

TIME Law News

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*Latest developments in German and International Law of the TIME-Industries
Telecommunication - IT - Media & Entertainment*

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1. Social Networks, Social Games and Gambling Monetizing the German market - top or flop?

By Dr. Stefan Bolay and Axel Knabe, Hambach & Hambach Law Firm

Online operators move ahead in their attempt to monetize the vast customer base that has coalesced around the social web in recent years. Social games and online gambling promise to be ideal candidates for creating additional revenue, not least for social networks. In Germany, however, arguably Europe's most important market in this regard, many such business models seem destined to fail due to a rather hostile regulatory landscape. Yet that is only half the truth: The time to enter the German market is now, as it presents market players with unique opportunities.

A market on the move, with Germany on the sidelines

At this very moment, a rather curious development is taking place in the European gaming market. Social networks and social games operators are constantly pushing the envelope in terms of monetizing their customer base. King, which recently surpassed Zynga as the number one app developer measured in monthly active users on Facebook has begun to shift its revenue model from in-game advertising to in-app purchases as well as microtransactions. At the same time Zynga continued its push into real money gaming products with its launch of Zynga Plus Poker and Zynga Plus Casino in the United Kingdom in April of this year. By the end of July Zynga announced to reduce its ambitions in the US gaming market and to stick to free-to-play gaming models. Facebook's last quarterly earnings report revealed a significant boost in its advertising revenue on mobile devices, which for now helped assuage worries that the company could not cope with the ongoing migration from desktop PCs to mobile Internet usage. This was though accompanied by new reservations that those revenue streams might tie the company down in an "advertising revenue bubble" bound to burst once the app market has matured further. Taken together with persistent concerns over the right balance between user satisfaction and exposure to ads on their platform, social networks still thirst for additional revenue sources, including gaming. The markets are volatile. The search for new or improved monetization models is palpable. Beneath all this, a billion dollar question lingers in the European gaming market. What is the state of play in Germany?

Regulation by the German states, effective at the federal level due to an Interstate Treaty on Gambling, largely prohibits online gambling. Certain exceptions apply to online lotteries and sports betting. The latter is restricted to a stringent licensing regime that allows only 20 licenses to be granted by authorities. Until recently one of the states, Schleswig-Holstein, had gone rogue with a separate Gambling Act that allowed for unlimited licensing of online-casinos and online sports betting. Almost fifty licenses had already been granted when a new majority in the state legislature overturned the Gambling Act and joined the Interstate Treaty on Gambling. For now, the prohibition on online gambling is, in theory, in effect in all 16 states. Yet operators that had already obtained a license in Schleswig-Holstein can nonetheless offer online gambling based on the license conditions and operators like bwin, mybet or onlinecasino-deutschland are advertising their gambling sites nationwide on TV (e.g. Eurosport), in newspapers (e.g. BILD) or online (e.g. Spiegel-online.de).

This regulatory and market snapshot explains why Germany's gaming market mostly attracts attention for being messy, which bears risks but also promising opportunities.

Beyond the obvious, market opportunities abound

Social networks as well as gaming operators can help define the outer limits of Germany's still nascent overall gaming ecosystem in the years to come. Developing the building blocks of such an ecosystem within the staples of current regulation can help lay the groundwork for a lasting market presence and influence how the regulatory system will develop over time. From a legal standpoint, three major strategic questions need careful consideration.

Is there a regulated market for online-gambling in Germany?

Yes, there is. Under German law, any online game in which participants pay to play for money or prizes of monetary value with a predominant element of chance dictating the outcome is considered a gambling offering. The current Interstate Treaty prohibits online gambling except for the 20 federal licensees who can offer online sports betting. There are, however, over 20 licensees that are allowed to offer online-casino games under the rules of Schleswig-Holstein's Gambling Act until at least 2019, among them bwin, PokerStars and Merkur Interactive. Advertising those offerings

throughout Germany might become another point of contention. For now, it is plausible to consider such advertising – from the EU law perspective - to be legal. Germany's big media companies such as Axel Springer or Constantin Media seem to share this assessment.

