

World Regulatory Briefing met in Germany – Where were the German gambling regulators?

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Frankfurt am Main. The English conference organisers CLARION are accustomed to success: they organise, among other events, the ICE Show in London – the largest gaming trade show in Europe. The format for the „World Regulatory Briefing (WrB)“: <http://www.wrbriefing.com> is just as successful: an international series of events which takes a closer look at the world-wide legal framework conditions for the gaming sector. In particular in Europe, this platform is frequently used by regulators to discuss current topics with international colleagues, political protagonists and trade experts from the gambling industry. For the German edition of the series, well over 100 participants from industry, politics and law met in Frankfurt. Many of them had come to meet the most important German gambling regulator, Dr. Thomas Gößl, one of the fathers of the old and new inter-state treaties on gambling (GlüStV), and head of the so-called gambling council (Glücksspielkollegium) of the 16 German federal states, who had been asked by the organisers to participate in the event. They were disappointed. Just as Gößl, all other representatives of the regulators were absent. Nevertheless, the industry gave the regulators' work a clear testimonial – „unsatisfactory“.

Flashback

During recent years, Schleswig-Holstein initiated the prerequisites for a gambling law regime which complies with European law and is also competitive, including up-to-date tax

rates, comprehensive possibilities for player protection, and guaranteed additional revenue for organised sports, following the example of the modern Danish gambling regulation. The other 15 German federal states maintained their regulations, whose compliance with European law is anything but proven, for instance as they do not cover the regulation of poker and casino games via the internet. After the change in the Kiel government, and the replacement of the CDU/FDP coalition, Schleswig-Holstein also joined this regulatory regime – however, only after the Minister of the Interior, Mr Breitner (SPD), had issued approximately 50 licences for sports bets, online poker and casino games. These licences now continue to apply – even under the act modifying the inter-state treaty on gambling (GlüÄndStV) which provides for exactly 20 licenses for the whole of Germany. The Ministry of the Interior of Hesse, which is responsible for issuing the licences, is currently preparing for a plethora of law suits and is looking for a law firm to represent and advise the Ministry during the issue of the licenses. Experts assume that licences will at the earliest be issued next year, in view of the expected legal disputes. In the meantime, the German Federal Court of Justice (BGH) referred questions relating to the different regulations within Germany to the European Court of Justice (ECJ): Whether it makes a difference under aspects of coherence if the regulations in one of 16 federal state differ from those applicable in the other states. Another issue is whether the licences for Schleswig-Holstein, which are valid until 2018/2019, lead to incoherence. A decision is not expected until next year.

"Holy war" between the Danish and the French model

These are probably not the only facts which led Professor Rudolf Streinz from the University of Munich to declare that legal issues relating to the gambling sector are themselves a gamble. In Frankfurt, he referred, among others, to the EU Services Directive and the EU Commission's action plan on

online gambling. Furthermore, the various gambling sectors – sports bets on the one hand, online poker and casinos on the other hand – are subject to different regulations in Germany. Like many other experts, he thinks that Germany is barking up the wrong tree as far as gambling law is concerned, due to the lack of consistency of gambling legislation. WrB chairman Dr. Wulf Hambach from the Munich law firm „Hambach & Hambach Rechtsanwälte“:<http://www.timelaw.de> had already said in his introduction that German gambling legislation is characterised by a „holy war“ – namely between the modern, competition-aligned regulatory example from Denmark and Schleswig-Holstein, and the more restrictive French model. An interesting aspect: Kiel’s Minister of the Interior, Mr Breitner (SPD) had praised the local regulation several times in the course of the licensing proceedings. In the minds of the co-initiators of the Schleswig-Holstein model, the chairman of the FDP parliamentary party in Kiel, Wolfgang Kubicki, and the parliamentary manager of the CDU in the Schleswig-Holstein parliament, Hans-Jörn Arp, there is no doubt that Kiel’s regulatory system is superior. Mr Arp said that the example of Denmark proves that the state regulation of all gambling sectors actually covers approximately 90 per cent of the entire market, whilst the coalition in Kiel, consisting of SPD, Die Grünen and Südschleswigscher Wählerverband SSW, together with the other federal states, continue to drive millions of players into illegality. Also, the loss in potential tax revenue is substantial: „In Denmark, revenue from sports betting alone amounts to 250 million Euro. Projected to the Federal Republic of Germany, this corresponds to three billion Euro which the states’ treasury as well as popular and professional sports miss out on“, Arp said.

