* means the player's account maintained by the gambling company for gambling games;

5) *casino* means approved and supervised premises where slot machines and casino games are kept and made available for use by players where the potential loss may be apparently disproportionate to certain players' ability to pay, as well as other gambling games;

6) *specific game room* means a space reserved exclusively or mainly for gambling or an online gambling site for which a player must register;

7) *gambling location* means a gambling sales location other than a specific game room or casino;

8) *marketing* means advertising, indirect advertising, and other sales promotion activities; indirect advertising in particular is the promotion of a product in combination with the advertising for another product, where the distinctive mark of another product or its seller is used as such or recognisably adapted to the product, or where the advertising of another product conveys an image of a certain product or its seller; regardless of the language of the website, a foreign or Åland lottery website that is accessible online in a digital information network where the lottery website is not linked to other material promoting lotteries in Finland or mainland Finland, is not considered marketing of lotteries within the scope of this Act; marketing of lotteries in foreign or Åland publications distributed in Finland or mainland Finland, where the main purpose of the publication is not the marketing of gambling games and the marketing of lotteries is not aimed at Finland or mainland Finland in particular, is not considered marketing of lotteries within the scope of this Act;

Section 14 b: Marketing of gambling games

Veikkaus Oy may promote gambling games and the company through marketing if the marketing is moderate in quantity, scope, visibility and recurrence, and necessary to direct gambling demand towards the provision of gambling services carried out under this Act and to gambling that causes less economic, social and health-related harm.

Marketing shall not promote gambling that causes economic, social and health-related harm by:

1) idealising gambling by presenting it as a desirable or exaggeratedly positive activity or by inciting gambling;

2) describing frequent gambling positively, or non-playing or moderate gambling negatively;

3) portraying gambling as an everyday activity by equating gambling with everyday life or with a person's everyday routines, a person's everyday or normal consumer behaviour, such as purchasing food or clothing, or presenting gambling as a necessary or harmless pastime;

4) presenting gambling as a solution to a person's financial problems, as a means of improving a person's financial position or as a means of addressing a person's challenges with life management or as an alternative to work;

5) describing gambling as a way of promoting a person's social success or acceptance;

6) providing a misleading or unrealistic picture of the chances of winning in a gambling game, overemphasising the potential for high winnings, or characterising gambling as an activity that has no economic, social or health-related risks;

7) exploiting ignorance, inexperience or credulity associated with gambling;

8) providing play money or providing gambling games free of charge or at a reduced price or with combined offers;

9) offering other gambling games to be purchased or selected in connection with the selection of a gambling game or other commodity or in the collection of winnings;

10) providing a random advantage other than the possibility of winning in connection with a gambling game purchase;

11) encouraging the financing of non-profit activities through gambling;

12) by any other means equivalent to that referred to in paragraphs 1–11.

Marketing shall not be targeted at minors or otherwise vulnerable persons. Minors shall not be presented in marketing. Gambling games shall not be marketed in television and radio broadcasts, in public performances of visual content in cinemas and in publishing activities aimed at minors, or in media services aimed at minors or appealing particularly to minors and young persons.

The following gambling games shall not be marketed outside the specific game rooms and casinos in which such gambling games are located:

1) a money lottery when run electronically;

2) fast-paced pools when provided exclusively in electronic format;

3) slot machines;

4) casino games.

Combination games which have been found to incur particular risk of gambling harm at the time of issuing the rules of play shall not be marketed outside specific game rooms, casinos and racetracks where the games or their point of sale are located.

Gambling locations for slot machines referred to in subsections 4 and 5 shall not be marketed. However, information on the gambling locations can be provided.

The marketing of gambling games shall always include information on the permissible age limit for gambling and where to obtain information on gambling management tools and service providers providing assistance for problem gambling.

Marketing shall not be targeted at a player who has self-excluded from all gambling. If a player has self-excluded from a specific game, the player may only be subject to marketing of gambling games from which the player has not self-excluded.

It is the duty of the National Police Board to supervise the marketing of gambling games to ensure compliance with this Act and the Consumer Protection Act (38/1978). Veikkaus Oy shall submit an annual report on the marketing of gambling games to the Ministry of the Interior and the National Police Board.

Further provisions on the report referred to in subsection 9 may be given by government decree.

Section 16: Specific provisions concerning slot machines

Slot machines shall be placed in such a way that their use can be monitored unhindered. They may not be placed in such a way that their use could endanger safety or cause a public disturbance.

The principles of placing slot machines and making them available for use at gambling locations shall be designed in such a way as to minimise the economic, social and health-related harm resulting from gambling. Placement of slot machines and making them available for use at gambling locations shall take particular account of the harm gambling causes for minors and vulnerable persons.

Section 62: Prohibitions on running a lottery

Running a lottery in a manner other than that referred to in section 3, subsection 2 or 3, or section 3a or 56 is prohibited.

It is prohibited to:

1) sell or resell tickets for a lottery run without a licence required under this Act, or any other gambling games than those run by Veikkaus Oy, or market such a lottery;

2) sell or resell tickets or market lotteries abroad, unless permitted under the legislation of the state or region in which the tickets are sold or resold or lotteries are marketed;

3) sell or resell tickets, receive stakes and distribute winnings connected with gambling games run by Veikkaus Oy without the permission of the company.

It is prohibited to provide space for making slot machines, casino games, non-money prize machines, or game machines or game equipment referred to in section 56 available for use without a licence referred to in this Act.

A bonus based on a draw may not be paid on premium bonds in addition to interest.

Gambling games run abroad in which Veikkaus Oy participates as an operator are not considered overseas lotteries under this Act.

Section 62 a: Prohibiting the running of gambling games

The National Police Board may prohibit the running of gambling games if:

1) gambling games are run by a body other than Veikkaus Oy;

2) the running of gambling games violates the prohibitions laid down in Section 62, subsections 1–4; or

3) this Act, or a decree issued under this Act, is otherwise violated in the running of gambling games in a manner other than that referred to in Section 62 b.

The prohibition may be imposed on:

1) the gambling operator;

2) a trader or organisation that resells participation tickets or forwards participation fees related to gambling games, provides space for making slot machines available for use, or markets gambling games;

3) a natural person who, for economic or other gain, markets gambling games or otherwise promotes participation in gambling games.

A prohibition is in effect for a maximum of 12 months. The National Police Board may extend the prohibition period by no more than 12 months at a time if the manner in which gambling games are run has not been corrected.

The National Police Board may temporarily prohibit the running of gambling games if the legal protection of players or the supervision of the running of gambling games is compromised and the possibility of misuse increases or the reliability of a lottery is otherwise compromised. The prohibition may be in force for a maximum of 30 days at a time. The National Police Board shall lift the prohibition if there are no longer grounds for it to be enforced.

Section 62 b: Prohibiting the marketing of gambling games

The National Police Board may prohibit the marketing of gambling games in violation of section 14 b.

The prohibition may be imposed on:

1) the gambling operator;

2) a trader or organisation that resells participation tickets or forwards participation fees related to gambling games, provides space for making slot machines available for use, or markets gambling games.

A prohibition is in effect for a maximum of three months. The National Police Board may extend the prohibition period by no more than six months at a time if the manner in which gambling games are run has not been corrected.

Section 62 c: Conditional fine

The National Police Board may impose a conditional fine to reinforce the prohibition referred to in section 62 a, 62 b or 62 m.

The National Police Board orders the payment of conditional fines imposed to reinforce the prohibition referred to in sections 62 a and 62 m. The Market Court orders the payment of conditional fines imposed to reinforce the prohibition referred to in Section 62 b upon application of the National Police Board.

Provisions on conditional fines are laid down in the Act on Conditional Fines (1113/1990).

Section 62 d: Penalty payment for violating provisions on the marketing of gambling games

A penalty payment may be imposed on the gambling operator or trader who intentionally violates the provisions of section 14 b on the marketing of gambling games.

The penalty payment may be imposed on the gambling operator, trader or natural person who intentionally violates the marketing prohibition laid down in section 62, subsection 2, paragraph 1.

Section 62 e: Amount of the penalty payment

The amount of the penalty payment is based on an overall assessment and is determined taking into account:

1) the nature, extent, seriousness and duration of the violation;

2) the benefits of the violation, where this information is available;

3) actions taken by the gambling operator, trader or natural person to mitigate or repair the damage;

4) any previous violations of marketing provisions by the gambling operator, trader or natural person.

The penalty payment imposed on a gambling operator or trader shall not exceed four per cent of the turnover of the year preceding the end of the violation, but shall not exceed EUR 5 million. However, the penalty payment shall not be less than EUR 10,000. If the financial statements have not yet been completed at the time when a penalty payment is imposed, if the business has only just started and the financial statements are not available, or if the financial statements are not available for any other reason, the turnover may be estimated on the basis of other evidence received.

The penalty payment imposed on a natural person referred to in Section 62 a, subsection 2, paragraph 3 shall not exceed four per cent of the person's taxable income in the year preceding the end of the violation, but shall not exceed EUR 40,000. However, the penalty payment shall not be less than EUR 500. If the income cannot be reliably established, it can be estimated on the basis of other evidence received.

For the purposes of this section, the turnover mentioned above means the net turnover referred to in Chapter 4, Section 1 of the Accounting Act (1336/1997) or equivalent turnover.

Section 62 f: Non-imposition of a penalty payment

No penalty payment shall be proposed to be imposed or imposed if:

1) the violation is minor; or

2) the imposition of a penalty payment is to be regarded as manifestly unreasonable.

A proposal to impose a penalty payment shall not be made and the penalty payment not imposed if the gambling operator, trader or natural person has taken adequate measures to remedy the violation immediately after its detection and the violation is not serious or repeated.

A proposal to impose a penalty payment shall not be made and the penalty payment not imposed if a conditional fine has been imposed for the same violation or an application for enforcing the payment of a conditional fine is pending.

Section 62 g: Relationship to criminal proceedings

No penalty payment shall be imposed on a person suspected of the same violation during a criminal investigation, for which consideration of charges for the same violation is pending, or on a person who is a defendant in a criminal matter concerning the same violation. Neither may a penalty payment be imposed on anyone with a final judgement for the same violation in a criminal matter.

If a matter concerning the imposition of a penalty payment is pending for the same violation or has been decided, no charges shall be brought and no judgement issued in a criminal matter.

Section 62 h: Imposition of a penalty payment

A penalty payment is imposed by the Market Court on a proposal from the National Police Board. No penalty payment may be imposed if the National Police Board has not made a proposal to impose it on the Market Court within five years of the end of the violation. Provisions on the consideration of a case in the Market Court are laid down in the Market Court Proceedings Act (100/2013).

The penalty payment is made payable to the State. The decision to impose a penalty payment shall not be enforced until the decision is final.

Section 62 i: Request for review of a decision of the Market Court

Review of a decision of the Market Court regarding a penalty payment may be requested by appeal to the Supreme Administrative Court without leave to appeal.

The decision of the Market Court may be appealed by the person on whom the Market Court has imposed a penalty payment.

The National Police Board may appeal against a Market Court decision by which the Market Court has rejected all or part of the National Police Board's proposal.

Section 62 j: Postponement of consideration

A court may postpone the consideration of a matter concerning a penalty payment if another matter concerning the same activity is pending in other proceedings which may affect the outcome of the penalty payment matter.

Section 62 k: Enforcement and expiry of a penalty payment

Enforcement of penalty payments is the responsibility of the Legal Register Centre. Provisions on the enforcement of a penalty payment imposed under this Act are laid down in the Act on the Enforcement of a Fine (672/2002). A penalty payment expires five years after the date of the final decision on the penalty payment.

A penalty payment lapses on the death of the party liable for the payment.

Section 62 l: Prohibition on the initiation and implementation of a payment transaction

The National Police Board shall keep available on a public information network a list in a machine-readable format of gambling operators that market gambling games in violation of Section 62, subsection 2, paragraph 1 and whose running of gambling games has been prohibited by the National Police Board under Section 62 a.

A payment service provider shall not implement or initiate a gambling-related payment transaction where the payer is a natural person acting as the player and the payee is a gambling operator referred to in subsection 1.

The provisions of subsection 2 also apply to virtual currency services provided by virtual currency providers and to the use of virtual currency as a means of exchange.

Section 62 m: Prohibiting the initiation and implementation of payment transactions

The National Police Board may prohibit the initiation and implementation of gambling-related payment transactions if a payment service provider or virtual currency provider violates the prohibition laid down in Section 62 l.

The prohibition may be imposed on the payment service provider or the virtual currency provider.

A prohibition is in effect for a maximum of 12 months. The National Police Board may extend the prohibition period by no more than 12 months at a time if the procedure for initiating and implementing the payment transaction has not been corrected.

Section 62 n: Access to information from a payment service provider

Notwithstanding non-disclosure provisions, the National Police Board shall have the right to obtain, free of charge, information from the payment service provider or virtual currency provider on the gambling operator that is a payer or payee and on the service provider implementing or initiating the payment transaction on its behalf.

The right to obtain information applies to the following information, where available in the systems of service providers:

1) account number;

2) merchant category code;

3) the identification details of the gambling operator or the service provider forwarding payments on its behalf;

4) the number of payment transactions;

5) information necessary to supervise the prohibition on the initiation and implementation of a payment transaction other than that referred to in paragraphs 1–4.

However, the National Police Board does not have the right to obtain personal data related to individual payment transactions.

Section 63: References to the Criminal Code

Provisions on the punishment for a gambling offence and a lottery offence are laid down in Chapter 17, sections 16a and 16b of the Criminal Code (39/1889).

Section 66: Request for review

Provisions on requesting a judicial review by an administrative court are laid down in the Administrative Judicial Procedure Act (808/2019).

Notwithstanding a request for review, the decision to revoke a licence or amend the licence conditions under this Act, the prohibition on the running of gambling games referred to in Section 62 a and the prohibition on the implementation or initiation of a payment transaction referred to in Section 62 m shall be complied with, unless otherwise decided by the appellate authority.

Section 66 a: Referring a prohibition on marketing to the Market Court

No appeal may be made against prohibitions on marketing gambling games referred to in Section 62 b and imposed by the National Police Board, or conditional fines it has imposed to reinforce such a prohibition.

The party to whom the National Police Board has imposed a prohibition on marketing gambling games referred to in Section 62 b, or a conditional fine to reinforce such a prohibition, may refer the matter to the Market Court on application within 30 days from the receipt of the order or the decision. The prohibition shall be complied with unless otherwise ordered by the Market Court.

Provisions on the consideration of a case in the Market Court and on appeal against a decision of the Market Court are laid down in the Market Court Proceedings Act (100/2013). (31.1.2013/134)

1 Background on the marketing regulations of the Lotteries Act

The marketing provisions of the Lotteries Act were introduced into the Lotteries Act at the beginning of 2010. Prior to the revisions, the Lotteries Act (1047/2001) only included a prohibition of the marketing of illegal gambling services. The government proposal[7] given to the Parliament on 26 June 2008 included proposals for statutes concerning the marketing of gambling services in accordance with the proposal of the Lotteries Act programme. The government proposal included proposals for the definition of marketing, the limitations on the marketing of permitted gambling services, and the extension of the powers of the supervisory authority. A proposal was also made to specify the prohibition of the advertising of illegal gambling services. Due to the government proposal, and with the changes proposed by the Committees, the Parliament approved the changes to the first phase of the revision of the Lotteries Act so that they came into force on 1 October 2010.

The amendment to the Lotteries Act, which came into force at the beginning of 2022, significantly changed the marketing regulations. The amendment aimed to prevent and reduce the economic, social, and health-related harms caused by gambling by adding new provisions to the Lotteries Act to support this objective. The proposal also aimed to strengthen the ability of the exclusive rights system to manage demand for gambling regulated by the Lotteries Act to further improve the prevention and reduction of gambling harm. The provisions on the marketing of gambling services by Veikkaus Oy were amended by adding more specific provisions to the Lotteries Act on the prohibited marketing of gambling services, on the means and methods considered prohibited in marketing, on the information to be provided in connection with marketing, and on direct marketing prohibitions.

The previous regulation of permitted forms of gambling marketing was based on directing gambling to the activities of Veikkaus Oy, which is regulated by the Lotteries Act. This principle was further supplemented with the principle of steering gambling towards less harmful forms. Marketing should also be necessary to direct gambling and should be moderate in quantity, scope, visibility and frequency. To support the channelling capacity of the exclusive rights system, the provisions on marketing were amended to allow the marketing of betting and totalisator games within specified marketing restrictions.

In order to more effectively combat the marketing of gambling companies outside the exclusive rights system, a provision was added to the Lotteries Act allowing the National Police Board to impose a prohibition on the marketing of gambling in violation of the Lotteries Act on a natural person and provisions on the administrative penalty payment as a result of marketing in violation of the Lotteries Act. To combat gambling harm more effectively and support the functioning of the exclusive rights system, provisions on preventing payment transactions related to gambling outside the exclusive rights system were added to the Lotteries Act. Payment service providers must block gambling-related

[7] HE 96/2008 vp (Legislative government proposal to the Parliament to revise Sections 2 and 7 of the Lotteries Act).

payment transactions from players to gambling companies that have been blocklisted. The blocklist will include gambling companies that market in violation of the Lotteries Act and for which the National Police Board has issued a prohibition decision regarding the marketing of gambling.

Following Government Proposal 135/2021 vp, Parliament approved the amendments to the Lotteries Act with the amendments proposed in committee discussions, and they entered into force on 1 January 2022.

2 The concept of marketing

The definition of marketing prescribed in the Lotteries Act comprises three main elements: ***advertising, indirect advertising, and other promotional activities.*** Based on the preparatory work of the law, the definition of promotional activities has been intended to broadly cover all marketing activities that **aim to promote demand for the gambling services or otherwise aim to increase the visibility of the provider of the gambling service and affect the image of the provider**[8]**.** In accordance with the government proposal, the suggested definition for marketing was intended to correspond to the definition used in the Alcohol Act (1143/1994), allowing interpretations to be based on the practices of the supervisory authority and case law corresponding to the definition in the Alcohol Act[9]. The provisions on marketing in the Lotteries Act constitute special legislation regulating gambling activities. They complement the marketing provisions of the Consumer Protection Act (38/1978).

In its interpretation practice, the Constitutional Law Committee has viewed commercial communications to be covered by the constitutional freedom of speech, although not amongst its core issues. Therefore, marketing can be subjected to more stringent limitations than would otherwise be possible within the core of freedom of speech.[10]

In the Lotteries Act, marketing is not limited to any specific method, medium or channel of marketing. Marketing shall be considered to constitute both advertising in traditional media channels, such as radio advertising, TV advertising, outdoor advertising or direct advertising, and advertising on the internet, via e-mail messages and on the social media.

