

GAMBLING IN THE SINGLE MARKET – A STUDY OF THE CURRENT LEGAL AND MARKET SITUATION

Volume II

Belgium, Denmark, France, Germany, Greece, Ireland



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GAMBLING IN THE SINGLE MARKET

A STUDY OF THE CURRENT LEGAL AND MARKET SITUATION

VOLUME II

BELGIUM, DENMARK, FRANCE, GERMANY, GREECE, IRELAND

BELGIUM

**STUDY OF THE LEGAL AND MARKET SITUATION IN ALL THE MEMBER STATES
CONCERNING BETTING, GAMING, LOTTERY AND SIMILAR ACTIVITIES
IN VIEW OF THE COMPLETION OF THE INTERNAL MARKET**

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BELGIUM

INTRODUCTION

In Belgium, games of chance for money can be divided into two different categories, according to whether the outcome is perceived as purely a matter of chance, or whether some skill element is involved.

The first category covers lotteries and games of chance in which each partner has an equal chance of winning, these chances may be determined beforehand by the calculation of probabilities.

The Law of December 31, 1851, prohibits lotteries as a general rule. Exemptions include lotteries for philanthropic and charitable purposes. The National Lottery is regulated by specific legislation, the Law of July 6, 1964, and is exempt from the Law of 1851.

The second category involves games of skill and betting where the chances of winning are proportional to the gambler's skilfulness, knowledge or judgement. Such betting includes sporting events such as football matches and horse races.

The Law of October 24, 1902 on games of chance, Article 1 of the Law of 1902, forbids the organisation of games of chance.

There are three *exceptions* to the general rule:

1. This prohibition is not applicable to games involving skill or to the bets wagered on these games.
2. This law does not apply to horse race betting, which falls within the scope of the Law of December 28, 1973, specifically applying to horse racing. Belgium is one of the few countries to have implemented specific legislation for betting on horse races taking place abroad.
3. The Royal Decree of January 13, 1975 includes a list of amusement machines whose operation is authorised, and exempted from the Law of 1902. Casinos are in the unusual situation of being prohibited under the Law of 1902, but 'officially tolerated'.

Of marginal importance is the Law of 1963 on betting on the results of sporting events.

1. LOTTERIES

1.1. National Lottery

1.1.1. Legislation

The Belgian National Lottery finds its roots in 1934 with the creation of the Colonial Lottery, profits of which were mainly destined to the ex-Belgian Congo. The legal foundation of the Colonial Lottery was a budgetary law, a type of law which is designed to operate for one year only. Various legal techniques were used to maintain the budgetary law in application. The Ministry responsible for colonies was responsible for the Lottery.

Following decolonisation, the Belgian legislator updated the law applying to the Lottery. A constantly extended budgetary law was no longer seen fit for the Lottery. Due to its specific nature, the new 'National Lottery' would need a special legal framework. That legal framework was the Law of July 6, 1964, empowering the Ministry for Finance to organise a public lottery, the National Lottery.

The National Lottery, an independent body, is accordingly exempt from the Law of December 31, 1851, covering lotteries. Exemption is granted on the basis of rendering a useful service to the public.

A Royal Decree of February 3, 1965, regulates the organisation and management of the National Lottery. The extension of the range of activities provided by the National Lottery has been achieved through separate Ministerial Decrees for each of the following games: Presto, Subito, Baraka, Lotto and Joker.

The philosophy behind setting up a special law to govern the National Lottery presumes participation in lotteries is an unsuppressable part of human nature and would take place whether legal or not. Legalisation, however, offers a better chance to regulate and control this activity. Moreover, legalisation will enable the Belgian authorities to collect a kind of voluntary tax, albeit for distribution to charitable and philanthropic purposes. Prohibition would deprive Belgium of these revenues, which, instead, would find their way to foreign lotteries.

1.1.2. Authorisation and Licensing/Supervision and Control

The National Lottery is the responsibility of the Ministry of Finance. Under the Law of July 6, 1964, the Ministry of Finance has a permanent authorisation, which can be revoked by a change in law or a Royal Decree.

The present regulations applicable are included in the Law of July 6, 1964, as amended by the Law of July 12, 1976.

A change of legal status for the National Lottery is currently under consideration; rather than being an integral part of the Ministry of Finance, the National Lottery would become a semi-State body, with increased scope for carrying out its activities.

The prime motive for the proposed change, is to introduce commercial business practices by way of more flexible management, cost control and revenue stimulation.

1.1.3. Taxation

The National Lottery is exempt from taxation. Instead, 'profits' are allocated to various charities and philanthropic activities as set out below.

1.1.4. Distribution of Profits

As stipulated in the Law of July 6, 1964, the National Lottery presents a proposal to the Minister of Finance regarding distribution of National Lottery 'subsidies'.

The net profits of the National Lottery must by law be used for three objectives:

1. At least 35% of the profits must be allocated each year to finance development cooperation, in tradition with the previous Colonial Lottery.
2. At least 25% is reserved for social objectives and in the public interest, as set out in the Royal Decree of August 23, 1982. This 25% is usually allocated to cultural projects and scientific research.
3. The remainder is distributed for other objectives described by the Council of Ministers. Usually recipients include promotion of sport, the handicapped, youth, the elderly, ...

1.1.5. Tax Revenue

The National Lottery is exempt from tax. Other public service activities are nonetheless funded by the National Lottery, in particular those listed in Section 1.1.4. The subsidies granted to these public service objectives amounted to:

Year	Funding from National Lottery (.000 ECU)
1985	149.606
1986	158.135
1987	171.275
1988	174.502
1989	185.336

1.1.6. Market Information

Recent annual turnover for the National Lottery was as follows:

Year	Turnover (.000 ECU)
1985	505.987
1986	543.100
1987	568.918
1988	601.190
1989	621.015

The market has grown apace with inflation. This is indicative of a mature market.

The National Lottery is not yet on-line. Instead, it relies on a series of independent intermediaries who collect funds, and look after marketing and training.

The distribution network is operated by two distinct networks. First, private sector agents, mainly retailers, offer approximately 7.000 outlets. Of these 7.000, about 4.200 have validation equipment necessary for certain games (Lotto-Joker). In major cities, agency companies operate a series of outlets/shops specialising in National Lottery games.

The second network consists of post offices and branches of financial institutions. This network consists of over 5.000 outlets. In total, the National Lottery has over 12.000 outlets.

All agents must sign an agreement with the National Lottery. A commission of 10% is paid to them. Incentive campaigns encourage sales by rewarding best performing agents with holiday trips.

1.1.7. Barriers

By the Law of July 6, 1989, the Belgian National Lottery has been authorised to sell its tickets throughout the entire Belgian territory. It is therefore not authorised to sell abroad.

Regarding foreign lotteries entering the Belgian market, no Belgian law specifically prevents foreign lotteries from selling tickets in Belgium. To sell lottery tickets legally in Belgium, an authorisation is needed. This authorisation has never been granted, thus effectively barring foreign lotteries from Belgian territory. Authorisation has not been granted because all lotteries in Belgium must be in the public interest.

German lotteries have attempted to penetrate the Belgian market, a prime target given its geographical proximity. Participation of Belgian residents in non-Belgian lotteries was condemned by the Belgian courts, the rationale behind this being that the profits yielded by the German lottery would not be in the Belgian national interest.

The result of the court case was German Lotto accreditations along the Belgian border with Germany are declared illegal as too were "informal" collections.

'National interest' must be interpreted in general manner. Belgian charities and other philanthropic activities are the most obvious case of 'national interest'. The economic wheels set turning by the operation of the National Lottery must also be taken into account; this would include such factors as jobs created by the Lottery, the suppliers of the Lottery, etc.

The court case mentioned above has not stopped clandestine frontier lottery networks from operating in frontier areas. By definition, the popularity of these lotteries is difficult to evaluate. Their importance can nevertheless be said to be marginal.

As in most EC countries, mailing campaigns by foreign lotteries are not allowed, given the monopoly of the National Lottery. Only when residents officially complain has any legal action been taken.

The main 'danger' to the monopolies is not so much international mailing campaigns as the possibilities created by developments in telecommunications. Even if cross-border 'telematic' campaigns are prohibited, it will be difficult and extremely expensive to stop them. The fact that lotteries are so profitable would make them a very tempting area. According to most national lottery operators, liberalisation of national lotteries would open the sector to various kinds of abuse. The abuse resulting from the inability to control and police the collection and distribution of tickets, would create an opportunity for customers to be debanded.

1.2. Non-national Lotteries

1.2.1. Legislation

According to the Law of December 31, 1851, lotteries are defined as any operations offered to the public with the intention of producing a profit as a result of chance.

The general rule is very clear : lotteries are forbidden under Article 1.7 of the 1851 Law. Only through exceptions to the general rule are lotteries allowed. Under the 1851 Law, exemptions have been granted in the cases of lotteries exclusively intended for philanthropic benefit or charitable organisations, or for the promotion of industrial or artistic activities or any public purpose which are not forbidden by law.

The objective of the Law of 1851 was to control abuses in the sector without forcing it undercover. It leaves significant powers in the hands of the authorising bodies, who effectively control the sector.

1.2.2. Authorisation and Licensing

Lotteries must be authorised in advance by the municipal, provincial or national authorities, depending on the coverage of the lottery.

The municipal authorities, (the mayor and municipal councillors) are empowered to authorise lotteries as long as the issue of tickets is exclusively made and announced in the municipality and is only published in the local press.

The provincial representative board is the appropriate authorisation body for lotteries covering more than one municipality or which are promoted in the local press circulating in those municipalities.

For lotteries involving the issue of tickets in more than one province or advertised in more than one province, authorisation from the governmental authorities is necessary. In such cases, it is the Ministère de l'Interieur which is responsible for authorisations. Ministry authorisations are given via Royal Decree.

Authorisations are granted only if the lottery is intended to benefit philanthropic or charitable organisations, for the promotion of industry, culture or the arts, or any other state-approved activity.

For each request the authority concerned will examine whether one or more of these objectives will be met, and whether there are sufficient guarantees of serious intent. The authority concerned has complete freedom to issue and revoke an authorisation.

This authorisation process is not effectively enforced for lotteries in private circles. Organisers of these lotteries often do not approach local authorities for permission. Jurisprudence in the matter holds that, as long as no marketing efforts are made towards the general public, lottery organisers will not be prosecuted for not having a licence.

1.2.3. Supervision and Control

The judgement of January 23, 1975, laid down by the 'Court of Cassation' provides that the Law of October 24, 1902, on gaming is in no way intended to annul or limit the competence of the communal authorities as regards the adoption of additional police regulations.

Individuals who organise lotteries without the prior authority to do so, or who breach lottery law in other ways, may be punished by imprisonment from between 6 days to 3 months and/or fines (based on Article 302 et seq. of the Code of Criminal Law).

As long as money prizes are not involved, the authorities are flexible in entering the law. Once money prizes are awarded, control tends to be much stricter. The main control for non-national lotteries is the authorisation procedure described at 1.2.2 above.

1.2.4. Taxation

Non-national lotteries are exempt from taxation.

1.2.5. Distribution of Profits

As long as non-national lotteries respect the law, they are free to distribute profits as they see fit; in most cases profits are reserved for charitable purposes, since the law prohibits that the lottery organiser makes any profit on the outcome.

1.2.6. Tax Revenue

No tax revenues are derived from non-national lotteries.

1.2.7. Market Information

As a result of the informality of the sector no market data is available. It can nevertheless be safely stated that the importance of this sector is marginal in comparison to the National Lottery and horse racing.

1.2.8. Barriers

There are no obvious barriers to local lotteries providing they are for a philanthropic or charitable purpose. There exists, however, no clear definition of what constitutes a philanthropic or charitable activity in the statutes. As a result, some of the decisions concerning permission to hold local lotteries may be seen as arbitrary.

2. HORSE RACING

French horse racing has been popular since the late 1940s in Wallonia as too has betting on these races. Three types of betting on horse racing are practised in Belgium. The most popular is off-track betting on races run abroad; bets are collected by 'agences hippiques' throughout the country. Over 80% of all off-track bets placed in Belgium is on French racing.

Many 'agences hippiques' (bookmakers) are situated in Belgium just across the border from France with the French punter being their primary source of income.

The existence of this market segment is recognised in legislation covering horse racing.

The two other types of betting on horse racing are both on races run in Belgium. A totalisator is operated by PMU Belge, which takes bets both on- and off-course. The remaining category of betting are the on-track bookmakers ('pari à la cote'), which are authorised to take bets on the specific course of their location.

As of December 1st, 1990, agences hippiques are eligible to act as bookmaker and take bets on sporting events other than horse racing. Betting on other sporting events was allowed by the Law of 1963 (see Section 5), but only using a totalisator system.

In a legal and commercial environment in which 'agences hippiques' have not thrived, the Belgian legislator, through the Royal Decree of September 12, 1990, has given the agences the possibility to develop a healthier business by allowing them to expand their 'product list'.

2.1. Legislation

The law of December 28, 1973 lays down regulations for the opening of a race course, the organisation of races, as well as betting on horse races.

The conditions under which authorisation is given, and the betting formalities, are determined by the Royal Decree of January 7, 1974. This Royal Decree is divided into three sections:

- Section 1: opening of a race course, and organisation of horse racing
- Section 2: acceptance of bets on Belgian horse races

- Section 3: acceptance of bets on horse races run abroad

The fact that bets on horse races run abroad is accepted within the statutes acknowledges the importance of this type of business.

A gradual transformation of public opinion was behind the 1973 Law. Betting on horses was no longer viewed as negatively as it had been in the past. Other motivations behind the law, particularly the section allowing betting on races held abroad, were to capture tax revenue and to prevent the sector from going underground. Before 1973, betting on foreign racing was taking place anyway, either illegally or simply by crossing the border into France.

2.2. Authorisation and Licensing

The rules are not the same for off-track betting on Belgian racing and off-track betting on foreign racing.

Section 1 of the Royal Decree provides that game organisers may not have criminal records nor be in an 'irregular' situation regarding tax payments. If more than five races in one year are intended, the objective of organising races must be to further horse breeding. Detailed plans of the race course itself and a programme of races must be included in the request.

Section 2 stipulates that authorisation to accept pool or fixed-odds bets on horse races taking place in Belgium is granted upon a written request from the organiser of the races, addressed to the General Director of the Tax Office. Authorisation to accept bets on such races is granted upon request from either individuals who have reached the age of 21, companies with legal status or associations (companies which do not engage in commercial activities). In each case the request must specify the terms of organisation and relevant information including:

- identity of game organiser
- places where bets will be collected
- documents to be used in the organisation of bets

Game organisers may not have criminal records nor be in an irregular situation regarding tax payments.

A request for authorisation for pool bets must also include details of percentages reserved for each class of intermediary.

A request for authorisation for fixed-odds bets must include details of amounts payable to the race organiser.

Collection of pool bets is reserved for the race organiser. Bets can be collected at any place, be they outlets set up specifically for this purpose or 'non-specialised' outlets, with the exception of places supplying alcoholic beverages.

Section 3 of the Royal Decree covers the acceptance of bets on horse races taking place abroad. The Regional Tax Office grants the authorisation. It specifies the maximum number of agencies allowed to operate, which is dependent on the amount of guarantee deposited. If the holder of the authorisation wishes to operate a larger number of agencies than this guarantee allows, he has to introduce a new request.

As mentioned above, while the organisation of betting on Belgian races needs authorisation from the National Tax Office, the organisation of betting on races outside Belgium requires the go-ahead from the Regional Tax Authorities. The operation of individual 'agences hippiques' would be less fixed, making regional intervention more appropriate.

As with betting on races held in Belgium, game organisers may not have criminal records nor be in arrears regarding tax payments.

For both types of betting the authorisation is granted either for a fixed period or until it is revoked by the Tax Office.

In addition the Royal Decree provides for the following:

1. Procedure for opening an agency
2. Renting
3. Opening hours
4. Display of regulations, conditions of acceptance of bets and terms of calculation and payment of winnings
5. Minimum stakes
6. Bookkeeping
7. Minimum distance between 'agences hippiques' (does not apply to PMU Belge).

Regarding advertising there are no specific legal restrictions.

2.3. Supervision and Control

The holders of the authorisation must permit inspection by the Tax Office's agents, and must give them all necessary data. Strict and accurate bookkeeping must also be observed. Copy betting slips are held in each outlet for three years and all bets have to be individually logged.

The Ministry of Finance is responsible for implementing the control and supervision of horse racing in Belgium.

Control has been vastly improved by the introduction of stamping machines necessary to validate betting slips and providing copies thereof.

2.4. Taxation

2.4.1. Beneficiary

Since January 1, 1989, the Belgian Regions, i.e. Flanders, Wallonia and Brussels, are the beneficiaries of all tax revenue levied on horse racing. The regions have been empowered to modify gaming tax rates as well as to decide upon exemptions to various tax brackets.

2.4.2. Taxpayers

The person who organises or accepts the bets, for his own account or as a middleman, is the person who must pay the tax. The taxpayers have to make a declaration to the collector of direct taxes. Gamblers themselves are never responsible for payment of the tax.

2.4.3. Taxable Basis and Payment

The taxable basis is generally the gross amounts wagered, and payments must be made to the qualified tax collector on the 1st and 15th day of the month.

The Finance Minister is entitled to claim a preliminary guarantee of payment of the tax in the form of a deposit.

2.4.4. Tax Rates

For Belgian horse racing:

- On-track bookmakers are subject to 5% tax on amounts staked in Flanders and the Brussels Region, rising to 6% in Wallonia.
- Totalisator bets (PMU) both on- and off-course are taxed differently by region:
 - Wallonia: 10% on stakes
 - Flanders and Brussels: 20% on the 35% (maximum) retained by the totalisator (equivalent to a 7% tax on stakes).

For foreign horse racing there is by definition only off-track betting. The tax levels are higher than for off-track betting on domestic racing:

- 11% amounts staked in Flanders and Brussels
- 10% amounts staked in Wallonia.

The Flemish regional authorities are discussing an increase of tax on off-track betting from 11% to 15%, and of tax on PMU from 20% to 22% or 23% in order to raise tax revenue.

2.4.5. VAT Regulations

Apart from horse races run in Belgium, no other betting and gaming operations may be considered as the supply of services, and hence they are not subject to VAT.

The organisation of betting on Belgian horse racing is the exclusive reserve of the race organisers who have formed themselves into a PMU Belge. The Belgian betting shops only intervene as middlemen, levying a commission on the global amount of the stakes bet on the pool. These shops are thus, insofar as they intervene in Belgian races, taxpayers subject to VAT, and must charge VAT at 19% to the organiser of the betting.

No other betting and gaming operations may be considered as supplying services, and hence they are not subject to VAT.

There are in addition some municipal and provincial taxes on betting shops, but they may not exceed ECU 35 (for provinces), and ECU 58 (for municipalities), per outlet.

2.5. Distribution of Profits

The PMU guarantees a 65% payback to bettors. Previously, the payback was 68,5%, but had to be reduced to compensate for a rise in taxation imposed on the PMU. The law stipulates a maximum of 35% of total stakes for expenses and profit.

The payouts on French racing are dictated by the French PMU results, regardless of the pool of 'Belgian' bets. Due to cultural preferences and differences in familiarity—a Belgian horse running in a French race will tend to have lower odds in Belgium—the spread of betting in both countries sometimes varies and, in consequence, the payout percentage of the pool is subject to variation.

2.6. Tax Revenue

In 1989 the following amount of fiscal revenue was collected in Belgium:

Fiscal revenue from Horse Race Betting (.000 ECU)	1989	1988	1987	1986	1985
On bets taken in Belgium on races abroad	26.279	26.556	26.948	27.339	29.737
On bets taken on races run in Belgium					
- On- and off-course PMU	7.146	9.244	9.705	10.097	9.636
- On-course bookmaking	1.982	1.936	1.729	1.752	1.844
Total	35.407	37.736	38.382	39.188	41.217

The fall in fiscal revenue has followed the fall in turnover described below.

2.7. Market Information

The off-course betting market has been declining since 1984. Instant lotteries, which were launched in 1985 and the Lotto are certainly linked to this decline. The increase in participation in the National Lottery has left less funds available for horse racing.

In 1989 the stakes in Belgium amounted to:

Betting practice	Stakes (.000 ECU)				
	1989	1988	1987	1986	1985
On bets taken in Belgium on races abroad	254.353	256.221	260.208	264.358	278.396
On bets taken on races run in Belgium					
- On- and off-course PMU	87.320	112.447	117.011	120.860	127.868
- On-course bookmaking	39.672	38.496	34.762	34.946	36.814
Total	381.346	407.164	411.981	420.165	443.078

These figures represent the taxable base.

The PMU Belge has been mandated by Belgium's eleven 'sociétés de courses' to organise the collection of bets on their behalf.

The off-track betting operation is divided into betting on Belgian horse racing, which is organised by the PMU via accreditations to non-specialised outlets and betting on foreign horse racing through specialised outlets. The latter is dominated by two British bookmakers; Ladbroke with approximately 70% of the foreign horse race betting market and Franco-Belge (Corals) with about 20% of the market.

Although over 80% of off-track betting in Belgium is currently carried out on French races, the French PMU refuses to allow television broadcasting of its races in Belgium.

3. CASINOS

3.1. Legislation

Although games of chance, including casinos, are in principle forbidden in Belgium by the Law of October 24, 1902, eight casinos are officially tolerated in the country. They were tolerated because of the 'historical right' they had acquired through many years of activity prior to 1902. Moreover, gambling at casinos was clearly the reserve of the wealthier portion of the population. It may be plausibly argued that casinos' clientele lobbied in favour of toleration.

Article 305 of the Penal Code indicates the punishment for those operating 'gaming houses'. There are no other laws regarding casinos.

It is the 'Parquet' (Public Prosecution) of which there are four in Belgium, which in practice allows casinos to continue their operations. At any time, the Parquet could theoretically decide to no longer tolerate casinos, simply by drawing attention to the 1902 Law.

Slot machines have in effect been prohibited under the Arrêté Royale of 1975 and, by implication, are not allowed in casinos. This prohibition handicaps Belgian casino operators vis-à-vis their competitors abroad where slot machines are allowed in casinos.

3.2. Authorisation and Licensing

Casinos are the property of the municipality or city in which they are established. They are operated by a concessionary company, in return for an annual rent and a part of the profits. An agreement, 'cahier de charges', is signed by the municipality and the casino operator, stating exhaustively the precise nature and extent of the casinos' activities. This concessionary company also undertakes, as a general rule, to promote tourism in the town concerned.

Each time a concession runs out, or in the case of bankruptcy of the operator, bids for the concession will be examined by the municipality. The municipalities' decision takes into account the personality and reputation of the bidder.

3.3. Supervision and Control

Operating gaming rooms is strictly regulated and controlled by the Ministries of Finance and Justice. In this way access to the gaming rooms is reserved

for members of the private club to which it relates. Members must be aged twenty-one or more, and the number of authorised games of chance is limited by Royal Decree. In addition, casinos are subject to a series of prohibitions imposed for moral considerations notably, access is forbidden to civil servants, no alcoholic beverages may be served and there must be no advertising in the gaming rooms.

An inspector from the Finance Ministry is permanently stationed in each gaming room to ensure the regulations are adhered to. 'Change' and 'tip' boxes are sealed. Tips are pooled into a 'cagnotte', a formula which allows the casino to pay less taxes.

