

## GERMAN FEDERAL STATES APPROVE AMENDMENT OF INTERSTATE TREATY ON GAMBLING – A FIRST STEP TOWARDS A LIBERALIZED GAMBLING MARKET?

The German Federal States have recently agreed to amend the Interstate Treaty on Gambling. In particular, the current "de facto acceptance" of sports betting providers will be extended until 30 June 2021 allowing providers to apply for licenses later this year. However, the current amendment is of a short-term nature and only serves as a gap filler until the Federal States agree upon a general overall revision of the regulatory framework for gambling. In particular, it remains to be seen whether political consensus on a more liberal and lenient regulation of online casino games can be reached.

### BACKGROUND INFORMATION ON GERMAN GAMBLING LAW

German gambling law has been subject of controversial debates over the last years and was successfully challenged before German courts as well as the European Court of Justice mainly for being too restrictive and incoherent in various different ways. The core regulatory framework for (online) gambling is governed by the Interstate Treaty on Gambling of 1 July 2012 ("**Treaty**"). The Treaty was adopted by 15 of the 16 German Federal States in 2012, and by the Federal State Schleswig-Holstein in 2013. The main regulatory objectives of the Treaty are (i) consumer protection (which includes prevention of gambling addiction and protection of minors), (ii) fraud prevention and (iii) combating the black market. The Treaty provides for a cap of 20 licenses for sports betting operations in Germany. However, this limitation was found to infringe EU law. Moreover, the licensing procedure which started in August 2012 was held to be unlawful by German courts and the European Court of Justice (case C-336/14). As a consequence, no sports betting licenses have been issued so far. At present, sports betting providers in Germany operate in a grey area. They are tolerated by authorities but are actually not formally licensed under German gambling law.

As regards online casino games, the Treaty imposes a total ban that has also been subject to controversies and debates in the last years. The federal state of Schleswig-Holstein had nevertheless issued several online casino licenses because it only acceded to the Treaty in January 2013 (after a newly elected

#### Key issues

- German Federal States have agreed to amend the Interstate Treaty on Gambling for a transitional period until 30 June 2021
- The limitation of available licenses for sports betting providers has been abolished
- Sports betting providers can obtain licenses as of 1 January 2020
- The German Federal States have time until 30 June 2021 to agree upon an overall general revision of German gambling law
- It remains to be seen whether consensus can be reached on a more liberal regulatory regime for gambling operations, particularly in relation to online casino games which are currently subject to a total ban under the Interstate Treaty on Gambling

government took over) and had its own, more liberal State Gambling Act before. However, these licenses have meanwhile expired.

## **RECENT AGREEMENT OF THE GERMAN FEDERAL STATES**

Under the recent amendment of the Treaty ("**Amended Treaty**"), the Federal States agreed to abolish the controversial cap on available sports betting licenses. As a result, there will be no limitation to the number of sports betting providers that can obtain a license. Sports betting providers will have the possibility to apply for a license later in 2019. Newly issued sports betting licenses are supposed to enter into force as of 1 January 2020 and expire by 30 June 2021 (which is also the expiry date for the entire Amended Treaty). Prior to issuing new licenses, the Amended Treaty will have to be submitted to the European Commission for notification (presumably in April this year). Licensed sports betting providers will have to comply with a number of conditions which are intended to ensure protection of players and minors such as conducting a proof of age which will be required before placement of a bet. In addition, sports betting providers must ensure that players do not bet more than EUR 1,000 per month. Further, live betting will also be prohibited.

Apart from the foregoing, the Federal States allowed Schleswig Holstein to continue with its own regulatory regime on gambling (particularly online casino games) until 30 June 2021, i.e. licenses for online casino games that recently expired may be renewed. Schleswig-Holstein has already initiated the first steps for renewing the online casino licenses it issued in 2012. As the case may be, it appears to be likely that the approach of Schleswig-Holstein may serve as a model for a (more) liberal regulatory regime on gambling that may be extended to the rest of Germany after June 2021. However, with regard to gambling providers that desire to offer both, online sports bettings and online casino games, the question arises whether and to which extent the simultaneous offering of online casino games will have an impact on the issuance of a sports betting license and, as the case may be, on the specific modalities of providing online sports betting offers. Anyway, we see viable possibilities and good reasons to argue that simultaneous offerings of online casino games and online sports bettings can be carried out in a legally compliant manner.

## **OUTLOOK: FURTHER LIBERALIZATION TO BE EXPECTED?**

Abolishing the limitation on available sports betting licenses is a first (small) step towards a more liberal and coherent regulation of the German gambling market. The Federal States now have time until June 2021 to develop and agree upon an overall regulatory regime for all forms of gambling in order to place German gambling law on a long-desired solid legal basis. In particular, it remains to be seen whether (political) consensus can be reached on a more liberal regime for online casino games. Considering that the unregulated black market for online casino games offered to German customers has been steadily growing since the German ban came into force, an opening of this market appears to be rather desirable in the light of the Treaty's core objective to combat the black market by "steering gambling activities into legal channels". It is not yet certain whether market participants and other stakeholders will be sufficiently involved and heard in the process of reforming the German gambling law.

## CONTACTS



**Dr. Mathias Elspaß**  
Partner

**T** +49 211 4355 5260  
**E** mathias.elspass  
@cliffordchance.com



**Dr. Thomas Volland**  
Partner

**T** +49 211 4355 5642  
**E** thomas.volland  
@cliffordchance.com



**Dr. Heiner Hugger**  
Partner

**T** +49 69 7199 1283  
**E** heiner.hugger  
@cliffordchance.com



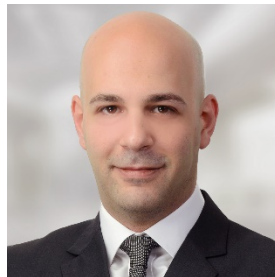
**Ulrich Lembeck**  
Of Counsel

**T** +49 211 4355 5674  
**E** ulrich.lembeck  
@cliffordchance.com



**Dr. Julia Baedorff**  
Senior Associate

**T** +49 69 7199 1452  
**E** julia.baedorff  
@cliffordchance.com



**Zaid Mansour**  
Senior Associate

**T** +49 211 4355 5772  
**E** zaid.mansour  
@cliffordchance.com

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Clifford Chance, Königsallee 59, 40215  
Düsseldorf, Germany

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