



TARBIJAKAITSE JA
TEHNILISE JÄRELEVALVE
AMET

GUIDELINE GAMBLING ADVERTISING

GUIDE - GAMBLING ADVERTISING

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1. Purpose and scope of the guide

- 1.1. The purpose of this guide is to clarify and specify the requirements for gambling advertising set out in § 29 of the Advertising Act² in order to achieve uniform compliance with the above requirements by operators.
- 1.2. Guide in application of must be please consult other legislation arising from requirements. In the case of imperative requirements deriving from legal acts, the legal acts must be complied with.
- 1.3. The guide is indicative and will be amended as necessary.
- 1.4. Legislation used in the preparation of this guide:
 - Advertising Act (RekS)
 - Act on the Trading of Goods (KaubTS)
 - Gambling Act (HasMS)
- 1.5. This is an updated version of the "Guidelines for compliance with gambling advertising requirements" approved on 06.04.2017.

2. Summary of key requirements for gambling advertising

- Advertising of gambling is allowed if the gambling operator has the required organisational permit under the Gambling Act. However, such advertising is subject to certain restrictions.
- Gambling advertisements must not contain any invitation to participate in gambling or to visit a gambling establishment, or any information that might suggest that gambling increases social success (see further in section 4.3.).
- Gambling advertisements must contain the warning text "Attention! This is a gambling advertisement. Gambling is not a suitable way to solve financial problems. Please read the rules and behave responsibly!". The warning must be conspicuous, understandable and clearly distinguishable from other information. Variations and abbreviations in the wording of the warning are not allowed (see section 4.4.).
- There are different restrictions on where and when certain gambling advertisements can be published, depending on the type of advertisement. The requirements for advertising in games of chance, lotteries, lotteries, lotteries and lotteries vary considerably and the permissibility of each type of advertising must be assessed separately. In assessing an advertisement, it is necessary first to identify the type of gambling advertisement and then to review the relevant requirements set out in § 29² (5) to (8) of the Advertising Act.
- Publication of the trademark of a gambling operator is prohibited in the building, building, territory and in the immediate vicinity of the building, building, territory and in the immediate vicinity of the building, building, territory, website aimed at children and before and during television and radio broadcasts mainly aimed at children.

The trade mark of the operator of a lottery, a lottery or a game of chance may be displayed provided that such trade mark does not contain an invitation to participate in gambling or to visit a place of gambling, or information which may suggest that gambling increases social success.

Any trademark of the operator of a game of chance may be displayed in places where advertising of games of chance is allowed (list RekS § 29² subsection 5). Outside the above mentioned places, the trademark of a gambling operator may be displayed subject to certain restrictions, such trademark may not express in words or pictures the game of chance, the place of play and the possibility of winning, and such trademark may not contain an invitation to participate in gambling or to visit a place of play or information that may give the impression that playing gambling increases social success.

- In certain cases, advertising may only be disclosed in conjunction with sponsorship notices (RekS § 29² subsections 6 (3-4), 7 (2-3)). In such cases, it must be taken into account that the sponsorship announcement must be included in the advertisement or be directly related to it. The sponsorship announcement must be truthful and verifiable. It is recommended that the sponsorship advertisement disclose in writing its content (e.g. company X supports company Y), the name of the sponsor (company X), the sponsor's trademark (company X trademark A) and information about the material support (material support of EUR xxxxx). As a minimum, the sponsorship statement must clearly and unambiguously indicate who is sponsoring whom (including the name or brand of the company).

- In addition to the gambling advertising requirements, the general requirements of the Advertising Act must also be respected. For example, the advertisement must be clearly distinguishable from other information in the ordinary course of attention and its content, design and presentation must ensure that it is understood as advertising.

The name of the advertiser, the trademark or domain name of the advertiser, whether registered or pending in Estonia or the European Community, must also be clearly and distinctively included in the advertisement. The advertisement must not be contrary to good morals and practices and must not contain false information.

