

Uncertainties over the reform of the Greek gambling market

A new law regulating the Greek online gambling market has recently come into force, amidst widespread criticism about its overly restrictive character. It seems that the law has come at an awkward time, with some commentators advocating the liberalisation of the Greek market to bring in much-needed revenue and others wanting to protect the Greek market from over-exposure to gambling services. As more EU countries regulate the online gambling marketplace, the reform of the Greek online gambling market, which comes amidst the Greek financial crisis, still contains a great deal of practical, technical and legal uncertainties, as Krystallia Iatridou, Attorney at Law at Karageorgiou & Associates, discusses.

On 21 September, just a few months after the Greek Government's announced it was selling off its shares in the publicly-controlled National Betting Organisation (OPAP), the Ministry of Finance organised a conference presenting the key aspects of the government's policy framework on gambling as well as the results of the public consultation. Indeed, after long debates regarding the anarchic situation of the Greek gaming market - and €1 million monthly fines imposed by the EU Commission, following the Greek Government's total prohibition of electrical, electro-mechanical and electronic games in 2002 - the government launched a public consultation regarding proposals on a draft Bill regulating and legalising the gaming market. The Greek Government's proposals were supposed to liberalise the market, and regulate online

gambling under strict terms and conditions, to permit the operation of one or more betting exchange companies under state supervision and waive the prohibition over the installation and use of electromechanical and electronic games. The proposals also set out four different possible types¹ of tender procedures, granting a number of licences to operators 'willing to contribute' to the country's bailout.

The draft Bill was finally put up, for a brief period of five days in January, for public consultation and then 'suffered' several amendments - not always in the way we would have expected to.

The first major concerns put forward by stakeholders pertained to the so-called 'black out period', the tax imposed on the turnover of future licence holders as well as to the total prohibition of online betting exchange platforms. The pressure exerted by interested parties led the Greek Government to amend some of these provisions:

- The taxation system now stands at a rate of 30% of gross profits, whereas the provision for the 'black out period', disqualifying anyone holding or participating in any illegal online gaming or gambling activity, has been totally withdrawn. Instead, online gambling providers may continue the provision of services during the transition period as far as they immediately and voluntarily accept to be subject to the tax status imposed by the new Bill.

- However, no further discussion was made over the issue of prohibition of the online bet exchange providers.

The first draft Bill regulating the Greek gaming market was submitted to Parliament for approval and ratification on 17 March 2011 and was, following the above amendments, presented on 5 April 2011 to the EU Commission².

This was followed by a strong wave of criticism from the gambling industry, the EU Commission as well as by some Greek MPs. The Greek MPs, governing party parliamentarians included, worried that the country would be turned into an endless casino, due to the onshore liberalisation of gaming machines, with VLTs spreading around Greece. This led the government to retract from its will to change its wider monopolistic stance in the gaming market - at least as far as gaming machines are concerned. However, and with regards to the regulation of the online gaming market compatibility with EU law, issues seem to be more deep-rooted.

There is not enough political will to enforce prohibition and there is not enough 'europeanisation' to liberalise the provision of services: an inevitable deadlock.

No surprise then, and according to the provisions of Directive 98/34, that the EU Commission and Malta issued a detailed Opinion on this draft Bill. The United Kingdom also filed its comments on the Greek draft Bill, expressing their concerns regarding the Bill's compatibility with Articles 49 (freedom of establishment) and 56 (freedom to provide services) of the Treaty on the Functioning of the EU.

The draft Bill examined by the EU Commission required EU-licensed online gaming companies to be established in Greece and have a bank guarantee from a bank established in Greece, provided for a limited number of available licences, and limited financial transfers via local banks or local branches of international banks only. Furthermore, all online providers were to be settled in Greece and host online games using websites having a '.gr' domain name. The required standstill period, following the

submitted opinions and comments, was extended until 8 August, postponing the adoption of the Bill by the Greek Parliament and calling the Greek Government to make the necessary amendments, under the pressure of potential infringement proceedings by the EU Commission.

Following the above comments, the Greek Minister of Finance submitted before the Parliament an amended draft Bill on 4 August - the amendments limited to the possibility of issuance of a letter of guarantee for the participation to the tender procedure either by a Greek or an EU Member State bank and to the definition of the final number of licences to be granted to online gambling providers - widely known as an approach not endorsed by the EU Commission. The above Bill was finally enacted by the Greek Parliament on 22 August 2011 under the Greek Law 4002/2011, amidst widespread criticism.

Furthermore, a new issue has been raised regarding onshore gaming machines. As mentioned before, the government succumbed to the pressure of the Parliament and OPAP to proceed to the granting of only one licence for gaming machines, obliging OPAP to grant via concession contracts more than half of the gaming machines permitted to operate in the country. This seemed to be within the terms of negotiation with OPAP regarding the renewal of its sports betting monopoly and of the selling of the state's shares. Nevertheless, the discussed extension of OPAP's monopoly beyond 2020 seems to be inhibited by the terms of its initial contract with the Greek State, setting limits to its renewal as it provides for this only after the lapse of 15 years following its signing i.e. not before 2015.

The maintenance of OPAP's

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monopoly has already lead the Greek Council of State, following a claim by Sportingbet plc regarding onshore betting activities, to recently lodge a reference for a preliminary ruling before the Court of Justice of the EU³, asking whether 'national legislation which, in order to attain the objective of restricting the supply of games of chance, grants the exclusive right to run, manage, organise and operate games of chance to a single undertaking, which has the form of a public limited company and is listed on the stock exchange, compatible with Articles 43 and 49 of the EC Treaty where, moreover, that undertaking advertises the games of chance which it organises and it expands abroad, players participate freely and the maximum bet and winnings are set per form and not per player?'

In addition to the above and with regards to the opinions expressed by perplexed online betting exchange operators excluded by the enacted Law, the question is whether the preservation of OPAP's monopoly is compatible with EU law, when no monopoly exists for the rest of online games. Betting exchange operators state that the above prohibition is selective and not proportionate, and that it will sooner or later lead to a new case before EU courts. Based on recent CJEU rulings⁴, this may not be far from the truth. National legislation must 'ensure a particularly high level of protection' whereas national legislation establishing a monopoly must genuinely be based on a finding that crime and fraud linked to gambling activities are a problem in the Member State concerned. Furthermore, only advertising which is moderate and strictly limited to what is necessary to channel consumers towards controlled gaming networks is permissible.

It is the Greek Government's general will for a faster enactment of the Law - in view of the eventual revenue generation for the Greek state - which seems to have allowed online betting exchange providers' arguments, not taking however into account OPAP's efforts for the creation of a new advertising campaign for responsible gaming.

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1. One of the four options for the holding of a tender procedure was to grant one unique licence to OPAP, including the total number of gaming machines to be established, which would at OPAP's discretion be sublicensed to other providers. At the time, this option seemed to be the less probable, due to stakeholders' negative reactions.
2. According to Directive 98/34 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services
3. Case C-209/11.
4. Case (C-347/09).