Norwegian Gaming Regulations – Jurisdiction profile

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Introduction
During recent years the landscape of the Norwegian gambling market has changed dramatically due to the vast number of internet based gambling companies targeting the Norwegian market. Although this has been a welcome development for Norwegian gamblers and players, the Norwegian authorities has another point of view, seeing it as an unwelcome, challenge to the state owned gaming monopolies. As a result they have to their furthest extent tried to stop this internet based gambling invasion, through the various provisions of the Norwegian gaming laws, with very varied results, in spite of relative recently implemented financial transfer bans and marketing prohibitions.

Norwegian gaming regulations
The basic premise under Norwegian law is that all forms of gaming are prohibited, except where permission to operate such activities is granted under the authority of a legal statute. According to article 298 and 299 of The Norwegian Penalty Code, it is a punishable offence to operate activities in the form of a “game of chance” not sanctioned by special legislation. “Games of chance” includes all types of betting and other types of gaming in which the element of winning is the key. Hence, poker is reckoned to be a “game of chance” by the authorities, however this has recently been challenged by a verdict in the High Court stating that “Texas Hold’em” is to be considered as a game of skill.

Despite the abovementioned general prohibition, there have long been statutory exceptions. These are currently laid down in three acts, which in detailed terms allow certain operators to be granted permits. These are (i) The 1927 Totalisator Act (horse race betting), (ii) The 1992 Gaming Act and (iii) The 1995 Lottery Act.

These three acts so forth constitute a coherent and exhaustive regulation of all forms of lottery and money gaming legally operated in Norway.

In practice, it is The 1927 Totalisator Act and The 1992 Gaming Act that by far have been the most important, regulating all forms of gaming through exclusive rights arrangements. The system developed under the Totalisator Act in effect gives Norsk Rikstoto Foundation an exclusive right to arrange horse race betting and The Gaming Act establishes the state owned gaming company, Norsk Tipping AS, granting to it exclusive rights to other sports based betting and certain number games (Lotto).

In practice this means that all traditionally large gaming activities are subject to the exclusive rights system operated by either Norsk Tipping AS or the Norsk Rikstoto Foundation.

The Lottery Act of 1995 is in principle the general act, comprising all other forms of lottery and gaming. This follows from the wide definition of “lotteries” given in Article 1(a) of the Act as all “activity in which a participant may for a stake acquire a prize as a result of a draw, guesswork or other procedures which wholly or in part produces a random outcome”. The definition of lottery is evidently wide and embraces almost all games that are traditionally offered at traditional casinos. Also games such as bingo, horserace betting, sports betting etc. are considered to be lotteries and therefore under the regulation of the Norwegian Gaming Acts. Only smaller and less important forms of gaming and lottery may be granted a license under the Lottery Act, and only when the profit is donated to humanitarian and socially beneficial non-profit organizations.

It is prohibited and punishable to operate gambling services in Norway contrary to the abovementioned gambling regime. A secondary law (Forskrift om forbud mot spillbetalingsformidling, 2010) prohibits banks to transfer money to foreign gaming companies.

However, it’s important to emphasize that it is not illegal to gamble in Norway. Nor is the government practicing any IP blocking towards foreign gaming providers. It is therefore fair to say that there are rich possibilities for foreign gaming providers to offer their services to Norwegian customers.
Marketing Prohibition
Not only the operating, but also the marketing of unlicensed gaming is prohibited according to the Norwegian Gaming Acts.

As a result, marketing of games and lotteries on the Internet is prohibited, with the exceptions of the games offered by Norsk Tipping AS and Norsk Rikstoto Foundation. In principle, the prohibition covers all forms of marketing that is targeted against Norwegian consumers and encourages gaming.

However, the general marketing prohibition for unlicensed gaming operators does not appear to hinder international gaming providers from marketing their products through marketing channels based outside of Norway, e.g. based on the EU broadcasting directive 89/552/EEV which applies for Norway.

As a result, international gaming companies often use TV-channels, websites and servers based outside Norway to market and to offer their services. This marketing, although frowned upon by the Norwegian gaming authorities, is not illegal as long as the marketing is not directly targeted against the Norwegian players. Conclusive in this matter is whether or not the games offered are primarily designated for the Norwegian market.

Financial Transaction blocking
As a result of the expanding gambling possibilities offered to the Norwegian players, the Norwegian authorities passed a secondary law in 2010, prohibiting banks from transferring funds to unlicensed gambling operators.

The financial transaction block is all embracing, and includes all forms of payment methods offered in Norway. As a result, all transfers of funds from Norway to a user location with the Merchant Category Code (MCC) 7995 (gambling activities) will be blocked by the service provider.

Transaction blocking is therefore not dependent on whether or not the institution is based in Norway or operates from the European Economic Area, but how the transfer is categorized under the MCC-system. If the transfer is marked as a 7995 transfer it will automatically be blocked as a result of the prohibition.

Having said that, credit transfers serviced through online banking transfers or bank giro, will not be automatically blocked as a result of the prohibition, unless The Gaming Authority passes a decision concerning blocking of certain account numbers. In June 2010 and January 2011, such decisions were passed by The Gaming Authority and 15 specific account numbers were blocked for standard credit transfers.

