

Lithuania's latest draft gaming bill ignores concerns raised

The Lithuanian Parliament has sought to amend Lithuania's Gaming Law through multiple draft bills, with the latest being presented on 6 January 2014. Already there are concerns that this latest draft will not comply with EU law and that the bill has not evolved significantly from previous drafts. As Vytė Danilevičiūtė, Senior Associate at Sorainen, highlights in this article, problems remain in terms of the requirements the draft bill would place on operators.

On 6 January 2014, the Lithuanian Parliament presented yet another draft amendment to the Gaming Law of the Republic of Lithuania (Bill No. XIP-4393 ES(2)). In part, this most recent bill comes as a natural development in the long overdue modernisation of the Lithuanian Gaming Law. So far, since its adoption in 2001, all attempts to modernise the Gaming Law have failed. It is likely, however, that the new draft Gaming Law was also partly prompted by the official actions of the European Commission.

On 20 November 2013, the European Commission decided to send an official request for information on national legislation restricting the supply of gambling services to several EU Member States, including Lithuania. The main concerns of the Commission relate to national provisions subjecting the provision of online gambling services to the establishment of physical presence in Lithuania.

The new bill dated 6 January 2014 builds largely on another draft Gaming Law initially proposed by the working group of the Parliament (bill No. XIP-4393) in May 2012. From the very

beginning the spirit of this bill was more conservative and protectionist compared to alternative proposals. For example, the draft Gaming Law proposed by Mr. Žilvinas Šilgalis (bill No. XIP-3447) was more liberal and provided for possibilities to provide online gaming services in Lithuania without physical presence in the country. The first one (Bill No. XIP-4393), however, received more favourable feedback from the Budget and Finance Committee of the Parliament. After consideration by the Budget and Finance Committee of the Parliament, a lead committee in the Parliament for legislative processes on the issue, in May 2013 the more liberal draft Gaming Law No. XIP-3447 was rejected and the draft Gaming Law No. XIP-4393 was presented for public observations.

As far as online gaming was concerned, the draft Gaming Law No XIP-4393 was criticised by the Legal Department of the Parliament, the European Law Department, and foreign operators as well as other stakeholders for three main reasons: (i) the physical establishment requirement; (ii) the minimum paid share capital requirement; and (iii) the requirement to open a certain amount of real life gaming establishments in Lithuania, all likely contradicting the basic principles of EU law.

Unfortunately, despite the criticism, the new draft Gaming Law (Bill No. XIP-4393 ES(2)) did not evolve too far from its predecessor (bill No. XIP-4393). The only development in this regard is that the current bill allows companies established in other EU Member States (only private limited liability entities) and having the right to organise gaming in accordance with the laws of that Member State to

organise online gaming activities in Lithuania after the establishment of a branch office instead of a subsidiary.

The minimum paid share capital requirement still exists and amounts to LTL 4 million (ca EUR 1,158,480). From the current wording of the bill it appears that the minimum paid share capital requirement applies to both local and foreign entities (from EU Member States) intending to provide online gaming services through a local branch. This means that an entity established in another Member State wishing to operate online gaming services in Lithuania would have to raise its share capital even if its country of establishment does not have any minimum share capital requirements. The Legal Department of the Parliament has previously raised doubts as to whether this burden is proportionate and in line with the EU law, citing the CJEU decision in case C-514/03, (Commission v. Spain). In this case, the Court considered security justifications put forward by the Spanish government as having no direct connection with the amount of share capital of security undertakings and found that the Spanish government failed to explain the restrictions placed on freedom to provide services and freedom of establishment.

Another questionable aspect of the draft Gaming Law (Bill No. XIP-4393 ES(2)) is the requirement to have real-life gaming establishments in order to obtain an online gaming licence. Namely, the bill requires the gaming operator to establish and operate at least one gaming house (casino), at least five betting shops for horserace sweepstakes, at least ten slot machine parlours, at least twenty betting shops or at least twenty sweepstake points. Such a

requirement was previously criticised by the Legal Department of the Parliament in its report with respect to the earlier bill (Draft No. XIP-4393). In addition to the EU law concerns, the Legal Department also raised constitutional concerns. The Constitutional Court of the Republic of Lithuania has noted in several decisions that the right to property, as the basis for individual economic freedom and initiative, may be limited because of the nature of the property or for other reasons where the protection of constitutional values, public interest, or the rights and freedoms of other individuals would become impossible without such limitation. Accordingly, the Legal Department doubted the proportionality of the requirement of real-life gaming establishments as a prerequisite for online gaming operators.

It seems that the working group on the draft Gaming Law disregarded the majority of the comments received with respect to the earlier bill as well as the raised voice of the European Commission. Effectively, this means that there is no clear consensus as to how the online gaming industry in Lithuania will be shaped and that no quick outcome can be expected from the legislative process. This time the draft Gaming Law has also drawn the attention of network operators. The bill establishes the right for the gaming supervisory body to order network operators (currently this applies only to internet service providers) to remove information related to illegal gaming or to limit

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the accessibility of such information. This provision has already been criticised by a member of the Parliament, Mr. Remigijus Šimašius, as superfluous and as establishing internet censorship.

Meanwhile, online gaming in Lithuania remains unregulated. Former market practice where online betting was allowed as long as certain real-life burdens were met and which had been approved by the gaming supervisory body was declared inconsistent with the effective Gaming Law by the Supreme Administrative Court of Lithuania on 2 May 2013. The civil case initiated by two local gaming organisers and the Association of the Gaming Service Operators of Lithuania in June 2010 against a number of foreign gaming operators reached the Lithuanian Court of Appeal and was suspended in 2013 pending the decision of the Constitutional Court of the Republic of Lithuania. The case in the Constitutional Court of the Republic of Lithuania was initiated by a group of 32 Members of the Parliament (case No. 18/2013). The main concern raised by the group in its reference to the Constitutional Court was that the current legal regulation discriminated against local gaming operators. Local gaming operators are banned from the provision of online services while online gaming services operated by foreign companies are still available to users in Lithuania. Moreover, foreign operators often have websites in the Lithuanian language, are not accredited or controlled by local authorities, and

do not pay taxes in the Republic of Lithuania. There are no technical means to limit these services to Lithuanian users. The group also pointed out that Lithuania is the only EU Member State where online betting is still prohibited.

Needless to say, the current situation requires a change and has a number of drawbacks. Foreign online gaming operators aiming to engage in legitimate business face legal uncertainty, local gaming organisers may not offer online gaming services without facing liability and are losing their market share to foreign unlicensed companies, consumers cannot be effectively protected, and the State budget is losing substantial amounts in tax revenue, to name but a few of the concerns. Realistically, it will still take a while before the new Gaming Law is adopted to bring some legal certainty.

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