



Regulation

Malta-licensed operators to fight Austrian illegal gambling lawsuit

Swedish igaming lawyer Ola Wiklund warns of “formidable obstacles” ahead for Austrian litigation firm pursuing claims against international gambling companies

Robert Simmons | 26 February 2021



Legal claims against international operators for alleged illegal gambling in Austria represents a “jurisdictional overreach”, according to prominent Swedish igaming lawyer Ola Wiklund.

Yesterday, *EGR* revealed **claims equalling more than €40m had been filed** by Austria-based litigation financing firm Advofin against operators on behalf of more than 2,000 clients.

Advofin is working with local law firms to try and recover the net losses of Austria-based consumers who gambled on international online casino sites licensed in Malta and other igaming hotbeds.

Addressing the potential for the claims, Wiklund told *EGR*: “This kind of ambulance-chasing venture might be profitable for Austrian lawyers, but it represents a jurisdictional overreach by a Member State of the EU.

“The Austrian claims are stemming from an application of rules of a legally questionable private monopoly,” he added.

Under Austrian law, only an Austria-licensed operator can offer online casino gambling to Austrian players, with only Casinos Austria currently licensed to do so.

Austrian law deems any other firm directly targeting Austrian players to have done so illegally.

In addition, Austrian players are deemed to sign a contract when registering with the respective site, making any judgment legally enforceable under Austrian law.

Using this precedent and prior EU court judgments, Advofin is now seeking to recover damages from as many as 70 of the industry’s biggest operators and has already won several claims.

However, Wiklund said he was sceptical of the firm's ability to reclaim the net losses on behalf of clients as the claims would be challenged by a combination of EU and local laws.

"The Maltese gaming operators are relying on the fundamental EU law principles of freedom of establishment and the freedom to provide services," he said. "The Maltese marketplace is also constitutionally protected by WTO-law and the Maltese constitution."

Article 4 of the Treaty for the Functioning of the EU prevents one member state from interfering in the market of another EU member in areas of research and technological development, while separate World Trade Organisation (WTO) rules also prohibit the implementation of unnecessary trade barriers between members.

Under Maltese law and EU law, disputes of this sort are subject to the law of the member state of the court where the question arises, which in several cases is in Malta via web domains.

This includes the conflict-of-laws rules of Malta, where capacity to undertake commercial contracts is governed by local law.

"An enforcement attempt invoking the Brussels regulation in Malta will meet formidable obstacles in the form of jurisdictional, procedural and constitutional legal principles," warned Wiklund. "The Maltese judiciary would be justified to refuse enforcement on a number of valid legal grounds."

Wiklund, managing partner at Stockholm-based law firm Wiklund law, is currently working with Malta-based lawyers representing implicated operators on a defence against the claims.

Speculating about the potential impact on Malta's igaming industry, he explained: "Politically, an enforcement attempt will crack open a wide rift of public policy.

"In these situations, legal history tells us that domestic preferences will prevail. Do you really believe that Maltese courts will serve as Austrian partisans in an attempt to take down the entire Maltese gaming industry? I think not," he added.

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