In principal the prohibition therefore blocks all forms of transfers to unlicensed gaming operators.

However, nearly all of the gaming companies have now turned towards third-party solutions. As a result of this, and that nearly none of the gaming companies still have their Norwegian bank accounts, it has become hugely complicated for The Gaming Authority to pass new decisions blocking...
transfers to certain account numbers. As a result, the transfer of funds through standard credit transfers is once again open.

The Norwegian Gaming Board recently published its evaluation report of the transfer ban. The Gaming Board concludes that the transfer ban has not had the desired effect, and that transfers to international gaming companies unlicensed in Norway still continues undisturbed, in spite of the prohibition. The Gaming Board is not satisfied with the development, but lacks the authority and tools to counteract the development.

The prohibition is therefore highly ineffective and the Gaming Authority has few or no measures against these transactions as the prohibition is only applicable for transactions marked as gambling related, and as the third-party solutions remove this connection, the prohibition is nearly impossible to enforce.

**Violations of the Norwegian gaming provisions**

In the event that a gambling operator is in breach of the provisions laid down in the Norwegian gaming acts, this could in principle lead to criminal sanctions. But so far, the Norwegian Gaming Authority has only issued administrative sanctions to companies in breach of the Norwegian regulations. However, if the gambling operator is very aggressive towards the Norwegian market and does not comply with relevant administrative sanctions issued by the Gaming Authority, the possibility of criminal proceedings cannot be excluded.

The prosecution of a foreign based gaming company would, however, raise jurisdictional issues pursuant to the Norwegian Penal Code. As of today, it is unclear whether or not Norway will have jurisdiction with regards to a penal prosecution of such companies.

This is supported by the statements made in the Norwegian white paper (Ot.prp. nr. 44 (2002-2003)) where jurisdictional issues pursuant to the Norwegian Penal Code are discussed in context with Norwegian gaming companies offering unlicensed gambling from branch companies based outside of Norway. The committee stated that the prosecution of a gaming provider offering unlicensed gambling from another country to Norway would be difficult, unless the offered game is illegal in the country from which it was provided.

However, The Norwegian Gaming Board stated in a case against eurollo.com in April 2011, that Article 12 of The Norwegian Penal Code would be applicable as the effect of illegal targeting and marketing towards the Norwegian market will fulfill the conditions laid down in Article 12 of The Norwegian Penal Code. Under the current situation criminal proceedings as a result of infringements to Norwegian gaming laws therefore constitutes a challenge for the Norwegian Authorities, and our impression is that it is therefore unlikely that the Norwegian Authorities would pursue such a case exhaustively.

**EU/EEA Compatibility**

Norway is obliged, as a European Free Trade Association (EFTA) Member State and party to the European Economic Area (EEA) Agreement, to comply with the provisions of the EEA Agreement.

Several gaming organizations and gaming companies are critical of the Norwegian gaming system, and are of the opinion that the gaming system is in defiance with the EEA Agreement. Some gaming companies have challenged the Norwegian gaming regulation under the references to the EEA Agreement. Particularly relevant in this matter is Article 36 of the EEA Agreement regulating the freedom to provide services.

Relevant in this matter is Case E-3/06, “Ladbrokes”, relating to the Norwegian sports betting regime. Ladbrokes claimed that they were legally entitled to provide their services to and within Norway as a consequence of their valid gaming license issued in another EU/EEA State.

As a result of Ladbrokes claim, Oslo City Court asked the EFTA Court for their evaluation on the matter. The EFTA Court concluded that each EEA Member State has the right to require possession of a license, thereby rejecting the automatic recognition of a license issued by another EU/EEA Member State. The City Court therefore rejected Ladbrokes claim.

The Norwegian system has on these grounds, so far, proved itself to be in compliance with the relevant provisions of the EEA Agreement and the relevant EU/EEA case law.

Closing remarks and thoughts on a changing regulatory landscape in Norway.

The Norwegian gaming regulations may at first seem rigorous and make the Norwegian gaming market seemingly unavailable for international gaming providers. But like most international based operators you will probably experience that a wide range of gambling service can be offered to the Norwegian players without any interference of the Norwegian Gaming Authorities if these services are rendered from outside Norway and not marketed aggressively and explicit for the Norwegian market and player.

If relatively basic ground rules are followed the operators should steer clear of the Norwegian gambling prohibitions and may even find that the Norwegian internet based gambling market is more open than at first glance. This will especially apply for the games qualified as “social gaming” as these games will not fall under the gambling definition according to the Norwegian regulations, and can thus be offered freely to and within Norway.

With regards to changes in the Norwegian gaming regulations, it would not be an honest assessment if we were to claim that a more open legislation is on the horizon.

However, gambling regulations are changing rapidly across Europe, and the Norwegian Gaming Authorities are watching these developments closely, especially with regards to the newly implemented changes in Denmark.

The new Danish gambling regime together with potential changes in the Swedish system and the developments in European countries may even eventually push through a change in Norway as well.

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