



PRESS RELEASE

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ECJ rules that German gambling legislation is in breach of EU law

The European Court of Justice (ECJ), confirming the previous assessment made by the national courts, finds in the two rulings issued today in cases *Winner Wetten* and *Carmen Media* that the German gambling monopolies do not contribute to limiting gambling opportunities in a systematic and consistent manner and that consequently German gambling laws are in breach of the freedoms of the Internal Market. The ECJ also confirms that all Member States' legislation, even at constitutional level, must comply with EU law.

The current legal framework for gambling in Germany, laid down in the State Treaty on games of chance, provides for regional monopolies on virtually all gambling activities, including sport betting, allegedly with the objective to “channel the gaming instinct of the population” In other words, to restrict it in order to minimise any negative effects . However, two gambling operators established elsewhere in the EU challenged the compatibility with EU law of the legislation in the regions of Nordrhein-Westfalen and Schleswig-Holstein. The referring courts in these two regions found that the participation in sports betting is encouraged by the bodies authorised to organise such bets and also that the public authorities pursue a policy of expanding private-run games of chance. The ECJ consequently finds in today's rulings that the existing legal framework for gambling does not contribute to limiting gambling opportunities in a systematic and consistent manner.

As such the justification for restricting access to the market is flawed.

The ECJ also restricts the discretion of the Member States to grant authorisations to offer gambling services. Such an authorisation system, which derogates from a *fundamental freedom*, must be based on criteria which are objective, non-discriminatory and known in advance, in such a way to circumscribe the exercise of the national authorities' discretion so that it is not used arbitrarily, and must ensure effective judicial protection.

The ECJ also reaffirms the primacy of EU law over national law, even of a constitutional order, and utterly rejects the transitional maintenance of gambling legislation that is incompatible with the freedom of establishment and the freedom to provide services.

Clive Hawkswood, Chief Executive of the RGA, said: *“We hope that these rulings dispel the myth that EU law gives Member States total discretion to decide their gambling policies. The ECJ has made it clear that they have to comply with EU law and that gambling is not an exception. In the circumstances it is impossible to see how the existing State Treaty can be retained in anything like its current form. In the light of this judgement we are urging the German authorities to move towards the introduction of a non-discriminatory licensing regime which will provide the right safeguards for consumers, rejuvenate the gambling market and ensure that German law is properly compliant with EU law.”*

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The RGA represents the world’s largest licensed, and stock market-listed remote gambling companies. It provides the industry with a single voice on all issues of importance to regulators, legislators, and key decision makers around the world.

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