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Turkey clamps down on illegal sites and users

Turkey unveiled new draft legislation on 7 May which would expand the handing of prison sentences to payment processors, advertisers or affiliates on unlicensed gaming websites, while increasing sentence length for operators; also, players on these sites could now receive fines of up to 500k Turkish lira.

"The main motivation is to deter the public from spending money on gambling, which culturally is frowned upon, and to prevent substantial revenue loss from being unable to tax income generated by uncontrolled websites,"said Serkan Ictem, Partner at Ictem Legal.

The proposed law will increase authorities' ability to combat illegal activity by preventing money transfers relating to illegal sites and by hastening the shutdown of these sites. Turkey's Telecommunications Agency would be able to ban access to websites without Court judgments. "We are of the opinion that if the activities of users are supervised in an effective way, the users will prefer to use licensed gambling providers and illegal online gambling activities will be decreased," said Gökben Erdem Dirican, Senior Partner at Pekin & Pekin.

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US gaming bills proliferate as California edges forward

Eight Californian tribes, including the Pechanga Band of Luiseno Indians, published on 15 May a draft bill to legalise i-poker, the Internet Poker Consumer Protection Act 2013. Three Californian i-poker bills now exist, including those by Sen. Wright and Sen. Correa respectively.

"The Pechanga tribe is very influential in the state and has not supported any previous i-poker initiatives," said Rachel Hirsch, Associate at Ifrah Law. "Its support is crucial." The latest bill specifies a $5 million fee per licence; Wright's bill proposes $30 million.

The latest bill is limited to poker and would license only federally-recognised tribes who operate land-based facilities. This bill has however missed the 22 February cut-off for introduction to the current legislative session.

"I just don't see how a brand new bill can be introduced," said Harsh Parikh, Associate at Snell & Wilmer. "They could amend Wright's bill or Correa's bill."

"There are many interested stakeholders in California; Wright's bill attempts to include them all. Correa's is basically a placeholder where it is hoped that language acceptable to at least the primary gaming tribes can be included," explains Linda Shorey, Partner at K&L Gates. "The [latest] proposal may be to assist with what language should be in Correa's bill."

In Pennsylvania, Rep. Tina Davis introduced on 22 April an online casino bill that would enable licensed casinos to apply for i-gaming licences. Shorey explains that "This is the first time that a bill concerning i-gaming has been introduced. It is too early to know if there is a possibility for i-gaming to be authorised during this legislative session."

In Illinois, a bill to expand casino activity in the state has been altered and its i-gaming section emerged on 16 May as a standalone draft. "Illinois Governor Quinn has expressed concerns regarding i-gaming," explains Jennifer Carleton, Shareholder at Brownstein Hyatt Farber Schreck. "A separate i-gaming draft bill is presumably an attempt to address this concern independently. Any Illinois i-gaming bill is unlikely to pass gubernatorial muster without significant player protections, transparency and comprehensive regulatory oversight by Illinois regulators."

California thus may be the candidate for the next state to legalise i-gaming. "I expect some form of i-poker legislation to go farther this legislative session than ever," said Parikh. "It seems the question is not if, but rather how i-poker will be legalised in California."

Canadian businesses support Bill on single-event sports betting

Several Canadian Chambers of Commerce sent a letter on 30 April to lobby senators to approve Bill C-290, which would legalise single-event sports betting in Canada. The Bill, which was passed unanimously by Canada's House of Commons, is now being debated before the Senate as part of its third reading.

"The Senators are not so acquainted with the issues surrounding Bill C-290, namely the 'integrity of sport' and 'problem gambling,' so they rely on third party's to provide arguments for and against the Bill," said Cory Levi, Attorney at Lazarus Charbonneau.

Bill C-290 has been with the Senate since March 2012, because of lobbying by sports associations and anti-gaming organisations. Currently only 'parlay' bets, which involve betting on three sporting events at a time, are allowed; the reason for this is simple thinks Danielle Bush, Partner at Chitiz Pathak LLP, "if you need to bet on three events at a time, it makes match-fixing difficult."

According to the Canadian Gaming Association, single-event sports betting in Canada is estimated to be worth up to CAD$40bn annually with up to $4bn passing through offshore online betting sites. "It is said that Canada is losing out on $10bn of sports betting revenue to 'foreign operators', which is the primary reason Bill C-290 was presented," adds Levi.

"Given the issues the Senate is facing, including a public audit of senators' expenses," adds Bush, "I am pessimistic about it passing within the next month or so."

Social Gaming 2013 tapped into the very heart of the social gaming debate, which continues full throttle, both in terms of predicting the future of such a young industry and whether regulation is not only necessary, but practical.

Tom Grant of Harris Hagan kicked off proceedings with a look at the approaches to social gaming regulation across Europe and the OFT's investigation into in-app purchases in games, which he believes are not targeting minors more aggressively than cereal companies for example, but in his view it is the immediacy of such purchases that is problematic.

World Online Gambling Law Report featured its first article on social gaming in May 2010 and what is interesting about this article penned exactly three years ago, is that it raises the same concerns that are still being debated today: concerns surrounding the conversion of social gaming to real-money gambling, the potential for social gaming to normalise gambling behaviour, the grey area around 'valueless' virtual goods and the inability to verify exactly who is playing these games.

The highlight of the conference was a detailed analysis of the Japanese social gaming market, by Japanese mobile and social gaming expert Serkan Toto. He walked delegates through the rise and rise of social gaming in Japan, the idiosyncrasies of the market and the successful monetisation of social games that has set Japan apart. "It is the use of big data and the ability to tweak games in response to a user's behaviour that puts DeNA and GREE ahead of the rest," said Serkan.

The debate is still going strong, and as the industry moves towards self-regulation, this space is more interesting than ever.

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Court strengthens operators rights in sportsbook licensing

Licensing process for sports betting non-transparent

In a decision of 30 April 2013, an Administrative Court in the state of Hesse, Germany, sent a clear signal against non-transparent conduct of licensing procedures to German authorities. The case deals with objections raised by bookmaker Victor Chandler against the licensing process for 20 licences for sports betting in preliminary proceedings. By accepting the claimant's claim for an invitation to the final consultation of the licensing process, the Court set a precedent in intervening in the pending process, re-opening the process for those applicants that had been excluded from the process earlier. It is expected that the case will impact the schedule of the procedure and delay granting of sportsbook licences for a number of months.

Experimental procedure

Under the German Interstate Treaty on Gambling, the number of nationwide licences for sports betting is limited to 20 in a so-called 'experimental clause' for sports betting regulation. What ought to have been a transparent and non-discriminatory procedure pursuant to constant jurisprudence of the Court of Justice of the EU, indeed turned out to be an 'experimental procedure'. In early August 2012, the procedure was initiated by the Hessian Ministry of the Interior (the 'Ministry') on behalf of the federal states and has since attracted criticism for setting tight deadlines and not disclosing all requirements to be fulfilled under the second tier in the initial tendering note. Whereas the first tier covered general requirements of the operators, such as reliability of managerial staff, at the second tier, a number of concepts relating to sales, profitability, (IT) security, social responsibility and payment processing had to be submitted by the end of January 2013, as detailed in an 'information memorandum' delivered to those applicants that successfully passed the first tier. The second tier is completed by a final consultation phase, where applicants present their security and social concepts upon invitation by the Ministry. It has been reported that only 14 betting operators had been invited to the consultation phase before this case.