3. Definition of gambling advertising

- Advertising is information that is disclosed in any form that is generally known, whether for payment or free of charge, for the purpose of increasing the provision of a service or the sale of goods, promoting an event or guiding a person's behaviour in the public interest (Advertising Act § 2(1)(3)).
- Publicly disclosed information is information disclosed through any promotional channel (TV channels, newspapers, social media, internet, outdoor advertising, etc.), whether such information is disseminated for a fee or free of charge. The law does not define more precise requirements as to the form in which advertising must be published.¹ Consequently, any information disclosed about a service or goods, irrespective of the form in which the information is published, the purpose of which is to increase the sales of that service or goods, constitutes advertising within the meaning of Section 2(1)(3) of the Advertising Act.
- The Supreme Court has also stated in its decision² that if there is no doubt that the information has been disclosed in a generally visible form, the labelling of goods in such a form cannot have any other purpose than to make the goods more visible, which in turn inevitably serves the purpose of increasing the sale of goods in retail trade. Consequently, the information displayed per se fulfils the characteristics of advertising.
- Commercial information is information provided at the point of sale to the customer about the goods, services or the terms and conditions of their sale (Section 10(1)(1) of the Consumer Sales Act). Thus, the purpose of commercial information is not to increase the sale of goods, but to provide the consumer with information about the goods for sale at the point of sale. As regards the point of sale, it is necessary to take as a starting point the provision of Section 2(6) of the General Sales Conditions Act, according to which the point of sale is the place where the trader directly offers and sells goods or offers and provides a service, i.e. where the consumer can make a purchase, for example in an ordinary shop or e-shop. Commercial information is not considered to be advertising if it meets the above requirements.
- For example, the Criminal Chamber of the Supreme Court (Judgment No. 3-1-1-82-04) has found that since the poster contained not only a New Year's greeting but also the "Casino Videomat" logo, it was advertising. This is because, together with the New Year's greetings, the trade mark "Casino Videomat" is also introduced, and in conjunction with the New Year's greetings, a positive attitude is formed in people towards gambling establishments operating under that trade mark. Thus, the information is intended to increase the sale of the service and its publication constitutes advertising within the meaning of Paragraph 2(1)(3) of the RekS.

Information that is disclosed in any form and for the purpose of increasing the sale of a product or service is considered gambling advertising. **Section 29 of the Advertising Act² sets out requirements and restrictions on gambling advertising. This means that gambling advertisements must comply with the requirements set out in section 29² of the RekS in addition to the general requirements for advertising.**

¹ Shoebox. M., Consumer Protection Law in the European Union and Estonia, Tallinna Raamatutrükikoda, p. 159.
² RKo, 3-3-1-7-16, p. 11.

4. Requirements for gambling advertising (RekS § 29)²

4.1. Administrative authorisation

In order to advertise gambling, the gambling operator must have an organisational permit. The advertising of gambling, gambling venues and gambling operators (hereinafter referred to as gambling advertising) is prohibited if the gambling operator does not have the organisational permit required under the Gambling Act (RekS § 29² subsection 1). Therefore, if the gambling operator has an operating licence required under the Gambling Act, its advertising is generally permitted. However, additional requirements and restrictions apply to advertising per type of gambling.

4.2. Gambling

Gambling, including commercial lotteries, gambling venues and gambling operators are treated within the meaning of the Gambling Act (RekS § 29² subsection 2): the definition of gambling in HasMS § 2 subsection 1, including the types of gambling in HasMS § 3, the definition of commercial lotteries in HasMS § 6 and the definition of gambling operators in HasMS § 8 subsection 1. The meaning of gambling venues is also laid down in the Gambling Act (HasMS § 37).

4.3. Call for proposals

Gambling advertisements must not contain an invitation to participate in gambling or to visit a place of gambling, or information that may give the impression that gambling increases social success (RekS) § 29² (3)).

As such advertising must avoid solicitations that direct a person to participate in gambling or to visit a place of gambling, it prohibits, in particular, direct solicitation. Instructive language, but also the use of superlatives and other forms of solicitation in certain cases, must be interpreted as prohibited solicitation. For example, phrases such as:

- come to play, come to try, come to see, try see, visit visit
the venue, ask about the venue, bet here, play now, play the game;
- buy, use, take, win;
- be the first, super offer, great games, powerful prizes.

Calls for responsible conduct are not considered prohibited (including the mandatory call RekS § 29² lg 4). This exemption applies to advertising by all types of games, venues and organisers on all channels.