The concept of marketing also includes ***indirect advertising***, which according to the point in the law particularly constitutes sales promotion using the established symbol of a gambling operator or a gambling service, such as a logo, in the advertising of a different product, if it is recognisable or the advertising conveys an image of the gambling service or the gambling operator. Such an image can be conveyed by, for example, the game's nickname, symbol or identifiable background music. Using the symbol in connection with a different product is considered to be marketing, even if the product and the gambling operator or game have no factual connection with each other. On the other hand, if a gambling service uses the name of a different product, service or operator, or the gambling product otherwise conveys an image of the commodity in question or its supplier, the gambling service is considered to be used to indirectly advertise the other product. The consequence may be that the visibility of the indirectly marketed commodity or operator will also indirectly market gambling services.

In some cases, however, it must be taken into consideration that the product names of certain gambling services are also the standard language name of the game. These include, for example, lotto, keno, poker and several table top games. If the name of the

[8] HE 96/2008 vp, p. 6
[9] HE 96/2008 vp, p. 6
[10] PeVL 15/2010 vp.

game or the term for the game type is used in communications other than marketing communications, this does not generally constitute the marketing of gambling services.

In addition to regular advertisements and indirect advertising, other kinds of communications based on the evocation of images can constitute ***other promotional activities*** that are identifiable as marketing. The distribution of various promotional items and brochures, providing price lists and other product information, but also publishing text written in the form of an article (referred to as an 'advertorial') may constitute marketing. Other typical sales promotions include promoting a gambling company on social media, e.g., through hashtags or live streams, promotional lotteries, product brochures and samples, as well as various discounts and benefits directly related to gambling, such as bonus offers and free games. The purpose of marketing is typically the commercial promotion of gambling services or a gambling operator in a way that aims to affect the buying behaviour of consumers and to create an image of the product or seller.

Sponsoring as a means of marketing is a frequently used method to market a gambling organisation. The sponsor enters into an agreement with the sponsored party that benefits both of them. The cooperation is based on the sponsor supporting the sponsored party financially or otherwise. Correspondingly, the sponsor aims to create a positive image of itself or its products through sponsoring by utilising the image of the sponsored party.

Various ***customer loyalty programmes*** and any benefits connected to them form a part of the marketing of a gambling operator, even if these are not used to market individual games at all. All gambling at Veikkaus Oy now requires registration, so Veikkaus Oy does not have separate loyalty programmes. ***Promotional lotteries*** have also been one of the marketing methods used by gambling operators.

Market and marketing research is often used for gathering information on the industry's market situation and marketing that the company or other operator then uses to support its business-related decision-making. A gambling operator may use gambling-related market research to obtain information on, for instance, demand for available services and the preferences of the consumers. In turn, the primary purpose of marketing research is to gather information related to marketing and its impact. Such research can, however, also have a marketing effect that increases the visibility of the actor and its products. The purpose of the research may also be merely to increase the visibility of the actor without any actual research objective.

The various ***sales transactions*** of gambling products may also involve the commercial promotion of gambling products. In these situations, too, the marketing restrictions must be taken into consideration just as in other marketing.

The definition of marketing specifically excludes the mere availability of gambling website in the electronic information network, when no other lottery-related materials promoting participation in the lottery in Finland or the state have been included on the lottery website. This amendment of the definition of marketing was made during the parliamentary proceedings. Based on this amendment, merely maintaining a Finnish online gambling website does not constitute marketing as referred to in the law, unless it

includes other marketing of a gambling website with the purpose of promoting the sales of the gambling site in Finland or the state.[11] The statement of the Constitutional Law Committee and the report of the Administration Committee that led to the amendment do not specifically explain what is meant by 'materials promoting participation'. Customer support related to an established gaming relationship, however, has been excluded from the definition of marketing, if it does not involve marketing purposes. Despite the exclusion, it must be noted that the availability of a gambling website in the Finnish language may still constitute illegal offering of gambling services under Section 62, subsection 2, paragraph 1 of the Lotteries Act. In its two different judgements – Betfair (C-203/08) and Ladbrokes (C-248/08) – the EU Court of Justice has assessed the chances of a Member State of limiting the offering of online gambling services. According to the Court's statement, because online gambling services can be offered from one Member State to another, the authorities of which are unable to sufficiently protect their consumers, there exist no obstacles for a Member State enacting legislation that prohibits the provider of the gambling services from offering games in the latter Member State even if the actor in question offers gambling services legally in the other Member State. Although the marketing of gambling services in the former Member State is prohibited, the mere availability of the gambling website on the internet causes the effects from which consumers should be protected.

The definition of marketing in the Lotteries Act also excludes the marketing of gambling services in a foreign or Åland publication, if the primary purpose of the publication is not to market the gambling services in Finland.[12] Several foreign newspaper and magazine publications are available for sale in Finland, but their sales are primarily targeted elsewhere than Finland. Such publications may contain marketing of gambling services that is legal in the publication's country of publishing or sale or the province of Åland. The intention is not to interfere in advertising in such publications with the restrictions on marketing laid down in the Lotteries Act.

The purpose of the wide definition of marketing is to prevent the circumvention of the marketing prohibition. Merely printing a publication abroad does not make the marketing contained in the publication permitted, if publishing the materials in Finland is not allowed. The assessment of whether the marketing of gambling services is directed at the area of the State is based on a comprehensive evaluation. The Administration Committee has stated in its report that distributing a Finnish publication from elsewhere does not make the procedure legal.[13]

When a publication is assessed in order to determine whether the marketing it contains is directed at Finland, the operative factors can be considered to include the language

[11] The clause uses the expression 'in Finland or the state'. This expression is somewhat problematic, as based on the expression one could understand that the Lotteries Act regulates the running of lotteries within the entire Republic of Finland. Based on the Act on the Autonomy of Åland (1144/1991 vp), lottery legislation is under the authority of the province. The Lotteries Act (1047/2001 vp) enacted by the Finnish Parliament thus regulates the running of lotteries in Finland with the exclusion of the province of Åland. The Supreme Court and the Constitutional Law Committee, among others, have used the expression 'State' when referring to the area of the Republic of Finland with the exclusion of the province of Åland.
[12] Added during parliamentary proceedings (cf. HaVM 7/2010 vp, p. 6).
[13] HaVM 7/2010 vp, p. 6.

used in the publication, subject matter that focuses on Finnish conditions or is particularly appealing to Finnish audiences, and the locations of the publisher, editing office and printing house. It is also important whether the publication is marketed to Finnish consumers, and where the sales of the publication's single copies and subscriptions or other distribution is directed.

As a rule, the publication being in the Finnish language indicates that the publication or the marketing materials contained therein are directed at Finland. On the other hand, publishing the materials in the English language does not necessarily mean that the published materials are directed elsewhere than Finland, because English is a widely known language in Finland, too. Marketing published in Swedish may also be targeted at Finnish consumers.

3 Permitted marketing of gambling services

3.1 Who is allowed to market?

The marketing of gambling services is only allowed for the gambling operator specified in Section 11 of the Lotteries Act, i.e. Veikkaus Oy. The section provides exclusive rights to Veikkaus Oy for offering gambling services.

Veikkaus Oy may grant permission for the sale and brokering of tickets related to a gambling service, reception of stakes, and delivery of winnings. Under the provision, however, Veikkaus Oy may not grant permission to market gambling services, thus transferring responsibility for marketing to other parties. The marketing must clearly indicate that it has been carried out by Veikkaus Oy. An agent or the party who provided the premises for offering games does not have an independent right to market the games of Veikkaus Oy, even if they have an agent agreement with the gambling operator. For example, an agent may not independently market gambling services offered under the Lotteries Act in their own publications, sound and image advertising or other marketing, or otherwise independently arrange marketing campaigns for the gambling services. Veikkaus Oy cannot with its approval make this kind of independent marketing by an agent legal. Based on the Lotteries Act, Veikkaus Oy must provide an annual report on the marketing of gambling services to the Ministry of the Interior and the National Police Board.[14] This report must contain all the marketing of gambling services, which would not be possible if other actors also had the right to market gambling games independently.

Decisions of the National Police Board

An actor who had entered into an agent agreement with a gambling operator asked the National Police Board to determine whether the customer publication independently created by the actor and presenting various gambling services was in keeping with the provisions of the Lotteries Act regulating the marketing of gambling services. The publication was intended to include articles presenting gambling services, experiences from consumers who play the games and persons who sell them, and other gambling-related phenomena. In its statement, the National Police Board considered the purpose of such a publication to be essential for the assessment. The independently created publication by an actor practising retail sales of gambling services likely aims at increasing the retail sales of the gambling services. Even if the publication was written in the form of articles, this would cause the creation of the publication to be in violation of the marketing regulations of the Lotteries Act.[15]

[14] Lotteries Act, Section 14 b, paragraph 9
[15] Statement of the NPB 2020/2012/1539

3.2 Channelling of gambling as the starting point of marketing

In a gambling system based on exclusive rights, the channelling of gambling primarily refers to directing the existing demand for gambling from gambling services considered illegal under the national legislation to legal, nationally monitored gambling services. The channelling also aims to direct gambling to gaming services that cause less harm. According to Section 14 b, subsection 1 of the Lotteries Act, Veikkaus Oy may indeed market gambling games and the company if the marketing is moderate in quantity, scope, visibility and frequency, as well as necessary to direct the demand for gambling to gambling services offered under the Lotteries Act and to gambling that causes less economic, social and health-related harms.

As there is no community-level legislation in the European Union, the ECJ has, in its numerous decisions concerning gambling activities, assessed the compatibility of the national statutes of the Member States with the provisions of the Treaty of the European Union. The ECJ has stated that a Member State shall have discretion to decide what requirements for the methods of running lotteries, the size of the stakes and the use of the income from the lotteries must be set in order to protect the players and, more generally, to safeguard the social order of the Member State taking into consideration the social and cultural special characteristics of each Member State.[16] Maintaining a gambling system based on exclusive rights must be justifiable, and it must have been implemented proportionately.[17] The Court has deemed, in particular, consumer protection, crime prevention and prevention of enticing citizens to spend excessively on gambling to be acceptable justifications for restricting the offering of gambling services.[18]

In an exclusive rights system, the operator offering gambling services must establish a reliable and attractive alternative to illegal activities. This may mean offering an extensive selection of games, advertising to a certain extent, and utilisation of new distribution techniques.[19]

The marketing of gambling services must always have a purpose based on the channelling of the demand for gambling services. The legal provision follows the principle established by the precedences of the ECJ. In order to fulfil this purpose, the marketing must be moderate and limited only to what is necessary for directing the consumers to legal gambling services. The channelling must also pursue directing gambling consumption from games likely to cause more harm to games causing less harm.[20] The provisions of the Lotteries Act concerning marketing are stricter in parts than the minimum requirements set by the ECJ. This is especially evident in the restrictions to the marketing of gambling services involving a particular risk of gambling-related harm. For games that present a particular risk of harm, despite the restrictions, location

[16] Inter alia Schindler (C-275/92) item 61.
[17] Inter alia Läärä (C-124/97) item 39, Zenatti (C-67/98) item 37; Gambelli (C-243/01) et al. item 72; Placanica (C-338/04) et al. item 48.; Digibet Ltd et al. (C-156/13) items 40 – 41
[18] Inter alia Schindler items 60–61; Zenatti item 31; Gambelli et al. item 67; Liga Portuguesa (C-42/07) et al. item 69.
[19] Placanica et al. item 55; Markus Stoβ (C-316/07) et al. item 101; Ladbrokes (C-258/08) et al. item 56.
[20] Markus Stoβ et al. item 103; Zeturf (C-212/08) item 71; Dickinger and Ömer (C-347/09) item 100 b).

information can be provided through certain means, such as keyword marketing, to direct demand for these gambling games into the exclusive rights system.[21]

Veikkaus Oy must take into consideration the restrictions on marketing laid down in the Consumer Protection Act and the Lotteries Act in all its marketing. Marketing must be based on a channelling need and it must be responsible.[22] The primary objective of marketing must not be to increase the turnover of the operator. Although the profits from the operations are used for socially beneficial purposes, the guidelines of the ECJ state that the profits from offering gambling services may only constitute an incidental beneficial consequence and not the real justification. In an exclusive rights system, Veikkaus Oy also does not have a competitive relationship with other business operators, like regular businesses.[23]

Channelling can also be justifiably used to aim at the players using their real identity instead of playing anonymously. The primary objective of promoting playing using one's real identity must be to prevent harm caused by gambling by providing the consumers with better opportunities to monitor their own playing and utilise the various playing management means offered by the operators.

Channelling can also mean providing customer satisfaction to keep the players from moving to gambling services other than those allowed in the Lotteries Act. To fulfil this objective, the gambling operator may not, however, reward a consumer for abundant or increasing gambling.

3.3 Marketing of Veikkaus Oy

Based on the Lotteries Act, Veikkaus Oy is allowed to market itself. Such marketing must also be based on the above-mentioned channelling principle.

According to the guidelines of the ECJ, this kind of company image marketing must also be measured, and the marketing must otherwise take into consideration the restrictions on the marketing of gambling services.

Indirect advertising by Veikkaus Oy as the symbol of a product other than a gambling product of a gambling operator is not compatible with the channelling principle for the marketing of gambling services. Associating gambling products and the name of the gambling operator with other products is not allowed due to the special nature of offering gambling services.[24]

Sponsoring as a means of marketing a gambling operator is allowed when done moderately. In sponsoring, the operator must take into consideration not to bypass the regulations on the distribution of profits from the operator's gambling activities.

Veikkaus Oy's employees can reference the gambling products and services they have created in job applications, as these activities do not have an explicit marketing purpose.

[21] HE 135/2021 vp, page 103
[22] HE 96/2008 vp, p. 8.
[23] Inter alia Schindler item 61; Zenatti (C-67/98) item 36.
[24] See also Section 4.13.3 Combining the marketing of gambling services and other products

For games with particular risks of gambling harm, the content should be technical in nature and not describe the entire gambling event. Veikkaus Oy's corporate partners may mention Veikkaus Oy in the customer listings, and the customer listing may include a link to Veikkaus Oy's business page.

3.4 Games permitted in marketing

The gambling operator legally offering gambling services in Finland has a selection of various games with different characteristics. The nature and quantity of the gambling-related harm the games may involve are, therefore, also different. The final report of the Lotteries Act revision project[25] lists five game-related characteristics that have been considered to have a particular impact on the gambling addiction and problem gambling risks. These characteristics are a) pace of the game, b) rewarding nature, c) immediacy of winning, d) importance of skill and interaction, and e) supply. This item has been included in the subsequently issued government proposal in 2008.[26]

Based on the marketing regulations of the Lotteries Act, the characteristics of a game had a significant effect on how each game could be marketed in the past. The Government Proposal HE 96/2008 vp divides individually named games into those involving particular risks of gambling-related harm, and into games that do not involve such risks to the same extent. This division has been described using the terms “**green**” and “**red**” games. Green games that involve a lower risk of gambling-related harm are considered to include scratch cards, lottery games, and certain totalisator games. Red games that involve a particular risk of gambling-related harm are considered in the Government Proposal HE 96/2008 vp to include at least online scratch cards; betting; most of the slot machines, casino, and casino games.

Prior to the reform of the Lotteries Act, which came into force in 2022, the division into green and red games also influenced the marketing of gambling. Previously, green games could be marketed more freely, while red games could only be marketed with informational content. The reform of the law removed the concept of “game information” from the Lotteries Act and eliminated the direct link between marketing restrictions and the risk of gambling harm.

The starting point for permitted marketing of gambling is the aforementioned channelling of gambling from illegal to legally offered gambling and from more harmful to less harmful gambling games. Marketing must ensure that it does not promote gambling that causes economic, social and health-related harms.

According to Section 14 b, subsection 2 of the Lotteries Act, the marketing of gambling shall not promote gambling that causes economic, social and health-related harm by:

1) idealising gambling by presenting it as a desirable or exaggeratedly positive activity or by inciting gambling;

[25] SM064:00/2007.
[26] HE 96/2008 vp, pp. 8–9

2) describing frequent gambling positively, or non-playing or moderate gambling negatively;

3) portraying gambling as an everyday activity by equating gambling with everyday life or with a person's everyday routines, a person's everyday or normal consumer behaviour, such as purchasing food or clothing, or presenting gambling as a necessary or harmless pastime;

4) presenting gambling as a solution to a person's financial problems, as a means of improving a person's financial position or as a means of addressing a person's challenges with life management or as an alternative to work;

5) describing gambling as a way of promoting a person's social success or acceptance;

6) providing a misleading or unrealistic picture of the chances of winning in a gambling game, overemphasising the potential for high winnings, or characterising gambling as an activity that has no economic, social or health-related risks;

7) exploiting ignorance, inexperience or credulity associated with gambling;

8) providing play money or providing gambling games free of charge or at a reduced price or with combined offers;

9) offering other gambling games to be purchased or selected in connection with the selection of a gambling game or other commodity or in the collection of winnings;

10) providing a random advantage other than the possibility of winning in connection with a gambling game purchase;

11) encouraging the financing of non-profit activities through gambling;

12) by any other means equivalent to that referred to in paragraphs 1–11.

Marketing must also not be targeted at minors or otherwise vulnerable persons, and the marketing must not feature underage persons. Gambling games may not be marketed in television and radio broadcasts, in public performances of visual content in cinemas and in publishing activities aimed at minors, or in media services aimed at minors or appealing particularly to minors and young persons.

The marketing of gambling games shall always include information on the permissible age limit for gambling and where to obtain information on gambling management tools and service providers providing assistance for problem gambling.

Marketing shall not be targeted at a player who has self-excluded from all gambling. If a player has self-excluded from a specific game, the player may only be subject to marketing of gambling games from which the player has not self-excluded.

The restrictions on marketing are discussed in more detail in Chapter 4.

Marketing must also comply with the marketing regulations of the Consumer Protection Act. Marketing may, thus, not be contrary to accepted principles of morality or improper. The marketing must be clearly identifiable as commercial communications, and it must indicate the party on whose behalf the marketing is conducted. Nor may marketing be aggressive, i.e., the marketing may not use harassment, force, or other such pressuring

of the consumer that is likely to result in the consumer making a purchase decision or other decision related to consumer goods that they would not otherwise had made. Marketing may not include claims or create images that are not based on facts or research data. On the other hand, the consumers must be informed of things with essential significance with regard to making a gambling purchase. The marketing of green games involving large winnings must take particular care not to give the consumers a false idea of the chances and probability of winning.