Equal treatment

The Administrative Court of Wiesbaden in Hesse (the 'Court') confirmed the applicant bookmaker's claim to fully complete the second tier before a decision on the distribution of licences is made, including consultation with the Ministry. The Court emphasised that the general rules of the freedom of establishment (Art. 49 TFEU), the freedom to provide services (Art. 56 TFEU) and the requirement of transparency arising thereof have to be observed, as well as the principle of equal treatment under Art. 3 of the German Constitution, when conducting the licensing procedure. Based on these principles, a licence applicant may assert its claim to complete the second licensing tier. Furthermore, the Court stated that providing information on licensing requirements in an information memorandum, which is delivered to licence applicants at a later stage during the on-going licensing procedure, does not comply with the requirement of transparency. In essence, the Court held that a main element of the tendering procedure for betting licences was non-transparent, and this clearly indicated a violation of EU law.

Finally, the Court considered that the claimant is in possession of one of the 25 licences for sports betting, issued by the state of Schleswig-Holstein, when admitting Victor Chandler's claim. For the Schleswig-Holstein licence, the claimant had to prove reliability, capability, transparency and safety with regard to operating games of chance, and provide a number of concepts similarly required under the Interstate Treaty. According to the Court, it cannot be reasonable to consider a licence applicant not compliant with the necessary requirements if the relevant concepts have already been approved in other states, unless there is further evidence.

This is an interesting development because the Court effectively has ruled that there is a presumption that if a betting operator has obtained a licence in Schleswig-Holstein, its concepts in respect of other licence applications in Germany are sufficient for such licence applications. Also, online gaming operators owning a Schleswig-Holstein licence could argue that they are principally licensable in Germany, albeit being denied a gaming licensing regime in the Interstate Treaty contrary to EU market freedoms. This legal development might considerably increase the value of the Schleswig-Holstein licence.

Insofar as the claimant had requested that an extension of the January 2013 deadline for submitting application documents is granted and that documents filed after the expiry of the deadline be considered by the Ministry when deciding on the licence application, such claims were dismissed by the Court. Thus, deficient application documents cannot be amended after expiry of the relevant deadlines or during later consultation with the Ministry.

Further procedure delayed

This precedent certainly is applicable to a number of licence applicants that have not been invited to the final negotiation phase, and may now ask the Court for a similar ruling. As a consequence, the Ministry will now have to invite them to the negotiation phase, which will most likely delay the whole procedure and granting of the licences for at least three months. Finally, the Court's presumption concerning fulfilment of licensing requirements by Schleswig-Holstein licensees certainly is a remarkable development that is likely to affect pending litigation and future licensing procedures.

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Regulating exchange betting and online slots in Spain

In May 2011, Spain began to regulate online gambling, yet while this law established five categories for grouping together the different regulated games, it did not include exchange betting and online slots. On 18 April 2013, almost two years later, Spain's Directorate General for Gaming Regulation announced that regulation of these two areas would be forthcoming. Ángel Jiménez, Of Counsel at Asensi Abogados, examines the background to this announcement and the next steps to expand the Spanish gaming market.

The starting point for the regulation of online gaming in Spain is the Law 13/2011, of 27 May 2011, on gaming regulation (hereinafter, LRJ for its Spanish initials). During its discussion in Parliament, the LRJ evolved from a rather restrictive regulation model as far as operators and games are concerned (it started from a limitation on the number of licences and operators) to another in which restriction applied exclusively to games (only explicitly regulated games are permitted).

From this perspective, the LRJ included five game modalities (lotteries, raffles, betting, contests and 'other games') and it was left to the Administration to decide upon the approval of the so-called basic regulations for each one of the game types. Expressed differently, although the LRJ determines and defines the categories around which the different games will be grouped together, it leaves to the national (state) gaming Administration (at present, the Ministry of Finance and Public Administrations - MINHAP) to decide which games can be commercialised in Spain, as well as the regulatory requirements that will be demanded for their development.

Therefore, when less than half a year had elapsed since the publication of the LRJ, the Administration approved what today stands as the Spanish game catalogue, formed by a group of Ministerial Orders published on 8 November 2011, to which must be added - as a consequence of the *ultra vires* effectiveness of the (explicitly repealed) previous legislation - lottery games and raffles which, even today, two years after the approval of the LRJ, continue to be governed by their old regulation, thus *de facto* preventing the development of this activity within the framework of the new regulation in the case of raffles.

As we say, the LRJ did not focus on providing full content to the game modalities that it was defining, with the exception of betting, about which it incorporated quite a detailed development that defined three types of bets depending on the event on the result of which the bet was made sports betting, horse-racing betting and other bets and another three types according to the organisation and distribution of the amounts wagered (fixed-odds, pari-mutuel and exchange betting).

The regulation that came after the LRJ incorporated fixed-odds betting into the three possible types according to the betting object: sports betting, horseracing betting and other bets; and pari-mutuel betting into two of them: sports betting and horseracing betting. However, it completely forgot about exchange betting, even though it was a type of bet for which there was an evident demand and which had developed without any apparent difficulties before the approval of the LRJ (during the period in which no specific regulation existed for online gaming) and later (until the entry into force of the LRJ sanctions regime following the award of the first licences within the framework of the said law).

Be that as it may, the decision of the national (state) Administration left exchange betting outside the regulatory context, despite the fact that such bets were explicitly contemplated by the LRJ which, unlike what happened with most game types, even included an *ad hoc* definition of the tax base for exchange betting in the Tax on gaming activities.

In short, the lack of regulation for exchange betting constituted a glaring omission, which effectively meant prohibiting one type of game. And the ultimate reasons justifying that omission or explaining the enormous delay accumulated in its regulation still remain unreported or unknown.

Together with the omission of the regulation for exchange betting, the other important game which did not have its regulation included in the first regulatory package was online slots.

Despite being regarded as an essential part of casino game offerings, slots currently lack a regulation in the national (state) online context. In practice, this means that they must be considered forbidden (although it is a widespread type of game offline and is even regulated in some Autonomous Regions for its online development and operation).

Nevertheless, it is also true that, contrary to the case of exchange betting, slots were not explicitly mentioned by the LRJ and that, therefore, and despite their undeniable interest and relevance, the Administration cannot be

accused of having inexplicably shelved their regulation until a later time in this case. However, it is a game which - because of its importance - should have undoubtedly formed part of the initial game offer before other types which were actually regulated and which belong - the same as slots - to the modality that the LRJ refers to as 'other games' (which includes all those game types which are left outside the group of modalities defined in the Law).

I do not think it is necessary to highlight the importance that the introduction of these two games would have had for the development of the newly regulated Spanish gaming sector and how hard it becomes to explain the initial omission. However, today, when two years have already elapsed since the publication of the LRJ, it is even more striking to see that neither has been introduced yet and that even today we must only content ourselves with the announcement of their future regulation.

In late October 2012, approximately one year after the publication of the initial regulatory package, the Directorate General for Gaming Regulation (the DGOJ is currently the directive unit within the MINHAP which has - apparently for an indefinite period of time - assumed the powers that the LRJ had reserved to the unborn National Gaming Commission) made public its intention to collect the opinions of the different gaming market players regarding the possibility of initiating the regulation of exchange betting and online slots.

