



JURISDICTIONAL PROFILE: Legal reform paves the way for gambling market growth in Romania

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Gambling is a growing industry in Romania. According to a Euromonitor survey, Romania's gambling revenues ranked 47th in the world and 4th in Eastern Europe out of 100 countries, with estimated total revenues of EUR 153 million for 2016. According to the same source, the gaming sector in Romania will reach about EUR 200 million in 2020; Romania's compounded annual growth rate of 7% (CAGR), outpaces the global market which will grow by 6.2% (CAGR).

The growth of Romania's online gambling industry can be traced back to the 2015 reform of Romania's current legislation for online gambling.

Prior to 2015, Romania had been under constant criticism from the European Commission and industry stakeholders because of cumbersome requirements applicable to EU and EEA gambling operators interested in operating gambling activities in Romania. Romania's failure to create an authority responsible for online gambling licensing was also a problem. By adopting the current legislation, Romania's National Office for Gambling (the "Office"), was able to address these criticisms and remedy the irregularities that had prevented gambling operators from establishing online gambling businesses in Romania.

The change resulting from the 2015 gambling legislation was radical. The new legislation introduced functional licensing and authorisation requirements for online gambling, as well as related activities such as the sale, lease, production, distribution, marketing and maintenance of gambling activities. Here is what you should know about Romania's gambling legislation:

Online gambling products defined

Under Romanian law, gambling, referred to as "games of chance", require the following four elements: (a) participation based on a fee; (b) potential material winnings offered by the organizer; (c) award of the winnings based on chance or risk; (d) Office approval of the rules governing the award of winnings. All

games of chance meeting these criteria which are made available via a communication system (e.g. internet, mobile or landline) are considered "online gambling".

Romanian law expressly regulates "common" gambling products and provides straightforward legal requirements. These expressly regulated products include: online betting (fixed odds betting, pari mutuel betting and exchange betting); online casino games (including online poker and online slot-machines); remote bingo games; online tombola (raffles); keno games, and remote lottery games.

However, the law is still insufficiently adapted for new types of gambling - such as e-sports and daily fantasy sports games - which do not fall clearly into one particular category of online gambling. For example, the law inadequately defines the "risk" element - making it difficult to determine whether certain skill games also constitute gambling activity. Romanian law does not distinguish between various types of risk or whether the participant's skill was a factor in obtaining the winnings. Consequently, given the broad definition of gambling under Romanian law, a skills game which includes an element of risk (irrespective of the type of risk or contribution of the participants in the final result) may qualify as gambling and be subject to the regulatory requirements provided by the law. However, it is debatable whether skill games played through online platforms would qualify as online gambling when the risk element is insignificant compared to the participant's skill in obtaining the winnings.

Licensing and authorisation requirements

Although the law generally establishes a state monopoly over the organization and operation of gambling activities, any private operator has the right to carry out online gambling in Romania, subject to prior authorization and licensing by the Office.

The Office is active in monitoring gambling operators' compliance and regularly sanctions gambling operators - who are included on official blacklists - for their failure to observe licensing and

authorisation requirements, including payment of relevant taxes (lists and decisions are accessible at <http://onjn.gov.ro/>).

Operators interested in operating online gambling in Romania must hold a Class 1 licence and one or several authorisations (their number and type vary depending on the type of gambling involved). In addition, operators interested in performing activities related to online gambling must apply for a Class 2 licence (e.g. operators who hold management and integration platforms specific for remote games of chance, operators of data/storage centres etc.). Class 1 licences are valid for ten years and authorisations are valid for one year; both are subject to annual fees.

The Office handles all licence and authorisation applications (which includes all relevant documentation required by law to prove the applicant's background, good standing and capacity to perform the relevant gambling activities (e.g. corporate documents, share capital threshold, directors' criminal records, requirements regarding technical equipment specific for online gambling etc.). The Office will not grant licences to operators with outstanding payment obligations to the state budget or who have had a previous licence cancelled (within the five years prior to the date of application) or revoked (within the last year prior to the date of application).

EU, EEA and Swiss Confederation based operators are eligible to apply for licences and authorisations (without the need to have a permanent establishment incorporated in Romania). In addition, the law provides a simplified licensing process for operators who are already licensed in an EU, EEA or Swiss Confederation state. In such cases, the Office may acknowledge that certain licensing requirements are met based on evidence and relevant documentation provided by the applicant (or the corresponding regulatory gambling authority in the respective state) proving

that it meets equivalent requirements in that state and that it holds a valid licence for the relevant gambling activity. Operators of online gambling established and authorised in a different state, must appoint an authorised representative (with fiscal or corporate headquarters in Romania) in order to represent the gambling operator before Romanian authorities and for the purpose of carrying out gambling activities in Romania.

Licensing and authorisation requirements differ depending on the class of licence and type of authorisation involved and are subject to separate applications and procedures. However, the process is straightforward and applications for both licences and authorisations may be submitted at the same time, along with the relevant documentation applicable for each procedure. While the Office is entitled in certain circumstances, to request additional documentation regarding an application, in practice, the award process takes between two to four weeks to complete.

