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Schleswig-Holstein repeal concerns EC

The European Commission has 'real concern' about Schleswig-Holstein's move to join Germany's Interstate Treaty, centred on the Treaty's compliance with EU law, according to the EC's detailed opinion of 7 December.

"Cancelling Schleswig-Holstein's Gambling Act would result in an incoherent situation: 15 licences under the Act and a limited number of licences under the Treaty," said Martin Arendts, Attorney-at-Law with Arendts Anwälte.

The EC reaction follows October's Communication, promising action on non-compliant Member States.

"The EC would be compelled to send formal notice pursuant to Article 258 of the Treaty on the Functioning of the EU, the first step in infringement proceedings, if the Draft Repeal and Accession Act of Schleswig-Holstein is passed without consideration of EC objections," explains Matthias Spitz, Attorney at Melchers. "Schleswig-Holstein cannot simply pass the Act, because it would have to provide comprehensive data proving that Treaty restrictions are necessary; this data, arguably, is impossible to furnish."

UK Bill to protect gamblers but tax is 'real motivation'

The UK Government published on 3 December its draft Gambling (Licensing and Advertising) Bill, which proposes to introduce a point of consumption licensing regime for all online gambling operators wishing to advertise to or transact with UK consumers, requiring that such operators acquire a Gambling Commission licence.

"Unlicensed operators from inexperienced jurisdictions are a genuine concern for the Government," said Julian Harris, Partner at Harris Hagan. "Anyone who applies for an EU licence can sell or advertise to the UK at the moment." The draft Bill highlights concerns about 'new and emerging European jurisdictions.'

However, Harris adds that "most operators in the UK are from well-regulated jurisdictions," referring to the large number of mainly 'white-list' operators, from Alderney or Malta for instance, offering services at present. Graham Hann, Partner at Taylor Wessing, said that the Government could have given "more legitimacy to its publicly stated rationale for the draft Bill if it had specified the regulatory regimes in mind. After all, why should all operators need to obtain a licence from the Gambling Commission if the majority operate under established and effective regimes?"

"The real motivation is tax," said Harris. "[Few operators] pay any tax in the UK. The amount of tax generated from this will not be vast, but in these times, any revenue is good."

Companies operating in the UK would, under the bill, be subject to a predicted 15% revenue tax and required to contribute towards UK problem gambling funds.

Andrew Danson, Senior Associate at K&L Gates LLP, does not expect "many operators to pull out of the UK market if the Bill is passed," adding that the market "is lucrative, and should remain so after the imposition of a point of consumption tax. There is a risk that consumers will get a worse deal as operators may not be able to offer the same odds if their tax and administrative burdens increase."

Stephen McGowan, Partner and Head of Licensing (Scotland) at TLT Solicitors, believes "the Bill may meet with some resistance due to ECJ jurisprudence on the free movement of goods and whether it is appropriate to place restrictions on goods in an effort to raise tax."

"The industry will probably challenge the Bill," adds Harris. "This could knock it into the next Parliament, whether the challenge succeeds or not."

Antigua & Barbuda pursues trade sanctions v. US IP interests

The government of Antigua & Barbuda announced on 9 December that it will pursue trade sanctions against US IP interests, in an attempt to claim the $21 million compensation awarded by the World Trade Organisation (WTO) in 2007, following WTO's finding of the US Unlawful Internet Gambling Enforcement Act (UIGEA) as a violation of international law.

"Antigua really has exhausted all other possibilities at this time," said Mark Mendel, Attorney at Mendel Blumenfeld LLP. "Perhaps a last minute deal is possible, but it will require that the US finally agree to reasonable compromise." Martin Owens, Attorney-at-Law, is "surprised" at Antigua's move, "after the US responses made it perfectly clear that Uncle Sam won't be bound by any decision he doesn't like."

Antigua's decision follows several years of negotiation after the passing of the UIGEA in 2006. The UIGEA forbids US citizens from betting with overseas operators. Antigua claims the UIGEA and other US laws have negatively impacted on its economy.

"The real cause of the decline in Antiguan gambling websites was much more likely the opening of competing jurisdictions such as Costa Rica," argues Owens.

"There is no coherent proof that the US state and federal laws which Antigua complains of actually caused Antigua any harm," continues Owens. "Cause-and-effect between US law and Antigua's gambling fortunes has always been presumed rather than proven."

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