

Inefficient enforcement and strict rules: still the norm

Introduction

According to the banners and other ads of the world's popular online sportsbetting and poker providers on different channels of the Hungarian media, online gambling manifestly runs well in Hungary, however, the Hungarian State endeavours to take all possible steps in order to terminate the current situation. Accordingly, the Gambling Supervisory Department of the State Tax Authority ("GSD") published its official standpoint that in the territory of Hungary exclusively Szerencsejáték Zrt./Gambling Ltd (the Hungarian State owned gambling organizer) has the GSD licence entitling it to organize gambling on the Internet. Other gambling organizers have not obtained such license from the GSD, and thus, they carry out illegal activity.

Strict rules – inefficient enforcement

The above position of the GSD is based on Act XXXIV of 1991 on Gambling Operations ("Gambling Act"). The Gambling Act stipulates that any services involving gambling (including betting) activities provided from the territory 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. The GSD shall grant authorisation for gambling activities conducted through communications equipment and network if the operator complies with the general requirements set forth in the Gambling Act and verifies: (i) having provided sufficient information to the players concerning the risk factors; (ii) providing adequate protection of players' personal data and other personal rights; and (iii) that the requirement of random selection is ensured.

In addition to the above, any publication of announcements for soliciting players for any game of chance through communications equipment and networks is subject to authorisation by the GSD. Furthermore, drawing games, casino games and card games are not authorized to be offered through communications equipment and networks.

Malfunctions in the course of enforcing the rules

The main reason for the current situation is that Hungarian authorities have no jurisdiction over most online gambling organisers, since their servers are typically located outside of Hungary.

Other reason is the useless restrictions in certain cases. For example, the Gambling Act stipulates that financial institutions and providers of communication services may not participate in the publication or acceptance of announcements for soliciting players for unauthorized gambling operations, nor provide technical assistance for such. Despite the above restrictions, no implementation rules and sanctions were introduced, rendering these provisions *lex imperfecta*.

The huge number of various competent authorities (e.g. GSD; National Consumer Protection Authority; Hungarian Financial Supervisory Authority, etc.) – which co-ordination is rather difficult – does not make the efficient action against unauthorized gambling easy, either.

Recently, the Hungarian state attempted to protect its interest from another aspect. The competent National Consumer Protection Authority has launched several procedures against advertisement

service providers for publishing illegal online gambling operators' advertisements in Hungary. As such decisions of the National Consumer Protection Authority can be challenged before courts, no final ruling has been published in such cases yet.

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

According to the draft amendment bill, an enterprise having its seat in the European Economic Area (hereinafter "EEA") could publish offers on the Internet available to Hungarian consumers with respect to bookmaking type sportsbetting and horserace betting if the GSD had registered it.

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

After all, the government has revoked the bill and no further actions were taken from this time to improve the Hungarian regulation of online gambling.

Considerable decisions of the Court of Justice of the European Union

Certain recent rulings of the European Court of Justice ("ECJ") may have significant impacts on the Hungarian (and the European) gambling market by stipulating that cross-border provision of services in the gambling field can be limited. The prevailing decisions reinforced the authority retained by Member States to determine their own gambling policies. The ECJ declared that the Member States have the right to prohibit online games of chance without violating internal market rules so long as the objectives for doing so prevent fraud, protect consumers or ensure public order.

These principles have also emerged in a decision of the Metropolitan Court of Budapest. According to the court, the already repealed advertisement ban provision of the Gambling Act 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, as it was obviously discriminative without reasonable justification.

The future of online gambling in Hungary

The newly formed government's intentions concerning online gambling is not yet revealed and currently, it is difficult to assess whether perplexity or deliberation lies behind the scenes. Nevertheless, one thing is still predictable: until the change of the current legislation, the windmill fighting continues against unauthorised online gambling.