Decisions of the National Police Board

Veikkaus Oy's marketing slogan "Double your winnings with royal multipliers" drew the attention of the National Police Board. The National Police Board judged that the marketing did not contain sufficient information for the players. Receiving the winnings doubled requires the bonus ('royal') number being among the winning numbers and paying an additional fee equalling the stake, which was not evident in the marketing. The National Police Board stated that all essential information must be conveyed to the consumers clearly and understandably in the marketing of gambling services.[27]

Veikkaus Oy's radio advertising campaign drew the attention of the National Police Board, as it featured fictional characters calling a therapist to ask, among other things, whether gambling is an acceptable way to seek excitement in life. In the advertisement, the therapist answers affirmatively and invites the callers to put their thoughts into practice (using a play on the word 'totalisator') either at the racetrack or in the Veikkaus online store. The National Police Board considered that linking the Toto75 gambling game to a familiar context for consumers, through the dialogue in a customer service situation featured in the advertisement, constituted portraying gambling as an everyday activity. The dialogue with the fictional therapist may have given rise to unwarranted confidence in gambling, as the professional title of 'therapist' is linked to ethically and medically approved interactive treatment. A positive and encouraging image of gambling may not only have given a positive image of gambling, but may also have lowered the threshold for buying gambling games.[28]

The marketing of Veikkaus Oy's Keno gambling game drew the attention of the National Police Board, as it equated gambling with everyday routines ("Keno is part of many people's daily routine, just like going out for coffee. When do you play Keno?"). The National Police Board considered that equating the Keno gambling game with coffee breaks and daily routines was portraying gambling as an everyday activity.[29]

Veikkaus Oy's marketing drew the attention of the National Police Board in connection with the films Supermarsu, Pony and Birdboy, and Jill, Joy and the

[27] Statement of the NPB on the matter POL-2014-5934
[28] Statement of the NPB on the matter POL-2019-44340
[29] Statement of the NPB on the matter POL-2019-34378

Sleeping Clock, among others. The National Police Board considered that the above three films, assessed as a whole, were aimed at minors. In the view of the National Police Board, the use of an opening sequence mentioning proceeds from Veikkaus Oy's gambling operations (veikkausvoittovarat) in connection with the above-mentioned films constituted sponsorship and, therefore, fell under other promotional activities within the definition of marketing. The National Police Board considered that the gambling company had therefore been marketed in a public performance of visual content in a cinema that was aimed at minors.[30]

3.5 Gambling games subject to the marketing prohibition

3.5.1 General

According to the Lotteries Act, money lotteries conducted electronically, fast-paced pools conducted electronically, slot machines, casino games and combination games which have been found to incur particular risk of gambling harm at the time of issuing the rules of play shall not be marketed outside specific game rooms, casinos and racetracks where the games or their point of sale are located.

The restrictions on marketing are medium-neutral and, thus, also apply to direct marketing via e-mail and post, various brochures and promotional goods, and social media marketing.

The restrictions on marketing must also be taken into consideration in the use of the colloquial name of a game or game type. Marketing communications may thus not circumvent the marketing prohibition by not mentioning the product name of the game, although the intention is to market a specific gambling game or game type subject to the marketing prohibition.

3.5.2 Gambling location information

Veikkaus Oy may provide *location information* for games that are subject to the marketing prohibition. This is an exception to the marketing prohibition. Since a large number of games are available through electronic channels, especially those subject to the marketing prohibition, location information allows Veikkaus Oy to inform consumers about the availability of legally offered games in order to fulfil its channelling purpose.

When providing gaming venue information, the communication **must not include similar enticing elements as marketing does**. Defining marketing definitely and unambiguously can, however, be difficult depending on the situation, when the marketing comprises many different kinds of activities and different implementation methods. Providing information on a product also forms part of marketing, when consumers are informed of the offered product or service with the real purpose of promoting sales. Providing information can, thus, have a significant impact on the demand for the gambling product.

[30] Statement of the NPB on the matter POL-2019-48265

Veikkaus Oy must ensure that its provision of gaming venue information remains within quantitative limits that do not effectively become advertising of the game. Indeed, Veikkaus Oy must ensure that game information is not used to pursue increased sales but to channel playing towards the legal offering.

The explanatory notes for the government proposal to amend the Lotteries Act state[31] that the provision of information on gambling games with a particular risk of gambling harm has been open to interpretation in the past, although the requirement for providing information has been that it should be clearly distinguishable from advertising containing enticing features. The content of gambling location communications must strictly adhere to factual information about the game location, and no part of the communication may include any enticing elements. The permitted information can be compared to a product description.

The assessment of whether the contents include any enticing elements focuses on the choice of words used; they must in no way induce gambling. Adjectives such as "awesome", "thrilling" or "popular", or verbs in the imperative such as "play and win" or "buy" usually constitute communications containing enticing elements. The use of slang or dialect, for instance, can alter the meaning of the information provided or make the presentation non-neutral. Not only word choice, but also the colours, soundscape and moving images such as image transitions and animations, can make the game information attractive to such an extent that it must be considered to be enticing marketing. For example, the use of moving images in TV broadcasts and the transmission of gambling location information through digital channels can easily create an enticing experience. Information about a gambling location provided in the context of TV broadcasts or digital channels can therefore already be interpreted as advertising based on just a few enticing elements. This means that especially the use of various moving images and videos to provide information about gambling locations must be strictly limited to providing information and must not in any way create an impression that is entertaining, entices people to gamble, or is otherwise immersive.

Not only the content of game information, but also the repetition of the provided information can affect the nature of the communications. The National Police Board has found that, in practice, defining exact criteria for the volume of information is impossible. But, when the shared information is comprehensive with regard to its visibility and other characteristics to such an extent that it is difficult for the consumer to avoid the information provided, providing game information does not materially differ from regular advertising. Information that is published in various media or otherwise made public, for example on street advertisement spots, and that does not differ at all or differs only slightly from other advertising used in the same medium with regard to its visibility, placement, shape or otherwise when considered as a whole, cannot be considered to be gaming venue information.

It is common in online marketing to try to direct consumers to a gambling website via a link (this issue is also discussed later, in section 4.13.5). Taking into consideration the restrictions on the marketing of games subject to the marketing prohibition, and the

[31] HE 135/2011, page 102

purpose of the said restrictions, publishing a direct link to a game, for instance with a "play" button, does not constitute permissible gambling location information. However, the National Police Board has deemed that the consumer may be directed to a website containing game venue information, allowing the consumer to obtain sufficient factual information about the game.

Especially games offered at casinos that specialise in gambling are almost without exception games subject to the marketing prohibition. Currently, the majority of games offered on premises considered to be game rooms are also games subject to the marketing prohibition. In this kind of marketing concerning a specific gaming venue, Veikkaus Oy must take into account that the gaming venue may not be marketed using games subject to a marketing ban, other than by providing game venue information. Product gifts related to games subject to the marketing prohibition cannot be considered to convey information; distributing them constitutes illegal marketing.

Winnings from gambling have often been reported in the media as news. Such reporting can also function for a promotional purpose, if it is done regularly and if the operator actively announces players' winnings. For games subject to the marketing prohibition, these kinds of communications with a promotional purpose constitute prohibited marketing. Cases where the media publishes a news report of exceptionally large winnings that may have news value can, however, be separated from promotional activities. If the winnings or other game-related aspects being reported are common, the news reporting can be equated with product advertising. In addition, gambling operators have published player stories about their winnings. Stories about games subject to the marketing prohibition do not constitute permissible marketing.

Winnings have also been announced at retail locations with, for instance, posters saying that a notable sum of money has been won from a game played at that point of sale. The winnings realised have no significance with regard to the probability of winning; nor do the winnings of someone else at the gaming venue in question have any informational content that would mean this could be considered to be providing allowed information.

Decisions of the National Police Board

The National Police Board prohibited the marketing of a red game it considered to be in violation of Section 14 b, subsection 2 of the Lotteries Act. The red game was marketed in newspaper advertisements, light boxes at bus stops, and on television with two 15-second video spots. According to the view of the gambling operator, this was a case of permissible dissemination of game information. However, the National Police Board considered that the dissemination of game information did not essentially differ from form and content typical of advertising. Taking into consideration the scant amount of game information contained by the marketing, and its enticing graphical execution and distinctiveness, the National Police Board judged that, taken as a whole, the gambling service was marketed in violation of Section 14 b, subsection 2 of the Lotteries Act, and imposed a conditional fine on

the gambling operator, prohibiting it from continuing such marketing of the gambling service.[32]

The National Police Board intervened in the marketing of a new slot machine game, Potti di Mare. The game was marketed in newspapers with a rather large advertisement. The National Police Board stated that the information on gambling services provided under Section 14 b, subsection 2 of the Lotteries Act may not be disseminated in such a way that the extent, visibility or other method of presentation of the communications is such that the consumers are unlikely to be able to tell the difference between advertising and the dissemination of information referred to in Section 14 b, subsection 2 of the Lotteries Act.[33]

The National Police Board did not consider communications concerning a poker tournament with the message "unique rake of 2.5% at its lowest" to be allowable. The National Police Board judged that the contents of the game information for a red game should not be of a type giving information on a favourable game term of an individual game that is occasionally in force. The advertising did not give the impression of objective information on the game terms. At the same time, the National Police Board intervened in marketing, where "liking" Rakelike communications on Facebook could result in a lower rake percentage. It was thus possible for individual players to obtain more favourable game terms by "liking". The National Police Board judged the marketing to be in violation of Section 14 b of the Lotteries Act.[34]

Casino advertisements on street advertisement spots, on television and in newspapers drew the attention of the National Police Board. According to the view of the National Police Board, the television advertisements in particular displayed slot machines and roulette in a way that could not be considered to be the dissemination of allowed information.[35]

The marketing of a red game related to harness racing used a cartoon character with the heading "Troika's Top 5, á la Trio-Pierre". The marketing used expressions like "hefty pools", "even big bets won't budge the odds much" and "Bonne chance!" The National Police Board prompted the gambling operator to abstain from marketing the red game in question in this manner, because the cartoon character and expressions used contained enticing elements and did not contain information on the game in question necessary to the consumer.[36]

The National Police Board intervened in advertisements published in the customer magazine of a gambling operator. The magazine advertised the Finnish Championships in online poker with the slogan "Mr. Bigshot played pyramid. Now he feels bad. He was taken to the cleaners. The Finnish Championships in online poker are not a pyramid scheme. Not even with a guaranteed 130,000 euros up for

[32] Decision of the NPB POL-2015-3804
[33] Statement of the NPB 2020/2010/3739
[34] Statement of the NPB 2020/2010/4259
[35] Statement of the NPB 2020/2011/3932
[36] Statement of the NPB 2020/2011/4150

grabs". The same magazine advertised poker by showing images of a fish and poker chips combined with the text "Traditional English dish. Live poker in Helsinki, Tampere and Turku. No fish to the poker table, please." Additionally, the magazine published a slot machine advertisement depicting a Pajatso machine with the text "DDR, YYA and RAY. One is still alive. 450 Valtti machines now available for play." The National Police Board did not consider the above-mentioned advertisements to contain only permitted game information.[37]

The National Police Board intervened in the marketing of a poker tournament, because the marketing used terms such as "larger than ever". The National Police Board also intervened in the cooperation with the organiser of the poker tournament and the radio channel that announced it; the National Police Board did not consider it to be proper considering the prohibition on marketing red games.[38]

The National Police Board found that Veikkaus Oy's website, veikkaus.fi, included the marketing of games subject to the marketing prohibition. The website had game information that included a countdown clock showing the time left to play a game, animated images, an emphasis on changes in game payouts and recommendations for games subject to the marketing prohibition.[39]

The National Police Board considered that the advertising campaign carried out by Veikkaus Oy to promote authentication contained elements that went beyond the information that could be given about slot machines under Section 14 b, subsection 2 of the Lotteries Act. Although the marketing campaign aimed to promote authentication, considering the way the campaign was conducted and its visibility, the campaign had a secondary objective of marketing slot machine games in violation of the Lotteries Act.[40]

3.5.3 Marketing of games in specific game rooms, at casinos and on horse race tracks

Games subject to the marketing prohibition may be marketed in special gaming rooms, at casinos and on horse race tracks where the games or their point of sale are located. Under the Government Decree on the Implementation of Veikkaus Oy's Gambling Services (1414/2016), there may be a maximum of 120 special gaming rooms. Under the decree, Veikkaus Oy may run casino operations in one casino within the City of Helsinki, and in one casino within the City of Tampere. Currently, there is only one operating casino in Helsinki. There are currently 43 trotting tracks in Finland.

According to Section 4, paragraph 6 of the Lotteries Act, a specific game room means a room reserved exclusively or mainly for gambling or an online gambling site for which a player must register in order to play. According to the interpretation of the National Police Board, lobby areas of, for instance, grocery stores or service stations, or the websites of gambling operators, are not special gaming rooms referred to in the law.

[37] Statement of the NPB 2020/2011/4431
[38] Statement of the NPB 2020/2012/2269
[39] Statement of the NPB on the matter POL-2021-55271
[40] Statement of the NPB on the matter POL-2020-56451

Grocery stores, service stations, restaurants and other such commercial premises cannot be considered to be special gaming rooms, if the space has not clearly been separated from the rest of the premises. A special gaming room can be a space separated from the rest of the commercial premises into which visibility is limited, entry is restricted, and in which there is staff for the express purpose of supervising games. Correspondingly, a space is not considered to be a special gaming room if it is separated from the rest of the commercial premises but visibility into it is unlimited, or if the gambling services offered in the space reserved for gambling are supervised, for example, at a cash desk located elsewhere on the commercial premises.

Veikkaus Oy's website is partially open to everyone and partially requires identification. In order to gamble online, consumers must identify themselves in the service and accept its terms and conditions. A website requiring authentication is the equivalent of a specific game room and is therefore also allowed to market games subject to the marketing prohibition.

Subsections 4 and 5 of Section 14 b of the Lotteries Act stipulate that the marketing of games subject to the marketing prohibition is only possible in game rooms, casinos and racetracks for only those games that can be played at the premises in question. Thus, for example, casino games cannot be marketed on racetracks because it is not actually possible to play them on racetracks. When planning the premises referred to in the Act and the marketing to be carried out within them, special consideration must be given to ensuring that persons under 18 years of age are not unnecessarily exposed to the marketing. Specific game rooms must be designed to prevent minors from having access to them at all. Marketing material inside specific gaming rooms and casinos should not be visible outside the gaming area Similarly, attention should be paid to the placement of gambling games so that they do not serve as marketing elements when viewed from outside the game room or casino. Minors may also attend races at racetracks, which should be taken into account in the marketing of games.

The marketing of games subject to the marketing prohibition must follow the same principles and methods as any other legal marketing of gambling services. It may not be contrary to accepted principles of morality, improper for the consumer, or misleading. The marketing must be measured and it must fulfil the channelling purpose.

When marketing games subject to the marketing prohibition, it must be taken into consideration that the games are not advertised to the customer on products that are given to the customers for free or as prizes, or on products intended for sale, and that the customers may take with them outside the gaming room, harness racing track or casino. The same applies to the working clothes and equipment of the personnel working on the premises in question. For example, Veikkaus Oy employees may mention games subject to the marketing prohibition in their portfolios or job applications to the extent that they have participated in the design or implementation of the game. However, a portfolio on a website, for example, must not show a full round of play and must not have content that entices people to gamble.

A regular product introduction is allowed in order to present the characteristics of the game and to provide instructions for playing. However, offering opportunities to play free

games by distributing game vouchers, for instance, is not allowed, if they can be used to participate in games with cash prizes. The above also applies to all gambling games.

A consumer cannot give their permission to receive advertising for games subject to the marketing prohibition. Even if a consumer has given permission for direct marketing referred to in the Act on Electronic Communications Services (917/2014), a gambling operator may not bypass the prohibitions on marketing. Communications with the purpose of managing customer relationships or other such purposes must be made in such a manner that they are not used to actually market games subject to the marketing prohibition. Exceptions to this restriction are service messages that a player subscribes to, for example, to alert them when a certain jackpot limit has been exceeded or other similar events.

Decisions of the National Police Board

The National Police Board considered the gambling operator's website to be similar to other websites that market and present gambling games and not outside the scope of the regulation of gambling marketing. Based on Section 4, paragraphs 6 and 8, Section 14 b, subsections 4, 5 and 6 of the Lotteries Act, and the preliminary work on the Act, the only information that may be provided on a gambling operator's website is gambling location information for games that are subject to marketing restrictions based on Section 14 b, subsections 4 and 5. However, the Lotteries Act is not intended to prohibit the keyword marketing of gambling games that are subject to a marketing prohibition.[41]

[41] Section 14 b, paragraph 3 of the Lotteries Act

4 On the restrictions on the marketing of gambling services offered under the Lotteries Act

4.1 General

Prescribing the offering of gambling services as the exclusive right of Veikkaus Oy and the restrictions on the marketing of gambling services have the purpose of preventing and reducing the harm caused by gambling. Marketing must be carried out in such a manner that the consumers are not enticed into excessive gambling that could result in various social and financial problems. On the other hand, the exposure of problem gamblers or those in the risk group to the marketing of gambling services must be avoided.

Marketing of gambling services is allowed if it is carried out in a responsible manner. The marketing may not be aggressive promotion of sales. In several of its decisions, the ECJ has assessed the use of various means of marketing when a Member State has restricted the offering of gambling services through national legislation and justified these restrictions by the prevention of harm caused by gambling. Based on the decisions of the ECJ, the starting point is that the advertising must be measured and strictly limited to what is necessary in order to channel consumers towards permitted games.

The Consumer Protection Act (38/1978 vp) that concerns the sales, offering and other marketing of consumer goods from business operators to consumers includes general requirements prescribed for the protection of consumers that must also be taken into consideration in the marketing of gambling services. Under the provisions of the Lotteries Act, it is also the duty of the National Police Board to supervise the marketing of gambling services for compliance with the regulations of the Consumer Protection Act.[42] Chapter 2 of the Consumer Protection Act prohibits marketing that is contrary to accepted principles of morality and practices that are improper for the consumer. Moreover, the dissemination of untrue and misleading information in marketing is prohibited in the Consumer Protection Act. The commercial purpose of the marketing must be identifiable. The commercial operator carrying out the marketing must also be identifiable.

Operating gambling activities constitutes a special type of economic activity, and special restrictions have been prescribed for its marketing. Relative to the Consumer Protection Act, the Lotteries Act constitutes special legislation that sets stricter requirements on the marketing of gambling services than those set on the marketing of regular services. According to the view of the National Police Board, a specific sales or marketing method may constitute aggressive marketing in gambling activities, even if the said method would not be considered aggressive in regular business activities. The provisions of the Consumer Protection Act consider harassment, force and other pressuring of the consumer that affects the consumer's decision-making to be aggressive marketing

[42] Section 14 b, paragraph 9 of the Lotteries Act

methods.[43] With regard to gambling services, the National Police Board has used stricter criteria in its assessment of whether the marketing is aggressive or not in order to prevent any harm related to the activities. The starting point of the sales and marketing of gambling products must be the consumer's own desire to gamble, and the possibly resulting unprompted gambling by the consumer. The consumer must not feel any kind of pressure during the purchasing and sales transaction.