How to give meaning to the statutory "information that may suggest that gambling increases social success" will evolve in practice. Certainly, gambling advertisements should refrain from conveying information that establishes a link between gambling and achieving good results for the first time or enhancing existing results in any socially relevant social aspect. For example, advertising must not contain information that creates the impression of a link between the establishment or increase of friendship, sexuality, wealth, etc. and gambling.

4.4. Warning text

- Gambling advertisements must contain the warning text "Attention! This is a gambling advertisement. Gambling is not a suitable way to solve financial problems. Please read the rules and behave responsibly!". The warning must, with the usual attention, be noticeable, understandable and clearly distinguishable from other information (RekS § 29² subsection 4). Variations and abbreviations in the wording of the warning are not permitted.
- As a general rule, a warning must be included separately in any gambling advertisement. As a single exception, it shall be sufficient for the warning to appear on the home page and on each sub-page of the gambling operator's website in such a way that it is noticeable, understandable and clearly distinguishable from other information. Therefore, it is not necessary to display the warning on each banner and on each surface of the gambling operator's website.
- If more than one gambling banner is displayed on a single website outside the gambling operator's website, the warning must be included on each banner separately. The exception to the above applies to so-called flash banners, where the banner images alternate without any further action by the consumer, i.e. there is no further clicking. For such banners, disclosure of the mandatory information on one frame is sufficient. However, if the final stop is a specific frame, i.e. a "stop frame", it is there that the mandatory warning must be included. Thus, it is not allowed to stop definitively on a single frame of a flashed banner if there is no mandatory information.
- In addition, we would like to draw the attention of gambling operators, advertisers and advertisers to the last sentence of this provision, the content of which has proved problematic in other similar provisions of the Advertising Act: "the warning must, in the ordinary course of attention, be conspicuous, understandable and clearly distinguishable from other information". In particular, the purpose of the warning is to draw the attention of the average consumer to important aspects of the specific nature of the gambling service. Accordingly, such information must be noticeable to the average level of attention and the warning must be presented in proportion to the overall advertisement, in a reasonable format and font and, in the case of an advertising clip, of sufficient duration to enable the consumer to perceive such a message in real terms.
- The target audience for gambling advertising is very diverse and it is therefore important that the warning is easy to find and read and understand by the average consumer. It is essential that the warning is presented in the same direction as the rest of the text and in a font size that contributes to the clear legibility and visibility of the call. In the case of television advertising, the duration of the on-screen display should be controlled so that it can be realistically read by the average consumer viewing the advertisement. Preferably, the warning should be presented on a monochrome background to maximise legibility. It is always advisable to make the text of the warning larger rather than smaller so that reading problems do not arise.
- A specific font size cannot be determined here, as readability and proportionality depend on the size of the advertisement, the type and colour of the font and other combinations of design. The legibility of the warning must be checked before the advertising material is made public (e.g. in the case of television advertising, it must be viewed beforehand at a reasonable distance on a television set, in the case of print advertising, the sample must be printed out in its original size). Viewing the advertisement on a computer screen alone does not give an accurate picture, as the viewer is not at the same distance from the computer

screen as when watching the advertisement on television, and in the case of print advertising much depends on the final result of the print and the actual size of the poster.
Consumer Protection and Technical

The Authority recommends that the size of the warning should be at least as large as the smallest reasonable font size of the rest of the advertisement, so that the mandatory call is not overshadowed by the rest of the advertisement and is proportionate to the rest of the advertisement.

4.5. Promotion of the gamble

As a general rule, gambling advertising is prohibited. By way of exception, gambling advertising is allowed:

- 1) the place where the game of chance is organised;
- 2) on board vessels and aircraft engaged in international passenger transport;
- 3) in the passenger terminal building of the airport and port serving scheduled international passenger services;
- 4) in the hotel where the game of chance is located;
- 5) on the website of the organiser;
- 6) advertisements sent by post, e-mail or telephone, if the advertisement has been ordered by the customer and is only sent to the customer's own postal or e-mail address or to a telephone number used by the customer and the customer has the possibility to stop the sending of the advertisement at any time by notifying the gaming operator (RekS § 29² subsection 5).

