

EUROPEAN-WIDE UPDATE

To conclude this year's European Legal Outlook, we draw bite-sized updates from a selection of countries in Europe with regards their potential for regulatory development in 2014.

PORTUGAL

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On October 3, 2013, and as a result of the country's evaluation meeting with Troika, the Portuguese government announced that it will legalise the online gambling market in accordance with the Proposal for the 2014 Budget presented by the government on October 15, 2013 which includes a legislative authorisation to regulate the operation and practice of online gambling.

Although the legislative authorisation included in the Proposal for the 2014 Budget is very broad and somewhat vague on what concerns its scope and implementation, it is important to find a compromise which allows the increase in tax revenue without coming into conflict with casinos and Santa Casa da Misericórdia. There are certain possible alternatives, but it is unlikely to consist of a full liberalisation system, opening the market to all entities aiming to provide online gambling, as it endangers Santa Casa and casinos' exclusive rights.

I believe that an intermediate model, where a limited number of new operators would be allowed to provide online gambling services as long as they comply with the relevant legal and technical requirements and conditions in the scope of the licensing procedure, is the better solution.

Although it is not possible, at this point, to assess the model to be adopted by the

government and how it will be implemented and the risks involved – with particular regard to the complexity of the tax efficiency – it is probable that any model is designed to increase tax revenue and will ensure the quality of the activities and services provided.

In other words, I would like to highlight the importance of finding a compromise solution which would balance the need to obtain more tax revenue with the interests of land-based casinos and Santa Casa and also the policy considerations regarding public order and the need to prevent fraud and money laundering.

Please note that to somehow allow new operators to provide online gambling is, from my perspective, inevitable (even if, at least, through some form of cooperation or association between them and the existing casinos and Santa Casa). In fact, gambling operators play a decisive role as they are the entities which have the relevant 'knowhow' and experience in this field.

The fact is that the potential liberalisation of online gambling sector will certainly bring new problems and challenges, both legal and technical, which need to be sorted out (namely, with regard to the blocking of financial transactions due to the prevention of money laundering schemes in which the offenders will justify unlawfully obtained sums as game losses, and the prevention of access by minors). Therefore, and because gambling operators are the entities with

iGaming knowhow, it is likely that the government will need their support to design the legislation. I believe this was the reason why international gambling operators have already had an audience with the Working Group created in April 2013.

It is difficult to foresee the next steps for online gambling in Portugal, however, one thing is certain: the tendency will be to liberalise the market and new developments on this matter are likely to arise within the first months of 2014.

CZECH REPUBLIC

Zuzana Zahumenska, Associate, DLA Piper Prague LLP

Expectant eyes are monitoring the horizon for changes to gambling regulations in the Czech Republic. After years of consternation regarding the narrow regulatory hoops through which any operation of gambling services has had to jump, there is reason to believe that the situation will change in the coming year so that the country's iGaming environment will become friendlier to foreign entrepreneurs.

According to Act no. 202/1990 Coll. (the 'Lottery Act'), Czech legal regulation of gambling activities subjects the operation of lotteries and similar games of chance to particularly rigid conditions. Not only must the applicant be a joint stock company registered in the Czech Republic in order to acquire the necessary Ministry licence, as well as being obliged to personally register the wagers in the business premises of the operator but, more contentiously, no foreign ownership structure of gambling operators is currently allowed. Although the draft of a new Act on gambling (the

'Act on Gambling') – which was adopted by the Czech government in August 2012 – no longer contained a ban on the foreign ownership structures of gambling operators, a requirement of a legal presence in the Czech Republic for the gambling providers is preserved.

The notification procedure commenced by the European Commission in respect of the bill in accordance with the Directive 98/34/EC, resulted in a declaration of the proposed gambling legislation's non-compliance with EU law and meant that, in March 2013, the Czech government revoked its previous approval of the proposed draft, ordering the Ministry to prepare a new EU-compliant draft by the end of June 2013.

