

Message 304

Communication from the Commission - TRIS/(2019) 02098
 Directive (EU) 2015/1535
 Translation of the message 303
 Notification: 2019/0187/D

Observations from the Commission (article 5, paragraph 2, of Directive (EU) 2015/1535). These observations do not have the effect of extending the standstill period.

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1. MSG 304 IND 2019 0187 D EN 29-07-2019 26-07-2019 COM 5.2 29-07-2019

2. Commission

3. DG GROW/B/2 - N105 04/63

4. 2019/0187/D - H10

5. article 5, paragraph 2, of Directive (EU) 2015/1535

6. Within the framework of the notification procedure laid down by Directive (EU) 2015/1535, the German authorities notified to the Commission on 26 April 2019 the "Third State Treaty amending the State Treaty on Games of Chance".

The notified draft amends the State Treaty on Games of Chance of 15 December 2011 (State Treaty on Gaming [GlüStV], hereafter: the State Treaty) and implements provisions previously envisaged during the proposal for the Second State Treaty that had been notified under No 2016/590/D, but did not enter into force. According to the notification message, the draft "Third State Treaty amending the State Treaty on Games of Chance" notified under 2019/187/D (hereafter: the notified State Treaty) contains amendments to the concession process for sport betting services.

Pursuant to Article 5(2) of Directive (EU) 2015/1535, examination of the draft has prompted the Commission to deliver the following comments.

1. Suspension of the restriction of the number of concessions – Article 1(1) of the notified State Treaty

The notified State Treaty eliminates the maximum number of 20 sport betting concessions. The Commission welcomes the change, which seems to increase the potential for bringing more operators from the unregulated market into the regulated area of sport betting in Germany.

However, the economic circumstances of the sport betting concessions have changed: due to the potentially higher number of concession holders as well as a much shorter duration of the experimental phase of only 18 months (instead of the previously foreseen 7 years), may reduce the incentives to move from the unregulated to the regulated area. The German authorities are therefore invited to carefully assess the cumulative impact of the changes of the State Treaty of 2012 pursuant to Article 1 of the notified State Treaty.

2. New timing of the experimental phase for sport betting – Article 1(5) and Article 2 of the notified State Treaty

The experimental phase of suspension of the State betting monopoly foreseen in Article 10a(1) of the State Treaty of 2012 originally was planned for seven years (from 1 July 2012 to 30 June 2019). The explanatory note of the notified draft State Treaty specifies that "the granting of concessions to organisers of sport betting is now legally possible for the entire period of validity of the State Treaty until 30 June 2021". This gives the impression that the original seven-year period is extended to nine years.

However, the Commission understands that this experimental phase has not started yet. The award of sport betting concessions pursuant to Article 10a (2) of the State Treaty of 2012 has not occurred to date and does not seem to be planned any longer before the envisaged entry into force of the notified draft State Treaty on 1 January 2020. Against this background, it appears that the notified State Treaty significantly reduces the duration of the

experimental phase from seven years to one and a half years.

According to the Commission, the fact that the experimental phase might be extended until 30 June 2024 does not significantly increase the attractiveness of the legalised sport betting market under the modified regime. Economic operators cannot take for granted such an extension, which requires a decision by at least 13 out of the 16 German States.

The Commission invites the German authorities to explain how a much shorter experimental phase will still help to test a better fulfilment of the objectives of the State Treaty of 2012 pursuant to its Article 1.

3. Relationship of notified State Treaty with Article 32 of the State Treaty of 2012 (unchanged by the notified State Treaty)

Article 32 of the State Treaty of 2012 provides that the effects of this State Treaty, in particular of Articles 4a to 4e, 9, 9a and 10a on the development and spreading of illicit games of chance on black markets, must be evaluated by the State gaming supervisory authorities in cooperation with the consulting committee. A comprehensive report must be submitted by 1 July 2017 (five years after its entry into force).

The Commission notes that the provisions of the State Treaty of 2012 covered by Article 32 are overlapping with the provisions contained in the notified State Treaty. The changes submitted in the present notification concern Articles 4a, 4b, 9a and 10a of the State Treaty of 2012 as regards sport betting services, which are explicitly covered by the evaluation obligation under Article 32 of the State Treaty of 2012.

As the experimental phase foreseen in Article 10a(1) of the State Treaty of 2012 has not started yet, the Commission invites the German authorities to clarify how the evaluation obligation of Article 32 of the State Treaty of 2012 will be implemented.

The Commission emphasises the need of a continuous evaluation of the implementation and application of the State Treaty, in particular (but not only) regarding sport betting. The German authorities already committed in 2012, in the context of notification 2011/188/D, to an evaluation of the suitability and efficiency of the provisions regarding sport betting. Unfortunately, in view of the failure to award sport betting concessions to date, no such evaluation was carried out until now. The German authorities are therefore invited to clarify how and when an evaluation of the suitability and efficiency of the provisions regarding sport betting will take place.

4. Relationship of notification 2019/187/D with previous notifications 2011/188/D and 2016/590/D

Notification 2019/187/D concerns changes to the State Treaty of 2012 notified at draft stage under the number 2011/188/D, which entered into force on 1 July 2012. As these changes are limited to few parts of the State Treaty of 2012, the Commission retains the detailed opinion and comments issued in the context of that notification 2011/188/D, in particular in the reaction of the Commission of 20 March 2012 to the response of Germany regarding the detailed opinion.

With regard to notification 2016/590/D, the Commission notes that the Second State Treaty amending the State Treaty regarding Gambling in Germany did not enter into force. The current observations thus replace the observations made by the Commission on 10 February 2017 in the context of notification 2016/590/D.

The Commission invites the German authorities to take into account the above comments.

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