3.4. Taxation

Different tax rates apply to different games:

- 4.80% on bankers' winnings at baccarat 'chemin de fer' (allowed, but not played in practice)
- 2.75% on punters' winnings at roulette without zero.
- 30% on the part of the gross winnings of casino games, excluding Baccara and Roulette without zero, which, any calendar year, does not exceed ECU 807,000; thereafter the rate increases to 40% on the excess amounts.

The Flemish community, in order to raise its tax revenue, has decided to increase the 30% rate to 40%, and the 40% (ECU 807,000) to 55%.

3.5. Distribution of Profits

Having paid their taxes and community charges as indicated in 3.4, the casino is then subject to normal civil company taxes. Thereafter it is free to distribute profits as it sees fit.

3.6. Tax Revenue

Tax paid by casinos are detailed below:

(.000 ECU)	Tax on turnover	Tax on Baccara 'Chemin de fer'*	Total
1985	6.846	807	7.653
1986	7.838	669	8.506
1987	8.691	784	9.474
1988	11.641	530	12.171
1989	11.803	553	12.356

* The tax on Baccara is a tax on the player and not on the casino operator.

In 1989, of the ECU 11,8 million, levied on casinos, ECU 6,6 million came from Flanders and ECU 5,2 million from Wallonia.

3.7. Market Information

There are eight officially tolerated casinos in Belgium. They are, in Flanders: Oostende, Knokke, Blankenberge and Middelkerke; and in Wallonia Spa, Namur, Dinant and Chaudfontaine.

3.8. Barriers

The only barriers is the one allowing regional judicial authorities to prevent any new entrants into the market.

4. GAMING MACHINES

4.1. Legislation

Gaming machines fall under the Law of October 24, 1902, and, in principle are forbidden. The Law of 1902 was introduced to stop the proliferation of private gaming machine operations. The tone of the law is repressive.

The scope of the prohibition of the 1902 Law was reduced by an amendment of April 19, 1963, which excluded from the definition of 'gaming machines' ('jeux de hasard') those which offer no chances of money prizes or material advantage other than the right to play again. The Law of November 22, 1974, adds that counters and chips are considered to be money prizes or material advantage.

An executing Royal Decree (of January 13, 1975), provides an exhaustive list of gaming machines exempted from the 1902 Law. One-armed bandits have not been included on the list, following their proliferation during the 60s and early 70s. During a short period, many municipal and provincial authorities took measures to prohibit slot machines, rules which were abrogated by the 1975 Royal Decree.

Article 7 of the 1902 law expressly stipulates that it does not apply to games where skill is preponderant. It is apparent, however, that certain games included on the 1975 list involve a significant proportion of skill.

4.2. Authorisation and Licensing

Requests to introduce another game to this list must be registered with the Ministry of Justice, which in turn, seeks advice from the Finance Ministry and collects the necessary background information.

Once a type of gaming machine is included on the list of the Royal Decree of 1975, no individual authorisation is necessary.

Authorised machines are divided into two categories. The first category covers machines authorised regardless of location; pin-ball machines, 'bingo' (different to UK 'bingo') and 'one-ball' enter this category. The second category covers gaming machines authorised only in 'lunaparks' and local fairs; approximately 50 types of machines fall into this second category.

4.3. Supervision and Control

The fiscal administration (Administration des Contributions Directes) in the Ministry of Finance is the body responsible for tax collection, although the region now has increased authority over fiscal matters. By way of tax verifications, the tax inspector is the governmental body responsible for control and suspension of the sector.

4.4. Taxation

A forfaitary tax must be paid on all automatic amusement machines located by public highway, in places accessible to the public or in private clubs, whether or not membership of such clubs is subject to the fulfilment of special conditions. The tax is due if the machines concerned are placed at the disposal of the public.

All tax revenues currently collected by the fiscal administration are now due to the Belgian regions, as of January 1, 1989. (Special Law of January 16, 1989 on the financing of communities and regions).

The owner of the machine is the taxable party. If the owner does not pay the tax, the person managing the premises on which the machine is installed, is considered liable for the tax. Payment of taxes is carried out on an annual basis by way of an anticipative deposit.

There are different tax rates for different categories of machine. The Royal Decree of November 10, 1980, defines each category, designating each by a letter from A to E. Tax rates vary from ECU 69 (category E) to ECU 830 (category A) per fiscal year. The ranking is calculated on minimum stakes, programmed retention and anticipated turnover.

Punitive taxation is levied on illegal gambling on games of chance at a fixed rate of ECU 4.610.

4.5. Tax Revenue

Gaming machine tax revenues 1988 and 1989.

	1988 (.000 ECU)	1989 (.000 ECU)
Flanders	12.033	12.563
Wallonia	6.316	6.616
Brussels	2.397	2.513
Total	20.747	21.692

4.6. Distribution of Profits

Once tax has been paid, the operators of gaming machines are allowed to dispose of profits as they see fit.

4.7. Barriers

There are no apparent barriers regarding gaming machines.

5. SPORTING EVENTS BETTING (EXCEPT HORSE RACING)

5.1. Legislation

Betting on the result of sporting events other than horse racing is allowed in Belgium. It is regulated by the Law of June 1963 on the promotion of physical training, exercise of sports, open-air exercise and the control of enterprises which organise betting on the result of sporting events. Horse racing is covered by different specific legislation (see section 2).

Under the Law of 1963, only 'concours de paris' are allowed. A 'concours de pari' is a betting competition in which participants bet against each other, a system which amounts to a totalisator.

The main purpose of the Law of 1963 was to provide a legislative framework for betting on the results of football matches, replacing a previous Law of 1956, bringing this type of betting under the umbrella at the Ministry responsible for sport.

5.2. Authorisation and Licensing

Authorisation from the ADEPS and BLOSO, the departments responsible for development of sport and culture in French and Flemish speaking areas respectively, is necessary for organised betting on sporting events. The authorisation request must be accompanied by the competition regulations and a distribution plan of the stakes.

The Royal Decree of March 3, 1964 determines the conditions under which the authorisation is given. Authorisation is granted either for a specific competition or for a determined or undetermined period. The persons receiving the authorisation are bound to communicate any information requested to the authorities.

5.3. Supervision and Control

The Chief Inspector of Direct Taxes (Controleur en Chef des Contributions Directes) is responsible for control. Fiscal control is the only form of control, as ADEPS and BLOSO are not equipped for this function.

- checking the list of people involved in the organisation of betting
- checking records of bets and amounts wagered
- checking accounts

5.4. Taxation

There are two principal taxes:

- An 11% game tax, based on the total stakes, is due to the Ministry of Finance.
- A 10% duty was payable to the Fond National des Sports for the development of sports. For betting on sporting events outside Belgium, the duty was 14%. Following regionalisation in Belgium, the duty was attributed directly to ADEPS and BLOSO.

An event organiser may be paid up to 5% but this is not a statutory obligation.

5% was traditionally paid to the Belgian Football League for supplying the calendar of events. This fee, combined with the 10% duty on Belgian sporting events, has the effect that betting on Belgian and foreign events pay similar net dues.

All taxes are redistributed pro rata to the regions.

The two-tier taxation on sporting events is to encourage betting on Belgian as opposed to foreign sports. This generates direct income for these bodies in terms of a negotiated revenue of up to 5% of total income.

The extra 4% tax due to ADEPS and BLOSO on bets placed on events outside Belgium compensates for the loss of direct revenue to these bodies.

5.5. Distribution of Profits

Following tax payments and a minimum payout of 60% of revenue, the organiser may allocate profits as they see fit.

5.6. Market Information

Littlewood pools (UK matches only) operated throughout Belgium after World War II but subsequently dropped out of the market by the advent of Lotto. Prior originally operated football pools on Belgian matches but also stopped their activities due to lack of profitability. The Lottery National introduced a football bet (Toto) in 1980 which was withdrawn due to lack of support in 1985. The Toto was exempted from the Law of 1963. Instead it

operated under the National Lottery Law of 1964 and, as such, was also 'exempt' from taxation.

During the football season of 1989-1990, three new football bets were tested. The total market never exceeded ECU 461.000 per event and all withdrew from the market place. With the exception of localised betting via an independent operator in Flanders ('Goal') there is no official sports betting operating under the Law of 1963.

The relatively high level of taxation, in comparison to that on horse racing, has clearly contributed to the lack of success of betting under the 1963 Law.

5.7. Barriers

Regarding the issue of lawfulness, the 1963 Law does not discriminate between betting on events taking place in Belgium and those taking place abroad.

Under Belgian Fiscal Law, a Belgian resident sending a football pools bulletin abroad, accompanied by payment, is not taxable, as long as this operation took place without the intervention of an intermediary located in Belgium.

DENMARK

**STUDY OF THE LEGAL AND MARKET SITUATION IN ALL THE MEMBER STATES
CONCERNING BETTING, GAMING, LOTTERY AND SIMILAR ACTIVITIES
IN VIEW OF THE COMPLETION OF THE INTERNAL MARKET**

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DENMARK

1. INTRODUCTION

The philosophy behind the Danish legislation has been to widely restrict gambling and gaming as a socially non-desirable phenomenon and only tolerate it for the benefit of organisations with publicly accepted objectives such as charitable organisations or sport associations.

The current legislative regime reflects the supply of gambling products available in other countries, notably in Germany, rather than any special domestic demand.

Traditionally the state has been the only operator who could legally organise a game of chance. The Danish Class Lottery is the first example thereof being an institution under direct state control. Lotto and Toto, the two most popular games in Denmark accounting for more than 60% of the country's turnover in lotteries and horse race betting, are organised by a private limited company with 20% of the shares held by private institutions.

The newly passed Casino Act which allows casinos to be opened as of 31 December 1990 marks a change of opinion of the legislator. For the first time in Denmark, games of chance can be legally organised by private parties on a commercial basis with a view to achieving a profit.

Another new type of lottery has been authorised in 1990: the prize savings accounts. This 'game', which has been organised in other European countries for several years, allows banks to distribute interest payments by organising a lottery in which the holders of special accounts participate.

With the exception of the winnings received in casinos and from gaming machines the state levies a uniform 'prize duty' of 15% on all winnings received from a game of chance that exceed ECU 25.

Danish nationals are allowed to participate in a foreign game of chance but have to declare any winnings as income in Denmark.

The barriers for foreign operators are lower the more recently a game has been introduced. Thus the operation of casinos and the offering of prize savings accounts are, in theory, open to foreign operators. They are, however, completely barred from games for which the state holds a monopoly as is the case with the class lottery and the Lotto and Toto.

The conclusion is therefore that the Danish legislation reacts to the market. Although lotteries are undesirable, it was recognised that 1 in 10 adults were betting on German lotteries. To secure fiscal benefits the Danish felt obliged to introduce their own Lotto.

Casinos were undesirable but the packed ferry boats taking Danes to Sweden, Danes crossing to Germany and Holland to play in casinos and a growth in illegal casinos.

The move from what is undesirable to what is desirable can be argued to be a reflection on the Danish populations desire to plays these games which has been evolving over a period of time.

2. LOTTERIES

2.1. Class Lottery

2.1.1. Legislation

The Royal Copenhagen Class Lottery has been set up by Law to offer a game of chance affordable for a large number of people yet still offering a high rate of return.

The Danish Class Lottery is not regarded as a business but is essentially viewed as a revenue raising mechanism. Since Denmark is a country with high rates for VAT and income tax, the Class Lottery's overall contribution to the national budget, however, is relatively small.

The Class Lottery organises two lotteries per year each running six months with a draw (class) every month. The price for a whole ticket (1/1) is ECU 79 and entitles the holder to participate in one lottery. A ticket may also be purchased for each draw separately. Whole tickets can be divided into 1/2, 1/4 or 1/8.

2.1.2. Authorisation and Licensing

The Royal Danish Class Lottery has been established by law in the Class Lottery Act of 1869¹ and this act serves as the 'licence'. Only the government is allowed to organise a class lottery. The daily management of the lottery is done by the Lottery Directorate.

2.1.3. Supervision and Control

The Minister of Taxation is the supervising authority and exercises control over the management of the Royal Class Lottery.

The annual accounts are inspected by the 'Rigsrevisionen', the Danish Audit Office.

¹ "Lov om klasselottériets ordning og forbud mod andet lotterispil af 6.marts 1869"

2.1.4. Taxation

2.1.4.1. Direct Tax

All winnings received from the Class Lottery that exceed ECU 25 are subject to a prize duty of 15% of the prize.¹ The duty is deducted at source by the Class Lottery and the winnings are paid net to the players.

2.1.4.2. Stamp Duty

A stamp duty of ECU 3 is levied on a 1/1 ticket which is sold for ECU 79 including the duty. The duty is paid by the lottery agents to the Ministry of Taxation.

2.1.4.3. VAT

No VAT is levied on the price of tickets for the Class Lottery.

2.1.4.4. Others

Individuals who are liable to Danish income tax have to pay income tax on the winnings they receive from foreign games of chance. The rate varies between 50 and 68%.

2.1.5. Distribution of Profits

The Class Lottery Act does not provide for a pay back rate. Instead, the number and price of tickets and the pay back rate are regulated annually in the budget laws by the government. It is currently set at 63% of the turnover.

After the prizes have been paid and the costs deducted the gaming profit of the Class Lottery is transferred to the general budget. It is not earmarked for any particular purpose.

¹ "Lov om afgift af gevinster i klasselotteriet, Lov nr.519 af 19. december 1942" (Act on duty on prizes of the State Lottery).

The following table shows the gaming profit of the Royal Class Lottery over the past years:

	1989	1988	1987	1986	1985	1980
Profit (.000 ECU)	4.311	4.559	3.976	5.330	3.031	2.348
% of T/O	12,1%	13,1%	11,6%	15,9%	11,2%	10,4%

2.1.6. Tax Revenue

2.1.6.1. Prize Duty

In addition to the gaming profit the Ministry of Taxation also receives the revenues of the prize duty from the Class Lottery which amounted to ECU 3.8 million in 1989.

The table below shows the revenues of prize duty over the past years:

	1989	1988	1987	1986	1985	1980
Tax (.000 ECU)	3.739	3.727	3.702	3.416	2.833	2.323
% of T/O	10,5%	10,7%	10,8%	10,2%	10,5%	10,3%

2.1.6.2. Stamp Duty

No detailed figures are available on the revenues of stamp duty. However, a turnover of ECU 35,7 million in 1989 corresponds to 472.000 tickets sold. Since the stamp duty amounts to ECU 3 per ticket the total revenue of stamp duty will be around ECU 1,4 million.

2.1.7. Market Information

The only operator legally organising a class lottery in Denmark is the 'Kongelige Københavnske Klasseslotteri' (Royal Copenhagen Class Lottery). It, therefore, in principle enjoys a monopoly. It has to compete with other games of chance legally organised in Denmark such as Lotto and Toto or betting on horse races.

2.1.8. Barriers

Since the Royal Danish Class Lottery was set up by exception to the law prohibiting other lotteries it is unlawful to establish a competitive class lottery in Denmark.

While foreign operators of class lotteries are barred from pursuing any activity in Denmark Danish players are free to participate in a foreign class lottery.

2.2. Private Lotteries

2.2.1. Legislation

All lotteries besides the Class Lottery and the Lotto and Toto fall into the category of 'private lotteries'. Some private lotteries do not require a permit but only notification with the authorities. These lotteries are called 'local and insignificant lotteries'.

The legal base for private lotteries is the Act on State Lottery of 1859 in conjunction with the Circular Letter of 12 September 1989 concerning lotteries.¹

2.2.2. Authorisation and Licensing

For every lottery a permit must be obtained from the Chief of Police in whose jurisdiction the operator is resident. A permit will only be granted if the purpose of the lottery is to raise funds for charitable or similar non-commercial purposes.

Local and insignificant lotteries for charitable and similar non-commercial purposes may be organised by associations and organisations without permit provided that:

- the lottery is arranged for members and their families only and that any advertisement clearly states this fact;
- prizes are not in cash and the value of each does not exceed ECU 25;
- the total revenues of the sale of lottery tickets does not exceed ECU 12.400 per lottery and day and
- the purpose of the association or organisation is not solely the organisation of lotteries.

Furthermore associations or organisations may once a year arrange a public lottery for charitable or non-commercial purposes without permit provided that:

- the purpose of the association or organisation is not solely the organisation of lotteries;

¹ "Cirkulære om bortlogning til politidirektøren i København og politimestrene, nr. 133 af 12. september 1989; (Circular letter to the Director of Police in Copenhagen and the chiefs of Police concerning lotteries).

- the total revenues of the sale of lottery tickets does not exceed ECU 1.860;
- prizes are not in cash and
- the notification is sent to the local Chief of Police no later than fourteen days prior to the sale of tickets.

The Circular Letter also contains details on certain requirements as to the information which must be provided on the lottery tickets and the way the draws are conducted.

2.2.3. Supervision and Control

Supervision and control are exercised by the local Chief of Police in whose district the operator of the lottery maintains his residence.

2.2.4. Taxation

Private lotteries are subject to the prize duty of 15% on all prizes exceeding ECU 25. The duty is deducted at source by the operator and paid to the tax authorities.

Depending on the nature of the association or organisation operating the lottery profits can be subject to income tax.

2.2.5. Distribution of Profits

The entire profit of private lotteries must be used for charitable purposes.

2.2.6. Tax Revenue

Operators of private lotteries pay prize duty on the lottery prizes.

At present, no information is available on the proceeds from prize duty received from private lotteries.

2.2.7. Market Information

The total turnover of the various private lotteries held regularly in Denmark amounted to ECU 35,2 million in 1989.

2.2.8. Barriers

Provided that the requirements for organising a private lottery are met, no barriers appear to exist.

Foreign operators are subjected to the same requirements as domestic operators. The authorities' discretion in granting a permit could, however, prove a barrier for a foreign association to organise a private lottery in Denmark.

3. LOTTO AND TOTO

3.1. Legislation

While Toto had been introduced in Denmark in 1975 the recent introduction of Lotto marked a major departure for Danish law. It was essentially motivated by the provision of similar betting products outside Denmark.

The legal base for these two games is the Act on Football Pools and Lotto of 1989.¹ According to this law only one company, the Dansk Tipstjeneste A/S, can be granted a licence to organise these games in Denmark.

3.2. Authorisation and Licensing

The Ministry of Taxation has granted a licence to the Dansk Tipstjeneste A/S, a public limited company. 80% of the shares are owned by the state while the two sporting associations 'Dansk Idrætsforbund' and 'De danske Skytte-, Gymnastik- og Idrætsforeninger' hold 10% each. The share capital is ECU 37.270.

The licence is granted for a period of five years and up to now has always been renewed.

3.3. Supervision and Control

Supervision of the Dansk Tipstjeneste is exercised by the Ministry of Taxation through a special 'state controller' who works at the premises of the Dansk Tipstjeneste and whose costs the company has to bear.

The state controller supervises every weekly game, the calculating of the winnings and the settling of players' protests. He checks the accounts of the company and prepares weekly reports.

In addition the accounts of Dansk Tipstjeneste A/S are audited like the accounts of other limited liability companies.

¹ "Lov om tipning og lotto, Nr.187 af 16.marts 1989"

3.4. Taxation

3.4.1. Price duty

All winnings received from the Lotto or Toto that exceed ECU 25 are subject to a prize duty of 15% of the prize.¹ The duty is deducted at source by the operator and the winnings are paid net to the players.

3.4.2. Special duty

A duty of 16% of the total stakes is payable to the Ministry Taxation. However, the rate is reduced to 13% until 30 September 1992.

3.5. Distribution of Profits

Dansk Tipsjeneste achieved a turnover of ECU 248,5 million in 1989. 41% were paid in prizes to players, 18% in taxes, costs amounted to 20% and 21% of the turnover was profit.

As stipulated in the Act on Football Pools and Lotto 6% of the turnover has to be distributed to the following organisations:

- 2,5% is paid to the Danish Olympic Committee;
- 3,5% go to the Danish Red Cross, organisations helping the handicapped and other humanitarian institutions.

The remaining profit is distributed among the shareholders.

3.6. Tax Revenue

In 1989 the Danish treasury received ECU 43,5 million in taxes from the Dansk Tipsjeneste comprising the prize duty and the special duty. All tax revenue raised falls directly to the state budget and is not earmarked for any specific purpose.

¹ "Lov om afgift af gevinster i klasselotteriet, Lov nr.519 af 19. december 1942" (Act on duty on prizes of the State Lottery).

3.7. Barriers

As the only organisation authorised to organise the Toto and Lotto in Denmark Dansk Tipsjeneste holds a monopoly on these games. No foreign operator is allowed to operate these games on the Danish market.

4. HORSE RACING

4.1. Legislation

In Denmark, betting on horse races can only be offered by a totalisator through on-track and off-track betting facilities. There is no bookmaking allowed for horse races.

The legal base for totalisators is the Promulgation order of the Act on Totalisators of 16 March 1989.¹

4.2. Authorisation and Licensing

Licences for operating a totalisator have to be obtained from the Ministry of Taxation. The licence may be issued for a period of up to three years and can be restricted to a certain number of days per year.

If the race does not take place on a fenced track bets can only be placed on the day of the race and the day before at a place authorised by the police.

4.3. Supervision and Control

Supervision and control is exercised by the Ministry of Taxation through the local Chiefs of Police.

4.4. Taxation

Winnings received from betting on horse races are not subject to a 'prize duty'. Instead a duty is levied on the bets placed payable by the operator of the totalisator.

The duty amounts to 1% of the stakes placed on the winning horse and bets on finishing place, 15% of the stakes placed on V5 (winning horse in five consecutive races) and 10% of the stakes placed on all other bets.

¹ "Bekendtgørelse af lov om totalisatorspil nr.186 af 16.marts 1989"

4.5. Distribution of Profits

The following percentages of the stakes placed has to be paid back to the players:

- 80% for winning horse and bets on finishing place;
- 70% for combined bets;
- 60% for the V-5.

4.6. Tax Revenue

Estimates calculated from turnover figures indicate betting tax revenue of approximately 5 million ECU for 1989.

4.7. Market Information

There are 9 racetracks in Denmark licensed to organise a totalisator. They are grouped together under the 'Dansk Travsports Centralforbund'.

The major operator is 'Det Danske Travselkab' in Charlottenlund.

An on-line system is presently being installed which will operate through 100 outlets.

4.8. Barriers

By virtue of the very tight relationship between the horse breeding society and the track operators it is difficult to enter horse race betting in Denmark. This has not, however, precluded the development of bookmaking of other events, notably in the form of account betting by telephone on foreign events.

5. CASINOS

5.1. Legislation

Gambling casinos have only recently become legal in Denmark when in June 1990 the Danish parliament passed the Casino Act 1990.

Up to this date casinos have been considered as closely connected to crime and money laundering. The change of opinion now can mainly be seen as a concession to the tourism industry which is expected to be the main beneficiary of the new legislation.

The Casino Act entered into force on 31 December 1990.

5.2. Authorisation and Licensing

The Act on Gambling Casinos of 13 June 1990¹ serves as the legal base for the authorisation and operation of the casinos in Denmark.

In order to be able to legally operate a casino a licence must be obtained from the Minister of Justice. The law does not specify the type of operator who will be eligible for receiving a licence but states that the applicant must be deemed suitable to run a casino.