4.2 Marketing targeted at minors

Protecting minors from gambling and the harm it causes is one of the key objectives of the Lotteries Act. The Lotteries Act prohibits not only the marketing of gambling to minors and the use of minors in the marketing of gambling, but also gambling by minors. The prohibition applies not only to the sale of gambling games to minors but also to the actual playing of gambling games. For example, minors are not allowed to gamble with a parent.

The protection of minors has also been extended to the marketing of gambling services. The marketing of gambling services targeted at minors is entirely prohibited. The provisions of Section 14 b, subsection 3 of the Lotteries Act specifically prohibits marketing directed at minors in radio and television programmes, public film screenings, publications and media services targeted at children. Thus, gambling may not be promoted at all in programmes, media services, or films aimed at minors. The essential part is that the marketing of gambling services is not targeted at minors. This prohibition refers not only to the marketing of individual games or product groups of gambling services, but also to the marketing of the gambling operator itself. Nor may minors be allowed to play various kinds of free trial and practice games. This can be implemented by, for example, requiring authentication before access to them is provided.

Care must be taken in marketing to ensure that it does not use cartoon, fairy-tale or other characters that are of a particular interest to minors, or persons who are of a particular interest to minors. Implementation must take into consideration that, assessed as a whole, the marketing is not targeted at minors, although individual elements of the marketing, such as displaying the logo of the gambling operator, would not as such be appealing to minors in particular. Gambling may not be presented as an alternative to obtaining an education and working; nor can the marketing otherwise create positive imagery of gambling for minors.

In the marketing of gambling services and the positioning of the gambling products at the point of sales of gambling services, it must also be taken into consideration not to place the sales and advertising of gambling products in the immediate vicinity of products

[43] Chapter 2, Section 9, paragraph 3 of the Consumer Protection Act: When the aggressiveness of a method is assessed, the following shall particularly be taken into consideration:
1) the timing, location, nature and duration of the method;
2) threatening or derogatory language or behaviour;
3) exploitation of the consumer's misfortunes or other such personal matters that are wont to impair the consumer's judgement;
4) hampering the exercise of consumer rights based on an agreement or the law; and
5) any threat to take action that is not allowed by the law.

targeted at children or products that are of a particular interest to minors, such as toys, candy, soft drinks and computer games targeted at minors. According to Section 16 a, subsection 2 of the Lotteries Act, special consideration must be given to minors and vulnerable persons when placing slot machines. This is to avoid exposing minors to gambling. It can also be concluded that slot machine games themselves contain marketing elements, so their placement and design must aim to reduce and prevent gambling harm. This has led to the introduction of screen savers in slot machine games and a shutdown mode in grocery stores between 21:00–9:00.

The marketing of gambling services and the gambling operator must be considered to be prohibited in contexts where the members of a sports team or the participants at a sporting or other event are primarily minors. If, due to the age limit of an age group, a team mostly comprises minors, or if a significant proportion of the people participating in a sporting or other event are minors, gambling services and the gambling operator should not be marketed. This must be taken into consideration also in the case where Veikkaus Oy is sponsoring the event. The logo of Veikkaus Oy may not be used, for example, in material distributed or otherwise displayed at the event.

Situations may occur in various circumstances where a team, or a match, competition or other event mostly comprising adults may occasionally include members or participants who are under 18 years of age. In these kinds of circumstances, under-age participants may be exposed to the marketing of gambling services, if such marketing is present on, for example, team jerseys or elsewhere at the event location. As a rule, this kind of marketing cannot be considered to be particularly targeted at minors, although children and young people are often interested in such sports or other similar activities. In these cases, too, the marketing must be assessed as a whole. It must be taken into consideration, however, that gambling services or Veikkaus Oy may not be marketed on the uniform of an individual under-age competitor, for example.

Sports clubs and other organisations that offer hobby opportunities to children and young people often maintain their own websites. These websites often include marketing that generates income to the organisation's activities. The marketing on such websites must also take into consideration the prohibition of marketing targeted at minors, and the marketing of gambling services or gambling operator is not allowed on websites the majority of whose users are minors.

Decisions of the National Police Board

The Rake Like communications implemented on RAY's Facebook social network drew the attention of the National Police Board. Based on the response received, the communications had been limited using the social network's targeting options to be visible only to people of 18 and older. The National Police Board found this consideration to be a good thing, but stated also that there was no complete certainty of people under 18 years of age not seeing the communications in question.[44]

[44] Statement of the NPB 2020/2010/4259

The National Police Board intervened in an underage player wearing Veikkaus Oy's golden helmet used in the SM-Liiga and Mestis ice hockey leagues. It sometimes occurs in these leagues that an underage player has become the highest-scoring player in his team, thus earning the right to wear the golden helmet of Veikkaus. In its correspondence, the National Police Board stated that an underage player entitled to wear the golden helmet would be allowed to do so, if the helmet does not feature the Veikkaus advertising stickers. Removing the stickers from the golden helmets will not necessarily have any significant actual effect in protecting minors from the harm of gambling but, taken as a whole, getting a minor to wear an advertisement of a gambling operator is not acceptable from the perspective of responsible gambling activities. Correspondingly, if the team uniform includes an advertisement of a gambling operator or a gambling service, which are allowed as such, the advertisement in question should not be used on the uniform of an underage player.[45]

The display of Veikkaus Oy's logo on the marketing materials for the Aarresaari (Treasure Island) event targeted at children drew the attention of the National Police Board. The National Police Board considered the display of the company's logo or other symbol to be a form of other promotional activity and therefore part of marketing. The National Police Board considered the use of Veikkaus Oy's symbols to not only be marketing but also part of open communications regarding the funding of the Aarresaari event. However, the marketing material contained imagery that was likely to appeal to minors and the event itself was specifically targeted at minors. The Police Board thus considered the marketing material of the Aarresaari event to be at least partly targeted at minors.[46]

The National Police Board ordered Veikkaus Oy to stop TV marketing to minors after it discovered that Veikkaus Oy had been marketing its gambling games during commercial breaks for children's programmes, such as the Smurfs film. The National Police Board considered that the prohibition of marketing to minors was not a matter of ambiguity in interpretation but was at the heart of the marketing provisions of the Lotteries Act.[47]

4.3 Abundant gambling or abstinence from gambling

Minimising any harm caused by gambling activities forms a core principle of the restrictions on the marketing of gambling services. For this reason, Section 14 b, subsection 2 of the Lotteries Act lays down provisions prohibiting positive depictions of abundant gambling. Abundant gambling may thus not, for example, be linked to social success, or that more gambling would help channel funds to socially beneficial purposes.

Correspondingly, moderate gambling or abstinence from gambling may not be depicted in a negative light. It is improper for marketing to give the impression that moderate

[45] Letter and statement of the NPB 2020/2012/4417
[46] Statement of the NPB on the matter POL-2021-51351
[47] Statement of the NPB on the matter POL-2023-119473

gambling or abstinence from gambling could have a negative effect on a person's financial or other situation. Marketing may not, for example, give a consumer the impression that not gambling resulted in lost cash winnings or some other negative consequence.

4.4 Portraying gambling as an everyday activity and aggressive promotion

According to the judgements of the ECJ, advertising by a holder of a public monopoly must be measured and strictly limited to what is necessary in order to channel consumers towards authorised gaming networks. Such advertising cannot, on the other hand, specifically aim to encourage consumers' natural propensity to gamble by stimulating their active participation in it, such as by portraying gambling as an everyday activity.[48] Portraying gambling as an everyday activity is not defined precisely in the decisions of the Court of Justice, but it is the National Police Board's view that the portraying gambling as an everyday activity aims at influencing the consumers in such a manner that gambling becomes part of their everyday or commonplace consumer behaviour just like purchasing food or clothes. The widespread visibility of gambling services and the gambling operator may be apt to portray gambling as an everyday activity. This kind of overall impression may arise if, for example, the checkouts at gambling points of sale and their immediate vicinity contain a large amount of marketing materials for gambling services.

Abundant marketing of gambling services unavoidable to the consumer also easily becomes aggressive promotion of sales. According to the preparatory work for Section 14 b of the Lotteries Act, the marketing of gambling services and Veikkaus Oy may not constitute aggressive promotion of sales. Even in the case of permitted marketing of games and the gambling operator, the marketing must be measured, and consumers may not be encouraged to gamble. The consumers must not feel that the marketing is oppressive or too enticing, and the initiative to gamble must come from the consumers themselves. Thus, for example, the verbal marketing of gambling services in situations where the consumer has not specifically expressed an interest in gambling services is prohibited.

Decisions of the National Police Board

Veikkaus Oy had marketed the Keno gambling game in such a way that playing the game was equated with everyday routines, such as going out for coffee. The Police Board considered that equating the Keno gambling game with coffee breaks and daily routines had constituted portraying gambling as an everyday activity. Coffee and going out for coffee are well-established elements of Finnish culture, where drinking coffee is a ritual part of Finnish everyday life and celebrations. The National Police Board considered that the marketing described above was not

[48] Markus Stoβ et al. paragraph 103; Zeturf (C-212/08) paragraph 71

permitted because of its potential impact on lowering the threshold for buying gambling games and creating a positive image of gambling.[49]

The National Police Board prohibited the aggressive marketing of gambling services that was in violation of Section 14 b. Gambling services were marketed verbally to customers at store checkouts without the customers spontaneously expressing interest in the gambling services. Additionally, gambling services were marketed at the checkouts and information desks with, for example, posters, chalkboards, banners around the checkout area and the clothing of the store clerks. The National Police Board judged that the verbal offering of gambling services and the abundant marketing materials for gambling services at the checkouts/information desks of the gambling points of sale and in their immediate vicinity made the marketing of gambling services aggressive and excessively conducive to gambling, because the consumers could not avoid the marketing of gambling services while shopping at the store. According to the view of the National Police Board, the marketing described above taken as a whole was not moderate, and its purpose was not just to channel demand for gambling services towards legal gambling services; the abundant marketing aimed at increasing gambling consumption by encouraging consumers to gamble. The National Police Board judged this to be in conflict with the responsible offering of gambling services. The National Police Board had conveyed its view in its earlier statements to the gambling operator. Because the gambling operator did not sufficiently take the National Police Board's views into consideration, the National Police Board imposed a conditional fine, prohibiting the marketing as being in violation of Section 14 b of the Lotteries Act.[50]

4.5 Gambling as a solution to problems

According to Section 14b, subsection 2, paragraph 5 of the Lotteries Act, the marketing of gambling must not depict gambling as a means of advancing a consumer's social success or acceptance. Section 14b, subsection 2, paragraph 4 of the Lotteries Act, in turn, prohibits marketing that portrays gambling as a solution to a person's financial problems, as a means of improving their financial situation, addressing their challenges with life management, or as an alternative to work. Poker players and their gambling lifestyle, in particular, have received such attention in the public eye that can be considered to be enticing to young people in particular. Conveying such an image is prohibited in Veikkaus Oy’s marketing.

In its recommendations, the European Commission has stated that online gambling services should be offered and promoted in a manner that is socially responsible, in particular to ensure that gambling remains a source of recreational and leisure activity.[51]

[49] Statement of the NPB POL-2019-34378
[50] Decision of the NPB POL-2014-16036
[51] 2014/478/EU Commission Recommendation, item 12 of the foreword

4.6 Free games and discounts

Various free games, discounts, bonuses and other offers are typical marketing methods in gambling services. Gambling operators offering gambling services in violation of the Lotteries Act offer the above-mentioned benefits in various different ways, for example on websites and via direct marketing.

However, according to Section 14 b, subsection 2, paragraph 8 of the Lotteries Act, Veikkaus Oy may not market by providing play money or providing gambling games free of charge or at a reduced price or with combined offers. Veikkaus Oy must seek to channel illegal gambling activities into supervised gambling activities as provided for in the Lotteries Act, but such channelling must be carried out through responsible marketing, which does not include free games, discounts, bonuses or similar offers. Free games offered for marketing purposes must primarily be distinguishable from free plays, such as the free spins included in some games or other similar features related to the progression of the game as defined in the game rules.

4.7 “Cross-sales” of gambling products

In its decisions, the ECJ has stated that, in an exclusive rights system, operators offering gambling services must represent a reliable, but at the same time attractive, alternative to a prohibited activity. This may as such necessitate the offer of an extensive range of games, advertising on a certain scale and the use of new distribution techniques.[52] The objective of the Finnish exclusive rights system is not to increase gambling but to protect the consumers and prevent problems caused by gambling, such as excessive spending in gambling.

According to Section 14 b, subsection 2, paragraph 9 of the Lotteries Act, Veikkaus Oy may not market by offering other gambling games to be purchased or selected in connection with the selection of a gambling game or other commodity or in the collection of winnings. The National Police Board has referred to this practice as “cross-selling”. Similarly, according to Government Proposal HE 135/2021[53], in the context of a single gambling purchase, selection or collection of winnings, a person should not be encouraged to purchase multiple instances of the same game. According to the National Police Board's interpretation, this means a prohibition on offering the same game, such as extra lines or a different way of playing the same game, like a group game, when selecting, purchasing, or collecting winnings from a game. Checking the results of a gambling game or the distribution of winnings via electronic channels is equivalent to collecting winnings within the meaning of the law. The basic principle is that consumers must always initiate the purchase of gambling games.

According to the view of the National Police Board, the cross-selling prohibition also applies to games offered both via electronic channels and in physical venues, where the consumer can only be present to watch the game, or the stake in the game can be increased after the first bet has been placed. These types of games are available in so-

[52] Placanica et al. item 55; Markus Stoβ et al. item 101; Ladbrokes et al. item 56
[53] HE 135/2021, page 101

called "live casinos" as well as in physical casinos. In these situations, game attendants or other Veikkaus Oy employees may not directly or indirectly encourage players to participate in the game or to increase their bets.

The cross-selling prohibition requires attention to be paid to the appearance of gambling websites. After the consumer has made a choice concerning the game category or type, the consumer may not be enticed to play other games on the website, for example by making the different games playable at the same time without a separate choice by the player.

Decisions of the National Police Board

The National Police Board required that consumers not be offered online scratch cards as a so-called side game for an online number lottery game.[54]

The National Police Board considered the practice of recommending a particular gambling game to a player in connection with purchasing or playing another game to be unacceptable, even if that game recommendation is based on the player's previous gambling behaviour.[55]

The National Police Board held that a gambling establishment may not market a second game, such as a second lottery ticket or an extra line, or a different way of playing, such as a pool game, to a customer using a game that has already been played. What was considered prohibited was the solicitation to buy a different game, another way of playing the same game, or several instances of the same game in connection with the selection, purchase transaction or collection of winnings from a gambling game. In the view of the National Police Board, reviewing a gambling activity or results via an online service was equivalent to collecting winnings because the feature is equivalent to customers checking gambling results at an agent's point of sale.[56]

4.8 Emphasising major winnings and misleading marketing

The nature of certain gambling games involves a small probability of winning, and correspondingly, significantly large payouts. In these games, the possibility of winning a large jackpot entices consumers. In its precedents, the ECJ has stated that advertising cannot be used to increase the attractiveness of gambling by means of enticing advertising messages emphasising the chance of major winnings.[57]

[54] Statements of the National Police Board 2020/2011/458 and 2020/2012/3817
[55] Statement of the National Police Board POL-2016-5632
[56] Statement of the National Police Board POL-2023-74842
[57] Markus Stoβ et al. item 103. Compare with the English version of the judgement prohibiting the use of major winnings as an inducement. In contrast, the Finnish translation tends to give the impression that it is prohibited to emphasise the chance of winning: "Such advertising cannot, however, in particular, aim to encourage consumers' natural propensity to gamble… by increasing the attractiveness of gambling by means of *enticing advertising messages depicting major winnings in glowing colours."* Swedish-language version: "Reklamen får däremot i synnerhet inte uppmuntra konsumenternas naturliga benägenhet att roas av spel… genom att *förstärka spelens dragningskraft med anslående reklambudskap där stora spelvinster förespeglas."*

According to Section 14 b subsection 2, paragraph 6 of the Lotteries Act, Veikkaus Oy may not market by providing a misleading or unrealistic picture of the chances of winning in a gambling game, overemphasising the potential for high winnings, or characterising gambling as an activity that has no economic, social or health-related risks. Paragraph 7 of the same subsection prohibits Veikkaus Oy from exploiting ignorance, inexperience or credulity associated with gambling in its marketing.

4.9 The use of promotional lotteries in gambling

The use of promotional lotteries to promote the sales of the operator's products and services as a method of running a lottery is entirely excluded from the scope of the Lotteries Act, when participation in the lottery is free to the consumer, or when receiving a random benefit requires no other remuneration than purchasing goods or making a purchase offer. If participation in a lottery requires a separate remuneration, or if purchasing the goods is more expensive to those participating in the lottery, the lottery is included in the scope of the Lotteries Act and, as a rule, subject to a licence.

A promotional lottery is a marketing method often used in the business world. According to Section 14 b, subsection 2, paragraph 10 of the Lotteries Act, Veikkaus Oy may not market by providing a random advantage other than the possibility of winning in connection with a gambling game purchase. According to the view of the National Police Board, Veikkaus Oy is therefore not allowed to use marketing lotteries to attract new consumers to play gambling games or otherwise seek to increase gambling.

According to the view of the National Police Board, using a promotional lottery as a method for marketing Veikkaus Oy or a gambling service does not in principle constitute responsible marketing of gambling services. If the purpose of the promotional lottery is to promote switching to authenticated gambling, the promotional lottery may be justified if implemented in moderation.

Another situation where the use of a promotional lottery in connection with gambling can be justified is related to market and marketing surveys targeted at consumers. In order for it to be possible to channel gambling towards gambling services legally offered in Finland, it may be necessary to survey the gambling behaviour and preferences of the consumers. This allows the offering to better meet the demand. To encourage the consumers to take the surveys, prizes raffled out amongst those who completed the survey can be used as a reward. The consumer survey must, however, genuinely have the purpose of determining the preferences and behaviour of people, and the survey must not be indirect advertising.

Running a promotional lottery with the above-mentioned purposes must be implemented in a measured fashion. The promotional lottery or its prizes may not be at the forefront or the dominant element of the marketing communications. The prizes given out may not have a great value.

The provisions of the Consumer Protection Act are applied to promotional lotteries. Promotional lotteries may not be run contrary to accepted principles of morality or in an improper manner.

