

NEW GERMAN INTERSTATE TREATY ON GAMBLING ENTERED INTO EFFECT

The new Interstate Treaty on Gambling 2021 (the "**Interstate Treaty**"), ratified by the German Federal States in March 2021, has entered into force on 1 July, 2021. The Interstate Treaty brings significant changes to the legal framework on gambling, including the legalisation of online gambling, further liberalisation of sports betting, amended regulations for payment transactions and the establishment of a joint supervisory authority.

ONLINE CASINO GAMES, VIRTUAL SLOT MACHINES AND ONLINE POKER

Whilst previously subject to a total ban, the new Interstate Treaty now provides for the possibility to obtain a license for the organisation and offering of online casino games, virtual slot machines and online poker. Same as under the previous framework, it remains possible to obtain a license for the organisation and brokerage of online sports betting.

Obtaining a license for public online games of chances, first of all, requires that no grounds for refusal exist, i.e. that the organisation and brokerage of a game of chance is not incompatible with the Interstate Treaty's objectives, namely (with equal priority):

- the prevention of gambling and betting addiction and the creation of effective addiction control,
- channelling the population's natural gaming desire into orderly and supervised legal channels,
- youth protection and player protection,
- safeguarding orderly gaming procedures and prevention of fraudulent manipulation, and
- the prevention of risks to the integrity of sports competitions in the organisation and brokerage of sports bets.

Second, obtaining a license for public games is subject to the following general prerequisites:

- guaranteed exclusion of minors and barred players,
- no money lending activities to players,

Key issues

- Licenses for previously banned virtual slot machines, online poker games and online casino games can now be granted.
- Introduction of amended rules concerning payment transactions.
- Inter-operator monthly deposit limit of max. EUR 1,000 per player.
- New joint law enforcement authority to monitor compliance with the new gambling law.

- the adoption of a social concept (for the protection of minors and players and to the benefit of responsible gaming and addiction prevention), and
- the set-up of graphically separated areas on the same online domain for different forms of games of chance.

Further, the following special licensing requirements apply to the organisation of online sports betting, online poker and virtual slot machines:

- (i) personal reliability, i.e. an applicant must disclose all owner and shareholder relations, have expertise to host public games of chance, demonstrate the lawful origin of the funds required and must not engage in illegal gaming;
- (ii) economic capability, i.e. an applicant must possess sufficient equity capital for long-term business, demonstrate profitability of the intended business and must have prepared necessary security deposits;
- (iii) transparency and security of the game of chance, i.e. an applicant must ensure transparency of the operations and monitoring of the sales network, have a registered office in the EU / the European Economic Area and must establish its own accounting for all game and payment processes in Germany through a domestic account or at a credit institution based in the EU.

A license for the organisation of sports betting, online poker and virtual slot machines will be valid in all German Federal States for a tenure of five years upon initial issuance and seven years in case of a renewal.

While there is no limitation on how many licenses may be granted for sports betting, online poker or virtual slot machines, only a limited number of licenses may be issued for online casino games. In this respect, no more licenses for online casino games may be issued than (terrestrial) casinos (*Spielbanken*) exist in the relevant Federal State. In this respect, it is to be noted, that the new Interstate Treaty enables the Federal States to regulate online casinos in analogy to the regulation of their own terrestrial casino systems. Accordingly, only terrestrial casino license holders may be eligible to obtain an online casino license whereas such offerings would nevertheless be limited to the territory of the respective Federal State.

REGULATORY REQUIREMENTS FOR ONLINE GAMBLING

When providing online gambling offerings, organisers are subject to numerous general obligations, *inter alia*, they are required to

- set up a provider-related game account for each player;
- establish an inter-operator deposit limit in the maximum amount of generally EUR 1,000 (administered in the so-called limit file) and the possibility for the player to set up provider-related daily, weekly or monthly betting, deposit and loss limits; if a bet or loss limit is exhausted, further participation in gambling offerings is forbidden and may not be enabled;
- transmit information to the joint law enforcement authority to maintain a central limit database to ensure compliance with online gambling regulations;
- ensure the exclusion of minors and suspended players through appropriate technical procedures

- implement and regularly monitor their IT security concept;
- comply with data protection and storage requirements;
- ensure that participation in online gambling is only allowed to players who are not yet registered with any other provider;
- implement and use an automated system for the early detection of players at risk of gambling addiction;
- implement and use a technical system that records all data required for the gambling supervision, that stores data digitally in a non-modifiable form and allows for electronic verification at any time;
- record the suspension of players in the suspended players database (the so-called blacklist file).

