

Gaming & Betting in Germany

A Guide to Germany's Gambling Law and current Legal Trends

provided by
The Task Force Gaming &
Betting Law of

Heuking Kühn Lüer Wojtek
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Editorial

Dear Reader,

The German gaming and betting market is highly attractive: The “grey” market for sports betting alone is said to represent annual sales of EUR 7.3 bn mainly generated by foreign remote gambling companies. Market players expect a volume of EUR 11 billion p.a. in case of market liberalisation. In comparison, the “white” land-based turnover of the German monopoly companies owned by the Federal States has shrunk in this segment to EUR 185 m p.a.

Since the European Court of Justice has declared the monopoly provisions of the German Interstate Treaty on Gambling as incompatible with Union law and thus not applicable to service providers from other Member States in September 2010, the market has recovered. The stigma of being overregulated is not the last word, competitors have regained a chance to be legally present.

The Federal States are discussing new models of market regulation, not only bearing in mind the ECJ decisions, but also looking at the upcoming internal market process, which will be initiated by the Commission’s Green Paper on online gambling soon.

These radical changes suggest it to us to regularly monitor the process and to inform our clients, colleagues and friends from the industry. The Task Force Gaming & Betting Law of Heuking Kühn Lüer Wojtek consists of experts in national and European regulatory and commercial law who are experienced in helping clients to achieve their objectives. We have prepared the following short overview of the status quo. Enjoy reading it and let us know whether you want to receive further editions (please see the attached form).

