

Operator licensing set to begin at long last in Romania

It seems that Romania is poised to finally get the online gambling 'white' market that many observers have been eagerly anticipating, with the draft law for amending the primary legislation awaiting approval by the Romanian President and notification sent to the European Commission of secondary legislation relating to organising and operating gambling activities in Romania. Ana-Maria Baciuc and Oana Albu of Nestor Nestor Diculescu Kingston Petersen describe the online gaming transitory period that will begin following the likely approval of the primary legislation, as well as key elements of Romania's new regime.

On 9 April 2015, the Romanian Government notified the European Commission of secondary legislation aiming to regulate the methodological guidelines for organising and operating gambling activities in Romania. The Government Decision regulating the secondary legislation will most probably be approved and will enter into force after the stand-still period ends, namely after 10 July 2015.

Meanwhile, a draft law for amending the primary legislation in force is awaiting approval in the President's office, but it won't be for long. The draft law amends several requirements for obtaining an online gambling licence and authorisation in Romania and provides a requirement list for an online gaming transitory period.

Thus, it looks like that within the next couple of months Romania will virtually have a white market for online gambling.

The online gaming transitory

period

A transitory period for online gambling, ending on 31 December, was included in the primary legislation so that the market could function until the secondary legislation comes into force and becomes operational, and until both the operators and the facility services providers (software and hosting providers, payment processors, and auditors, etc) fulfill the conditions to apply and be granted full licences.

Thus, based on the interim provisions in the primary legislation, operators may apply, subject to less strict requirements, to be granted this provisional right to operate on the Romanian market (until no later than 31 December 2015).

By this date, the authorities hope that (i) the legal framework will be complete and will allow applications for full licences and (ii) the operators will be prepared to fulfill all requirements in order to apply for a full licence. This provisional right may be granted to both (i) the operators that have been in the past (or still are) on the Romanian market, as well as to (ii) the operators that have never acted in this market.

The difference is that those operators in the first category (i.e. the operators that have been in the past or are still on the Romanian market) that are considered by the regulator as being subject to criminal liability (for offering gambling activities without the proper licence and authorisation) will need to pay an entry/amnesty fee (set forth by the regulator as the licensing fee previously applicable to online - RON 400,000/year (approx. €89,899.50) plus the authorisation fee, calculated as 20% of GGR - for the entire period that the operator accepted players from Romania.

In what concerns the calculation

of the entry fee/amnesty tax, the gambling operators will have to make available to the regulator a financial audit to reveal the amounts cashed from the players in participation fees and the prizes awarded (including jackpots) differentiated for each type of gambling and respectively per day or calendar month or, in such cases, for gambling games where the organiser cashes a commission from the participants/winners of gambling games. The 20% fee will be applied on GGR.

With respect to the audit report needed for the calculation of the entry fee/amnesty tax, from the discussions with the authorities' representatives, it has become apparent that they also want proof that the financial analysis is based on genuine and certified data from an operator's servers. Also, they will expect the operator to include in that audit the number of Romanian players and their transactions since December 2010, and they want all details of this kind to be certified as real and genuine by a third party auditor. Thus, they would like the financial audit to be related to a certified report about the number of players and the amounts of money that generated the operator's GGR, starting from the end of 2010 when online gambling became legal in Romania. In other words, it seems that the authorities will expect a combination of technical and financial audit.

In the case that this fee is paid within 90 days of the coming into force of the draft law, the operator is exempted from criminal and fiscal liability. For those who are not willing to pay, the Romanian authorities seem willing to do whatever is needed (including by involving EUROPOL) in order to enforce criminal liability.

From a practical perspective, it seems that if an operator decides to

pay the entry/amnesty fee, and then decides not to apply for provisional rights to operate in Romania, but to wait for the process for obtaining a full licence to become fully operational, it will have to have a blackout period, between the date the entry/amnesty fee is paid - at the latest, 90 days from the coming into force of the law - and the date the licence and authorisation are granted.

Thus, payment of the entry/amnesty fee will have the effect of removing criminal liability only for providing unlicensed gambling activity before, at a maximum, 90 days from the coming into force of the new law. So, basically, after this fee is paid, the operator should either stop carrying out online gambling activity in Romania or start carrying it out in accordance with the law.

The new taxation system for players' revenue

The draft law also amends the recently introduced taxation system for players' revenue (this is no longer on winnings, as was formerly provided by the legislation), which consists of a triple threshold system as follows: (i) 1% for revenues of up to and including RON 66,750 (approx. €14,994.10) (ii) RON 667.5 + 16% of the amount exceeding RON 66,750 for revenues between RON 66,750 and RON 445,000 inclusive and (iii) RON 61,187.5 + 25% of the amount exceeding RON 445,000, in case of gross revenue exceeding RON 445,000. The tax is to be withheld and paid by the organiser, except for online gambling, slot machines, poker festivals and lottery tickets where the tax must be declared and paid by players, on an annual basis.

Are online slot machine-like

The draft secondary legislation expressly provides for the obligation of the licensed operator to transfer to the platform to be licensed in Romania all Romanian players who have accounts open with the affiliates of the applicant, and that are registered in a non-EU Member State

games legal?

A legitimate question that arose following the entering into force of the new legal provisions was whether remote slot machine games can be lawfully organised in Romania, since they are not expressly mentioned in the current classification of gambling games. Fortunately, this aspect is clarified in the draft secondary legislation, as online slot machine-like games are now explicitly included in the category of remote casino games.

New licensing requirements regulated by the draft secondary legislation

The draft secondary legislation recently notified to the European Commission sets forth several additional legal requirements for an online gambling operator applying for a licence and authorisation in Romania, of which we would like to highlight the requirement to provide: (i) a business plan for Romania, as well as information about the turnover for the year prior to the year in which the application is made; (ii) a list with the agreements concluded with the affiliates, payment processors, software providers, audit/certification companies and support services providers; and (iii) any other data, information and documents requested by the regulator.

In addition, the applicant will have to present to the regulator, when the first authorisation is issued, information regarding the accounts opened by Romanian players, registered on the gambling platforms. Further, the draft secondary legislation expressly provides for the obligation of the licensed operator to transfer to the platform - to be licensed in Romania - all Romanian players who have accounts open with the affiliates of the applicant, and that are registered in a non-EU

Member State. Most probably, in practice the regulator will ask for this transfer from all affiliates, irrespective of whether they are located in an EU or a non-EU Member State.

The authorised representative

While the primary legislation stipulates that foreign online operators must appoint an 'authorised representative' of the company, having his/her domicile on the Romanian territory, empowered to conclude contracts on behalf of the foreign entity and represent the foreign entity in front of state authorities and courts of Romania, the draft secondary legislation clarifies that the local representative can also be a company headquartered in Romania.

Conclusion

After more than half a decade, Romania seems very close to having the viable legal framework that the industry has been waiting for. We do hope it will remain as highly attractive for the operators as it currently seems to be.

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