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Prediction Markets: Between Betting, Financial Instruments and Digital Information Markets

A Legal and Regulatory Analysis from an Austrian Perspective

How do prediction markets fit within Austrian law: federal gambling monopoly, social bet (*Gesellschaftswette*), or financial derivative? A differentiated legal assessment is required; categorical answers fall short.

KEY ARGUMENTS

01 **Classification is everything**

Austrian law draws a hard line between gambling (GSpG federal monopoly) and betting (state-level). Prediction markets sit at that boundary.

02 **Most offerings are social bets**

Contracts on elections, policy decisions, or cultural events fit the Gesellschaftswette category, not gambling.

03 **No house, no conflict of interest**

Unlike bookmakers, platforms take no market risk. Revenue comes from fees, mirroring the totalisator principle.

04 **Two pressure points at the margins**

Contracts on financial variables approach FMA-regulated binary options; others near war or human harm approach prohibited-bet rules.

GSpG | Gesellschaftswette | FMA | Polymarket · Kalshi | Binary options | OGH

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I. Introduction: The Classification Challenge

At first glance, a market in which participants trade on how often a politician applauds during a speech appears indistinguishable from gambling. Yet this impression often changes upon closer examination. Past speech experience, audience composition, rhetorical behavior, and event context all become analytically relevant. What initially appears random can be modeled and assigned a probability based on knowledge and structured estimation.

This shift from apparent randomness to knowledge-based probability assessment is precisely what matters for Austrian law. From that perspective, a contract on observable political behavior is more plausibly understood not as gambling, but as a social bet (*Gesellschaftswette*), a bet on a real-world event embedded in an informational context.

This distinction is foundational in Austria. Gambling is subject to the federal monopoly under the Austrian Gaming Act (*GSpG*). Betting, by contrast, is largely regulated at the level of the federal states and, in principle, permissible unless it falls into a prohibited category. Any Austrian analysis of prediction markets must therefore begin with classification: not whether the product appears novel or exotic, but whether the underlying contract is, in substance, a lawful bet, a prohibited bet, a financial instrument, or something so dominated by chance that it approaches gambling.

II. Structure and Function of Prediction Markets

Prediction markets allow participants to take positions on the likelihood of future events, aggregating collective judgment into measurable probability indications. Prediction market platforms then reflect the market's assessed probability in prices for shares of an outcome between 0 and 1 US dollar. These prices emerge from the user assessment and activity rather than being set by an operator.

The payoff structure is straightforward: if a participant buys a “Yes” share at $0.25 and the predicted event occurs, the share pays out $1, if not, it expires worthless. This combines elements of betting and financial trading: the participant takes a position based on probability assessment, while the market price determines both entry cost and potential return. At the same time, positions can be sold at any moment prior to resolution at the prevailing market price, allowing participants to realise gains or limit losses based on changing probabilities without having to wait for the final outcome.

The critical structural difference from fixed odd bookmaker betting lies in the counterparty arrangement. In the classical fixed odd bookmaker model, the operator sets odds and acts as counterparty to each transaction. In prediction markets, trading occurs directly between users. The platform provides infrastructure, classic matching orders and handling settlement, but assumes no market risk. Revenue derives from transaction fees rather than customer losses, eliminating the inherent conflict of interest present in bookmaker models.

This structure represents a technologically advanced form of the totalisator principle: participants bet against one another, with no house taking the opposing side. However, prediction markets go further by enabling continuous tradability: positions can be bought and sold before resolution, liquidity and market depth matter, and price discovery is ongoing rather than terminal.

III. Prediction Markets as Social Bets: The Dominant Classification

Despite superficial similarities to financial instruments, most prediction market contracts exhibit characteristics that place them firmly within the category of social bets under Austrian law.

Both Austrian legislative and regulatory framework as well as legal literature expressly recognize bets on political, cultural, and social events as a distinct category. Classic examples include bets on who will become Federal President or who will win the Eurovision Song Contest. The overwhelming share of prediction market offerings, like election outcomes, policy decisions, economic indicators, cultural contests, fits within this already known form of betting.

Several features distinguish these contracts from financial instruments despite their sophisticated trading mechanics:

First, the reference object is (in the typical case) a discrete real-world event. For the vast majority of the offered bets, the contract asks whether something will happen, not what price a tradable asset will reach. This event-contingent structure is the hallmark of betting, not derivatives trading. Where a contract instead references the price of assets such as Bitcoin or rates of commodities such as oil, it moves away from the social bet framework towards a separate regulatory regime governed by financial market law, including their licensing and conduct requirements.

Second, the informational dimension is central. Participants analyse publicly available information, political developments, expert commentary, and historical patterns to arrive at their own assessment of how likely an outcome is. This knowledge-based assessment distinguishes betting from gambling, where outcomes are predominantly chance-driven. The market aggregates dispersed information into a continuously updated probability, rewarding accurate analysis and pricing out inaccurate expectations. At the same time, these platforms increasingly function as information sources and quasi-polling instruments in their own right, as they provide structured market data, historical trends, and contextual information that both reflect and shape user expectations.

Third, while the user experience could give the impression that prediction markets resemble exchange trading, the underlying mechanics remains betting on external events. A bet does not become a financial instrument merely because it can be resold before resolution. Functionally comparable features are already well-established in the fixed odd sports betting market, where operators offer cashout features and re-buy options allowing participants to close or adjust positions before event resolution.