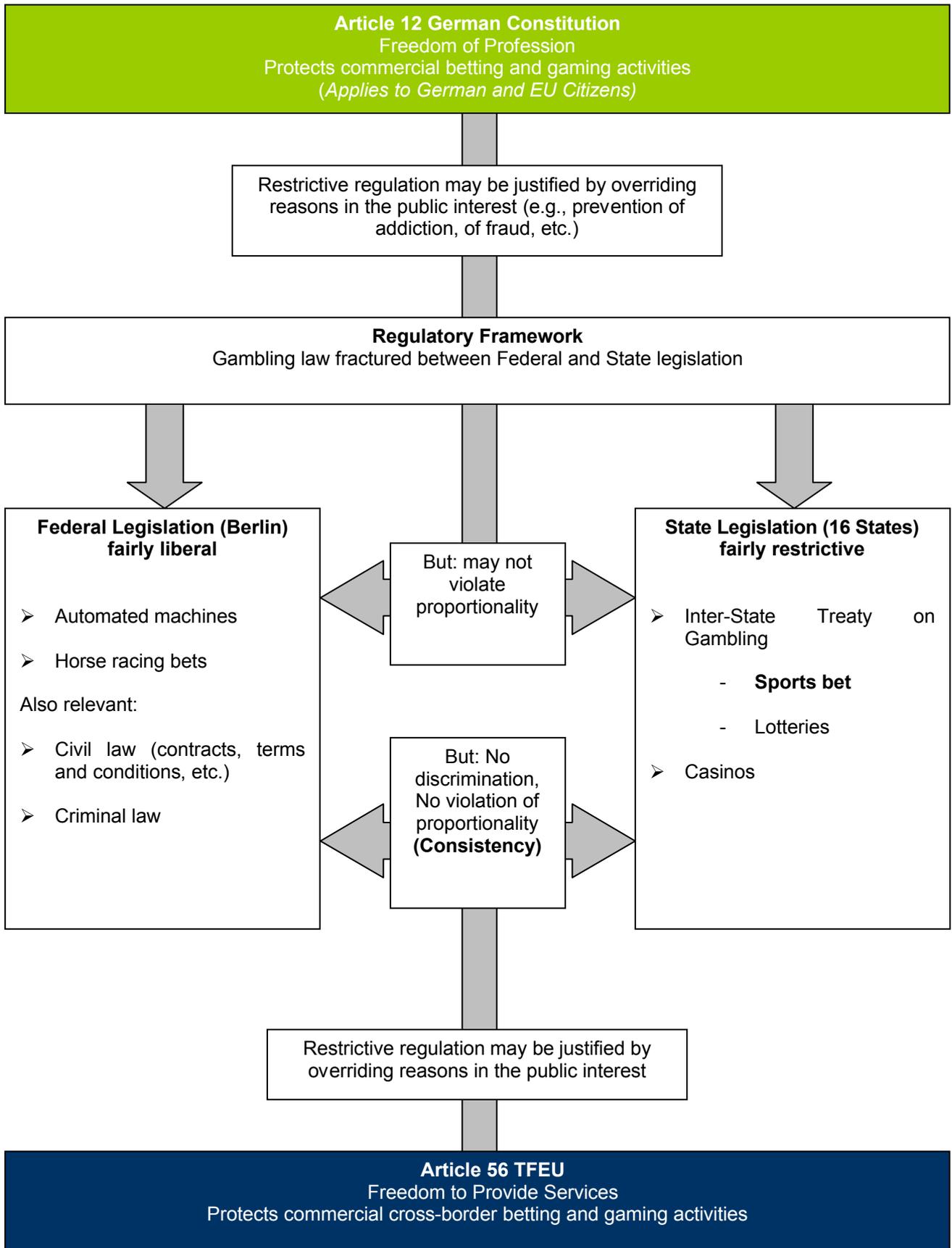
Best regards,

Your Task Force Gaming & Betting Law

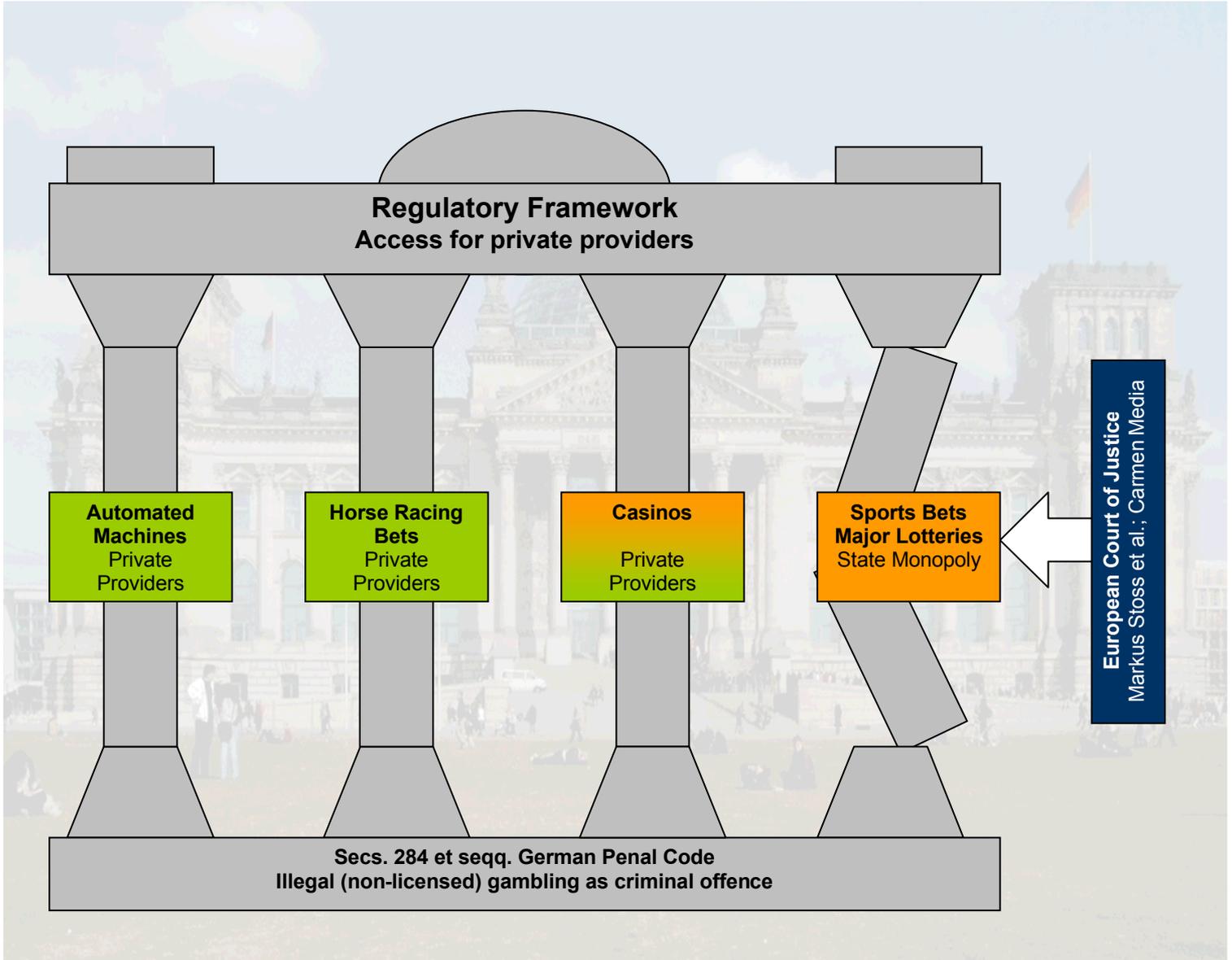
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Gaming & Betting in Germany – Legal Framework German and European Law