The government, however, has made it clear that the decisive factors are the applicant's financial ability and the location of the new casino. The government's intention is to locate the casinos in the country's touristic centres with a large number of foreign visitors.

The licence may be issued for a period of up to ten years at a time. It can contain special conditions as regards the opening hours, admission fees, number of gambling tables and the securing of large winnings by bank guarantee.

The permit expires

- when the holder of the permit ceases to exist;
- in case of change of the management or the board of company if the change is not approved by the Minister of Justice;
- if the holder of the permit suspends payments or goes bankrupt.

¹ Lov om spillekasinoer; nr.397 af 13.juni 1990.

Under the present Casino Act only roulette, baccarat or black jack and gaming machines are allowed.

5.3. Supervision and Control

Supervision and control is exercised by the Ministry of Justice. The company has to be audited by a certified auditor and the accounts have to be presented to the Ministry not later than 6 months after the end of the company's financial year. The Minister of Justice can at any time have the accounts of a casino inspected by his Ministry.

5.4. Taxation

A casino tax of 65% is levied on the gross gaming revenue of the Danish casinos.

The winnings paid to the players are tax free.

5.5. Distribution of Profits

No special provisions regulate the distribution of profits.

5.6. Tax Revenue

The proceeds of the casino tax accrue to the general budget.

5.7. Market Information

The following operators have been so far licensed to operate casinos in Denmark:

Operator	Name of Casino	Location
SAS Hotels	Casino Copenhagen	Hotel Scandinavia, Cop.
Hotel Marienlyst*		Elsinore
Hotel H.C.Andersen	Casino Odense A/S	Odense
Hotel Munkebjerg	Casino Munkebjerg	Vejle
Hotel Royal	Royal Scandinavian Center	Arhus
Limfjordshotellet		Aalborg

5.8. Barriers

There appear to be no barriers to establish a casino in Denmark—even as a foreign operator— provided that the licensing requirements are fulfilled. It is significant, however, that not a single non-Danish organisation has so far been granted a casino licence.

6. GAMING MACHINES

6.1. Legislation

The installation and operation of gaming machines outside of gambling casinos is widely restricted. No machines that offer cash prizes are allowed and only in limited number in one location.

The government has expressed concern about the addictive qualities of gaming machines and their attractiveness to the young.

The legal base for the installation of gaming machines is the Circular Letter on Public Amusement of 4 February 1988.¹

6.2. Authorisation and Licensing

A licence to install and operate a gaming machine must be obtained from the Chief of Police in whose district the operator resides. It is only granted for machines that offer non-exchangeable coins as prizes which can only be used to play a gaming machine.

Eligible for a licence are:

- owners of bars and restaurants for one machine per 200 seats;
- operators of amusement parks as long as the gaming machines are not the major attractions. The number of machines will depend on how many other attractions the park offers.

No licences will be issued for amusement arcades.

6.3. Supervision and Control

Supervision and control lies with the Minister of Justice

6.4. Taxation

The gaming machines are subjected to a special fee which is payable by the operator to the municipality on whose territory the machine is set up. The

¹ Cirkulære om offentlige forlystelser, nr.16 af 4. februar 1988.

fee varies by municipality between ECU 2000 and ECU 9900 a year for each machine.

6.5. Distribution of Profits

The profit received by the operator of a gaming machine is not subject to any rule regarding its distribution but is considered as a regular commercial profit.

6.6. Tax Revenue

The revenues of the gaming machine fee accrues to the budget of the municipality which levies the fee.

6.7. Market Information

In Denmark, at the moment about 1800 permits have been issued to operators of gaming machines. For Copenhagen, the number amounts to around 260 permits for approximately 270 machines.

6.8. Turnover

In 1988 the total turnover of gaming machines amounted to approximately ECU 14,9 million.

6.9. Barriers

As long as the requirements for obtaining a licence are fulfilled there do not appear to be any barriers to operate a gaming machine. However, the installation and operation of gaming machines offering prizes is widely restricted. This strict legislation as such represents the major 'barrier' for operators.

7. PRIZE SAVINGS ACCOUNTS

7.1. Legislation

On 1 July 1990 the new Act on Prize Savings Accounts¹ entered into force enabling Danish banks and Postal Bank to offer special savings accounts.

Instead of paying interest directly to the account the bank pools all the due interest payments and distributes them in large amounts among the holders of prize savings accounts. Each holder of an account is entitled to a certain number of lottery tickets according to the amount of money deposited.

There are also 'mixed accounts' where only a part of the interest is distributed by lottery.

7.2. Authorisation and Licensing

The authority in charge of executing the Act on Prize Savings Accounts is the Minister of Economics.

No special licence is necessary to offer this type of accounts. The banks legally operating in Denmark including the Postal bank are authorised by the Act itself.

7.3. Supervision and Control

Supervision and control over the banks offering prize savings accounts is executed by the Minister of Economics.

The Act on Prize Savings Accounts stipulates that a notary public has to supervise the draws.

7.4. Taxation

A prize duty of 15% is payable on any winning received on a prize savings account which exceeds ECU 25. The duty is deducted at source by the bank and paid to the tax authorities.

¹ Lov om gevinstopsparing, nr.321 af 16. maj 1990.

The banks are not allowed to deduct the prizes paid on prize savings accounts from their taxable income.

The 'interest' received through the lottery by the holders of the accounts are taxed very leniently resulting de facto in the same treatment as regular interest payments.

7.5. Tax Revenue

No figures have been obtained regarding the amount of revenues received by the state from banks on prize duty.

7.6. Market Information

The market is difficult to investigate since the banks are reluctant to disclose any figures concerning the size of the deposits they hold.

It can be noted, however, that the prize savings accounts have become very popular in the short period of time since their introduction and that all major banks accept deposits on such accounts.

7.7. Barriers

Since this type of distributing interest has been introduced by law authorising all Danish banks to offer prize savings accounts there does not appear to be a barrier provided that the conditions set out in the relevant Act are met.

Even for a foreign bank established with a branch in Denmark there seems to be no barrier.

FRANCE

**STUDY OF THE LEGAL AND MARKET SITUATION IN ALL THE MEMBER STATES
CONCERNING BETTING, GAMING, LOTTERY AND SIMILAR ACTIVITIES
IN VIEW OF THE COMPLETION OF THE INTERNAL MARKET**

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FRANCE

INTRODUCTION

The basic concept underlying French legislation is that gambling should be considered as a dangerous and amoral activity for the players since it is based on chance. Hence, the French Civil Code, established in 1804, does not allow legal action for the recovery of a gambling debt.

In the early nineteenth century, the French State passed a law to prohibit gambling. The law of May 21, 1836 stated that every kind of gambling was prohibited under penal punishment (Article 410 of the Penal Code), with the exception of small lotteries which were submitted to prior authorisation of the Prefect (District governmental representative).

Nevertheless, gambling continued to flourish and develop in various forms encompassing all social classes. The French state provided at the end of the nineteenth century, and in the early twentieth century, several exemptions to the law of 1836.

Firstly, the law of March 28, 1885 provides that the operations on the Stock Exchange Market are exempt from the regulation. The laws of 1891 (horse racing), 1907 (casinos), 1933 (national lottery) and 1987 (gaming machines) specified further exceptions and have thus substantially established the structure of the market as it now is.

The main principles underlying the legislation can be summarised as follows:

- Firstly, the French State has considered that although gambling is not to be encouraged, it exists *de facto* and has to be legally structured to protect the players and control behaviour in a strict way.
- Secondly, the French state justified the exemptions as resulting in profits made for charitable or philanthropic purposes (see for example Article 4 of the Law of June 15, 1907 on casinos; Article 5 of the Law of June 2, 1891 on horse racing).

The two most important forms of gambling and gaming in France are the National Lottery, (France Loto), and horse race betting via the PMU.

Lotto is a highly profitable activity generating significant indirect, non-tax derived revenue for the State.

By the Decree of November 9, 1978, the French State transferred the management of national lottery business to a 'Société d'Économie Mixte', now called 'France Loto', in which shares are primarily held by the French state. Since then, the number of games marketed to the public has considerably increased. The strategy of 'France Loto' is to create a new game about every six months, supported by advertising, TV commercials and setting up of monthly subscriptions to the Lotto during the summer holidays.

Betting on horse racing operates exclusively under the tote system. The PMU was set up to collect bets on behalf of the Sociétés de Courses. In 1984 the PMU became a Groupement d'Intérêt Economique in order to acquire legal personality. A successful advertising campaign has also been launched by the PMU in recent times.

Casinos are authorised to operate in France under strict supervision and are heavily taxed. Due to switchback legislation in the area of gaming machines, a two-speed situation has arisen where some casinos are entitled to run gaming machines while others are not.

1. LOTTERIES

1.1. Non-National Lotteries

1.1.1. Legislation

The basic principle is that all kinds of lottery are prohibited. This is clearly stipulated in the Law of May 21, 1836. Violation of this law is subject to punishment under penal law (Article 410 of the Penal Code).

Nevertheless, gambling activities continued to develop, and in view of the profitability of the activity for the organisers, certain exemptions have been granted for non-national (i.e. local) and national lotteries.

Articles 5, 6 and 7 of the Law of 1836, amended in 1986, define three exemptions:

- i. tombola and municipal lotteries which are submitted for prior authorisation to the Prefect (Commissaire de la République);
- ii. funfair lotteries;
- iii. tombolas with charitable objectives

The objective behind these exceptions is the promotion of charitable activities, cultural activities and non-profit sporting events. Participants are limited to a 'restricted' group and the value of prizes is limited currently to ECU 42.800.

1.1.2. Authorisation and Licensing

Non-national lotteries are submitted for the prior authorisation of either the Prefect (Commissaire de la République) who is the state representative for each administrative district or the Ministry of the Interior.

As stated in the Decree of June 19, 1987 (in application of Article 5 of the Law of 1836), any lottery exceeding an amount (for tickets sold) of over ECU 28.500 must be given prior approval via an opinion of the 'tresorier-payeur'.

1.1.3. Supervision and Control

For non-national lotteries, the Commissaires de la République and the police prefect are responsible for ensuring that authorisation and licensing requirements are respected.

1.1.4. Taxation

Local lotteries are exempt from taxation.

1.1.5. Distribution of Profits

As long as non-national lotteries comply with authorisation requirements and are essentially set up for charitable, cultural or non-profit sport purposes, the organisers are free to distribute profits as they see fit.

1.1.6. Tax Revenue

Local lotteries are exempt from taxation.

1.1.7. Barriers

There are no apparent barriers to local lotteries.

1.2. National Lotteries

1.2.1. Legislation

The Law of May 21, 1836 prohibits all kinds of lotteries. The Law of May 31, 1933 exempts the government from the prohibition of 1836. The exemption was allowed in order to satisfy an existing public demand that otherwise would run the risk of being satisfied without being sufficiently controlled. State control of lotteries ensures their sincerity. In view of the large sums involved, liberalisation of lotteries would run the risk attracting criminal organisations, in particular those interested in money laundering.

The state considers that a national lottery should not be a source of commercial profit. It therefore 'confiscates' the profits of the lottery by allocating them to the states resources. Tax generated from the games of the national lottery are an important source of tax revenue.

The National Lottery is organised and run by a company called 'France Loto' previously known as 'Société de la Loterie Nationale et du Loto National' (SLNLN). This State controlled company is a 'Société Anonyme d'Économie Mixte' (S.E.M.) set up by Decree n° 78-1067 of November 9, 1978 and gov-

erned by the Law of July 24, 1966, on companies. The objective of the company is to satisfy public demand for games and lotteries, under the strict control of the state. The aim is neither purely commercial, nor purely fiscal.

The French state holds a 72% stake in the company, the ten 'émetteurs' (the ticket issuing organisations) 18%, intermediaries (ticket brokers), 3% and the employees 7%.

The most important games are the 'Loto National' which was established by a Decree of November 9, 1978, and the 'Loto Sportif', established in 1985. Loto Sportif involves guessing correctly the result of sporting events. It was initially based on soccer, rugby and basket ball but by 1988 had moved to soccer only (see Section 2 Betting on Football).

Other games include:

- 'Loterie à billet' (lotteries based on sale of tickets such as Tac-o-Tac, Bingo, Surf, Banco)
- 'Tapis Vert' (a card game)

The sale of lottery tickets is controlled by the Decree of August 8, 1935, adjusted and modified in October 30, 1935. According to this law, the seller must request prior authorisation from the French Administration (the Prefect or the Ministry of the Interior) before commencing to sell tickets.

1.2.2. Authorisation and Licensing/Supervision and Control

By a series of decrees, the Ministry of Finance authorised the S.E.M. France Loto to organise and operate the games it currently offers to the public.

France Loto is managed by a committee placed under the control of the Ministry for the Budget (Cour des Comptes et Inspections Générale des Finances), which itself is part of the Ministry of Economy, Finance and Budget.

The Inspection Générale des Finances and the Cour des Comptes carry out the bulk of supervision.

1.2.3. Taxation

The National Lottery is subject to various forms of taxation both on turnover and payout which are summarised as follows:

- Direct Taxation

As a 'Société Anonyme d'Économie Mixte' that is partly owned by the French State, France Loto is subject to standard French corporate income tax rules. It is taxed on the difference between its own management and administration expenses and the amounts collected in the form of tickets and bets.

- VAT

In essence, VAT is not payable on winnings nor on stakes. However, operating expenses and commissions are subject to VAT as normal commercial transactions. This is more fully explained below.

- The national lotteries are exempt from VAT according to the Code Général des Impôts (CGI) Article 261-E-2° in the following areas:
 - Levies made by the State on the amounts gambled;
 - Proceeds attributed to the winners.
- Conversely, the national lotteries are subject to VAT on payments according to (CGI) Article 261 E-2° in the following areas:
 - Persons who organise or who are involved in the organisation of the Loterie National games, i.e. those involved in trading or the operating aspect of the games:
 - * the ticket issuing organisations
 - * intermediaries
 - * retailers: tobacconists and newspaper sellers.
 - Since these people carry out their activity on behalf of the company, only the latter pays VAT assessed on their commissions and on the sale of tickets.

The applicable rate is 25% (CGI Article 281 bis). It has recently come to our attention that this 25% rate is likely to be reduced to 22% or 23% in the near future.

However, intermediaries can be exempted from VAT if the following conditions are fulfilled (CGI Article 267 II 2°):

- * their commission has been previously set up on a percentage basis by a Ministry decision;

- * their activity is only remunerated through the payment of their commission and the sale of the tickets;
- * their liability is limited to that of a legal representative;
- * they submit a report of their activities.

- Duties

- Proportional stamp duty on tickets (CGI Article 919 B and 919 C) :
 - Tickets of the National Lottery are subject to a proportional stamp duty equal to 3,7% of the amounts gambled;
 - 'Instantaneous lottery' tickets such as the card game 'Tapis Vert' are subject to a proportional stamp duty of 0,5%.

The stamp duty is not borne by the players at source, but is raised via a tax on the amounts gambled, the purpose of which is to cover the management costs of the Loto.

- Proportional duty on winnings (Finance Act for 1986 Law n° 88-824 July 11, 1986)

This duty is applied to the Loto as follows:

Gains (ECU)	Rate (%)
700 to 14.200	5
14.200 to 71.200	10
71.200 to 142.400	15
142.400 to 284.700	20
284.700 to 711.900	25
Over 711.900	30

- Summary of Levies on Stakes and the Distribution of Proceeds

- Instantaneous Lotteries
 - 17,64% is levied. This levy is imposed to cover the costs of organising the game and is based on the Ministry decision of December 12, 1990.
 - then the afore-mentioned 0,5% stamp duty is levied;
 - 50% of the remaining amount is repaid to the players in the form of winnings;

- the balance is transferred to non-fiscal earnings on the general state budget.
- National Lottery ('Loto' in which 6 numbers out of 49 must be guessed)
 - 26,375% is levied which is composed of the following:
 - 3,7% as stamp duty;
 - 2,5% for the National Fund for the Development of Sports Activities (FNDS);
 - 19,675% for organisation and management costs, and
 - 0,5% to the ticket issuers as royalties.
 - The balance of 73.625% is shared between the winning players (70%) and the general state budget (30%).
- 'Tapis Vert' (card game based on selecting 4 cards)
 - 21,555% is levied for the state budget;
 - Once the stamp duty is paid (0,50%), the balance is shared between the winners (approximately 77%) and management costs (approximately 23%).

- Gaming and Gambling Winnings

While ordinary gamblers are not normally subject to personal income tax on their winnings, large amounts won on the various games would be subject to French Wealth Tax (ISF) applied as follows:

Wealth (ECU)	Rate (%)
0 to 588.000	0
588.000 to 955.300	0.5
955.300 to 1.896.400	0.7
1.896.400 to 2.941.400	0.9
2.941.400 to 5.694.900	1.2
> 5.694.900	1.5

1.2.4. Distribution of Profits

Winnings are shared between the state, the company, the players and the Fonds National pour le Développement du Sport (FNDS) according to 'arrêtés' (Ministry decisions). Distribution percentages and proportions vary from game to game.

Overall distribution of National Lottery turnover is as follows:

- State: 29,5%
- Players: 50,8%
- Management costs: 19,7%

1.2.5. Tax Revenue

According to the 1990 Finance Act, the total tax revenues from lotteries are estimated as follows for the 1989 and 1990 financial years (ECU million).

	1989	1990
Loto national	429.400	452.000
Lotterie à billet	178.400	210.700
Tapis vert	24.600	24.600
Total	632.400	687.300

The aim of France Loto is not one of tax collection. The 'confiscation' of profits by the state follows logically from the State's authorisation, which is an exception to the general prohibition.

1.2.6. Market Information

France Loto is the only operator.

In 1989, the total turnover for the various games was the following:

	Net turnover (.000 ECU)
Loto national	1.907.780
Lotterie à billet	398.641
Tapis Vert	113.897

Total	2.420.318
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Against the previous year, turnover increased by approximately 7%.

There are no restrictions on advertising for the games of the national lottery. In 1989, France Loto's advertising expenses amounted to ECU 41 million.

France Loto's distribution network is composed of 'émetteurs', brokers and retailers.

The 'émetteurs', or issuers, of which there are currently eight, are the ticket issuers. They are mainly war veterans and war victims associations, mutualities, as well as some private organisations to whom the state granted the monopoly of dividing lottery tickets into 'tenths'. 'Emetteurs', historically linked with the National Lottery, are responsible for issuing tickets to their own geographical zone.

Approximately 280 'courtiers', or brokers, carry out distribution of tickets and bulletins, collection of unsold tickets, promotion campaigns and instruction for retailers. The brokers are grouped into thirteen G.I.E.s (Groupement d'Intérêt Economique) to manage common infrastructure.

Over 43.000 retailers sell lottery tickets. Of these, approximately 13.500 are on-line validation centres for Loto, Loto Sportif and Tapis Vert. The retailers offer France Loto games to the public, collect payment for tickets and pay minor winners.

1.2.7. Barriers

There are no private sector profit-centred lotteries in France. France Loto has a monopoly on the National Lottery. The inherent nature of such a monopoly is a barrier to any other parties wishing to organise a national lottery.

As the lottery was set up by exception to the law prohibiting gambling, it would be unlawful to set up a competing lottery, whether French or from another country.

It would also be unlawful to bet on such a lottery. This includes cross-border betting on neighbouring national lotteries.

2. FOOTBALL BETTING

Although France Loto runs Loto Sportif there are some significant differences in the tax and profit distribution which are examined below.

2.1. Legislation

The Law of 29 December 1954 exempted the creation of football pools from the basic 1836 prohibition of all gambling and gaming. Betting on football matches in France is organised in the form of a game called 'Loto Sportif', which was created in 1985. It is regarded as an exception to the basic principles prohibiting lotteries. The Decree of April 1, 1985, sets out the rules regarding the organisation and operation of the Loto Sportif. Similarly to the Lotterie National, the Loto Sportif is run by France Loto. The statutes of France Loto were amended to incorporate this new game.

The introduction of the game was in order to strengthen the product base of the national lottery.

2.2. Authorisation and Licensing

To set up the Loto Sportif France Loto required permission from the Ministries of Youth and Sport and the Ministry of Finance's division responsible for budgetary matters.

2.3. Supervision and Control

A Committee for the Ethics of Loto Sportif was created by the Arrêté of April 1, 1985. The main powers of the Committee are investigatory. Enforcement is carried out by the relevant Ministry.

2.4. Taxation

20% of total amounts collected is levied in favour of the National Fund for the Development of Sports Activities (FNDS).

After that, a stamp duty of 3,70% is levied.

A proportional duty on winnings (based on the Finance Act for 1986, Law n° 88-824 July 11, 1986) is applied to the Loto Sportif as follows:

Winnings (ECU)	Rate (%)
700 to 14.200	5
14.200 to 71.200	10
71.200 to 142.400	15
142.400 to 284.700	20
284.700 to 711.900	25
Over 711.900	30

2.5. Distribution of Profits

At least 50% of the amount of total bets must be reserved for payback to players as set out in the Arrêté of April 1, 1985. In fact, in accordance with the statute of France Loto, once the 20% in favour of the FNDS and the stamp duty have been paid, the balance is shared between the winners (78%) and management costs (22%).

2.6. Tax Revenue

According to the 1990 Finance Act, the total tax revenue from Loto Sportif was estimated at ECU 6,8 million for 1989 and ECU 7,5 million for 1990.

2.7. Barriers

The barriers are as per the Lotteries National in that any other competitor is unlawful under the Law of 1836. So too is playing on such an illegal activity.

3. CASINOS

3.1. Legislation

The basic principle is that the running of a public gaming house where games of chance are played, is prohibited by Article 410 of the French Penal Code. Consequently, violation of this law will result in punishment under penal law.

Nevertheless, the first exemption to the principle of prohibition was allowed by the Law of June 15, 1907 for casinos located in spa towns or seaside resorts. This exemption was subsequently extended to other areas. The law of 1907 remains the basic point of legal reference regarding casinos. The motivation behind allowing casinos was clearly one of achieving better control of clandestine gaming houses.

The Law of 31 July, 1920 stipulated the additional requirement that all casinos must be at least 60 km distant from the French capital.

The Law of 31 March, 1931 provides for limited exceptions from the Law of 1907, and establishes rules of revenues desired from casinos.

The Decree of 22 December, 1959 lays down strict rules applying to the operation at a casino.

The casino business is usually conducted by commercial companies under the form of an SA 'Société Anonyme' or 'SPRL'.

There are no specific restrictions on advertising for casinos.

3.2. Authorisation and Licensing

To set up a casino, the prior authorisation of the Ministère de l'Intérieur is necessary, following agreement from the municipality in which the proposed casino is to be located. Once an authorisation has been granted, it remains revocable. Authorisation requires a specific set of regulations (called 'Cahier des charges') to be established between the Ministère de l'Intérieur and the Casino's directors. The Cahier des charges clearly indicates which games are authorised, under which conditions the casino may operate and the control mechanisms to be put in place. It includes how much duty will go to the municipality, how much will be spent on charities and other advantages for the municipality.

The directors of a casino must be of EC nationality.

3.3. Supervision and Control

The casino business is controlled by the Ministère de l'Intérieur at its 'Service des Courses et des Jeux'. Inspections can be carried out at any time by a representative from the Ministry. The financial year has been defined as from November 1st to October 31st. Ministry of Finance representatives supervise and control tax payment.