This first consultation, after the gaming sector had already taken for granted that the activity concerning the regulation of exchange betting would start in the first month of 2013 (not so much in the case of online slots, which generated more uncertainty), was followed by another consultation in February, officially justified by the fact that not enough data had been provided during the first consultation to enable the DGOJ to prepare a well-grounded proposal.

In short, the lack of regulation for exchange betting constituted a glaring omission, which effectively meant prohibiting one type of game. And the ultimate reasons justifying that omission or explaining the enormous delay accumulated in its regulation still remain unreported or unknown.

The result of the second consultation was made public by the DGOJ on 18 April 2013, announcing that the regulation of both exchange betting and online slots would be dealt with and that the regulatory processing of both game types would be carried out consecutively, starting with that of exchange betting and later continuing with online slots.

This announcement made by the DGOJ brought an end to the speculation and uncertainty generated after its first failed announcement, which had even cast doubt on the MINHAP's real willingness to regulate both games which did not enjoy favour with some lobbies whose negative influence has been felt during a significant part of the online gaming regulation process.

After the announcement made by the DGOJ removed the uncertainty about the MINHAP's willingness to regulate, uncertainty still remains about the moment in which the long-awaited regulation of exchange betting and online slots will be effectively published.

In this respect, the fact that the previous Director General of the DGOJ left only a few days after the announcement is not good news, since it once again infects the market with doubt in relation to what the future appointment of a replacement might hold in store.

It seems logical - and so it is assumed by us - to think that the DGOJ's announcement could have not been adopted without knowing the opinion of its hierarchical superiors: the Secretary of State for Finance and, most probably, the Minister of Finance and Public Administrations, which is why logic leads us to believe that the change of Director General should not affect what has been announced.

And yet, will the change of Director General affect the date of approval for the new regulation meant to govern both exchange betting and online slots? In principle, the change does not seem to have contributed to the speed with which the authorities should deal with this regulation, which is bound to arrive with a delay of nearly two years in the best of cases.

Of course, the DGOJ does not find itself in a period of regulatory effervescence like the one that was experienced during the months following the approval of the LRJ. In fact, no regulatory proposal whatsoever has been published yet by the DGOJ at the moment of writing, which most probably has to be interpreted within the context of the appointment of the future Director General and - in our opinion - not so much under other circumstances, since the text of the proposal should be almost surely sufficiently advanced already when it was publicly announced that the regulation process was going to begin.

In any case, what we have before us is not only the first process of introduction for new games within the framework of Spanish online gaming regulation but also the first chance to check if the new regulation deepens into what seems to be the right course to follow: the elimination of obstacles for the development of the, as of today, still incipient online gaming market in Spain.

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PASPA: challenges to the prohibition of sports betting

The Professional Amateur Sports Protection Act was enacted in 1992 to stop the spread of State-sponsored sports gambling. Nick Burkhart and Dylan Welsh, Saint Louis University law graduates, examine the history of PASPA, challenges to it and how these have been bolstered by recent events.

Despite a growing acceptance throughout the United States, sports wagering is widely classified as illegal under State and Federal law. The 2013 State of the States report by the American Gaming Association (AGA) estimates Nevada, the only State currently offering legal wagering on a full range of leagues and sporting events, facilitated $3.4 billion in sports wagering, a figure representing somewhere between 1%-3% of all sports gambling[1]. The remaining 97%-99% of gambling takes place illegally, suggesting that Americans continue to gamble in defiance of State and Federal law. Increased participation[2] and an evolving public perception expose serious concerns to the value and effectiveness of State and Federal laws currently prohibiting sports wagering.

One Federal law, in particular, has taken centre stage in recent years - The Professional and Amateur Sports Protection Act ('PASPA' or the 'Act')[3]. On 22 February 1991, Senators DeConcini, Hatch, Bradley, and Specter introduced Senate Bill 474[4]. Then Senator Joseph R. Biden, Jr., writing on behalf of those in support of the proposed bill to amend Title 28 of the United States Code, declared that without Federal legislation, sports gambling would spread on a 'piecemeal basis', ultimately developing 'irreversible momentum', threatening the integrity of America's national pastime[5]. One year later, in 1992, Congress enacted PASPA in order to stop the spread of State-sponsored sports gambling operations by prohibiting States from enacting, sponsoring, operating, advertising, promoting, licensing or otherwise authorising any form of betting, gambling, or wagering schemes related to sporting events[6]. In an interesting move, Congress articulated it had no desire to apply PASPA retroactively to Oregon or Delaware, or to 'threaten' the economy of Nevada[7], a State that over the decades had become, and continues to be, dependent on legalised gambling, including sports gambling[8]. In addition to the grandfather clause, Congress created an exception for any State that:

- had allowed commercial casinos to operate within the ten-year period prior to the effective date of PASPA; and
- chose to authorise sports wagering within one year after the effective date of PASPA[9].

NCAA v. Christie

Although unchallenged for more than fifteen years, PASPA has come under increased scrutiny as cash-strapped States have recognised the untapped potential of new tax revenues associated with the legalisation of sports wagering. Nearly two decades after its enactment, NCAA v. Christie[10], a case pitting the Garden State's proposed New Jersey Sports Wagering Law[11] against the Department of Justice (DOJ) and the professional sports leagues of the United States - including the National Football League (NFL), the National Basketball Association (NBA), the National Hockey League (NHL), the Office of the Commissioner of Baseball (MLB) and the National Collegiate Athletic Association (NCAA), collectively, the 'Leagues' - raises serious concerns over State sovereignty, questions Congress' ability to commandeer States to carry out Federal policy, and raises doubt over the perceived harm of sports wagering claimed by American professional sports leagues.

In 2012, despite not qualifying for the grandfather clause exemption under PASPA, the State of New Jersey amended its State constitution and passed a State law authorising sports gambling[12]. In response to the legislative action taken by New Jersey, the professional and amateur sports leagues brought suit against Chris Christie, Governor of New Jersey, and other State officials in an attempt to prevent the implementation of New Jersey's Sports Wagering Law. The State, and other Defendants who intervened in the case, including the New Jersey Thoroughbred Horsemen's Association, argued that PASPA violates the Constitution of the United States and cannot be used by the Leagues to prevent the implementation of legalised sports wagering. In the initial ruling on the case, Judge Michael A. Shipp held that:

- PASPA was a rational expression of Congress's power under the Commerce Clause;
- PASPA did not violate the Tenth Amendment of the US Constitution as the Act does not force New Jersey to take any legislative, executive or regulatory action; and
- Congress has a rational basis to enact PASPA in the manner it chose (including the 'grandfather' clause)[13].

In response to the ruling, the State of New Jersey - along with other Defendants - promptly filed appeals arguing:

- the Leagues have failed to establish standing to challenge the New Jersey Sports Wagering Law;
- PASPA violates the anti-commandeering principle of the Tenth Amendment; and
- PASPA violates the fundamental principles of equal sovereignty[14].