Gaming & Betting in Germany Basic Principles



Automated Gaming Machines

Regulated on Federal level in Secs. 33 d-l "Gewerbeordnung" (German Industrial Code).

Horse-Racing

Federal "Rennwett- und Lotteriegesezt" (Horse Racing Bets Act of 1922). Bookmaker licences are traditionally available.

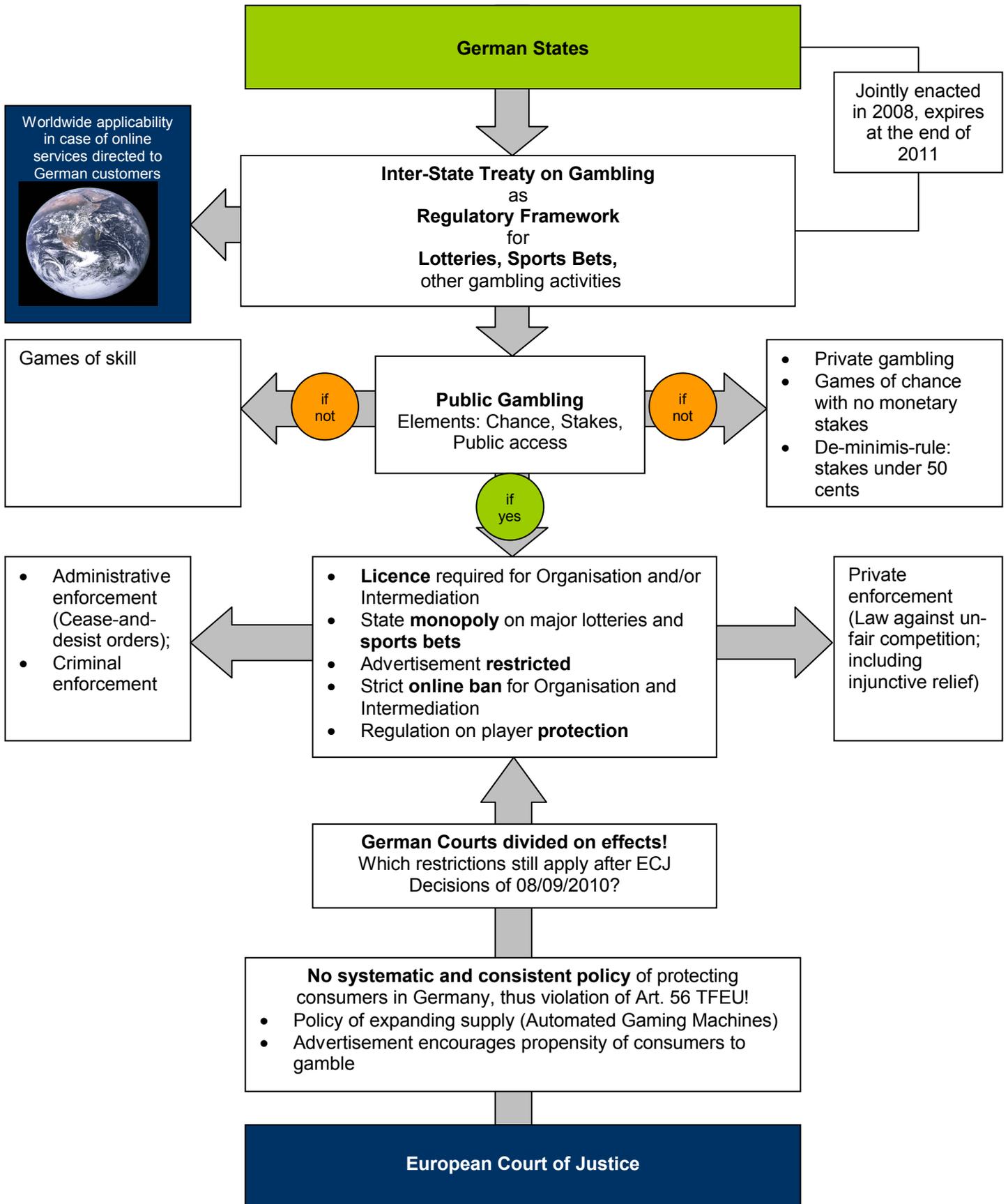
Casinos

State regulations ("Spielbankgesetze" = "Casino Acts"). Some additional provisions are included in the Inter-State Treaty on Gambling. In several (not all) states, licences are available.

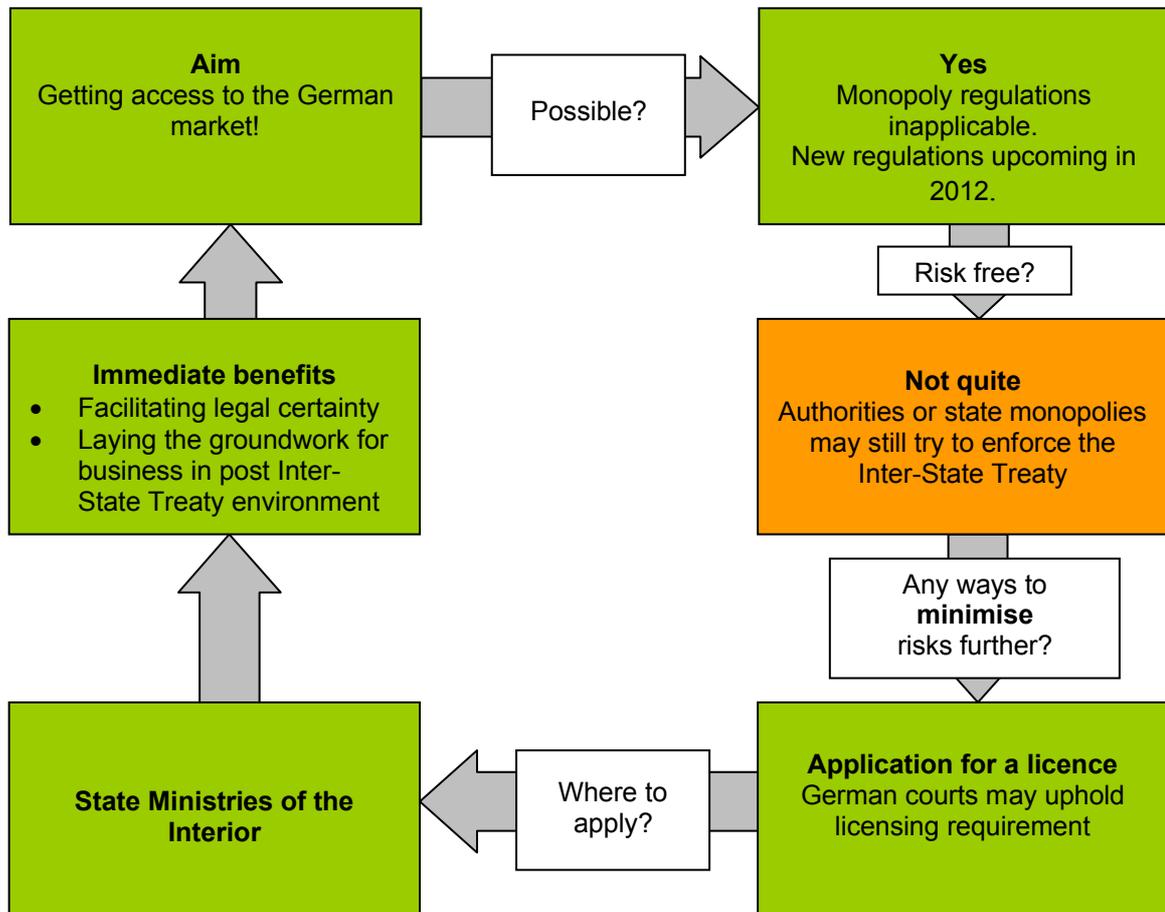
Lotteries, Sports Bets, etc.