According to the explanatory memorandum, customers will be able to subscribe to notifications from the operator to their e-mail address, by post or by SMS, including, for example, information about new promotions and customer offers. However, the customer must be able to unsubscribe from such newsletters at any time. It follows from the wording of the provision that only 'customer communications' which fulfil all the conditions of point 6 are allowed: they must be subscribed to by the customer, they must be subscribed to by the customer only on his personal means of communication and the operator must stop sending the newsletter immediately upon receipt of the request to do so. The definition of a customer derives from the Commercial Activities Act, which defines a customer as a consumer within the meaning of the Consumer Protection Act and a person who is not a consumer and who wishes to enter into or does enter into a transaction with a trader. The definition of customer is therefore somewhat broader.

the definition of "player" to include also persons who have another business relationship with the gambling operator and therefore an interest in obtaining information about the activities of the gambling operator.

According to § 3 p 1 of the Gaming Act, games of chance are games of chance the outcome of which depends on chance and which are played by mechanical or electronic means or through the intermediary of a game operator.

Gambling advertising occurs when the advertisement contains references to a game whose outcome depends on chance and which is played by mechanical or electronic means or through a game operator (including slot machine games and table games such as poker, blackjack, roulette, baccarat). Thus, references to a card game may also transform a particular advertisement into an advertisement for a game of chance. The symbolism of the card masts can also be considered as a reference to a card game.

4.6. TOTO advertising

Toto advertising is generally permitted, but § 29² (6) of the Advertising Act provides a list of important restrictions when toto advertising is prohibited:

- 1) a building, structure, territory and their immediate vicinity, a website aimed at children, the place and time of an event mainly aimed at children, and the access to such an event, used by a pre-school establishment, a primary school, a secondary school, a vocational school, a leisure school, a permanent youth camp and a youth project camp;
- 2) TV and radio programmes;
- 3) on the front and back pages of newspapers and magazines, unless it is published together with sponsorship information;

4) as outdoor advertising, unless it is published together with sponsorship notices.

According to § 3(3) of the Gaming Act, lotteries are games the outcome of which depends on the occurrence, non-occurrence or manner of occurrence of an event predicted by the player, where the event on which the player makes a prediction is beyond the control of the gaming operator, the winning depends on the validity of the prediction and the amount of the prize depends on the size of the bet and the amount of the winnings determined before the bet is made.

the odds of winning (betting) or the percentage of the total amount bet by the gambling operator, the number of correct predictors and the size of their bets (totalizator).

While in other respects toto advertising is mostly unambiguous, depending on the place of publication it is either permitted or prohibited in its entirety, it follows from § 29² subsection 6 (3-4) of the Advertising Act that toto advertising may be published on the front and back pages of newspapers and magazines and as outdoor advertising if such advertising is published together with sponsorship notices. According to § 2(2)(6) of the Advertisement Act, sponsorship is defined as the name, trade mark and information on the material support provided by the sponsor. Therefore, it is recommended that the sponsorship notice disclose in writing the content of the notice (e.g. company X supports company Y), the name of the sponsor (company X), the sponsor's trademark (company X's trademark A) and information on the material support (material support of EUR xxxxx). However, as a minimum, the sponsorship statement must clearly and unambiguously indicate who (including the name or trademark of the company) is sponsoring whom.

The sponsorship announcement must be included in or directly linked to the advertisement. Where sponsorship is disclosed, the sponsorship must be truthful and verifiable.

Newspapers and magazines are treated separately for each individual copy. Thus, both the main publication and a special publication (e.g. a business supplement, etc.) which, although originally contained within the same cover, are nevertheless separable, will normally be treated as separate publications, and their front and back covers should be treated accordingly.

We stress that a distinction must be made between the purchase of advertising, for example on the front cover of a newspaper, and the sponsorship or financial support of a newspaper. Buying advertising space on the front cover of a newspaper is not the same as sponsoring a newspaper. The advertiser must be able to prove sponsorship (for example, by means of a sponsorship agreement).

Additional sponsorship requirements are set out in § 30 of the Media Services Act (MESA). According to § 30(8)¹ of the MESA, a gambling operator may only display the name and trademark of the operator in a sponsored audiovisual media service or broadcast. In the case of trade mark display, the conditions under § 29² (9) of the RekS apply. A gambling operator who does not have a gambling licence issued in Estonia may not sponsor a media service or programme.

