

Romanian draft proposal welcomes foreign operators

The proposal to amend Romania's online gambling legislation, Emergency Ordinance no. 77/2009, is currently pending approval in the Romanian Parliament. Ana-Maria Baciu and Oana Albu of Nestor Diculescu Kingston Petersen discuss the details of the draft law, which aims to open up Romania's legal online gambling market after years of paralysis.

Following the Default Notice - Infringement no. 2013/4216 issued by the European Commission, 'drawing attention to certain provisions stipulated in Government Emergency Ordinance No 77/2009 on the organisation and operation of games of chance, which seem to raise issues of compatibility with the fundamental principles of the freedom to provide services regulated by Article 56 of the Treaty on the Functioning of the European Union,' Romania has been looking to amend its online gambling legislation. The aim is to create an effective legal online gambling market as well as to allow foreign operators to carry out gambling activities in Romania, this time without being required to establish a local legal entity. At the same time, the envisaged amendments aim to revise the rules regarding tax on winnings, which under the current legislation should be withheld by the organisers, on the basis of daily winnings, for each player.

A new draft law amending the gambling legislation in Romania (the 'Draft Law'), which has created high expectations amongst foreign legal entities, especially those active in online gambling, is currently up for debate in the Parliament.

New online gambling products: betting exchange and tombola

The Draft Law regulates new online products for the Romanian gambling market such as online betting exchanges and remote tombola games. These products are also regulated as newly permitted land based gambling activities.

In addition, remote casino-style games and remote poker games will now be expressly regulated as separate online gambling products. Furthermore, according to the Draft Law, mutual betting activities, both online and land based, will no longer be a part of the current monopoly of the national company Loteria Romana in order to allow private economic operators to organise and exploit such activities.

The key to unblocking the online gambling market

Another amendment - which, in our view, should have as a direct consequence the unblocking of the online gambling market in Romania - refers to the technical control, monitoring and supervision of online gambling, which will be exclusively performed by the National Office for Gambling. Thus, the monitoring and supervision functions will no longer be outsourced to entities outside of the Office (as intended by the legislation currently in force, but which has never actually been implemented so far).

General requirements for online gambling operators

According to the Draft Law, the operator applying for a licence and authorisation to organise online gambling will have to meet certain requirements, the following of which are worth mentioning:

- to be set up as (i) a Romanian legal person established under the

Romanian law or a (ii) legal person duly established in (a) a Member State of the European Union, (b) a Contracting State of the Agreement on the European Economic Area ('EEA'), or (c) the Swiss Confederation;

- to hold a bank account with a bank licensed in Romania, or with an authorised bank in another EU Member State/state party to EEA/Switzerland, but which operates a subsidiary in Romania;

- the central information system must automatically record every transaction, in real time, to a mirror server made available to the National Gambling Office (the regulator, also called 'the Office') and transmit periodic summary reports to the backup server, also placed on Romanian territory;

- the communication equipment and the location at which the organiser's central information system is located must be on Romanian territory or on the territory of another EU Member State/state party to EEA/Switzerland;

- foreign organisers established outside Romania must have an 'authorised representative' of the company domiciled in Romania; and

- all the payments to players will only be made through a payment processor which is licensed by the Office.

How expensive?

Under the Draft Law, for online gambling activities, the private economic applicant must have a subscribed and paid-up share capital of RON 500,000 (approximately €112,000), which is half of the amount regulated under the current legislation.

Further, the organisers of online gambling activities must pay an annual licensing fee for all gambling activities, which is to be calculated according to the

organiser's turnover. For example, turnover of up to €500,000 per year will lead to an annual licensing fee of €6,000, whereas a turnover of over €10,000,001 per year will determine an annual licence fee of €120,000.

The annual fees related to the authorisation of online gambling activities will be 16% of the organiser's income. In addition, under the Draft Law, all organisers of online gambling activities will be required to create a security fund of EUR 100,000 for each online gambling activity offered.

Licences for auxiliary gambling services

Another novelty of the Draft Law is that the operators that conduct activities related to online gambling in Romania, namely the operators that offer management and hosting facilities on their gambling platforms, payment processors, manufacturers and distributors of software, affiliates, certifiers and auditors, are obliged to obtain a licence from the Office in order to carry out these types of activities, subject to a €6,000 per year licence fee.

A brand new taxation system for players' winnings?

The new legislation also intends to change the taxation system for players' winnings. Thus, while the legislation currently in place provides a 25% withholding tax for all winnings that exceed RON 600 (approximately €130), the Draft Law provides an exemption from the withholding tax for online gambling revenues.

Notwithstanding, a 1% withholding tax from the amounts received from players applies to land based gambling. However, it is rather unclear whether the authorities actually intended to exempt winnings from online gambling from taxation. It is very

It is rather unclear whether the authorities actually intended to exempt winnings from online gambling from taxation. It is very probable that the authorities will expect players to declare and pay taxes for their own winnings

probable that the authorities will expect players to declare and pay taxes for their own winnings.

The 'blacklist' controversy

According to the Draft Law, a licence and authorisation for gambling will not be granted to operators that carried out gambling activities in Romania and that do not declare and pay the amounts owed pursuant to the law. The operators that exploited gambling activities and did not pay the licence and authorisation fees, as well as other amounts owed, will be 'black-listed' as unauthorised operators until the situation is clarified.

While the wording of this provision is rather unclear, the authorities have confirmed that in their view these provisions also apply to operators who have provided online gambling in Romania prior to the entry into force of the Draft Law and prior to obtaining the licence and authorisation in accordance with the requirements.

Timescales

On 16 October 2014, the Draft Law was notified for the first time to the European Commission ('EC') to comply with the mandatory notification procedure set up through Directive 98/34/EC, but as a fiscal measure. The standstill period (set by the Romanian authorities to only one day) ended on 17 October 2014. Further, on 11 November 2014, Romania notified the same Draft Law to the EC again, most probably in order to observe the legal requirement of the three month standstill period. This time, the standstill period will end on 12 February 2015.

Although the Draft Law has been included on the agenda of the plenary sitting of the Chamber of Deputies for some weeks now, due to a large number of projects to be

discussed, the debate on the Draft Law has been postponed twice. Moreover, taking into account Romania's current political context (i.e. recent Presidential elections) and the Parliament's current agenda, the chances are that the Draft Law will not be voted on in the Parliament this year.

In what are regarded as the Methodological Norms (i.e. the secondary legislation) for the implementation of the Draft Law, the proposal for amendments is currently being discussed by the regulator's officials. In case the amended secondary legislation is agreed by the authorities by the end of this year or, most probably, at the beginning of next year, this will be notified to the EC and the three month standstill period will begin.

Consequently, in our view, Romania will have a viable legal framework for online gambling licensing in 2015, but probably not before April-May.

Ana-Maria Baciu Partner
Oana Albu Associate
 Nestor Nestor Diculescu Kingstons
 Petersen, Romania
Ana-Maria.Baciu@nndkp.ro
