



GAMING IN HUNGARY – A LEGAL OVERVIEW

INTRODUCTION

According to the unambiguous official standpoint of the Gambling Supervisory Department of the State Tax Authority ("GSD"), the supervisory authority for gambling in Hungary, in the territory of Hungary is exclusively Szerencsejáték Zrt./Gambling Ltd (the Hungarian State owned gambling organizer; "State Game Organizer") and has the GSD licence entitling it to organize gambling on the Internet. Other gambling organizers have not obtained such licence from the GSD, and thus, they carry out illegal activity.

Seeing the banners and other ads of the world's popular online poker and sportsbetting providers on different channels of the Hungarian media, the situation, in fact, does not seem so simple.

LEGAL BACKGROUND

The above referred interpretation is based on Act XXXIV of 1991 on Gambling Operations ("Gambling Act"), which divides gambling activities into liberalised and non-liberalised activities.

Liberalised activities – the operation of slot machines and non-continuously operated drawings – may be conducted by any person who obtains the GSD licence (or in certain special cases, who only announces such activity to the GSD).

Non-liberalised gambling activities may exclusively be conducted by, (i) the State Game Organizer, (ii) another company exclusively owned by the State Game Organizer; (iii) an economic organisation with majority state ownership; or (iv) a company on the basis of temporary authorisation by the state in the form of a concession agreement.

In addition, lottery and betting, except for horserace betting and bookmaker type betting, shall exclusively be conducted by the State Game Organizer, i.e. not even a concession can be granted for these activities.

REQUIREMENTS FOR ONLINE GAMBLING IN HUNGARY

The Gambling Act uses the expression "communications equipment and network", which includes any equipment or network system that features specific functions to allow a player to make a declaration or to perform an action by which to enter a game of chance covered under the Gambling Act. Such are, in particular, entry forms with or without address, standard letters, order forms published in advertisements placed in newspapers, catalogues, telephone sets, automatic calling devices, radio, video phones, videotext (with microcomputer screen) with keyboard or with touch-screen, the Internet, electronic mail (e-mail), facsimile machines and television sets.

The Gambling Act stipulates that any services involving gambling (including betting) activities provided from the territory of the Republic of Hungary through communications equipment and networks must be conducted under the provisions of the Gambling Act. Accordingly, all operations of gambling activities must be authorized by the GSD, save for the exceptions set out in the Gambling Act. The GSD shall grant authorization only if the applicant meets the required personnel, equipment and economic conditions.

For the authorization of gambling activities conducted through communications equipment and network, the operator must comply with the general requirements set forth in the Gambling Act, and shall verify:

- a) having provided sufficient information to the players via communications equipment and network concerning the risk factors involved;
- b) providing adequate protection of players' personal data and other personal rights;
- c) that the requirement of random selection is ensured by way of auditing the electronic gaming systems.

In addition to the above general rules, certain special provisions – mainly restrictions – determine online gambling activities in Hungary as follows:

- Any publication of announcements for soliciting players for any game of chance through communications equipment and networks is subject to authorization by the GSD.
- Drawing games are not authorized to be offered through communications equipment and networks; casinos shall not be authorized to offer any casino games via communications equipment and networks and casinos cannot be operated through communications equipment and networks.

THE WINDMILL FIGHTING AGAINST ONLINE GAMBLING

Although the Hungarian State allegedly endeavours to protect its consumers (and certainly, the monopolistic position of the State Game Organizer) by all possible means, online gambling manifestly runs



well in Hungary. One reason for this is that Hungarian authorities have no jurisdiction over most online gambling organisers, since their servers are typically located outside of Hungary.

The Hungarian State has tried to find alternative ways to prevent illegal (cross border) online gambling.

