

Amending the regulation of online gambling in Estonia

Online gambling has been regulated in Estonia for three years and boasts one of the lowest tax rates in Europe at 5% of net profit. However, Estonia still suffers from a high level of problem gambling and struggles to limit the prominence of illegal operators. Kaupo Lepasepp and Mihkel Miidla of the Estonia office of Sorainen law firm, provide an insight into the current situation in Estonia in regards to online gambling, and the proposed legislative amendments that are currently being debated.

Introduction

The two primary legal acts regulating online gambling in Estonia are the Gambling Act and Gambling Tax Act. Remote gambling has been regulated since 2010 and gambling regulations overall are quite strict in their nature. Also of significance are the Advertising Act and Media Services Act which regulate the advertising of gambling and sponsorship.

There are some unique requirements in Estonia that inevitably require operators to develop custom IT solutions. For example, systems integration with the national self-exclusion list, electronic recordkeeping and control system integration with the information system of the Estonian Tax and Customs Board. Specific requirements for the payment systems and responsible gaming features may require custom developments of the existing systems. Also highly recommended is to implement the possibility to use the Estonian national electronic ID-cards or mobile-ID for the secure verification of players' identities.

There are currently only eight

gambling operators holding necessary licences issued by the Estonian Tax and Customs Board to offer remote gambling services in Estonia. The Estonian Tax and Customs Board is the gambling regulator in Estonia who conducts supervision over licensed operators. It is also tasked with the limiting of illegal gambling; unfortunately however, the tools available to the regulator are limited and quite ineffective against foreign operators. One of the most used methods is the blocking of domain names of illegal gambling operators in Estonia. As of 13 August 2013 a total of 831 domain names have been blocked by the Estonian Tax and Customs Board.

According to surveys conducted in recent years, gambling addiction is widespread in Estonia compared to other EU Member States. According to the Centre of Gambling Addiction 16% of the people who turned to them with addiction problems were gambling online. In the case of online gambling, the problematic gamblers include a higher share of people who have taken part daily in betting/sports predictions, traded on stock and exchange markets, played poker, taken part in lotteries or games of skill (Gambling prevalence in Estonia 2012 survey). The profile of online gamblers is somewhat different from people who play in regular casinos, including more young people (age group 20-29). Consequently, the approach of the Estonian government towards the gambling sector is strict and politically a sensitive issue. At the same time, the tax rate on remote gambling is one of the lowest in Europe - with 5% of net profit (bets minus winnings) currently taxed. Although there have been some initiatives to change that, no amendments have been adopted.

2012 amendments

In 2012, several amendments were made to the Gambling Act, some of which directly affect the organisation of remote gambling. Many of the 2012 amendments are concerned with technical requirements (location of the server, electronic recordkeeping and control systems), which were necessary to meet the practical needs.

For instance, the server that is used to organise remote gambling no longer has to be physically located in Estonia, if certain criteria are met. The server may be located in any country provided that the operator can present evidence regarding the legal basis and possibilities of the supervisory authority for gambling and of the authority dealing with the prevention of money laundering in the country where the server is located, to cooperate with the Estonian Tax and Customs Board and Financial Intelligence Unit. 'Legal basis and possibilities' in the current context means a formal basis in the legislation of the corresponding state and the actual possibilities (necessary resources, e.g. to translate documentation, correspond over mail or email, etc.) of a particular institution in that state to cooperate with Estonian authorities. The evidence should be appended prior to the application for an operating permit; otherwise issuance of an operating permit may be refused. Presenting such evidence is however not necessary if the server is located in Estonia or in a state that is a party to the Convention on Cybercrime or if the Estonian Tax and Customs Board and the Financial Intelligence Unit have a cooperation agreement with the competent authorities of the corresponding country regarding exchange of information on gambling supervision. The aim of

this amendment was to make the organisation of remote gambling more flexible and consequently increase the number of licenced gambling operators.

The server containing the software used for the organisation of remote gambling must store data regarding the registration, identification and verification of the identity of each player, verification of compliance with the age limit, verification of restrictions on playing games of chance, start of a gaming session, and logging in and out. The data must be retained for five years pursuant to the rules dealing with prevention of money laundering and financing of terrorism. Supervisory officials must be provided with unrestricted access to such data.

For organising remote gambling, the gambling operator must ensure measures to avoid providing any gambling opportunities to persons who are younger than the age set out in the Gambling Act (21 years in the case of games of chance) but only with respect to such players who play by remote gambling in Estonia. Such new wording means that if the online gambling service (based on the Estonian licence) is offered outside of Estonia, then the gambling operator must comply with the age requirements of the other country and may allow under 21 year olds to play games of chance if the legal age for gambling is lower in that country.

A significant amendment in the Gambling Act concerns the electronic recordkeeping and control system. This is meant to be the means through which most of the interaction between the Estonian Tax and Customs Board and a gambling operator is

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conducted. The gambling operator must ensure the possibility of connecting its electronic recordkeeping and control system with the information system of the Tax and Customs Board in order to enable access to the required data. The procedure for connecting the electronic recordkeeping and control system with the information system of the Tax and Customs Board is established with a regulation by the Minister of Finance. The same regulation prescribes the technical requirements for the manner of connecting the electronic recordkeeping and control system with the information system of the Tax and Customs Board, and the terms of and procedure for the exchange of data via such connection. Once the electronic recordkeeping and control system of an operator has been connected with the information system of the Estonian Tax and Customs Board no separate reports on the organisation of gambling have to be filed since the reporting will take place automatically.

New rules for making deposits and withdrawals were also introduced. The operator of remote gambling must ensure that deposits for the making of bets are accepted only from the (settlement) account of the same player. Withdrawals may be made only to the same (settlement) account, from which the player has made the deposit.

Future initiatives

There are currently several draft amendments currently under revision. The most significant amendments prescribe prerequisites for beneficial owners by subjecting them to the same

requirements currently set out for shareholders with a qualifying holding in a gambling operator and the members of a management body within the gambling operator. Implementing the electronic recordkeeping and control system and connecting it with the information system of the Tax and Customs Board will become a prerequisite before operating permits are issued. There are also plans to apply the national self-exclusion list to betting and classical lotteries; currently the national self-exclusion list applies only with respect to games of chance. In the draft act, several amendments related to responsible gaming have been included, for instance the obligation of all players to set weekly or monthly limits as to their acceptable losses; it will be forbidden to accept bets from players who have not set up upper limits for acceptable losses. The players can lower these limits at any time, but setting a higher weekly or monthly limit must be accompanied by a 72 hour cooling off period. If adopted, these changes will enter into force in 2014. However, as these amendments are still under review, changes are possible during the parliamentary debate.

There is also a non-binding guideline under development by the Estonian Consumer Protection Board on the advertising of gambling. It is expected that such a guideline will be introduced within 2013.

Kaupo Lepasepp Partner
Mihkel Miidla Senior Associate
 Sorainen
 kaupo.lepasepp@sorainen.com
 mihkel.miidla@sorainen.com

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