



THE NEW GAMING REGULATION IN THE CZECH REPUBLIC

An opportunity for non-Czech casino operators?

By Jakub Kolomičenko

The former Czech gaming legislation violated EU law in not enabling entities from other EU countries to operate gaming in the Czech Republic, so the Czech Republic was essentially forced to offer a piece of the Czech market to foreign casino operators. But is this accurate? Let's take a closer look at the conditions of the new gaming licence in the Czech Republic.

Quick overview

Before the 1st of January 2017, gaming and lotteries were regulated in the Act No. 202/1990 Coll., on lotteries and other similar games. Despite many amendments (in total 15 amendments) it was obvious that the 26-year-old regulation was no longer able to respond to the dynamic and fast growing market as is the gaming market. With respect to that, the Ministry of Finance decided to prepare the completely new regulation for this subject area of business.

The new regulation of gaming in the

Czech Republic consists of three separate laws. It is the Act. No. 186/2016 Coll., on gambling ("Gaming Act"), the Act. No. 187/2016 Coll., on gaming tax and the so-called Amendment Act, Act. No. 188/2016 Coll., which promotes the newly adopted regulation into other related prescriptions.

The mentioned package of new legislation has been approved by the Chamber of Deputies, approved by the Senate and signed by the President and went into legal force as of 1st January 2017. The biggest news which this new regulation of gaming in the Czech Republic brings is (i) enabling non-Czech operators and (ii) (finally) enabling on-line gaming.

The Czech market is strictly licenced. The licence is issued by the Ministry of Finance, and it is illegal to operate on the market without the gaming licence. Also, the only valid gaming licence is the one which has been issued by the Ministry of Finance. Therefore, holders of licences issued by the UK, Maltese or any other regulatory agency cannot operate on the Czech market and must apply for the Czech licence.

Those operators who will try to operate without a valid licence will be punished

with a fine up to EUR 2 million, injunction of operation or seizure of items. Compared to previous legislation, the merit of the administrative offences has been extended and now contains more than 70 different administrative offences. In some cases, according to the Czech criminal law, operating without a valid licence could be considered as a criminal offence. It is fair to say that the new regulation could be considered as very strict.

Besides that, the Ministry of Finance will create a "black list" of illegal operators and then will require Internet service providers and payment providers to block those black-listed operators. This provision brought big attention in the Czech Republic because some interest groups think that this provision is against the freedom of Internet and tried to remove it from the Gaming Act by the complaint to the Constitutional Court of the Czech Republic. So far, this group hasn't been successful.

Conditions for the licence

According to the Gaming Act, the Czech gaming market will be formally opened for businesses located not only in the Czech Republic. With respect to that, applicants

for the Czech gaming licence may be either from the Czech Republic but also legal entities having their registered office in the European Union, or in a country that is a contracting party to the Agreement on the European Economic Area.

Besides the mentioned above, the applicant must have:

- Transparent ownership structure;
- Proper organizational structure;
- Satisfaction of material, personnel and organizational requirements;
- EUR 2 million of its own equity;
- No debts towards public authorities and a clean criminal record;
- No liquidation or bankruptcy;
- Security deposit of approximately EUR 2 million (amount of deposit depends on type of operating games, as specified below);
- No disturbance of public order; and
- Proper operation of gaming guaranteed and appropriate technical equipment ensured.

According to the Gaming Act the length of the application process should not exceed 60 days. However due to the lack of secondary legislation, serious delays in a matter of months are expected. To the date of drafting this article, only one gaming licence has been issued and the rest are pending. The secondary legislation should have been effective during summer 2016; however the deadline has been extended to summer 2017. The current situation is confusing when both operators and the Ministry of Finance do not know what should be required. Licences issued before the effective date of the Gaming Act were not extended, supplemented or prolonged which means that the existing authorisations will remain valid. But once their validity expires, such operators must apply for a licence under a new legislation.

For operators of bingo, technical games and live games, the so-called two-phase authorisation scheme is required. First, such operators must obtain the licence from Ministry of Finance (the basic licence), and then a permit to locate the gaming room. Such permit is granted by that municipal authority in whose district gambling games will be operated.

Games

The Gaming Act defines what is gambling and states the types of gambling games which can be operated in the Czech Republic. The games are: a lottery; an odds bet; a totalizer game; a bingo; a technical game; a live game; a raffle and small size tournament.

The list stated in the Gaming Act is exhaustive, i.e. it may not be expanded or altered, and for this reason no other gambling games may be organised.

The Deposit

As mentioned above, the deposit should be paid together with the general gaming licence. And on top of that, for the land-based operators, there is also the second deposit for gambling premises location licence.

The amount of the deposit is determined from the type of the game but for most of the games the amount is from EUR 1 – 2 million per each type of game. So, for example for an online casino with technical games and live games the deposit is EUR 4 million. The funds must be deposited to a special account of the Ministry of Finance or as a bank guarantee that will be accepted by the Ministry. The deposit placed into the special account of the Ministry must remain in the account in full during the entire period of the basic licence.

A similar approach is used in the case of a deposit for gambling premises location licence. The deposit could be deposited to special account of the Ministry or the bank guarantee could be used. The amount is again determined by the number of casinos or gaming halls and the average amount is EUR 1 million.

Protection of players

The Gaming Act establishes a meticulous protection of players. Only Czech residents can have a full customer account. Especially with on-line gaming it is unusual. During the registration, their personal information should be checked and compared with the database to prevent from gambling: minors under 18, those who will be in insolvency, are on benefits or have a court ordered ban on playing.

Furthermore, all information related to the operation of any gambling game must be easily accessible in the Czech language. For the type of game, where it is possible, the operator is obligated to allow the player to set self-limiting measures protecting players from harmful effects of gaming. The

individual player can set up his own limits for losses over a certain period as well as his own exclusion from gaming. Other obligation of the self-measures for the operator is to allow each player to set a maximum betting limits and losses. When these limits are met, the operator has an obligation to prohibit the player from further participation.

Taxes

The taxation of income from gambling was a big issue during the whole legislative process. Firstly, it was suggested that the gaming tax for casino games should be 40 % from the gross gaming revenue. However, an amendment has been approved so the gaming tax has been set on 35 % from gross gaming revenue for technical games and 23 % for sports betting, lotteries, live casino games, horse betting and bingo. On top of all that, there is a basic 19 % corporate income tax, which makes the taxation of gaming in the Czech Republic one of the highest in whole Europe.

Summary

So, what is the conclusion of this article and the answer to the opening question?

As it has been mentioned above, the principles of the new regulation contain numbers of problematic provisions. I am sure that most of the gaming lawyers welcome regulated markets. And I also believe that clearly and fairly set regulation is the way gaming should progress. However, in the case of the Czech Republic, I unfortunately believe that the new regulation is not fair and is definitely not clear. Due to huge set-up fees, deposits and taxation, the Czech Republic will be a playground for a few major players and will not be so attractive for other smaller competitors or start-ups, not to mention the lack of secondary legislation and overall uncertainty that one must face with the application for a licence. I am afraid that the new legislation will not bring more income to the state treasury but will lead to the growth of the grey and the black market. ♣



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