Originally, there was a complete ban on any advertising or promotional activities related to foreign gambling operations; the advertising customer, the advertising service provider and the publisher were jointly held liable for any violation of such advertisement ban. Due to the cumulative pressure of the EU with reference to the principle of free movement of services, the Hungarian Parliament has deleted this ban. This was seen later as timely, as according to a new decision of the Metropolitan Court of Budapest, the above advertisement ban provision was in conflict with the founding treaties of the European Union, as it was unambiguous that the Hungarian legislator has preferred the national gambling monopoly in an unacceptable way. According to this decision, the questionable provision was obviously discriminative without reasonable justification: while the State Game Organizer had the opportunity to advertise its services in a wide range, other service providers of the EU were not allowed to do so. It is to be noted that it is still very rare that a Hungarian court would apply community law directly, as in this case.

After repealing the advertisement ban, the legislator amended the Gambling Act stipulating that financial institutions and providers of communications services may not participate in the publication or acceptance of announcements for soliciting players for unauthorized gambling operations (i.e. without a GSD licence), nor provide technical assistance for such. In addition, no sales, organization and mediation activities may be pursued in Hungary in connection with any game of chance without a GSD licence.

Notwithstanding the above restrictions on financial institutions and providers of communications services, no implementation rules and sanctions were introduced, rendering these provisions *lex imperfecta*; i.e. basically useless. The GSD and the Hungarian Financial Supervisory Authority (the supervisory authority for the financial sector in

Hungary) can admittedly not enforce the ban without such detailed rules.

HUNGARIAN INTENTIONS TO REGULATE ONLINE GAMBLING

In the autumn of 2008, it seemed that the government could no longer tolerate illegal Internet gambling providers threatening the state's economic interests. Not only had the missing tax revenues irritated the state, but also the possible harms of consumer rights arising from the uncontrolled activity of the foreign gambling organisers.

In order to regulate this expanding and currently unrestrained sector of the gambling business, the government had initiated the amendment of the Gambling Act.

According to the draft amendment bill, an enterprise having its seat in the European Economic Area ("EEA") could publish offers on the Internet available to Hungarian consumers with respect to bookmaker type sportsbetting and horserace betting if the GSD had registered it. Practically, this means that poker and casino games, for example, would still not have been eligible for authorisation.

The GSD would have registered the applicant if – among others – it had been entitled to carry out gambling organizing activity in at least one of the EEA member states other than Hungary, and furthermore, it had actually been carrying out such activity for five years prior to requiring the registration. The minimum registered capital of the applicant would have been approximately €3,570,000. The registration would have lasted for the period during which the applicant actually carries out such activity in another EEA member state, but for a maximum of five years.

The bill would not only have given the right to the GSD to fine the non-registered foreign entities, but it would also have even entitled it to penalize electronic communications service providers.

In case the GSD had established that the organizing of online gambling is unlawful, then the GSD should have notified the electronic communications services provider to make the offer unavailable in its network. In case the electronic communications services provider would not have fulfilled this obligation, it would have been fined between €1,800 and €35,700.

The gaming tax would have been a flat rate tax, i.e. €3,570,000 per year, but

this could have changed according to experience gained.

After all, the government has revoked the bill (containing a large number of other additional, non-gambling related financial rules) and currently it is difficult to assess what is happening behind the scenes.

SHORT OVERVIEW OF HUNGARY'S POSITION IN THE EU; THE FUTURE

The European Commission sent a letter of formal notice to – among others – Hungary in April 2006, as the first step in an infringement procedure. Based on the Hungary's response, it has not verified that the restrictions are compatible with Article 49 of the EC Treaty, which guarantees the free movement of services; in particular, the measures taken by Hungary have not been shown to be necessary, proportionate and non-discriminatory. In March 2007, the Commission – as a second step – formally requested Hungary, Denmark and Finland to amend their laws accordingly. In case of a non-satisfactory reply, the Commission was entitled to refer the matter to the ECJ, however, pursuant to the information available, such measure was not taken.

Based on the recent resolution of the European Parliament on the integrity of online gambling, in which it calls on the member states and the Commission to co-operate and to take certain measures by focusing on the possible solutions, it is obvious that Hungary – like a number of other EU states – has much to do in the future. It is yet to be seen how the legislator decides to act, especially in today's financially hit times.



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