The anticipated future

The consequent failure of the Ministry to meet its deadline was mainly caused by turbulence in the Czech political scene (triggered by the resignation of the prime minister back in June 2013), and to some extent, also by a pertinent weighty judgment from the Czech Constitutional Court in April 2013. The possibility of municipalities regulating interactive video lottery terminals via municipal ordinances is, it ruled, part of constitutionally guaranteed rights of municipalities to self-government. The Ministry responded to this by declaring that it is ready to initiate ex officio administrative proceedings regarding the cancellation of such licences to operate gaming devices that would be in conflict with the relevant municipal ordinances. Approximately 2,000 of the aforesaid proceedings are still pending. Thus, the Ministry continues its work on the new Act on Gambling, with preference being

given to solving the situation regarding interactive video lottery terminals. It has emphasised the imperative achievement of accurate regulation of online gambling – sorely missing in current Czech gambling law.

With all this in mind, it is expected that the new Act will have successfully navigated the legislative procedure by the end of 2014. Such development does, however, depend upon political will. It cannot, of course, be guaranteed that the adoption of the new Act on Gambling will be a priority for the freshly established Czech parliament.

ITALY

Giulio Coraggio, Information Technology, Internet and Gaming Lawyer and Senior Counsel, DLA Piper Italy

The Italian gambling regulator (AAMS) has now confirmed that it is considering whether to require online game suppliers to hold an Italian remote gaming licence in order to offer their games to Italian residents as a measure to fight against the black market. During the last European iGaming Conference (EiG) in Barcelona, as part of round table session with regulators of different jurisdictions, it was interesting to hear from the Italian online gambling regulator that it is also considering putting in place a licensing regime for game suppliers in order to fight the Italian black market; i.e. the offering of games to Italian residents by entities operating without an Italian licence.

According to the regulator, one of the reasons the Italian black market is still so large – despite the fact that the offering of games between 'it' and '.com' platforms is

almost the same, is because casino game suppliers offer the same types of games to both Italian licensed operators and '.com' operators targeting Italian players through platforms run under a foreign remote gaming licence. This practice is disruptive as, due to the lighter tax regime provide by the licence under which they offer their games, they are able to offer the same product with a better payout which is more attractive for Italian players despite the potential criminal sanctions that both operators and players can face.

Such practice can lead to imprisonment of up to three years for operators while players and advertisers can face up to three months imprisonment in addition to facing potential criminal proceedings for tax fraud, while game suppliers themselves might be deemed contributory liable for the illegal activity performed by operators. However, despite this and notwithstanding the recent launch of customised bets and the upcoming launch of betting exchange and bets on virtual events, the Italian online gaming black market still appears to be significant.

According to the Italian gambling regulator, this situation is partially due to the fact that, currently, game suppliers are not regulated in Italy, acting as mere subcontractors of operators without the need to hold any local licence and without taking any direct obligation towards Italian authorities. However, if they are required to hold a local licence it is likely they will be expressly required to prevent any offering of games to Italian residents by their clients operating without an Italian remote gaming licence, and therefore, the regulator might

take more immediate actions against them without the need for criminal proceedings. This measure is expected to be adopted by the Italian government as part of the laws implementing the so called '*Delega Fiscale*' which will empower the government to adopt regulations in the next 12 months that should harmonise and reorganise relevant regulations governing the gaming sector whilst introducing additional measures to combat the black market.

According to commentators, however, the scenario will not change until the taxation for sportsbetting games is lowered, switching from a turnover-based tax regime to the gross profit tax regime that is already applicable to casino games and cash poker games. Therefore, the two measures might be adopted to foster the growth of the market.

THE NETHERLANDS

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In many ways, 2014 will be marked in the Netherlands by 'the quiet before the storm' of remote gaming licensing activity that is due to arrive in this jurisdiction during the course of 2015. Legislation, the *Wet op de kansspelen* (Betting and Gaming Act, 'Act'), which dates back to 1964, maintains a 'prohibited unless licensed' approach to all forms of gaming, subject to some minor exceptions, and at present, there is no legal basis for remote gaming licences to be awarded by the Kansspelautoriteit (Gaming Authority). Therefore, there is no true remote gaming offering available in the Netherlands which is lawful under Dutch law.