Fees and taxes

Licence and authorisation fees

The costs for undertaking online gambling in Romania can be significant. Mandatory licence and authorisation fees are due annually, prior to commencement of gambling activities. For Class 1 licences, the annual licensing fees range from EUR 6,000 to EUR 120,000. For Class 2 licences, the annual licensing fees are EUR 6,000, for each type of ancillary activity. The annual authorisation tax for remote games of chance is 16% of the gross gambling revenue (but not less than EUR 100,000). In addition, other special taxes apply, such as, the EUR 2,500 tax for analysis of an application for a licence for online gambling activities which must be submitted along with the application documents, and the EUR 8,500 annual tax issuing the licence.

Corporate income tax

Although Romanian tax law does not explicitly require non-resident online operators to register in Romania for corporate income tax purposes, online operators that have a permanent establishment (“PE”) in Romania are required to register in Romania for corporate income tax purposes.

A PE is defined as a fixed place of business through which the activity of a non-resident is wholly or partly carried out, such as - a place of management, a branch, or an office. A PE may also be deemed to exist if a non-resident conducts business in Romania through a dependent agent. Given the fact that online gaming activities involve the selling of services and transmission of data over the internet, online gambling providers may also be seen as electronic commerce (“e-commerce”) businesses – thus triggering additional criteria for determining the existence of a PE. Depending on the location of the server/computer equipment and any support functions performed in Romania, it is possible that a PE may be found and corporate income tax owed.

However, the current perspective on defining the PEs of e-commerce businesses based on the location of their server is changing due to OECD reports and actions addressing Base Erosion and Profit Shifting (“BEPS”). Once Romania implements BEPS, the previous positions taken by the tax authorities will no longer be relevant. As a result, when determining if they have a PE in Romania, foreign operators should focus on the functions to be performed in Romania including the ones arising from regulatory requirements (e.g., payment processor, mirror and security servers, legal representatives, etc.).

Tax compliance obligations

Irrespective of the corporate income tax assessment, non-resident operators must

register for tax purposes in Romania in order to declare and pay their annual license and authorisation fees.

Separately, operators are obliged to, individually, notify all players about how much they won from their gambling activities. Following this notification, each player must submit a statement to the tax authorities reflecting their winnings and the tax authority will determine the tax owed by the player.

Developments under way for the online gambling sector

While it is true that online gambling in Romania has seen significant progress due to the 2015 legislation, this sector still requires further development and regulation.

Advertising of online gambling activities

Presently, gambling operators can promote gambling on their own internet pages, without such activity being considered an “advertisement” under the law and hence subject to certain legal prohibitions.

However, a new draft law in Romania would introduce the following significant restrictions on the advertising of all gambling activities:

1. advertising of gambling activities will be permitted only within the premises where gambling activities are organised and in gambling-specialised publications; and
2. audio-visual commercial communications regarding gambling activities will be prohibited.

Despite the draft law’s goal to protect vulnerable consumers and limit gambling addiction, it lacks clarity and substance and may prove to be insufficiently adapted to the realities of the gambling sector. Obviously its failure to explicitly address the use of online platforms to advertise gambling will result in confusion. Considering that the only means of advertising allowed under the draft law are those on the premises of gambling establishments and in

gambling-specific publications, a plain reading of these provisions suggests that it outright prohibits online advertising of gambling activities. Also, the draft law may be understood as expanding the term “advertising” to include promotion on gambling operator’s own websites.

Whether the draft law allows advertising on online publications specialised in gambling is also unclear. Moreover, the draft law does not clarify whether the restriction applies only to audio-visual programmes licensed in Romania or also to programmes which are retransmitted in Romania but whose content is subject to the laws of a different jurisdiction, which may give rise to potential discrimination issues when the two types of programmes have similar content.

Anti-Money Laundering (“AML”) rules and potential impact on the gambling legislation

Romania’s draft law implementing the fourth EU Anti-Money Laundering Directive is still in the pipeline. The current AML draft law contains stricter rules than those of the AML directive and has potential to negatively impact gambling operators.

The draft AML law requires all gambling operators to comply with the AML obligations, which include:

- obligations to report suspicious transactions, despite insufficiently clear criteria as to what type of information should be reported;
- customer due diligence obligations covering extended circumstances, such as occasional transactions of EUR 15,000, transfer of funds exceeding EUR 1,000, and collection of winnings and casino related transactions exceeding certain thresholds;
- client data recording obligations (applicable for both new and existing clients) which require collection of accurate identification information;
- obligations to keep information, both in hard copy and electronic format, in

a format which is admissible in judicial proceedings, for a period of five years.

Conclusion

It is undisputed that through its recent reforms, Romania has established the necessary framework for a prospective online gambling industry, providing adequate tools for those interested in venturing into this sector. In light of the anticipated growth of the gambling sector in Romania, we expect further reform – as well as increased investment – in this sector over the next few years.

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