

Germany's Online Gaming Market 2013 – Welcome to the (license) jungle!

Germany's gambling regulation remains torn. Although the former maverick state Schleswig-Holstein officially joined the regime of the Interstate Treaty on Gambling (ITG) of the other 15 states at the beginning of 2013, this much more liberal Gaming Reform Act (GRA) has to remain applicable to regulate and supervise gambling license holders in Schleswig-Holstein. Nearly 50 gambling licenses for online sports betting, online casinos and online poker, each valid for 6 years, were granted by the Ministry of Interior in Kiel before the GRA (Danish model) was (partially) withdrawn to join the ITG. The 20 sports betting licenses which can be issued based on the ITG remain in the box as the Administrative court of Wiesbaden decided against the fairness of ITG tender procedure. To identify the lucky 20 ones from 143 license application seems to be a mission impossible so far.

While the "ITG license authority" in Wiesbaden watches the wave of claims arising it now calls via an official tender procedure for outside legal assistance. It seems to be more likely that the tender procedure for picking the one law firm representing the "ITG authority" against the expected approx. 100 operators who want to bring the potential discriminatory character of the "20 license model" to court, will end faster than the main license tender process itself. In the meantime the online betting and gambling market in Germany gets crowded. Example: During the latest handball championship game in Hamburg (Kiel vs. Flensburg) the floor was covered with advertising banners from the Schleswig-Holstein licensed operators bwin.party and Merkur Interactive. Whereas Flensburg played in "bet-at-home.com" jerseys, THW Kiel played in (State) "Lotto" jerseys and bwin branded shorts.

This jungle of tender procedures and private and state online operators entering the German market calls for a conference like the "**World Regulatory Briefing Germany**" to bring all involved parties to one place in Frankfurt, Hessen (the Federal State which is competent for the tender procedure). The aim is clear: Finding a reliable path in Germany's regulatory jungle where things seem to change on a daily basis. For more information and to join in for the discussions on 27th June visit: www.wrbriefing.com/germany

Background:

The new regulatory situation is more than complex and legal consequences are unclear. Germany's Federal Court of Justice (FCJ) has already referred four questions concerning the compliance of the German gambling regime with EU law (resolution of 24 Jan. 2013, court ref. I ZR 171/10 – digibet) to the European Court of

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Justice (ECJ). The main question in this proceeding is whether the coexistence of two different regulatory systems for gambling in Germany contradicts the requirement under European law to ensure a consistent and coherent legal regime in a member state.

The main conflict point of the German gambling regulation is online poker. While the GRA regulates online casinos, including poker and 23 online casino and poker providers have been awarded a license in Schleswig-Holstein, the ITG strictly prohibits all kinds of online casino games. Another conflict exists in the different regulation of online sports betting. While there are already 25 sports betting operators licensed under the GRA, the ITG only allows up to 20 sports betting operators for the whole German market. Furthermore sports betting operators in Schleswig-Holstein are allowed to offer different kinds of bets on sports events, while the ITG only allows bets on the final or intermediate results (half-time, quarter etc.) of sports events. In addition, the ITG stipulates a general betting limit for players of 1000 Euros per month. This limit refers to the bets made, regardless of the winnings or losses.

The ITG: incoherent in itself?

Another legal controversy lies in the regime of the ITG itself. It is questionable if the above mentioned restrictions are proportionate and if the ITG's regulation of the different types of games is consistent and coherent at all.

Regulation of terrestrial gaming arcades and slots is still relatively modest, compared to the general prohibition of online gambling in the ITG, although there is hardly any controversy that slot games offered in gaming arcades and even in public restaurants and bars have the highest addiction potential of all games of chance. The recently published draft of the new regulation for slot and gambling machines (*Spielverordnung*) stipulates some stricter rules for these kinds of games, but does not go as far as to constitute a total prohibition of slot and gambling machines.

