



## **Internal Market, Industry, Entrepreneurship and SMEs DG**

**Kristian Hedberg, Deputy Head of Cabinet  
Agnieszka Drzewoska, Member of Cabinet  
of Commissioner Elżbieta Bieńkowska**

**Meeting with Alber & Geiger on German Gambling Law  
Brussels, 13 January 2015, 16h30**

### **BRIEFING NOTE**

#### **Context:**

Alber & Geiger is a law firm actively following the legislative developments and compliance of gambling legislation particularly in Germany. They represent the Gauselmann Group, a leading manufacturer, supplier and operator of gambling machines.

The German gambling market is not the biggest in Europe (total volume of 39 billion Euros in 2012 compared to 62 billion in France and 59 billion in UK) but with a fast growing online gambling sector (+700% from 2012 to 2013)<sup>1</sup>. The sector is also politically sensitive because gambling is a Länder competence.

Alber & Geiger have been in contact with the Commission on notifications pursuant to Directive 98/34/EC (coordinated by GROW C3, with substantive input from GROW D3) and in the context of infringement proceedings (handled by GROW D3).

During the time of the previous Commission, Alber & Geiger met with Members of the Cabinets of Commissioners Barnier

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<sup>1</sup> Figures based on the study "International vergleichende Analyse des Glückspielwesens", Goldmedia GmbH Strategy Consulting, September 2014

(MARKT) and Nelli Feroci (ENTR), most recently in September 2014.

It is assumed that Alber & Geiger would like to continue with the practice to discuss gambling services directly with Members of the responsible Cabinet of Commissioner Bieńkowska.

The meeting will focus on the German evaluation of the adequacy of its gambling legislation. In view of its client, the Gauselmann group, Alber & Geiger's interest will be concentrated on the issue of slot machine regulation.

<b>Line to take:</b>
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The Commission is closely following the developments in Germany in the area of gambling. There are several elements of concern, notably in the field of sport betting and online casino services, about the compatibility of the German legal framework with the Internal Market principles, in particular the free movement of services.

As you know, the Commission services have met the German authorities in November 2014. The evaluation as agreed between the Commission services and the German authorities in 2012 was carried out. This is an informal interim evaluation

exclusively intended to enable the Commission services to carry out the assessment of the compatibility of German law and practice with EU law. It precedes the full formal evaluation provided for by the Interstate Treaty for the year 2017.

The Commission services are currently assessing the results of this interim evaluation. Certain aspects remain unresolved, such as the on-going sport betting concession award procedure, which is still pending after 2 years.

The Commission will continue to actively monitor the compliance of German gambling legislation with EU-law and take infringement action if considered appropriate in full consideration of the principle of equal treatment of Member States.

In this context, the Commission always welcomes the opportunity to receive information from stakeholders complementing the picture presented by the Member

State authorities. The input already received from you in the past was very useful and further input from your side in the future will be equally appreciated.

<b>Q+A:</b>
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**Q1:** Alber and Geiger's clients are concerned by the lack of Commission action against recent regulation of the provision of slot machine gambling services in gambling arcades. In the view of Alber & Geiger, the increased conditions for providing such services violated EU-law as it discriminates gambling arcade operators vis-à vis casino operators.

**A1:** The Commission received notifications of German draft laws in the past and provided comments to the German authorities.

Specific concerns with the legislation of Member States may always be brought to the attention of the Commission. However, restrictive measures taken by Member States in specific areas of gambling may be justified by public interest considerations (such as consumer protection).

The measures taken have to be proportionate. The assessment of the proportionality is rather complex in the area of gambling, taking into account the suitability of measures, addiction potential of the

services in question, different rules for different games of chance, etc.

**Q2:** Alber and Geiger might want to inquire that status of our gambling infringement action against Hungary.

**A2:** The Commission is currently assessing the Hungarian gambling legislation by means of a pending EU-Pilot procedure. The next steps depend on the Hungarian replies to the questions put forward in the context of the EU-Pilot procedure.

## Background information:

### ➤ Commission Action Plan on Online Gambling (2012)



The compliance of national regulatory frameworks with EU law is one of five key initiatives set out in the Commission's Action Plan on Online Gambling adopted on 23 October 2012. Following a broad public consultation the Commission does not propose sector-specific (online) gambling legislation but focusses instead on a mix of initiatives:

- Compliance of national law with EU law (with emphasis on online gambling for the clear cross-border dimension);
- Administrative cooperation between gambling regulators of Member States and efficient national enforcement;
- Protection of economic interests and health of consumers and citizens;
- Prevention of fraud and money laundering;
- Safeguarding the integrity of sports and preventing match-fixing.

