

Why do the federal states forgo extra revenue of 1.5 billion Euro?

Germany bottom of the list: European gambling legislators oriented to the successful Danish model

Barcelona/Munich, July 2013. The German federal states could generate additional tax revenue of more than 1.5 billion Euro between 2014 and 2017. This would require neither redistribution nor tax increases. It would merely be necessary to adjust the inter-state treaty on gambling (GlüStV), which has been in force for one year, to market realities. The model act already exists in Schleswig-Holstein. Possible tax revenue would increase by more than five times the sums generated under the current partial opening of the market. Up to 93 per cent of the betting stakes could furthermore be channelled to regulated platforms. This is the conclusion reached by a study presented by the consultancy company „Goldmedia“: <http://www.goldmedia.de> („Glücksspielmarkt Deutschland 2017“).

And there's more to it: After one year, the German gambling law regime has failed to achieve its noble intentions, report Focus Online and others. „The regulatory objective of channelling the betting stakes towards state-licensed offers, of combating the black market and of ensuring the best possible level of player protection would not be achieved with the new gambling legislation“, the study concludes. 70 per cent of German betting stakes currently remain in the unregulated market. In 2012 alone, turnover of 6.8 billion Euro was generated in the German sports betting market, with only 245 million originating from state-regulated offers. Focus reports that „the major part“ of the turnover lost due to the decrease in the betting market „will probably wander

off into the black market. Significant losses are also to be expected for the online market.“

EU trend: Taxation of revenue and competitive tax rates

Whilst providers based far away from Europe and acting in the black market are rubbing their hands with glee, those who decided to face the challenges of comprehensive licensing procedures in Schleswig-Holstein with state-of-the-art instruments for player protection and fraud prevention, and who are furthermore prepared to pay taxes in Germany, are left high and dry. In addition to the neglect of online poker and online casino games in the GlüStV, the taxation of the gambling stakes on which it is based has also contributed to the flourishing of the unregulated market.

„Tax rates on gambling stakes similar to the ones applicable in Germany have, for instance in France, with a rate of 7.5 per cent on the stakes, resulted not only in a reduction of the number of licensed and therefore regulated providers from 35 in 2011 to 21 in 2013, but also in a continuous decrease in the number of players“, Claus Hambach, specialist for international tax and commercial law at the Munich law firm „Hambach & Hambach“:<http://www.timelaw.de> recently explained during the World Gaming Executive Summit WGES in Barcelona (see

http://www.timelaw.de/cms/front_content.php?idart=870“:http://www.timelaw.de/cms/front_content.php?idart=870). Most regulators and legislators in Europe have found out of late that a system such as this is not competitive and will only lead to a growing black market. The latest example is Holland, where – contrary to the taxation of stakes chosen by Germany and France – it was decided to apply a tax on revenue which is more attractive for all parties involved. Furthermore, experience in Italy and Denmark has shown that the taxation of revenue results in growth of the regulated gambling sector, whilst the taxation of the stakes favours the black market. Denmark, a system along the lines of which the Schleswig-

Holstein model was designed, and which provides for a 20 per cent tax on the gross gambling revenue, now only has a black market share of less than 5 per cent. „This makes it clear which type of taxation actually serves channelling“, Hambach said.

Joachim Englisch, tax law expert from Münster, gave a similar statement during the World Regulatory Briefing in Frankfurt in June. He not only doubts that the taxation complies with German constitutional law and EU law, but also showed that there is a contrast between commercially profitable and legal operation possibilities for the providers. Sport bets can currently be offered legally online in Germany, however – due to the taxation – usually not profitably; online casino games or online poker can be offered profitably – because licences have already been issued in Schleswig-Holstein -, but are not legal nationwide. Hambach’s conclusion: „Taxation and regulation must not be considered separately. A reasonable regulation without a reasonable taxation system is not possible.“ For Germany, it is not too late to establish a profitable and practicable tax system, which can be seen from the experience of the European neighbour countries. It is obvious at first sight that the legislator of the realistic Schleswig-Holstein model had first entered into a dialogue with experienced EU regulators, Claus Hambach said.

Where will the GlüStV take us?

The applicable GlüStV and therefore the federal states only regulate a part of the existing sports betting market and ignore online poker and online casino games. According to Goldmedia, the consequences are obvious: In the online market for sports bets, the lack of channelling of the new gambling law regime is particularly obvious. In the regulated online market, only 400 million Euro of annual turnover would be generated in 2017, as opposed to approx. 4.5 billion Euro of turnover in the unregulated online market. This means that licensed offers would only have a share of 8.1 per cent of all

online turnover in 2017. And the tax revenue generated through the licensed sports betting providers allegedly favoured by the GlüStV? It is logical that the pendulum does not swing in the expected direction in this area either: Due to decreasing turnover and the difficult revenue perspective as a consequence of the new gambling regulation, Goldmedia forecasts a reduction of tax revenue from most recently 164 million Euro to approx. 100 million for 2017.

On the other hand, the channelling as well as tax revenue could be influenced positively, based on the Schleswig-Holstein gambling act. The Goldmedia scenario is based on a 20 per cent taxation of gross gambling revenue – similar to Schleswig-Holstein – for online poker and casino games, in addition to the 5 per cent betting stake taxation for sports bets under the act on horse race bets and lotteries (RennwLottG). According to this, 93 per cent of the betting stakes could be generated by licensed sports betting providers in 2017. In this comparative scenario, the sports betting tax revenue would have a volume of 395 million Euro in 2017. A tax on online casino games and online poker as levied in Schleswig-Holstein could even increase revenue from gambling to approx. 560 million Euro in 2017. Applying a cumulative view of the years 2014-2017, the sum of approx. 490 million Euro to be expected from sports betting taxes under the current regulation of the new GlüStV stands against up to 2.1 billion Euro in revenue from sports betting tax and gambling tax.

The future:

Germany will lose the race for a reasonable regulation and taxation of this branch of the e-commerce industry which is worth billions – in spite of clearly visible signals – unless the German legislator initiates competitive regulations – which has recently been done in Italy, Spain, Denmark and the Netherlands. How close will the blows have to come until the German legislator finally recognises that the GlüStV serves

neither the treasury nor the companies or the consumers?