

Gaming in Germany Newsletter: State aid complaint may delay proposed online gaming tax regime

Gaming Germany

As we reported earlier, Germany's Federal Council (Bundesrat), which represents the sixteen federal states, recently approved a legislative proposal to tax online poker and virtual slot machines at 5.3% of player stakes (minus other expenses).

In order to enter into force, the proposal must next be approved by the federal parliament (Bundestag). Despite the necessity of federal approval, all resulting tax revenue will be exclusively due to the federal states (Länder).

The Bundestag must approve this draft law on June 7 for the legislation to enter into force on July 1, 2021. If the federal parliament does not pass this law, debate will be delayed until the next legislative session after the summer break and the federal state elections that will take place on 17 September 2021.

However, German trade bodies DSWW and DOCV have submitted a detailed state aid complaint to the European Commission regarding the proposed tax regime for online gambling services (background here). It appears that the complaint was taken seriously by the Commission and that, as a result, the Commission reached out to Germany's federal government to ask for clarification.

Against the background of this intervention by the European Commission, there is now a likelihood that introduction of the proposed tax regime will be delayed, possibly into 2022.

This does not mean, however, that the State Gambling Treaty will be delayed as well, as this is a treaty between the sixteen contracting federal states and, as such, legally and constitutionally separate from any act of the federal parliament.

A delay into 2022 would give licensed operators more space to build on the state aid complaint and continue their (not unreasonable) lobby against the proposed tax regime. Although the arguments of the state aid complaint were previously presented to legislators, these objections were broadly ignored. With the support of the Commission, this situation might change.

Malta Gaming Authority lowers minimum return-to-player (RTP) percentage to accommodate Germany-facing operators

While it is not yet certain whether Germany's online gaming tax regime will enter into force on July 1, the Malta Gaming Authority (MGA) has anticipated this possibility by lowering the minimum return-to-player (RTP) percentage for Malta-licensed online operators from 92% to 85%.

Although Germany's updated State Gambling Treaty will enter into force on July 1, the first licenses under this new regime are not expected to be issued until the fourth quarter at the earliest.

However, Germany-facing providers who operate under an MGA license could be subject to the new tax regime as early as July.

Obviously, with a 5.3% turnover tax, a RTP percentage of 92%

would be unsustainable in the long term. The MGA's quick action therefore avoids a massive headache for its licensees that serve the German market.

Upcoming Events

The following events may be of interest to the Gaming in Germany community.

- The third edition of **CasinoBeats Summit** will return to Malta from 13 – 15 July, 2021, as part of Summer iGaming Week organized in partnership with KPMG and Gaming Malta.□
- **iGB Live** and **iGB Affiliate** have also been moved to 28 September – 1 October, 2021, but will still take place in Amsterdam!□
- The **2021 Gaming in Holland Conference** has been scheduled for 1 October, 2021 – the very day that the regulated Dutch online market finally opens. Netherlands Gambling Authority chairman René Jansen has agreed to deliver the keynote speech. Save the date!□
- **SIGMA Europe** has been rescheduled to 16 – 18 November, 2021.□
- The **Betting on Sports America** conference and expo has been scheduled for 30 November – 2 December, 2021 and will bring together all the major players in the fast-growing North American sports betting industry.□
- The **World Gaming Executive Summit** is returning live on 6 – 8 December, 2021 at the W Hotel, Barcelona.□
- **ICE London** and **iGB Affiliate London** have been postponed to 1 – 3 February, 2022.

Online gambling technical guidelines published

On Friday, the Ministry of the Interior and Sport of the State of Saxony-Anhalt published the technical specifications of the

database for the central monitoring of player logins and deposit limits, as well as those of the database for the general monitoring of player behavior and problem gambling prevention. Prospective licensees under the new regime will also be given access to a test environment.

The technical guidelines can be found here: <https://mi.sachsen-anhalt.de/themen/gluecksspiel/technische-informationen/>

The publication of these technical guidelines marks an important step in the imminent opening of the German online casino and poker market. It is, however, unclear whether and to what extent these databases will be up and running by July 1.

Both databases will initially be operated by the State Administrative Office of Saxony-Anhalt from July 1, 2021; and, subsequently, by the Joint Gaming Authority from January 1, 2023.