The State's initial argument on appeal is that the Leagues lack standing, an 'indispensible part of [a] plaintiff 's case'[15], to bring their challenge. The State argues that the Leagues cannot demonstrate a concrete or imminent injury traceable to the Sports Wagering Law. This argument can most easily be traced to economic or monetary damage, an injury the Leagues have failed to address thus far. The State further argues that the district court erred in its reliance on Markell as the case failed to address the issue of standing and that the Leagues cannot satisfy the three-part test of standing under Article III[16] or establish that PASPA somehow circumvents the Article III standing requirement. The State proceeds with what Judge Shipp deemed a 'novel' argument - that PASPA violates the anti-commandeering principle of the Tenth Amendment.

In general, the State's argument is that PASPA does not seek to curtail sports wagering directly through prohibition, but instead mandates certain States not to 'authorize by law or concept' sports wagering, thereby requiring those States to maintain and enforce their pre-existing bans on sports wagering. The State's final argument rests on the fundamental principle of equal sovereignty, arguing that PASPA's discrimination among States exceeds its power under the Commerce Clause and the district court erred by disregarding the constitutional principle of equal sovereignty as '*dicta*'.

Bolstering the State's position, on

In general, the State's argument is that PASPA does not seek to curtail sports wagering directly through prohibition, but instead mandates certain States not to 'authorize by law or concept' sports wagering, thereby requiring those States to maintain and enforce their pre-existing bans on sports wagering.

6 May 2013, West Virginia, Georgia, Kansas, and Virginia filed an *amici curiae* brief with the Third Circuit in support of reversal. The amici States did not take a stance on the Sports Wagering Act, arguing instead that the District Court's reasoning posed federalism concerns and the opinion, if upheld, would result in unprecedented injury to State sovereignty, allowing Congress to force the States to advance Federal policy in a way that would make individual States appear responsible. Specifically, the *amici* States argue the District Court's finding, that commandeering does not occur when Congress prohibits States from taking action, is inconsistent with Supreme Court precedent and at odds with the doctrine's purpose of ensuring State and Federal governments remain directly accountable to their citizens for their own actions[17]. The *amici* States also argue the District Court improperly dismissed the State sovereignty claims, erroneously applying rational basis review and ignoring Supreme Court precedent requiring Federal statutes that intentionally discriminate among States be tailored to local problems[18].

With millions of dollars in tax revenue at stake, States are hedging their bets on the outcome of NCAA v. Christie.

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1. The American Gaming Association, 'State of the States: The AGA Survey of Casino Entertainment', 36 (2013), available at: www.americangaming .org/sites/default/ files/uploads/ docs/aga_sos2013_fnl.pdf. Despite the State of Delaware taking sports wagers on a parlay basis limited to NFL games, Nevada continues to be the only State with legalised sports wagering on a full complement of sporting events and leagues.
2. Based on the AGA's State of the States report, legal sports wagering increased from $2.8 billion in 2012 to $3.4 billion in 2013.
3. 28 U.S.C. §§ 3701-3704 (1992) (The Professional and Amateur Sports Protection Act) [hereafter PASPA].
4. S. REP. NO. 102-248, at 3 (1991).
5. Id. at 4-5.
6. PASPA, supra note 3 at §3702.
7. 2012 Sports Market Report, supra note 1 at 8; Id.at §3704.
8. Id.
9. See PASPA at §3704(a)(3); Michael Levinson, 'A Sure Bet: Why New Jersey Would Benefit from Legalized Sports Wagering', 13 Sports L.J. 143, 149 (2006).
10. NCAA v. Chris Christie, 2012 U.S. Dist. LEXIS 183395 (D.N.J. 21 December 2012).
11. N.J. Stat. §5:12A-1.
12. Id.
13. NCAA v. Christie, 2013 U.S. Dist. LEXIS 27782 at 7 (D.N.J. 28 February 2013).
14. Appls.' Brief, Civil Action No. No. 13-1715.
15. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130 (1992).
16. Appls.' Brief, Civil Action No. No. 13-17. 15, citing Summers v. Earth Island Inst., 555 U.S. 488, 493 (2009) ('a plaintiff must show that he is under threat of suffering "injury in fact" that is concrete and particularised; the threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury'.
17. Brief for West Virginia, Georgia et. al. as Amici Curiae Supporting Reversal, NCAA v. Christie 2013 U.S. Dist. LEXIS 27782 (D.N.J. 28 February 2013).
18. Id. at 25.

The twilight of illegality for the Ukraine gambling market

In May 2009 the Ukrainian Parliament adopted the law 'On prohibition of gambling business in Ukraine' which introduced a complete ban on gambling operations in the country. However, such a complete prohibition on all forms of gambling has seen the large-scale growth of the illegal market, which the Ukraine now hopes to regulate and control with the release of the draft law 'On gambling business in Ukraine,' released at the start of this year. Natalia Pakhomovska and Roman Inozemtsev, of DLA Piper Ukraine, analyse the need for the draft law and the detail.

Prior to the total prohibition of gambling business in the Ukraine there was no clear legislative mechanism of state control over the gambling market and moreover there was no single state authority that was responsible for adherence of gambling legislation and issuance of gambling licences. Such lack of sufficient regulation of the gambling sector in the Ukraine has resulted in excessive non-systemised growth of gambling throughout the country and regular abuse of gamblers' rights by unfair gambling operators. As a result, Ukrainian lawmakers have totally prohibited gambling activity until clear and comprehensive regulation of this sector could be elaborated.

At the same time, recognition of gambling activity as illegal did not eliminate it in reality but gave rise to the development of a grey gambling market despite severe penalties for breach of the legislative ban. The majority of casinos and slot halls that existed previously were refitted into so-called 'internet clubs' providing access to online gambling resources or 'video lottery clubs' where in fact regular slot-machines were used as 'video lottery-vending machines.' Such illegal operations of gambling houses in the Ukraine caused prolonged discussion between the business community and governmental officials aiming to revitalise gambling business under a strictly regulated legislative framework.

Tensions over the necessity of implementing new regulations have been exacerbated by the discovery of numerous illegal gambling operations, such as underground casinos and 'creep joints,' by enforcement authorities. Furthermore, the need for the adoption of specific regulation in the gambling sector has been confirmed by the Cabinet of Ministers of Ukraine in its recently published 'Economic Development Activation Program for 2013-2014' where implementation of gambling legislation is recognised as one of the priority tasks for the government in 2013. However, as of now, gambling businesses in the Ukraine operate in the twilight of illegality, as a sufficient legislative framework which would both legalise gambling activity and protect gamblers by effective mechanisms of state control has not yet been implemented.

Since the entire prohibition of gambling operations in the Ukraine, several draft laws aimed at revitalising the industry were submitted to the Ukrainian Parliament, but until now none of them have been supported by the parliamentarians.

At the beginning of 2013 the draft law 'On gambling business in Ukraine' (the 'Bill'), which aims to implement specific regulation of gambling business, has been registered by the Parliament of the Ukraine on 1 February 2013 under number 2156. Although at this stage it is too early to forecast the future of the Bill, considering its substantive nature we may expect that the Parliament will give it close attention.

The Bill in particular envisages the basic requirements for establishing and running a gambling business, permitted types of gambling, an exhaustive list of requirements for obtaining different types of gambling licenses, general requirements for the rules of gambling games, as well as providing for the establishment of a specific regulating body which shall control and process the issuance of gambling licences, the adherence of legislative requirements and perform other controlling functions.