Decisions of the National Police Board

A gambling operator intended to run a marketing lottery with four passenger cars as prizes. Participation in the lottery required registration as the company's regular customer. Although the purpose of the campaign was reported as gambling using one's own identity, and the campaign did not directly market gambling services, the National Police Board judged that the campaign would be problematic taking the marketing regulations of the Lotteries Act into consideration, and that the marketing campaign would be contrary to Finland's responsible gambling policy.[58]

In its statement, the National Police Board brought up a marketing lottery run in connection with a consumer survey. The title of the online survey was "Do you know Keno?", and it asked how many Keno draws take place in the online casino each day. The National Police Board deemed that the survey was not a genuine consumer survey that would have provided essential information on the preferences of the consumers. Run in this manner, the lottery was mainly marketing communications for the game. In the same statement, the National Police Board brought up a marketing lottery related to opening an online gambling account offered by a gambling operator. The marketing communications used the title "You can win by opening a gambling account". When opening a gambling account, the consumer had a chance of winning a travel gift card. The National Police Board judged that the marketing lottery mostly enticed consumers to open a gambling account and thereafter play red games.[59]

The customer loyalty programme of a gambling operator was marketed, for example, by announcing that the player may win a EUR 10 or EUR 1,000 prize from a slot machine by playing the game using a debit card to which the customer relationship was linked. Additionally, the campaign involved marketing of a chance to win a travel gift card for two to Brighton or Florida, and other smaller prizes. The National Police Board requested information concerning the matter, and judged that communications concerning registration-based gambling under one's own identity should be based on the player being better able to control the gambling-related social and financial harm while playing under one's own identity. Based on the observations of the National Police Board, the marketing campaign was solely focussed on benefits and raffles worth money offered to the registered customers.[60]

The National Police Board took a position on the use of gift cards as prizes in promotional lotteries. The National Police Board applies Section 3 a of the Lotteries

[58] Statement of the NPB 2020/2010/3735
[59] Statement of the NPB 2020/2011/3258
[60] NPB's request for information 2020/2012/3394

Act to the concept of a gift card as a prize in a promotional lottery, which treats gift cards the same way as items because they are exchangeable for items or services. The use of gift cards as prizes in promotional lotteries is permitted. The key element for implementation is the moderation of the prize in the promotional lottery and moderate implementation as a whole.[61]

4.10 Combined offers and giveaways

According to Section 14 b, subsection 2, paragraph 8 of the Lotteries Act, Veikkaus Oy may not market by providing play money or providing gambling games free of charge or at a reduced price or with combined offers. A combined offer means, for example, that two or more products are sold at the same price. In a giveaway offer, the buyer receives another product, the giveaway, for free or at a reduced price when buying the product.

Combined offers and giveaways are inappropriate promotional activities for gambling services. Even if the value of a product offered in connection with a gambling game is low, the offer of another commodity may increase the attractiveness of the gambling game. It is also prohibited to offer gambling games in connection with any other commodity. It is against the Lotteries Act to give gambling games as prizes in lotteries, competitions, as rewards for responding to various consumer surveys, or in any other similar context.

Decisions of the National Police Board

The National Police Board intervened in the marketing campaign of a pizzeria, where those who bought a pizza were also given Lotto numbers paid for by the pizzeria. The National Police Board judged that, in addition to pizza, the campaign was also used to market the Lotto game, and the company in question was not allowed to market gambling services under the Lotteries Act. The National Police Board also stated that the purpose of the combined offer was not to channel gambling towards legal gambling services but to promote the sales of another product, which is against the marketing regulations of the Lotteries Act.[62]

4.11 Marketing abroad

The Lotteries Act prohibits the selling or passing on of tickets abroad or the marketing of the lottery abroad unless it is allowed under the legislation of the state or area to which the tickets are sold or passed on, or where the lottery is marketed.[63]

In practice, the provision has a limited effect on gambling. Playing the online gambling games offered by Veikkaus Oy requires registration with the gambling operator's website, which is impossible if the consumer's place of residence is not in Finland.

[61] Statement of the National Police Board POL-2020-22416
[62] Statement of the NPB 2020/2012/4691
[63] Lotteries Act, Section 62, paragraph 2, paragraph 2

Because the Lotteries Act practically prohibits the marketing of gambling services from abroad to Finland, the consistency of the gambling system requires that the gambling games offered under the Lotteries Act are not marketed abroad. The provision thus requires that Veikkaus Oy ensure that marketing abroad does not violate the legislation of the state in which the marketing is carried out.

Decisions of the National Police Board

A rally driver's racing apparel featured the Toto logo based on a cooperation agreement with Fintoto Oy. The National Police Board judged that the company must ensure that the marketing in question does not violate the legislation of a different state even if the marketing in question is targeted at Finland.[64]

4.12 Emphasising the use of revenues

According to the guidelines of the ECJ, the profits from offering gambling services may only constitute an incidental beneficial consequence and not the real justification.[65] The Court has also stated that the advertising of gambling services cannot emphasise the fact that revenues derived from them are used for activities in the public interest.[66]

In accordance with the guidelines of the ECJ, under Section 14 b, subsection 2, paragraph 11 of the Lotteries Act, Veikkaus Oy may not market by encouraging the financing of non-profit activities through gambling. Information on the purpose for which the revenues are used cannot thus be a central element with dominant visibility.

The Lotteries Act was amended in 2023 so that Veikkaus Oy no longer distributes its profits for non-profit purposes, but Veikkaus Oy's profits must be remitted to the state as revenue. Consequently, the connection between Veikkaus Oy and non-profit activities was severed, and Veikkaus Oy can no longer use the public interest purpose of gambling proceeds in its communications.

4.13 Assessment of certain marketing-related phenomena

4.13.1 General

This section discusses various marketing methods and phenomena used in the marketing of gambling services that in the view of the National Police Board need to be addressed. The purpose of this section is not a thorough discussion of the phenomena related to the marketing of gambling services; its purpose is to bring up some central viewpoints.

[64] Response of the National Police Board POL-2014-1924
[65] Inter alia Inter alia Schindler item 61; Zenatti item 36.
[66] Markus Stoβ et al. item 103.

4.13.2 Customer benefits

The provision of customer benefits must take into account gambling marketing regulations and ensure that any related marketing also has a channelling purpose. Customer benefits may also serve a purpose related to preventing gambling-related harm if the registration process provides the player with access to various tools for managing gambling. In the marketing and other implementation of benefits, the aspects related to the player's control of their gambling must take precedence over the various benefits they receive as a customer.

Customer benefits may not be used as a marketing channel to increase demand for gambling or to circumvent restrictions on the marketing of gambling, for example. Players must not be rewarded based on the quantity or increase in the number of games they play.

Decisions of the National Police Board

The customer loyalty programme of a gambling operator was marketed, for example, by announcing that the player may win a EUR 10 or EUR 1,000 prize from a slot machine by playing the game using a debit card to which the customer relationship was linked. Additionally, the campaign involved marketing of a chance to win a travel gift card for two to Brighton or Florida, and other smaller prizes. The National Police Board requested information concerning the matter, and judged that communications concerning registration-based gambling under one's own identity should be based on the player being better able to control the gambling-related social and financial harm while playing under one's own identity. Based on the observations of the National Police Board, the marketing campaign was solely focussed on benefits and raffles worth money offered to the registered customers.[67]

The National Police Board issued a statement concerning a customer loyalty programme planned by a gambling organisation. The National Police Board judged that the purpose of the concept was acceptable, because it was to support and reinforce responsible gambling. The National Police Board estimated that the four gambling days per month required to join the customer loyalty programme was not compatible with the objectives of the concept, as the membership actually required active gambling, particularly with red games. The offering of various gambling-related benefits such as free games and higher stake limits could not be justified, either.[68]

4.13.3 Combining the marketing of gambling services and other products

Various events and other phenomena of the world of entertainment have often been linked to gambling activities and gambling products. Due to the special nature of offering

[67] NPB's request for information 2020/2012/3394
[68] Statement of the National Police Board POL-2014-1994

gambling services, combining the marketing of gambling services and other products or services can, however, be problematic. Based on the marketing provisions of the Lotteries Act, only Veikkaus Oy is allowed to market itself and its games.

Brand cooperation, when done in moderation, could be acceptable, if its purpose is to channel gambling towards gambling activities referred to in the Lotteries Act. Such brand cooperation must, however, strictly avoid mixing the marketing of the gambling product and the related brand. A gambling product is too closely tied to a different brand if, for instance, a film or a television programme, or their marketing, promotes a gambling product with the same name. In practice, marketing cooperation related to red games in particular constitutes the circumvention of the related marketing prohibition.

Decisions of the National Police Board

The National Police Board intervened in the marketing of a poker tournament, because the marketing used terms such as "larger than ever". The National Police Board also intervened in the cooperation with the organiser of the poker tournament and the radio channel that announced it; the National Police Board did not consider it to be proper considering the prohibition on marketing red games.[69]

The National Police Board intervened in the marketing campaign of gambling services offered by Veikkaus Oy implemented in K-Citymarkets. The campaign combined the sales and marketing of instant cash games with the marketing of Mammuttimarkkinat (the Mammoth Fair) arranged by the K-Citymarkets. The National Police Board judged that the combined marketing cannot be considered allowable due to the special nature of gambling activities.[70]

The National Police Board intervened in the marketing of a slot machine called Marja Tyrni, implemented using various campaigns related to the game's theme. Marketing was carried out with, for example, a marketing raffle with a chance to win entry to the television show that originally made the game's Marja Tyrni character famous. The marketing of the game connected the character in question to a known entertainment character in a manner that the National Police Board did not consider to be allowable.[71]

The National Police Board intervened in the way a scratch card product was incorporated with the brand of a television programme. Incorporating a gambling product with an entertainment product as an essential element and/or vice versa can be apt to portray the offering of gambling services as an everyday activity in such a manner that cannot in all parts be considered to be in line with the objectives of the Lotteries Act. This kind of cooperation could be acceptable with a channelling purpose to offer a gambling alternative that is sufficiently attractive to the consumers in accordance with the guidelines of the ECJ. The implemented marketing was not acceptable, however, because the gambling service was

[69] Statement of the NPB 2020/2012/2269
[70] Statement of the NPB 2020/2012/3274
[71] Statement of the NPB POL-2014-13576

marketed in a television programme and videos created with the help of the host of the television programme.[72]

4.13.4 Direct marketing messages

Direct marketing must take into consideration the provisions in Chapter 24 of the Act on Electronic Communications Services (917/2014). Electronic direct marketing, for example via e-mail or text messages, primarily requires advance consent from the person. It must be possible for the consumer to give their consent to receive marketing messages by an active measure such as ticking a checkbox, but not, for example, in such a manner that the checkbox is automatically ticked in advance. It must also always be possible for the consumer to withdraw their given consent.

Even if a consumer gives their consent to receive direct marketing messages, the restrictions on the marketing of gambling services must be taken into consideration. The contents of the communications must not be aggressive, and only gaming venue information may be provided for games subject to the marketing prohibition. The direct marketing messages must be clearly identifiable as marketing messages sent by a gambling operator, and the number of the messages must be reasonable.

It must be also taken into consideration when sending direct marketing messages that communications related to the maintenance of the customer relationship may not be used to circumvent the marketing regulations; such communications must keep strictly to communications that are essential to the maintenance of the customer relationship. Exceptions to this restriction are service messages that a player subscribes to, for example, to alert them when a certain jackpot limit has been exceeded or other similar events.

No direct marketing messages of a promotional nature may be sent to customers who are banned from gambling. The main purpose of a gambling ban is to protect problem gamblers from gambling harm. Marketing a gambling company and promoting the availability of gambling during a ban on all gambling is not responsible marketing, even though the ban prevents using Veikkaus services for gambling at that time.

Decisions of the National Police Board

The National Police Board intervened in marketing, where registered customers were sent direct marketing messages via e-mail containing a reminder of the amount of money on the customer's gambling account. In the view of the National Police Board, sending messages to customers who have not played for a while has the primary purpose of reminding the customer of the money still on the customer's account, thus getting the customer to continue gambling.[73]

The National Police Board intervened in direct marketing text messages concerning red games. The first message marketed a wager by informing the

[72] Statement of the NPB POL-2014-4481
[73] Letter of the NPB 2020/2013/1861

recipients of a game played between the same teams in the previous year. The second message marketed an electronic instant cash game by giving the price of the game, the number of tickets and the main prize. The message in question also included the sentence "Have you tried our new games?" The National Police Board judged that the sentence in question contained no information referred to in Section 14 b, subsection 2 of the Lotteries Act.[74]

Veikkaus Oy's customer communications, which also targeted customers who were banned from gambling, drew the attention of the National Police Board. According to the view of the National Police Board, the elements used in customer communications – at least the Veikkaus Oy logo and links to Veikkaus Oy's website, social media pages and applications – are partly of a marketing nature. Consequently, Veikkaus Oy's customer communications to customers who had imposed a gambling ban included marketing. The National Police Board considered that the imposition of a ban on all gambling should lead to the cessation of customer communications on matters other than those that are absolutely necessary. Examples of necessary communication include security issues, while changes to the game rules and prize notifications cannot be considered necessary communication. A game restriction on a particular game group or game should, in turn, block all communication regarding the blocked game or game group. In particular, the National Police Board viewed communications as especially problematic when they targeted customers who had blocked all gambling and included direct links to Veikkaus Oy's applications or websites that facilitated gambling.[75]

4.13.5 Linking

In gambling activities, linking to a gambling website is an often-used marketing method. The same restrictions apply to linking as to any other marketing of gambling services. Linking is used in both advertising space purchased directly from the publisher, and in marketing implemented with the help of partner websites or so-called affiliates. The maintainer of the affiliated website usually receives compensation for games played via the link on the website, or on some other equivalent grounds agreed between the parties.

With regard to those gambling games that may be marketed, linking for gambling channelling purposes is permitted, provided that it is done in moderation. However, the links may not be placed on websites that are targeted at minors or sites whose content otherwise suggests that they are of particular interest to minors. In addition, Veikkaus Oy may not market on websites whose users may be particularly vulnerable to gambling-related harm. Links should also be sufficiently clearly labelled as marketing if, for example, they consist of links in an article rather than a clearly identifiable marketing

[74] Letter of the NPB POL-2015-1358
[75] Statement of the NPB on the matter POL-2021-97048

element, such as an advertising banner. Such methods may include, for example, using the terms "Commercial Partnership" or "Advertisement" in connection with links.

For games subject to the marketing prohibition, such linking must be justified as providing information about the gambling location. For this purpose, the link may direct the consumer to read more information about the availability of the game, but it must not lead directly to the game.

Decisions of the National Police Board

The National Police Board considered that the links associated with horse racing tips were not clearly enough labelled as Veikkaus marketing. The links to the Veikkaus service in the horse racing tips did not indicate that the marketing was on behalf of Veikkaus, even though the marketing was based on an agreement between the publisher of the horse racing tips and Veikkaus.

The National Police Board also viewed as problematic the fact that, as the links in the horse racing tips became outdated, they could lead to games subject to the marketing prohibition. The National Police Board took the view that under no circumstances should links to outdated games lead visitors to games subject to the marketing prohibition.[76]

4.13.6 Use of a gambling operator's symbol

The logo or symbol of the gambling operator and its visibility can be considered to be the marketing of the gambling operator. Typically, the gambling operator's logo is used in the context of sponsorships, other partnership agreements, or on the gambling operator's own material.

In the decision of the Supreme Administrative Court KHO:2018:86, the use of a foreign gaming company's symbol on a partner's website and social media has been assessed as marketing within the meaning of the Lotteries Act. Simply using the logo of a gambling site may constitute the marketing of gambling within the meaning of the Lotteries Act, even if the use of the logo is not accompanied by any other communication promoting gambling.

When assessing the commercial purpose of an activity, it is also worth noting that the preliminary work on the Lotteries Act states that "Commercial practices that primarily serve a purpose other than influencing the commercial choices of consumers with regard to products, such as commercial communications to investors, like annual reports and company brochures, do not constitute sales promotions."[77]

The display of a gambling operator's logo or other symbol can therefore be considered to be a form of other promotional activity and, thus, part of marketing. When using a

[76] Statement of the NPB POL-2021-54381
[77] HE 96/2008 vp, p. 7.

symbol, the restrictions on marketing set out in the Lotteries Act should therefore be followed.

Decisions of the National Police Board

Veikkaus Oy's symbol was used on the Nuorelle Siivet campaign materials and on Nuorten palvelu ry's website. The National Police Board considered the use of the symbols to not only be marketing but also part of open communications regarding funding. In addition, the Police Board considered that although both the Nuorelle Siivet campaign and Nuorten palvelu ry direct their activities towards minors, the communication and marketing could be considered to be aimed more at donors, volunteers and other adult audiences.[78]

The display of Veikkaus Oy's symbol on the marketing materials for the Aarresaari (Treasure Island) event targeted at children drew the attention of the National Police Board. The National Police Board considered the display of the company's logo or other symbol to be a form of other promotional activity and therefore part of marketing. The National Police Board considered the use of Veikkaus Oy's symbols to not only be marketing but also part of open communications regarding the funding of the Aarresaari event. However, the marketing material contained imagery that was likely to appeal to minors and the event itself was specifically targeted at minors. The Police Board thus considered the marketing material of the Aarresaari event to be at least partly targeted at minors.[79]

4.13.7 Influencer marketing

Influencer marketing refers to commercial partnerships between companies and influencers to promote the sale of a company's products or increase brand awareness.[80] In the marketing of gambling, influencer marketing is usually the use of a celebrity or their social media channels to support the goals of a gambling operator. Influencer marketing is used to reach desired target groups that are not accessible in the same way through traditional media.

With regard to influencer marketing, the need to channel gambling demand from illegal gambling to legal, nationally controlled gambling under national legislation is justified. However, when assessing the moderation of influencer marketing, attention should be paid to the timing of the method, the nature and duration of the advertising and the channels through which it is carried out.

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[78] POL-2020-55510
[79] Statement of the NPB on the matter POL-2021-51351
[80] For example, a commercial partnership can result from a company and an influencer entering into an agreement on producing content for the company's products. The end product of influencer marketing can be a video, audio, photo or blog post published by the influencer about the company or its products. Finnish Competition and Consumer Authority: Influencer marketing in social media https://www.kkv.fi/en/consumer-affairs/facts-and-advice-for-businesses/the-consumer-ombudsmans-guidelines/influencer-marketing-in-social-media/

Carrying out influencer marketing on social media channels is problematic in terms of the principle of moderation in the marketing of gambling. The marketing of a gambling operator or its gambling products through social media channels can be considered to go well beyond the scope of normal marketing, especially since marketing through these channels takes place at all hours.