All of this warrants the conclusion that there exists a nascent yet adequate market for real money gambling in Germany. In the years to come, Schleswig-Holstein should be a testing ground for licensed operators and social networks to build an ecosystem of responsible gaming, one that could be at a later stage expanded to the federal level. A failure to seize this opportunity would probably diminish a considerable tendency among lawmakers across Germany to liberalize the online gambling market. One would certainly be mistaken to read Schleswig-Holstein's recent accession to the Interstate Treaty as a definitive signal against liberalization.

Could social games operators' monetization efforts face overregulation in Germany? What about data protection regulations?

Compliance challenges could certainly increase over time and in light of different monetization models yet would be manageable with a carefully tailored legal strategy. For now, social games that rely on "freemium models" for monetization do not face any acute danger to evoke regulatory authority under the Interstate Treaty. Usually, those games either rely on participants' skills rather than chance (e.g. gameduell.de) or they are free to play (e.g. FarmVille (2) or fulltiltpoker.de). Therefore, they do not require a gaming license under German law. This does not mean, however, that regulators do not keep a close eye on how social games' monetization efforts might evolve over time. Certainly the competent German media supervision authorities should be "informed" about these license-free offers.

Aside from that, it is at least as important to consider the full spectrum of potentially applicable regulation. King's new emphasis on in-app purchases is one recent example. As social games operators' monetization models evolve, a constant reassessment of applicable regulation is a pivotal requirement for a successful market operation. The fluidity and variations of monetization efforts invoke different legal challenges. In-app purchases may not be relevant from the standpoint of gambling regulation yet they certainly warrant a closer look with regard to consumer protection laws. Youth

and player protection in general might well become a focal point for regulators the more social games emphasize microtransactions to boost revenue. In Germany, the "average consumer doctrine" can entail significant challenges for microtransaction schemes, which is why they should be subjected to a "baseline test" to corroborate their compliance with an average consumer's rights pursuant to applicable laws.

Obviously, **data protection regulation** is and will remain a constant companion, especially with recent lower court decisions in Berlin and Frankfurt turning up the heat on Apple's as well as Samsung's terms and conditions of their app stores. This will affect the gaming industry at least as much as any other area of the digital economy. To date, one of the most underestimated future pitfalls from a data protection standpoint concerns the so called constitutional right to integrity and confidentiality of information technology systems. Its fancy name as well as its basis in German constitutional law should not fool anyone. This right might have serious and far-reaching consequences for the scope and substance of data protection obligations, from the depth of data security standards to the legality of automated software updates. As for the latter, the "Samsung decision" of the District Court Frankfurt offers a snapshot of what might lie ahead, holding a clause concerning such updates to be illegal for, amongst others, insufficiently covering the extent to which a customer's software could be altered. While adoption of the proposed European Data Protection Regulation would also mean that the European Court of Justice replaces national constitutional courts as the final arbiter in most matters concerning the privacy of personal data, German constitutional doctrine could still significantly sway data protection standards. At first, all of this certainly feels like a rather academic question. It is not. In fact, it is about time to consider the practical implications this might have for data protection compliance.

Is "social gambling" under threat from regulation in Germany?

No, because there is no such thing as "social gambling". Admittedly, in recent discussions concerning gaming regulation one sometimes stumbles upon this concept. It seems as if the term was coined to describe some kind of "hybrid" between social gaming and gambling. However, for the German market at least, "social gambling" is a description for something that simply does not exist as a matter of regulatory compliance. All it does is diluting an otherwise clear-cut distinction between two opposite

poles. Social games may involve monetization models that put them over the definitional threshold of the Interstate Treaty on Gambling at which point they simply become gambling offerings. There is not - and probably will not be - some sort of legal no man's land in which certain games elude a specific enough regulatory classification. It is either one or the other. Therefore, maybe not as a description of a certain business model yet as a matter of legal compliance, it is advisable to eliminate "social gambling" from one's vocabulary.

There is no need for it anyway. A reasonable and economically feasible compliance program, especially at the moment of market entry, requires clear structuring and classification of prospective regulatory obligations. There is no upside in vagueness as it only facilitates short-sided and potentially ill-advised tactical and strategic decisions. Once again, Germany's "regulatory jungle" could be more useful than one might think. For social networks, partnering with licensees in Schleswig-Holstein is an ideal opportunity to test-run both social gaming as well as gambling operations in a stable regulatory environment. It can also help identifying the outer limits of social gaming offerings that do not amount to gambling. Later migration of gambling operations to the federal level might be much easier as they would have already been embedded in a sophisticated compliance architecture. For Schleswig-Holstein's Gambling Act might come relatively close to what lawmakers would adopt in the whole of Germany at a later stage.