The Bill allows the following types of gambling on the territory of the Ukraine: cards, dice, roulette, intellectual-commercial games, and pari-mutuel. Organisation and the carrying out of the said gambling activities under the Bill shall be allowed in gambling houses operated solely by Ukrainian legal entities and subject to obtainment by them of respective gambling licences. The Bill provides for three types of gambling licences to be issued for a period of seven years, namely: (i) licence on organisation and carrying out of gambling in casinos; (ii) licence on organisation and carrying out of intellectual-commercial games at electronic (virtual) clubs; and (iii) licence on carrying out of pari-mutuel gambling. It is envisaged in the Bill that official licence fees for each type of licence payable to the state budget by the gambling operator will constitute UAH 40 million (approximately USD 5 million) for licenses (i) and (iii) and UAH 10 million (approximately USD 1.25 million) for licence (ii). In our

view such relatively significant monetary thresholds in the form of licence fees for the running of a gambling business will substantially limit the number of gambling houses.

The Bill also states that the organisation and carrying out of gambling shall be an exclusive type of activity carried out by the gambling operator and may only be supplemented by rendering services in food and the lodging industry. In addition the Bill envisages the guarantees to gambling operators as regards non-revision of the value of a licence as well as a trade patent during the whole period of validity of the licence as well as against introduction of permits (except in the cases of free of charge substitution of already issued permits).

One of the most remarkable positive developments proposed in the Bill is the establishment of a single controlling state authority for the gambling sector. Before the prohibition of gambling in the Ukraine, controlling functions in this sector were entrusted with numerous state and regional bodies, which were not able to co-operate effectively and thus ensure adherence to the gambling legislation. Under the Bill the functions of the state gambling regulator will be entrusted to the Ministry of Finance of Ukraine which would be responsible for the issuance of gambling licences, the inspection of gambling operators on compliance with licence conditions, maintenance of the state register of gambling and gambling equipment, and co-operation with enforcement bodies in investigation of breaches of the gambling legislation.

Another important peculiarity of the Bill is the introduction of specific requirements (depending on the category of the gambling and licence type) for gambling locations and gambling operators, which shall be met in the course of carrying out gambling activities. In particular:

- Gambling in casinos is only allowed if the casino is located in a five star hotel (with room capacity of at least 60 rooms) all over the country or in three/four star hotels (with room capacity of at least 60 rooms) which are located in resort zones, the list of which shall be preliminarily determined by the Cabinet of Ministers of Ukraine. The area of the casino should be no less than 400 square metres, and the value of the assets owned by the gambling operator are no less than UAH 10 million (approx. USD 1.25 million);
- Intellectual-commercial games at electronic (virtual) clubs are allowed if the server as well as the software used for gambling belongs to the duly licensed gambling operator, and the value of the assets owned by the gambling operator are no less than UAH 5 million (approx. USD 625,000);
- Pari-mutuel gambling is only allowed on duly certified software, bets shall be made through specially equipped cashiers, and the value of assets owned by the gambling operator are no less than UAH 10 million (approx. USD 1.25 million).

At the beginning of 2013 the draft law 'On gambling business in Ukraine' which aims to implement specific regulation of gambling business has been registered by the Parliament of the Ukraine on 1 February 2013.

The said requirements undoubtedly create the general framework for the functioning of gambling houses, which have been lacking previously in Ukrainian legislation. The introduction of the requirements for the maintenance of a particular value of assets owned by the gambling operator will serve as a tool to ensure the ability of licensed gambling operators to pay the winnings.

Securing the gambler's rights from unfair behaviour by the gambling operator shall be ensured through the introduction by the Bill of specific requirements for the equipment used in the gambling activity. According to the Bill gambling equipment prior to its exploitation shall be duly certified, registered in the state register of gambling equipment and a trade patent will be obtained by the gambling operator with regard to each item of gambling equipment.

It is worth mentioning that as part of the specific requirements related to the carrying out of gambling activity, the Bill provides for certain restrictions in the advertising of gambling. Gambling advertising may only be placed at casinos or published in specialised publications, shall contain actual and truthful information about the gambling activity and details about the licence of the gambling operator. Additionally, the Bill establishes liability for the breach of gambling legislation and contains provisions aimed at preventing money laundering in gambling establishments.

In our view the Bill would introduce a general legislative framework for carrying out gambling activities in the Ukraine, systemise the mechanism of state control over gambling operations and protect the rights of gamblers. However, at this stage it is difficult to predict whether the initiatives provided by the Bill would be effective in practice.

At the same time adoption by the Parliament of specific legislation regulating the gambling sector in the Ukraine would ruin the presence of the grey market and create additional opportunities for the hospitality sector.

Currently the Bill awaits consideration in the Ukrainian parliament.

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UK Gambling Commission's Report on social gambling

The UK Gambling Commission published on its website this month a report it commissioned entitled 'Exploring Social Gambling: Scoping, Classification and Evidence Review,' as part of its on-going attempts to understand and monitor the social gambling industry. David Clifton, Director at Clifton Davies Consultancy Limited, discusses the approach taken by the Commission and the report.

As I write this article, I reflect on chairing a debate at ICE in February: 'Self-regulation never works: social gaming must be regulated in the interests of consumer protection' - when the 'ayes' had it. At the same time, I look forward to moderating a similar debate, this time at the IAGA International Summit in June, the motion for which is 'Unregulated social gaming operators represent a major threat to consumers and licensed real gambling operators alike.'

It's certainly a hot topic. So should social gaming be regulated? However, first of all, what does 'social gaming' mean?

Here in Great Britain, the Gambling Commission is wrestling with the problem of definition. It has published on its website a link to a report it commissioned entitled 'Exploring Social Gambling: Scoping, Classification and Evidence Review.' In describing the nature of the games it is monitoring, it says: 'Some of these games might look like gambling but do not meet the legal definition. They may involve a game of chance for a prize and may use gambling mechanics such as cards or dice but, crucially from a narrow legal perspective, if the prize is not money or money's worth, they are not gambling under UK legislation.'

The report itself describes 'social gaming/gambling' as: 'an ambiguous term which currently lacks conceptual clarity.' The report goes on to say: 'Better terminology and understanding regarding this product is critical as it will help stakeholders to (a) identify a priori the games which should receive fresh consideration in terms of their distinctive features and (b) provide a basis for grappling with issues of consumer protection.'

Section 6(1) of Britain's Gambling Act 2005 tells us that gaming means playing a game of chance for a prize. However, it is section 6(5) upon which attention has been focused in the context of whether under the 2005 Act social gaming falls to be regulated. It hinges on the first part of the definition of the word 'prize,' ie: 'prize in relation to gaming ... means money or money's worth.'

