



# New German gambling regime

STATE MONOPOLY TO BE UPHELD UNTIL 2012 – BAN ON ALL INTERNET ACTIVITIES

On 1 January 2008, a new gambling regime came into force in Germany. The new law upholds the state monopoly for gambling until 2012. All internet activities are prohibited. Advertising is restricted to providing information on gambling activities and is prohibited on TV and the internet or by telecommunication. The law was discussed and generated some controversy before coming into force. It is expected that authorities will take action against private land-based and internet operators as well as financial institutions and service providers in early 2008.

## Background

In Germany, gambling is regulated by the state law of the 16 federal states (*Länder*). After the Federal Constitutional Court (the Court) declared the current regime unconstitutional in a decision of 28 March 2006 (file no 1 BvR 1054/01; the case concerned the law of Bavaria), the Heads of States (*Ministerpräsidenten*) agreed on a new gambling regime to implement the Court's requirements in a State Treaty on Gambling (*Glücksspielstaatsvertrag*).

After long and controversial discussions, all 16 *Länder* ratified the treaty and incorporated it into state law. Thus, from 1 January 2008, the new regime applies. As the rules in each *Länder* are not identical, the following is a summary of the basic principles.

## The new regime – upholding the state monopoly and strict prerequisites for advertising and distribution

### Scope of application

The new law applies to the arranging of (*veranstalten*), operating of (*durchführen*) and providing for (*vermitteln*) any form of gambling, ie lotteries, betting and casino games. It does not apply to horseracing or slot machines in amusement arcades. Games of skill and fun games are also not covered.

### Upholding of state monopoly

Under the new regime, any form of arranging of and providing for gambling requires a licence. The licence

requirement for private operators for the forwarding of bets to state-owned lotteries is a new requirement.

### Internet ban

The arranging of and providing for games of chance on the internet is generally prohibited. As an exception, private lottery distribution companies may adapt their distribution channels to those permitted under the State Treaty until 1 January 2009.

### Advertising restrictions

Advertising for private operators is prohibited. However, advertising activities of licensed operators are restricted to pure information and must not invite, offer incentives to, or encourage participation in games of chance. It must not be directed at minors or other vulnerable groups. No advertising on the internet, on TV or by telecommunication is permitted.

### IP and financial blocking

The Treaty authorises the state gaming authorities to prohibit financial institutions from being involved in payment on illegal games of chance, and to prohibit internet service providers from co-operating with access to unauthorised games of chance.

### Transition period for existing licences

Licences granted before 1 January 2007 will remain in force until 31 December 2008. However, advertising and distribution restrictions are applicable.

## Fines

In case of non-compliance, the respective laws of the *Länder* provide for fines up to €1,000,000. Such fines apply in each of the 16 *Länder*, so 16 fines could be imposed on an internet provider offering its services in all German states. Fines on the internet ban were dismissed at the last minute due to concerns regarding compliance with EU law.

## Compliance with EU law?

In two letters to the German government, the European Commission (the Commission) expressed its serious doubts as to whether the new regime complies with EU law. This particularly concerns the internet ban, which, in the view of the Commission, is not a proportionate means to combat gambling addiction. It is expected that the Commission will initiate formal infringement proceedings against Germany. Some cases have already been referred to the European Court of Justice by German courts. It is expected that the court will not decide on these cases before the end of 2008.

## Future of gambling law in Germany

The new regime will not lead to any legal certainty on the legality of gambling activities in Germany. It will now be up to the courts to decide whether this regime meets the requirements of both constitutional law and EU law. Private operators of gambling activities, whether online or land-based, media companies advertising any gambling activity and service providers, as well as financial institutions offering payment services, are well advised to prepare themselves for potential action by the authorities and/or state-owned operators. Until a final court decision is made, the focus will be on whether, and how, the Treaty is enforced.

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