Influencer marketing on social media channels presents challenges for the identifiability of marketing because of the inherent ability to share content on these platforms. Social media is digital media that encourages users to participate, interact with each other and share content on the platform. The potential to share marketing publications related to a gambling operator or its products results in uncontrolled marketing, with the risk of obscuring the identifiability of the marketing by associating the influencer marketing with the influencer themselves. Given the marketing provisions of the Lotteries Act, only a gambling operator may market itself and its games.

The celebrities and athletes used in influencer marketing are often role models with whom young people, in particular, can easily identify. The use of characters or celebrities who appeal to children and young people in marketing a gambling operator or its gambling products may send mixed messages to children and young people about the target group for gambling and may also create unnecessary interest in gambling.[81]

The use of influencer marketing in a gambling operator's marketing activities is likely to increase the exposure of minors to the marketing of gambling and the harm it causes. Consequently, the National Police Board considers it permissible for influencer marketing to take place only on Veikkaus Oy's own social media channels and the veikkaus.fi website. In influencer marketing, it is not permitted for influencers, partners, experts or content providers to use their own social media channels to support Veikkaus Oy's marketing activities. Veikkaus Oy must, in cooperation with any influencers, partners, experts and content producers, ensure that publications made on Veikkaus Oy's channels are not linked or otherwise directed to the social media channels of those influencers, experts or content producers.

Decisions of the National Police Board

Veikkaus Oy asked the National Police Board to comment on the use of influencer marketing. The National Police Board stated that effective efforts must be made to prevent minors from being exposed to gambling-related harm since, despite the age limit for gambling, minors cannot avoid advertising when using the internet, mobile apps and media that advertise gambling companies and games. There is no reason to increase the exposure of minors to gambling advertising through influencer marketing, which is, by nature, a form of advertising that reaches large consumer audiences. Thus, the National Police Board did not consider it acceptable for influencer marketing to use the social media channels of influencers and other partners to support Veikkaus Oy's marketing objectives. The National

[81] Castrén, Murto & Salonen; Rahapelimarkkinointi yhä aggressiivisempaa - unohtuvatko hyvät periaatteet? Yhteiskuntapolitikka 79 (2014):4, p. 440.

Police Board considered it permissible for influencer marketing to take place only on Veikkaus Oy's own social media channels and the veikkaus.fi website. Using other parties' social media channels in Veikkaus Oy's marketing activities would not align with consistent and responsible gambling operations.[82]

4.13.8 Communicating about winnings and stories about wins and winners

Stories about wins and winners and communicating about winnings are used to highlight the winnings from gambling and to publicise the winners. It is typical to mention the winner's home town and the amount they won in a press release. Sometimes winner stories also contain more detailed information about them, such as information about their future plans for spending their winnings.

Communicating about wins and winners is gambling marketing. Consequently, these communications must take into account the regulations and policies governing the marketing of gambling. When reporting on wins, particular consideration must be given to the amount won and the news value it brings, the winner's right to privacy and the game the player has played.

Winnings must be substantial in order to be publicised. Ordinary winnings do not have news value and should not be reported to avoid portraying gambling as an everyday activity. The jackpot of a game can therefore be considered the limit for publicity. In gambling games where payouts can be particularly large, wins other than the jackpot may also be newsworthy. Reporting small winnings can create an image of gambling as a national pastime, as it can be reported on an almost daily basis. Communication must also take into account the player's right to privacy. Thus, in principle, a player's personal data should not be disclosed except in cases of competitive events, such as poker tournaments or games where the rules require a player's name to be made public.

Decisions of the National Police Board

Veikkaus Oy's practice of using game information as a marketing tool drew the attention of the National Police Board. As part of its opinion, the National Police Board also commented on the win and winner stories. It is the view of the National Police Board that a distinction can be drawn between promotional activities and cases where the media publish a news article about an exceptionally large win that may have news value. These situations generally relate to the jackpot wins of betting games such as Lotto and Eurojackpot and do not generally apply to games subject to the marketing ban. If the amount of the win being reported and other aspects of the game are typical, the provision of information is equivalent to advertising a product. In games that are based partly on skill in addition to chance and in which you compete against other participants, the winner's identity and the amount won can have informational value. There is no informational value in a winner story, but the identity of the winner may be relevant in games that are at

[82] Statement of the NPB on the matter POL-2019-78451

least partly skill-based and have competitive elements. In contrast, the winnings and winners of conventional casino games, slot machines and online lotteries, for example, have no such informational value. In this respect, the National Police Board considers stories about winnings and winners in games subject to the marketing ban to be prohibited marketing.[83]

4.13.9 Slot machine placement as a marketing tool

Slot machines can be considered to have a marketing function. The machines themselves are eye-catching devices that are associated with gambling. According to Section 16 of the Lotteries Act, the placement of slot machines must be designed to minimise the harm caused by gambling. Placement must take particular account of minors and vulnerable persons.

According to the National Police Board's interpretation, slot machines must therefore not be placed near products aimed at children, for example, and the slot machines themselves must not be made too enticing. The appeal of a slot machine can be influenced by different elements such as the image on the screen, the lighting and the soundscape. Slot machines should indeed be audio-visually restrained, especially when they are not in use or are shut down. Slot machines must also not be overly enticing during play so that the machine does not promote gambling to passers-by.

4.13.10 Responsibility and targeting marketing

The marketing of gambling must be responsible and carried out in the manner prescribed in Section 14 b of the Lotteries Act so that it is moderate in quantity, scope, visibility and recurrence. Marketing must comply with the guidelines issued by the National Police Board in this document, as well as its statements and decisions.

Responsible marketing thus requires that marketing is not aggressive or overbearing in its content or implementation. In addition to content, the choice of marketing media and the volume of marketing should also take into account moderation and responsibility. Self-monitoring and internal guidelines are key to carrying out responsible marketing. External partners used by the exclusive operator, such as agents, advertising, communication and media agencies, must also carry out gambling marketing responsibly.

Responsible marketing must also be taken into account when targeting marketing. Targeted marketing must not be directed at minors and must also avoid targeting consumers who have a gambling ban on the gambling game being marketed or who are otherwise vulnerable.

The marketing of gambling must also consider responsibility with regard to the marketing channel. Advertising must not be targeted mainly at channels used by minors. The marketing of gambling services should also avoid environments where, for example,

[83] Statement of the NPB on the matter POL-2019-20099

credit institutions market their services. Creditors are prohibited from marketing in connection with gambling under Chapter 7, Section 13, subsection 2, paragraph 1, sub-paragraph f of the Consumer Protection Act, but the exclusive operator is also required to ensure compliance.

As technology continues to evolve and the use of various machine learning algorithms in marketing becomes more widespread, the exclusive operator must take special care to ensure that this kind of marketing is also responsible. AI-generated advertisements are used in a variety of sectors, and their use is not inherently problematic, provided that the content produced complies with existing legislation. The marketing entity is responsible for the content of the marketing, and marketing material produced by AI is also the responsibility of the marketing entity, even if the content is independently produced by an entity external to the marketing operator, such as a social media platform or a search engine service.

Decisions of the National Police Board

The National Police Board commented on Veikkaus Oy's practice of targeting marketing to players who had not played a game for a week or two. The National Police Board considered such targeted marketing problematic because it exclusively targets players who are already aware of the game but have not played on their own initiative. Instead of the player being able to independently control their gambling and attempt to reduce or stop it on their own initiative, they were targeted with marketing aimed at reminding them of the games they had played in the past. The game in question was one in which the player's consumption was unlikely to transfer outside the exclusive rights system. The National Police Board considered that targeted marketing in this manner was not necessary to channel gambling demand into the exclusive rights system. The National Police Board considered it likely that targeting marketing to players taking a break from gambling would increase the overall amount of gambling.[84]

4.13.11 Giving gambling games as a gift

Gambling is personal in every case. The Lotteries Act does not recognise the possibility of giving gambling games as a gift. This can also be derived from the definitions in sections 2 and 3 of the Lotteries Act. The National Police Board's general guiding interpretation is that players, if they wish, seek out gambling games and make the decision to gamble rather than the gambling games coming to players. Gambling requires an active personal decision and the payment of a fee to a gambling company.

Gifting a gambling game is also likely to increase the consumption of gambling services. Therefore, gifting a gambling game or a product that can only be used for gambling is also considered to be marketing of gambling services. The purpose of such a product is to create new demand for gambling games and not to channel existing demand, as

[84] Statement of the NPB on the matter POL-2023-119473

required by Section 14 b, subsection 1 of the Lotteries Act. A gift card that can only be used for gambling is considered equivalent to a gambling game. Therefore, gambling games given as gifts or other products that enable it, such as gift cards used exclusively for gambling, are in violation of the Lotteries Act.

5 Prohibition of the marketing of gambling services offered in violation of the Lotteries Act

5.1 General

Section 62, subsection 2, paragraph 1 of the Lotteries Act prohibits all other marketing of gambling services than that carried out by Veikkaus Oy specified in Section 11 of the Lotteries Act.

Maintaining the exclusive rights gambling system chosen by Finland requires that the state acts against illegally run gambling services and their marketing. In its recommendations, the EU Commission has stated that it is appropriate for the Member States to act against gambling services which, consistently with Union law, are not allowed according to the law of the Member State where the online gambling service is received.[85] The Commission has also taken legal action if it has deemed that a Member State is not implementing its chosen exclusive rights system consistently, but allows illegal gambling activities.[86]

Under Section 62 a of the Lotteries Act, the National Police Board may prohibit the offering of gambling services. The prohibition of the activities referred to in the provision may also be imposed on a party that markets gambling games in violation of the prohibition laid down in Section 62, paragraph 2, paragraph 1. The prohibition may be imposed on an organisation or trader that markets gambling games or a natural person who, for economic or other gain, markets gambling games or otherwise promotes participation in gambling games. The prohibition can thus not only be imposed on operators offering gambling services but also on those whose activities have a material impact on the marketing of gambling games. Consequently, e.g., advertising and media agencies, those responsible for distributing marketing material, event organisers, influencer marketers and other parties must ensure that gambling is not marketed illegally.

Court decisions

The decision of the Supreme Administrative Court KHO:2022:60 made final the prohibition decision issued by the National Police Board against a Finnish limited liability company that allowed participants in a fantasy sports game to win money. In particular, the decision evaluated whether the criterion of chance, which is an inherent part of gambling, was met. According to the ruling, based on the preliminary work on the Lotteries Act, winning a prize is based on chance when the influence of chance on the outcome cannot be ruled out by even the most knowledgeable or skilful player. Although sports competitions and sports of skill, for example, are excluded from the scope of the law despite the associated element of chance, guessing the results of the same competition or sport can still fall within

[85] 2014/478/EU Commission Recommendation, item 17 of the foreword
[86] Press release by the Commission 16 October 2014: Gambling services: Commission refers Sweden to court for lack of compliance with EU law.

the definition of a lottery. The Supreme Administrative Court ruled that in a fantasy sports game, players tried to use their knowledge to guess the performances of real-world athletes and events in games as accurately as possible. By their nature, these games are not comparable to the sports, cultural or beauty contests referred to in the Government Proposal or to other examples of activities intended to fall outside the scope of the Lotteries Act. While the chance of success in fantasy sports games based solely on guessing may in itself be considered low, this does not in itself mean that winning games cannot be based at least in part on chance. Consequently, the chance of winning may ultimately be decisively influenced by point spreads, which are the result of unpredictable circumstances. The Supreme Administrative Court held that the possibility of winning in fantasy sports games is at least partly based on chance within the meaning of Section 2, subsection 1 of the Lotteries Act. When the other characteristics of a lottery are also fulfilled based on the information obtained, the games must be considered lotteries within the scope of the Lotteries Act. Since it was possible to win money from the game, it is thus, in terms of Section 3, subsection 1 of the Lotteries Act, a gambling game for which Veikkaus Oy has the exclusive right to offer.

In decision 967/2024, the Helsinki Administrative Court held that editorial material, such as blog posts, podcasts, and videos published on a gambling company's website, directs and attracts consumers to the gambling site. When the editorial material is combined with long-odds betting tips in separate links, the totality can be regarded as gambling marketing aimed at promoting the sale of gambling games. It was irrelevant if the blog was actually published on another site. The Administrative Court found that material promoting the sale of gambling games that is publicly visible on the internet constitutes prohibited marketing within the meaning of the Lotteries Act if the marketing is directed specifically at Finland and Finns. This assessment does not depend on the domain name used or the server being located abroad. Regardless of the language used on a lottery website, the mere availability of a foreign or Ålandic lottery website on an online information network is not considered to be marketing in violation of the Lotteries Act if the lottery website is not accompanied by other material promoting participation in the lotteries in Finland or the state.

The company's gambling website had podcast, blog and video content in Finnish featuring Finnish ice hockey players or other Finnish persons. The Administrative Court held that it was thus not simply a question of a foreign lottery site being available, but that the promotional material and the company's long-odds betting tips that appeared underneath it constituted gambling marketing directed at Finland or Finns. It was irrelevant that Finnish expatriates might also be interested in the material. The Administrative Court held that betting options specifically directed at Finland or Finns were material that promoted participation in Finland within the meaning of the Lotteries Act, even if the same betting options were also available in other languages.

According to the Administrative Court, if banner advertisements are displayed on websites aimed at Finland, even if they are in English, they can, in the view of the Administrative Court, be considered to be aimed at promoting the sale of gambling games in Finland. The gambling company is also responsible for its banner advertising conducted through affiliate marketing, as it must be considered as being carried out on behalf of the company, taking into account the financial benefit to the company.

The Administrative Court held that the National Police Board had grounds to believe that the company had targeted its gambling marketing at Finland based on the information it had received about the company's activities. Based on the facts presented in the decision under appeal, it was evident that the measures in question were gambling marketing within the meaning of Section 4, subsection 1, paragraph 8 of the Lotteries Act. The marketing was directed at Finland and Finns, and the company's marketing could therefore be considered to have violated the prohibition of offering gambling services provided for in Section 62, subsection 2, paragraph 1 of the Lotteries Act. The prohibition imposed by the National Police Board may be directed at the company's marketing practice, which the National Police Board has determined, based on its findings, to constitute the offering of gambling services in violation of the Lotteries Act.

Decisions of the National Police Board

The National Police Board intervened in marketing carried out at an event held in a restaurant in Helsinki in violation of the Lotteries Act. The event had been organised for a limited group of people who had been selected from amongst the customers of the gambling operators in question, and operators other than those allowed in the Lotteries Act were marketed there. The company responsible for the technical arrangements for the event had received an assignment that included, for example, event decorations associated with the customer's brand. The National Police Board stated that, although the principals of the event were primarily responsible for arranging the events, the company responsible for the technical arrangements for the event had had an essential impact on the implementation of the marketing. Without necessary technical measures related to arranging the event, holding the event and therefore the marketing of gambling services would not have been possible in the manner in which they were realised.[87]

5.2 Exercise of the freedom of expression

According to Article 12 of the Finnish Constitution, everyone has the freedom of expression. Freedom of expression includes the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. Freedom of expression is also guaranteed by Article 11, paragraph 1 of the EU

[87] Statement of the National Police Board POL-2014-10067

Charter of Fundamental Rights, which states that everyone has the right to freedom of expression. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article corresponds to Article 10 of the European Convention on Human Rights. In addition, Article 19 of the UN International Covenant on Civil and Political Rights states that everyone has the right to hold opinions without interference.

According to its preliminary work, the main purpose of the provision on freedom of expression is to guarantee the free formation of opinions, open public debate, the free development and pluralism of the mass media and the ability to publicly criticise the exercise of power, which are prerequisites for a democratic society.[88] Traditionally, freedom of expression has been seen as a fundamental political right, above all else.[89] Dissemination means any form of publishing, distributing or transmitting communications. The dimensions of freedom of expression in the provision should indeed not be interpreted too narrowly.[90] The provision prohibits both a traditional prior inspection of communications and other interference with freedom of expression that amounts to prior prevention. This could include, for example, publishing printed matter subject to a licence.[91]

Freedom of expression is not linked to any form of communication, such as the printed word, but protects communication regardless of the method used to express or publish it.[92] Freedom of expression is understood in the Constitution in a broad and medium-neutral way.[93] Freedom of expression generally provides a safeguard for different forms of creative activity and self-expression.[94]

However, freedom of expression does not preclude the restriction of the rights contained therein by means of post-publication regulation as long as the regulation meets the general requirements for restricting fundamental rights. Among other things, these restrictions must be precise and proportionate and must not interfere with the core fundamental right. Thus, for example, far-reaching and broad criminalisation of the exercise of political expression can be problematic for freedom of expression.[95] The ECJ has also ruled in its case law that the right to freedom of expression is not absolute, but must be proportionate to the role it plays in society. Consequently, the exercise of freedom of expression may be restricted, provided that the restrictions actually serve objectives in the public interest and do not interfere with protected rights in a way that is disproportionate to the aim pursued and in a way that would be unacceptable and would infringe the fundamental substance of that right.[96]

[88] HE 309/1993 vp
[89] PeVL 19/1998 vp, p. 5/I
[90] PeVL 52/2010 vp
[91] HE 309/1993 vp
[92] HE 309/1993 vp
[93] E.g. PeVL 60/2001 vp
[94] HE 309/1993 vp
[95] PeVL 26/2002 vp, HE 309/1993 vp
[96] HE 135/2021 vp

According to the Constitutional Law Committee, in principle, the protection of freedom of expression also covers advertising and marketing, although the Committee has not considered such communication to be at the core of freedom of expression. The Committee's established practice allows for more far-reaching restrictions on advertising and marketing than would otherwise be possible. However, the regulation of advertising and marketing must also meet the general conditions required of a law restricting a fundamental right.[97]

The Constitutional Law Committee has found that the restrictions on the marketing of gambling under the Lotteries Act are proportionate to the specific nature of the activity and are justified on the grounds of promoting public health and protecting children in the context of the underlying system of fundamental rights. In the Committee's view, the marketing restrictions[98] proposed at that time were rather loose in terms of the requirement of precision and accuracy in restricting fundamental rights, but not problematic from a constitutional law perspective.

