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Shared liquidity in Portugal: Regulation notified to the European Commission

After some delay, the final draft of Portugal's Regulation for the technical requirements of the online gambling technical system with shared liquidity ('Regulation') was submitted to the European Commission at the start of the year. Hopes are high that this Regulation - which allows online operators to offer services between Portuguese players and players in other jurisdictions where such gambling and shared liquidity is legal - will revive the Portuguese online poker market. João Alfredo Afonso, Partner at Morais Leitão, Galvão Teles, Soares da Silva, discusses the requirements set out under this Regulation and the most recent developments.

Introduction

On 3 January 2017, the Portuguese online gambling regulator ('SRIJ') finally submitted to the European Commission the final draft of the Regulation, which is now subject to final comments from the European partners, and is expected to enter into force within the next couple of months.

The final draft of the Regulation has received positive reviews from gambling operators and gamblers' associations, who can finally envisage a drawing to a close of the 'ring fencing' period in which the online poker market has been subject to a closed liquidity restriction.

The submission of the Regulation represents a long awaited measure that will (hopefully) reawaken the online poker industry in Portugal by making it much more appealing to both online gamblers

and online gambling service providers. As a result thereof, a substantial increase in the number of applications for licences to provide online poker services with shared liquidity in Portugal can be expected.

Recent developments

The submission of the Regulation to the European Commission represents the end of a highly uncertain period of almost one year in which the SRIJ has gathered contributions in order to reflect upon such views in the final draft of the Regulation. Considering that the initial draft of this Regulation was made available in March 2016, we note that the entire process has taken longer than was initially expected. In addition, the Regulation is still a few months away from entering into force since the European Commission and the other Member States have a period of three (extendable to four) months to

review and comment on the Regulation (the 'status quo period'). If all goes as planned, it is expected that the final version of the Regulation will be in full force in mid-April (or mid-May).

Despite all the criticism around the delay on the completion of the Regulation, there has still been significant progress. Last November, the first licence for the provision of poker services was issued by the SRIJ. However, as the Regulation has not yet entered into force, this licence has limited operators to a closed liquidity market, resulting in a smaller number of active gamblers and the potential earnings associated with online poker being considerably low (especially considering the size of the internal market).

The Regulation

This Regulation sets the requirements

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for the technical system of online gambling with shared liquidity and it shall be applicable to online gambling service providers operating on a shared liquidity basis and certifying entities located in Portugal.

For the purpose of this Regulation, shared liquidity consists of the possibility of an online gambling operator, licensed under the SRIJ, providing online gambling and betting services between players registered under a Portuguese domain and players who establish access from locations outside the Portuguese territory and who are registered under the domain of a foreign jurisdiction, where online gambling and betting with shared liquidity is also legally admissible.

Regarding players' registration and verification requirements, the Regulation sets forth a number of obligations that the service provider must comply with. First of all, the gambling technical system ('System') shall verify and ensure that players will only be able to participate if they are registered under a jurisdiction where online betting and gambling with shared liquidity is legally allowed. Furthermore, this System shall generate an identification number for the players located outside Portugal or not registered under a Portuguese domain. This identification number shall enable the SRIJ to have access to detailed information on that specific player. The abovementioned System shall also ensure that, for the purpose of online betting and gambling with shared liquidity, players are only able to participate with a single identity and identification number.

The registration and verification process of players located in Portugal or registered under a Portuguese domain and who participate in online betting and gambling with shared liquidity shall take place on the exact same terms and conditions provided for under Regulation no. 836/2015, which is the general regulation for the registration of online gambling players in Portugal. All players located outside Portugal or not registered under a Portuguese domain may have

access to online gambling and betting with shared liquidity in accordance with the terms and conditions set forth under the laws applicable to the jurisdiction where they are registered. It should be noted that the online gambling service provider is accountable for the verification, in advance, of the identity of such 'foreign' players (in accordance with the laws applicable to such jurisdiction) and shall guarantee compliance with the requirements set forth under the Portuguese general legal framework for online gambling and betting ('RJO' - Decree Law no. 66/2015 of 29 April 2015).

In regards to reporting and traceability, the Regulation is particularly demanding. The gambling technical System must record all information on the operations carried out by players who are playing outside the Portuguese domain and it shall also associate all of those operations with the player's exclusive identification number. The System shall provide information on all financial transactions, such as deposits, withdrawals, profits and losses as well as recording all relevant information in order to enable calculation of tax due as a result of the participation in online gambling with shared liquidity.

There are also a number of requirements for the attribution of licences to provide online gambling and betting services with shared liquidity in Portugal. For that purpose, these operators must firstly be granted a licence by the SRIJ for the operation of online betting and gambling services and, secondly, their respective technical gambling System shall be certified and approved in accordance with the terms and conditions set forth under the Regulation. In addition, these operators may only operate online betting and gambling with shared liquidity if and when the SRIJ enters into an agreement with the online gambling regulatory entity from the jurisdiction where the operator wants to offer those services or, if that does not happen, the SRIJ must be able to verify that all technical requirements applicable in that jurisdiction are in compliance with the terms and conditions set forth under the Regulation

and also with the principles of the RJO.

The Regulation further addresses other issues, notably setting out the official currency (euro) and the official reference time of the System (Portuguese time). The annex to this Regulation lays down specific requirements for the online gambling technical System and is intended to set out the minimum standards required for an operator to operate on a shared liquidity basis.

Conclusion

The major adjustments introduced in this Regulation (when compared to the previous draft) are related to the inclusion of a few more specific requirements that the operators must comply with in order to operate online betting and gambling services with shared liquidity in Portugal.

The Regulation has included a provision that clearly states that these operators may only carry out online betting and gambling with shared liquidity if and when (i) the SRIJ enters into an agreement with the online gambling regulatory entity from the jurisdiction where the operator wants to offer those services or, (ii) if there is no agreement, the SRIJ is able to verify that all technical requirements applicable in that jurisdiction are in compliance with the terms and conditions set forth under the Regulation and also with the principles of the RJO.

This regime allows for the Portuguese authorities to better delineate the eligible jurisdictions with whom the operators of online betting and gambling services may share liquidity and addresses one of the major concerns of the Portuguese authorities, which was to be able to control the chain of 'gambling' cash flows in and out of the country and avoid these online betting and gambling online platforms from serving fraudulent purposes, notably allowing operators from offering online betting and gambling between players located in Portugal and players located in tax havens.