



II-8.7: The German Land of Schleswig-Holstein implements a new law on online gambling.

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Translated Article



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MAIN INFORMATION

The German Land of Schleswig-Holstein is the first in Germany to implement a law on online gambling, which appears to be one of the most modern and liberal in Europe.

CONTEXT AND SUMMARY

The European Union allows Member States to benefit from a certain margin of manoeuvre in the organisation and regulation of their online gambling markets. Indeed, gambling is a matter of public interest, since it is related to several problems such as addiction or tax policy. Indeed, in many European States, games of chance were State monopolies, and yet, the development of online gambling activities, illegal for a while, required that European States reorganise the regulation of gambling activities.

Yet, Member States, in order to respect the freedom of occupation and establishment, core principles of the Union, have to open their online gambling market to operators established in another Member State. Due to specific, gambling-related risks, it is of course left to the countries to organize their regulatory framework to specifically protect the consumers and avoid criminality.

In Germany, the regulation of games of chance is a matter of the *Länder*. In this specific context, each German Land is free to organise the market of games of chance according to its own preferences, in the respect of European and Federal principles.

In 2010 and 2011, 15 German *Länder* - all *Länder* except Schleswig-Holstein - tried to agree on offering a coherent regulation of games of chance all through the country, with specific restrictions due to the risks linked with such activities, and, also, since games of chance provide for significant incomes for the governments. However, the resulting project of regulation embraced a quite restrictive approach to the regulation of games of chance. The opening of the market was solely foreseen for horse betting. Also, only seven licences, limited in time, could be granted at the Federal level.

Therefore, betting companies from other Member States complained this restrictive approach was hampering their activities, and could concretely shut the German market to other EU-based gambling companies. As a result, the European Commission notified to Germany in July 2011, that this project of law should take into account the conclusions of previous ECJ decisions^[1], and was, in its current form, violating European standards.

It is in this context that the Land of Schleswig-Holstein, run by a black-yellow coalition (CDU - the Christian Democrats, right-wing, and FDP, the liberal party), adopted a surprisingly business-friendly law on September 16th, 2011, dissociating itself from the prevailing restrictive approach all through the country. It should open the local market by March 1st, 2012.

This law legalises online gambling and provides that any operator can freely maintain (or create) its activity on the market providing that they are granted a licence by the State. It is not anymore requested that companies are established neither in Schleswig-Holstein, nor in the European Union, provided that they have a branch inside the European Union. This provision should make the granting of a licence more attractive to all kind of operators. Also, operators already holding a licence in any other European Member State can be granted a compulsory licence in Schleswig-Holstein. In exchange, the Land will take 20% of the gross income of gambling rooms, including all payments made by players in every area in which the operator provides its services, and not only in Schleswig-Holstein. And finally, the authority responsible for the granting of licences will be an administrative body under the authority of the Ministry of Home Affairs of the Land. Similarly to a regulator, this authority will be in charge of the supervision of the market. This opens the online gambling market in an unprecedented way in Europe.

[1] See II-8.1 : The European Court of Justice restricts Member States' ability to hinder the free provision and establishment of gambling services on their national territory, Lorraine Boris, The Journal of Regulation, 2010

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BRIEF COMMENTARY

The law, which will be effective in March 2012, took other German *Länder* by surprise, and jeopardises the process of organising a harmonious framework in the Federal Republic. The decision of the Parliament of Schleswig-Holstein to open its market as a maverick, while the European Commission has recently dismissed the regulatory project of the other *Länder*, is certainly unusual.

As a consequence, the reaction of the other *Länder* is awaited. Indeed, the existence of great discrepancies inside Germany is of course endangering the coherence of any Federal oversight of such risk-related activities. Furthermore, such a law constitutes now concretely the standard to which other *Länder* will more or less have to comply. A reunion of Ministerpräsidenten (the Prime Ministers of German *Länder*) will take place in October in Lübeck, during which this theme will be discussed.

This law is also a very strong embrace of the opening of the local market to competition, and a strategic coup, insofar that it will eventually be taken as the standard law to which each other Land will have to refer to elaborate its own law. Being the first to strike, the Land of Schleswig-Holstein set a standard and forces other German *Länder* to adjust their position towards the opening of the market, while it offers a very business-friendly regulatory framework makes it very attractive for operators to provide services in this Land.

Allegedly one of the most modern law on online gambling in Europe by now, this law remains to a certain extent classical, inasmuch as it creates a separate authority in charge of the ex ante agreement of a market operator but as well as the ex post surveillance and supervision of the market. The authority will be also including several specific divisions, on addiction and protection of the consumer, of the youth, and the fight against criminality. These advisory groups will assist the board and the President of the authority. Eventually, the Land of Schleswig-Holstein has made the choice to implement a specific, technically well-adapted regulatory authority that will cooperate at the level of the Federal Republic of Germany with the representative authorities of the other *Länder*.