It's time: Designing a "beta-version" of Germany's future gaming ecosystem

There is a window of opportunity for social networks and games operators to tap more forcefully into the German gaming market. There might not come another one quite like it. Only time will tell what market players make of this moment and how it will influence Germany's ongoing legal and political struggle for further liberalization. One thing is clear: Missing out on this opportunity could prove to be a serious mistake. Schleswig-Holstein can, and should be, a testing ground for licensed operators and social networks alike: Which kind of responsible gaming ecosystem can be developed and how could it combine elements of gambling and social gaming? Consider it the legal equivalent of a "beta-version", a trial and error phase for the federal gaming ecosystem that is to be built in a future liberalized market.

2. Coherency in German Gaming Law: A Legal Discussion

Summary of a discussion of the review programme created by Prof. Koenig and Meyer regarding horizontal coherency of the German gambling

By Bettina Brenner, LL.M., Hambach & Hambach Law Firm

As of February 8, 2013, all German federal states introduced legislation regulating games of chance, the so-called Interstate Treaty on Gambling (ITG). Despite this alleged harmonised legal situation, the Gambling Reform Act Schleswig-Holstein (GRA SH) is still applicable for gaming operators who are in possession of the licence issued by the federal state of Schleswig-Holstein. Having significant differences in the level of opening the gaming market for private operators, this leads to incoherent gaming regulations in Germany. Exactly this explosive topic of horizontal coherency was recently raised by Prof. Koenig and Meyer. The question of horizontal coherency has also been discussed by the German Supreme Court, which submitted the question for a preliminary ruling to the ECJ, as well as the EU Commission.

The following article makes reference to the article by Prof. Koenig and Meyer and introduces several examples indicating that the current legal framework for gambling is in fact incoherent from a horizontal point of view, therefore contrary to the law of the EU and invalid. Further, the article briefly points out that contrary to the ITG the GRA SH has not been criticised by the EU Commission. It ends by showing that it would still be possible for Germany to adopt the GRA SH and to transfer all 64 licences that were issued under the GRA into a new legal framework.

The complete discussion by *Bettina Brenner* is available under the following link http://www.timelaw.de/cms/front_content.php?idart=944).

3. World Regulatory Briefing met in Germany – Where were the German gambling regulators?

By Ansgar Lange, published at freiewelt.net

Frankfurt am Main. The English conference organisers CLARION are accustomed to success: they organise, among other events, the ICE Show in London - the largest gaming trade show in Europe. The format for the World Regulatory Briefing (WrB) <http://www.wrbriefing.com> is just as successful: an international series of events which takes a closer look at the world-wide legal framework conditions for the gaming sector. In particular in Europe, this platform is frequently used by regulators to discuss current topics with international colleagues, political protagonists and trade experts from the gambling industry. For the German edition of the series, well over 100 participants from industry, politics and law met in Frankfurt. Many of them had come to meet the most important German gambling regulator, Dr. Thomas Gößl, one of the fathers of the old and new inter-state treaties on gambling (GlüStV), and head of the so-called gambling council (Glücksspielkollegium) of the 16 German federal states, who had been asked by the organisers to participate in the event. They were disappointed. Just as Gößl, all other representatives of the regulators were absent. Nevertheless, the industry gave the regulators' work a clear testimonial - "unsatisfactory".

Flashback

During recent years, Schleswig-Holstein initiated the prerequisites for a gambling law regime which complies with European law and is also competitive, including up-to-date tax rates, comprehensive possibilities for player protection, and guaranteed additional revenue for organised sports, following the example of the modern Danish gambling regulation. The other 15 German federal states maintained their regulations, whose compliance with European law is anything but proven, for instance as they do not cover the regulation of poker and casino games via the internet. After the change in the Kiel government, and the replacement of the CDU/FDP coalition, Schleswig-Holstein also joined this regulatory regime - however, only after the Minister of the Interior, Mr Breitner (SPD), had issued approximately 50 licences for sports bets, online poker and casino games. These licences now continue to apply - even

