

HIGHLIGHTS ON GAMBLING COMPLIANCE'S REGULATORY BRIEFING:  
"THE NEW PORTUGUESE GAMBLING LEGISLATION IN A EUROPEAN CONTEXT"

DECEMBER 1, 2015

This document provides a short summary of the most important interventions, comments and information provided by the speakers in the latest Gambling Compliance's Regulatory Briefing held in Lisbon on the last December 1<sup>st</sup>.

➤ **Teresa Monteiro (Vice-President of Turismo de Portugal)**

Mrs. Teresa Monteiro started her intervention by laying down the general principles of the Online Gambling Regime ("RJO"), which comprise the following:

- An Open market regulatory model;
- Licenses can be applied at any time/no "numerus clausus";
- 3-year licensing periods;
- Only one form of taxation (Special Online Gambling Tax);
- Advertising and sponsorship is now allowed.

Afterwards, Mrs. Monteiro emphasized the evaluation provision, which provides that the RJO will be reviewed in 2 years. In her view, this provision guarantees that potential imperfections in the law will be addressed and corrected in the future. For this to occur, the regulation must be confronted with the practices and reality of the market, and only after its response can SRIJ evaluate the outcome. Therefore, **"this is not a finished model"** and **"no amendments are excluded"**. Mr. Monteiro also stated that SRIJ was aware that there are some "contingencies" that will be answered in the best way possible

Finally, Mrs. Monteiro provided a brief picture of the RJO's implementation process, underlining that the secondary legislation has been notified to the EU and that the technical requirements were subject of a detailed opinion, which means that a "standstill period" is currently going on and only after December 7 will this regulation be applied.

Thus, only in 2016 will a fully operational market exist and the first licenses issued. Nevertheless, SRIJ is already analysing 11 licensing applications from national and international operators.

*Operator's perspective*

➤ **Pierre Tournier (Director of Government Affairs, Remote Gambling Association)**

Mr. Tournier expressed his concern and dissatisfaction with the current blackout period preventing operators from conducting their activities in Portugal since July. In his view, the inability to get a license and operate legally in Portugal is harming RGA members on a daily basis. As a consequence, RGA does not see this blackout period as a necessary measure.

RGA members are looking to Portugal, but this market is not attractive as of yet. Mr. Tournier expressly stated: **“We support regulation, but good regulation”**.

Regarding the tax regime, Mr. Tournier stated that very few operators will apply for sports betting licenses and that the demand for sports betting will not be supplied.

More importantly, in Mr. Tournier's perspective, there is an unfair tax treatment that reveals itself in three ways:

- The fiscal treatment of Santa Casa is more favourable when compared with other operators. For this reason, the RGA filed a complaint before the European Commission, on the grounds of State Aid.
- Betting exchanges are treated more favourably than fixed-odds sports betting and there is no justification for the difference of treatment.
- The two-tier progressive aspect of this tax will mostly harm RGA's members when compared with the rest of the industry. This tax arrangement benefits small operators and will not attract big operators.

In conclusion, the whole tax regime is designed to, in Mr. Tournier's own words, **“protect Santa Casa from competition.”**

As a result, a **“pretty grim”** picture is foreseen by Mr. Tournier for the sports betting industry here in Portugal.

➤ **Fernando Paes Afonso (Vice-President of Santa Casa da Misericórdia de Lisboa)**

Mr. Afonso stated that the current blackout is **“simply the Rule of Law”** and the way justice works in Portugal. In his opinion, gambling is a “very special” activity and it is important that the rules are clear. This online gambling regime is a good first step and the main concerns are addressed and conveniently protected (player protection, prevention of criminality and money laundering).

Regarding the taxation issues, Mr. Afonso recalled that Portugal is facing a recovery process and that its citizens had to pay more taxes than they would probably want. Therefore, in his opinion, **“it would be incomprehensible for a Portuguese citizen that an activity which is not productive and involves a risk is not heavily taxed”**.

Finally, regarding the Stated Aid complaint filed by the RGA, Mr. Afonso underlined that it is the competence of each Member State to regulate on gambling matters.

➤ **Paulo Rebelo (President of the Portuguese Online Gambling Association)**

Mr. Rebelo stated that this law is a good starting point and that the players are happy with the legislative process and the regulator's openness.

Nonetheless, Mr. Rebelo also showed some concern with the taxation regime, stating that if taxes are too high operators will offer less attractive products and gamblers will not be drawn to the Portuguese market.

➤ **António Moura Portugal (Partner, ABBC Advogados)**

Mr. Portugal's presentation focused on RJO's tax regime in a constitutional perspective. Mr. Portugal raised the issue of the different tax treatment given to games of chance and sports betting, mentioning that, in principle, there is no reasonable justification for the imposition of different forms of taxation.

With the current taxation scheme where a tax may be levied on the betting turnover, companies will be taxed even if they do not have profit. The question to be asked is, thus, the following: is there any admissible reason to justify the different tax treatment given to different types of gambling? If the answer is negative we may be faced with a possible breach of the neutrality principle held by the Portuguese Constitution.

*Regulator's perspective*

➤ **Manuela Bandeira (Director of the Gambling Regulation Department at SRIJ)**

Mrs. Bandeira started by giving a general perspective on the current status of the licensing process. Acknowledging that all operators want to operate as soon as possible, Mrs. Bandeira stated that there is still secondary legislation that needs to be appreciated by the European Commission.

Regarding the blackout period, Mrs. Bandeira told the audience that a part of the operators closed their websites voluntarily, others did it after the "shut down" order, and others initially closed their websites but opened new ones. As to the latter, Mrs. Bandeira informed that SRIJ's has already presented charges with the Public Prosecutor. Nonetheless, these illegal operators will continue to carry out their activities as SRIJ does not have the power to order banks to block payments and/or freeze accounts.

Finally, Mrs. Teresa Monteiro also reacted to the State Aid complaint, stating that she was **"astonished with this conversation and this topic"**. Although she did not want to discuss the case as SRIJ is obliged to keep confidentiality, her view is that this State Aid

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case may jeopardize the application of the law, extending therefore the blackout period beyond what was initially expected.

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