

EU Commission: Action for Infringement of the Treaty against Germany?

According to a report in today's economic magazine „Handelsblatt“ the EU Commission is planning to initiate an action for infringement of the EC Treaty against Germany. In the Commission's opinion the state gambling monopoly in place in Germany in particular infringes the freedom to provide services as provided for by the EC Treaty.

This action for infringement of the treaty is governed by Art. 226 of the EC Treaty and is composed of several steps. First, after an informal finding of the facts, the Commission notifies the concerned state formally, thus formally initiating the action. In this case the inquiries were proposed by the EBA, the European Betting Association (<http://eu-ba.org>), founded last year. The question, whether Germany is going to receive a letter from Brussels or whether the formal initiation of the action is going to be postponed (for political reasons), will become evident on Wednesday. On this day the Commission as a collegial body is going to decide on Charlie McCreevy's, the responsible European single market commissioner's, proposal. He finds the foreclosure of the German market from operators from other EU member states to constitute an infringement of the treaty. Similar actions for infringement of the treaty have already been brought against Denmark and Greece.

In a second step Germany can then comment on the Commission's reminder. In case the Commission does not find the arguments brought forward by Germany to be convincing it issues a justified and well-founded opinion. In case the Member State does not comply with the opinion in due time, the commission may bring the case before the ECJ and thus sue Germany.

With regards to this multi-level action and the long duration of the procedure (12 – 18 months for the pre-trial proceedings; ca. 25 months for the trial proceedings) caused thereby, the legal questions arising thereof ought to be resolved before in the context of the preliminary rulings procedure (Art. 234 EC-Treaty).