3.4. Taxation

3.4.1. Direct Taxation

Income derived from casinos is subject to the standard French corporate income tax provisions and is taxed at a rate of 37% on retained earnings, and at a 42% rate on distributed profits. Corporate income tax is levied after a progressive duty and stamp duty have been paid, after the municipality's 15% has been levied (see below), and after costs have been paid.

3.4.2. VAT

According to (CGI) Article 261-E-1°, the casino business is exempt from VAT in France.

Since casinos are subject to specific duties and are exempt from VAT, they cannot recover any input VAT incurred on their expenditure, which means that they suffer a considerable tax cost, this may amount to approximately 60% of their gross income.

3.4.3. Duties

- A *progressive duty* is applied on gross gaming wins in favour of the casino.

Rates are set out by Decree n° 86-1212 dated November 27, 1986, as follows:

Casino Wins (ECU) per annum	Rate (%)
0 to 54.100	10
54.100 to 106.800	15
106.800 to 316.100	25
316.100 to 587.300	35
587.300 to 978.800	45
978.800 to 2.936.400	55
2.936.400 to 4.894.000	60
4.894.000 to 6.851.600	65
6.851.600 to 8.809.200	70
Over 8.809.200	80

The duty is assessed on the gross winnings made by the casino.

A maximum of 15% of duties levied are paid to the city or municipality in which the casino is located.

- *Stamp duty*

An additional stamp duty is levied on each entrance to the casino. The rates are as follows:

	ECU
Entrance for the day	8
Entrance for the week	28
Entrance for the month	71
Entrance for the opening period	142

3.4.4. Annual Tax Assessed on Employee Wages (Payroll Tax)

While casino activities are exempt from VAT, they are nonetheless subject to tax assessed on employee wages ('taxe sur les salaires').

For the 1990 financial year, the base rate is 4,25%, which is

- Increased to 8,50% for individual salaries between ECU 4.950 and 9.900 per month;
- Increased to 13,60% for individual salaries over ECU 9.900 per month.

3.4.5. Wealth tax

While ordinary gamblers are not normally subject to personal income tax on their winnings, large amounts (such as gains derived from casino windfalls) could be included in the basis for the calculation of the French Wealth Tax (ISF) applied as follows:

Wealth (ECU)	Rate (%)
0 to 588.000	0
588.000 to 955.300	0.5
955.300 to 1.896.400	0.7
1.896.400 to 2.941.400	0.9
2.941.400 to 5.694.900	1.2
Over 5.694.900	1.5

Wealth tax remains largely theoretical, because most people do not declare their casino winnings.

3.5. Tax Revenue

The total taxes due on gross casino proceeds (Recettes Brutes de Jeux) is expected to amount to ECU 78,3 million in 1990 (out of a total estimated revenue of ECU 213,6 million). This figure excludes stamp duties and local

taxes which are not itemised in the general state budget and are, therefore, difficult to obtain.

French casinos have appealed that the high level of tax is stifling their development.

3.6. Market Information

The three main casino groups in France are:

- Lucien Barrière (including the biggest casino in terms of income, Deauville)
- Citerici (8 casinos in the south of France)
- Partouche (Forges-les-Eaux, Vichy, Dieppe)

3.7. Barriers

The only apparent barrier is the restriction on nationality of the Director of a casino. EC nationality is required.

4. GAMING MACHINES

4.1. Legislation

In 1983, all gaming machines had been prohibited by virtue of the 'Deferre' law at 12 July, 1983. This followed proliferation of gaming machines and the potential abuses and poor morality associated with gaming machines.

However, gaming machines or slot machines can be set up in casinos, by virtue of the Law n° 87-306 of May 5, 1987. It is the only place gaming machines can be legally operated, giving casinos an effective monopoly on the sector. The first machines were installed towards the end of 1988. Rather than completely ban gaming machines thus forcing players 'underground' or abroad, the French legislator preferred to allow the machines, but only in a closely controlled environment. Furthermore, gaming machines were an additional source of revenue.

4.2. Licensing and Control

Each gaming machine or slot machine must be declared to the French tax authorities at least 24 hours in advance of its coming into operation. Each machine must have a 'vignette', a form of tax receipt, distributed by the tax authorities. This is the main form of control.

Not all casino operators have been given permission to install machines in their casinos. Permission is at the discretion of the national authorities.

As explained in the section on casinos, only in fifteen casinos have gaming machines been authorised. There has been a crackdown on issue of any new licences, the regulators being concerned about the instant popularity of gaming machines where they have been introduced.

4.3. Taxation

Slot machine operators must pay an annual operating duty, 5^{ème} Catégorie, as set out in Article 1560 of the CGI. The amount varies according to the size of the administrative locality in which the casino is located:

In localities of:	ECU
up to 1000 inhabitants	14
from 1001 to 10,000	28
from 10,001 to 50,000	57
over 50,000	85

Income deriving from the machines set up within the casinos is subject to the progressive duty applied to casino proceeds. By virtue of pre-programming of the machines, 85% is paid out to the gambler and the remaining 15% is retained.

4.4. Barriers

There exist two types of potential barrier. Firstly, machines may only be operated within a casino and, secondly, the readiness of the authorities to grant licences.

5. HORSE RACING

5.1. Legislation

The legislative approach adopted by the French authorities to gambling and gaming in general is one of global prohibition complimented by few exceptions. In the case of racing, the only exception allowed is that of races organised for the sole purpose of improving horse breeding.

The law of June 2, 1891, stipulates that betting on horse racing may be organised only by 'Sociétés de Courses' (see definition below) and only those which fulfil the following 4 conditions :

- betting must be organised only by Sociétés de Courses and only using the totalisator system for betting;
- a special authorisation from the Ministry of Agriculture must be granted to the race organiser;
- organisation of betting must not result in profit for the organiser;
- a duty on betting stakes must be levied in favour of public service objectives.

The provisions of the law of 1891 reflect 5 fundamental principles:

- defense of public order;
- only pool-betting is allowed, for it is the only system by which the race organiser has no vested interest in race results, given the very nature of the system;
- promotion of horse breeding through allocation of prize money to the best horses;
- only Sociétés de Courses can organise betting, and only they can be responsible for managing distribution of prize money;
- the right to create a Société de Course, and the organisation of betting must be permanently supervised by the state.

Betting on horses was rendered legal in 1891 because it enabled the state to control a previously illicit activity which would have continued whether legal or not. Legalisation furthermore allowed the activity to be taxed. Bookmaking was excluded because it was associated with abuse and fraud, due to the fact that a bookmaker's profit is inherently linked to the outcome of races.

The law of 16 April, 1930 allowed the tote to take bets off-course. This was motivated by the resurgence of illicit off-track bookmakers.

The Decree of October 4, 1983 sets out that horse owners, trainers, breeders and jockeys must be members of two kinds of breeder institutions:

- Sociétés de Courses, and
- mother companies, which are a special type of Société de Course.

'*Sociétés de Courses*' are non-profit-making associations with strictly defined legal functions which include the promotion of horse breeding by way of the organisation of races, and management of training centres for horse racing. There are currently approximately 270 Sociétés de Course in France. The Sociétés own the racecourses, and the oldest date back as far as 1833.

A specific type of Société de Courses are the three '*mother companies*', (Sociétés Mères) of which one exists for each type of race (track, steeple and trot) :

- 'Société d'encouragement pour l'amélioration des races de chevaux en France' (Company for the improvement of horse breeding in France — track races),
- 'Société des steeple chase de France' (Company for steeple chases),
- 'Société d'encouragement à l'élevage du cheval français' (Company for improvement of French horse breeding —trot races).

Each Société Mère is responsible for the competition and course rules relating to one of the three types of races. Horse racing professionals (owners, breeders and jockeys) must also be members of the Société Mère of their speciality. The right to be a Société Mère was earned by the fact that these three Sociétés were the earliest on the scene, and each specialised in one type of racing.

The Sociétés de Courses, including Sociétés Mères, have centralised the management of prize money awarded to horse owners for each type of racing by running horse owners' current accounts. The accounts are credited by the amounts of prize money won and debited by the amounts due from the owners to the racing companies, in race entrance fees.

The Sociétés de Courses also manage funds which finance the development of thoroughbreds. These funds come from:

- the racing companies via the PMU
- the European breeding funds
- racing entrance fees paid by the horse owners

In order to take bets from all over the country, the Sociétés de Courses set up an organisation called the 'Pari Mutuel Urbain' or PMU. Rather than operating a series of different totes, as of 1931, the Sociétés de Courses agreed to use a common vehicle for collecting bets on their behalf. Currently ten Sociétés de Courses, including the three Sociétés Mères, all located near Paris are members of the PMU. Another approximately 260 lesser Sociétés de Courses are not members of the PMU but use its services.

In 1984, the PMU opted for the legal form of a Groupement d'Intérêt Economique or GIE. This type of company is an association and, as such, falls under the 1901 law on the matter. The decision to operate as a GIE was simply to enable the PMU to acquire 'legal status' (personnalité juridique).

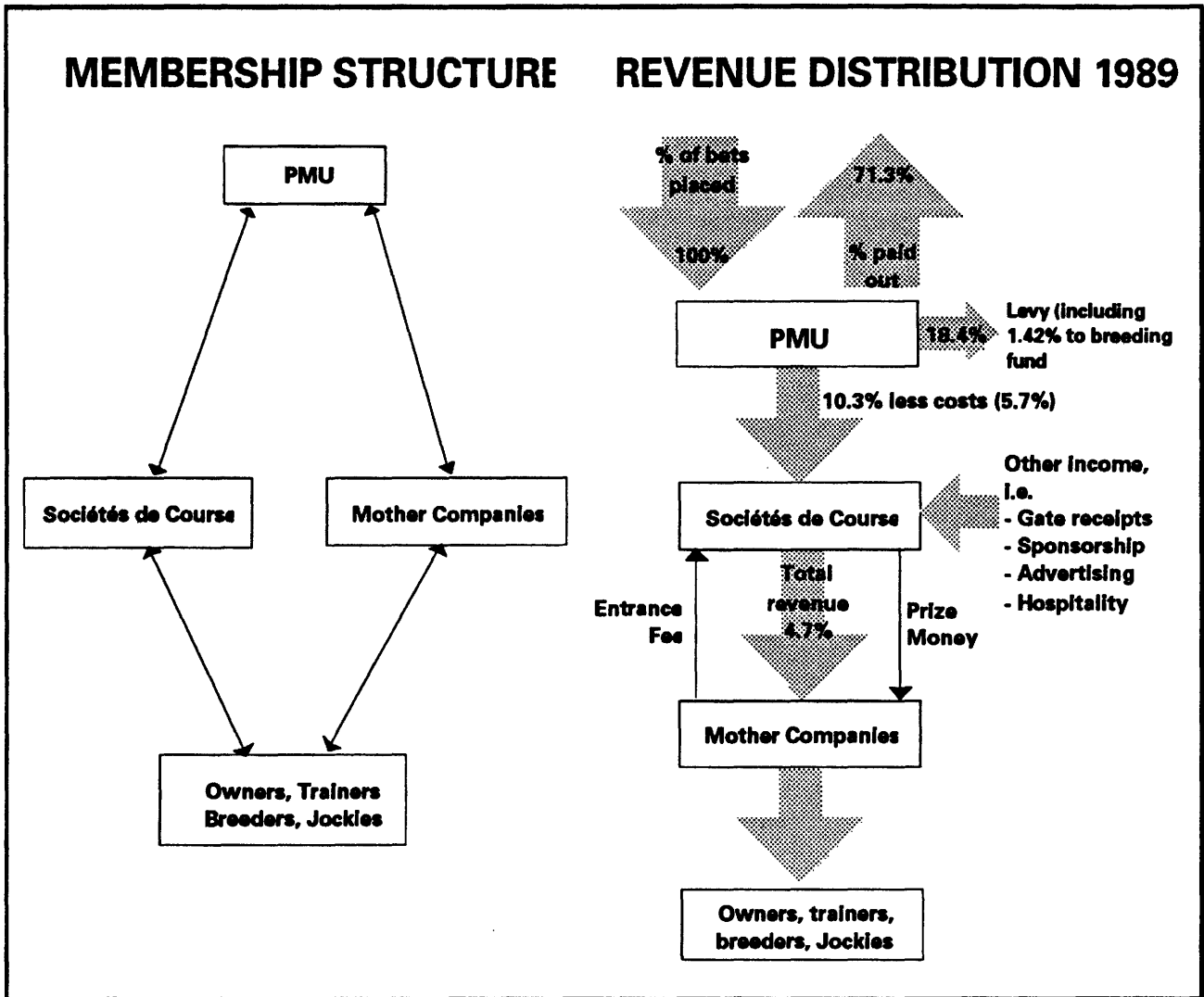
The PMU was thus established in order to collect bets on behalf of Sociétés de Courses. Under French law another totalisator could, in theory, be set up at any time, as long as it acted on behalf of one or more authorised Sociétés de Courses. In this sense, while the PMU is the one and only tote in operation, it is not legally entitled to a monopoly. In practice the system operates as an oligopoly of the major Sociétés de Courses, for only Sociétés de Courses can obtain authorisation to organise betting on horse racing. A Société de Courses is apt to be authorised, by the Ministry of Agriculture, only if, among other conditions, it is prepared to organise racing exclusively for the benefit of horse breeding and not for individual profit.

Control of the PMU is in the hands of the three Sociétés Mères, who account for approximately 75% of votes on the PMU board.

The regulations governing the operation of tote betting have been set out in the Decree of September 13, 1985, as updated by the Decree of 31 May, 1989.

The symbiotic relationship between the PMU, Sociétés de Courses and mother companies is shown in Diagram 1.

DIAGRAM 1



To summarise:

- Owners, trainers, breeders and jockeys must belong to a Société de Courses and/or a mother company,
- the Sociétés de Courses organise races and created the PMU to collect bets on their behalf,
- the PMU, via the Recette General de Finances, pay approximately 10% of all turnover to the Sociétés de Course who, after taking costs, pay the mother companies which manage the prizes and financial interests of trainers and owners, with regard to racing.

5.2. Authorisation and Licensing

Races must be organised for the sole purpose of improving horse breeding and not for the purpose of private or corporate profit. By setting up a system whereby the Sociétés de Courses and mother companies allocate prizes to the most performing horses, this prerequisite is deemed to be fulfilled.

It is prohibited to organise races without the prior authorisation of the Ministry of Agriculture. Authorisation is granted on an annual basis and can be revoked if legal requirements are not respected.

5.3. Supervision and Control

Sociétés de Course fall under the control of the Ministry of Agriculture, which is responsible for overseeing their activity (i.e. the types, number and conditions of races) and their accounts. Approval of their operations was granted under the Law of June 2, 1891.

The Ministry of the Interior intervenes only when something goes wrong, such as the existence of illegal bookmaking or the presence of banned individuals from racecourses.

5.4. Taxation

5.4.1. Direct Taxation

A GIE is not subject to French corporate income tax. Profits, if any, are taxed at the member's level.

Sociétés de Courses are not subject to French corporate income tax on the amounts received since their activities are classified as not profit-making.

Amounts collected from punters are allotted , according to Decree n° 83-878 dated October 4, 1983.

5.4.2. VAT

i) Racing Winnings

According to CGI Article 261-E-2°, gains derived from horse race betting are exempt from VAT. This exemption includes winnings paid to the players and amounts levied on bets by the state for its general budget.

ii) Operating Costs

The operating costs allocated to the organisers (Sociétés de Courses) and commissions earned by the PMU auxiliaries (bet collectors), which are paid out of the 10% which goes to the Sociétés de Courses, are subject to VAT. In practice, this means that VAT is applied to management costs. The VAT rate is 25%.

iii) Horse Owner Winnings

Prize money earned by the horse owners is subject to VAT at a rate of 5,5%.

iv) Mother Companies and Sociétés de Courses

i. Sociétés de Courses

Sociétés de Courses which organise the races are subject to VAT on their takings, i.e. admission fees, sponsorship and various other forms of income.

Entrance fees paid by owners when their horses run in a race are exempt from VAT.

Horse owners may contribute additional amounts to increase prize money available. This amount called 'la poule des propriétaires' (owners fund) is not subject to VAT when paid to the racing companies. Conversely, the prize money paid out to owners is subject to VAT.

ii. Mother Companies

Since VAT is invoiced by the horse owners to the mother companies, the latter can deduct part of this VAT. The deduction right is limited, as prize money, which is one source of income for the mother companies is not subject to VAT.

5.4.3. Duties

A proportional duty is levied on PMU tickets at a rate of 3,70% on all the amounts gambled on a particular race (CGI Article 919).

This amount collected by the racing companies is paid by the latter to the tax collector's office.

5.5. Distribution of Profits

All amounts collected by the PMU on behalf of the 'Sociétés' are paid to the Recette Générale des Finances, which has the duty of redistributing funds according to legal provisions between bettors, the state and 'Sociétés de Course' (see Article 27 of the Decree). Approximately 71.3% is paid to bettors, 10.3% to the Sociétés de Courses, and 18.4% to the state (of which 1.42% is allocated directly to the breeding fund).

The 10.3% is going to the Sociétés de Courses covers their costs and prize money distributed to encourage the most performing horses.

The 18.4% state share goes into the state coffers and becomes indistinguishable from the general body at fiscal revenue, except for the 1.42% that is reserved for the breeding fund.

5.6. Tax Revenue

Over the last five years, the horse racing industry paid taxes to the French State as follows :

(.000 ECU)	1985	1986	1987	1988	1988
State tax	754.600	726.100	740.333	783.000	825.800

5.7. Barriers

The PMU, the vehicle used by an oligopoly of Sociétés de Courses to collect bets, has an effective monopoly of the French market.

As indicated earlier betting on horse racing is legally admitted only when promotion of horse breeding is the prime motivation. Organisation of betting

to promote private or corporate objectives is prohibited. This requirement excludes the multinational bookmakers from acquiring permission to set up a Société de Courses, the only legal entity allowed to organize betting in France.

Cross-border betting is evident on French horse racing. In the UK, players bet on prime French races, such as the Prix d'Arc de Triomphe while over 80% of all bets in Belgium are placed on French horse racing. French horse racing is actively promoted under licence in Switzerland and Germany with the fiscal benefits resting in the home country while revenue in the form of fees and commissions for know-how are paid to the PMU. Revenue is used to promote horse breeding in France.

GERMANY

**STUDY OF THE LEGAL AND MARKET SITUATION IN ALL THE MEMBER STATES
CONCERNING BETTING, GAMING, LOTTERY AND SIMILAR ACTIVITIES
IN VIEW OF THE COMPLETION OF THE INTERNAL MARKET**

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GERMANY

1. INTRODUCTION: THE LEGAL REGIME

This report on gambling and gaming in Germany covers the legal and market situation in the 11 *Länder* which formed the Federal Republic of Germany until October 3, 1990. It does not contain specific information on the five new *Länder* (former East Germany) which have become part of the Federal Republic on October 3, 1990.

The situation as regards to gambling and gaming in the new *Länder* has not yet been settled. We have, however, made the attempt to give a picture of the current situation and the ongoing discussions in chapter 1.6. of this report. All information and data given in the rest of the report, therefore, concern only the eleven 'old' *Länder*.

1.1. Introduction

As is the case with all other EC Member States gambling and gaming in Germany is state controlled. However, due to the federal structure of the country many legislative and executive powers rest with the 11 '*Länder*' (states) and not with the 'Bund' (Federation).

The division of competences between the federation and the states is a main principle of the German legal order and derives from the country's federal structure. All legislative and executive powers that have not been retained by the federation and which are enumerated in the German Constitutional Law ('*Grundgesetz*') of 1949 lie with the *Länder*.

In order to understand why the *Länder* have been given the exclusive competence in the field of gambling and gaming, one has to look back at the situation of gambling in 1949. In that time lotteries, casinos and other games of chance were of little importance to the State compared to today. Since the federation had retained the competence to legislate on criminal law the view was that the federation would have sufficient control over gambling by enforcing the provisions on illegal gambling of the German criminal code. The *Länder*, on the other hand, have used their competences to set up companies that organise lotteries and operate casinos generating considerable revenues for the states.

Regarding gambling and gaming the German *Länder* have the exclusive power to legislate on lotteries and casinos. The Federation remains competent to regulate gaming machines and betting on horse races. In addition it is the Federation who legislates in the field of taxes in connection with gambling and who collects the taxes through its administration.

Due to this division of competences between the *Länder* and the Federation each of the *Länder* has its own set of gambling and gaming legislation. The basic principles are, however, the same since the relevant state law is based on Federal Acts which the states have re-published when they were given their powers in this field after World War II. Differences between the regulatory regimes of the *Länder* exist mainly as regards the organisation of the state lottery companies and the distribution of their proceeds. The rules on casinos differ from state to state mainly regarding the legal status of the casino operator.

The German Constitutional Court qualifies the laws on gambling and gaming as specific laws falling within the scope of the general laws on public order and security. Following that the Court concluded that the organisation of lotteries and the operation of casinos are not to be considered economic activities whose operators enjoy the basic economic rights guaranteed by the German Constitution. Consequently, a private person or company cannot claim a right to operate a game of chance in Germany.

1.2. Lotteries

The German *Länder* have the power to organise and licence lotteries within their territory. Each of them has set up or licensed one company which exclusively organises the major lotteries like the Lotto 6/49, the Toto and various instant lotteries.

In order to be able to organise lotteries on a national level the eleven-state lottery companies have formed the 'Deutscher Lotto- und Totoblock' (German Lotto and Toto Bloc) which is legally structured as a partnership. Its main goal is the planning of uniform lotteries and the pooling of winnings. The partners of the Bloc remain fully independent and the activities of the Lotto-Toto Bloc are supervised by the eleven-state authorities.

Beside the lotteries offered by the eleven lottery companies of the *Länder* there are two organisations which operate the so-called class lottery. Instead of having each state in Germany organise a class lottery of its own the states

jointly operate two class lotteries: the 'Nordwestdeutsche Klassenlotterie Hamburg' and the 'Süddeutsche Klassenlotterie München'.

The 'Nordwestdeutsche Klassenlotterie' has been set up by the states Nordrhein-Westfalen, Niedersachsen, Schleswig-Holstein, Hamburg, Bremen and Saarland and is situated in Hamburg. The 'Süddeutsche Klassenlotterie' was established by state treaty between the states Bayern, Baden-Württemberg, Hessen and Rheinland-Pfalz.

Both companies operate under the supervision of the respective states exercised by the Ministers of Finance.

All lotteries mentioned above are so-called State Lotteries since the state (even if only indirectly) is the sole operator of these games. If certain requirements are fulfilled the states can authorize private parties to organise lotteries. The legal regimes of the *Länder* with regard to private lotteries show only slight differences because most of the relevant provisions have been transformed from federal law into state law.

The most known private lotteries in Germany are the two TV-lotteries where the draws are carried out live on TV. 'Die Goldene 1' is the lottery presented by the ARD, the first German TV-network and organised by the 'Deutsche Fernsehlotterie GmbH'. The profit is given to the 'Stiftung Deutsches Hilfswerk', a charitable organisation. The second German TV-network, ZDF, presents its lottery 'Der große Preis' for the 'Aktion Sorgenkind' also a charitable organisation. Both lotteries have been granted licences in all the German *Länder* for 1990.