Through the so called "*experimentation clause*" 20 online sports betting operators could be exempted from the general online gambling ban stipulated by the ITG. Federal sports betting licenses will be granted by the Ministry of Interior in Hesse. The tender procedure for issuing nation-wide sports betting licenses has just entered its third and final round of assessments. But rumors say that not even 20 applicants might be awarded a license. Since there were more than 90 applicants who made it to the second round, it is only a question of time when the arbitrary limitation of licenses and the somewhat confusing tender procedure, which was initially managed by the law firm that normally represents the German gambling state monopoly, will be challenged in court. ([Confused: the state of online gambling in Germany. Page 5](#))

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Finally, besides this partial exemption for online sports betting, all online casinos games, incl. poker remain prohibited. The grounds of the ITG only give a very short justification for this ban:

An alleged *“high manipulation risk and the extraordinary addiction potential”* would not allow the regulation of these kind of games. The authors of the ITG state that terrestrial casino games offered by the few state owned casinos have to suffice to meet the customer’s demand.

But it seems as if these justifications are as short as they are superficial, to say the least. Recent scientific research regarding online poker comes to different conclusions.

Poker a game of skill or too dangerous to regulate?

With regard to the alleged addiction potential the study [*“Measuring and Evaluating the Potential Addiction Risk of the Online Poker Game Texas Hold’em No Limit”*](#) shows that at least the most popular online poker game “Texas Hold’em” has the same addiction potential as sports betting. Hence, addiction potential cannot be a valid argument to allow up to 20 sports betting providers in Germany while prohibiting online poker in total.

Furthermore recent court rulings in the US and Germany reanimate the general discussion if poker is a game of chance at all. Jack B. Weinstein, Senior United States District Judge at the United States District Court Eastern District of New York ruled in August 2012 that [*“Poker is predominated by skill rather than chance”*](#) (page 112).

And in fall 2012, even the 12th senate of the Finance Court of Cologne ruled that Poker is a game of skill, at least for professional players (court ref. 12 K 1136/11). - Of course, with the negative impact for professional players that their winnings are therefore subject to taxation.

Hence it, is questionable if Poker falls under the regime of the ITG at all and if the strict regulations should really apply to a game that is predominated by skill. These questions were also raised by the head of the liberal party’s parliamentary group in the Schleswig-Holstein parliament, Wolfgang Kubicki, but the ministry of the interior was not able to give a straight answer. [*\(See here for more details\)*](#).

And what about the alleged “manipulation risk”? - Online casino games, especially poker, are often named in the context of money laundering and fraud.

Jürgen Creutzmann, member of the European Parliament, former rapporteur of the European Parliament on [*“Online gambling in the Internal Market”*](#) and now shadow

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rapporteur of the EU Parliament for the new pending report on online gaming (so called *Fox-Report*), wanted to get more in-depth information on this topic.

On his invitation representatives of the European Commission, the European Parliament, national regulators as well as scientists and industry experts came together for a workshop in the European parliament to discuss the topic: "[Online Poker - Need for European Safety Standards?](#)". The result of the workshop was crystal clear: there is no reason not to regulate online poker. In fact, poker should be regulated not only on a national but on EU level, since customer protection in the EU can be achieved best, if regulated national markets agree on common security standards for their players.

[Professor Friedrich Georg Schneider](#) of Johannes-Kepler-Universität Linz one of the world's leading experts on issues relating to the shadow economy, challenged the perceived threat scenario of money laundering via online poker. He found money laundering via online poker is not worthwhile. According to his analyses, illegal gambling plays a minor role in global money laundering activities, running at only approximately 0.5 per cent. In view of a study of the consultancy firm Goldmedia on the German gaming market, he explained that, even if all online poker activities were used exclusively for money laundering purposes, the total volume of "laundered money" would be comparably small in comparison to other fields of the economy and therefore relatively unattractive for criminals. He added that money laundering via online poker is associated with large outlay and high transaction costs. As the business model furthermore works with non-cash payment transactions, funds paid in have in most cases already been part of the banking circuit, and have been made subject to the financial institutions' money-laundering examinations before they are paid in to the player accounts.

Prof. Schneider's thesis was supported by Rapporteur Ashley Fox (MEP) himself, who presented the draft of his long awaited *Fox-Report* to the Internal Market and Consumer Protection (IMCO) committee on 20 March 2013. During a conference in Brussels on 19 March 2013 he stressed that money laundering via EU regulated online gambling sites is not attractive for criminals since they would always leave "an electronic link behind, which can be traced". The "ML issue" would therefore "not be a big problem for the regulated markets".

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Join [WrB Germany](#) on 27th June in Frankfurt for a clarification of the licensing mess in Germany and to catch-up with all the local and international stakeholders driving the regulatory changes and embroiled in them.

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