Are SPD and Die Grünen waiting for a defeat before the courts?

Just as Wolfgang Kubicki, the CDU politician also bets on the normative power of existing facts. „Those of the federal

states which have stuck to the GlüStV increasingly recognise the implementation problems. I think that the Schleswig-Holstein model will prevail more quickly than expected by many, in particular once the licensees from Schleswig-Holstein actually use their licences." In this case, the GlüStV becomes obsolete, Kubicki believes. He furthermore pointed out that „this is exactly what some people are hoping for who do not want to change their current line of argumentation as this would be difficult to communicate.“ Many simply wait for the courts to create a new situation which would clear the way for the Kiel model, he explained with a view to certain members of the SPD and Die Grünen who had said that they intended to join the GlüStV in order to then revise the relevant components in view of online offers.

Martin Gerster, SPD spokesman for sports politics in the German Bundestag has already been quoted with a demand for new negotiations: „The current situation is a disaster for all those involved. For sports, for the federal states, for the private and for the state-run betting providers“, Gerster said according to SID. „In my opinion it is obvious that the GlüStV will not work this way. I once more ask the federal states to meet again and to decide on procedural improvements.“ (see „<http://www.ran.de/de/mehr-sport/sonstiges/1307/News/sport-profitiert-nicht-von-neuem-vertrag.html>“:here) „In the long run, we will not be able to ban online casino games and online poker games“, FDP politician Kubicki said, as the reality of the internet does not allow this. He also stressed the motivation of CDU/CSU and FDP to act in the area of regulatory politics: „We have to regulate, we have to channel, and thus also allow state control.“

Professor Friedrich Georg Schneider from the University of Linz, making reference to a TÜV study, rejected the statements of critics of an opening of the market for online poker and co., who see this as a gateway for money laundering activities. Measured by the effort required and the

transaction costs necessary, money laundering via online poker is not profitable. Furthermore, the WrB in Frankfurt made it clear that nowadays a multitude of technical mechanisms exist which allow the identification of manipulation attempts, betting collusion (match fixing) etc.

The optimum legislation which takes into consideration the interests of all parties involved was outlined by lawyer Rechtsanwalt Ronald Reichert from the Bonn law firm Redeker Sellner Dahs and Rechtsanwalt Markus Ruttig, CBH Rechtsanwälte in Cologne: There should neither be monopolistic nor oligopolistic structures, it is necessary to abolish the capping of licences, and the providers who fulfil the necessary requirements must be put in a position which allows them to bring their own offers into the market.

The door has been pushed open

But how do practitioners assess the current situation in Germany? Will the providers, in view of the legal situation in Germany, be able to provide attractive offers for players as well as for companies? „We have pushed open the door in Germany, and have stuck our foot in“, Mybet CEO Mathias Dahms summarised during a panel with Wolfram Kessler from the legal department at Tipico and Werner Becher, board chairman of Interwetten. And this foot is not intended to be pulled back. The Kiel model has set framework conditions which do justice to the market, was their analysis, which only Michael Burkert, spokesman of the Deutsche Lotto- und Totoblock, did not want to endorse. The new GlüStV on the other hand creates insecurity regarding legal issues and planning. Following the results of the current Goldmedia study „Gambling Market in Germany 2017“:<http://www.goldmedia.de>, only 30 per cent of the sports betting sales – approx. two billion Euro – would be generated by state-regulated providers if the current German regulation still applied in 2017. The regulatory objective of channelling the betting states 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.

According to the providers' assessment, the success of the regulation also depends on the level of channelling of player conduct. Here, Denmark has a rate of 95 per cent of all players who no longer play in the shadow economy, which underlines the effectiveness of a regulation similar to the one in Schleswig-Holstein. Representatives of the private providers therefore assume that the GlüStV in its current form will not last. „The only question is when that thing is going to die“, Werner Becher said.

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