Providers are usually state owned companies. German-wide lottery and sporting bet products (Lotto, Toto, Oddsett etc.) are coordinated by the *Deutsche Lotto- und Totoblock* ("DLTB") - a consortium of state owned providers.

The Inter-State Treaty on Gambling and the ECJ



**You want to offer sports bets in Germany –
Which aspects to keep in mind?**



Online gambling

- Proper reading of the ECJ's decision points to current **inapplicability** of the ban on online gambling in Germany. Some authorities and courts may still try to uphold this ban. However, at the moment **risks** for **non-German** providers should be **manageable**.

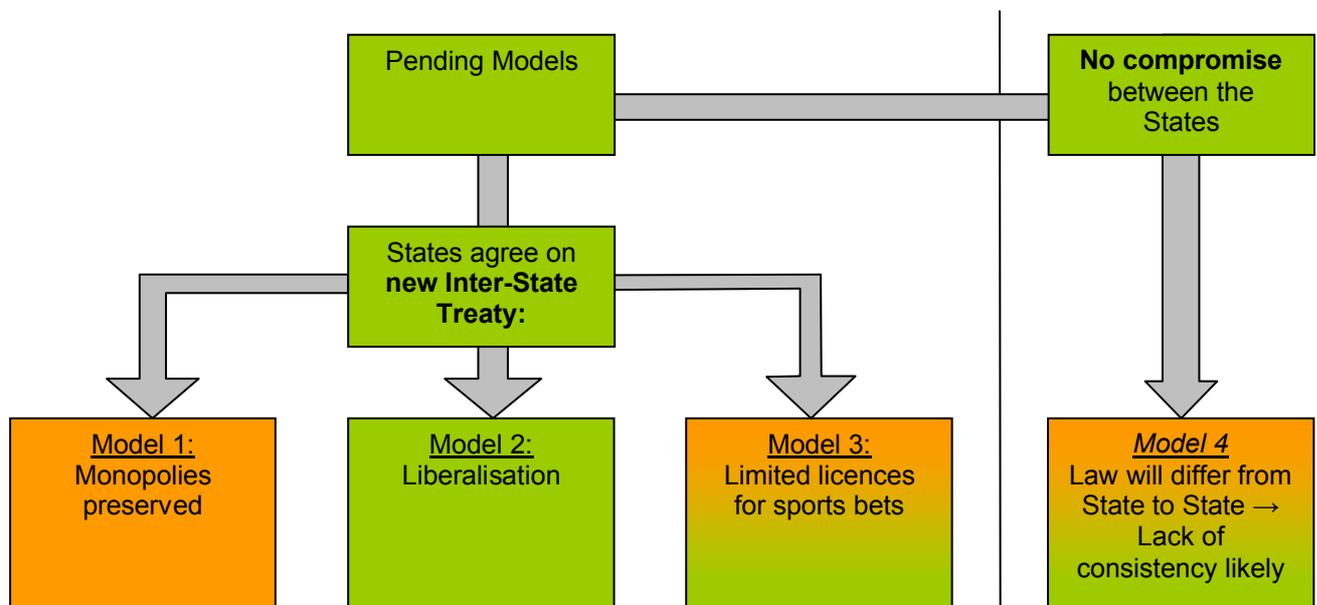
Advertisement

- Advertisement is **highly restricted** and strictly prohibited on TV and the internet pursuant to the Inter-State Treaty on Gambling.
- In practice, advertisement **restrictions** are not only **ignored** by state monopolies. Non-German sports betting providers now successfully place **advertisement in prominent places like boards at Bundesliga games**.
- Placing of advertisements is not totally risk free. Some authorities and courts may still try to enforce the advertisement restrictions even in the current legal environment. Risks for non-German providers of betting and gaming services should be **manageable**.