The Constitutional Law Committee has also assessed the marketing of gambling services outside the scope of the Lotteries Act with regard to freedom of expression. The Committee has stated, for example, that a precise advertising prohibition only covering gambling games can be considered an acceptable restriction on freedom of expression because of the social harm, abuse and legal risks associated with gambling-type lotteries. According to the Constitutional Law Committee, even in this case, the regulation must meet the requirements of precision and accuracy arising from the principle of legality in criminal law.[99] The Constitutional Law Committee has also assessed the definition of marketing. According to the Committee, the definition of marketing proposed in the government proposal for laws amending the Lotteries Act and sections 2 and 7 of the Act on Certain Proceedings before the Market Court[100] aimed to clarify the prohibition and associated criminalisation of the marketing of unauthorised lotteries and is not problematic in terms of Section 12 of the Constitution and the principle of legality in criminal law contained in Section 8 of the Constitution.[101]

The European Court of Human Rights has an extensive body of case law on freedom of expression. The Court has ruled that freedom of expression is a cornerstone of democratic societies and a fundamental prerequisite for the development of both individuals and societies. However, it may be restricted by law if there is a compelling social reason to do so and the restriction is proportionate to the pursued goal. According to Article 10, paragraph 2 of the European Convention on Human Rights, the exercise of freedom of expression also entails responsibilities and duties, as the Court of Justice has also emphasised in its case law. The Court has taken a stricter approach to restrictions on freedom of expression in the case of political expression or public debate on a matter

[97] PeVL 18/2014 vp, PeVL 6/2012 vp, PeVL 3/2010 vp, PeVL 54/2006 vp
[98] HE 96/2008 vp
[99] PeVL 22/2001 vp
[100] HE 96/2008 vp
[101] PeVL 15/2010 vp

of public interest, which are central to this right. In contrast, restrictions on commercial expression, for example, have been viewed more favourably.[102]

When the European Court of Human Rights has assessed the justification for restricting freedom of expression, for example, to protect health, the Court has paid attention to whether the restricted expression has been accessible to vulnerable groups, such as children. For example, in Société de conception de presse et d'édition and Ponson v. France (26935/05), 5 March 2009, the Court held, with regard to advertising of tobacco products, that the fact that the advertising was likely to encourage young people in particular to use tobacco products was a sufficient and appropriate justification for restricting the freedom of expression.

The regulation in Section 14 b of the Lotteries Act concerning the marketing of Veikkaus Oy can be considered to have an impact on the exercise of freedom of expression.[103] The regulation does not restrict the exercise of a natural person's freedom of expression, but would affect Veikkaus Oy's ability to market the company and its gambling services. As stated above, according to the Constitutional Law Committee's established opinions, advertising and marketing may be subject to more far-reaching restrictions than the core area of freedom of expression. The proposed provisions restricting freedom of expression are based on the grounds of public health and child protection, which the Constitutional Law Committee previously considered acceptable.[104] The regulation aims at preventing gambling-related harm more effectively, so the provisions can therefore be considered to meet the conditions for restricting freedom of expression set out in the Constitutional Law Committee's established opinions.[105]

In order to combat marketing in violation of the Lotteries Act, the National Police Board may prohibit the marketing of gambling games by gambling companies other than Veikkaus Oy and impose a conditional fine to enforce the prohibition. A penalty payment may also be imposed for marketing in violation of the Lotteries Act. The Constitutional Law Committee has previously stated that a precise marketing prohibition on gambling games can be considered an acceptable restriction on freedom of expression because of social harm, abuse and legal risks. The Lotteries Act cannot be used to interfere with voluntary communications between private persons.[106] The purpose of the regulation is to address communications that are considered to be marketing and are intended to influence the commercial purchasing decisions of consumers. The provisions concerning the prohibition decision and the penalty payment cannot be considered to lead to the prevention of open public debate on gambling in society. This kind of societal debate is thus not regarded as gambling marketing. The regulations therefore do not interfere with the essence of the fundamental right. The regulations on issuing a prohibition decision and imposing a penalty payment are considered to be precise and accurate. The

[102] e.g., Markt intern Verlag GmbH and Klaus Beermann v. Germany, judgment 20 November 1989, Mouvement Raëlien Suisse v. Switzerland, Judgment of the Grand Chamber, 13 July 2012
[103] HE 135/2021 vp
[104] PeVL 15/2010 vp
[105] HE 135/2021 vp
[106] HE 135/2021 vp

regulation concerning marketing in violation of the Lotteries Act is considered to meet the general conditions for restricting fundamental rights.[107]

However, the advertising and marketing of gambling games can thus be subject to more far-reaching restrictions than societal debate, which is at the core of freedom of expression. If the expression of an opinion, which is at the core of freedom of expression, is accompanied by references to a gambling operator or the marketing of gambling, it may be more difficult to assess whether this is a permitted exercise of freedom of expression or prohibited marketing of gambling services. However, expressing an opinion can be or can become a form of commercial promotion, even if it involves societal debate. For example, if an opinion is repeatedly expressed in a paid announcement and the announcement includes elements normally associated with commercial communications, such as pictures or other similar enticing material, the communication as a whole may constitute marketing prohibited by the Lotteries Act.

When publishing editorial material, it should be taken into account that editorial material and marketing are clearly distinguishable from each other. Editorial materials may not be prepared with the actual purpose of marketing a gambling service or the party offering the gambling service. The Consumer Protection Act contains a specific provision on the identifiability of marketing, according to which marketing must clearly indicate its commercial purpose and the party on behalf of whom the marketing is carried out.[108]

Court decisions

The Supreme Administrative Court's decision KHO:2018:86 has addressed the relationship between marketing in violation of the Lotteries Act and freedom of expression. The National Police Board had prohibited a Finnish company from marketing a foreign gambling company on its website and social media. The Finnish company's website and social media accounts mentioned cooperation with a foreign gambling company and included the gambling company's logo. The Finnish company and the foreign gambling company had entered into a sponsorship agreement, in which it was agreed that the Finnish company would give the foreign gambling company additional visibility in return for compensation, which included visibility on the internet and social media. This visibility came to light in this case through the display of the foreign gambling company's logo on the website and social media, among other things. The Supreme Administrative Court found that the case involved marketing within the meaning of Section 4 of the Lotteries Act. Based on the information obtained in the case and the sponsorship agreement made between the foreign gambling company and the Finnish company, the Supreme Administrative Court assessed that the foreign gambling company also targets Finland with gambling services and their advertisement. The Supreme Administrative Court held that the objective of the Lotteries Act is sufficient in itself to justify restrictions on freedom of expression in gambling advertising, provided that the restriction is sufficiently precise and proportionate to

[107] HE 135/2021 vp
[108] Chapter 2, Section 4 of the Consumer Protection Act.

the objective. According to the Supreme Administrative Court, the restriction on freedom of expression imposed by the National Police Board's prohibition decision applies to a foreign gambling company’s marketing on the website and social media of a Finnish company's auxiliary business name, and the prohibition decision does not otherwise restrict the communications of the Finnish company or its auxiliary business name on the internet. According to the Supreme Administrative Court, the Police Board's decision to prohibit the marketing is acceptable with regard to the objective of the Lotteries Act to reduce the social and health-related harm caused by gambling and therefore does not include a restriction on the freedom of expression that is contrary to the Finnish Constitution and the European Convention on Human Rights.

Decisions of the National Police Board

A gambling website illegal in Finland was marketed in several publications by offering the chance to win a trip to a casino event held in Malta. The National Police Board judged the campaign to use a promotional lottery to promote gambling operator's image illegal in Finland. The advertisements prominently displayed the company's brand name together with elements commonly known to be connected to gambling such as pictures of poker chips, dice, playing cards and roulette. Although the promotional lottery in question was not a lottery subject to a licence as defined in the Lotteries Act, the National Police Board was of the opinion that the actual purpose of the published advertisements was to market the gambling website in violation of the Lotteries Act.[109]

The National Police Board intervened in articles published in magazines, containing text and pictures of an operator illegally offering gambling services. The articles were written in such a manner that, taken as a whole, they constituted marketing of gambling activities illegal in Finland. Furthermore, there was an evident risk of editorial materials and the marketing of illegal gambling activities becoming mixed with each other.[110]

The National Police Board issued a statement in a case where advertisements of a gambling operator other than those specified in Section 11 of the Lotteries Act were published in newspaper, containing statements on the Finnish gambling policies. The majority of the full-page advertisement was filled by a photograph of a well-known sports personality. In addition to the statement, the text section included a quote from the person in the photograph, saying that he cannot give betting tips even if he wanted to. The National Police Board judged that the advertisement contained both the exercise of the freedom of speech on a societal issue and commercial marketing. According to the view of the National Police Board, an individual publication of the said advertisement could not be considered

[109] Statement of the NPB 2020/2011/3629
[110] Statement of the NPB 2020/2011/4304

to be marketing of gambling services, but after several repetitions the advertising in question increasingly has a commercial purpose.[111]

5.3 Target country for marketing

As stated above, only the holder of exclusive rights is allowed to market gambling services in Finland as laid down in Section 14 b of the Lotteries Act. If the gambling services are marketed from abroad, and the impact of the marketing reaches Finland, it must be assessed whether the purpose of the marketing is to promote the sales of the marketed gambling services particularly in Finland.

In its preliminary work on the marketing regulations of the Lotteries Act, the Administration Committee of the Parliament has emphasised in its statement that circumventing the marketing prohibition is not permitted. For example, distributing a Finnish publication from beyond Finland's borders does not make this method legal. It is prohibited, for example, to promote lottery sales in a programme or other event publication related to some event held in Finland. A comprehensive assessment of the actual extent to which the publication attempts to effect sales promotion of gambling services must also be made.[112]

In the assessment of whether the purpose of marketing is to commercially promote gambling services in Finland, the overall impression created by the marketing is central. The Finnish language used in the marketing almost always indicates that the marketing is targeted at Finland, because in practice, the Finnish language is in common use only in Finland. It must be noted, however, that marketing in English, for example, is not automatically targeted elsewhere than Finland, because English is a commonly known language in Finland.[113] In its decision of 19 February 2024, the Helsinki Administrative Court stated[114] that it is irrelevant that expatriate Finns may also be interested in material on the marketing of gambling services. The use of the Finnish language, which arose in this case, together with other promotional material promoting participation in gambling games in Finland, was considered to be marketing directed at Finland. Whether the gambling games can actually be played in Finland is also relevant to the assessment.

The National Police Board has several times given attention to, for example, Finnish-language websites on the internet that publish Finnish and international sports news and contain banner advertising for gambling services. Such advertisements are often designed in such a manner that clicking the banner opens the advertised Finnish-language gambling website for the user. The National Police Board has judged that marketing carried out in this way is targeted at Finland even if the news website is maintained by an operator located abroad. It may also be significant for these and other assessments whether the marketing is realised in such a context or whether the activity

[111] Statement of the NPB 2020/2013/4067
[112] HaVM 7/2010 vp, p. 6.
[113] Regardless of the language used, the mere online availability of a foreign or Åland lottery website has been excluded from the concept of marketing, if the website does not contain other materials promoting participation in the lottery in Finland or the State (see above Chapter 3, p.9).
[114] Helsinki Administrative Court 967/2024

containing marketing is of such type as to take Finnish conditions into consideration. In the above-mentioned cases, this could, for example, mean that the sports news website publishes sports news that are of a particular interest to Finns and discuss Finnish sports events, leagues or athletes.

Marketing is also generally targeted at Finland using expressions, symbols and characters familiar to Finns. These can include events, characters, people, animals and landscapes that are specifically meaningful to Finns. These factors can be taken into account in the overall assessment.

In the assessment of whether online marketing is targeted at Finland, it is not significant whether the website's domain is .fi, the national country code of Finland, the country code of some other country, or a commercial domain.

Section 2, subsection 3 of the Lotteries Act excludes gambling services that are offered abroad or in Åland and not sold or resold in Finland from the scope of the Lotteries Act, and thus also from the provisions on the marketing prohibition.

Court decisions

From the province of Åland, PAF had offered online betting and cash lotteries in such a manner that players living in the State could also participate in these games. The Supreme Court considered that PAF had offered gambling services also in the area of the State, because it had marketed its online games massively in the State and, in practice, enabled playing from mainland Finland by, for instance, translating its online gambling website into Finnish. Furthermore, registration required a Finnish Personal Identity Number and an account in a Finnish bank. The Supreme Court considered that the online games were offered in a manner that showed the operations to be targeted at the area of the State. No decisive significance was given in the matter to the fact that the game server was located in Åland, where PAF's management and administration were also located. The association's managing director, marketing director and the chairman of the board were deemed to have committed a lottery offence. On the grounds stated in the Supreme Court's judgement, it was deemed that the lotteries had also been run within the State. The association's managing director, marketing director and the chairman of the board were deemed to have committed a lottery offence.[115]

A paper published by a Finnish limited liability company published Finnish-language advertising for gambling companies offering online gambling services. The companies did not have the government licence required by the Lotteries Act to offer gambling services in Finland. Both the district court and the court of appeals took the view that, by publishing the advertisements, the person who acted as the chairman of the board and managing director of the company that was the publisher of the paper had illegally promoted gambling services offered in Finland without a licence. The person was punished with 20 unit fines for a lottery offence. The company that published the paper was sentenced to compensate the state

[115] KKO 2005:27

with EUR 6,000 as the proceeds of crime. The provisions of the Lotteries Act that were in force before 1 October 2010 were applied in the case.[116]

Three gambling magazines published advertisements for such gambling companies offering gambling services that did not have the licence required by the Lotteries Act to offer gambling services. The prosecutor demanded a punishment for the editor-in-chief and the chairman of the board of the publishing company for promoting lotteries run without the licence required in the Lotteries Act. The marketing provisions of the Lotteries Act that were in force before 1 October 2010 were applied in the case. The defendants pleaded with regard to the case that, for example, publishing the advertisements was an obligation based on the licence agreement enabling the publication of the magazine. In its judgment of the case R 11/375, the district court dismissed the lottery offence charges against the editor-in-chief of the magazine and the chairman of the board of the company publishing the magazine as time-barred, because the defendants could not have influenced the advertisements and their contents after the publishing date of the magazine. The district court referred to the interpretation established in the Supreme Court's decision 2005:27, based on which the location of the gambling company's management or the game server does not have a decisive significance with regard to the assessment of where the gambling services had been offered. In its decision, the district court stated that, regardless of the publishing agreements of the magazines, the publishing of advertisements must comply with the Lotteries Act, and sentenced the companies responsible for the publications to compensations totalling EUR 56,700 and EUR 75,600 as the proceeds of crime fulfilling the criteria of a lottery offence. Differing from the assessment of the district court, the Helsinki Court of Appeal took in its verdict of 31 December 2014 in the case R 13/1235 the view that the offences could be considered to be a single act, for which the limitation period of the offence did not begin until the publication date of the last issue of the magazine referred to in the count. The Court of Appeal accepted the district court's interpretation that the case involved the promotion of gambling services offered in violation of the Lotteries Act. The Court of Appeal stated that, taking the precedents of the ECJ into consideration, the national provisions are proportionate taken as a whole and de facto fulfil their purpose of protecting consumers from problems caused by online gambling. The Court of Appeal sentenced the editor-in-chief to a fine equivalent to 40 unit fines. The companies publishing the magazines were sentenced to compensate the State with EUR 262,500 and EUR 297,000.[117]

Decisions of the National Police Board

Poker magazines containing marketing of gambling services were on sale at magazine stands. The publishing and printing of the magazines had been moved outside Finland. The National Police Board took the view that, taking the Finnish

[116] Kouvola Court of Appeal 9 December 2010, R 10/273
[117] Helsinki Court of Appeal 31 December 2014 R 13/1235

language used in the magazines into consideration, the magazines were targeted at Finnish readers, and that the marketing published in them was in violation of the Lotteries Act. The company responsible for the retail sales of the magazines did not make any decisions concerning the marketing contained by the magazines, but the distribution company was for its part responsible for the execution of marketing-related decisions. The company stopped the retail sales of the magazines that contained marketing in violation of the Lotteries Act.[118]

A gambling website offered in Finland in violation of the Lotteries Act was marketed in publications by offering the chance to win a trip to a casino event to be held in Malta. The National Police Board judged the campaign to use a marketing lottery to promote awareness of the corporate image of a gambling company and the gambling services offered by the company. The advertisements prominently displayed the company's well-known brand name together with elements commonly known to be connected to gambling such as pictures of poker chips, dice, playing cards and roulette. According to the view of the National Police Board, this was a case of a marketing lottery the advertising of which was used to market the gambling website in violation of the Lotteries Act.[119]

The National Police Board imposed a conditional fine on an ice hockey team to prohibit it from continuing the marketing of a gambling website offered in violation of the Lotteries Act. The team jerseys worn by the team during away games played outside Finland prominently featured the logo of a gambling website or an equivalent logo. Although the activities primarily took place abroad, the National Police Board took the view that the marketing was targeted at Finland. The ice hockey team is a limited liability company based in Finland, with a significant part of its activities focussing in Finland. A large number of the team's supporters live in Finland. Ice hockey also interests a significant part of Finnish consumers, due to which the team's games receive media attention; the marketing was thus particularly targeted at Finland.[120]

The National Police Board imposed a conditional fine to prohibit a sports-themed website from marketing gambling websites offered in violation of the Lotteries Act, because the marketing of the gambling services was deemed to be particularly targeted at Finland. Taken as a whole, the assessment was affected by the fact that the advertisements and the entire sports news website were in the Finnish language, and that the news on the site could be deemed to be of a particular interest to Finnish consumers. The sports news website had also been marketed in Finland at various sporting events. According to the view of the National Police Board, the purpose of the advertisements for the gambling websites was to promote the sales of the gambling websites in question in Finland. The fact that the company responsible for the operations of the sports news website was registered

[118] Statement by the NPB in cases 2020/2010/4349 and 2020/2010/4361
[119] Statement of the NPB 2020/2011/3645
[120] Decision of the NPB POL-2014-7348

in Ireland was deemed to have no bearing in the matter. The company's persons in charge lived in Finland.[121]

The National Police Board imposed a conditional fine to prohibit the marketing of gambling sites operating in violation of the Lotteries Act on a sports website and in audio-visual content, as the marketing was deemed to specifically target Finland. The conditional fine was ordered payable because the marketing activities continued after the prohibition decision. The marketing of the gambling services was considered to target Finland, as the marketing on the site was in Finnish and the website, podcasts and videos are largely about topics of interest to Finns, such as Finnish football, ice hockey and baseball. According to the view of the National Police Board, the purpose of the advertisements for the gambling websites was to promote the sales of the gambling websites in question in Finland. The fact that the company responsible for the activities was registered in Estonia was deemed to have no bearing on the matter.[122]

The National Police Board imposed a conditional fine to prohibit a website from marketing gambling websites operating in violation of the Lotteries Act, because the marketing of the gambling services was deemed to specifically target Finland. The radio broadcasts had a broadcasting license in southern Finland. Although it was also possible to listen to this channel outside of Finland over the internet, this did not change the fact that the channel is specifically aimed at Finland and the advertisements published there are targeted specifically at Finland. In addition to gambling advertising, a significant part of the channel's advertising targeted consumers living in Finland, and the advertisers were companies operating in Finland. Offering the channel to Finnish companies operating in Finland for advertising purposes was considered to be an indication that the activity was targeted at Finland, since companies operating in Finland have no interest in advertising their products to an audience outside Finland. In addition to radio advertising, the gambling sites advertised on the channel were in Finnish and aimed gambling games at consumers residing in Finland.[123]

The Svenska Spel logo had appeared on the Swedish national ice hockey team's jerseys at the Ice Hockey World Championships in Finland. The Police Board considered that Section 2, subsection 3, paragraph 1 of the Lotteries Act was to be interpreted as excluding gambling carried out abroad from the scope of the marketing prohibition if the lottery tickets were not sold or resold in Finland. A resident of Finland could not actually participate in such gambling games. As a result, the marketing prohibition did not extend to Svenska Spel's gambling games when they were carried out abroad without selling or reselling lottery tickets in mainland Finland.[124]

[121] Decision of the NPB POL-2014-11880
[122] Decision of the National Police Board POL-2021-70535
[123] Decision of the NPB POL-2021-14076
[124] Decision of the NPB POL-2022-63164

5.4 Affiliate marketing

Affiliate marketing refers to results-based marketing, where payments are made based on achieved objectives. An objective may be, for example, to direct a customer to an online service, to complete a purchase, or to register. Affiliate marketing is a common practice in the gambling sector, and operators often receive a share of the losses incurred by a player referred to a gambling site. Most gambling companies have their own affiliate marketing programmes, with which they reach out to various websites and social media influencers.

