Gambling in Germany –
The Regulatory Background

18 October 2011
Germany: Federal vs. State Regulation

**Federal Level**
- Automated games/ Slot machines
  - (Horse Betting)
- (Generally) allowed for private operators

**State Level**
- Casino Games
  - Sports-Betting
- Lotteries
- Public monopoly
Interstate Treaty on Gambling

• **Aims:**
  - Fight addiction
  - Channel players into legal offers
  - Protect minors and players
  - Prevent fraud

• **Content:**
  - Public Monopoly on all games of chance
  - Ban on all forms of online gambling – also for public operators
  - Strict rules on advertising

Interstate Treaty expires end of 2011
(Most state implementation acts, however, contain extension clauses)
Public monopoly generally legitimate in order to fight prevailing public interests (e.g. gambling addiction)

Monopoly, however, has to be applied in a consistent and systematic manner across all different sectors of gambling
  - No advertising campaigns for public offers with a view to maximising profits
  - No (further) liberalisation of games of chance which are more addictive, e.g. automated games

National rules which violate EU freedom of services automatically invalid

Current Interstate Treaty not in line with EU law
German High Courts

- Federal Administrative Court (24 Nov 2010):
  - Justification for public monopoly has to be applied **consistently across all forms of gambling** including more addictive forms of gambling
  - Public advertising must be in line with aims of the public monopoly
- Federal Administrative Court (1 June 2011), Federal Civil Court (28 Sep 2011)
  - **Ban on the online provision** of all games of chance **consistent** and **valid**
- Various lower court decisions with differing results

→ Internet State Treaty likely invalid at the moment, **but**: Internet offers still prohibited

→ Limited effect of judgments in view of expiry of current Interstate Treaty
New Interstate Treaty - Draft

- Preservation of **public monopoly on lotteries**
- „Liberalisation“ of **sports betting market**
  - 7 licenses for sports betting for a test period of 5 years
  - Licence fee: € 250,000 1st year, € 175,000 each additional year
  - **16.66 % turnover tax on all wagers**
  - Various restrictions (e.g., monthly stakes, no live „in-game“ betting)
- Online Casino Games only if **live transmission of terrestrial casino games**
- Restrictions on arcades
- Option for authorities to order blocking of gambling websites by ISPs

→ Draft factually upholds public monopoly
EC Comments of 18 July 2011

• **Detailed opinion**: Restriction of freedom of services by
  • Limitation on **amount of licences for sports betting**
  • Different regulation for sports betting and casino games not consistent
  • Preferential treatment for land-based casinos in Germany re online offers
    → Disregard of detailed opinion could lead to infringement proceedings

• Various **comments**, e.g.
  • Clarification of criteria for licences
  • Different rules for established publicly held operators
  • Amount of licences required for agency services (16 State licences)

→ No direct comments re 16 2/3 % turnover tax
Schleswig-Holstein

- Gambling Act („Glücksspielgesetz“) passed on 14 September 2011
- Public monopoly on lotteries upheld
- Liberalisation of
  - (Online-)Gambling (except for games with a banker)
  - Sports-Betting
  - Lottery agencies
- 20% gross profit tax, additional administrative fees
- No restriction on number of licencees
- Separate licences for operation (Veranstaltung) and distribution (Vertrieb)

SH approach already approved by EU-Commission
Schleswig-Holstein - issues

• Licences not taking effect before 1 March 2012

• **Territorial scope** of licences?
  • Interstate Treaty: Location of player relevant to determine applicable state law
  • Sec. 35 para. 2: „Operation“ **under scope of SH Act** if licenced operator makes games available to residents outside of SH

→ Out of scope regulation or mere tax provision?

→ Reactions by other states?

• **Enforcement** of prohibition decisions and fines from other states in SH?

• Will SH stay in **Deutscher Lotto- und Totoblock**?

• What happens to licences after **elections in May 2012**?

→ **Farewell to federal solidarity or well-planned bargaining chip?**
Interstate Treaty – next steps and issues

• Meeting of the Heads of State on **28/29 October in Lübeck** (SH presiding)
  • Joint solution - how much (further) liberalisation?
  • Interstate Treaty between 15 States, Schleswig-Holstein to uphold its Act?
• New Interstate Treaty unlikely to enter into force prior on 1 January 2012
• Compatibility with ECJ requirements?
  • Consistency if **public monopoly on lotteries** still upheld?
  • Consistency of **online bans** if particular forms of online games allowed?
  • Consistency if **different regulatory regimes** in particular German states?
  • Consistency if still (fairly) **liberalised rules on slot machines**?

➔ Many questions for the panel!
Many thanks!

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