

Issues preventing the launch of operations in Portugal

Draft regulations issued on betting exchanges and liquidity

The Portuguese online gambling market has made several significant opening steps, notably by means of a Legal Framework for online betting and gambling¹ ('RJO'), dated April 2015, and a 'regulation package' setting up the rules governing the licensing procedure and other technical aspects of the law. The certification procedure for online gambling technical systems certification entities is also ongoing, with eight entities already certified and approved by the Regulator ('the SRIJ'). However, there are still two relevant issues that have not been tackled yet that prevent operators from starting operations in Portugal, as the necessary regulatory framework is not completed: the technical system requirements for betting exchanges and the so-called 'international liquidity' in online poker.

In what concerns betting exchanges, the SRIJ published on 10 March 2016 a draft regulation laying down the betting exchanges' technical system requirements². The publication of this regulation is of the utmost importance, as operators of betting exchanges were prevented from applying for a licence as they did not know the necessary technical specifications for their technical systems. This draft regulation is available for consultation and remarks until 28 April.

As per the 'international liquidity' matter, initial rumours made some believe that the market was to be ring-fenced, restricting liquidity only to players from Portugal. However, the SRIJ also published on 10 March a draft regulation³ destined to appease players' and operators' concerns regarding liquidity in the online poker market. This regulation sets the requirements for technical systems using 'shared liquidity,' a concept that makes it possible for an operator licensed by the SRIJ and also licensed in countries where online gambling and international liquidity are allowed, to provide online betting services to players registered in such countries. With this 'double licensing' feature the SRIJ ensures that 'international liquidity' is only allowed when the operator is licensed in a country that expressly accepts this possibility. This verification procedure is the subject of the above mentioned draft regulation and must be observed by all operators that intend to operate games where 'shared liquidity' is available.

As with prior draft regulations, there will be a period of 30 business days (ending on 28 April) where the documents can be accessed, analysed and commented on by any interested parties. Gambling associations, public entities and operators will certainly provide the SRIJ with their feedback, which will result in a final regulation that will be sent to the European Commission for any remarks or detailed opinions, for a period of three months (plus one month if there is a detailed opinion). It is also worth noting that this 'status quo' period was already activated by the European Commission when it issued a detailed opinion regarding RJO in December 2014.

It is therefore fairly reasonable to assume that there will be

another delay in the issuance of online gambling licences (at least for the types of games directly concerned). Some comments among operators resulting from interactions with the SRIJ pointed at the end of March for the beginning of the issuance of the first online gambling licences. However, this date has been constantly postponed by the SRIJ and was originally set to be within the last quarter of 2015. It is therefore very difficult to predict any concrete date for the issuance of online gambling licences, which naturally drives operators and players away from the Portuguese market and its uncertainties.

This unpredictability deserves criticism, especially when considering that online gambling operators have been prevented from providing services in Portugal since July 2015. This 'limbo' period mentioned in our last article⁴ is the main deterrent for operators considering establishing their businesses in Portugal, since the uncertainty and apparent inefficiency of the recently created the SRIJ does not assist with mid to long-term business plans. In the meantime Santa Casa introduced a new fixed-odds sports betting game and has been busy advertising its services. Also, illegal gambling still takes place, with several websites still providing online betting and gambling services to Portuguese players who, despite acknowledging *ex officio* their wrongdoings, have no real alternative in a market that everybody expected to be open and booming by this time. Finally, it should also be noted that the newly appointed government has not issued any official statement nor assumed any relevant stance on the state of implementation of online gambling legislation in Portugal, making operators uncertain as to future legislative developments in this field.

Miguel Cortes Martins Junior Lawyer

João Alfredo Afonso Partner

Morais Leitão, Galvão Teles, Soares da Silva, Portugal

mcmartins@mlgts.pt

joaoafonso@mlgts.pt

1. Decree-Law no. 66/2015, 29 April.

2. Available at <http://www.srij.turismodeportugal.pt/pt/jogo-online/regulamentos-instrucoes-e-orientacoes/>

3. Also available at <http://www.srij.turismodeportugal.pt/pt/jogo-online/regulamentos-instrucoes-e-orientacoes/>

4. The World Online Gambling Law Report, Volume 14, Issue 7, July 2015. Available online at: http://www.e-comlaw.com/world-online-gambling-law-report/article_template.asp?Contents=Yes&from=woglr&ID=2206