under the act modifying the inter-state treaty on gambling (GlüÄndStV) which provides for exactly 20 licenses for the whole of Germany. The Ministry of the Interior of Hesse, which is responsible for issuing the licences, is currently preparing for a plethora of law suits and is looking for a law firm to represent and advise the Ministry during the issue of the licenses. Experts assume that licences will at the earliest be issued next year, in view of the expected legal disputes. In the meantime, the German Federal Court of Justice (BGH) referred questions relating to the different regulations within Germany to the European Court of Justice (ECJ): Whether it makes a difference under aspects of coherence if the regulations in one of 16 federal state differ from those applicable in the other states. Another issue is whether the licences for Schleswig-Holstein, which are valid until 2018/2019, lead to incoherence. A decision is not expected until next year.

"Holy war" between the Danish and the French model

These are probably not the only facts which led Professor Rudolf Streinz from the University of Munich to declare that legal issues relating to the gambling sector are themselves a gamble. In Frankfurt, he referred, among others, to the EU Services Directive and the EU Commission's action plan on online gambling. Furthermore, the various gambling sectors - sports bets on the one hand, online poker and casinos on the other hand - are subject to different regulations in Germany. Like many other experts, he thinks that Germany is barking up the wrong tree as far as gambling law is concerned, due to the lack of consistency of gambling legislation. WrB chairman Dr. Wulf Hambach from the Munich law firm Hambach & Hambach Rechtsanwälte <http://www.timelaw.de> had already said in his introduction that German gambling legislation is characterised by a "holy war" - namely between the modern, competition-aligned regulatory example from Denmark and Schleswig-Holstein, and the more restrictive French model. An interesting aspect: Kiel's Minister of the Interior, Mr Breitner (SPD) had praised the local regulation several times in the course of the licensing proceedings. In the minds of the co-initiators of the Schleswig-Holstein model, the chairman of the FDP parliamentary party in Kiel, Wolfgang Kubicki, and the parliamentary manager of the CDU in the Schleswig-Holstein parliament, Hans-Jörn Arp, there is no doubt that Kiel's regulatory system is superior. Mr Arp said that the example of Denmark proves that the state regulation of all gambling sectors actually covers approximately 90 per cent of the entire market, whilst the coalition in Kiel,

consisting of SPD, Die Grünen and Südschleswigscher Wählerverband SSW, together with the other federal states, continue to drive millions of players into illegality. Also, the loss in potential tax revenue is substantial: "In Denmark, revenue from sports betting alone amounts to 250 million Euro. Projected to the Federal Republic of Germany, this corresponds to three billion Euro which the states' treasury as well as popular and professional sports miss out on", Arp said.

Are SPD and Die Grünen waiting for a defeat before the courts?

Just as Wolfgang Kubicki, the CDU politician also bets on the normative power of existing facts. "Those of the federal states which have stuck to the GlüStV increasingly recognise the implementation problems. I think that the Schleswig-Holstein model will prevail more quickly than expected by many, in particular once the licensees from Schleswig-Holstein actually use their licences." In this case, the GlüStV becomes obsolete, Kubicki believes. He furthermore pointed out that "this is exactly what some people are hoping for who do not want to change their current line of argumentation as this would be difficult to communicate." Many simply wait for the courts to create a new situation which would clear the way for the Kiel model, he explained with a view to certain members of the SPD and Die Grünen who had said that they intended to join the GlüStV in order to then revise the relevant components in view of online offers.

Martin Gerster, SPD spokesman for sports politics in the German Bundestag has already been quoted with a demand for new negotiations: "The current situation is a disaster for all those involved. For sports, for the federal states, for the private and for the state-run betting providers", Gerster said according to SID. "In my opinion it is obvious that the GlüStV will not work this way. I once more ask the federal states to meet again and to decide on procedural improvements." (see <http://www.ran.de/de/mehr-sport/sonstiges/1307/News/sport-profitiert-nicht-von-neuem-vertrag.html>) "In the long run, we will not be able to ban online casino games and online poker games", FDP politician Kubicki said, as the reality of the internet does not allow this. He also stressed the motivation of CDU/CSU and FDP to act in the area of regulatory politics: "We have to regulate, we have to channel, and thus also allow state control."

