

Act amending the North Rhine-Westphalia Online Casino Game Act¹

Dated XX Month 2024

The State Parliament has adopted the following Act, promulgated herewith:

Article 1

The North Rhine-Westphalia Online Casino Game Act of 23 February 2022 (NRW Gazette of Laws and Ordinances (GV. NRW) p. 258) is amended as follows:

1. § 3 is amended as follows:

a) In the third sentence of paragraph (1), the specification ‘General Administrative Fees Regulation of 3 July 2001 (GV. NRW. p. 262)’ is replaced by the specification ‘NRW General Administrative Fees Regulation of 8 August 2023 (GV. NRW. p. 490)’.

b) The first sentence of paragraph (5) is amended as follows:

aa) In subparagraph 9, the word 'and' is replaced by a comma.

bb) In subparagraph 10, the full stop at the end is replaced by the word ‘and’.

cc) The following subparagraph 11 is added:

‘11. The staff employed for the implementation and use of the concession have the requisite reliability.’

2. § 5 is amended as follows:

a) The fourth sentence of paragraph (2) is worded as follows: ‘Requirements for the procedures for demonstrating territorial compliance as referred to in paragraph (1) and proof of domicile or habitual residence shall be laid down by the ordinance referred to in § 37(2) subparagraph 11.’

b) Paragraph (3) is worded as follows:

‘(3) By way of derogation from paragraph (2), other procedures for demonstrating territorial compliance for the concession may be allowed at the request of the concession holder. For this, it must be ensured that these procedures, at least to the same extent as the procedures referred to in paragraph (2) and further laid down in the ordinance referred to in § 37(2) subparagraph 11, are suitable for preserving the limitation of concessions to the territory of the State of North Rhine-Westphalia pursuant to § 22c(1) of the 2021 State Treaty on Gambling. Furthermore, it must be ensured that these procedures can be monitored by the supervisory authority with reasonable effort. The details may be laid down in the ordinance referred to in § 37(2) subparagraph 11.’

¹ Notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

3. § 9 is amended as follows:

a) Paragraph (1) is amended as follows:

aa) In the first sentence, the words ‘and after examination’ are inserted after the word ‘application’.

bb) The following sentences are inserted after the first sentence: ‘The costs of the examination shall be borne by the concession holder. The examination may also be carried out by an independent external examination organisation commissioned by the concession-granting authority.’

b) In the second sentence of paragraph (2), the word ‘external’ is inserted after the word ‘independent’.

4. In § 15, the following paragraph 7 is added:

‘(7) Powers of the Ministry responsible for the supervision of gambling pursuant to § 9 of the State Treaty on Gambling and pursuant to other provisions shall remain unaffected.’

5. After § 15, the following § 15a is inserted:

‘§ 15a Authorisation of service providers and live broadcasting from the premises of service providers

(1) On the basis of a private-law contract, service providers shall commercially offer the implementation and live broadcasting of banking games to concession holders. They are neither an organiser nor an intermediary of public gambling in this respect. Services referred to in the first sentence may only be provided with an authorisation from the concession-granting authority pursuant to this Act. The authorisation may not be granted if the provision of the service is contrary to the objective laid down in § 1 first sentence subparagraph 4 of the 2021 State Treaty on Gambling. The provisions of the 2021 State Treaty on Gambling, of this Act and of the ordinance shall also apply to service providers insofar as they relate to the implementation of games of chance and are transferable according to their content. The Ministry responsible for the supervision of gambling shall lay down the details of the requirements for the private-law contract with the concession holder by means of an ordinance.

(2) Authorisation to provide services pursuant to paragraph (1) may be granted for a location within the meaning of § 15(2) fifth sentence per service provider if:

1. the applicant has the technical, spatial and personnel capabilities for the implementation and live broadcasting of banking games, in particular, the location is suitable for the proper implementation of banking games and proper supervision can be ensured at this location;
2. the applicant is capable within the meaning of § 4a(1) subparagraph 2 point (a) of the 2021 State Treaty on Gambling;
3. compliance with the IT security requirements arising from § 6f of the 2021 State Treaty on Gambling is ensured;
4. the applicant, if it does not have a registered office in Germany, designates to the concession-granting authority an authorised receiving agent and representative in Germany;

5. the ownership and shareholding structure of the applicant are fully disclosed and the applicant neither itself nor through affiliated companies organises or acts as an intermediary for unlawful gambling;

