Last year – 2013 – was a considerably less eventful year for German gambling law than 2012, which saw significant reforms within the industry (please see our overview here¹).

**Conflict between the two separate German gambling regimes**

In January 2012, Schleswig-Holstein passed a liberal gambling law which enabled online operators to apply for licences for most games of chance, including sports bets, poker and casino games. The other fifteen German federal states, however, passed the reformed Interstate Treaty on Gambling 2012 (ISTG). Although the ISTG enabled online operators to accept sports wagers and liberalised the German gambling industry (in particular with respect to lotteries) to a certain extent, it also maintained the state monopoly for games of chance and the general ban on online gambling as set out under the previous legislation.

Schleswig-Holstein withdrew its gambling law in January 2013 (after it had granted about 50 licences to online operators) and joined the ISTG, which is now the only applicable gambling law in Germany. However, those licences already granted under Schleswig-Holstein’s gambling law remain valid for a period of six years. In other words, about 50 online operators may still lawfully offer gambling services despite the prohibition under the ISTG.

The conflict created by these opposing regimes could make the general state monopoly and the general ban on online gambling set out in the ISTG unenforceable under European law. The General Federal Supreme Court requested a preliminary ruling on the matter from the Court of Justice of the European Union (CJEU) in January 2013. We are still waiting for its decision and, until we receive it, the legal situation in Germany with respect to gambling law remains unclear.

**Impact on enforcement actions**

Last year, enforcement action against online operators decreased significantly. While the gambling authorities have historically been quick to take legal action against rogue online operators, the authorities seem to have stopped issuing new prohibition orders pending the CJEU ruling. Even existing prohibition orders seem to be enforced only to a limited extent. This is particularly the case with respect to sports betting services not licensed in Germany where the relevant online operator pays the German tax of 5% for the provision of sports betting offers. In addition, court cases have been put on hold while other disputes have been terminated by settlement agreements between the parties.

The few court judgments handed down in 2013 seem to be more open to the possibility that the current legal regime for gambling in Germany fails to comply with European law and is, therefore, unenforceable. The highest German administrative court has even confirmed that the state monopoly in one federal state under the previous regime is unlawful – a surprising decision given that it was widely held until then that the pre-2012 regime was fully compliant with European law.

**Difficult licensing process regarding sports betting**

Under the ISTG up to twenty online operators may be granted internet sports betting licences. The process of awarding the licences began mid-2012 and should have been completed by early 2013, but has been beset with problems. Despite 14 applicants having initially been found to meet the licence criteria, the competent ministry in Hesse has halted the process claiming that, in fact, none of the applicants have met the minimum requirements. All applications now have to be amended which means that internet sports betting licences are unlikely to be granted before the middle of 2014 and possibly not until 2015.

¹) http://www.taylorwessing.com/download/article_gambling_law_germany.html
New anti-money laundering stipulations

In February 2013, the German Money Laundering Act was amended to place certain obligations on online operators. These obligations require them to implement a risk management system and take specific measures to prevent money laundering, financing of terrorism and a number of other criminal offences. Obligations regarding the identification of players and the assurance of cash flow transparency must also be met.

Advertising Directive

Last but not least, the ISTG provides online operators with more opportunities to advertise than they enjoyed under the previous regime. The Advertising Directive, passed in 2013, sets out the detail of what sort of advertising is permitted, especially with respect to advertisements for lotteries as well as for sports and horse racing on the internet and television. Under the ISTG and the Advertising Directive, advertisements on the internet and television are only permitted if a specific advertising licence has been granted by the Regional Administration of Düsseldorf (an overview of the licences granted so far can be found on www.brd.nrw.de). There is, however, no requirement to obtain a licence to sponsor television shows.

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2) http://www.brd.nrw.de/ordnung_gefahrenabwehr/gluecksspielrecht/service/Uebersicht__erteilteWerbeerlaubnisse.pdf