Future of the Inter-State Treaty on Gambling

- **General outlook:**

- Current Inter-State Treaty on Gambling will expire in December 2011.
- Significant changes have to be adopted in any successor treaty.
- The prime ministers of the states are adamant about preserving the states' monopoly on lotteries.



- **Three alternative drafts** are being discussed (labeled Models 1-3):

- **Model 1: “Make the monopolies work”**

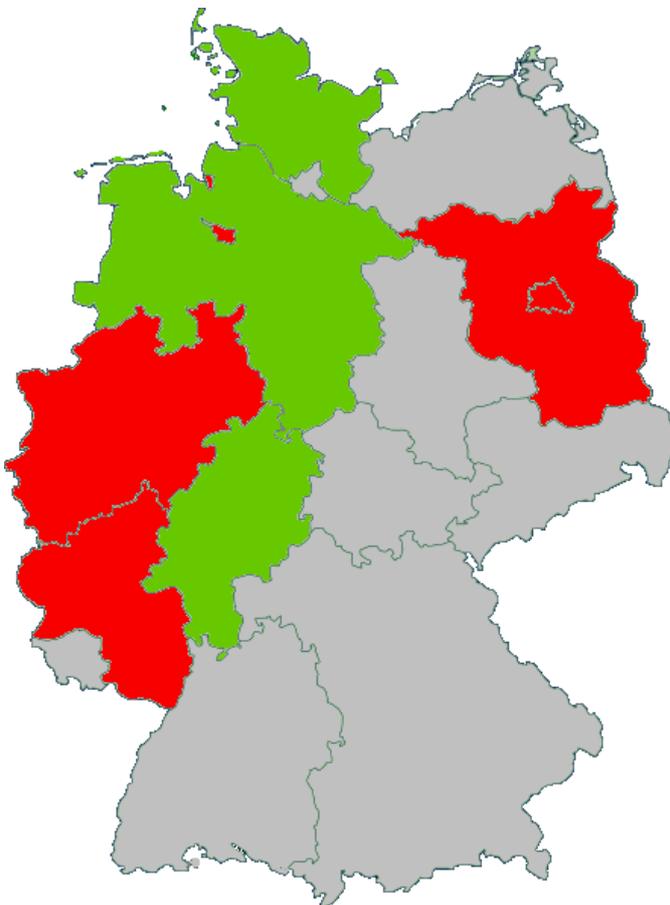
- The lottery and sports bets **monopoly** would be **preserved**, the **online ban lifted and** restrictions on advertisement relaxed (TV and Internet restrictions dropped).
- Sports bets products would be improved and extended. Massive advertisement campaigns for state monopolies are envisaged.
- In order to adhere to the ECJ’s “Consistency Test” with regard to horse racing bets and automated machines, the States urge the Federal Republic to adopt a stricter regulation or to transfer legislative competence for this sector to the States and intend to adopt stricter rules for areas that already fall under their jurisdiction.

- **Model 2: “Liberalise the sports bets market”**

- The monopoly on lotteries would be preserved. For sports bets, a **licensing** system would be adopted. **Licences** granted in other EU Member States would usually be **recognised**. The **online** gambling ban would be lifted.

- **Advertisement** restrictions would be relaxed (TV and Internet restrictions dropped).
 - **Taxation:** A special tax (“Glücksspielabgabe”) would be levied on any gambling activities in Germany based on a percentage of gross profit yet to be determined.
- **Model 3: “Keep the lottery monopoly and strictly control the sports bets sector”**
- The monopoly on lotteries would be preserved.
 - During a test phase of seven years, a **limited number of licences** for private providers of **sports bets** would be available. Licences for **online gambling** would be available.
 - Restrictions on **advertisement** would be relaxed (TV and Internet restrictions dropped).

• **Upcoming developments:**



- Most social-democrat governed States are in favor of Model 1. **At least three States** (Hesse, Lower Saxony and Schleswig-Holstein) are in **favor of liberalising** the German gambling market (Model 2). Most commentators believe that Model 1 would likely again fail the ECJ’s “Consistency Test.”
- The final drafts will be submitted and presented at the next conference of the State’s Prime Ministers in **March 2011**. This date would be the **earliest date for a decision**. More likely: decision at a special summit of the Prime Ministers in April 2011.
- The adopted draft must be presented to the States’ parliaments for approval and notified to the European Commission. The Chiefs of the State Chancelleries emphasise that any later adoption of a particular draft after March 2011 might jeopardise the time schedule with regard to the expiration of the Inter-State Treaty on Gambling by the end of the current year.

