

Portugal's online gambling regulation proves controversial

João Alfredo Afonso and Bruno Santiago of Morais Leitão, Galvão Teles, Soares da Silva, analyse Portugal's proposed online gambling regulation with a particular focus on the provisions relevant to foreign online gambling operators.

The Portuguese Government recently presented a legislative proposal to the Parliament with the intent to establish a legal framework for the regulation of online gambling and betting services: Law Proposal nr. 238/XII on the Legal Framework for Online Gambling ('LFOG').

This proposal governs the operation and playing of games of chance (such as poker, blackjack or roulette) as well as sports betting and horse race betting, when carried out through electronic, interactive or technological means (hereinafter referred to as 'online gambling').

This article will identify and summarise the most significant aspects of the proposal with special focus on the most relevant provisions from the perspective of a foreign online gambling operator.

Licensing

One of the key principles of the LFOG is that online gambling and betting services should be an activity reserved for the Portuguese State, due to its impact on the economy and people's lives. Therefore, the provision of these kinds of services depends on the issuance of licences from the Gambling Inspection Service ('GIS'). These licences will cover the gambling activities mentioned above. Autonomous licences for specific games may be created and, specifically in regards to sports events and horse races, bets can only cover the events contained in a list drafted and approved by the

GIS.

In order to be eligible for a licence to provide online gambling services, the applicant must comply with the following requirements: a) The applicant must be a private legal person, incorporated as a public limited company or equivalent; b) The applicant must have its registered office in a Member State of the EU or in a Member State of the EEA provided it is bound by administrative cooperation in the fields of taxation, fraud prevention and money laundering; and c) If the applicant is a foreign company, it must have a subsidiary or a branch in Portugal.

Licensing procedure

Licences are valid for three years and can be renewed for successive periods of three years. They also depend on the payment of a fee, the amount of which is still to be determined by the Minister of Finance and the Secretary of State for Tourism.

The licensing requests are presented in a specific licensing form (preferably by electronic means) and must be accompanied by the documents proving compliance with the requirements demanded for the provision of online gambling services. For the evaluation of this licensing request the payment of an 'evaluation fee' is also necessary.

If the request receives a favourable decision the applicant must also provide, within 30 days of notification, two deposits: a) One deposit of €500,000 as a guarantee of its legal obligations; and b) One deposit of €100,000 as a guarantee of payment of the online gambling special tax.

Requirements for the issuance of licences

The applicant must cumulatively meet the following conditions in

order to provide online gambling services:

- a) It must have paid all its social security contributions in Portugal or in the State in which its head office is located;
- b) It must have paid all its taxes in Portugal or in the State in which its head office is located;
- c) It must be suitable and trustworthy, and have technical, economic and financial capacity¹;
- d) Provide the deposits mentioned above;
- e) Pay the required fees; and
- f) Present a detailed structure of its website (containing elements like the descriptive document, the place where the entry and registration infrastructure will be installed, the categories and types of online games and bets to be provided, player auto exclusion and inhibition measures, wage limits, payment and prize distribution, security controls, transactions register, etc).

Online gambling operators also undertake the obligation to have at least 60% of their share capital represented by nominative and bearer shares, registered in the company's books, and to have one bank account in a credit institution authorised to carry out banking activities in Portugal, through which all the transactions regarding online gaming and betting will be made.

Obligations of the operators

Website

Operators undertake the obligation to install a specific website with the 'pt' domain for the provision of online gaming and betting services. The website's physical infrastructure must be hosted in Portuguese territory and must continuously report in real time the gambling and betting activity to an infrastructure controlled by the GIS.

Data protection

Each player will have one account (and only one), which can be accessed by the GIS for gaming and betting volume monitoring.

Online gaming operators must also define a privacy policy that must be expressly accepted by the player and must identify the minimum amount of information to be requested, its purpose and the conditions under which that information may be disclosed. This privacy policy must also inform the players of how they can access their personal data. The security, protection, and treatment of the player's information must also be ensured.

The registry of player identities must at least contain their full name, birth date, nationality, occupation, address, civil and tax identification number, bank account details (NIB, IBAN or SWIFT) and email address.

Gambling technical systems

The gambling technical systems must also be certified by the entities accredited for the purpose. Without the certification and the respective homologation by the GIS, the operator may not initiate gambling activities. The technical system must also be hosted in facilities easily accessible by the GIS at all times.

Reporting

Online gambling operators must also comply with reporting obligations to the GIS, notably:

- a) To report, within 10 days, any changes in the relations between the holders of shares in the company's share capital and in the composition of the company's management body;
- b) To report, within 30 days of registration in the company's books, any share transfer or encumbering of shares;
- c) To store in Portugal all data

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related to online gambling for a period of 10 years and deliver monthly activity reports to the GIS; and

d) To provide information regarding the deposited amounts in its bank account until the first business day of the following month, including an indication of the total balance in player accounts.

Sanctions

In what concerns administrative offences (misdemeanours), the LFGO sets forth three categories:

- a) Very serious administrative offences are punishable with a fine of between €50,000 and €1,000,000, or between €50,000 and 10% of the offender's turnover in the previous financial year if it is superior to €1,000,000;
- b) Serious administrative offences are punishable with a fine of between €5,000 and €50,000, or between €5,000 and 5% of the offender's turnover in the previous financial year if it is superior to €50,000; and
- c) Light administrative offences are punishable with a fine up to €5,000, or up to 5% of the offender's turnover in the previous financial year if it is superior to €5,000.

Ancillary sanctions, such as the suspension of the offender from online gambling activity, may also be applied, as well as compulsory sanctions destined to ensure compliance with administrative decisions or orders.

Tax

The legislative proposal includes the creation of a new special tax to collect revenue from online gambling and betting services.

This tax will be charged to the entities involved in online gambling and betting services.

For tax purposes there will be a distinction between i) games of

chance and mutual betting on horse races, and ii) sports betting odds and horse betting odds.

The former will be taxed on the gross receipts at a tax rate that will range from 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 from between 8% and 16%.

It is also noteworthy to mention that besides the tax rates explained above, the entities involved in these activities as well as the players will not be subject to corporate income tax, personal income tax or stamp duty on matters relating to online gambling.

First reactions

Associations like the Remote Gambling Association ('RGA') and the Portuguese Online Gamblers Association ('POGA') have expressed their satisfaction over the Portuguese Government's initiative to regulate the online gambling market. However, great concern has also been expressed about the 'punitive levels of taxation' that, in the RGA's view, 'will severely limit competition in the Portuguese sports betting market.' According to the POGA the risk is that the level of taxation may not provide sufficient incentives for online gambling companies to operate under the terms of the law.

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1. In what concerns economic and financial capacity, it should be highlighted that the share capital of the companies that intend to exercise this activity must not be inferior to €250,000 and that they should have an indicator of their financial autonomy, expressed through an equity-to-total net assets ratio, superior than the one determined every year by the GIS.