



Germany's State Treaty on Gambling 2021

NEW GAME, NEW LUCK

On 1 July 2021, Germany's new State Treaty on Gambling 2021 (*Glücksspielstaatsvertrag 2021 – GlüStV 2021*) will come into force, bringing with it far-reaching changes and possibilities. All 16 federal states have now ratified it. In addition, the legislator is working on an amendment to the Race Betting and Lotteries Act (*Rennwett- und Lotteriegengesetz – RennwLottG*) to adapt taxation to the new gambling regulation.

We summarise the most important changes for operators, advertising media and for those involved in payment transactions.

Most important new regulations for gambling operators

The main goal of the upcoming liberalisation is to channel the natural gambling instinct into supervised channels. This is accompanied by new licensing possibilities for private (*fee-based*) gambling offers on the internet, namely for:

- Virtual slots
- Online poker
- Online casino games

While virtual slots and online poker can be licensed in all federal states and for an unlimited number of private operators, a limited choice is provided with regard to online casino games. The federal states can either offer online casino games in the state monopoly themselves or grant one to a maximum of as many licences per state as there are casinos in the respective state. So far, however, no federal state has made use of the possibility to open up the possibility of licensing online casino games to private operators.

In addition, existing licensing options for Internet offerings by private operators will be continued (social lotteries, lottery brokerage) or transferred to a permanent licensing model (sports betting).

However, liberalisation is also associated with new restrictive requirements for operators, such as:

- a player blocking system across operators and forms of play;
- a cross-provider deposit limit; and
- a central file to prevent parallel play at several operators on the internet as well as the requirement to connect to a safe server.

Unpaid offers, especially of virtual slots and online casino games, will also be subject to regulation under gambling law; among other things, a player account must be set up.

Most important new regulations for advertising

The expansion of the licensing possibilities is of course also associated with an expansion of the advertising possibilities for the licensed offers, especially since the previous requirement of an additional gambling advertising licence for the internet and TV will no longer apply in the future. However, advertising is not possible without limits. The GlüStV 2021 also contains detailed specifications for the type and scope of advertising, which are in addition to the regulations of other laws (such as media, unfair competition and youth protection law). These include, (for example) the following general and game form-specific regulations:

- Advertising must not be directed at minors and those at comparable risk (eg gambling addicts).
- The type and scope of advertising must not run counter to the objectives of § 1 GlüStV 2021 (not be “excessive”).
- Misleading advertising is prohibited, in particular about the chance of winning or the type/amount of the prize.
- The mixing of advertising and editorial content is prohibited (so-called native advertising).
- Virtual slots, online poker and online casino games: No advertising between 6AM and 9PM on TV, radio and internet.
- Sports betting: No advertising immediately before or during the live broadcast of sports events on the broadcast channel “for sports betting on this sports event”; no advertising for sports betting with active athletes/functionaries.
- Remuneration Internet advertising: No variable, in particular revenue-, deposit- or stake-dependent remuneration (exception: advertising for lotteries with low event frequency); permissible affiliate links with fixed remuneration (eg per click or per new customer).

In addition, further detailed regulations on advertising will be regulated in the licences in so-called content and ancillary provisions. It is advisable to actively participate in the licensing procedure and, if necessary, to subsequently review individual provisions before the administrative courts.

Violations of some of the advertising requirements of the GlüStV 2021 can be punished with a fine of up to EUR500,000.

Most important new regulations for those involved in payment transactions

The existing prohibition of participation in payment transactions in connection with unlicensed gambling will be expanded in the future. This applies in the event that an operator or broker of public gambling offers other services in addition to unlicensed gambling and the mixture with unlicensed gambling leads to the fact that payment flows cannot be clearly identified. Then the participation in the entire payment transaction in this context shall be prohibited. This prohibition of participation can be avoided by ensuring a separate and distinguishable payment transaction (by gambling offer).

In this respect, it is a direct obligation of those participating in payment transactions, especially credit and financial services institutions. According to the explanatory memorandum to the GlüStV 2021, e-money institutions and operators of payment systems are also to be covered. In addition, the gambling supervisory authority has the power to monitor unlicensed gambling offers after prior notification, but without prior recourse to the operator or broker.

New licensing/supervisory authority and transitional arrangements

The Joint Gambling Authority of the Federal States (*Gemeinsame Glücksspielbehörde der Länder*) will be established in Saxony-Anhalt as the new central licensing and supervisory authority for cross-state gambling offers on the internet. However, this new authority will only gradually take up its new functions, so previous licensing responsibilities will initially remain in place until 31 December 2022.

For virtual slots and online poker, the State Administrative Office of Saxony-Anhalt (*Landesverwaltungsamt Sachsen-Anhalt*) will act as the licensing authority on a transitional basis. During this time, the Gambling Board (*Glücksspielkollegium*) will continue to serve as the body of the respective competent gambling supervisory authority.

The State Treaty on Gambling also provides for numerous transitional regulations. Among other things, existing licences will be extended by law by one year (for lotteries) or one and a half years (for sports betting) as of 30 June 2021.

Most important new tax regulations

With the new regulation of the RennwLottG, the taxation for online gambling will also be revised. In future, the tax for sports betting, virtual slots and online poker will be a uniform 5.3%. The basis of assessment is the betting or gaming stake less the respective tax. The betting or gaming stake does not include betting or gaming bonuses that are made available to the player but cannot be paid out, but can only be gambled away.

Implications for refund claims

The GlüStV 2021 and its extended licensing options are also likely to have (at least indirect) effects on the currently booming business model of so-called refund claims. This applies in particular to gambling offers that already meet the requirements of the Circular

Resolution of the heads of the state and senate chancelleries of the federal states of 8 September 2020, and the associated joint guidelines of the supreme gambling supervisory authorities. This would also be in the interest of the State Treaty objective of combating gambling addiction, which is opposed by the motto of risk-free gambling (either taking winnings or claiming a refund). Some regional courts have already put a stop to refund claims by German players against providers of online gambling with foreign licences and dismissed corresponding claims, among other things, if the risk of loss known to the player and inherent in gambling has materialised in the case of gambling participation over a longer period of time.

Your contacts



Dr Michael Stulz-Herrnstadt
Rechtsanwalt | Partner
Litigation & Regulatory (Gambling)
+49 40 188 88 223
michael.stulz-herrnstadt@dlapiper.com



Prof Dr Stefan Engels
Rechtsanwalt | Partner
Intellectual Property (Competition law)
+49 40 188 88 206
stefan.engels@dlapiper.com



Christoph Engelmann
Rechtsanwalt | Counsel
Litigation & Regulatory (Gambling)
+49 40 188 88 221
christoph.engelmann@dlapiper.com



Rainer Funke
Rechtsanwalt | Of Counsel
Litigation & Regulatory (Public affairs)
+49 40 188 88 139
rainer.funke@dlapiper.com



Fabian Jeschke
Rechtsanwalt | Senior Associate
Litigation & Regulatory (Gambling)
+49 40 188 88 248
fabian.jeschke@dlapiper.com



Katja-Maria Harsdorf
Rechtsanwältin | Associate
Intellectual Property (Competition law)
+49 40 188 88 149
katja-maria.harsdorf@dlapiper.com