Source: Portal der statistischen Ämter des Bundes und der Länder (DeStatis); David Liuzzo.

Schleswig-Holstein pushes ahead

The “Danish” solution - a “Las Vegas by the Sea”?



Source: Portal der statistischen Ämter des Bundes und der Länder (DeStatis); David Liuzzo.

- Meanwhile, the State of Schleswig-Holstein strongly pushes to further liberalise particularly of the sports bets market. A draft new Gambling Act (“Glücksspielgesetz” = “GlüG”) is currently being assigned to the parliamentary sub-committees for evaluation. If adopted, the GlüG will replace the current GlüStV by January 2012.
- The States may at their discretion adopt individual gambling laws. Furthermore, if several states opt out of a new joint Inter-State Treaty on Gambling and German gambling law disintegrates into a mosaic of different regulations, a restrictive new gambling law is a *fortiori* unlikely to pass the ECJ’s “Consistency Test.”

- **Interesting provisions of the draft GlüG concern:**

- **Sports bets:** The state monopoly would be abolished. The provision of public (sporting) bets would be **open for private providers** and require a licence. **Licences** granted in other EU member states would usually be **recognised**. The online gambling ban would be lifted.
- **Securities:** Any applicant has to provide **securities** in order to safeguard customers. These securities can be provided by submitting an absolute guarantee by a major bank to the amount of up to EUR 20,000.00 for any “terrestrial” sales point or at least **EUR 1 m for online distribution**.
- **Advertisement:** Restrictions on advertisement would be severely **relaxed**. Basically, **no special regulations apply**. The majority parties who presented the bill explicitly made clear that the level of consumer protection achieved by the Law against Unfair Competition is also deemed to be sufficient for gambling.
- **Taxation:** Any person or enterprise that provides gambling services within the jurisdiction of the GlüG has to pay a special tax. The rate is fixed at **20% of gross profit** or in case of games without risks for the organiser 20% of the fee charged by the provider. This charge will be levied regardless of a licence.

Task Force Gaming & Betting Law

For further advice please send an e-mail to gaming@heuking.de or contact:

Astrid Luedtke

Head of Task Force Gaming & Betting Law
Certified Specialist Lawyer in Intellectual Property Law



Regulatory, Unfair Competition, IT

Georg-Glock-Straße 4
40474 Düsseldorf
GERMANY
Phone +49 (0)211 600 55-166
E-mail a.luedtke@heuking.de

Michael Schmittmann

Head of the Firm's Practice Group IP/IT/Media



Regulatory, EU, Business Structure, Transactions

Georg-Glock-Straße 4
40474 Düsseldorf
GERMANY
Phone +49 (0)211 600 55-165
E-mail m.schmittmann@heuking.de

Dr. Georg Jacobs, LL.M.



Unfair Competition, IP, Litigation (civil law)

Georg-Glock-Straße 4
40474 Düsseldorf
GERMANY
Phone +49 (0)211 600 55-275
E-mail g.jacobs@heuking.de

Marc Oliver Brock



Regulatory, Competition, Litigation (administrative law)

Georg-Glock-Straße 4
40474 Düsseldorf
GERMANY
Phone +49 (0)211 600 55-168
E-mail o.brock@heucking.de

Simon Hirsbrunner



EU, Competition Law

Avenue Louise 326
1050 Brussels
Belgium
Phone +32 (0) 2 646 20-00
E-Mail s.hirsbrunner@heucking.de

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More than 220 specialised lawyers, tax advisors and notaries at Heiking Kühn Lürer Wojtek provide counseling services across nine offices, making it one of the large German commercial law firms. National and international clients include medium-sized and large companies from manufacturing, trade and the service industries as well as associations, public corporations and discerning private clients.

This overview does not contain legal advice. The information included has been carefully researched. However, it only reflects excerpts of case-law and legal/political development and cannot replace individual legal advice taking into account the particularities of the individual case.

We will gladly provide you with additional information on current developments in German Gambling Law. Please let us know whether you want to receive further information:

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Thank you very much for your interest!