In some of the states the major banks offer so-called 'prize savings accounts'. These accounts fall under the rules of private lotteries. Some states have issued special laws governing this type of account and the distribution of the interest by lottery.

1.3. Casinos

There are currently thirty-two casinos in operation in Germany.

The competence to legislate on casinos rests also with the *Länder*. Each *Land* has its own 'Spielbankengesetz' (Casino Act). These state laws are worded similarly and in some *Länder* the old federal law on casinos of 1933 is still in force. Most of the Casino Acts stipulate who can operate a casino, in which cities a casino can be established, the gambling tax paid to the state,

the games allowed, the opening hours and days of the casinos and the gambling age.

The question of who is eligible to operate a casino is handled differently by the eleven states. In four *Länder* (Bayern, Bremen, Niedersachsen and Nordrhein-Westfalen) private operators are not granted a licence. In the remaining seven *Länder*, private ownership is possible. In some states, however, a state-owned company must be share-holder in the casino company.

1.4. Betting on horse races

The 'Rennwett- und Lotteriegesezt' of 1922 serves as the legal base for betting on horse races. The supervising authority is the Federal Ministry of Agriculture. The organising of a totalisator and bookmaking are licensed. Licences are issued by the competent authority of the *Land* in which the activity will be pursued. The state legislation of the *Länder* stipulate the authority in charge of executing the 'Rennwett- und Lotteriegesezt' on the state level. In most of the states it is the Ministry of Agriculture.

According to the 'Rennwett- und Lotteriegesezt', only horse racing and horse breeding associations can be granted a licence to organise a totalisator. Only those associations whose sole aim is the promotion of horse breeding are eligible. The licence is given only for certain race tracks which have to be specified and can be issued for a limited period of time or under a restriction. All the proceeds have to be used exclusively for prizes and the financing of horse breeding. The organiser of a totalisator must allow bookmakers to trade and assign to them a fixed spot in return for a fee.

Bookmakers must be in possession of a valid permit both for on-track and off-track bookmaking before accepting bets. Permits are only granted to applicants who are deemed suitable and who can show that they possess the necessary skills to work as a bookmaker. For every person working with the bookmaker and accepting bets on his account a separate permit is required.

Before the permit is issued the applicant has to pay a security guarantee. The amount is fixed by the issuing authority in relation to the size of the operation. In the event of non-payment the guarantee will be used to cover tax debt, fines and outstanding payments of winnings.

The local racing and breeding associations in Germany are members of two major associations who coordinate the activities of their members on a national scale:

- the Hauptverband für Traberzucht und -rennen co-ordinates the work of the trotter associations;
- the Direktorium für Vollblutzucht und Rennen groups the associations who organise horse races.

1.5. Gaming machines

The operation of gaming machines which provide prizes is considered an economic activity and falls under the rules of the Gewerbeordnung (Trade Act). The execution of the Gewerbeordnung comes under the responsibility of the federal Ministry of Economics.

In order to be able to legally install and operate a gaming machine its owner must hold a permit issued by the local authority entrusted with the execution of the Gewerbeordnung. Furthermore the gaming machines must have passed an inspection by the Physikalisch-Technische Bundesanstalt. This institute checks the machines for compliance with the Spielverordnung 1985 (Law on Gaming Machines).

1.6. East Germany

In East Germany lotteries have been organised by one state owned company 'VEB Vereinigte Wettspielbetriebe'. This company has offered three lotto games and one Toto, organised similarly to those in the West.

Following re-unification on October 3, 1990, the five new *Länder* have gained the competence to regulate in the field of gambling and gaming.

Until the new *Länder* have legislated in this field, the Lottery Act of the former GDR remains in force. It is not yet decided if the new *Länder* will form separate lottery companies or if they will form a joint company.

2. CLASS LOTTERIES

2.1. Legislation

The two German class lotteries, the Nordwestdeutsche and the Süddeutsche Klassenlotterie, operate identical lotteries under the control and legislation of the respective *Länder*.

The Nordwestdeutsche Klassenlotterie (NDKL) has been established by the *Länder* Nordrhein-Westfalen, Niedersachsen, Schleswig-Holstein, Hamburg, Bremen in 1947 with Saarland joining in 1968 and is situated in Hamburg. The 'Süddeutsche Klassenlotterie' (SDKL) was established in 1948 between the states Bayern, Baden-Württemberg, Hessen and Rheinland-Pfalz, which joined in 1955, and operates out of Munich.

The state lottery company of Berlin (Deutsche Klassenlotterie Berlin) has a special agreement with the NDKL to sell their tickets in Berlin without taking part in the organisation of the NDKL.

Both companies organise two lotteries a year. Each lottery consists of six classes and each class of four draws. Therefore, draws take place every week. The last class offers the main prizes, with the highest first prize amounting to ECU 2,4 million in the SDKL. The SDKL offer 1,1 million tickets and around 500.000 winnings for each lottery. Since the smallest prize is the prize of the ticket, there is a 50% chance to win at least the stake.

2.2. Authorisation and Licensing

a. Nordwestdeutsche Klassenlotterie

Based on their power to legislate on lotteries the six *Länder*, represented by their Ministers of Finance, have entered into a formal Agreement establishing the Nordwestdeutsche Klassenlotterie. A consortium of eight banks (all indirectly state owned) has been entrusted with the organisation of the lottery. The consortium is managing the class lottery through a Lottery Directorate.

b. Süddeutsche Klassenlotterie

Bayern, Baden-Württemberg and Hessen established this lottery in a state treaty. In 1954, Rheinland-Pfalz joined the treaty. The Süddeutsche Klassenlotterie is located in Munich and managed by the Direktion der Staatlichen Lotterieverwaltung (Directorate of the State Lottery Administration).

2.3. Supervision and Control

a. Nordwestdeutsche Klassenlotterie

The management of the NDKL is accountable to the Lotteriewausschuß (Lottery Committee) which comprises representatives of the six Ministries of Finance. The members of the Committee are responsible to the Ministers of Finance.

b. Süddeutsche Klassenlotterie

The management of the SDKL is supervised by the Staatslotterie-Ausschuß (State Lottery Committee) which has to approve the budget and the annual accounts. The Committee comprises four representatives (one of each *Land*) who report to their Ministers of Finance.

2.4. Taxation

As provided for in the 'Rennwett- und Lotteriegesez' the lottery tax applies also to class lotteries. The tax rate is 20% of the nominal value of the tickets excluding the tax, i.e. effectively 16 2/3 % of the price of the tickets. It is payable on the 15th day after each draw at the latest to the local 'Finanzamt' (Tax Office).

The class lotteries are exempt from all other taxes. No VAT is levied on the sale of class lottery tickets.

2.5. Distribution of Profits

a. Nordwestdeutsche Klassenlotterie

Article 4 of the Agreement provides for the distribution of the profit and the lottery tax yields between the participating *Länder*:

- 50% of the profit and tax yields are split according to the population of the *Länder* and the other
- 50% according to the number of tickets sold in each state.

The profit is calculated by taking the revenues and subtracting costs and commissions.

b. Süddeutsche Klassenlotterie

The profit and the lottery tax yields are distributed among the four *Länder* according to the number of tickets sold in each state. As with the NDKL the profit is the revenues minus all cost incurred.

As far as the use of the lottery profits are concerned, there are no specific provision in the state legislations and the amounts distributed accrue to the state budgets.

2.6. Barriers

Since the power to legislate on lotteries rests with the states each of the eleven *Länder* could theoretically set up a class lottery. For reasons dictated by the market the *Länder* have arranged themselves leading to the present duopolistic market structure with the Nordwestdeutsche and the Süddeutsche Klassenlotterie as the only market players.

When assessing the barriers to market entry that a foreign class lottery faces, one must first distinguish between the two separate activities involved in a class lottery:

- the actual organising of the lottery, i.e. the conducting of the draws, the design of the winning plan, the printing of the tickets, etc.
- the marketing of the lottery tickets

The attractiveness of a class lottery lies in its large main prizes (up to ECU 2,4 million) and the high probability to win at least the stake. This requires a certain size which only a large market can assure. The German market at present accommodates two class lotteries.

The class lottery agents, on the other hand, find themselves in a different position. They are independent from the operator, the class lottery company, and work under German commercial law. While they can freely market tickets in Germany they are subjected to the national rules on lottery of the countries in which they want to sell tickets. The national laws of these countries, however, all establish lottery monopolies which comprise not only the organising of a lottery but also the sale of lottery tickets. The main motive for many lottery agents to market tickets abroad despite the legal restrictions is the fact that there is a demand from the foreign players. With sales figure remaining level in the home country, German agents make use of unsatisfied

demand in other European countries. Depending on the country of destination and the way of mailing used, they increasingly encounter legal problems when operating abroad, such as interception of their mailings (as happened in the UK) or direct legal action against them (as occurred in Belgium).

3. LOTTO AND TOTO

In this chapter we will deal with the various lotteries and sport bets which are jointly organised by the eleven-state lottery companies within the framework of the Lotto-Toto Bloc. These games account for approximately 65% of the total gambling and gaming turnover in Germany.

3.1. Legislation

3.1.1. The Lottery Companies

Using their power to regulate in the field of lotteries the eleven *Länder* have each set up their own institution entrusted with the organisation of lotteries (see table 1). Although the legal structures of the companies vary from state to state according to one of these three models, they all operate very similarly:

1. State enterprise model

The state directly runs lotteries and casino operations through its administration. In Bavaria, the entity in charge of lotteries and casinos ('Staatliche Lotterieverwaltung') is part of the Bavarian Ministry of Finance. Its employees are civil servants. The 'Nordwest Lotto' in Schleswig-Holstein is organised similarly.

2. Public law model

The state establishes by state law an institution ('Anstalt des öffentlichen Rechts') which is exclusively authorised to organise lotteries. This model can only be found in Berlin where the 'Deutsche Klassenlotterie Berlin' is organised in such a way.

3. Private law model

This is the most common legal construction among the state lottery companies. Eight of the eleven companies are incorporated as 'Gesellschaft mit beschränkter Haftung - GmbH' (private limited company). Depending on how directly the state is involved in these companies as owner we can group them as follows:

- 100% state ownership: the state holds all the shares of the company. The lotteries in Baden-Württemberg, Hessen and Niedersachsen (only the lotto company) belong to this group;
- indirect state ownership: the state still owns all the shares but holds them indirectly through another state owned company (e.g. a bank). The 'Westdeutsche Lotterie GmbH & Co' is organised in this way. The only shareholder is the 'Westdeutsche Landesbank', a bank owned by the state Nordrhein-Westfalen;
- mixed ownership: in addition to the state shares are also held by private entities which are always sport associations (like the state sport federations or the state soccer associations). This model can be found in Bremen, in the Saarland and in Niedersachsen (only the toto company);
- 100% private ownership: in Rheinland-Pfalz, the lotto/toto company is owned by three sports associations.

The different legal construction of the German lottery companies has historical reasons rather than practical ones. Most of them have been set up in the 1950s and some in the 1960s. The choice of the legal construction and the question of ownership depended largely on the availability of reliable and financially sound operators in those days. In many states a state-owned entity was chosen to ensure a reliable operation of the lottery games.

3.1.2. The Games

Currently the eleven-state lottery companies all organise the following games within the framework of the Lotto-Toto Bloc:

- LOTTO 6/49 Wednesday and LOTTO 6/49 Saturday;
- TOTO-Auswahlwette and TOTO-Ergebniswette (bet on soccer games);
- RENNQUINTETT (bet on horse races);
- SPIEL 77 ('add-on lottery', can only be played with ticket of one of the above mentioned games);
- GLÜCKSSPIRALE (TV lottery played between September and December);
- RUBBEL-LOTTERIE and LOSBRIEF-LOTTERIE (instant lotteries).

In addition to these games, several state lottery companies organise regular draws where holders of lottery tickets can win non-cash prizes such as cars, VCRs and the like.

The legal base for the organisation of these games are the various laws and regulations in force in the relevant state. The *Länder* either have the old 'Lotterieverordnung' (Regulation on Lotteries) of 1937 in amended form in force or have issued new laws which are based on the old regulation. Therefore separate laws can be found for the lotteries (Lotto, Spiel 77, Glücksspirale and instant lotteries) and for the so-called sport bets such as Toto and Renn-Quintett.

3.1.3. The Lotto-Toto Bloc

The eleven German Lotto-Toto companies have formed the Lotto-Toto Bloc to facilitate the joint organisation of the Lotto, Toto and similar games on a national basis. The main two functions of the Lotto-Toto Bloc are the organising of the weekly draws and the pooling of the winnings. Thus, the eleven Lotto-Toto companies can offer a set of uniform games throughout the whole country. In addition, the Bloc serves as a forum where the member companies discuss and coordinate common matters such as legal questions, technical matters, advertising and publicity as well as the introduction of new games.

The eleven Lotto-Toto companies remain completely independent. Decisions have to be taken unanimously in order to be carried out by all companies. Every company is free to leave the Lotto-Toto Bloc at any time.

The Lotto-Toto Bloc is represented by one of the eleven companies for a term of two years. During this period, the company acts as spokesman and coordinates the work of the Bloc. The costs for representing the Lotto-Toto Bloc are carried by the member companies.

Table 1

THE GERMAN LOTTO—TOTO BLOCK

Baden- Württemberg	Staatliche Toto-Lotto GmbH Stuttgart
Bayern	Staatliche Lotterieverwaltung München
Berlin	Deutsche Klassenlotterie Berlin
Bremen	Bremer Toto und Lotto GmbH
Hamburg	Nordwest Lotto und Toto Hamburg Staatliche Lotterie der Freien und Hansestadt Hamburg
Hessen	Lotterie-TreuhandgesmbH. Hessen Wiesbaden
Niedersachsen	Niedersächsische Fußball-Toto GmbH Niedersächsische Zahlenlotto GmbH Hannover
Nordrhein- Westfalen	Westdeutsche Lotterie GmbH & Co. Köln
Rheinland- Pfalz	Sporttoto GmbH Staatliches Zahlenlotto Rheinland-Pfalz Koblenz
Saarland	Saarland-Sporttoto GmbH Saar-Zahlenlotto Saarbrücken
Schleswig- Holstein	Nordwest Lotto Staatliche Lotterie des Landes Schleswig-Holstein, Kiel

3.2. Authorisation and Licensing

As explained above the *Länder* have used different legal constructions to make use of their exclusive right to authorise lotteries. The result of this is that the *Länder*—regardless of the legal organisation of the lottery companies—effectively control these games and maintain a monopoly.

The companies have either been authorised by the state parliament issuing a special law (e.g. in Bayern and Berlin) or by the Ministers of the Interior representing the State government.¹

3.3. Supervision and Control

The relevant authorities vary from state to state. In most of the *Länder* the Minister of the Interior is in charge of supervision and control over the lottery companies. In addition the Minister of Finance exercises control over the finances of the lotteries. In some states (Bayern, Hamburg, Rheinland-Pfalz and Schleswig-Holstein) the Minister of Finance is in charge of all supervision of the state lottery companies.

3.4. Taxation

The 'Rennwett- und Lotteriegeseztz' provides for the lottery tax which is levied on all public lotteries. For the games offered by the Lotto-Toto company the tax rate is 16 2/3% of the total stakes.

The lottery laws of the *Länder* contain an exemption from all other state and municipal taxes for these lotteries.

The lotteries are also exempted from VAT on the sale of the tickets.

3.5. Distribution of Profits

Although the profits of the state lottery companies are distributed according to different schemes in quite different ways some identical factors can be seen.

¹ In order to coordinate the authorisation of lotteries in more than one state the German *Länder* have set up a working group on lotteries (Arbeitskreis der Lotteriereferenten) comprising representatives of the Ministries of the Interior of all *Länder*.

a. Rate of payback

The two Lottos 6/49 (Wednesday and Saturday), the two Toto soccer bets and the horse race bet 'Rennquintett' have a pay back rate of 50% in all eleven *Länder*.

For the add-on lottery 'Spiel 77' the payback rate has been set at 43 1/3% for all states.

The payback rate of the TV lottery 'GlücksSpirale' is set for each season for all the participating *Länder*. In 1989 it was 39,86%.

The instant lotteries have payback rates between 40% and 43% varying by state.

b. Definition of Profit

Depending on the legal set up of the lottery company the definition of 'profit' varies greatly among the *Länder*. In all the *Länder*, the net revenues of the state lottery companies are used for financing public welfare, cultural institutions and charitable organisations. These include the Red Cross, and other organisations working to the benefit of the handicapped, disabled and elderly as well as various sporting associations. Revenues from the 'Rennquintett' (horse betting) are paid to the horse breeding and horse racing associations.

The Lottery Acts of the *Länder* contain the notion 'Zweckertrag' which can be freely translated as revenue ear-marked for the distribution among beneficiaries. Therefore, the lottery companies do not make a profit in the strict sense. The amount to be paid out as 'Zweckertrag' is set at a level that allows the companies to cover their costs.

The minimum rate for the 'Zweckertrag' is set by all *Länder* at 25% of the total stakes.

The lottery companies which are directly controlled by the state (the case in Bayern, Berlin, Hamburg, Hessen and Schleswig-Holstein) pay the 'Zweckertrag' directly to the state treasury. The state then is responsible for the distribution according to state law.

The companies in the remaining *Länder* pay the 'Zweckertrag' directly to the beneficiaries.

c. Distribution

Despite the differences in number and type of beneficiaries as well as rate of contribution among the *Länder* the following breakdown gives an approximate picture of the distribution of stakes:

- 40 to 50% Winnings
- 16,67% Lottery tax
- 8 to 18% Costs (incl. commissions paid to sales agencies)
- 25% Zweckertrag (Net revenue for distribution among beneficiaries)

Given the total turnover of the German Lotto Toto Bloc of ECU 4,2 billion in 1989 the Lotto/Toto generated around ECU 821,2 million in revenues which were distributed among the beneficiaries.

3.6. Tax Revenue

The eleven lottery companies forming the Lotto Toto Bloc achieved a total turnover of ECU 4,2 billion in 1989. Given a tax rate of 16,66% the lottery tax paid by all companies amounted to approximately ECU 676,3 million.

The tax yields stay with the *Länder* who decide on their allocation.

3.7. Barriers

The lotteries organised by the state lottery companies generate a significant revenue for the *Länder*. In 1989 the lottery companies paid some ECU 676,3 million in lottery tax and distributed about ECU 821,2 million among the beneficiaries.

Some *Länder* (e.g. Bayern) make it illegal to participate in lotteries which are not licensed in that state. This is a rule which is very difficult to enforce in the case of the purchasing of foreign lottery tickets by mail.

Agents of the Lotto-Toto companies are bound by their contracts to market tickets only in the one state of Germany where their company has been granted a licence. Unlike the class lottery agents, the Lotto-Toto agents can

not market tickets by mail. In border regions, they can accept tickets from foreigners but only on their premises.

At present, no foreign Lotto or Toto is permitted to market tickets in Germany. The lottery laws do not exclude the possibility of granting a licence to a foreigner to market tickets in Germany. This has not yet happened. Furthermore, neither nationals nor foreigners can claim a right to be granted a licence.

4. TV LOTTERIES AND OTHER LOTTERIES

The TV lotteries are the two main private lotteries in Germany. Unlike the lotteries mentioned in section 3 which can only be organised by the state lottery companies a private organisation can apply for a licence to operate any private lottery subject to the fulfilment of certain requirements.

In this chapter we describe the German TV lotteries. Everything said regarding licensing, supervision and taxation equally applies to all other private lotteries.

4.1. Legislation

The two TV lotteries are hosted by the two German TV networks 'ARD — Erstes Deutsches Fernsehen' and 'ZDF — Zweites Deutsches Fernsehen'. 'Die Goldene 1' is the lottery presented by the ARD, the first German TV-network and organised by the 'Deutsche Fernsehlotterie GmbH'. The profit is given to the 'Stiftung Deutsches Hilfswerk', a charitable organisation. The second German TV-network, ZDF, presents its lottery 'Der große Preis' for the 'Aktion Sorgenkind' also a charitable organisation. Both lotteries have been granted licences in all the German *Länder* for 1990.

For 1990 nine major draws have been scheduled which are broadcast live on the ARD programme. Every major draw is followed by six weekly draws. A ECU 2,4 —ticket entitles to participate in one major draw and the following six weekly draws. For ECU 22 —a one-year-ticket can be purchased. Beside the cash prizes there are also non-cash prizes to be won.

The tickets can be obtained at post offices and banks and have to be paid for either directly in cash or by transfer. The payment slip serves as ticket and contains the ticket number as well as name and address of the player.

4.2. Authorisation and Licensing

Private lotteries are dealt with in the Lottery Acts of the *Länder*. Since they are all based on the old 'Lotterieverordnung 1937' (Act on Lotteries) their provisions differ only slightly. In the following, when we speak about 'Lottery Acts' we refer to the Lottery Acts of the *Länder*.

4.2.1. Licensing Authorities

The licensing authorities are:

- the Minister of the Interior if the lottery is organised across a whole *Land*; in case that the lottery is also organised in another state the Minister of the Interior decides in cooperation with the Ministers of the states concerned;²
- the district authorities if the lottery is organised in more than one municipality;
- the mayor for lotteries organised only in one municipality.

4.2.2. Licensing Requirements

A licence can only be obtained for lotteries which meet the following requirements:

- its operator must show that he is capable of organising the lottery as proposed and that he has no commercial objectives;
- the net revenues are exclusively and directly used to promote charitable organisations or public welfare purposes;
- the net revenues and the winnings each amount to at least one fourth of the total stakes;
- no commercial promotional activity is pursued in connection with the lottery;
- the lottery will not interfere with other already licensed lotteries in the same area.

Once a licence has been granted the operator is obliged to obey the following rules:

- he has to keep his costs as low as possible;
- he has to distribute the net revenues according to the provisions of the licence; he can entrust a third party with the distribution of the revenues.

² See footnote 1.

For certain small local lotteries the Lottery Acts contain a special provision which provides for a general authorisation. Lotteries which meet the requirements need not be licensed but have only to report to the relevant authorities. Lotteries have only to be reported if:

- the stakes do not exceed ECU 14.500;
- the net revenues amount to at least 1/3 of the stakes;
- they are organised only within one district and
- the period during which tickets are sold does not exceed 3 weeks.

The Deutsche Fernsehlotterie GmbH received a licence from the Minister of Finance of the city of Hamburg to operate the ARD TV-lottery.

4.3. Supervision and Control

The licensing authorities are also the authorities entrusted with the supervision of the lotteries.

The Deutsche Fernsehlotterie GmbH is supervised by the Ministry of Finance of the city of Hamburg.

4.4. Taxation

4.4.1. Lottery tax

Under the rules of the 'Rennwett- und Lotteriegesezt' only lotteries which require a licence are subject to lottery tax. The rate is 20% of the nominal value of the lottery tickets excluding tax or effectively 16 2/3% of the price.

Certain (small) lotteries are exempted from lottery tax if :

- the total stakes do not exceed ECU 97 (ECU 580 if the lottery takes place on a fair) or
- the net revenues are used for charitable purposes and the total stakes do not exceed ECU 36.200.

Foreign lottery tickets sold in Germany are subject to lottery tax at a rate of 25% of their price. This provision is of little practical value since —as we have learned— no major foreign lottery has ever been granted the permission to sell tickets in Germany.