'Money's worth' is not defined in the Gambling Act, but the phrase was considered by the House of Lords in the context of gaming legislation (specifically section 34(3) of the Gaming Act 1968) in the case of R v. Burt & Adams Ltd [1999] 1 AC 247. In his judgment, Lord Hoffman said: "Money's worth" is a legal term of art. As Buckley J. said in Secretan v. Hart [1969] 1 WLR 1599, 1603 it is an expression "very familiar to lawyers as being a way of expressing the price or consideration given for property where property is acquired in return for something other than money, such as services or other property, where the price or consideration which the acquirer gives for the property has got to be turned into money before it can be expressed in terms of money." In my opinion, 'money's worth' means anything which is capable of being turned into money, such as the items of merchandise for which the plaques could be exchanged. In terms of other legislation, it is clear from the definition of 'money's wort' in section 62(3) of the Income Tax (Earnings and Pensions) Act 2003 that it means something that is 'of direct monetary value' or 'capable of being converted into money or something of direct monetary value.'

For its part, the Gambling Commission has variously described 'money's worth' as:

- including 'free or donated prizes which have an intrinsic value' (Advice on gaming in clubs and alcohol licensed premises: Gambling Act 2005, September 2008); and
- relating to 'the realistic value of the prize offered. It includes emoluments, vouchers, goods or other items which have a value' (Guidance to licensing authorities 4th edition, September 2012).

Typically prizes in social gaming will comprise virtual credits. In considering whether they have any monetary value, it is instructive to bear in mind a case in 2011, when a Devon businessman was sentenced to two years' imprisonment for hacking into Zynga's server and stealing 400 billion virtual poker chips, which he sold on the black market for £53,000. Little surprise that in June 2012 Matthew Hill Director of Strategy, Research and Analysis, Gambling Commission said that "there is a chance that some [social game products] may fall to be regulated as gaming and it might revolve around the development of secondary real markets in the virtual currencies [where] you end up with something that actually does count as money's worth because you can go and sell it on eBay".

As matters stand, the Gambling Commission's Chairman Philip Graf made it clear in January 2013

that the Commission:

- does not wish to regulate where it does not have to; and
- would only want to advise the Government to bring social gaming within the scope of gambling regulation if it believes there are risks that cannot be addressed by responsible self-regulation by operators and targeted use of existing consumer protection powers.

As the growth in use of social media for social gaming and gambling develops further, the Gambling Commission is looking closely at games which involve recognisable traditional gambling mechanics, in its own words 'those that look and play like regulated gambling products.' The areas of concern identified are:

- the risk of customer exploitation by, for example, rigged games or unscrupulous operators, in relation to which the Commission poses the question: 'if this risk occurs, is the answer regulation or better consumer education?'
- that consumers transferring from social gaming to real gambling will be unclear about their chances of winning, particularly in light of the increasing convergence between the products of traditional gambling and social gaming businesses; and
- what it decribes as 'the potentially increased difficulty of avoiding excessive gambling if the activity is embedded in social life online.'

This last concern focuses on the exposure of under age people and others to gambling or gambling style activity by means of marketing on social media and echoes comments made last year by Dr Henrietta Bowden-Jones, Founder and Director of the National Problem Gambling Clinic, in relation to the concept of "priming young peoples' brains towards an excessive appetite for reward based activities and how that might then lead them to recognise the gambling activities as familiar, emotionally pleasant ... reminiscent of activities that they were doing when they were children".

As the growth in use of social media for social gaming and gambling develops further, the Gambling Commission is looking particularly closely at games which involve recognisable traditional gambling mechanics, in its own words 'those that look and play like regulated gambling products.'

Coinciding with publication of the 'Exploring Social Gambling' report, the Gambling Commission is 'calling on the social gambling industry to build on [its] work to date by using their existing player data to further explore the size and potential impact of these risks.'

In the meantime, it does seem that, coupled with:

- the Office of Fair Trading investigating games that might be 'misleading, commercially aggressive or otherwise unfair;'
- Gamcare urging immediate action to improve the education and information available to young people and to parents about social gaming; and
- the Daily Mail having published headlines that Facebook is 'creating a generation of gambling addicts because of the site's Las Vegas style games;'

the social gaming industry is getting its act together. At GiGse in April, the formation of the International Social Gaming Coalition was announced. Paul Mathews COO of PlayStudios informed delegates that "there is a real risk of regulation in the social gaming space because there is a lack of information out there and people are jumping to the wrong conclusions". Raf Keustermans, CEO of Plumbee has echoed such sentiments, being quoted as saying "the behaviour of social gamers and problem gamblers is completely different as, when people play for fun, they know they cannot win money and that means they don't get into a cycle of chasing cash and loss."

So in Europe will we see self-regulation or regulation imposed by law? The Belgian Gaming Commission recently 'blacklisted' two social gaming companies and a draft decree to reform Belgian legislation to expressly cover social gaming is actively being progressed. Norway, Sweden, France and Spain are also said to be seriously considering the issue.

In Great Britain, whilst the 'Exploring Social Gambling' report constitutes merely an information-gathering exercise, it does recommend further research and such measures as stricter age verification and close monitoring of games involving increased accessibility through social media and removal of cost of entry. The Gambling Commission is awaiting 'more quantitative analysis' and says that it will continue to work with the Social Gaming Association and International Social Gaming Coalition and the wider industry as it develops its understanding.

How ironic it would be if, whilst:

- the Gambling Commission waits to gather evidence and allows time for the social gaming industry to self-regulate; and
- the British Government continues to trumpet its Gambling Bill as providing greater protection for British consumers participating in remote gambling;

regulators in other European countries take the innovative step of starting to regulate social gaming. Some may surely think such a development would bolster the argument that the UK Government's proposals for change are challengeable under EU law as being all about tax and nothing to do with greater consumer protection.

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Does selling furniture require a gambling licence?

A recent German Court Decision deals with the age-old question of how to define gambling. As there are relatively few activities in business which are risk free and do not contain an element of chance, the proper definition can become surprisingly important. Michael Schmittmann and Oliver Brock, of Heuking Kühn Lüer Wojtek, explore how, in the court case in question, a store linking the purchase of sofas, chairs and tables to a prize game, caused it to become entangled in the jungle of Germany's Interstate Treaty on Gambling. The case sheds light on the courts' views on the kind of activities that are covered by Germany's gambling laws.

With the Interstate Treaty licensing process still running and a second round upcoming, the Higher Administrative Court of Baden-Württemberg (Decision of 9 April 2013, 6 S 892/12) this spring had the opportunity to tackle a fundamental question in (probably not only) German gambling law: What exactly is gambling? The dispute about which games fall under the scope of the old and new Interstate Treaty on Gambling is not only interesting itself, it also highlights the deep flaws within German gambling regulation. A patchwork of different regulations at federal and state level still prevent any consistent and systematic approach to gambling issues even in the three years after the ECJ's Carmen Media and Markus Stoss decisions and one year after the enactment of the Interstate Treaty on Gambling. Ideology still trumps a pragmatic and reasonable approach and brings to mind Richard Wagner's infamous quote: 'To be German means doing something for its own sake.'

The case and the law

This time, a large furniture shop in southern Germany got entangled in Germany's byzantine gambling laws. The shop planned a promotion that featured a prize game. Any customer who purchased a product during the promotional period would have been automatically eligible to demand a full refund or a voucher to the amount of the original purchase price if there would have been rainfall at a certain date (approx. three weeks after the end of the promotion) between 12 am and 1 pm at Stuttgart airport. Is this gambling requiring a regulatory intervention or just a simple prize game?

