ECJ Special Report:
A Mandate For German Gambling Reform
Contents

2 Executive Summary

2 Implications for Germany

3 Implications for Europe

4 Facts

4 Markus Stoß

5 Carmen Media

7 Hearing

10 Opinions and Judgments

11 Objectives and Consistency

21 Mutual Recognition

27 Authority Discretion

29 Internet Gambling Bans and the EU

32 Analysis

35 Implications for Germany

41 Implications for Europe

45 Endnotes

49 Acknowledgments

50 About Us

51 Disclaimer
Executive Summary

There is consensus that the September 2010 European Court of Justice (ECJ) judgments involving the Carmen Media case¹ and the combined cases of Markus Stoß² are likely to result in significant changes. This is true, not only in Germany, but also in Europe.³

Implications for Germany

While the ECJ has mandated change for the regulation of gambling in Germany, the level of change required to achieve a coherent model is yet to be determined. There is an urgent need to end the legal chaos. However, a political solution may be difficult to find, with views divided along party lines among the country’s 16 federal states or Länder.

Mixed Views on Sports-Betting Liberalisation

While some proponents of liberalisation have suggested opening up the market is a foregone conclusion, others insist that this is simply not the case. Currently, the Christian Democrats are calling for modest liberalisation, while the Social Democrats are calling for the maintenance of the status quo.

More Stringent Slot Machine Regulation

The court held that slot machines in Germany have been subject to an expansion policy and have a higher risk of addiction. Regulating slot machines in arcades in the same way as casinos is a strong possibility. If this happens, passport controls and self-exclusion schemes will be introduced as a minimum.

Divided Opinions on Casino Regulation

The ECJ holds the view that casinos have pursued an expansionist policy in recent years. Despite this, industry representatives highlight a reduction in patronage and revenues. However, a consistent model for both private operators and public monopolies may present some difficulties for private operators in terms of advertising and revenue maximisation.

Lottery Monopolies to Continue

With the ECJ confirming monopolies are more effective in combating gambling addiction, and the Länder agreeing with this view, state monopolies look set to continue to exist in a new regulatory framework for gambling. A tighter approach to advertising, with limits on enticements to gamble is likely to accompany this.

Internet Gambling Regulation Likely

Two of the three options for a new Interstate Treaty allow for some form of internet gambling regulation. Coupled with the state of Schleswig-Holstein seeking to license private operators, the lifting of the blanket prohibition on internet gambling seems likely. While there is some consensus among operators on lifting the ban, there is intense political debate about the extent of any internet gambling offering.
Implications for Europe

The decisions affecting one of Europe’s biggest markets were welcomed by German-facing internet gambling operators, and the listed operators share prices rose sharply. The judgments were also keenly watched by other member states, particularly those with exclusive gambling licences. There was hope that the decisions would provide some legal clarity for the European market, but many questions remain.

Member States’ Discretion
The ECJ decisions do not affect a member state’s ability to unilaterally choose the type of gambling regulation and policy in line with the principle of subsidiarity. Member states still have an unfettered right to have a monopoly or prohibition on gambling, provided they pursue the objectives of their regulation in a consistent and systematic manner. The court again dismissed the concept of mutual recognition and held that a study is not necessarily required prior to implementing an exclusive licensing system.

Sector Consistency
It is clear the ECJ requires Germany to apply its gambling policies in a consistent and systematic manner across all sectors. Debate is now turning to the application of the German decisions reasoning on sector consistency to other member states across Europe.

Advertising Implications for Monopolies
The court’s observations in Marcus Stoß may put pressure on monopolies to limit advertising to simply informing the public of offerings without any images, messages or even colours that can be interpreted as enticements to gamble. However, a balance will be required to ensure the advertising is enough to channel customers away from illegal offerings.

The ECJ and Online Gambling
The ECJ has extended its stance against internet gambling, which began with the Santa Casa decision. Without reference to evidence, the court reconfirmed that internet gambling has an increased likelihood of gambling addiction and negative social consequences.