That said, some of the incumbent operators are permitted to provide their offline offering via the Internet and remote operators can expect not to be subject to enforcement measures by the Gaming Authority should they satisfy three conditions which have been widely discussed elsewhere.

The current government is driving the introduction of a remote gaming licensing regime and in May 2013, the Ministry of Security and Justice (Ministry), along with colleagues in Finance, published a draft bill with a view to amending the Act. This draft aims to amend the Act so as to introduce a framework for regulating remote gaming, which will be 'filled in' with various pieces of secondary legislation covering different issues, e.g. responsible gambling and licensing.

Following a consultation procedure which ran during the summer of 2013, the Ministry will amend the bill and submit it to the legislative process which will initially consist of a review by the Ministerraad (Council of Ministers) and advice from the Raad van State (Council of State). Only after these steps will the revised bill be sent to the lower house of parliament, and only then will its new form become public knowledge. Most of the bill's passage through the legislative process in the public gaze can be anticipated occurring in 2014.

Concurrently, the Ministry is busy preparing the aforementioned secondary legislation so that when the bill reaches the statute books, the regulation of remote gaming can commence as soon as possible. For some areas which secondary legislation will cover, the Ministry is heavily involving the remote gaming sector, notably with regards to responsible gaming and technical requirements. Once input has been gathered, secondary legislation will be drafted. In the shadow of the primary bill going through parliament, 2014 should reveal the nature of secondary legislation which future remote gaming licensees will have to comply with. Thus, whilst the market is expected to open in 2015, we will get a clearer picture of the nature of the remote gaming landscape during 2014.

Changes are also afoot in other areas of the national gaming policy, notably the privatisation of the national casino monopolist Holland Casino and the introduction of a transparent licence allocation mechanism for offline lotteries.

Separate as these two processes are from the forthcoming licensing of remote gaming, 2014 should allow us to forecast how the winds of change will impact these sectors too.

SLOVENIA

Zoran Svetik, Deputy to the Managing Director of SIQ, Slovenia

A draft of the new Act on Games of Chance was made public at the end of September and prompted discussion within the gaming industry and related circles. It was withdrawn from further procedure after negotiations among political parties of the ruling coalition.

The main intention of the lawmakers was to establish conditions for the privatisation of casinos, opening the door to foreign equity, with the operation of lottery games becoming specifically a state monopoly. There will also be one licence available for operating sportsbetting. Casinos continue to be allowed to operate an unlimited number of slots plus live (table) games, while gambling halls are only allowed to operate up to 200 slots and no live games. In addition, there will be one new category of casino games operator, Casino Amusement Resort, which if established will have to provide a capacity above certain values (over 1,000 four star rooms, over 2,000 slots, at least 100 tables).

As far as Internet gaming is concerned, there are no exciting changes. Licences to operate online games of chance can only be granted to companies with a previous licence for operating physical (terrestrial) games of the same category, i.e. online lottery games can be operated only by state lottery, sports bets can only be operated by the one licensee for sportsbetting, casino games can be operated by Casino Amusement Resort or a regular casino (not by gambling halls, according to the present draft) and the server has to be within the casino premises.

There were a number of other changes concerning taxation and gaming duties, equity and other requirements for casino games operators, with much more emphasis

on responsible operation of games of chance, supervision and suppression of illegal gambling, especially online.

So which direction will regulation take in the future? There is a likelihood of an amendment to the present Act to provide for the privatisation of casinos, at least. The text of the present draft can give some indication of direction. At this point, it is impossible to say whether any future legislation will provide for licences for online games of chance independent of physical operations.