Fourth, unlike financial derivatives, these contracts do not derive their value from an underlying financial asset or serve hedging or risk-transfer functions in relation to other market exposures. They are self-contained bets on observable occurrences.

The payment and settlement mechanisms, all-or-nothing payouts, live pricing and variable quotes create surface-level resemblance to financial products. Yet these operational features do not override the substantive classification. Austrian law has long assessed contracts by their economic substance rather than their technical form. A social bet remains a social bet even when wrapped in sophisticated market infrastructure.

IV. The Problematic Margins

The difficulty begins at the edges of the prediction market spectrum, where two distinct pressure points emerge.

Prohibited Bets

Austrian state betting laws define substantive limits on acceptable betting. The Upper Austrian Betting Act, for instance, prohibits bets aimed at the killing or injury of humans or animals, bets that grossly violate human dignity, and bets that degrade individuals on protected grounds. Similar provisions can be found in other federal state laws.

These provisions demonstrate that Austrian law is not indifferent to subject matter. Rather, it establishes clear normative boundaries designed to protect human dignity, public morals, and the integrity of betting activities. Prediction markets, due to their global and highly flexible structure, may host contracts that approach these boundaries. While major platforms do not typically offer direct bets on the death of specific individuals, markets relating to armed conflicts, such as developments in the war in Iran, or other harmful events are increasingly observable. Depending on their framing and proximity to real-world harm, such markets may raise concerns analogous to those underlying the statutory prohibitions.

It must be noted that Austrian state betting laws are generally tied to territorial application and licensing regimes. The Austrian Supreme Court (OGH) has confirmed that the federal provisions do not apply to operators without a physical presence or licensed operation within the relevant federal state. However, this does not render them irrelevant. On the contrary, they provide an important normative benchmark for assessing which types of betting activity the Austrian legislator considers unacceptable. Moreover, conduct that approaches or crosses these normative boundaries may nonetheless trigger consequences under other legal frameworks even in the absence of a direct licensing nexus. General civil law principles, in particular the good morals standard of the Austrian civil code, may render contracts void where they conflict with fundamental regulatory policy, regardless of whether a specific licensing requirement technically applies. Additionally, even outside a formal statutory framework, the OGH has recognised that contractual protection obligations can arise from the nature of the relationship between operator and player, and may in extreme cases give rise to civil liability. From this perspective, certain prediction market offerings can be placed, at least conceptually, within a grey zone close to prohibited bets, even if their formal regulatory classification remains unresolved.

Financial Instrument Boundaries

The second pressure point concerns contracts that, despite the prediction market label, functionally resemble financial derivatives. Consider a market on whether Bitcoin will exceed a certain price within five minutes. In legal and economic substance, this closely resembles a binary option: an all-or-nothing, cash-settled contract with fixed payout upon condition fulfillment.

The Austrian Financial Market Authority has been hostile to such products. Binary options linked to securities, currencies, interest rates, or financial indices qualify as financial instruments under Austrian law and may only be offered by licensed investment firms. Marketing to retail clients is prohibited under FMA intervention measures reflecting broader EU policy.

A five-minute crypto threshold contract does not readily qualify as a social bet, not only because of the nature of its underlying reference object. Rather than a future event in the conventional sense, participants are speculating on the price movement of an asset such as a cryptocurrency, oil, or gold. Its structure is binary, and its economic substance amounts to little more than speculative exposure to short-term market fluctuations. In terms of function, such a contract bears far greater resemblance to a derivative instrument than to a conventional bet.

Moreover, the shorter the contract horizon, the more difficult it becomes to maintain that participant assessment is genuinely informed rather than overwhelmingly noise-driven. While this does not automatically constitute gambling, it illustrates why ultra-short-term binary contracts sit uneasily between betting, financial speculation, and gambling-like product design.

V. Conclusion: Differentiated Assessment Required

The proper Austrian conclusion is neither alarmist nor permissive; it is differentiated or, in classic legal terms: it depends.

Most prediction market offerings are legally unproblematic. They constitute, in substance, ordinary bets on political, cultural, economic, or social events and thus fit comfortably within the established Austrian category of social bets. The sophisticated trading infrastructure does not alter this classification; it merely modernizes the delivery mechanism. These markets aggregate information, reward accurate analysis, and enable participation in collective probability assessment. Activities well within the bounds of lawful betting.

However, prediction markets are also a container technology capable of hosting problematic content. At one margin, contracts touching war, death, or similarly grave events raise serious prohibited-bet concerns under Austrian federal statutes. At the other margin, ultra-short-term or other contracts on financial variables increasingly resemble binary options subject to financial market regulation and FMA intervention measures.

The consequence for legal practice is clear: prediction market offerings cannot be assessed categorically. Each contract requires individual evaluation by reference to its subject matter, structure, and function. Where the market concerns observable social events and enables informed assessment, it is presumptively lawful betting. Where subject matter approaches prohibited categories or contract structure approaches that of financial derivatives, distinct regulatory frameworks apply. Austrian law possesses the conceptual tools for this differentiation, betting law, gambling law, public-morality limits, and financial-instrument regulation, but they must be deployed with precision rather than collapsed into a single judgment on the prediction market phenomenon as such.