Additional requirements may vary depending on the type of gambling.

SPECIAL PROVISIONS ON SPORTS BETTING

The Interstate Treaty introduces further provisions on sports betting. Sports betting can be permitted as combination or single bets on the outcome of sports events (bets on outcomes) as well as on the occurrence of certain events during an ongoing game (bets on events). Such bets may be placed, for example, on the next goal, set or on a similar component of a final result in sports where only a small total number of these events regularly occur during the course of the event. Sports betting on the occurrence of illegal behaviour or the sanctioning of (allegedly) illegal behaviour is not permitted.

TERRESTRIAL ARCADE CENTERS

The legal framework for terrestrial arcade centres (*Spielhallen*) under the Interstate Treaty did not change significantly and remains subject to regulation by the individual Federal States. Terrestrial arcade centres are still subject to minimum distance requirements. Moreover, Federal States can limit the amount of licences that may be granted in each municipality. Furthermore, terrestrial arcade centres which are physically connected to other terrestrial arcade centres are generally still not permissible.

However, Federal States may adopt provisions that allow arcades existing on 1 January 2020 and built in a constructional connection with other arcades to jointly apply for a license. This requires that all those terrestrial arcade centres are certified and regularly re-certified by a testing organisation, that the terrestrial arcade centres operators have a special proof of expertise and that the terrestrial arcade centres staff is specially trained with regards to youth protection and gambling addictions.

RULES FOR PAYMENT TRANSACTIONS

Participating in payment transactions in connection with unlicensed gambling is prohibited. The supervisory authority may issue prohibition orders to those involved in payment transactions, in particular credit and financial service institutions, to deter them from participating in payments for unlicensed gambling and in pay-outs from unauthorised gambling.

Apart from that, payments to or from a gaming account may only be made from a payment account within the meaning of Sec. 1 (17) of the Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*), established in a player's name with an obligated party pursuant to Sec. 2 (1) no. 1 or 3 of the Anti-Money Laundering Act. Players may only hold payment accounts at credit institutions, financial service institutions or e-money institutions. Deposits and

withdrawals via anonymous means of payment, such as bitcoins, are not allowed.

NEW JOINT SUPERVISORY AUTHORITY

The Interstate Treaty on Gambling implements an institutional framework with a newly established joint supervisory authority at its centre, the so-called Common Gaming Authority of the Federal States (*Gemeinsame Glücksspielbehörde der Länder*), based in Saxony-Anhalt. Its task is, amongst others, to act as permit and supervisory authority for cross-border gambling services, in particular on the internet. Further tasks include the monitoring of developments in the gaming market and the promotion of research in that area. The Common Gaming Authority is competent to administer essential databases, such as the blacklist file or the limit file.

OUTLOOK

The Interstate Treaty aims to liberalise the gambling market by allowing online gambling and reducing restrictions on sports betting in order to shift (the organisation and brokerage of) games of chance as well as the participation in gambling away from black markets to supervised structures. It remains to be seen whether in practice the Interstate Treaty will achieve these objectives, given the rather strict regulatory requirements such as deposit limits across all providers and other (partly significant) administrative burdens.

Apart from that, it is noteworthy to highlight the currently ongoing discussion on the taxation of stakes (and its levels). The European Gaming and Betting Organisation (EGBA) has already filed a formal complaint to the European Commission, asserting that the recent proposal by the German Federal Council (*Bundesrat*) on an additional tax for online poker (5.3% of the stake) and virtual slot machines (8.0% of the stake) would bring a significant and unfair advantage to corresponding terrestrial offerings. Also, it appears that such excessive taxation approach would rather contradict the Interstate Treaty's objectives. In particular, it could perpetuate the black market and motivate players to rather use illegal gambling offerings.

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