### ➤ Gambling legislation in Germany

Like in many other Member States, the German gambling legislation contains restrictions to the freedom to provide services. Such restrictions may violate Art. 56 TFEU unless they can be justified by imperative requirements in the general interest, such as

consumer protection and the prevention of fraud or of incitement of gambling addiction. The Court of Justice ruled that such restrictions must be suitable for achieving those general interest objectives in a consistent and systematic manner.

On 1 July 2012 an Interstate Treaty for Gambling concluded between the German States (*Länder*) entered into force replacing a previous State Treaty from 2008.

The State Treaty removed the system of exclusive rights particularly for sport betting services, creating a licence system with a total of 20 licences. It also reduced the previous total ban of online gambling services to a ban for online casino and poker games.

The 2012 State Treaty was subject to considerable exchange with the German authorities. In the context of the notification process under Directive 98/34/EC (notification 2011/188/D), the Commission issued a detailed opinion in July 2011, resulting in an increase of the number of available sport betting licences (from 7 to 20) and a modification of the conditions originally foreseen for the award of licences.

Remaining issues in this context have been the new regime for the award of licences for sport betting services and the ban of online casino and poker games.

As for sport betting, the previous legislation provided for a monopoly. This restriction was not justified under EU-law as based on the case law of the CJEU a monopoly demands that a particular high level of protection is sought with sufficient effectiveness, requiring that the monopoly is pursued in a coherent and systematic way and subject to strict public control. It remains to be seen whether the proposed concession regime is suitable to meet the policy aims justifying the restriction of the service to 20 providers.

Regarding the ban of online casino and poker games, based on the case law a restrictive system also needs to be subject to State



control. With the growing unregulated online offer there is a risk that consumer protection is eroded.

In view of doubts regarding the suitability of the provisions of the 2012 State Treaty in these areas, it was agreed at a meeting in December 2011 that these provisions of the State Treaty would be reviewed between Germany and the Commission services by 1 July 2014.

Prior to the last meeting in November 2014, the German authorities provided an interim report on the evaluation of the Interstate Treaty to the Commission services. The report actually highlighted some unresolved issues such as a sharp increase of online casino games which are illegal in Germany putting in question the suitability of the system created by the 2012 State Treaty. It also confirmed that no licences had been granted 2 years after the entry into force of the State Treaty. The sport betting monopoly in violation of EU-law therefore currently still continues.

The sport betting award procedures are still pending as review procedures have been initiated in September 2014 against the award decisions by some gambling operators on legal and procedural grounds.

This difficult implementation of the State Treaty has obviously led to a growing amount of frustration among the operators.

➤ German legislation on gambling arcades

Gambling arcades are regulated in the German Gaming Order (Spielverordnung). The latest (Sixth) edition of the Order was notified last year on 20 June 2014 (notification 2014/289/D).

The Sixth German Gaming Order introduces new requirements for slot machines such as limiting games for points, lowering prospects for winning; lowering maximum wins/losses per hour and prohibiting automatic buttons on slot machines.

The Commission services (ENTR) sent comments on the Order in September 2014. The German authorities clarified that the new requirements are motivated on the basis of studies emphasising the need to curb addiction related to gambling at slot machines.

The Sixth German Gaming Order was adopted in November 2014.

A Seventh German Gaming Order is currently in the drafting stage modifying the transitional period for the operation of slot machines authorised before the entry into force of the Sixth German Gaming Order.

It should be emphasised that the Commission focus in the area of gambling is not on the land based slot machine market (see background information above on the Commission Action Plan on Online Gambling (2012)). However, the regulation of the slot machine market has to be seen in the overall context of a coherent gambling policy suitable to achieve the objectives justifying restrictions to the freedom to provide services. In particular, attention is required whether increased regulation of the land based slot machine market might lead to an increased share of unregulated online gambling.

➤ Gambling legislation in Hungary

The Commission services became aware of new gambling legislation in Hungary in November 2014 which has not been notified under Directive 98/34/EC.

The Commission services are therefore seeking to clarify whether the restrictions foreseen in the Hungarian legislation can be justified in coherence with EU law, through the ongoing EU Pilot procedure launched earlier last year.

Name of main contact person:

Telephone number:

Directorate/Unit:

GROW D3

Annex

Information on the Interlocutors (from the Alber & Geiger webpage):

