[NO] Norwegian operators instructed to block betting advertisements on Discovery channels targeting Norway

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In two decisions of 30 March 2022, the Norwegian Media Authority (NMA) instructed Norwegian operators of networks transmitting television in the Norwegian market, to block or hinder access to advertisements for certain betting websites from two Maltese betting companies, BLM Group Ltd and Trannel International Ltd. The order to block betting advertisements included the German Discovery channels FEM, MAX and VOX, and Eurosport Norge which is offered by the French company Eurosport S.A.S. The operators included in the decisions are the five largest operators of networks providing linear television in Norway. This includes operators of television through satellite, cable/fibre and the digital terrestrial network. OTT services and audiovisual on-demand services are not covered by the decisions.

The Norwegian gambling system is based on a statutory system of exclusive rights. Only the state-owned companies Norsk Tipping and Norsk Rikstoto, and a few other minor companies, may offer gambling services in Norway. The offering or marketing of gambling services from other Norwegian or foreign companies is strictly forbidden. The gambling monopoly aims to prevent adverse impact arising from gambling.

The legal basis for the NMA decisions is a new provision in the Broadcasting Act, which was amended from 1 January 2021. The Broadcasting Act section 4-7 states that the NMA may issue an order to prevent or hamper access to marketing in television or audiovisual on-demand services when it contravenes Section 2 of the Gaming Scheme Act, Section 11 of the Lottery Act or regulations warranted by the Totalizator Act.

Before the orders were issued, the NMA assessed whether the considerations that spoke in favour of the order were weightier than the disadvantages the order would entail. An order must not be issued when the NMA finds that it would be a disproportionate measure. The decisions from the NMA are based on the conclusion that marketing of cross-border gambling services, in breach of the Norwegian gambling legislation, causes special harm to the objective of the Norwegian gambling policy. This policy entails channelling demand for gambling services to a supervised domestic range of gambling services within the scope of

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high consumer protection.

When adopting the new provision in the Broadcasting Act, the Norwegian Parliament considered whether a decision instructing Norweigian operators to block betting advertisements on TV channels targeting Norway, would be in violation of the freedom of reception in Article 3 of Directive 2010/13/EU, the Audiovisual Media Service Directive (AVMS Directive).

In November 2018, the amendment of the AVMS Directive (Directive 2018/1808/EU) was approved and the possibility of interfering with the marketing of gambling through national legislation was clarified in recital 10. In the White Paper with the proposed amendment to the Broadcasting Act, the Parliament considered that it had been made clear in recital 10 of the revised AVMS Directive that gambling advertising was not intended to be harmonised by the Directive. Thus, the Directive did not affect the Member State's authority to decide upon a national approach to gambling advertising, provided that such measures were justified, proportionate in comparison to their intended objective, and necessary. On this basis, the NMA found that gambling was not a field coordinated with the AVMSD, and therefore, its decisions did not violate the freedom of reception in the Directive Article 2. The decisions do not order the operator to block the tv-channels as such, only the unlawful betting advertisements. Furthermore, the procedures laid down in Article 4 of the Directive do not apply to gambling activities.

The operators have until 15 August 2022 to fulfill the obligations set out in the decisions. The NMA may issue compulsory fines if the terms of the decisions are not met. Two of the operators have appealed the decisions to theindependent Media Appeals Board. The parties to the decisions may also take legal action against the decisions before the courts. Prior to the decisions, Discovery had taken legal action regarding the legal basis in the Broadcasting Act, arguing that the provision itself was in violation of the AVMS Directive and general EU/EEA law. The Norwegian Supreme Court dismissed the appeal on the basis that Discovery did not have a justified claim. The Court found that Discovery had to await a decision from the NMA before taking legal action.

Pressemelding om Medietilsynets vedtak med pålegg om å hindre tilgang til pengespillreklame for norske tv-distributører

https://www.medietilsynet.no/nyheter/aktuelt/medietilsynet-palegger-tv-distributorene-a-stoppe-pengespillreklame-fra-discovery/

Press release on the Norwegian Media Authority's decisions to block gambling advertisements

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Lov om kringkasting og audiovisuelle bestillingstjenester av 4. desember 1992 nr. 127

https://lovdata.no/dokument/NL/lov/1992-12-04-127?q=kringkastingsloven

Act relating to broadcasting and audiovisual on-demand services

https://www.medietilsynet.no/globalassets/engelsk-dokumenter-og-rapporter/2021-unofficial-translation-act-relating-to-broadcasting-and-audiovisual-on-demand-services.pdf

Lov om pengespill mv. av 28. august 1992 nr. 103 (pengespilloven)

https://lovdata.no/dokument/NL/lov/1992-08-28-103?q=pengespill

Gaming Scheme Act

Lov om lotterier mv. av 24. februar 1995 (lotteriloven)

https://lovdata.no/dokument/NL/lov/1995-02-24-11?q=lotteriloven

Lottery Act

Lov om veddemål ved totalisator av 1. juli 1927 nr. 3 (totalisatorloven)

https://lovdata.no/dokument/NL/lov/1927-07-01-3?q=totalisatorloven

Totalizator Act

Norges Høyesteretts ankeutvalg - Kjennelse

https://lovdata.no/dokument/HRSIV/avgjorelse/hr-2022-486-u?q=HR-2022-486-U

Supreme Court decision (HR-2022-486-U)

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