

The latest developments in a turbulent Greek market

The proposed Greek gambling law has instigated a number of complaints from gambling associations, concerning amongst other things unjustifiable restrictions and taxation requirements for remote gambling operators entering the Greek market. Krystallia Iatridou, an Associate at Karageorgiou & Associates, evaluates the current confusion in Greece and the action being taken by the European Commission to ensure Greece's online gambling market is fair.

Reactions were rife following the Greek Government's position not to proceed to any substantial amendments despite the EU Commission's expressed opinion during the standstill period of the draft Bill. The persistence on licence requirements such as obligatory establishment of online service providers in Greece and exclusive conduct of any financial transfer via local banks or local branches of international banks have led the Remote Gambling Association and the European Gaming and Betting Association to file a complaint before the European Commission on 28 November 2011.

Complaints

The Remote Gambling Association (RGA) and the European Gambling and Betting Association (EGBA) made complaints to the EU Commission which were addressed as a matter of urgency since unjustified restrictions still remain in the finally adopted text pertaining inter alia to the above two points as well as to the fact that the Law imposes a higher age limit for online than offline gaming 'with no justifiable evidence to support that restriction', as noted on the common press release of the two associations.

With regards to the proportionality of the above measures we have already commented¹ that according to EU case law, Member States have the discretionary power to set a sufficient public interest protection net based namely on the protection of consumers, the fight against money laundering and to combat gambling addiction. It is interesting to note that in the Dickinger case (C/347 - 09), the European Court of Justice (ECJ) stated that 'Member States have wide discretion in relation to the

objectives they wish to pursue and the level of protection they seek'. Based on the fact that no harmonisation at a European level exists, yet, for games of chance 'Member States may legitimately wish to monitor an economic activity which is carried out on its territory, and that would be impossible if it had to rely on checks made by the authorities of another Member State using regulatory systems outside its control'.

However, restrictions provided in the name of the above protection net shall be proportional to the objective pursued and shall not in any case constitute an arbitrary impediment to the free provision of services. To that end, objective criteria shall be set out for the relevant granting of licenses not creating adversarial discrimination for prospective market players. We shall also note at this point that any provided restrictions must inter alia contribute, in a consistent and systematic manner, to the reduction of gambling activity and not, exclusively, to the increase of tax income as was the case for the Greek Government last year.

Income declaration

Representing the majority of online gaming operators, RGA also filed an action before the Greek Council of State seeking the annulment of the decision adopted by the Greek Minister of Finance² inviting online gaming providers to submit an income declaration for years 2010 and 2011. This voluntary inclusion in the tax regime provided by the Greek law regulating the gaming market would allow duly licensed providers in other EU Member States to continue operating in Greece in the light of the transitional period provided by the said law, until the international public tender to be held for the

granting of online gaming licenses in Greece. The Greek Government by imposing these tax obligations retroactively - in compliance with the Greek Constitution's principle for tax imposition as it extends to only one year before it was enforced - apparently aimed at the generation of an important income, but which still did not lead major operators to declare their revenue ensuing from their activity in the Greek Market.

Transitional period

According to RGA, the proposed taxation measures are unconstitutional contravening the right to conduct a business activity and constitute an entry fee. Does this impede the freedom of conducting business and is this entry fee necessary and justified by the general interest? In a first approach we shall say that this may be considered an entry fee constituting a barrier to free entry to the Greek gaming market, but let us bear in mind that it only considers the 'provisional' Greek gaming market as it only refers to a transitional period. It is clear though that those who don't opt in are 'condemned' to immediate cessation of their activity as they are subject to major administrative fines as well as penal sanctions.

We were hoping that the above reactions and the failure of the transitional period, with only a very small number of providers participating, would lead either to an amendment of the current legal framework with regards to the licensing procedure and the related restrictions or even of the tax regime, where discussions took place even over an eventual reduction of the 30% tax imposed on the online service providers gross profits.

Instead, we come across confusing announcements still questioning whether the Greek

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National Betting Organisation will retain its monopoly not only on offline gaming but also on online betting activity. We shall underline at this point that the question on OPAP's alleged online monopoly has also been treated in a recent decision of the First Instance Court of Athens. The said decision was delivered following an application filed by the agents of the National Betting Company requesting the immediate cessation of any advertising of online gaming and betting companies pursuant to a later amended article of the Law prohibiting any kind of commercial communication to gaming service providers not licensed by the Greek State. The publication of relevant advertisements in newspapers and websites by foreign companies was judged as legal, based on the provision of the Law allowing EU licensed undertakings to provide services during the transitional period, namely from the publication of the Act until the granting of licenses in Greece.

The above decision, amongst others, stated that the right of conduct of online betting and gaming activities exclusively belongs to the Greek Public, concluding that no such right is granted to OPAP. However, according to the 13 October 2000 agreement between the Greek State and OPAP an exclusive right for the conduct of games by any means is granted to OPAP.

Although, from the very beginning, it was clear that OPAP's monopoly will not extend to the online gaming market, news sources in March, support that online gaming licenses will only be granted to providers of online casino and poker games, not supporting sports betting activities. The above constitutes a great paradox since no distinction is provided for different kinds of

online gaming licenses according to the enacted Law and part of the participating incumbents to the transitional period already provide online sports betting services...

Following the above, the Greek gaming market still remains in a state of confusion where OPAP remains the protected face to new market entrants. The implementation of Law 4002/2011 is still monitored by the European Commission and the penalty imposed to the Greek State by virtue of the ECJ's judgment C - 109/08 is still ongoing...

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1. Liberalisation v. State monopoly: How Greece sees the issue, issue August 2010 and Uncertainties over the reform of the Greek gambling market, *World Online Gambling Law Report*, issue 9, September 2011.
2. M.D. 1248/13.12.2011.