Details on the tax procedures can be found in the 'Ausführungsbestimmungen zum Rennwett- und Lotteriegesezt'. The lottery operator is liable for lottery tax from the moment he receives the licence. The operator has to register the lottery at the *Finanzamt* submitting details on the lottery such as date, time and place of the lottery, number and price of tickets. Lottery tax has to be paid to the *Finanzamt* of the operator before the sale of tickets starts.

4.4.2. VAT

No VAT is levied on the sale of tickets of those lotteries that are subjected to lottery tax. The sale of tickets of lotteries exempted from lottery tax is subject to VAT.

4.4.3. Income tax

Private lottery operators are taxed on their income from lotteries as income from self-employment or from trade.

4.5. Distribution of Profits

The ARD TV lottery pays the net revenues to the foundation 'Stiftung Deutsches Hilfswerk' where they are used for charitable purposes.

In 1989 the net revenues amounted to ECU 16,6 million or 50% of the stakes.

4.6. Tax Revenue

The Deutsche Fernsehlotterie GmbH paid ECU 5,6 million lottery tax in 1989 or 16,67% of the stakes.

4.7. Market Information

Two TV lotteries are presently licensed to operate in Germany as detailed in 4.1.

4.8. Barriers

Operators who want to organise a private lottery can obtain a licence provided that the legal requirements are met. Theoretically there are no barriers to entry in the market although the final decision lies with the licensing authorities and no operator can claim a right to obtain a licence.

5. CASINOS

5.1. Legislation

The competence to legislate on casinos rests with the *Länder*. Each *Land* has its own 'Spielbankengesetz' (Casino Act). These state laws are worded similarly and in some *Länder* the old federal law on casinos of 1933³ is still in force. Most of the Casino Acts stipulate who can operate a casino, in which cities a casino can be established, the gambling tax paid to the state, the games allowed, the opening hours and days of the casinos and the gambling age.

5.2. Authorisation and Licensing

Table 2 contains a summary of the Casino Acts of the German *Länder*. In all of them it is the Minister of the Interior who authorises or grants the licence to operate a casino. In some states the Casino Act names explicitly the municipalities where a casino can be set up. In general, these are only big cities and touristic areas

The question of who is eligible to operate a casino is handled differently by the eleven states. In four *Länder* (Bayern, Bremen, Niedersachsen and Nordrhein-Westfalen) private operators are not granted a licence. In the remaining seven *Länder*, private ownership is possible. In some states, however, a state-owned company must be share-holder in the casino company.

5.3. Supervision and Control

In all *Länder* the Ministers of the Interior are in charge of supervising the casinos by executing the Casino Acts. Their main task is to control that the conditions under which the licence was granted are complied with by the operator.

The Ministries of Finance supervise the compliance with the provisions concerning the casino fee by placing controllers in every casino. The controllers are present during the opening hours of the casino and supervise the counting of the daily gaming revenue.

³ "Gesetz über die Zulassung öffentlicher Spielbanken vom 14.7.1933"

Table 2. Legislation on casinos in Germany

Land	Baden-Württemberg	Bayern	Berlin	Bremen	Hamburg	Hessen
Laws	Spielbanken G 1933 Spielbanken Vo 1938	Spielbanken G 1933 Spielbanken Vo 1938	Spielbank G 1973 Spiel O 1983	Spielbank G 1978 Spiel O 1979	Spielbank G 1976 Spiel O 1977	Hess.SpielbG 1988 Spiel O 1989
Licensing restrictions in the Laws	—	only Staatliche Lotterieverwaltung can operate casinos	"Konzession" (license) given only to private person or legal person of private law	"Konzession" only to legal person of public law	—	License granted only for certain locations
Private operator eligible	YES	NO	YES	NO	YES	YES
Gambling Age	21	21	21	18	18	21
Land	Niedersachsen	Nordrhein-Wf.	Rheinland-Pfalz	Saarland	Schleswig-Hst.	
Laws	NSpielb G 1989	SpielbG NW 1974 SpielO 1976, 1980, 1985	Spielb G 1985 Spielb Vo 1986 SpielO 1986	Spielbanken G 1933 Spielbanken Vo 1938 Spielbank O 1979	Spielbanken G 1933 Spielbanken Vo 1938 Spiel O 1982	
Licensing restrictions in the Laws	operator's shares must be owned directly or indir. by the state	only legal persons of public law eligible state does not take any shares	—	—	—	
Private operator eligible	NO	NO	YES	YES	YES	
Gambling Age	18	18	21	18	18	

5.4. Taxation

5.4.1. Casino Fee

Gambling casinos are subjected to a special casino fee which covers all federal, state and municipal taxes. It is levied as a state tax at a rate of 80% of the gross gambling revenue, i.e. the total stakes minus the winnings paid.⁴

Of the casino fee yields the Federation receives a share of 4%. The municipalities on whose territory a casino has been established receive a share of the casino fee that varies by state between 10 and 30%. The rest accrues to the budgets of the *Länder*.

In Bremen, 50% of the casino fee yields are paid to the foundation 'Stiftung Wohnliche Stadt' to be used for urban planning purposes. In Rheinland-Pfalz the health resort administrations in cities with casinos receive an additional 10% of the casino fee yields.

5.4.2. Tronc Fee

According to the Casino Acts all the tips which the personnel of a casino receive have to be deposited in a special container, the tronc. The tronc has to be used to pay the salaries, social security contributions and other benefits to the personnel. The remaining part of the tronc has to be distributed evenly among the casino employees.

The casino operators are required to count the tronc every day and keep records. In general, the tronc amounts to 50% of the casinos' turnover.

Most of the *Länder* levy a special fee on the money collected in the tronc, the tronc-fee. The rate varies by state between 2% and 25%.

5.5. Distribution of Profits

The operating profit of the casinos is not subjected to any specific distribution schemes but belongs to the operator. In Bavaria, for example, where the state is operating the casinos the profit accrues to the state budget. Private operators' profits are subject to (corporate) income tax.

⁴ In Schleswig-Holstein the tax rate is progressive from 73 to 88%.

5.6. Market Information

There are 32 casinos in operation in Germany.

Land	Location
Baden—Württemberg	Baden—Baden
	Konstanz
Bayern	Bad Kissingen
	Bad Reichenhall
	Bad Wiessee
	Garmisch Partenkirchen
Berlin	Lindau
	1
Bremen	1
Hamburg	1
Hessen	Bad Homburg
	Wiesbaden
Niedersachsen	Bad Bentheim
	Bad Zwischenahn
	Bad Harzburg
	Hittfeld
	Norderney
	Borkum
	Hannover
Nordrhein—Westfalen	Bad Pyrmont
	Aachen
	Bad Oeynhausen
Rheinland—Pfalz	Dortmund
	Bad Neuenahr
	Bad Dürkheim
	Bad Ems
	Mainz
	Trier
Saarland	Saarbrücken
	Schloß Berg
Schleswig—Holstein	Westerland/Sylt
	Lübeck

These 32 casinos are operated by 16 operators. With two exceptions the operators own casinos only in one state.

5.7. Barriers

In the seven *Länder* where a private operator can obtain a licence (see Table 2) there appears to be no statutory barrier for a foreign operator other than the requirement for residence or incorporation in Germany. However, the licensing authorities' discretion in determining if unspecified requirements (such as reputation, commercial soundness etc.) are met could be used as a barrier.

In Bayern, Bremen Niedersachsen and Nordrhein-Westfalen foreign operators are legally barred from receiving a licence. In these *Länder*, the state has reserved the right to operate the casinos through a state-owned company.

6. HORSE RACING

6.1. Legislation

The power to regulate betting on horse lies with the Federation. The legal base for betting on horse races is the 'Rennwett- und Lotteriegesezt' (Act on horse races and lotteries), a federal law of 1922 which contains the basic principles on the organising of a totalisator and the bookmaking. It confers on the states the right to legislate on details regarding the granting of licences and specifying the relevant authorities.

6.2. Authorisation and Licensing

The 'Ausführungsbestimmungen zum Rennwett- und Lotteriegesezt' contain details on the licensing requirements for totalisators and bookmakers as well as on the taxation of horse race betting. A separate set of rules apply to the organising of a totalisator and to the business of a bookmaker.

6.2.1. Totalisator

Only horse racing and horse breeding associations can apply for a licence to organise a totalisator. The licence is issued for a specific race track and can be subject to restrictions and limitations which are set by the relevant authority.

The main condition under which the licence is granted is that the operator has to use the revenues solely for prizes and the promotion of the horse breeding in the state. To this end he has to provide the authorities with a detailed distribution plan. The authorities can require further proof of the lawful distribution of the revenues.

The operator must allow bookmakers to trade at the race track and has to assign to them a fixed spot in return for a fee.

The licensing authority can authorise the operator of a totalisator to establish shops outside the race track and to except bets also for other totalisators.

In Bremen, Berlin and Hamburg the licensing and supervising authority is the Senator of the Interior. In Baden-Württemberg and Nordrhein-Westfalen the *Regierungspräsident* is in charge of authorising and supervising totalisators.

In all other *Länder* the power to authorise and supervise lies with the Minister of Agriculture.

6.2.2. Bookmaker

The business of a bookmaker is considered as a trade under German trade law. Bookmakers must be in possession of a valid permit both for on-track and off-track bookmaking before accepting bets. Permits are only granted to applicants who are deemed suitable and can show that they have the necessary skills for a bookmaker. For every person working with the bookmaker and on his account a separate permit is required.

It has been the practice of the state authorities in Germany (with the exception of those in Rheinland-Pfalz) to grant bookmaker licences only to an individual and not to a partnership or a corporation. This practice has been highly disputed in the past years but was upheld in the case *Ladbroke versus Regierungspräsident Nordrhein-Westfalen* before the Administrative Court in Düsseldorf.

Before a permit is issued the applicant has to deposit a security guarantee. The amount is set by the licensing authority in relation to the size of the operation. The guarantee is used in the case of non-payment to cover tax debt, fines and outstanding payments of winnings.

The permit has to contain the race tracks and the shops where the bookmaker can operate. It can contain restrictions and limitations regarding the exercise of the bookmaker's business.

In general the licensing authority for bookmakers is the same as for totalisators. In Bayern the district police issues the permits and in Hessen, it is the *Regierungspräsident*. In Schleswig-Holstein the permits are granted by the Minister of Economics.

6.3. Supervision and Control

The licensing authorities are also entrusted with the supervision of totalisators and bookmakers.

6.4. Taxation

6.4.1. Totalisator

The operator of a totalisator is liable for betting tax. The tax is levied on the total stakes at a rate of 16 2/3%. The 'Ausführungsbestimmungen zum Rennwett- und Lotteriegesezt' contain details on the tax procedure and the bookkeeping requirements for the operator.

One peculiarity of the German betting tax system is the fact that the racing associations operating a totalisator receive a refund on the betting tax of 96% therefore only pay 4% of the tax. At a tax rate of 16,67% the actual tax burden is reduced to 4% of 16,67 or 0,66% of the total stakes. The refund has to be used exclusively to finance horse racing.

6.4.2. Bookmaker

a. Betting tax

The bookmaker is liable for betting tax on the total stakes at a rate of 16 2/3%. The tax is calculated for each race on the basis of the bets placed. The 'Ausführungsbestimmungen zum Rennwett- und Lotteriegesezt' contain details on the tax procedure and the bookkeeping requirements.

b. Other taxes

In addition to betting tax bookmakers are liable for trade tax and income tax.

6.5. Distribution of Profits

a. Trotting races

The horse racing associations organising trotting races are grouped in the 'Hauptverband für Traberzucht und -rennen e.V.' (HVT).

The HVT achieved a totalisator turnover of ECU 180,3 million in 1989. The payback rate was 80% and amounted to ECU 144,3 million. An amount of ECU 29,0 million (16% of T/O) was paid in prizes and breeding premiums. The net betting tax amounted to ECU 1,2 million leaving the HVT with a profit of ECU 5,8 million to spent on horse breeding in accordance with the articles of association.

b. Gallop races

Gallop races (thoroughbred races) are organised by the 'Direktorium für Vollblutzucht und Rennen e.V.' on 55 race tracks.

The 'Direktorium' achieved a turnover of ECU 275,8 million in 1989. ECU 208,5 million were paid in winnings which represents a payback rate of 75%. The net betting tax amounted to ECU 1,8 million leaving the 'Direktorium' with net revenues of ECU 65,5 million. This amount has been used for prizes, premiums and the promotion of horse breeding. The refund of betting tax is used to finance the races.

6.6. Tax Revenue

The HVT paid ECU 30,0 million on betting tax in 1989. It received a refund of ECU 28,8 million reducing the net tax burden to ECU 1,2 million for 1989.

The 'Direktorium' paid ECU 46,0 million on betting tax and received a refund of ECU 44,1 million.

6.7. Market Information

10 horse racing associations organising trotting races are grouped in the 'Hauptverband für Traberzucht und -rennen e.V.' (HVT).

In 1989 the HVT organised 9243 trotting races on 807 race days.

Gallop races (thoroughbred races) are organised by the 'Direktorium für Vollblutzucht und Rennen e.V.' on 55 race tracks.

6.8. Barriers

6.8.1. Totalisator

The requirement that the operator of a totalisator can only be a horse racing association situated in the state where applying for the licence limits effectively the chance of a foreigner to be granted a licence. In addition the law clearly states that the net revenues have to be used to promote horse breeding in the respective state.

6.8.2. Bookmaker

The question whether a foreigner can do business as a bookmaker in Germany is mainly a question of German trade law which sets the requirement of residing in Germany and obtaining a German trade permit. The 'Rennwett-u-Lotteriegesetz' does not discriminate against foreign applicants. The German authorities, however, apply the law in such a way as to grant a licence only to an individual. This practice certainly represents a barrier for foreign corporate bookmakers wishing to enter the German market.

7. GAMING MACHINES

This section covers amusement machines which provide cash prizes and where the player cannot influence the outcome of the game.⁵

German legislation widely restricts the operation of gaming machines with cash prizes outside casinos in two ways:

- the machines only accept small stakes and pay back only small amounts as winnings;
- they are only allowed in amusement arcades and the number of machines per location is limited to ten.

This clearly reflects the legislators' motives that gaming machines should primarily serve the purpose of entertainment, offering negligible winnings, outside casinos.

The gaming machines are dealt with in the 'Spielverordnung' (Act on Gaming Machines) of 11 December 1985. The taxation of gaming machines is covered by the Law on entertainment tax and the VAT Act. The commercial activity of operating a gaming machine is covered by the 'Gewerbeordnung' (Trade Act).

Due to stricter rules introduced in the Spielordnung 1985 the number of gaming machines with cash prizes has steadily decreased over the past five years. The German Association of Gaming Machine Operators estimates that by the end of 1990 another 10.000 machines will have to be removed when the transitional period set out in the Spielverordnung 1985 will come to an end.

For machines already installed a grace period has been granted until 1996 during which the old rules stay in force. The legal regime set out below, therefore, applies only to the setting up and operating of new machines.

7.1. Legislation

The operation of a gaming machine with cash prizes requires that:

⁵ Note that the gaming machines set up in casinos do not fall under the legislation discussed in this section but are covered by the Casino Acts of the *Länder*.

- the operator holds a permit issued by the 'Gewerbebehörde' (trade authority);
- the gaming machine has passed inspection by the 'Physikalisch-Technische Bundesanstalt' (Federal Institute of Physics and Technology) and that
- the operator has obtained a certificate of non-objection from the 'Bundeskriminalamt' (Federal Bureau of Criminal Investigation).

7.2. Authorisation and Licensing

In order to be able to lawfully install and operate a gaming machine its owner must hold a trade permit issued by the local 'Gewerbebehörde'. The permit will be refused if the applicant is not deemed to be suitable which is the case if he has been involved in previous illegal gambling or been convicted of a crime.

Once a permit has been obtained the 'Gewerbebehörde' has to certify that the premises of the operator are suitable and comply with the provisions of the Spielverordnung.

Gaming machines which offer cash prizes can only be legally installed in amusement arcades. The maximum number per location is ten with the proviso that only one machine can be installed per 15m².

Prior to installation the machine must have passed a technical inspection at the 'Physikalisch-Technische Bundesanstalt'. The purpose of the inspection is to verify that:

- the chances to win are the same in every game;
- the machine cannot be influenced by the player;
- a break of 15 seconds is built in between two games;
- the payback rate is at least 60%;
- the number of free games won does not exceed 150 in a row and
- the maximum stake does not exceed ECU 0,20 and the maximum win per game does not surpass ECU 2,0.

The Federal Bureau of Investigation has to certify that the gaming machine cannot impose excessive financial losses on a player in a short period of time.

7.3. Supervision and Control

The local 'Gewerbebehörde' is in charge of supervising and controlling the operation of gaming machines.

At the federal level the Minister of Economics is in charge of executing the Spielverordnung as well as the Gewerbeordnung.

7.4. Taxation

7.4.1. Entertainment tax

The operator of a gaming machine is liable for entertainment tax. This tax is levied by the municipality in which the operator is established.

The actual tax rate varies by state and municipality. The Federation has set the maximum rate at ECU 130 per month and machine. Most of the big cities charge the maximum amount whereas smaller municipalities have set the rate considerably lower.

7.4.2. VAT

VAT is levied on the service of providing the opportunity to play a gaming machine. The tax rate is applied on 1,5 times the revenue received from the machine. This factor has been chosen to offset the amount of money the machine paid back in winnings.

7.5. Distribution of Profits

The profit received from operating a gaming machine is not subject to any rule regarding distribution but is treated as regular income from trade.

7.6. Tax Revenue

7.6.1. Entertainment tax

Since the entertainment tax is levied by the municipalities and at different rates it is very difficult to give figures for the whole country.

7.6.2. VAT

In 1989 the 'Bundesrechnungshof' (Federal Court of Auditors) criticised the government for not effectively collecting VAT on gaming machines thus losing around ECU 159,4 million on tax yields for the treasury in 1987.

The government has since reacted announcing that it will raise the multiplier from 1,5 to 2,5 therefore levying VAT on 250% of the amount contained in the gaming machines. Eventually the government plans to base the tax assessment on the total stakes using a built-in counting mechanism.

7.7. Market Information

In 1989 173.800 gaming machines with cash prizes were in operation in some 5000 amusement arcades throughout Germany. The number was down from 179.600 in the year before and from 182.000 in 1987.

7.8. Barriers

There do not seem to be any barrier to operating a gaming machine as long as the requirements for obtaining a licence are fulfilled.

GREECE

**STUDY OF THE LEGAL AND MARKET SITUATION IN ALL THE MEMBER STATES
CONCERNING BETTING, GAMING, LOTTERY AND SIMILAR ACTIVITIES
IN VIEW OF THE COMPLETION OF THE INTERNAL MARKET**

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GREECE

1. LOTTERIES

1.1. National Lotteries

There are three National Lotteries in Greece:

- The Laiko (Popular) Lottery
- The Ethniko (National) Lottery
- The Kratiko (State) Lottery

The games are identical. The Kratiko is a once-a-year lottery with a grand prize. The Laiko and Ethniko are weekly. The lotteries are identified as being different because the recipients of the revenues are different for each lottery.

1.2. Legislation

Principal legislation are the Laws 3865/57, 3764/57 and 3777/57. These laws basically formalise the sole powers of the Ministry of Finance to run lotteries and how the stakes and revenues should be managed.

Under the legislation, private lotteries and foreign lotteries are illegal.

- The net revenue from the lottery game is passed to the State budget
- The level of profit, tax on player's winnings and regulations on lottery operations and issues are decided by ministerial decrees.

1.3. Authorisation and Licensing

The distribution and sale of the three lotteries is organised via a network of regional agents who are appointed by the Department of Lottery.

A new agent must obtain consent to operate from the Committee of Lottery Management. Following consent, the application is then sent to the Minister of Finance for approval. The General Secretary to the Minister of Finance is the President of the Committee of Lottery Management. Such an arrangement en-

sure that there is no friction between the Committee and the Ministry of Finance, both in terms of licensing and supervision.

1.4. Supervision and Control

The General Secretary to the Ministry of Finance makes all the decision on the running and control of the National Lotteries with the exception of the following:

- Amendments to the lottery systems and rules for the games
- Establishment and appointment of lottery agents
- The allocation of funds resulting from the lottery

These three areas are the responsibility of the Minister of Finance who can alter the status quo by Ministerial Decree.

The agents are responsible for the control of a number of non-specialised outlets. It is their responsibility to ensure:

- Cash and ticket collection
- Ticket and winnings distribution
- Distribution of marketing materials
- Completion of audited reports for each event
- Handle any complaints and report them to the Lottery Department

Staff at the Lottery Department audit the agents return for each event. Random spot checks are carried out at outlets and of winners to confirm the validity of the returns.

Current ticket processing is decentralised, with some tickets being checked manually and some through off-line optical readers. This is currently under review with an aim to improve accuracy and security.

1.5. Taxation

1.5.1. Direct Tax

At flat rate tax of 10% on players' winnings is deducted at source.

1.5.2. VAT

The value of lottery tickets is not subject to VAT. Commission paid to agents and vendors is subject to VAT at the standard rate.

1.6. Distribution of Profits

The Lotteries operate as a division of the Ministry of Finance. Their expenses are incorporated in the Ministry's annual budget. An amount equivalent to 14% of turnover is paid out in commission. The balance of earnings less returns to players in the form of winnings is retained by the Ministry of Finance.

65% of the gross income from Ethniko Lottery and Laiko Lottery sales is allocated to the winners, while 2% of the net income is allocated to the Invalids and War Victims Fund. The rest is kept by the State.

53% of the gross income from Kratiko Lottery sales is allocated to winners. An amount is allocated to several foundations, hospitals, etc. Both the Minister of Finance and the Minister of Health and Social Security decide to which foundations and hospitals this income will be allocated.

1.7. Barriers

It is forbidden for private or foreign lotteries to operate in Greece.

2. TOTTO

Totto is a football bet based on predicting the outcome of a series of football matches. Each match gives three options: a home win, a draw, an away win. There are thirteen matches and it is possible to bet on more than one combination of results.

2.1. Legislation

The Law 3865/57 of 1957 facilitated the organisation of football betting in Greece. Under the legislation, the Undersecretary of Culture, responsible for Sport via the General Secretariat of Sport (GSS), controls football betting in Greece.

The principle of the legislation allows the establishment of an organisation to handle all football betting under the auspices of the GSS.

2.2. Authorisation and Licensing

The OPAP was founded in 1959 as a state-controlled vehicle for football betting. The Board of Directors manage the day-to-day operation of football betting. They report to the GSS who monitor their operation.

The distribution of tickets and collection of stakes is, like the Lottery, the responsibility of regional agents. New agents are licensed by the Board of Directors of OPAP. The licence requires the approval of the Undersecretary for Sport.

2.3. Supervision and Control

The OPAP is under the supervision of the State through the GSS headed up by the Undersecretary of State. The OPAP and GSS work very closely together with GSS personnel on the board of OPAP.

All decisions relating to any changes in the games or management systems require the approval of the Undersecretary of Sport. Any changes in the constitution of OPAP would also be subject to the approval of the Undersecretary of Sport.

The GSS audit the OPAP on an annual basis or more often if desired by the Undersecretary of Sport.