The preliminary work on the Lotteries Act[125] has exclusively stated that not only is marketing by the gambling operator itself prohibited, but so are the activities of other parties engaged in the marketing of gambling games. The prohibition may thus not only apply to gambling operators themselves, but also to other gambling marketers, such as affiliate marketers and other promoters of gambling games, including affiliate marketing intermediaries.

Decisions of the National Police Board

The National Police Board imposed a conditional fine to prohibit a public figure from marketing gambling games and acting as an intermediary for affiliate marketing. The National Police Board concluded that the Finnish public figure's gambling marketing activities had been prolonged, extensive and involved multiple channels, and the audience for the marketing had been broad. The marketing had exploited the individual's publicity value and included personalised gambling offers to their followers. The marketing included gambling company logos and symbols, as well as links to gambling company websites and affiliate marketing sites promoting gambling companies. The person also approached a third party in an attempt to get them to promote gambling games on social media. The gambling company was referred to as a customer. The person also maintained affiliate marketing pages under their own website, which were personalised for other social media influencers.[126]

5.5 Marketing on websites

The vast majority of gambling marketing on websites that violates the Lotteries Act occurs through affiliate marketing. In addition to this, gambling games are marketed through "banner" or "display" advertising. Sometimes advertising space is purchased on a fixed basis to market a particular company or commodity, but most commonly, it is sold through programmatic buying. Programmatic buying is a kind of automated auction of advertising space that occurs when a website is loaded to a visitor. In this case, the

[125] HE 96/2008 vp
[126] Decision of the NPB POL-2021-20857

seller of the advertising space provides information about the space and the person visiting the site, and the buyer makes an offer based on this information.

In most cases, the intermediaries of advertising space have various guidelines and restrictions for advertisers. It is common for gambling advertising to be prohibited by either the site or the intermediary of the advertising space. Despite this, gambling advertising also occurs in display advertising. This is usually due to the marketer's active efforts to circumvent advertising restrictions. At its simplest, this can happen when an advertisement is placed in a category other than gambling advertisements. In this case, the responsibility for the marketing that has taken place lies primarily with the party that has circumvented the restrictions, i.e. the gambling company.

In the decision of the Supreme Administrative Court KHO:2018:86, the use of a foreign gaming company's logo on a partner's website and social media has been assessed as marketing within the meaning of the Lotteries Act. In addition, the preliminary work on the marketing provisions of the former Lotteries Act emphasises that even any indirect promotion of unauthorised gambling activities is illegal.[127] Simply using the logo of a gambling site may constitute the marketing of gambling within the meaning of the Lotteries Act, even if the use of the logo is not accompanied by any other communication promoting gambling.

When assessing the commercial purpose of an activity, it is also worth noting that the preliminary work on the law states that "Commercial practices that primarily serve a purpose other than influencing the commercial choices of consumers with regard to products, such as commercial communications to investors, like annual reports and company brochures, do not constitute sales promotions."[128]

Decisions of the National Police Board

The National Police Board imposed a conditional fine to prohibit a company from marketing gambling games on its websites. Marketing of foreign gambling sites had taken place through banners and links on the websites. In addition, one of the sites had marketed Veikkaus Oy's games through group games, which users could participate in using a link on the site. In the view of the National Police Board, the gambling marketing on the website was targeted at Finland.[129]

5.6 Marketing on social media

Gambling marketing in violation of the Lotteries Act has become more common in recent years, especially on social media. There are numerous social media channels suitable for marketing, which has also increased the visibility and accessibility of gambling games. Most social media marketing is affiliate marketing. In general, this type of marketing is not labelled as marketing under Chapter 2, Section 4 of the Consumer

[127] HaVM 7/2010 vp.
[128] HE 96/2008 vp, p. 7.
[129] Decision of the NPB POL-2019-600

Protection Act, which would indicate its commercial purpose and on whose behalf the marketing is implemented. In contrast, affiliate marketing of gambling games has sought to promote gambling as a personal hobby, a fun pastime or other similar activity. Such marketing is not only a violation of the Lotteries Act, but must also be assessed as a violation of the requirements of the Consumer Protection Act regarding the identifiability of advertising.

The marketing of gambling games on social media has also been used to attempt to circumvent the marketing provisions of the Lotteries Act. The aim is to circumvent the marketing prohibition laid down in the Lotteries Act by producing content in English or by having the marketer based outside the borders of Finland. However, other content on the social media account may be in Finnish or otherwise directed towards Finland. It can be observed on some social media accounts that followers are almost exclusively from Finland, in which case the marketing is actually targeted at Finland and Finnish consumers.

Decision of the Finnish Competition and Consumer Authority

A band engaged in commercial cooperation with a foreign gambling company, which included the use of the company's name and/or logo in the band's music video and on their social media channels. According to the Lotteries Act, only Veikkaus Oy is allowed to market gambling games in Finland. The purpose of this arrangement is to prevent and reduce the harm caused by gambling. Since the marketing of foreign gambling services must therefore be regarded as contrary to generally accepted social values, the practice was also contrary to good practice within the meaning of the Consumer Protection Act. In addition, the commercial cooperation had not been communicated clearly enough in the band's various channels, so the marketing was not identifiable. According to the FCCA, the band's practices were in breach of Chapter 2, sections 1, 3 and 4 of the Consumer Protection Act.[130]

Decisions of the National Police Board

The National Police Board imposed a conditional fine to prohibit a social media influencer from marketing gambling games. Some of the websites and social media channels where the person marketed gambling games were entirely focused on marketing gambling. Gambling company logos and symbols were displayed in publications and they also included links to gambling company websites and affiliate marketing sites promoting gambling companies. The publications included presentations and reviews of gambling games, as well as various offers to encourage gambling, which were personalised to the person's followers. The social

[130] Decision of the Finnish Competition and Consumer Authority KKV/704/14.08.01.05/2019

media channels were open to follow, and there were no restrictions on the number of people who could view the posts.[131]

5.7 Direct Marketing

The most common form of gambling marketing in violation of the Lotteries Act is the direct marketing of gambling games. Direct marketing is primarily conducted via email and SMS, but it has also been carried out via post and telephone calls. The marketing is carried out in Finnish and often also sent to an email address with a Finnish domain or a Finnish telephone number. When conducted in this way, the marketing is in violation of the Lotteries Act. Electronic direct marketing as a marketing method is regulated in Chapter 24 of the Act on Electronic Communications Services (917/2014). Direct marketing by electronic means that is intended primarily for a natural person requires the recipient's consent. An existing customer relationship may also allow direct marketing, subject to certain restrictions and on condition that the person is clearly informed of the possibility of opting out of the marketing. Despite the above prohibitions and restrictions, the National Police Board receives reports of direct marketing related to gambling games that recipients have not consented to, or the message does not include the option to opt out of the marketing. The National Police Board has assessed that a sender of messages that violate the Lotteries Act cannot obtain consent to send marketing material that violates the Lotteries Act, so the customer's consent to direct marketing is not decisive for the assessment of legality.

Direct marketing is therefore subject to the same restrictions as other forms of gambling marketing. Only Veikkaus Oy is allowed to market gambling games in mainland Finland, in which case the direct marketing of gambling games to persons residing in Finland violates the Lotteries Act.

Decisions of the National Police Board

The National Police Board imposed a conditional fine to prohibit companies from engaging in direct marketing and the marketing of gambling games on their websites. The gambling games had been marketed on websites and by telephone, and the communications had been in Finnish. The National Police Board stated that even if another party had been involved in the marketing and thus in the offering of the gambling services, the party on whose behalf the marketing of gambling services is carried out as part of the offering of the gambling services is also always liable for marketing that violates the Lotteries Act. The fact that the companies were based abroad did not prevent the imposition of a prohibition decision.[132]

[131] Decision of the National Police Board POL-2021-20857
[132] Decisions of the NPB POL-2020-38633 and POL-2020-63868 5.8.

5.8 Offering gambling services in violation of the Lotteries Act

The Lotteries Act prohibits the offering of gambling services by anyone other than the exclusive operator. The Supreme Court of Finland ruled in its decision (2005:27) that a gambling game must be considered as being offered within the territory of Finland when various actions (such as marketing directed at Finland and the translation of a gambling website into Finnish) are intended to enable and promote participation in gambling in Finland, even if the game servers or the administration of the games are located outside Finland.

It is therefore irrelevant whether the gambling services are offered or marketed from outside Finland or whether the gambling operator and marketer are licensed in another EU Member State or in a non-EU country. What is essential in this case is that the actions related to the offering and marketing of gambling services are aimed at enabling and promoting participation in gambling in Finland.

Decisions of the National Police Board

The National Police Board imposed a conditional fine to prohibit two foreign companies from offering gambling services in mainland Finland. The marketing had succeeded in selling gambling services to consumers residing in Finland via telephone. Subscriptions to the gambling services were made verbally over the telephone. Also, according to the information provided on the website, coupons could be ordered via telephone, and they were automatically added to the game account by the seller. Bills and collection letters had been sent to consumers residing in Finland for claims related to the gambling games sold over the telephone.[133]

5.9 Administrative penalties under the Lotteries Act

The Lotteries Act contains several different ways of intervening in the marketing of gambling services that violate the Lotteries Act. The Lotteries Act, which came into force at the beginning of 2022, increased and expanded the administrative intervention measures available to the supervising authority. This was aimed particularly at improving the effectiveness of intervening in the marketing activities of operators outside the exclusive rights system.

5.9.1 Prohibition decision

In terms of administrative procedure, the most important instrument for intervening in marketing and activities that violate the Lotteries Act is the prohibition decision. The prohibition decision is designed to halt the marketing of gambling services that violates

[133] Decisions of the NPB POL-2020-38633 and POL-2020-63868

the Lotteries Act. In addition to marketing, the prohibition decision may also be imposed on the offering of gambling services and the sale and resale of lottery tickets.

According to Section 62 of the Lotteries Act, it is prohibited to sell or resell tickets for lotteries conducted in violation of the Lotteries Act and to market such lotteries; to sell or resell tickets or to market lotteries abroad in violation of the legislation of the target country; and to sell or resell tickets, receive stakes, and distribute winnings in connection with gambling games conducted by Veikkaus Oy without the company's authorisation.

In addition to the above, it is prohibited to provide space for the unauthorised use of slot machines, casino games, non-money prize machines, or game machines and game equipment referred to in Section 56.

Section 62 a of the Lotteries Act specifies the conditions for prohibiting the running of gambling games that violate the Lotteries Act. The National Police Board may prohibit the running of gambling games if a gambling game is run by a body other than Veikkaus Oy, if the running of the gambling game violates the prohibitions in Section 62, or if the running of the gambling game otherwise violates the Lotteries Act or a regulation issued under the Lotteries Act in a manner other than that referred to in Section 62 b. A prohibition is in effect for a maximum of 12 months. The National Police Board may extend the prohibition period by no more than 12 months at a time if the manner in which gambling games are run has not been corrected.

In turn, the marketing of gambling games that violates the restrictions under Section 14 b of the Lotteries Act may be prohibited based on Section 62 b of the Lotteries Act. In this case, the National Police Board may impose a prohibition on the gambling operator or a trader or organisation that resells participation tickets or forwards participation fees related to gambling games, provides space for making slot machines available for use, or markets gambling games. A prohibition under Section 62 b of the Lotteries Act is in effect for a maximum of three months. The National Police Board may extend the prohibition period by no more than six months at a time if the manner in which gambling games are run has not been corrected.

Sections 66 and 66 a of the Lotteries Act make it clear that the prohibition decision must be complied with despite an appeal, unless the appeal authority orders otherwise.

In recent years, the prohibitions imposed by the National Police Board have been aimed at gambling marketing activities outside the exclusive rights system. In addition, the National Police Board has also imposed prohibitions on the sale and resale of lottery tickets. Administrative control procedures have led to prohibition decisions in a very small number of cases because operators have ceased their illegal activities before the prohibition decision was taken.

Before issuing a prohibition decision, the National Police Board shall consult the concerned party in accordance with Section 34 of the Administrative Procedure Act. In accordance with Section 33 of the Administrative Procedure Act, the concerned party will be given sufficient time to respond to the hearing. However, failure to respond to the hearing or to meet the deadline will not prevent the case from being resolved.

The decision will be duly served and a notice of appeal will be attached. As a general rule, prohibitions take effect at the end of the appeal period, which is 30 days after notification of the decision. Service with proof of receipt may be carried out using a certificate of receipt, or if this fails, the National Police Board may use a process server or public notification in accordance with Section 62 of the Administrative Procedure Act.

5.9.2 Conditional fine

A prohibition decision, whether it is under Section 62 a, 62 b or 62 m of the Lotteries Act, may be reinforced by a conditional fine. A conditional fine is imposed by ordering the party concerned to comply with the main obligation under the threat of a fine and is intended to encourage compliance with the prohibition. Each main obligation must be reinforced by the imposition of a separate conditional fine. The decision must clearly state what the party concerned is obliged to do and when, by what date or from what date the main obligation must be complied with. When considering the length of the time limit, it is necessary to consider the nature and extent of the main obligation, the ability of the obligated person to comply with it and other relevant factors. When considering the amount of the conditional fine, it is necessary to consider the nature and extent of the main obligation, the ability of the obligated person to pay and other relevant factors.

The amount of the conditional fine may be fixed or recurring. In the case of a recurring conditional fine, a fixed base amount and an additional amount are set for each period (conditional fine period) indicated in the decision during which the principal obligation has not been complied with. The National Police Board has primarily used fixed conditional fines.

A conditional fine can only be imposed on a party who is in a position to comply with the principal obligation. If a conditional fine applies to several parties, a separate conditional fine must be imposed on each party. If the main obligation concerns an association or foundation, the conditional fine is imposed either on the association or foundation, the members of its decision-making body, or on its managing director or any other person in a similar position.

The authority that imposed the conditional fine may order it to be paid if the main obligation has not been complied with and there is no valid reason for non-compliance. Ordering a conditional fine to be paid requires that the decision to set the fine is final, unless the decision has been prescribed or ordered to be enforced despite an appeal. A conditional fine may also be imposed at a lower amount than the set amount if the principal obligation has been substantially complied with, the obligated person's ability to pay has been significantly reduced, or if there are other justified reasons for reducing the amount of the conditional fine. The party concerned is heard regarding the imposition of the conditional fine, and the collection of its payment is carried out by the Legal Registry Centre.

5.9.3 Penalty payment

The purpose of the penalty payment is to effectively prevent marketing activities that violate the Lotteries Act, the continuation of such marketing activities and their recurrence. The penalty payment thus serves a clear general and specific preventive function.

The nature and purpose of a conditional fine and penalty payment are different. The prohibition decision and the conditional fine imposed to reinforce compliance with it are future-oriented in order to stop conduct that violates the Lotteries Act. The purpose of a conditional fine is to ensure compliance with the principal obligation and thus to achieve a lawful state of affairs. In contrast, a penalty payment is a direct financial sanction for illegal conduct that has already taken place.

A proposal to impose a penalty payment shall not be made if a conditional fine has been imposed for the same violation or an application for enforcing the payment of a conditional fine is pending. A penalty payment may also not be imposed if the same case is pending in criminal proceedings or if the same offence has previously been the subject of a criminal conviction.

The amount of the penalty payment may not exceed four per cent of the turnover of the operator or trader in the year preceding the end of the violation. However, it shall not exceed EUR 5 million or be less than EUR 10,000. If the financial statements have not yet been completed at the time when a penalty payment is imposed, if the business has only just started and the financial statements are not available, or if the financial statements are not available for any other reason, the turnover may be estimated on the basis of other evidence received. The penalty payment imposed on a natural person may not exceed four per cent of the person’s taxable income in the year preceding the end of the violation. However, the penalty payment shall not exceed EUR 40,000 or be less than EUR 500. If the income cannot be reliably established, it can be estimated on the basis of other evidence received.

5.9.4 Blocking of payment transactions

According to Section 62 l of the Lotteries Act, the National Police Board shall maintain a list of gambling operators that market gambling games in violation of Section 62, subsection 2, paragraph 1 and whose running of gambling games has been prohibited by the National Police Board under Section 62 a. Payment service providers and virtual currency providers are obliged to block payments to companies on this list that are made by natural persons who are players. It is therefore the responsibility of the payment service provider to block gambling-related payments from the players to gambling companies that are on the blocked list.

Under Section 62 m of the Lotteries Act, the National Police Board may prohibit the initiation and implementation of gambling-related payment transactions if a payment service provider or virtual currency provider violates the prohibition laid down in Section 62 l. The prohibition is valid for a maximum of 12 months, and the National Police Board

may extend the prohibition period by no more than 12 months at a time if the procedure for initiating and implementing the payment transaction has not been corrected. A separate policy document has been published on blocking payment transactions.[134]

[134] National Police Board's policy document POL-2023-48460

6 In conclusion

With the introduction of new technologies such as artificial intelligence, the offering of gambling services will evolve rapidly. The same applies to the marketing of gambling services. The gambling industry already uses marketing strategies based on the behaviour and preferences of individual consumers, and AI can be used to create more effective marketing and target it more effectively. Marketing is increasingly targeted and customised as personalised marketing for individual consumers. Gambling is also widely marketed through social media influencers, which carries a risk of targeting minors, and it is also not always easy to recognise marketing communications as marketing. It is expected that changes or additions to this policy document will also be necessary in the future due to forthcoming changes in the gambling system, new interpretations by the National Police Board and changes in marketing practices. There may also be legislative changes resulting from developments in EU law, which may require updating the guidelines.

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This document has been signed electronically. Police of Finland 04.11.2024 at 09:30. Authenticity of the signature can be verified by the Registry.

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