Professor Friedrich Georg Schneider from the University of Linz, making reference to a TÜV study, rejected the statements of critics of an opening of the market for online poker and co., who see this as a gateway for money laundering activities. Measured by the effort required and the transaction costs necessary, money laundering via online poker is not profitable. Furthermore, the WrB in Frankfurt made it clear that nowadays a multitude of technical mechanisms exist which allow the identification of manipulation attempts, betting collusion (match fixing) etc.

The optimum legislation which takes into consideration the interests of all parties involved was outlined by lawyer Rechtsanwalt Ronald Reichert from the Bonn law firm Redeker Sellner Dahs and Rechtsanwalt Markus Ruttig, CBH Rechtsanwälte in Cologne: There should neither be monopolistic nor oligopolistic structures, it is necessary to abolish the capping of licences, and the providers who fulfil the necessary requirements must be put in a position which allows them to bring their own offers into the market.

The door has been pushed open

But how do practitioners assess the current situation in Germany? Will the providers, in view of the legal situation in Germany, be able to provide attractive offers for players as well as for companies? "We have pushed open the door in Germany, and have stuck our foot in", Mybet CEO Mathias Dahms summarised during a panel with Wolfram Kessler from the legal department at Tipico and Werner Becher, board chairman of Interwetten. And this foot is not intended to be pulled back. The Kiel model has set framework conditions which do justice to the market, was their analysis, which only Michael Burkert, spokesman of the Deutsche Lotto- und Totoblock, did not want to endorse. The new GlüStV on the other hand creates insecurity regarding legal issues and planning. Following the results of the current Goldmedia study "Gambling Market in Germany 2017" <http://www.goldmedia.de>, only 30 per cent of the sports betting sales - approx. two billion Euro - would be generated by state-regulated providers if the current German regulation still applied in 2017. The regulatory objective of channelling the betting states towards state-licensed offers, of combating the black market and of ensuring the best possible level of player protection would not be achieved with the new gambling legislation.

According to the providers' assessment, the success of the regulation also depends on the level of channelling of player conduct. Here, Denmark has a rate of 95 per cent of all players who no longer play in the shadow economy, which underlines the effectiveness of a regulation similar to the one in Schleswig-Holstein. Representatives of the private providers therefore assume that the GlüStV in its current form will not last. "The only question is when that thing is going to die", Werner Becher said.

4. “Big Data“ – Big Compliance?

By Claus Hambach, LL.M. and Axel Knabe, Hambach & Hambach Law Firm

(Privacy) Compliance at the crossroads

Big Data, the latest "buzzword" of the internet age describes what everyone has been expecting since the beginning of the web 2.0. The power of information is immense, the economic possibilities of collecting, linking and analyzing almost unlimited amounts of data are tempting. However, companies do not only profit from the new opportunities but also have to face potential re-evaluations in compliance. What once came along in the guise of informational self-determination, could soon be experiencing new impulses due the right to confidentiality and integrity of information technology systems. Big data does without any doubt have great potential, but at the same time it will force companies to fundamentally re-evaluate their compliance programs.

Every development within the information technology usually creates new or additional legal clarification. First of all, companies do have to know how and to what extent changing conditions also affect legal assessment and therefore generate additional or modified compliance burdens. Secondly, consumers need to become aware of their rights and the nature and extent of exercising their rights in view of the changes.

"Big Data" is a new trend that is likely to require this kind of legal re-evaluations. In principle, "big data" describes what has already been outlined by the development of web 2.0 over the last 10 to 12 years: The collection, storage, use, interconnection and multifunctional use of increasing amounts of data, which comprised 8 billion terabytes worldwide in 2012, according to the German magazine Spiegel. The Association of the German Internet Industry (eco) considers this trend to be one of the five main reasons for the ongoing internet boom in Germany due to the fact that the resulting volumes of data while using the internet could be used to develop completely new services.

The progressive migration to mobile devices contributes to this increasing significance, also with regard to apps. On 16 May 2013, the 50 billionth app was

downloaded in the Apple App Store alone, which proves the economic potential behind it.

However, there is still no stable legal framework for the exploitation of this enormous potential. This applies particularly, but not only, to issues of data protection and IT security.