The regional agents are responsible for:

- Ticket collection and distribution,
- Stake collection and winnings distribution,
- Distribution of marketing materials
- Completing audited returns for each event
- Handling of complaints and their referral to OPAP

Ministerial decree ensure 45% of winnings are repaid. The large bulk of the balance goes to the GSS, i.e. 36.3%. The rest is broken down into costs and is provided to various pre-identified sporting beneficiaries.

OPAP audit the agents returns for each event and random physical spot checks are carried out on each agent.

The OPAP also has an off-line ticket reading capability and tickets are sorted in different collection centres. They are currently reviewing a proposal to move to an on-line ticket processing system which will improve control.

2.4. Taxation

2.4.1. Direct Tax

There is a 10% players winnings tax deducted at source on all winnings over ECU 140.

The organisation of football betting (OPAP) does not make a profit but has costs fixed at 10.7% of turnover. Any excess revenue due to good management resulting in lower cost would be subject to standard corporate tax.

2.4.2. VAT

Stakes on Tutto are not subject to VAT. Commission for vendors and agents are subject to VAT.

2.5. Barriers

The OPAP is the only body allowed under current legislation to organise bets on football in Greece. Competition by way of new entrants or cross-border postal betting are illegal.

3. HORSE RACING

3.1. Introduction

Greece has only one race track which is located near Athens. Three meetings are held each week throughout an 11-month season.

The Horse Racing Organisation of Greece is a State-owned body with exclusive responsibility for all horse race betting in Greece. There are two types of horse racing bet in Greece, an on-track totalisator (or pari mutuel) and an off-track sweepstake.

3.2. Legislation

The legislative framework for horse race betting was defined in 1925 and subsequent amendments fall within the competence of the Secretary of State for Culture.

3.3. Authorisation and Licensing

The Horse Racing Organisation (HRO) of Greece was founded in 1925 to organise horse racing and to control and manage horse race betting in Greece.

The Horse Racing Organisation of Greece (Philippos Association of Greece) is managed via a Board of Directors. They, in turn, report to the General Secretariat of Sport (the GSS).

The Horse Racing Organisation is responsible for:

- Organisation and number of race meetings
- Types and number of races
- Handicapping
- Registration of race horses
- Organising betting
- Nominating prize money
- Establishing racing rules.

Their task is made much easier by the fact that there is only one registered race course in Greece. The HRO manage the collection of on-track bets themselves.

All decisions made by the HRO must be approved by the Undersecretary of State for Sport via the GSS.

3.4. Supervision and Control

The GSS audit the operations of the Horse Racing Organisation on an annual basis or more often if the Undersecretary for Sport demands.

The Horse Racing Organisation controls the collection of on-track bets via its own staff operating the totalisator.

The off-track sweepstake is controlled via collectors whose returns are audited and spot-checked by HRO staff prior to the draw of tickets.

3.5. Taxation

3.5.1. Direct Tax

Players' winnings from horse races are not subject to taxation. There is a 10% fixed tax rate applied to players' winnings from the sweepstake. Taxes on sweepstake winnings are withheld by the HRO and are refunded to the State by the completion of appropriate tax returns. Each year the HRO is obliged to pay to the state a fixed amount of tax. This was initiated in 1983 and was set at ECU 3,7 million.

The above amount is subject to a 5% increase per year.

Yearly Tax Payments to the State

Year	Tax Payments (in .000 ECU)
1983	3.690
1984	3.875
1985	4.069
1986	4.272
1987	4.486
1988	4.710
1989	4.722

3.5.2. VAT

Stakes are not subject to VAT. The HRO is a government vehicle although when trading it is subject to standard VAT.

3.6. Distribution of Profits

80% of all revenues from horse racing and 50% of all revenues from the sweep-stake is distributed to the winners. 13.85% is kept by the HRO. A part of it is used to finance operating expenses of the HRO while the remainder is transferred to the GSS which allocates it to various athletic and cultural organisations.

3.7. Barriers

Off-track horse race betting is forbidden under Greek law. Only the State-run HRO may organise horse race betting at the race-track. Competition cannot therefore enter the market.

4. CASINOS

Casinos were introduced to Greece following the change to a democratic government.

Casinos are seen as a vehicle to encourage tourism. This is reflected in the regulatory framework in which they operate.

4.1. Legislation

Casinos in Greece are regulated by the Greek Tourism Organisation which reports directly to the Minister of Tourism, who controls casinos by ministerial decree.

Under legislation, Greek nationals are not allowed to be members of casinos in Greece unless they can prove an income of over ECU 5600 per annum. They must have their income tax return to present at the casino.

4.2. Authorisation and Licensing

The Minister for Tourism grants licences for casinos. The casinos operate under the direct supervision of the state. Licences to operate casinos are granted if it is proved that it would benefit the tourism of an area.

The terms and conditions of a licence are negotiated individually with each applicant and are subject to approval by Parliament. After approval, the Minister of Tourism will grant a licence.

The licence covers:

- opening hours
- complementary services
- type of games
- number of tables
- minimum and maximum stakes
- security procedures
- membership conditions

4.3. Supervision and Control

A member for the Greek Tourism Organisation is present during the entire time the casino is open for gaming. The casino is also audited on a regular basis by the GTO.

4.4. Taxation

4.4.1. Direct Tax

Winnings are not subject to taxation. The casino gross revenue (entrance fee and gaming winnings less costs) are subject to 80% tax by the state. The 20% balance is kept by the operator.

The operator is subject to normal corporate tax rates of 46% on undistributed profits, 47% on dividends.

In Greece the operators interests are not solely the casino, which in each case forms part of a greater leisure complex of hotels, restaurants and sports facilities.

4.4.2. VAT

Stakes are not subject to VAT. The licensee is subject to the standard corporate VAT regime.

4.5. Distribution of Profits

Following taxation the licensee may distribute profits as they see fit.

4.6. Barriers

Because of the requirement of physical presence when playing the game, cross border betting considerations do not apply.

The licences are granted on an individually negotiated basis and are therefore open to some subjectivity regarding ownership by non-Greeks.

IRELAND

**STUDY OF THE LEGAL AND MARKET SITUATION IN ALL THE MEMBER STATES
CONCERNING BETTING, GAMING, LOTTERY AND SIMILAR ACTIVITIES
IN VIEW OF THE COMPLETION OF THE INTERNAL MARKET**

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IRELAND

INTRODUCTION

The major principles underlying the development of gambling and gaming legislation are the protection of participants from 'evil doers', the control of an activity that will take place whether legal or illegal and the collection of taxes.

In Ireland, betting on horse racing is the most important form of gambling and gaming. The National Lottery, launched in 1987, has introduced another form of 'gambling and gaming', which now accounts for nearly a third of the total market. Non-national lotteries, gaming machines, dog racing and prize bonds take up the remainder of the market.

Separate legislations govern on- and off-course betting. The regulatory and tax systems encourage horse and greyhound race betters to visit the race-tracks, stimulating the track's income and hence improving the racing industry's infrastructure. The off-track set up tends, however, to allow an important degree of tax evasion.

The development of the gambling and gaming industry in the Republic of Ireland is closely linked to that of the United Kingdom, which controlled the country until the 1920s.

The relationship continued after independence with an open border between the Republic and Northern Ireland. In 1985, off-track bookmaking tax levels were reduced from 20% to 10%, closer to the UK tax level of 8%.

The major legislation is as follows:

Betting Act, 1931 as amended

Racing Board and Racecourses Act, 1945, as amended in 1975

Gaming and Lotteries Act, 1956 as amended

National Lottery Act, 1986

Ireland's legislation does not allow its citizens to participate in any external gambling or gaming activity without their presence in that country. Even with physical presence, Ireland's currency control legislation limits the scope of such activity.

New legislation, the National Lottery Act, was set up in 1986, to launch the Irish National Lottery. The legislation ensures the National Lottery is run as a

monopoly product. The 1986 Act is totally different to the legislation applying to non-national lotteries.

While gaming machines are lawful under Irish law, the permit system allows local authorities considerable latitude. Public opinion tends to regard gaming machines very negatively.

Prize bonds are another form of gambling and gaming; the national authorities have recently made an attempt to update the management of prize bonds.

Unlike the United Kingdom, casinos are prohibited under the Gaming and Lotteries Act, 1956, which prohibits, subject to certain exceptions, the promotion of gaming in which the chances of all players, including the banker, are not equal.

Numerous requests have been made for the amendment of this legislation so as to allow casinos in Ireland. Successive governments have refused to comply with these requests because "the law could not restrict the right to establish a casino sufficiently to prevent a new dimension in gaming from establishing itself and experience elsewhere has shown that sooner or later gambling of this kind attracts criminal elements and necessitates elaborate controls. Any advantages deriving from large scale gambling by way of taxation [...] have not been thought to be adequate compensation for the possible social problems that might arise".

1. HORSE RACING AND GREYHOUND RACING

1.1. Legislation

Horse racing in Ireland operates under two completely different legislative frameworks. The Betting Act 1931, as amended, concerns only off-course betting, while the 1945 Racing Board and Race Courses Act governs on-course betting on horses.

The very existence of two separate legislative foundations is clear evidence of the differences between both types of activities. Due to its concentration in one area, on-track racing is significantly easier to control. On-course betting tends to be a weekend outing rather than a daily pastime, which often is the case with off-track betting. There is thus less need for strict regulation.

The fundamental theme underlying existing legislation is one of strict regulation of the operation of bookmakers, both on-course and in registered off-track bookmakers' offices. Rather than have undercover controlled betting activities, it was decided to legalise these activities but subject them to strict control and protect people from the evils of gambling. Doing so would yield useful revenue as a consequence.

Monitoring and controlling of off-course betting is embodied in the Betting Act, 1931, as amended. Wide discretionary powers given to the licensing bodies in horse racing. They are free to decide on what is meant by 'personal fitness'. The Betting Act of 1931 gives extensive power to the Garda Síochána (The Irish Police), Minister for Justice and Customs & Excise and there are penalties for non-compliance with the Act.

There have been no significant recent changes in the application of the Betting Act. As far as Excise duty is concerned, it should be noted that up to 1985 the duty was 20% and it was apparent that the revenue from this tax did not reflect the level of business in the country. It was recognised that, due to the high level of the tax, 'black' (tax free) bets were being placed with unregistered bookmakers. After representations by the interested bodies the tax was reduced and now stands at 10%.

On-course betting in Ireland is run by the Racing Board, a semi-state body, with the purpose of improving horse racing and breeding in Ireland. It is the only body in Ireland licensed to run a Tote, and is responsible for revenue collection and distribution on-course. The Racing Board reports to the Department of Agriculture and must also consult with the Department of Finance. The Racing Board may establish, equip and maintain race courses.

The Racing Board is financed by the 5% levy it imposed on all on-track betting. It receives no financing directly from the government, as is common in most other Member States. In this sense, off-course betting does not finance on-track betting.

The Racing Board is not allowed to have off-track betting offices, unlike many other European countries.

The Turf Club, a totally independent body, is responsible for rules and administration regarding horse racing.

On-course gambling and horse racing is not subject to duty (but is subject to a 5% levy). There is a statutory control by the police that those who accept wagers at racetracks are of adequate repute. The same is true of greyhound racing. Both these open air activities tend to be regarded as of better moral stature and less likely to be widely addictive than indoor betting activities. They are considered less suitable as a base on which to impose tax, mainly because additional taxation (on top of a 5% levy and a race course entrance fee) would discourage people from going to the race.

These outdoor activities were during the conception of legislation seen as activities of wealthier people, and were perceived as being less in contact with criminal elements and thus less in need of control. On-track betting tended to be seen as entertainment rather than as gambling.

Indoor activity e.g. betting offices (which generally accept bets on horse racing, greyhound racing, other sporting activities and just about anything else) and gaming machines were seen as a subject for more detailed regulation and higher taxes.

An illustration of the differentiation between on- and off-course betting is the issue of enforceability through the courts of betting debts. In principle, betting debts are not enforceable through the courts, in order to reduce the chances of punters being manipulated. This principle is applied to off-track betting. On-track betting, on the contrary, is apt to be collected through official judiciary channels. On-track betting, against the Tote, is not considered to be 'betting'. By definition, a Tote cannot lose money, and therefore is considered to be an 'investment' rather than a 'bet'.

The 1931 Betting Act prohibits advertising relating to betting. In practice, however, bookmakers are allowed limited forms of advertisement (prices on horses ...). The law states, for example, that no advertising should be visible in the windows of betting shops; by general consensus this law is not effectively enforced.

1.2. Authorisation and Licensing

Under the Betting Act, 1931, any person wishing to obtain a bookmakers licence must, in the first instance, apply to the Garda Siochana for a certificate of personal fitness. If the person intends to operate a bookmaker's office, the application must be sent to the Garda Siochana in the area in which the bookmaker's office is to be located. If he does not wish to operate a bookmaker's office but operate solely at race or greyhound meetings as an on-track bookmaker, the application for personal fitness must be made to the Garda Siochana in the area in which he ordinarily resides.

The application must be preceded by a notice in at least two newspapers circulating in the area of the Garda Siochana office to which the applicant is about to apply. The notice would indicate the intention of making such an application. The application must be on a prescribed form and countersigned by two Police Commissioners.

The Garda Siochana has up to 14 days within which the certificate of personal fitness may or may not be issued.

Any person who is ordinarily resident outside Ireland and desires to obtain a bookmaker's licence may, after publishing the notice already referred to, apply in the prescribed manner and form to the Minister for Justice for a certificate of personal fitness. The Minister may, at his absolute discretion, issue or refuse to issue a certificate. If the Minister refuses to issue the certificate, he is under no obligation to state the grounds on which such refusal was based.

This discrimination against non-residents was introduced as a supplementary guarantee to ensure that those organising betting activities would be completely above-board. While it was easier to ascertain the character of locals, it was less easy to do so with foreigners. The spirit of the law is one of keeping foreign and local criminal elements out of the betting scene.

There are various grounds under which the Garda Siochana may refuse an application for personal fitness. Examples are arrears of betting duty, conviction of a crime or an offence under the 1931 Act, general character or known habits of the applicant.

Any person who wishes to register a premises for use as a betting shop, must make application to the Garda Siochana and publish a notice of that in-

tention in the newspapers (as previously described). The Garda Siochana has 14 days to issue or refuse to issue this certificate of suitability of premises.

A refusal may be made on one of various grounds, for example, the premises are in close proximity to a religious institution, place of worship, a school, premises known to be resorted to habitually by evily disposed persons, or close to another betting shop.

Appeals against refusals by the Garda Siochana both in respect of a certificate of personal fitness and in respect of a certificate of suitability of premises may be made to the District Court.

Once the necessary certificate(s) is/are granted, the individual then applies to Customs & Excise for a licence. This is normally a very straightforward transaction and the bookmaker's licence will be issued or renewed on payment of the annual licence fee.

Under the 1945 Racing Board and Race Courses Act, the Racing Board may hold a totalisator licence. It is the only body entitled to do so. The Racing Board may grant to any licensed bookmaker a permit authorising him to operate at race courses. The Board may also revoke such permits.

1.3. Supervision and Control

The powers of the three regulatory bodies (the Garda Siochana, Customs and Excise and the Ministry of Justice) are extensive. The following are some examples of the powers wielded by these authorities:

- Granting of or refusal to issue certificate of personal fitness.
- Revocation of licence if licensee is convicted of any crime or offence.
- Revocation of licence by the Minister for Justice if the licensee is convicted of any crime or offence in cases where certificate of personal fitness were issued by the Minister.
- Granting of or refusal to issue certificate of suitability of premises.
- Right of entry into and search of premises by an officer of Customs & Excise where bookmaking is suspected of being carried on.
- Penalties for obstructing, impeding, refusing to produce documents, answer questions, furnish name and address to Customs & Excise Officer.
- Right to removal of books, etc., by Customs & Excise if reasonable grounds for suspecting fraud exists.
- Restrictions on the use of registered premises and hours of opening (Garda).

- Restriction on the acceptance of bets by persons under 18 years of age (Garda).

Further examples can be found in the body of the legislation and show that this is a 'hands on', controlled, market environment.

1.4 Taxation

The bookmaker's licence, issued annually, costs ECU 209. Registration of bookmaker's premises, where applicable, is also subject to the payment of an annual fee of ECU 209. The issue of the licence and the registration of a premises are subject to the production of certificates of personal fitness and suitability of premises to the Customs & Excise authorities.

An excise duty of 10% is levied on all bets taken at bookmaker's premises. It should be noted that the duty applies not only to horse racing but to greyhound racing and other events in respect of which bets are taken. There is no excise duty levied on bets made on track at meetings.

The excise duty is collected by Customs & Excise on a 'self-assessment' basis. This means that the bookmaker computes the amount of bets taken in any one day and calculates the excise duty payable thereon. The duty is payable to the Customs & Excise on a weekly basis in arrears. A financial guarantee is in force to cover situations where the excise duty is not paid to Customs & Excise on time.

The controls exercised by the Customs & Excise authorities are essentially documentary coupled with spot checks. The bookmaker is obliged to enter all bets in an official record and retain all betting slips for a prescribed period of time. The Customs & Excise officer examines the records of the bookmaker and compares details with the betting slips.

Despite these controls the system for off-track tends to favour tax evasion at the betting office. Increased competition among bookmakers tends to accentuate the temptation to grant tax free betting, with bookmakers ready to take risks to keep customers.

In cases of credit betting, usually by telephone, tax free betting is even more difficult to trace.

1.5. Distribution of Profits

The bookmakers balance their books to entice play by offering attractive odds while ensuring their profit whichever horse wins.

Tax is paid at the time a bet is placed off-course by the player and this tax is itemised on the betting slip. The player has the option to pay tax on winning as opposed to the stake but given the optimism of players and the nature behind the transaction this is less than 5% of all bets placed.

The off-track bookmaker normally achieve a profit return of approximately 10% of stakes net of betting tax but before costs. He is free to distribute net profits as he sees fit.

The on-track bookmaker pays a levy to the racing board. As on-track bookmakers fix an individual as opposed to corporate book, it is easier to manage and they are more able to generate an improved margin to absorb the levy. He is again free to distribute net profits as he sees fit.

1.6. Tax Revenue

Off-track Excise duty is 10% of the amount of each bet.

There is a levy of 5% imposed by the Racing Board for bets on horse races and Bord na gCon for bets on dog races on the amount of bets taken by on-track bookmakers at meetings. The levy collected by each such body is primarily used for prize money. The balance is allocated to the upkeep and development of race courses and miscellaneous expenses.

The Racing Board has lobbied for a portion of the 10% off-track excise duty to be rechannelled into the horse racing industry, via the Racing Board. The government has not agreed to this, but it has agreed to annually grant the Racing Board an equivalent amount to cover structural projects consisting mainly of race course renovation.

The yield from excise duty on off-course betting in 1988 (the last year for which figures are available) was ECU 29,0 million. That figure is expected to rise to between ECU 32,2 million and ECU 34,8 million for 1989.

In 1988 a total of 873 on-track licences were issued and the licence duty collected was ECU 141.000. In that same year 1,177 premises were registered as bookmaking premises and the fees generated in respect of such registrations were ECU 190.000.

Excise duty, licence duty and fee for registering premises are one of a number of revenue generating taxes operated by the government to fund its expenditure programme. It is not possible to identify specifically to which particular use these duties and fees have been put.

Slightly less than ECU 117,1 million was taken in bets at horseracing meetings in 1988. The levy collected was just over ECU 5,9 million. Betting at greyhound racing meetings in 1988 amounted to ECU 37,3 million and the 5% levy amounted to ECU 1,9 million.

1.7. Market Information

The main horse racing companies in Ireland are Ladbrokes, Corals, Stanley Racing and Paddy Power. The first three are UK-based and have somewhere between 50 and 75 betting shops each. Paddy Power is the largest Irish-owned racing company. Between the four of them, they account for approximately 70% of off-course betting.

The 'take' from off-course betting on racing, both for horse and greyhounds, is expected to increase by approximately 10% during 1990. There is a greater attempt at improving facilities in betting offices such as the installation of satellite television which will improve the image of off-track betting, with a consequential increase in the amount of bets and revenue.

The off-track corporate bookmakers are shareholders of SIS (Satellite Information Service, a multinational group) which beams racing live into their shops from the UK, Ireland and occasionally Belgium and France. For a fee, all bookmakers, both large racing companies and small independent bookmakers, may acquire the rights to broadcast SIS races. In Ireland, it is generally agreed that SIS has a beneficial effect on off-course racing. By 'supplying' more races/events, it attracts more punters to betting offices. It goes without saying that only when all bookmakers have access to the system is a situation of unfair competition avoided. The introduction of SIS has also helped to upgrade the image of bookmakers; the fact that any such moves to upgrade betting shops is against the spirit of the 1931 Betting Act is usually ignored.

1.8. Barriers

Any person who is ordinarily resident outside Ireland and desires to obtain a bookmaker's licence may, after publishing the notice already referred to, apply in the prescribed manner and form to the Minister for Justice for a certificate of personal fitness. The Minister may, in his absolute discretion issue or refuse to issue a certificate. If the Minister refuses to issue the certificate, he is under no obligation to state the grounds on which such refusal was based.

Ireland already has cross-border betting. Irish punters are legally entitled to bet on both Irish and British racing. All off-course bets made on Irish soil, whether on local or foreign races, are taxed (10%) in the Republic. The only restrictions are those on currency, which, in any case, will be abolished by the end of 1992. Contradictorily, under legislation an Irish player could not credit or deposit bet on the same races if the bookmaker was in the United Kingdom.

Currently no revenue from bets placed in Ireland on foreign races goes to foreign governmental nor racing authorities.

2. LOTTERIES

2.1. Non-national Lotteries

2.1.1. Legislation

The Gaming & Lotteries Act, 1956, as amended, prohibits lotteries except in special circumstances. Four kinds of lotteries have been declared lawful:

- 'private lotteries' organised by societies and clubs for their members;
- 'occasional lotteries' held under garda permits;
- 'periodical lotteries' held under District Court licences (Periodical Lotteries Regulation, 1961) and;
- 'lotteries held at certain functions'.

The main games covered by the above legislation are bingo, and the National Rehab and Gael Linn Lotteries.

A 'lottery' includes all competitions for money or money's worth involving guesses or estimates of future events or past events the results of which are not yet certain or not yet generally known.

As long as they operate for charitable or philanthropic purposes, the law provides for lotteries at dances, concerts and at carnivals and other events. The precise definition of 'charitable' has not yet been firmly established by Ireland's courts.

Bingo is operated on a local social basis. It is used in the main by churches and clubs to generate additional income. The game is also played in local seaside resorts during the holiday season.

The primary motive behind the 1956 Act was to establish statutory controls which would avoid possible abuse or fraud of previously undercover activities, while ensuring that a reasonable proportion of the proceeds from the sale of lottery tickets would be made available to declared charities.

The Gaming & Lotteries Act, 1956, despite its subsequent updates, is largely considered to be *outmoded* and imposing onerous duties on lottery operators. These regulations were originally introduced in order to prevent fraud but have failed to keep pace with the changing technology of lottery games. For example, although the Act makes no provision for scratch and lotteries, this important part of the lottery business is nonetheless regulated by the Act. This anomaly is caused by the fact that scratch cards are not regarded as either gambling or gaming.

