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KEEP THE FAITH

Gaming lawyer Martin Arendts asks whether there is an end in sight to the German sports betting licence procedure

In 2012, Germany decided to abandon its strict state monopoly system regarding sports betting and start a licensing procedure. However, after almost two years, no licences have been granted and the licensing procedure appears to be a never-ending story.

It is quite obvious that the whole procedure does not fulfil the criteria of the Court of Justice of the European Union (CJEU). There is no factual basis for the maximum amount of 20 licences. Even more essential is the fact that the detailed licensing criteria have not yet been published. It will also be hard to argue that the licensing criteria are unequivocal, as required by the CJEU.

Questions and answers

Until now, the Hessian Ministry of the Interior has collected more than 900 questions from applicants and, sometimes, quite contradictory answers from the Ministry. So, the procedure looks more like a bonanza for lawyers than a legal certainty for operators. Apart from that, the CJEU, in two referral cases from Germany, will have to give an opinion on whether the regulation of gambling in Germany is coherent and consistent, as required by EU law.

The Interstate Treaty on Gambling of 2012 contains an experimentation clause in

section 10a that allows for up to 20 sports betting licences. The Hessian Ministry of the Interior was appointed to organise the sports betting licensing procedure and to issue the licences on behalf of the newly created gambling board.

Legal battles

More than 100 applications were filed with the Ministry. After the second step, however, the procedure seemed to have stopped halfway. The procedure came to a stand-still, and the first legal battles were fought in 2013. In November 2013, in a letter to the remaining 41 applicants, the Ministry declared that none of the applicants fulfilled the minimum requirements. In January 2014, the applicants were requested to hand in additional information and documents before 14 March 2014.

In the meantime, state-owned ODS ODDSET Deutschland Sportwetten GmbH has asked the Administrative Court of Wiesbaden to be granted a licence. In its interim decision of 20 December 2013, the Administrative Court of Wiesbaden requested the Hessian Ministry of the Interior accelerate the licensing procedure and decide on the application of ODS within three months. It held that the Ministry had to decide on the application within reasonable time and that there was no comprehensible reason why the Ministry could not do so. However, the Hessian Administrative Court of Appeal has now repealed this decision, arguing that ODS must wait for a final decision.

The court of appeal pointed

to the fact that applicants could bring an action for failure to act. In a partial judgment for a private operator, the Administrative Court of Wiesbaden already declared that the Ministry had to decide on the application within three months. However, the court allowed for an appeal to clarify the procedural situation.

End in sight?

An end of the legal dispute is not near. If the Ministry will eventually decide to issue licences and not to re-start the whole procedure, it first has to send out rejection letters and to wait for two weeks before sending out licences. In the meantime, certainly most rejected applicants will ask for interim legal protection. Several licence-holders may also file suits against incidental provisions of their licences.

The CJEU will also have to decide two sports betting referral cases from Germany. On 2 April 2014, the CJEU heard the Digibet case. In this case, the court will have to decide whether the gambling regulation in Germany is coherent and consistent, if two completely different sets of rules apply. The gambling licences granted under the now-revoked Schleswig-Holstein Gambling Act are still valid.

In the Ince case, the District Court of Sonthofen *inter alia* asks the CJEU to clarify the criteria for a licensing procedure. The court also points to several inconsistencies.

With regard to the current sports betting licensing procedure in Germany, this new referral in a criminal case is even more interesting. ♦