

The EC on Portugal's draft i-gaming amendments

Proposed new gambling tax also subject to commentary

In our article of July 2014¹ we highlighted the main features of the Portuguese government's proposal for the regulation of online gambling and betting services (the 'proposal'). The proposal would introduce significant improvements to the panorama of online gambling in Portugal, of which we emphasise the following:

- The provision of online gambling services would be dependent on the issuance of licenses by the Gambling Inspection Service ('GIS');
- There would be an obligation for a gambling operator, if it is a foreign company, to have a subsidiary or branch in Portugal;
- There would be an obligation for online gambling operators to have one bank account in a credit institution authorised to carry out banking activities in Portugal, through which all transactions regarding online gaming and betting will be made;
- There would be an obligation for online gambling operators to install a specific website with the '.pt' domain whose physical infrastructure must be hosted on Portuguese territory and must continuously report in real-time the gambling and betting activity to an infrastructure controlled by GIS; and
- The creation of a new special tax that will be charged to online gambling operators, with a distinction between i) games of chance and mutual betting on horse races, and ii) sport betting odds and horse betting odds. The former will be taxed on the gross receipts at a tax rate that will range between 15% and 30%. Gross receipts for these purposes are considered to be the amount of the bets net of the premiums paid. The latter will be taxed on the volume of the bets at a rate that varies between 8% and 16%.

In this article we provide some updates as to the development of this legislative initiative, notably, the European Commission's ('EC') assessment of the proposal, reactions from relevant gambling associations regarding the gambling tax and the estimated time frame for the law finally entering into force.

The European Commission's detailed opinion

The EC issued a detailed opinion, registered on 5 December 2014, regarding the proposal, challenging some of its provisions on the grounds that they could pose restrictions regarding the freedom of movement of goods, the freedom to provide services and the freedom of establishment. Data protection concerns were also raised, especially concerning players' personal data.

Regarding fundamental freedoms, the EC showed some concern about provisions requiring that foreign applicants for online gambling licences must have a subsidiary or a branch in Portugal, and that their servers must also be located in the Portuguese territory. Other requirements imposed by the proposal which, according to the EC's perspective, may possibly restrict fundamental freedoms, are the obligation to have a bank account in a credit institution authorised to operate in Portugal and the obligation to design specific websites with the '.pt'

domain. In regards to data protection, the EC is concerned with the confidentiality and personal data of players. This is mainly connected with the fact that the GIS will have access to a database where personal information such as the identification, age and taxpayer number of each user will be available.

Despite the EC's concerns, the Portuguese government has stated that this detailed opinion only seeks to clarify some 'technical aspects' of the proposal and does not call into question its core structure.

Criticism of the gambling tax

Notwithstanding the relevance of the concerns brought by the EC, the aspect of the proposal that has received constant and heavy criticism within the gambling community is the Gambling Tax ('GT'). As it is currently structured by the government's proposal, the GT is charged on the betting turnover (the total value of bets) registered at a specific website. However, associations like the Remote Gambling Association and the Portuguese Online Gamblers Association have already expressed their discontent, claiming that this tax system would force gambling operators to increase their operational margins, which would shift the burden of tax directly to the player. This would in turn lead to a loss of competitiveness for regulated operators and encourage consumers to use the non-regulated markets. In order to avoid this unnecessary penalty on the player, both associations suggest the implementation of a tax system based on gross gaming revenue (the amount wagered minus the winnings returned to players). In this way, players would continue to be properly rewarded and gambling operators would also remain competitive while at the same time the State would obtain superior fiscal revenues.

Amendments and approval

All these remarks will be surely taken into account by the Portuguese government, which will have to amend some of the proposal's provisions in order to make the law compatible with EU law and possibly (but not mandatorily) with the input provided by the associations of gambling operators and players. Regardless of any of these potential changes, the Portuguese government estimates that the proposal will be approved at some point during the first quarter of 2015.

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1. 'Portugal's online gambling regulation proves controversial,' João Alfredo Afonso and Bruno Santiago of Morais Leitão, Galvão Teles, Soares da Silva, *World Online Gambling Law Report*, Volume 13 Issue 7, July 2014; see http://www.e-comlaw.com/world-online-gambling-law-report/article_template.asp?from=woglr&ID=2082&Search=Yes&txtsearch=portugal