A Pan-European Political Solution?
The legal uncertainty created by the German ECJ cases provides a powerful incentive for member states to agree on a pan-European political solution to the transnational issues raised by online gambling. Following the likely release of a ‘Green Paper’ by EU Internal Market Commissioner Michel Barnier in early 2011, a window of opportunity will exist for stakeholders to participate in a consultation this year. Optimism is also high following a resolution from the Competitiveness Council of the European Union to “work more closely together” on internet gambling issues.
Endnotes


2. Markus Stoß (C-316/07), Avalon Service-Online- Dienste GmbH (C-409/07), Olaf Arnoedus Wilhelm Hoppel (C-410/07), Kulpa Automatenservice Asperg GmbH (C-358/07), SOBO Sport & Entertainment GmbH (C-359/07), Andreas Kunert (C-360/07)

3. There was also another judgment which was delivered on 8 September 2010 - Case C-409/06 Winner Wetten GmbH v Bürgermeisterin der Stadt Bergheim.
Founded in February 2007, GamblingCompliance has very quickly established itself as the leading publisher in the global gambling industry – specialising in legal, regulatory, political and market information. Our independent and impartial analysis, delivered daily to a worldwide client base of over 800 top gaming executives and regulatory bodies via a cutting-edge technology platform, has ensured we are an essential information service for the industry.

We help clients and their advisors reduce exposure to regulatory and market risk by providing timely information on an advanced web-based platform, allowing clients to monitor, track and receive updates on regulation, compliance, competitors and market developments around the world.

The GamblingCompliance service gives you immediate access to in-depth country, state and provincial regulatory profiles from around the world, as well as extensive analysis across all gaming sectors. GamblingCompliance has 25 full-time staff based in Europe and the United States plus an established network of analysts and professionals representing all sectors of the industry, to ensure that our coverage is truly global. With the recent opening of our US office in Washington DC, the heart of the nation’s hub for regulatory, legislative and policy developments, subscribers will receive unrivalled analysis of critical state and federal developments affecting the global gaming sector.

Our clients include global online and terrestrial gaming operators, lawyers, regulators, financial services firms, public lotteries, software and payment providers. We provide high-level analysis via four delivery channels:

- A fully searchable web-based annual subscription service and daily email newsletter.
- Comprehensive reports including: White Papers; Market Barrier; and Regulatory reports.
- Customized research projects.
- Seminars and executive briefings.

If you are interested in reports that cover other regions or would like a FREE 2-Week Trial to GamblingCompliance, contact us today:

**US Office**
1250 Connecticut Avenue NW Suite 200
Washington DC 20036
Tel: +1 202 261 6583
Fax: +1 202 261 6583
info@gamblingcompliance.com

**UK Office**
91 Waterloo Road
London SE1 8RT
Tel: +44(0)207 921 9980
Fax: +44(0)207 960 2885
info@gamblingcompliance.com
Disclaimer

In preparing this report GamblingCompliance Ltd. has made every effort to ensure the accuracy of the contents of this report. However, no representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this report. Furthermore, GamblingCompliance Ltd. does not intend this report to be interpreted, by any reader as constituting legal advice.

Any reader, or their associated corporate entity, that relies on any information contained in this report does so entirely at their own risk. GamblingCompliance Ltd. and its employees do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this report or any decision based on it. This report is no substitute for local legal advice in the jurisdiction covered. Before acting or refraining to act on any information you read in this report it is strongly recommended that you obtain independent legal advice.

Terms and Conditions

On purchasing the Special Report or accessing the Special Report as part of an International Premium subscription, you will be granted a non-exclusive, non-transferable user licence to access the Special Report, subject to your complying with these terms and conditions. The user licence may be granted on a single user basis, or a corporate multi-user basis authorising a specific number of additional users access to the Special Report. Each User may:

- Display the materials electronically on a single computer.
- Download and store one copy of the materials electronically on a single computer.
- Print one copy of the materials.
- Use materials presented solely for users internal business use.

Users may not:

- Use the materials otherwise than in accordance with these terms and conditions.
- Sub-licence, rent, lease, transfer or assign any rights in the materials, including without limitation copyright, trademark and other intellectual property rights, to any other person, or attempt to do any of the foregoing.
- Alter or remove any copyright notices or other notices indicating the proprietary ownership by Gambling Compliance Ltd. or any third party of any intellectual property in the materials.
- Use the materials in any manner except as expressly permitted, or transfer or export the materials or any copies into any country, other than in compliance with applicable laws.
- Create derivative works based on the materials.
- Use the Special Report for any unlawful purpose.

© Copyright 2011 GamblingCompliance Ltd. All rights reserved.

The intended use of this report is for purchasers only. No part of this report may be (i) copied, photocopied or duplicated in any form by any means or (ii) redistributed or republished without the prior written consent of GamblingCompliance Ltd.