The playing of *electronic lottery* games such as Lotto is *effectively prohibited* in the context of non-national lotteries by virtue of:

- the current regulatory framework;
- the prize fund limitation (ECU 13.000);
- the onerous formal requirements in relation to lottery tickets;
- the wide definition of 'gaming' contained in the 1956 Act which may be wide enough to embrace electronic games requiring player participation as opposed to mere scratch card lotteries. In this latter regard, the wording of 'lottery game' for the purpose of the National Lottery is considerably wider.

Current legislation prevents lotteries from running joint prize funds.

2.1.2. Authorisation and Licensing

A clear distinction must be made between periodical lotteries on the one hand and private, occasional and functions lotteries on the other. Periodical lotteries may be promoted only under licence from the District Court (lowest level of Court in Ireland), while other lotteries need a permit from the Garda Siochana (the Irish police force). While statistics are hard to come by in this sector, periodical lotteries appear to generate significantly more funds than the other types of non-national lotteries.

a. Private Lotteries, Occasional Lotteries and Lotteries Held at Certain Functions

On the application, the Garda Siochana in the district in which the applicant resides may issue a permit for the promotion of a lottery, provided the lottery complies with the following conditions:

- the permit holder shall derive no personal profit from the lottery,
- the total value of the prizes shall be not more than ECU 3.900, and
- the value of each prize shall be stated on every ticket or coupon.

Such a permit can be granted only once in six months for the benefit of any one beneficiary. It may authorise the promotion of more than one lottery in conjunction with a carnival, bazaar, local festival, etc. but the prize money must not exceed ECU 3.900 a week.

b. Periodical Lotteries

Control over non-state periodical lotteries in Ireland is accomplished at two levels. The first level of control is through local District Courts (lowest level of Court in Ireland). A prospective promoter or organiser of a lottery must apply to the local District Court for a licence authorising the conduct of a lottery for the benefit of a named charitable purpose.

Such authorisation, if granted, will be subject to the promoter's compliance with the provisions of the Gaming and Lotteries Act, 1956-1986, notably Sections 28, 33 and 34. Section 28 stipulates that lotteries must comply with the following conditions:

- it shall be for some charitable or philanthropic purpose;
- the licensee shall derive no personal profit from it;
- the total value of the prizes per week shall be not more than ECU 13,000 (it is generally accepted that this limit is too low, and has significantly hampered the development of non-national lotteries);
- the value of each prize shall be stated on every particular coupon; and
- no more than 45% of the gross proceeds shall be utilised for the expenses of promotion including commission.

The second level of control is exercised by the police authorities to whom detailed returns in relation to the conduct at a lottery must be made. These requirements are extremely detailed and provide both for weekly returns, and for an overall return at the end at any particular lottery game.

The intending applicant for a licence must give 28 days notice in writing of his intention to the Garda Síochána for the district in which the lottery is to be organised giving full details of the proposed lottery, e.g. its purpose, value of prizes, etc.

An appeal against a refusal to grant the licence lies with the Circuit Court with regard to:

- the applicant —from the Order of the District Court refusing the application;
- the applicant —from the part of the Order of the District Court specifying the period of the licence, and

- any person who at the hearing opposed the application —from the Order of the District Court granting the licence or the part of the Order specifying the period of the licence.

A District Court licence, once granted authorises the promotion and conduct of the authorised lottery by the promoter throughout the whole of the Republic of Ireland for one year. This effectively allows the Court and the Police to monitor ongoing lotteries, from year to year.

Under Section 32, each lottery ticket must show the name and address of the holder of the licence or permit, the printer and the beneficiary of the lottery proceeds. It should also state whether it is being carried out under a licence or under a permit and the Court or Garda Síochána by whom the licence or permit was granted.

A permit is not required if the lottery is promoted as part of a dance, concert or other like event, provided that the person organising the lottery derives no personal profit from the event or from the lottery and the total value of prizes is not more than ECU 32.

A lottery may be promoted as part of a circus or travelling show, carnival or bazaar, subject to certain conditions, mainly that the tickets are not sold outside the place or premises where the event is in progress, that they are sold only on the same day or night as the draw and announcement of results and, in the case of a carnival bazaar, that the persons arranging for the holding of the event derive no personal profit from the event or the lottery. The price of the ticket may not be more than ECU 0,03 and no person may win more than the value of ECU 0,64 in the lottery.

Public *advertising* of lotteries was banned by the 1956 Act (Section 22). This prohibition has been eased in subsequent years.

2.1.3. Supervision and Control

The powers of the regulatory authorities are as described under the licensing/permit arrangements. It is clear that the powers of the regulatory authorities are wide-ranging. In practice, this means that the obstruction or impeding the Garda Síochána in entering any place or premises in the exercise of power under the Gaming and Lotteries Act shall be construed, until the contrary is proved, that such place or premises was being kept for unlawful

gaming. Any person who is the holder of a licence and who is convicted of an offence under the Act may have his licence revoked by the Court.

2.1.4. Taxation

There is no fiscal regime governing the operation of non-national lotteries or bingo as by definition they are for charitable or philanthropic purposes only.

2.1.5. Distribution of Profits

Private lotteries are free to distribute profits as they see fit. Other lotteries are free to allocate profits to the charitable or philanthropic beneficiaries of their choice.

There are no statistics available regarding the revenue generated from bingo. The playing of bingo is permitted essentially for charitable or philanthropic purposes and the licensee or permit holder does not derive any personal profit from it.

The revenue generated from the two main lotteries covered in this section is used to foster the objects of both organisations. In the case of Gael Linn, the objective is to foster and promote Irish cultural interests. In the case of National Rehab lotteries, the objective is to improve the welfare of physical and mentally incapacitated people.

2.1.6. Tax Revenue

Non-national lotteries are not taxed.

2.1.7. Barriers

In respect of non-state lotteries, there is effective prohibition on the promotion or conduct of Irish licensed lotteries outside of the state and an effective import ban on foreign lotteries wishing to market themselves in Ireland.

The former is effected by virtue of the requirement that Irish licensed lotteries be conducted wholly within the state (Section 26 of the Gaming Lotteries Act 1956) and by virtue of the prohibition on the taking of tickets or other documents relating to or any prize money won in an Irish lottery out of the state (Section 34 of the 1956 Act). The effective import ban is maintained

by virtue of the requirement that all lotteries promoted in the state be licensed in Ireland and comply with the various formal requirements mentioned above.

2.2. The National Lottery

2.2.1. Legislation

Launched in March 1987, Ireland's National Lottery is the newest member of the EC National Lottery family. Its results have been spectacular in terms of commercial success. In setting up so recently, its organisers have been able to capitalise on the availability of advanced technology in on-line systems.

The National Lottery Act, 1986, provides for the holding by or on behalf of the Minister for Finance of a national lottery. This Act specifically provides that the Gaming & Lotteries Act 1956 to 1979 does not apply to the National Lottery.

The Gaming & Lotteries Act of 1956 was considered too restrictive and unsuitable for the National Lottery. The National Lottery is seen as a special type of creature needing a special type of treatment.

The decision to set up the National Lottery was motivated by the perceived need to raise money in a context of severe governmental budgetary deficits. The money raised would benefit the Irish community without the need for recourse to taxation or other compulsory revenue raising measures.

The Act sets down how the National Lottery is to be organised and managed, the licensing arrangements for the operation of the National Lottery and how receipts for the National Lottery are to be allocated between prizes and other specified purposes.

There have been no changes in this legislation since it was first enacted.

2.2.2. Authorisation and Licensing

The Minister for Finance is the authority responsible for the granting of a licence to a person authorising the holding on behalf of the Minister of a National Lottery. Not more than one licence shall be in force at any time. Where a licence is granted to a person for the first time, its duration shall not exceed ten years. Thereafter, the duration of any subsequent licence granted to the person shall be for such a period as the Minister may determine.

The Minister may attach such terms and conditions to the licence as he deems fit and may amend such terms and conditions or insert into it or delete from it terms or conditions. The licence may be revoked by the Minis-

ter for reasons that seem to him to be sufficient. All licensing powers are thus concentrated in the hands of the Department of Finance.

The first licence has been granted to An Post, Ireland's national postal service, which created An Post National Lottery Company to operate the lottery.*

2.2.3. Supervision and Control

As with licensing regulation of the National Lottery also falls to the Department of Finance. It has strong powers in the matter and its relationship with the National Lottery is a very close one. All new games and the budget must be sanctioned by the Minister of Finance.

The Department of Finance has the power to scrutinise independently the overall management and operation of the National Lottery. In addition, only authorised outlets may sell lottery tickets and the total number so authorised shall be determined by the operators of the National Lottery. There are currently approximately 2700 authorised outlets, each of which are on-line and computer-linked with the National Lottery headquarters.

Each agent must sign an agreement with the National Lottery Company. Up to May 1990, retailers acting as agents to the National Lottery were not allowed, under their contract with the National Lottery, to sell the tickets of other lotteries. This exclusive agent rule was deemed by the Minister for Industry and Commerce to be an unfair business practice as defined in the Restrictive Practices Act, 1972. The National Lottery Company revised its agent agreement to drop the exclusive agent clause, but added a requirement to meet certain relative sales targets.

National Lottery tickets shall not be sold at a price less than that at which they are sold to members of the public generally except when they are awarded as prizes in the National Lottery. Persons connected with the National Lottery are not entitled to own a National Lottery ticket.

* An Post National Lottery Company is 80% owned by An Post and 20% by the Department of Finance. The company's board has seven members, of which four are appointed by An Post and three by the Department of Finance. The Board reports to the Department of Finance.

The only restriction on the National Lottery's advertising is the 19.75% of all monies collected limit imposed on total expenses.

2.2.4. Taxation and Distribution of Profits

The number, form and value of the prizes to be distributed in the National Lottery shall be determined by the person authorised by licence to operate the lottery. An Post —the Irish postal authority— is presently authorised to operate the lottery. The total value of the prizes distributed in any financial year, taking one year with another, shall be not less than 40% of the total monies received in that year in respect of the sale of National Lottery tickets. This law provides for the independent scrutiny of the National Lottery and includes the right to investigate:

- the organisation, management and procedures
- the system for selecting winning tickets
- the installation, operation, maintenance, etc. of computers and other electronic devices used for the purposes of the National Lottery

The report of this independent scrutineer is made to the Minister at least once a year or from time to time in relation to any other matters regarding the National Lottery which the Minister considers should be so reported.

The net proceeds of the National Lottery are applied to sport and other recreation, national culture (including the Irish language), the arts (within the meaning of the Arts Act, 1951), the health of the community, and other purposes that the government may determine from time to time. Details of expenditure from the net proceeds are as follows:

	Launch - 31 Dec 1987		1988		1989	
	.000 ECU	%	.000 ECU	%	.000 ECU	%
Sales	131.800	100.0	142.100	100.0	180.700	100.0
Prizes*	55.900	42.4	65.800	46.3	88.700	49.1
Expenses	18.700	14.2	24.700	17.4	33.300	18.4
Development costs	3.600	2.7	4.200	3.0	1.400	0.8
Surplus	53.700	40.7	47.400	33.3	57.300	31.7

* This is the amount provided for prizes in each year. To the extent that there are unclaimed prizes, actual expenditure on prizes may differ from the amount provided in any given period. However, since prizes which remain unclaimed for a certain period are returned to prize funds, the discrepancy between the amount provided and the amount actually spent on prizes diminishes over time.

Section 4(2) of the National Lottery Act, 1986, stipulates that not less than 40% of the total monies received by the company in respect of the sale of tickets must be distributed in prizes. Expenses are not allowed to be more than 19.75% of the total monies received for ticket sales.

The National Lottery was launched on March 22, 1987. Trends in ticket sales, prizes paid, operating costs, development costs and net proceeds available for disbursement to beneficiaries are as follows:

AREA	National Lottery Fund Expenditure (.000 ECU)				
	1987	1988	1989*	Total	%
Sport/Recreation/Youth	5.000	27.000	41.000	73.000	47.3
Dublin Millenium	64	800	-	864	0.6
Arts & Culture	4.100	14.800	24.000	42.900	27.7
Irish Language	-	2.700	9.400	12.100	7.8
Health & Social Welfare	4.300	10.400	10.800	25.500	16.6
Total	13.464	55.700	85.200	154.364	100.0

* Allocation

2.2.5. Tax Revenue

See section 2.2.4 above regarding fiscal regime and distribution of profits. The national lottery is not subject to tax and nor are winnings (Section 34 of the Finance Act 1987). The national lottery, as already indicated, is a government vehicle for generating revenue.

The monies allocated from the national lottery have displaced exchequer funding as follows:

Activity	Displacement of Exchequer funding %
Youth, Sport, Recreation	50.4
Arts & Culture	56.1
Health & Welfare	50.5
Irish Language	46.7

2.2.6. Barriers

The major barrier is that not more than one licence shall be in force at any time.

Cross-border betting from Northern Ireland is acknowledged and accepted as it is to the benefit of the total revenue of the national lottery in Ireland. The line is drawn at marketing the National Lottery abroad. Nor are there any official outlets abroad.

Cross-border issues

Under Irish law, the National Lottery can sell its tickets to all —both Irish and non-Irish residents. Irish law does not prevent the National Lottery from setting up marketing outlets abroad.

In practical terms, the only foreign market that matters for Ireland is the UK, and, in particular, Northern Ireland. Cross-border betting from residents in Northern Ireland is tacitly acknowledged by the Irish (and UK) government.

Despite its legal liberty to establish outlets abroad, the National Lottery has not done so.

Regarding the flow in the opposite direction, i.e. Irish residents betting on foreign lotteries, this is not forbidden under Irish law.

The only possible restriction is that of currency. Currency controls as they now stand will be abolished by the end of 1992 following implementation of the Single Market. Furthermore, bank account manoeuvres are increasingly feasible to transfer money to the extent that currency restrictions are a porous type of barrier.

This issue must also be examined in the context of legislation pertaining to cross-border mailing campaigns. It remains a grey area for the Irish legislator.

It is legal for a foreign lottery operator to mail, from outside the Irish territory, subscription forms to Irish residents. The person receiving the form is free to participate in the foreign lottery. In these circumstances, individual mailing is seen as being for private use. An advertisement for a foreign lottery is also regarded as lawful.

If, however, an agent of a foreign lottery organises solicitation of Irish customers from the Irish territory, this is not lawful. It would mean the co-existence of two National Lottery organisers, which would breach the licensing rules of the 1986 Act.

The organisation of bulk mailing within Irish territory has been considered as unlawful. A more precise legal definition of the line to be drawn between the acceptable and unacceptable has yet to be drawn.

3. GAMING MACHINES

3.1. Legislation

The law in relation to gaming machines is contained in section III of the Gaming & Lotteries Act, 1956, as amended, in 1970 and 1979. 'Gaming' means playing a game (whether of skill or chance or partly of skill and partly of chance) for stakes placed by the players. The effect of the amendments mentioned above have been to legalise slot machines under licence and increase the total value of prizes that may be awarded.

The philosophy behind the 1956 Act is as follows: rather than have illegal undercover gaming machines, it is better to legalise them under strict regulatory conditions.

The powers of the Garda Síochána under this Act and Customs & Excise (under the relevant Finance Acts) are very wide. The tone of the Act is one of containment of gaming machine activities. In Ireland, gaming machines are very much considered as a social evil. As opposed to some other types of gambling and gaming, gaming machine players have been perceived as "playing until they run out of money". A well-publicised case of suicide linked to gaming machines has worsened the sector's reputation. Gaming machine operators have been accused of making huge profits while making a negative contribution to society.

The only significant recent change is that many local authorities, including Dublin, have rescinded a previous resolution which allowed for the licensing of amusement halls and funfairs in its area. This reflects general public opinion which is very much against the presence and availability of slot machines and similar gaming machines. The ban is being challenged by certain gaming operators.

Under the Gaming and Lotteries Act, no person shall promote or assist in promoting or provide facilities for any kind of gaming:

- in which by reason of the nature of the game, the chances of all the players, including the banker, are not equal, or
- in which any portion of the stakes is retained by the promoter or is retained by the banker except as winnings on the result of the play, or
- by means of any slot machines.

Such gaming is referred to in the principal 1956 Act as unlawful gaming.

Gaming is lawful if no stake is hazarded by the players with the promoter or banker, except a charge for the right to take part in the game, provided that:

- only one such charge is made in respect of the day on which the game is played and
- the charge is of the same amount for all the players and
- the promoter derives no personal profit from the promotion of the game.

This, in effect, implies that slot machines are illegal unless licensed.

The stake in any game cannot exceed ECU 0,03, nor the prize money ECU 0,64. If these limits were enforced, no gaming machines would be profitable for their operators. The limits give the government the prerogative to outlaw gaming machines at any time, simply by enforcing the law.

The reason the law is not updated to a greater extent is that it would be politically difficult to try to do so at a time when such negative connotations are attached to gaming machines.

3.2. Authorisation and Licensing

The District Court may grant a certificate authorising the issue of a licence permitting gaming at an amusement hall or funfair. The certificate shall not be granted unless forms of entertainment other than gaming are also provided. A certificate can only be granted to a 'qualified individual' or a 'qualified company'.

A 'qualified individual' means an individual who, during the period of twelve months preceding a given date, has had his usual or principal place of residence in Ireland.

A 'qualified company' means a body corporate of which both the majority of the members and the majority of the persons exercising control and management are qualified individuals.

The justification for discriminating against non-residents is that those who operate gaming machines must be completely above-board. The local police and courts were judged to be sufficiently aware of local criminal and non-desirable elements. As for newly arriving non-resident operators, it was felt that one year's residence in the country was necessary to be sure of the reputable character of applicants.

The Court may attach to the certificate conditions—including:

- limiting the hours during which gaming may be carried on
- restricting the kinds of gaming
- the extent to which particular kinds of gaming may be carried on
- limiting the amount of the stakes and of the prizes and
- prohibiting or restricting gaming by persons under specified ages

The certificate shall specify the period in the particular year to which it relates for which the licence is to be issued.

The intending applicant for a certificate shall give 28 days notice in writing of his intention to the Garda Síochána for the locality whose administrative areas the premises to which the application relates are situated. The notice shall state the number and kinds of games proposed to be carried on and the other forms of amusement to be provided. At least 14 days before the hearing in a newspaper circulating in the locality, the applicant shall also place a notice of his intention to apply for a certificate.

If the District Court refuses the application for a certificate, an appeal shall lie to the Circuit Court:

- by the applicant for a certificate—from an Order of the District Court refusing the application,
- by the application—from any particular part of an Order of the District Court granting a certificate, and
- by any person who at the hearing opposed the application—from an Order or any particular of an Order of the District Court granting the certificate.

A certificate granted by the District Court shall remain in force until altered or revoked on appeal.

The Revenue Commissioners will, on the application of a person to whom a certificate for a gaming licence has been granted and on payment by him of any licence duty provided for by law, issue to the applicant a licence which shall be and be expressed to be subject to the conditions attached to the certificate.

The licensee of a licensed amusement hall or funfair shall have displayed at all times, in a conspicuous position near the entrance, a notice giving the name and address of the licensee and the conditions of the licence.

3.3. Supervision and Control

Some of the powers have already been highlighted under the licensing/permit arrangements. In addition, gaming instruments may be seized by the Garda Síochána if they are fraudulently or suspected of being fraudulently operated. The Garda Síochána shall have free access to any amusement hall, funfair, etc. at all reasonable times in which gaming is or is believed to be carried on. The Garda Síochána may arrest without warrant any person found conducting or assisting in a public place any kind of gaming which there is reason to believe to be contrary to this Act. Obstruction of the Garda Síochána, refusing to give name and address or giving a false or misleading name and address renders that person guilty of an offence and liable on summary conviction to a fine not exceeding ECU 32.

Obstruction or impeding the Garda Síochána in entering any place or premises in the exercise of powers under the Act shall be construed, until the contrary is proved, that such place or premises was being kept for unlawful gaming. Any person who is the holder of a gaming licence and who is convicted of an offence under this Act may have his licence revoked by the Court. Confiscation of gaming equipment may be ordered by the Court.

It should be noted that Customs & Excise have similar powers of entry and search. There are penalties for obstructing or impeding an officer in the discharge of duties relating to gaming licences and gaming machine licences.

A local authority may by resolution allow for the licensing of amusements and funfairs in respect of the whole or a specified part of its administrative area and may by resolution rescind such adoption. If such a resolution is not adopted or, if adopted, subsequently rescinded, gaming is not permitted. This is their ultimate power over gaming machines.

The control over the gaming machine licence duty is enforced by Customs & Excise via periodic visits to licensed amusement halls or funfairs. The gaming machine licence is inspected and the number of machines in the amusement hall checked to ensure conformity with the licence details.

3.4. Taxation

There are two aspects to the fiscal regime governing gaming machines —the gaming licence to operate an amusement hall or funfair and a gaming machine licence to have gaming machines situated in the premises for play.

3.5. Distribution of Profits

Once licences have been paid for, gaming machine operators may dispose of profits as they see fit.

3.6. Tax Revenue

The costs of a gaming licence is ECU 515 per annum or pro rata for part of a year. In 1988 (the last year for which full figures are available), 288 gaming licences were issued and the amount of licence duty collected was ECU 47.400.

470 licences were issued for gaming machines and the amount of licence duty collected was ECU 1.190.300. It should be noted that a licence can cover any number of machines and that the licence duty for each gaming machine is ECU 400 for a full year or ECU 260 for weekends throughout the year.

3.7. Barriers

There appear to be no official barriers to market entry other than the qualification by the licences that are required. Barriers of a social nature, due to the negative connotations associated with gaming machines have been more effective than any legal barriers.

4. PRIZE BONDS

4.1. General

The Minister for Finance, under the Finance (Miscellaneous Provisions) Act, 1956, may create and issue non-interest-bearing non-transferable securities. These securities are subject to such conditions as to repayment, redemption or otherwise as the Minister for Finance thinks fit. Particular securities may be selected by chance for prizes. The securities are referred to as 'Prize Bonds'.

The Exchequer of the State bears the cost of the prizes and the expenses incurred in connection with the issue of these securities.

Any monies raised by Prize Bonds are placed to the credit of the account of the Exchequer. It should be noted that the Gaming & Lotteries Act, 1956, does not apply to Prize Bonds.

Bonds are sold to the public and may be cashed by the holder at any time at their face value. They do not bear interest but bond holders participate in monthly and weekly draws for cash prizes. The prize fund for each draw is determined by calculating interest on aggregate amount of bonds outstanding on the first day of the month in which the draw is held.

The system was set up as an alternative borrowing mechanism for the state to fund the national debt. It was seen as more acceptable than other forms of gambling, since only the interest accruing is 'gambled'; the initial capital remains untouched. The purchaser can request a refund at any time.

The Department of Finance delegates the operation of the prize bond system to an outside organisation. Up to 1989, the Bank of Ireland was responsible. As of 1989, a new company was created to operate the system: Prize Bond Company Ltd. is 50% owned by Fexco (Forex Company of Ireland) and 50% owned by An Post, the Irish national postal service.

4.2. Tax Revenue and Market Information

Approximately ECU 9,0 million is received in income each year. Encashment of existing bonds amounts to almost 50% of the year's income. Thus, taking one year with another, approximately ECU 3,9 - 5,1 million is added to the Prize Bond fund each year.

The Prize Bond fund stands at approximately ECU 112 million at the moment. This increases, as indicated above by between ECU 3,9 million to ECU 5,1 million annually. Prize bond payouts each month amounts to not less than ECU 541,000 but often reaches ECU 592,000.

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