

European Court of Justice: German Sports Betting Regulation in compliance with European Law

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In a ground-breaking decision (matter “Ince” – C-336/14 –), the European Court of Justice (“CJEU”) declared that German criminal authorities must not prosecute intermediaries of sports betting services, as the respective stipulations penalising private operators in Germany are in compliance with EU law.

Legislative Background:

Since 2008, the German gambling market has been regulated by an Interstate Treaty on Gambling prohibiting private providers from offering public sport bets and games of chance, thus setting up a general state monopoly on games of chance. For a number of reasons and following various CJEU decisions, the highest German administrative court, the Federal Administrative Court, judged that this state monopoly on sports betting violated EU law and was therefore inapplicable (cp. Federal Administrative Court, judgement 20 June 2013, – 8 C 17/12 –). In order to bring German gambling law in compliance with EU law, the Interstate Treaty was amended in 2012 allowing up to 20 private providers to receive a sports betting license. However, the licensing process has been beset with problems and no licenses have been granted, so far („http://united-kingdom.taylorwessing.com/fileadmin/files/docs/TWPlay_Gambling-law-in-Germany_2015.pdf“: http://united-kingdom.taylorwessing.com/fileadmin/files/docs/TWPlay_Gambling-law-in-Germany_2015.pdf).

Background to the CJEU Decision:

A Turkish business woman living in Germany – Ms. Sebat Ince – operated a sports betting terminal in Bavaria brokering sport bets of an Austrian provider without holding the German administrative authorization required by law. Such unauthorized provision of sports betting services to German players is prohibited by German gambling law and considered a criminal offence. Consequently, Ms. Ince was charged by German public prosecution authorities. However, the Local Court of Sonthofen which was competent in this matter had significant doubts whether the respective German prohibition stipulations were actually in line with EU law and whether Ms. Ince could indeed be sentenced for a criminal offence. Thus, the Sonthofen court brought the matter to the attention of the CJEU.

Findings of the CJEU:

While the CJEU also took up a stance regarding the gambling laws in place until mid-2012 and pointed out various inconsistencies until such time, which potentially might lead to damage claims of private sports betting providers against the German state, the most relevant statements of the decision relate to the Gambling law currently in force in Germany.

Inter alia the CJEU ruled that, as (i) no sports betting licenses have been granted during a period of more than three years in which the current gambling law was in place while (ii) the state sports betting providers were allowed to continue their offers, a “de facto” state monopoly on sports betting is still in place. As mentioned above, a state monopoly had already been deemed incompatible with EU law by the German Federal Administrative court. Even though theoretically private and state-owned providers could now be awarded with sports betting licenses, the fact that this had not happened in practice factually upheld the sports betting state monopoly, and the ruling of the German Federal Administrative Court on the illegality of such state monopoly

still applies.

Impact of the decision:

The CJEU decision will have a direct impact on the German legal regime regarding sports betting. Authorities may no longer issue prohibition orders against private sports betting providers having licences from other EU Member States for the mere fact that they do not hold the required license for offering sports bets (as such license cannot be obtained in practice). Furthermore, the current sports betting procedure will most likely have to be started anew and changes in German gambling law will likely have to be implemented.

Moreover, the CJEU's decision may also have an impact on the on-going debate over the legality of online casino games and poker in Germany. While the CJEU's decision does not explicitly mention that its reasoning also applies for online casino games and poker (as this was not part of the questions referred by the Sonthofen court), such conclusion could be drawn. The arguments brought forward against a state monopoly and the obligation for private providers to obtain prior authorisation before offering games of chance could also be considered viable arguments in cases that deal with online casino gaming and online poker. It can be assumed that a number of local German courts will commence rejecting prohibition orders against casino and poker providers which are solely based on the lack of (unachievable) authorization held by the private providers.

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