6. the applicant does not have a business relationship with organisers and intermediaries who engage in unlawful gambling in Germany, but only with those who are included in the joint official list pursuant to § 9(8) of the 2021 State Treaty on Gambling (Whitelist) or are otherwise authorised;

7. the applicant declares in writing that it does not cooperate with organisers or intermediaries, nor is it in a contractual or other business relationship, with those who engage in gambling abroad that is unlawful under the regulations in force there; and

8. the applicant and the responsible persons tasked by it within the meaning of § 4(3) third sentence have the reliability and expertise required for the provision of the service and guarantee that the implementation and live broadcasting are carried out properly and transparently for the concession holder and the concession-granting authority; in the case of legal entities and partnerships, all persons with powers of representation must have the reliability and expertise within the meaning of the ordinance.

(3) The Ministry responsible for supervision of gambling shall lay down further details on the authorisation criteria and the authorisation procedure by ordinance, in particular regarding the requirements for the security of the broadcast, the staff and the gaming tables and gaming equipment. The staff employed by the service provider may not participate in the gambling that is implemented and broadcast for the concession holder. Players may not be granted loans by the service provider or its employees (ban on credit).

(4) The concession holder is not exempted from the obligations and requirements of the 2021 State Treaty on Gambling, this Act or the ordinance enacted thereto by commissioning an authorised service provider. The obligations of the organiser to ensure the protection of players and minors cannot be transferred to the service provider. In particular, only the concession holder may collect and store customer data, carry out identity and age checks, set up and manage gaming accounts, including the making of deposits and withdrawals, and perform reconciliations in the barring system. The service provider must not be granted access to personal data of the players. As far as this is technically necessary, the service provider may have access to the IP address of players and an ID uniquely assigned to them. The concession holder remains responsible for realisation of the social concept and shall obligate the service provider to cooperate through its staff, insofar as this is necessary. Without prejudice to the powers of the concession-granting authority under § 9(1) of the 2021 State Treaty on Gambling, also vis-à-vis the service provider, the concession holder is required to monitor compliance with the requirements of gambling law by the service provider it has commissioned.

(5) Service providers may carry out live broadcasts of banking games on behalf of the concession holder in accordance with § 15(1). The first to third and fifth sentences of § 15(2) shall apply. The location of the service provider shall be deemed to be a location of the concession holder. Permission to use the premises of the service provider may be linked to the concession if such premises have already been authorised in accordance with paragraph (2). By way of derogation from the requirements of the seventh sentence of § 15(2), the concession-granting authority may authorise the use of the premises of the service provider by multiple concession holders if the premises are suitable for this purpose. § 15(3) to (6) shall apply, *mutatis mutandis*.

6. § 36(1) is amended as follows:

a) In subparagraph 12, after the words ‘North Rhine-Westphalia’, the words ‘or contrary to the obligation arising from § 5(2) does not request the necessary proof’ are inserted.

b) In subparagraph 14, the word ‘external’ is inserted after the word ‘independent’.

b) In subparagraph 27, the word ‘or’ is replaced by a comma.

c) In subparagraph 28, the full stop at the end is replaced by a comma.

d) The following subparagraphs 29 and 30 are added:

‘29. breaches an ancillary provision of the concession pursuant to the third sentence of § 3(4),
or

30. contrary to § 3(5) first sentence subparagraph 11 fails to check the required reliability of the staff.’

7. § 37(2) is amended as follows:

aa) Subparagraph 3 is worded as follows:

‘3. the data security measures that are to be taken by persons working in gambling and financial supervision, and by employees and visitors to the casino within the framework of § 14,’

b) Subparagraph 11 is worded as follows:

‘11. the requirements that are to be imposed on the proof of domicile or habitual residence within the meaning of § 5(2) and how the procedures for demonstrating territorial compliance for the concession within the meaning of § 5 are structured in more detail’

c) In subparagraph 12, the full stop at the end is replaced by the word ‘and’.

d) The following subparagraph 13 is added:

‘13. the requirements that are to be imposed on the reliability of the persons pursuant to § 3(5) subparagraph 11 and how the obligation of the concession holder to check the reliability is to be implemented.’

Article 2

This Act shall enter into force on the day after promulgation.

Düsseldorf, XX Month 2024

The state government
North Rhine-Westphalia

The Minister-President
Hendrik Wüst

Minister for Economic Affairs, Industry, Climate Action and Energy
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