Pursuant to sec. 4 (1) Interstate Treaty, offering gambling products (in the words of the law, public games of chance) requires a licence. Sec. 3 (1) Interstate Treaty stipulates that any games are considered games of chance which require the payment of 'remuneration' for the purchase of chances of winning and whose outcomes are decided by (mostly) chance. The legal question at hand is whether the payment of the purchase price for the furniture can also be considered as the payment of 'remuneration' for participating in a game of chance. In the background lurks a basic problem of both the old and the new Interstate Treaty: games of chance are defined slightly differently under state level law on the one hand and (the much older) federal criminal law on the other. Sec. 284 German Penal Code stipulates the requirement of a 'stake', which has to be placed by the player instead of remuneration.

Much ink has been spilled on trying to solve the problem of if there is a difference between 'stake' and 'remuneration.' Did the lawmaker at state level really want a different definition to apply? The definition of sec. 284 German Penal Code is stricter, i.e. if 'remuneration' in Art. 3 (1) Interstate Treaty is defined respectively, more games would fall outside the scope of gambling regulation. On the other hand, gambling authorities and some courts in the past insisted that sec. 3 (1) Interstate Treaty implies a wider scope of applicability of German gambling regulation as 'remuneration' implicates a wider meaning than 'stake.' In practice this controversy was usually fought out on two main battlefronts. Prize games on TV or radio were largely deemed to be exempted from the scope of gambling regulation if the stake/remuneration was below a minimum limit of 50 cent, a threshold taken from the Penal

Code's definition of a 'stake.' Further, massively disputed was how to treat participation fees e.g. for poker events where no additional stakes were placed in the actual game. Authorities tended to regard any such fees as 'remuneration' within the meaning of sec. 3 (1) Interstate Treaty. Only pure non-monetary or charity events were exempted from the licensing requirement.

The Gambling Authority's view

Against this background, the furniture shop in this case requested a clarification from the local gambling authority in Baden-Württemberg that its planned prize game did not constitute a game of chance. A longer correspondence between the shop and the authorities in Baden-Württemberg followed. In the end, the State opted to 'go German,' within Richard Wagner's meaning declaring the promotion to be a proper game of chance, thus requiring a licence. The purchase price for any furniture acquired was considered as 'remuneration' pursuant to sec. 3 (1) Interstate Treaty. The shop appealed and won in the first instance. This decision was now confirmed by the Higher Regional Court of Baden-Württemberg.

Games without proper stakes usually not gambling

The court clarified the obvious assuming in principle a uniform definition of games of chance with regard to sec. 284 German Penal Code and the Interstate Treaty in spite of the different wording. It reaffirmed that not any and every monetary payment made for participation in a game can be considered a 'remuneration' within the meaning of sec. 3 (1) Interstate Treaty just as pursuant to sec. 284 German Penal Code. Paying the purchase price for a piece of furniture is usually not remuneration for participating in games of chance. Customers want to acquire goods for a market-conforming price. This is the overriding priority; winning the prize is just a potential further consequence. The promotion did not in any way influence the pricing of the products. The court also rejected the somewhat dubious argument that any participation in the promotion would wet the customer's appetite for gambling and thus increase the overall risk of gambling addiction. Who would have thought it?

From the outside, it is hard to believe that this case was a matter of regulatory gambling law at all. The case concerned a promotional activity. Any legal assessment is usually a matter of the Law of Unfair Competition. No measurable risks for customers that would require a prior regulatory intervention by a regulator are apparent. Neither large-scale fraud or money laundering nor presumed addiction risks justify the application of a per se ban and licensing requirement.

A patchwork of different regulations at federal and state level still prevent any consistent and systematic approach to gambling issues even in the three years after the ECJ's Carmen Media and Markus Stoss decisions and one year after the enactment of the Interstate Treaty on Gambling.

Outlook

Overall, the decision is not only consistent with common sense but also, by far, more consistent with regard to the actual wording of sec. 3 (1) Interstate Treaty. As the court points out in a key sentence of its reasoning, the law links the 'remuneration' to the purchase of the chance of winning. The law stipulates a direct link between the remuneration/stake and a potential prize. It does not link the remuneration to any kind of participation. This distinction is important e.g. for hosts of poker events. As explained above, in the past authorities and some courts considered participation fees generally as 'remuneration' within the meaning of sec. 3 (1) Interstate Treaty. A 'direct link' is however doubtful if the payment of the fee just allows the player to participate. A strong argument can be made that (sensible) participation fees are not directly linked to the purchase of a chance of winning. Remuneration for actual services and goods (payment of leasing fees for the place of the event, contribution towards expenses etc.) provided by the host should fail this 'direct link' test and fall outside the scope of the German Gambling regulation. If all relevant authorities and courts will follow suit remains to be seen, however.

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Romania's Ordinance to begin regulating online gambling

Remote gambling legislation passed in Romania at the end of the last decade meant that, as of December 2010, online gambling was allowed to take place in the country - in theory, at least. However, the online gambling market suffered from a serious roadblock in that the remote gambling legislation required a third party to take on monitoring and reporting responsibilities for the sector. No third party stepped up to this mantle and so, essentially, no legal online gambling could take place in Romania. In late March 2013, the Romanian government passed an Emergency Ordinance aimed at finally remedying this problem. Ana-Maria Baciu and Oana Coanda, of Nestor Nestor Diculescu Kingston Petersen, examine the Emergency Ordinance and the impact it will likely have on the Romanian gaming sector.

The Promise

2013 began in Romania with a new and bright promise for the future of online gambling.

While in theory online gambling has been allowed in Romania since December 2010, such activity could not be legally conducted so far, as, in practice, there was no person authorised to monitor the activity.

In March this year, the Government seemed to have decided that it is finally the time to unblock the online gambling market in Romania, and, as a first step, it issued the Government Emergency Ordinance no. 20/2013 ('GEO 20/2013'), intended for the creation of the National Gambling Office, as well as for amending certain provisions from the so-far in-force legislation that regulates gambling.

Apparently, the creation of this new governmental body - the National Gambling Office (the 'Office') - replaces the existing Gambling Commission within the Ministry of Finance, and had, as fundament, the expertise of the European States with experience in this area. The Office is aimed at allowing an efficient management of the legal issues regarding budget venues, prevention and combating of illegalities and the creation of any necessary means in order to grant protection for minors and vulnerable groups from gambling addiction.

By creating the new authority, the Romanian Government tried to cover the lack of supervision of online gambling, to find a better way to control the accuracy and legality of gambling transactions as well as to create an effective structure that may fulfill the goal of collecting taxes from online gambling activities.

Thus, according to the substantiation report of GEO 20/2013, the National Gambling Office shall improve co-ordination, co-operation and information exchanging between institutions with competence in the field, ensure mitigation of potential tax evasion in the field and enable better co-ordination and management of surveillance and control in the field of gambling, but mostly with a significant focus on increasing revenues for the state budget.

Why now?

What has prompted the authorities to issue this Ordinance now, more than two years after permitting online gambling? The lack of any official position of the authorities on this matter, one can assume.

One could think, for example, that back in 2010 the authorities did not have a clear view on what to actually expect from the market. And that, when, two years later, their hope that a private economic operator would apply for monitoring authorisation did not come true, they had to come up with a different approach.

There might also have been repeated requests from the online gambling operators that intended to enter the Romanian online gambling market, but refused to do so illegally.

