



Court of Justice of the European Union

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Judgment in Case C-156/13

Press and Information

Digibet Ltd and Gert Albers v Westdeutsche Lotterie GmbH & Co. OHG

The more liberal policy adopted temporarily by the Land Schleswig-Holstein on games of chance does not damage the consistency of the stricter policy pursued by the other German Länder

The prohibition on the organisation and advertising of games of chance on the Internet in almost all the Länder may be proportionate to the public interest objectives pursued

In Germany, the organisation and facilitation of games of chance on the Internet and the advertising of games of chance on television, the Internet and via telecommunications networks are, in principle, prohibited. However, the use of the Internet for those purposes may be authorised in exceptional circumstances for lotteries and sporting bets. That exception aims to offer an appropriate alternative to the illegal supply of games of chance and to combat the development and spread of unauthorised gaming.

In the *Land* Schleswig-Holstein, the organisation and facilitation of games of chance on the Internet was authorised from 1 January 2012 until 8 February 2013. That authorisation was granted to any person who, in the EU, met certain objective conditions. During the same period, Schleswig-Holstein also authorised advertising for games of chance on television and the Internet. Although the more liberal legislation on games of chance applicable in the *Land* Schleswig-Holstein has now been repealed, the authorisations issued to operators of games of chance on the Internet remain valid for a transitional period of several years.

Digibet is authorised to organise games of chance under a licence issued by the authorities in Gibraltar. Thus, it offers games of chance and sports betting in German via its Internet site 'digibet.com'. Following an action brought by the Westdeutsche Lotterie (a public lottery company in North Rhine-Westphalia) a German court ordered Digibet and its managing director Mr Albers to cease to offer the possibility of playing games of chance via the Internet to persons in Germany.

Digibet and Mr Albers challenged that judgment before the Bundesgerichtshof (German Federal Court). That court asks the Court of Justice whether the more liberal policy adopted by Schleswig-Holstein for more than one year may affect the compliance of the prohibition on games of chance in the other *Länder* with the rules on the freedom to provide services. Although permitting Member States to limit that fundamental freedom in relation to games of chance, European Union law requires that any restriction must be appropriate to achieve the public interest objectives justifying its adoption. According to the Bundesgerichtshof, in the present case, the existence of more liberal rules in the *Land* Schleswig-Holstein might undermine the ability of the rules adopted in the other *Länder* to achieve the legitimate public interest objectives pursued.

In today's judgment, the Court recalls, first of all, that the prohibition on organising and promoting games of chance in Germany constitutes a restriction on the free movement of services, but that such a restriction may be justified by public interest objectives such as those set out in the German legislation.

Second, the Court holds that, even assuming that the more liberal legislation in Schleswig-Holstein may have undermined the consistency of the policy of prohibiting games of chance in the other *Länder*, **the application of that more liberal legislation was limited temporally to less than 14 months and geographically to a single *Land*.** Thus, the existence for a limited period of more

liberal rules in the *Land* Schleswig-Holstein does not seriously affect the appropriateness of the restrictions on games of chance applicable in all the other *Länder* to achieve the legitimate public interest objectives pursued. Thus, the Court of Justice observes that the other 15 *Länder* were not required to change their legislation in that field simply because a single *Land* had followed a more liberal policy for a limited period.

Accordingly, the Court of Justice holds that **the German legislation on games of chance is capable of being proportionate to the public interest objectives it pursues and, therefore, of being compatible with the freedom to provide services**. However, it is for the Bundesgerichtshof to verify whether the legislation at issue satisfies all the conditions to proportionality which are laid down in the case-law of the Court of Justice.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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