4.7. Publicity for the match

As a general rule, advertising of a match is allowed, but § 29² subsection 7 of the Advertising Act (RekS) sets out a list of cases when advertising of a match is prohibited as an important restriction:

- 1) in buildings, premises, territories and their immediate vicinity occupied by pre-school establishments, primary schools, upper secondary schools, vocational training establishments, leisure schools, permanent youth camps and youth project camps, on websites aimed at children and before and during television and radio broadcasts mainly aimed at children;
- 2) on the front and back pages of newspapers and magazines, unless it is published together with sponsorship information;
- 3) as outdoor advertising, unless it is published together with sponsorship notices. According to Section 3(4) of the HasMS, games of skill are games the outcome of which depends predominantly on the physical skill or skill and knowledge of the player and which are played with the aid of mechanical or electronic equipment.

Similar to the requirements for toto advertising, advertising of the event on the front and back pages of newspapers and magazines, and as outdoor advertising, is only allowed in combination with the publication of a sponsorship announcement (see requirements in the previous point).

4.8. Lottery advertising

Lottery advertising is generally allowed. By way of exception, lottery advertising is prohibited in the premises of pre-school establishments, primary schools, upper secondary schools, vocational training establishments, leisure schools, permanent youth camps and youth project camps and in the immediate vicinity thereof, on children's websites, prior to and during television and radio broadcasts primarily aimed at children and at the place and time of an event primarily aimed at children and on the entrance to such an event (RekS § 29² subsection 8).

Lottery advertising in other places and at other times is generally permitted, but the gambling operator must have an organisational permit to publicise the advertisement (§ 29² subsection 1), the advertisement must not contain an invitation to participate in gambling or to visit a gambling location or information that may give the impression that playing gambling increases social success (RekS 29² subsection 3) and the advertisement must contain the warning text "Attention!". This is a gambling advertisement. Gambling is not a suitable way to solve financial problems. Read the rules and behave responsibly!" (RekS 29² paragraph 4).

Pursuant to § 3 p 2 of the HasMS, lotteries are games the outcome of which depends on chance, where the prize fund is no more than 80 per cent of the realisation value of the lottery ticket circulation and the result of the game is not determined more than three times a day or is determined when the lottery ticket is opened. Pursuant to § 2(5)(3) of the Gambling Act, the requirements of the Gambling Act do not apply to lotteries with a prize fund of up to EUR 1,000. Such a lottery is, however, gambling within the meaning of the Gambling Act. Pursuant to Section 29² (2) of the RekS, gambling is considered to be gambling within the meaning of the Gambling Act. Since a lottery with a prize fund of less than EUR 1000 is gambling, all the requirements of the Advertising Act apply.

4.9. Display of a trade mark

Permitted to display only a trademark of a lottery, sweepstakes or lottery operator that does not contain an invitation to participate in gambling or to visit a place of gambling, or information that may suggest that gambling increases social success.

While the advertising of a game of chance is only permitted in the cases mentioned in subsection 5 of Section 29 of the Advertising Act², outside the places mentioned in the said list, the trademark of the gaming operator may be displayed, which does not express in words or pictures the game of chance, the location of the game of chance and the possibility of winning and such. The Advertising Council has expressed the view on 4 April 2018 that a gambling operator's trade mark which includes the word "casino" expresses in words a game of chance. The trademark of a gambling operator must not contain an invitation to participate in gambling or to visit a gambling establishment, or information that may give the impression that gambling increases social success.

Publication of the trademark of the gambling operator is prohibited in the building, building, territory and in the immediate vicinity of the building, building, territory and in the immediate vicinity of the building, building, territory, website aimed at children and before and during television and radio broadcasts mainly aimed at children.

At its meeting of 2 October 2014, the Advertising Council has expressed the view that if additional images, which are not part of the trademark, are disclosed in the background of the trademark, then the trademark is no longer disclosed, the design of the trademark has been infringed. In case the information disclosed by the gambling operator identically follows the design of the trademark filed by them with the Patent Office, then it would be a display of the

trademark on the advertising space.

According to the Consumer Protection Board, information that goes beyond the disclosure of the trademark is considered advertising.

In a nutshell, a distinction must be made between gambling advertising and the display of a gambling operator's brand. In the case where only the trademark is displayed, the warning as set out in § 29² (3) of the RekS is not required.

