

Regulation of General Betting Provisions under German Law (Part 1): International Private Law

Alongside competition and trademark problems, civil law issues have begun to play an increasing role since a liberalisation of the sports betting and gambling market has become a real prospect.

In many cases, in relation to German customers, it is the law of another state which is chosen as the basis for the contract between the customer and the provider (e.g. "Allgemeine Wettbestimmungen" (General Betting Regulations) under Austrian Law). Art. 29 of the EGBGB (Einführungsgesetz zum BGB, the Introductory Act to the German Civil Code; by which e.g., International Private Law is regulated) pertains to this choice. This provision applies to contracts which do not relate to the professional or commercial activities of the customer. This is the case for almost all business connections between foreign providers with German customers and has the effect that stringent regulations of the state in which the customer lives (here, in particular the AGB-Inhaltskontrolle (judicial review of a business's general terms and conditions) which we will explore in our second part on this theme) cannot be excluded. Where a dispute later arises, the customer can therefore invoke those provisions, which are beneficial to him, and claim, inter alia, that individual clauses in the foreign provider's terms or even that the betting contract itself is invalid.

Under Art. 29, para. 1, no. 1 of th EGBGB, this is also the case where the conclusion of the contract is preceded by a clear offer or an advertisement in the customer's country

(e.g., by a receiving office or a website, i.e., banner advertising) and if the user “carried out the legal acts necessary for the conclusion of the contract” there (i.e., the placing of a bet in the receiving office, e.g., using the customer’s computer).

Under Art. 29, para. 1, no. 2 of the EGBGB, this also applies where the user’s contractual partner or his representative in that country accepts bets from users in that country (e.g., by a betting office in Germany).

The clauses which would be invalid under German law will be explored in the second part (AGB-Inhaltskontrolle: judicial review of a business’s general terms and conditions, which will feature in the next edition of the newsletter).