FRANCE

Tatjana Klaeser, Attorney at Law and Head of Ulys Gaming Law Practice

In its statement for 2013 at the beginning of this year, the French regulator of online games of chance (ARJEL) expressed its concerns regarding the protection of consumers against “supposedly free of charge online games, games supposedly based upon skill or games where the gains are supposedly virtual”. This call for legislative intervention was echoed by the government under the form of Amendment 960 to the Bill on Consumption introduced before the Assemblée Nationale on June 20, 2013. The Amendment therefore impacts on the current Article 322 of the Homeland Security Act which already prohibits the operation of lotteries.

After a first vote in the Assemblée Nationale on June 28, 2013, Amendment 960 became Article 72quater of the Bill on consumption. A new, slightly modified version of Article 72quater was adopted before the Senate on September 13, 2013 leading to a second round of discussions before both Chambers of Parliament. The Bill on consumption is to be re-examined within the Assemblée Nationale’s internal commissions during the week of November 19, the vote being scheduled around the week of December 2, 2013.

HUNGARY

Gabor Damjanovic, Managing Partner, Forgo Damjanovic & Partners, Hungary

Prior to the numerous and sometimes seemingly ad-hoc modifications of the Hungarian gambling act (it has been modified over ten times during the last three and a half years) by the right-wing populist FIDESZ government, Hungarian gambling law was relatively coherent. There were liberalised games (e.g. tombola drawings and the operation of slot machines) that could basically be carried out with a licence from the authority, whereas non-liberalised gambling activities were partly available through a concession from the state (e.g. land-based casinos) and partly reserved for the state (e.g. lottery). The most essential recent changes mostly concerned slot machine operators and the online gambling sector.

The relatively change in the law has broadened the scope of online gambling to spread to casino games and sportsbetting, making it more attractive for prospective operators. Online gambling is non-liberalised, meaning that an operator will need a concession to be granted by the state, the latter having full discretion as to whether to issue a concession tender and grant concessions.

It is interesting to note that based on the wording of the new law, online slots can theoretically be established; the market is uncertain whether this was intentional or happened by (a game of) chance. These concessions can be granted for a maximum period of five years with the minimum (and high) concession fee set at approximately €350,000 – the supervisory fee to be paid quarterly is also costly. Some say that this is probably too high a price to pay to cut the hegemony of the only legally operating gaming site; the one run by the state.

One can summarise that due to the recent law changes, there are opportunities in the Hungarian market (both online and land-based), but whether and how these opportunities will and can be taken is yet to be seen.

Bill on consumption prohibits skill, social and mobile games

Article 72quater goes further than the mere prohibition of lotteries already contained in the French Homeland Security Act as it bans: “All operations available to the public, under any name whatsoever, that give rise to the hope of winnings that would be, even partially, due to chance and for which a financial sacrifice is required from the participants by the operator. This prohibition includes games whose operation is based on the player’s knowhow (read ‘skill’).

“The financial sacrifice is considered fulfilled when the organiser requires an advance payment from the participants, even if a subsequent refund is made possible by the rules of the game”.

As a result, any game, competition or contest is prohibited provided that it cumulatively implies (i) an offer to the public, (ii) a financial sacrifice and (iii) a prize, the intervention of chance being completely evaded from the definition of prohibited gaming.

Risks for social gaming – even when they do not foresee any cash-out – derive from the fact that additional playing time, virtual points or ranking could potentially qualify as a prize, thereby meeting all three conditions for the game to be prohibited.

At this stage, any amendments from the industry to restrict the prohibition to games which foresee prizes in cash, require a monetary stake, imply a minimum level of chance, etc, have been rejected before both chambers of Parliament.

Ulys law firm will nevertheless keep on drawing the government’s attention to the illegality of the Bill on consumption which conflicts with EU and national law principles of proportionality and freedom of service provision. Prohibiting gaming (in the broadest sense) for reasons of public health and safety is simply incoherent, disproportionate and inconsistent with France’s policy to allow gambling under licence as it cannot be argued that gaming represents heavier challenges than gambling when it comes to fighting fraud or money-laundering or the protection against addiction.