

## CJEU: German sports betting regulation continues being in breach of EU law

Brussels, 4 February 2016

Today, the Court of Justice of the European Union (CJEU) concluded in the "Ince" Case (C-336/14) that Germany must not impose sanctions against operators on the basis of the German online gambling legislation that has already been found to be against EU law by national Courts. The current Interstate Treaty with its experimental clause de facto prolongs the monopoly and consequently violates EU law.

The [CJEU judgment](#) follows the previous ruling of the Higher Administrative Court of Hesse suspending the granting of licenses under the German Interstate Treaty on Gambling. These rulings at both EU and national level effectively render the Interstate Treaty defunct.

Maarten Haijer, Secretary General of EGBA, said: *"Today's ruling emphatically confirmed that the German online gambling regime reached a practical and legal dead end. The CJEU ruled the experimental clause for sports betting introduced in 2012 has failed to remedy the incompatibility with EU law. This means the German online gambling regime still violates EU law and cannot be enforced."*

He added: *"The European Commission must now swiftly open an infringement case against Germany to ensure it changes its course rather than persists with the failed Interstate Treaty. A comprehensively and cautiously prepared reconsideration of the legal framework, which needs to be carefully adapted to the realities of the Digital 21<sup>st</sup> century, will allow German consumers access to a competitive and regulated online offer under the protective umbrella of German legislation. Existing regulation in Schleswig-Holstein, the proposal put forward by Hesse as well as other European regulatory models like the Danish one can provide good inspiration for successful regulation."*

The Court found that:

- "[...] the fictitious authorisation procedure [...] cannot be regarded as having remedied the incompatibility with EU law, found by the national courts, of provisions of national law establishing a public monopoly regime" (para 62);
- "[...] a Member State may not apply a criminal penalty for failure to complete an administrative formality where such completion has been refused or rendered impossible by the Member State concerned, in infringement of EU law" (para 94);
- Sanctions may not be imposed "[...] despite the entry into force of a national provision permitting the grant of licences to private operators, [if the] application of the provisions establishing a public monopoly [...] deemed by the national courts to be contrary to EU law, has persisted in practice (para 95).

The European Commission has previously questioned Germany already on the consistency and compliance with EU law of the German Interstate Treaty on Gambling stating that it had

clearly failed in its objectives<sup>1</sup>. The EC had already raised doubts about compliance with EU law back in 2012 by issuing a Detailed Opinion<sup>2</sup> upon receiving the notification of the Treaty. The next step should now be the urgent opening of an infringement case against Germany.

The CJEU has once again confirmed that national licensing procedures have to adhere to the principles of transparency and equal treatment. Several German courts have criticised exactly these issues during the licensing procedure that has been on-going since 2012.

A ruling of the Higher Administrative Court in Hesse finding the licensing procedure in violation of German constitutional law effectively rendered the German legislation obsolete in October 2015<sup>3</sup>. The German State of Hesse has meanwhile stopped supporting the Interstate Treaty, rather calling for a multi-license system for all online gambling products, the prevalent regulatory model throughout the EU<sup>4</sup>.

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**Notes:**

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**About the EGBA:**

The [EGBA](#) is an association of leading European gaming and betting operators [Bet-at-home](#), [BetClic](#), [GVC/bwin.party](#), [Expekt](#), and [Unibet](#). The Gibraltar Betting and Gaming Association ([GBGA](#)) and Branschföreningen för Onlinespel ([BOS](#)) are affiliate members of EGBA. As a Brussels-based non-profit association, EGBA promotes the rights of more than 20 million adult European citizens to participate in online gambling of their choice in an informed, regulated, safe and secure environment. While online gambling remains a smaller part of the total gambling market (15%), based upon innovation, technology and digital consumer demand, online gambling transformed itself into an industry champion of the European digital economy with material spin-off effects towards other digital economies and strong synergies with sports. EGBA members have invested more than €600M into digital security and contributed to sports with more than €800M, mainly via sponsorship deal and purchasing innovative sports streaming rights. [www.egba.eu](http://www.egba.eu)

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<sup>1</sup> <http://www.shz.de/schleswig-holstein/politik/eu-zerpflueckt-gluecksspielvertrag-der-bundeslaender-id10167911.html>

<sup>2</sup> <http://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2012&num=519>

<sup>3</sup> [https://vgh-kassel-justiz.hessen.de/irj/VGH\\_Kassel\\_Internet?rid=HMdJ\\_15/VGH\\_Kassel\\_Internet/sub/bac/bac023a2-8bb6-051f-012f-312b417c0cf4,,,11111111-2222-3333-4444-100000005003%26overview=true.htm](https://vgh-kassel-justiz.hessen.de/irj/VGH_Kassel_Internet?rid=HMdJ_15/VGH_Kassel_Internet/sub/bac/bac023a2-8bb6-051f-012f-312b417c0cf4,,,11111111-2222-3333-4444-100000005003%26overview=true.htm)

<sup>4</sup> <https://innen.hessen.de/presse/pressemitteilung/hessen-macht-konkrete-vorschlaege-fuer-eine-moderne-gluecksspielregulierung>