4.10. Commercial lottery advertising

Pursuant to § 29² subsection 10 of the Advertising Act, the disclosure of information about a commercial lottery shall not be deemed to be gambling advertising.

According to § 6 of the HasMS, a commercial lottery is a classic or quick lottery organised by a supplier of goods or services to promote the sale of goods or services or to advertise goods, services or their supplier. In its practice, the Consumer Protection and Technical Surveillance Authority is often confronted with enquiries about recreational consumer games and commercial lotteries, which consist of both complaints from consumers and questions from businesses. Consequently, the Authority has produced a guide for the organiser of a consumer game, which gives an overview of the main things to bear in mind when organising different types of consumer games. We also recommend that you consult the Tax and Customs Board's Guide to the organisation of commercial lotteries, the rules of the game and the publication of information.

4.11. Promotion of activities at the venue

Advertising of activities on the premises will be subject to the rules on gambling advertising. Thus, any advertising of events taking place in a casino or other gambling venue (such as entertainment or charity events, restaurant or fashion evenings, etc.) is subject to stricter rules.

4.12. Gambling is not considered to be advertising

The signage of a gambling establishment, which may include the name of the operator, the trademark, the type and name of the gambling establishment, the domain name and the opening hours, shall not be considered gambling advertising. The signage may be located either on the building where the gaming premises is located or at the entrance to the gaming premises, and may be located simultaneously in one or other of the above locations. For example, the entrance to the gaming venue may also be located inside a building (RekS § 2(2)(2)). The marking of a vehicle used by a gambling operator in the course of his business or professional activities with the name, contact details, trade mark, domain name and field of activity of the person concerned shall not be regarded as advertising (RekS § 2(2)(4)). However, information going beyond the foregoing shall be deemed to be gambling advertising.

5. Promoting free bets and bonuses

A free bet refers to a specific type of bet that allows bettors to wager without investing their money. The wagering is therefore at the expense of the gambling operator. In practice, the most common free bets are divided according to the nature of the bet as follows:

- Sign-up bonus or welcome bonus. This bonus is generally intended for new players, and in some cases also for players who have already registered and who have received a welcome bonus.
have not used the bonus. This is a bonus where the player is not required to deposit any funds in advance in order to use the bonus.
- A cash-back bet or, in some cases, a risk-free bet. This is a bonus where the player bets on the game of their choice and depending on the outcome, in case of a win, the player receives
win and if he loses, the money he bets is returned to him. The terms and conditions of the cash-back bet may vary, both in terms of the amount and the games wagered.

"Cash back" offers must be in cash, not in any other bonus offered by the game operator (such as free spins or spins);

"money-back" offers must not result in consumer detriment.

NOTE: The offer of free spins or additional spins and spins in an advertisement may be construed as an advertisement for a game of chance, as these spins and spins are specific to games of chance (slot games) and may therefore be prohibited.

The TTJA recommends that bonuses should not be advertised using verbal constructions that would be in conflict with the mandatory warning text on gambling rewards "*Attention! This is a gambling advertisement. Gambling is not a suitable way to solve financial problems. Please read the rules and behave responsibly.*" or diminish the importance of the warning text. According to the TTJA, the phrase "**risk-free bet**", for example, could be considered as such a verbal construction. Moreover, it is not usual for bonus advertisements with such a construction to include explanatory terms for the consumer. Gambling is not in itself risk-free and the fact that gambling advertising is placed by the legislator in the chapter on restricted advertising is also evidence of its relatively risky nature.

The TTJA recommends that information on gambling should make the essential information on the advertised product or service easily available to consumers. This information could be easily available on the landing page of gambling advertisements. Disclosure of the above-mentioned information is important to avoid misleading consumers and to ensure that consumers make informed transactional decisions. In terms of player protection, it is measures that focus on informing the player and giving the player time to reflect that are most effective. Providing the consumer with additional information will also prevent unnecessary disputes before the various dispute resolution bodies.

According to the TTBE, conditions that are likely to affect the consumer's understanding of the advertising can be considered as material information. This includes, for example, the conditions for the deposit of funds by the consumer and detailed requirements for play-through or wagering. It also includes the conditions for withdrawing money (including winnings). **Relevant terms and conditions for the promoted offer should be no more than one click away from the**

advertisement.



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