

EDITORIAL

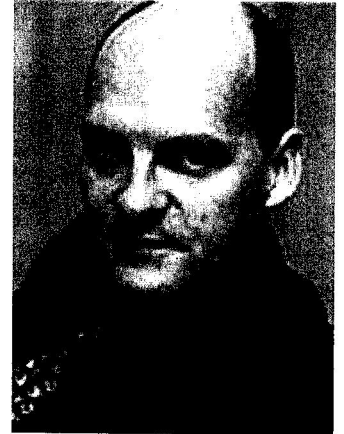
Schleswig-Holstein's switchover under EU law scrutiny

Germany has submitted its notification under Directive 98/34/EC to the European Commission on the switchover from the Gaming Act of the Land Schleswig-Holstein (Gaming Act S-H) providing for licensing of private online gaming operators to the system of total online bans and a restricted sports betting concessionary system under the German State Amendment Treaty on Gambling (GlüÄndStV). The Gaming Act S-H only continues to apply for the purpose of monitoring the licenses already issued on its basis for a limited period of time and is otherwise rescinded. The switchover from the Gaming Act S-H to the rather restrictive system of a maximum of 20 sports betting concessionary licenses and of total online bans under the GlüÄndStV raises questions as to its compliance with the principles of coherency and proportionality under Article 56 TFEU. The notification states briefly the grounds by referring to the objective of "uniform regulation of gambling at national level and the accession of the Federal State of Schleswig-Holstein to the First State Gambling Amendment Treaty" (GlüÄndStV). However, this statement of reasons does not satisfy Member States' obligation to establish coherent and systematic national regulations. In a nutshell, the ECJ judgment *Dickinger & Ömer* (Case C 347/09, para. 54) clearly allocates the burden of proof to the Member States to supply all essential evidence that the measures do indeed comply with the requirements deriving from the principles of proportionality and coherency. Hence, the very switchover by Schleswig-Holstein from its Gaming Act providing for licensing of private online gaming operators to the system of total online bans and a restricted sports betting concessionary system under the GlüÄndStV has to be scrutinized (and not only the GlüÄndStV on a stand alone basis). Therefore, Schleswig-Holstein (Germany) has to provide evidence with regard to regulatory shortcomings and insufficiencies experienced under the licensing system of the Gaming Act S-H in order to justify the switchover to the system of total online bans and the restrictive concessionary system for sports betting services under the GlüÄndStV. Proportionality and coherency of newly introduced regulation, i.e. Schleswig-Holstein's accession to the GlüÄndStV, can only be established in comparison to the regulatory status quo ante, i.e. shortcomings and insufficiencies experienced under the licensing system of the Gaming Act S-H.

However, the practical experiences under the licensing system of the Gaming Act S-H, especially with regard to the 11 licenses for online sports betting and 1 for stationary (offline) sports betting granted by Schleswig-Holstein, appear to provide some contrary evidence that a rigid licensing procedure within a liberalized, however tightly regulated system is able to control online services more effectively than those distributed via traditional offline channels. All operations performed on electronic media can be tracked in order to detect problematic or suspicious operations, i.e. addictive gambling patterns, black market and money laundering operations. Leading problem gambling experts have confirmed that numerous technical tools are (only) digitally available to protect players, combating and preventing black market and money laundering operations. Technically sophisticated minor protection or (self-) exclusion tools are by far more effective in an online than in an offline modus. Taking account of the risks inherent in any gambling services, especially those from third countries neither licensed nor regulated under EU or EEA standards, the rigid licensing procedure under the Gaming Act S-H appears actually to experience more efficiency in combating black market and money laundering operations as well as in consumer protection than the system of total online bans under the GlüÄndStV.

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