MELCHERS
GAMING LAW
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10 July 2017

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“SHexit” – Schleswig-Holstein taking back control

“Where’s the nearest exit?” Not only a number of North Eastern Englishmen and passengers on overbooked UA flights seem to be asking themselves this question, it is also becoming contagious in the Neverending Story of gambling regulation that is known as the Interstate Treaty on Gambling.

Back in 2013, the northernmost German state, Schleswig-Holstein (‘SH’), quit the Interstate Treaty on Gambling and adopted their own Gambling Act in an attempt to create a licensing environment for sports betting and online casino. Contrary to the Interstate Treaty, the Gambling Act has been deemed to comply with EU law. However, following a change of government in SH, a coalition of “pro-monopoly” states back then pressured the SH government led by Labour and the Greens into repealing the Gambling Act and joining the Interstate Treaty.

Now, 4 years later, Conservatives, Liberals and Greens have agreed to form a new government coalition – aka the “Jamaica-coalition” in German political slang, a reference to the political colours of the parties.

Even during the election campaign, Conservatives and Liberals had been determined to “take back” control and reviving their Denmark-style regulation. It has now been agreed in the coalition negotiations together with the Greens that the new SH government will do so by not ratifying the Interstate Treaty amendments in a first step and to subsequently terminate the Interstate Treaty.

These plans will essentially collapse the Interstate Treaty amendment which was intended to react to the non-compliance of the sports betting regulation with EU law. In a way, it is history repeating itself; back in 2011, SH also refused to sign up to the Interstate Treaty as it was already apparent that this Treaty would not satisfy key requirements to gambling regulation under EU law and, instead, introduced the Gambling Act.

We think that this is good news for the remote gambling industry as it will give fresh impetus to regulatory discussion rather than to stabilise the regulatory construct of the Interstate Treaty which, primarily, aims to curb online gambling.

As per the new coalition agreement, the new government is planning on introducing a licensing system for sports betting and online casino (including poker) that is based on its former Gambling Act and complies with EU law.

Home & Away Team

July – Joerg moderated a round table at the World Gaming Executive Summit WGES 2017 in Barcelona (4 July 2017) and will be moderating a panel at the iGaming Super Show in Amsterdam (13 July 2017).

Coming soon: We have been asked to contribute chapters on German regulation to the 2nd edition of the Gambling and Gaming Law Review Germany (Law Business Research). The publications will be launched soon.

New AML regulations in force – a “well-honed sword”?

Thanks to the clumsy regulatory approach towards gambling under the Interstate Treaty, enforcement of restrictions to the online gambling industry for years have been reminiscent of the efforts of a certain Mr Don Quichote with some regulators still riding around. However, a new chapter in that story may have been opened on 26th of June 2017:

On that day, the new Anti-Money-Laundering Act came into force, implementing the 4th Anti-Money Laundering Directive of the EU (2015/849).

The new legislation not only covers casinos but all gambling providers with the exception of retail lotteries, gaming machines, horse racing and charitable lotteries; albeit a substantial risk analysis at national level is missing, the legislator claims that these are low-risk gambling sectors. Sports betting and online casino, in principle, are subject to the scope of the new requirements.

This is why some gambling regulators have expressed that, at last, they have been dealt a “well-honed sword” to strike down illegal gambling. Further to new AML requirements, fines have been drastically increased: non-compliant entities can now be fined up to EUR 100,000. For a serious, repeated or systematic violation the fine can even amount to up to EUR 1m or twice the profit made through non-compliant behaviour.

In terms of the key requirements, obliged entities are required to conduct a risk-analysis and to implement effective risk management procedures to detect and prevent money laundering. An AML Officer plus deputy who are responsible for the risk management have to be appointed.

From a practical perspective, KYC and restrictions to payment methods are likely to be burdensome for the operators. Preliminary player accounts allowing players to gamble on a preliminary basis until KYC is complete, will be possible – albeit subject to certain conditions which include either an ID-card based verification process or verification based on data from previously conducted face-to-face checks, e.g. by means of matches with datasets collected by banks. Since anonymous payment methods are banned, it does not come as a surprise that cash vouchers are not allowed. Accepted payment methods, for example, include direct debit, transfer and electronic payment card. In a last-minute, most unwelcome amendment in the legislative process, credit card payments, where the name of the credit card owner has not been matched against the owner of the player account, are subject to a transaction limit of EUR 100 per month and EUR 25 per transaction.

Clearly, these requirements are onerous for the gambling industry. However, we think that it will be prudent for remote gambling companies (and their directors) to consider ways to reduce risks from future AML-related enforcement. The challenge over the next 6 months will be to find ways to mitigate the impact of these requirements in a viable way.

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