Recent court decisions have provided a picture of this gap:

In April, the regional court of Berlin justified why it considered several clauses of Apple's privacy policy to be unlawful. The court criticized i.a. unauthorized consents regarding the use of personal data and the lack of differentiation between different data sets and their collection and use. This month the regional court of Frankfurt also decided that many of the terms and conditions of the Samsung App Stores are to be regarded as unlawful. For example, some of them did not meet the requirements for advertising, pursuant to § 4a BDSG, 12 f TMG / para 2 UWG. Moreover, a presumption of consent to change the terms and conditions was considered a violation of § 308 No. 5 BGB.

The details of the decisions mark a significant need for evaluation of compliance in the field of IT security and data protection and other parts of consumer law. What is even more interesting, is what the decisions remain silent about. Thus, the regional court of Frankfurt, for example, assumes in its decision against Samsung that an agreement of the customer to *automatically* install updates violates § 308 No. 4 BGB, because it was unreasonable, at least in its present form. This way, not only technical adjustments can be made, but above all also substantive modifications of the problematic software.

However, the court does not address the right to confidentiality and integrity of information technology systems, which has been developed by the Federal Constitutional Court not too long ago (Article 2 Paragraph 1 in conjunction with Article 1, paragraph 1 GG). It has so far been virtually unknown to what extent this "new" fundamental right also influenced private law. It seems, however, to be very likely that the user's expectation of integrity from their own information technology systems - including mobile devices – will gain importance for data protection law and IT security law as well as the affected companies.

Since in the days of "big data," Web 2.0 and cloud computing nothing is really limited to a single state, the question arises on the side of app-companies what is actually part of their compliance programs and what is not :

- Are those influences such as standards of the German constitutional law at all relevant for their own compliance?
- Does European data protection law apply at all?
- If it does, does German data protection law apply and in how far does it interact with the EU data protection guidelines?

These difficult questions are supplemented by a variety of tricky individual issues, such as the collection of different categories of data and the associated legal requirements, questions on the legality of consents to data processing, location-based services or cookies - what impact does the "Cookie Directive" have which has not been implemented in Germany yet? - to name just a few. Another question is whether a network of different apps through a third party provider makes them a commissioned data processor, something that will probably be decided on basis of the contractual arrangement between the app provider and the third-party provider.

Outlook:

2.8 billion terabytes of data in 2012 is an impressive number, but it becomes even more impressive when you consider that in 2020 (according to estimations) 40.000.000.000 terabytes of data will be produced. Yet, with the amount of data that is collected, processed and economically used, the legal requirements become opaque.

Many groups have a say in this issue: Courts, data protection officers, legislators at national and at European level and, not least, the German Federal Constitutional Court. At the end, the currently proposed Data Protection Regulation may become directly applicable law in the member states. However, that won't be able to solve all issues.

Privacy and IT security are about to experience a new "development boost", which companies and their compliance programs should be preparing for.

5. The Case for Sports Betting Operators in Germany to Reclaim Taxes

- Why the notification procedure of sec. 17 para. 2 no. 2 Horse Betting and Lottery Act may be insufficient -

By Maximilian Riege, Hambach & Hambach Law Firm

Nearly 50 sport betting providers are still waiting to obtain a federal license in Germany in the ongoing tender procedure in the state of Hesse. And yet, they are already obliged to pay turnover tax on sports betting offers provided to German customers. Most of the providers pay the tax: Since 1 July 2012 sports betting operators have paid around 200 million Euros in taxes to the German government, more precisely to the tax authority Frankfurt am Main III.

In the attached article, it is argued that there are reasonable doubts against the applicability of the corresponding tax clause in sec. 17 para. 2 no. 2 of the German Horse Betting and Lottery Act which stipulates a 5% turnover tax on all sports bets offered in Germany.

In the article published in the German tax review (Deutsche Steuer-Zeitung, DStZ), Prof. Dr. Englisch, Professor of Tax Law and Public Law, Managing Director of the Institute for Tax Law, Muenster University and Maximilian Riege, Junior Partner at Hambach & Hambach, argue that the German state has infringed its duty to notify the relevant tax clause under the EU Information Procedure Directive 98/34/EC.

The obligatory notification text of the German state from 27 June 2012 (see: http://ec.europa.eu/enterprise/tris/pisa/app/search/index.cfm?fuseaction=pisa_notif_overview&sNlang=EN&iyear=2012&inum=397&lang=en&iBack=2) did not inform the EU Commission, the member states, or interested parties about the extension of the personal, territorial and factual margin of application of the tax burden to all sports betting offers provided in Germany, notwithstanding whether the bets are organized inside or outside of Germany. Instead, it only refers to racehorses as agricultural products as the products concerned but not to sports bets.

