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Payment Services in Online Gambling

Where Are the Limits for What Is Permissible?

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German Regulatory Framework – The GlüStV 2021

- **Jurisdiction:** Gambling regulation in Germany is fundamentally a matter for the **federal states**.
- **Need for Uniformity:** Due to the nature of online gambling, the federal states decided to introduce **uniform regulations** applicable throughout German territory.
- **Legal Basis:** The sixteen German federal states concluded the **State Treaty on Gambling (GlüStV) in 2021** to achieve common rules for **internet-based gambling**.
- **Compliance Scope:** The GlüStV contains strict **compliance obligations** for organizers and intermediaries of online gambling.
- **Licensing Requirement:** Prior **permission** is required to organize virtual slot machine games, online casino games, or sports betting.

The Core Constraint: The Prohibition of Contribution

- **General Rule (Section 4 (1) sentence 2 GlüStV):** The GlüStV provides for a so-called **prohibition of contribution**.
- **Definition:** This prohibits the provision of **payment services** to providers of **illegal gambling**.
- **Extension (Section 4 (1) sentence 3 GlüStV):** This principle is extended to "mixed cases" where a provider mixes fundamentally permissible services with **unauthorized gambling**.
- **Result of Mixing:** In such cases, **contribution to payment transactions** for *other services* of that provider is also prohibited.
- **Consequence:** The payment service provider may not execute such payments or provide payment services in relation to these transactions.

Compliance Demands for Payment Institutions

- **Challenge:** Compliance with the **prohibition on contribution** under Section 4 (1) sentence 3 GlüStV can be quite challenging for **payment institutions**.

- **Required Expertise:** Institutions must have a **comprehensive understanding** of the customer's business model and be able to classify it under **gambling law**.
- **Risk Indicators:** Special attention is necessary if services include **gamification elements** or simply **random chances of winning**.
- **Separation Test:** The prohibition applies if payments relating to permissible services **cannot be clearly separated** from payments relating to illegal gambling.
- **Standard of Proof:** Payment institutions must determine with **legal certainty** whether the business model contains elements of **illegal gambling**.

Defining Gambling and Illegality

- **Unauthorized Gambling:** This is the organization or brokering of **public games of chance** without the necessary **license** within the meaning of Section 4 (1) sentence 1 GlüStV.
- **Definition of Gambling (Section 3 (1) GlüStV):** Gambling is present when a fee is charged for the opportunity to win, and the decision on the winnings depends entirely or **predominantly on chance**.
- **Interpretation of Chance:** Dependence on chance is assumed in any case if the **uncertain occurrence or outcome of future events is decisive** (relevant for sports betting or online poker).
- **Publicity:** A game of chance is considered **public** if a large, non-closed group of people has the opportunity to participate.
- **Gray Areas:** Difficulty arises when the gambling element is an incidental, **random by-product**, for example, as part of **marketing measures**.

Institutional Duties and Conclusion

- **Primary Duty: Payment institutions** must **thoroughly review** the business models of their commercial customers.
- **Objective:** The review must determine whether the business models contain any elements of **illegal gambling**.
- **Risk Mitigation:** The **prohibition on contribution** mandates that payment services are not provided if illegal payment flows are **not clearly identifiable**.
- **Legal Expertise:** Institutions must be able to classify the customer's operations under **gambling law**.
- **Legal Commentary:** The legal aspects of this framework are constantly discussed by experts.

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