

Virtual gambling en route to legality

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With more than four million players, the German online poker market is the second largest world-wide. However, with regard to the legal framework, online poker does not even exist in this country. The players are acting in a grey zone; putting it bluntly, one could even say they are committing a crime. Up to now, the only federal state is willing to change this is Schleswig-Holstein – “the others will have to follow suit as soon as possible”, is the opinion of Wulf Hambach and Stefan Bolay.

In the past, poker was rather being played in the saloon. In the meantime, however, the game has become fully acceptable in the living room for a significant part of the population. The fundamental prerequisite for the emergence and spreading of online poker was the technical development of the World Wide Web and, in particular, of internet connections. This was what allowed the user-friendly provision of games such as online poker for a broad audience.

The world-wide poker boom began in 2003, when an amateur player in the USA won the world’s largest poker tournament, which had up to then been dominated by professional poker players. Following this, poker tournaments were broadcasted in similar fashion to sports events, also on German television.

Nowadays, several poker shows are broadcasted on TV every week, in particular on Sport 1 and ProSieben. The television host Stefan Raab has picked up on the boom and started his show “TV Total PokerStars.de Nacht”. Interested players can

qualify via free online poker tournaments for a game with Raab and other celebrities, in which the winner receives a prize of 50,000 Euro.

No pertinent regulations in the draft for the new inter-state treaty on gambling

A point in dispute in this context is whether or not poker is to be regarded as a game of chance at all. Most courts in Germany are of the opinion that the element of chance is dominant in poker. Foreign courts, for instance in Sweden and the Netherlands, have reached the opposite conclusion.

Also, numerous scientific studies, also originating from countries other than Germany, have stated that the most popular form of poker, Texas Hold'em, is a game of skill. In Italy, for instance, poker is regulated as a game of skill. An argument in favour of this assessment is that many professional poker players earn their living with this card game.

Irrespective of the legal classification as a game of chance or as a game of skill, poker has in recent years been legalised and liberalised in Italy and France. The same development is presently taking place in Denmark, Spain and the Netherlands, where in March the state secretary for public safety and justice, F. Teven, addressed his parliament in a written appeal, pointing out that "[m]odern game forms such as poker, whether via the internet or otherwise, [...] [provide] the public with leisure activities" which is why the legislator should make available to the consumers "adequate and attractive gambling offers".

This is the aim also pursued by the federal state of Schleswig-Holstein. The associated gambling act has already gone through the first reading in parliament and is intended to come into effect before the end of the year. According to this, online poker providers based in the EU would have the

option of applying for a licence in Schleswig-Holstein.

The inter-state treaty on gambling (GlüStV) from 2008, which will expire as per 31 December 2011, does not contain any regulations for online poker. Pursuant to the present draft for a new GlüStV presented by the 15 federal states without Schleswig-Holstein ("E-15-GlüStV"), online poker will continue to not be regulated, even after 1 January 2012, and will therefore continue to be prohibited according to the view taken by these federal states.

The law must be adapted to reality

Not only the present legal situation, but also the law contemplated by the E-15-GlüStV, blatantly contradicts reality: It turns a blind eye to gambling offers which have long since reached a part of society.

Without a regulation of online poker as intended by Schleswig-Holstein, German authorities will not be able to control the providers – even though, based on a recent study by the University of Hamburg, approximately 4.5 million German players have already become their customers. German rules on player protection cannot be implemented at all in this manner.

Schleswig-Holstein on the other hand has, according to its own statements, received more than 30 declarations of intent from online gambling providers who have expressed their general willingness to apply for a licence in Schleswig-Holstein. In doing so, they would actually make themselves subject to the German player protection provisions. Without a regulation, online poker players would be forced into illegality or even crime. The E-15-GlüStV names "combatting the black market" as one of its major objectives, but completely ignores online poker.

The question therefore is how to combat this huge "grey" or "black market". It seems more than questionable that the internet blockings provided in the present draft will solve

this problem – in particular against the background that such blockings were only recently rejected by a cross-party political majority in the German parliament even for the combat of child pornography, on the grounds that such blockings were held to be disproportionate and unsuitable.

„New showcase state for gambling regulation“ rather than “Las Vegas of the North“

Another fact to be considered is that, without a regulation of online poker, Germany would lose millions in tax revenue, as providers cannot be taxed in Germany if they are not permitted to legally provide their services in the country.

Schleswig-Holstein is planning a 20 per cent tax on the gross proceeds, thus being in line with the taxes in Italy, where the largest poker provider alone pays double-digit millions in tax every year. Also, some studies have reached the conclusion that the taxation of online poker would result in revenue which would at least reach the sums obtained through the taxation of online sports bets.

Summing up, it can be stated that the law and politics in Germany have up to now neglected online poker, even though the population has long since accepted the game. Schleswig-Holstein is the only state working towards the necessary paradigm shift, by intending to regulate and legalise the popular and widespread game in Germany.

Schleswig-Holstein will therefore by no means become a “Las Vegas of the North” as currently propagated. Rather, it would earn the title “new showcase state for gambling regulation”, which the other 15 federal states should not hesitate to copy.

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