Furthermore, the brief statement of grounds only mentions sec. 10 of the Horse Betting and Lottery Act and the reduction of the federal horse betting tax from 16.66% to 5%. Neither the brief statement of grounds nor the extensive explanatory notes of the law provided with the notification message refer to the extended margin of application. The statement of the federal finance committee of the German Parliament which explicitly describes this impact of the amended sec. 17 para. 2 no. 2 was not provided during the notification procedure.

Therefore, the notification message may be described as incomplete if not misleading. Since transparency is one of the core elements of the notification procedure, there are strong legal arguments that the German state did not duly notify sec. 17 para. 2 no. 2. The lack of a due notification procedure leads to the inapplicability of the law until a due notification procedure including a standstill period has been completed.

Following the line of argumentation of Englisch and Riege, all tax payments made on the basis of sec. 17 para. 2 no. 2 of the Horse Betting and Lottery Act would have been made without legal obligation. Sports betting providers who paid taxes by virtue of sec. 17 para. 2 no. 2 can reclaim the paid amount from the tax authority.

The complete article in German by *Maximilian Riege* and *Prof. Dr. Joachim Englisch* is available under the following link:

http://www.timelaw.de/cms/upload/pdf/Seiten_aus_dstz_2013_08_Heftzusammensetzung.pdf

6. Taxation of Online Gambling in Germany

*By Prof. Dr. Joachim Englisch, published in Gaming Law Review and Economics
Volume 17, Number 1, 2013*

This article will provide an overview as well as a critical analysis of the tax regime for online gambling in Germany. For the purposes of this article, online gambling shall be defined as a public gaming activity which does not require the physical presence of players, since participation is offered and effected through Internet access. This covers both games of chance (including poker), where the event which determines the outcome of the wager is generated electronically (e.g., online roulette), as well as games of chance in which the decisive event is real-life one (e.g., online sports betting). As in the rest of Europe, the phenomenon of online gambling is relatively recent in Germany, emerging only in the late 1990s. Its rising popularity ever since is a corollary to the spread of the Internet.

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Please read the full article at:

http://online.liebertpub.com/doi/pdf/10.1089/glire.2012.1714#utm_source=ETOC&utm_medium=email&utm_campaign=glre

7. In-House News

Hambach & Hambach is pleased to announce the following appointments:



Bettina Brenner, LL.M.
as Senior Associate



Alexander Pfütze, LL.M.
as Senior Associate



Publication Announcement: Legal Commentary "Gambling and Gaming Law in the Media"



Hambach & Hambach is pleased to announce a noteworthy publication in the field of gambling and gaming law to be published in the fourth quarter of 2013. In the legal commentary, "Gambling and Gaming Law in the Media", more than a dozen leading lawyers and law professors in the field give a comprehensive overview and in-depth legal analysis of gaming and gambling legislation in Germany. Some of the topics covered include: The Interstate Treaty on Gambling, The Gaming Reform Act Schleswig-Holstein, The Advertising Directive and The Federal Anti-Money Laundering Act.

The editors of this legal commentary are Dr. Wulf Hambach (founding partner at Hambach & Hambach), Prof. Dr. Rudolf Streinz (professor for public and European law at Ludwig-Maximilians University of Munich, and one of the leading international experts in European law) and Prof. Dr. Marc Liesching (professor for media law and theory at Leipzig University of Applied Sciences and one of the leading German experts in the area of youth protection law).

Publisher C.H. Beck calls the commentary a useful guide and handbook for judges, gambling authorities and prosecutors, as well as for media companies and lawyers.

Further information is available [here](#).



Dr. Wulf Hambach will be speaking at the following events:

01.10.2013 - 04.10.2013

IMGL Autumn Conference

Oslo, Norway

Organizer: IMGL

08.10.2013 - 10.10.2013

EiG 2013

Barcelona | Spain

Organizer: Clarion Events



8. Editorial details

TIME Law News offers gratuitous information on current events in European and international gaming law. Hambach & Hambach do not accept any liability for the accuracy of the contents of TIME Law News. Please note that TIME Law News is only meant to serve as a source of information and can under no circumstances replace legal advice by a lawyer.

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