However, the main reason for the issuance of the new piece of legislation seems to be the need to bring more money to the state budget. Back in 2010, the Romanian authorities allowed online gambling with the purpose of generating revenues to the state budget. More than two years have passed since then, and not a single coin went to the state budget from online gambling.

Let the money come

The issuance of GEO 20/2013 was in fact necessary in order to increase revenues to the state budget, by actually collecting

money from an activity that was already conducted in Romania and was generating huge revenues for gambling operators. The initiators of this ordinance estimate that this new piece of legislation will increase the amount poured into the state budget by approximately 20.5 million Euros in 2013 and 27 million Euros per year in the following five years.

According to Cristian Pascu, the President of the Romanian Association of Gaming Organisers and Producers, the online gaming market at the moment is worth 500 millions euros[1], although, we would add, there are still no companies authorised to organise online gambling in Romania.

Technical legal aspects

According to GEO 20/2013, the National Gambling Office will perform the following main tasks:

(i) co-ordinate the uniform, fair and non-discriminatory application of legal provisions in the gambling area;

(ii) analyse and solve applications submitted by operators wishing to conduct gambling activities according to the legislation in force;

(iii) supervise the activities of gambling directly or with other state institutions under the law;

(iv) exercise systems for technical control, monitoring and surveillance of online betting, bingo games and online gambling organised through communication systems such as the internet, landline and mobile telephone systems, as these activities are regulated by the legal provisions currently in force;

(v) control the enforcement of specific legislation, ensuring its uniform application, assess minor offences and apply penalties provided by law or notify competent authorities, as the case may be;

Moreover, the requirement that operators must be organised as Romanian companies (not excluded by the new legislation) will most probably be (still) a barrier for the involvement of operators in the Romanian gambling market.

(vi) review the complaints received, verify and solve issues raised or notify the competent authorities;

(vii) solve the preliminary complaints of operators on taken measures in the exercise, according to the law competences and provisions;

(viii) analyse and solve requests from other authorities, operators and other interested parties, according to the provisions of the gambling legislation;

(ix) issue administrative provisions relating to the activity and manage the necessary documents granting the organisation and functioning rights and the issued decisions;

(x) provide database management and publish information on its website;

(xi) perform risk analysis for verification and control actions of gambling activities for each permit holder licensee, establishing the risk associated with each one;

(xii) archive the activity documentation according to the law;

(xiii) participate in the activities of specialised international organisations and be a member thereof, based on the mandate received from the Romanian Government; and

(xiv) ensure co-operation, information exchange and representation in the gambling area.

In exercising its attributions, the National Gambling Office will be able to establish co-operation and collaboration agreements with similar institutions, gambling associations or other authorities and institutions, and will establish contracts concerning gambling surveillance.

Also, the normative act establishes general criteria regarding the surveillance activity of online gambling as well as the main rules applicable to the functioning of the Surveillance Committee, created within the Office.

What to expect

Now, with this new authority created, and a new set of rules put on paper, the Romanian gambling market should become more secure, more attractive, more transparent and more profitable, and should, as a direct consequence, open its gates widely to major operators in the field.

Still, the promised bright future does not seem so bright right now, as, apparently, the Supervision Committee, the decisional structure within the Office, exists only on paper and has never been convened so far.

Moreover, the requirement that operators must be organised as Romanian companies (not excluded by the new legislation) will most probably be (still) a barrier for the involvement of operators in the Romanian gambling market.

How important such a barrier will be, and what other obstacles the operators will have to overcome in order to be successful in the Romanian online gambling sector, only time will tell.

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1. Pursuant to the interview given for the 'Financial Magazine Live' online program on 19 April 2013: http://www.zf.ro/zf-live/cristian-pascu-presedintele-asociatiei-organizatorilor-si-producatorilor-de-jocuri-de-noroc-din-romania-la-zf-live-am-castigat-20-30-de-mii-de-locuri-de-munca-10767027

Setting the scene for gaming advertising regulation in Italy

The latest news published about the sanctioning of inappropriate TV advertising in Italy according to Balduzzi law made me want to set the scene straight regarding the applicable laws and regulations in Italy. The Italian legal framework on gambling advertising in Italy is based on primary and secondary regulation, as described below:

(i) In addition to the license contract obligations executed with the licensee, the Italian regulatory authority AAMS issued notices in 2009 addressing all gambling licensees with compulsory obligations on how promotional and advertising campaigns shall be conducted and obliging each licensee to notify the AAMS of any national campaign notwithstanding the channel of distribution. AAMS is entitled to sanction any non-compliant licensees with penalties, suspension or in the worst-case scenario with the revocation of its licence.

(ii) The competition authority AGCM issued notices on consumer protection and the consumer code itself. AGCM is entitled to sanction any non-compliant gambling operator with monetary fines.

(iii) The primary law presented by health minister Renato Balduzzi[1]. This law introduced stricter rules on gambling promotions, both offline and online, such as forbidding incitement to gamble and imposing compulsory inclusion of responsible gambling statements and winning probabilities information as well as the avoidance whatsoever of promotion towards minors. It forbids in particular advertising messages regarding gambling in newspapers, publications, during radio and television programs, movies and theatre performances and on the internet:

a) directed to incite gambling or to praise gambling;

b) in which minors are shown;

c) during programs and performances directed to minors;

d) without warnings on gambling addiction and notices regarding information on winning probabilities published on AAMS's website and on the websites of each licensee or available on gambling premises.

This law also introduced major sanctioning powers for the AAMS. On 21 December 2012, AAMS published a notice in consideration of Balduzzi gambling promotions and provisions enforcement in order to provide some advertising guidelines to solve interpretation issues. The notice of the AAMS clarifies Balduzzi law provisions and obliges gambling licensees in particular to:

- insert an addiction and winning probabilities warning box (as described hereunder) at the top of the licensee's homepage and of no less than 60 pixels in size.
- include in any TV, newspaper and publication, radio, internet, theatre, and cinema promotions the following compulsory information and warnings:

(i) name of the licensee and licensee concession number;

(ii) gambling is prohibited to minors warning in addition to the logo 18+;

(iii) addiction risk warning;

(iv) a reference to AAMS's website and the licensee's website for winning probabilities and/or return to players information notices.

Six months after the Balduzzi law enactment across the Italian gambling landscape, no sanctioning decision based on the law has been taken. It is interesting to point out that before the Balduzzi law came in to force, the lack of primary law encouraged associations and entities to adopt on a voluntary basis some rules and guidelines for gambling advertising.

The IAP, the institute for advertising and marketing communication self-regulation in Italy, has been among the first to care about gambling advertising with its advertising self-regulation code addressed to advertising campaign producers and has already challenged one of the biggest online poker operator's TV campaigns in 2011[2]. Earlier in 2012, the IAP inserted a specific section on gambling advertising into the self-regulation code.

While the aim of the institute is commendable and deemed to demonstrate the will of advertising stakeholders to embrace additional and voluntary guidelines, the effectiveness of its code is limited to its adhering partners.

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1. Balduzzi law-decree (no. 158 dated 13 September 2012) has been converted into law no. 189 dated 8 November 2012.
2. http://www.iap.it/it/giuri/2011/g0932011.htm