

worldonline gamblinglawreport

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The legal position of foreign operators

Now that the Czech Republic is an EU member state, operators have been watching to see if the government will change its internet gambling laws. Eva Adamcová, a junior Attorney-at-Law with Peterka & Partners v.o.s, outlines the current legal position for foreign operators offering internet betting products into the Czech market, and discusses the possibility of future change.

In the Czech Republic, gambling is regulated by Act No. 202/1990 Coll., on Lotteries and Other Similar Games of Chance ('the Act on Lotteries'). This Act, of 17 May 1990, naturally does not take into account online betting or other forms of online gambling, lotteries and games of chance conducted via the internet. Therefore, online betting is neither permitted nor expressly forbidden under Czech legislation.

Gradually, foreign betting agencies have started to operate on the local market, offering online betting to Czech citizens. These foreign entities operate on the Czech market without any authorisation of the relevant Czech body, by means of websites in the Czech language and bank accounts in Czech banks. The largest inflow of foreign betting agencies to the Czech market was seen after the Czech Republic became a member of the European Union, when these foreign betting agencies cited community legislation on the free movement of services and capital.

Local betting agencies disagreed with this situation, as they could not conduct online betting as no relevant authorisation for this activity was granted in general, and due to the operations of foreign betting agencies, they were losing profit.

Under the Act on Lotteries, gambling, lotteries and other

similar games of chance may be conducted in the Czech Republic solely based on an authorisation granted by the Ministry of Finance. The Ministry of Finance, however, has issued no authorisation to conduct online odds betting. The reason for not permitting online betting given by the Ministry of Finance is mainly the concern about the impossibility of identifying the age of bettors and thus the impossibility of preventing minors from online betting. Further concerns relate to the impossibility of identifying payments made for internet gambling, and money laundering.

Representatives of foreign betting agencies reject these reasons and claim that, similar to internet banking, the relevant instruments may also be applied to online betting by means of which gambling payments, gamblers and their age may be identified. In major cases, online gamblers must register with one of the betting agencies and deposit funds in advance. Therefore, a bank account or a credit card is necessary. The Bwin.com online betting company, for example, does not accept cards issued to student accounts in the Czech Republic, according to Jindich Rachle, a representative of Bwin.com. In addition, upon registration, all gamblers are notified of the fact that winnings will be paid by the betting agency against a copy of their passport or their identity card and based on the matching of the data included in the copy and the data presented upon registration.

Online betting conducted by foreign entities is naturally being criticised by the representatives of local betting agencies. Ale Huák, Chief Executive Officer of Sazka a.s., the largest betting agency on the Czech market, claims on the Ihned internet portal on 8 March 2007 that the state does not

sanction online betting sufficiently. On the contrary, competitors of Sazka believe that the unwillingness of the state to legalise online betting results from the effort to defend the monopoly position of the largest Czech betting agency.

Urged by this stalemate, an amendment to the Act on Lotteries was passed by the government on 20 July 2005. This amendment basically prohibited online betting both to Czech and foreign betting agencies. The Lower House of the Parliament, however, rejected the amendment.

In March 2006, the opinion of the representatives of the Ministry of Finance on online betting changed when the Ministry of Finance admitted it had made efforts to define the conditions under which the operation of online odds betting may be permitted in the Czech Republic in the future. Online betting should be allowed based only on the obligatory registration of gamblers. The Ministry of Finance thus wished to prevent children and minors from accessing online betting. According to specialised analysts, the unofficial reason for allowing online betting was the interest in the financial contribution to the state budget in the form of taxes arising from this activity levied by the entities conducting online betting in the Czech Republic. The major motivation was the coming Football World Cup being held in Germany in June 2006.

To date, however, no change to legislation has been implemented.

Under the current situation, online betting in the Czech market is offered by nine foreign betting agencies. Advertisements by these companies can be seen on the tracksuits of Czech sportsmen, at stadiums and during the sports coverage by TV stations.

As mentioned above, lotteries, betting, gambling and other similar games of chance may be conducted in the Czech Republic solely based on an authorisation granted by the Ministry of Finance. In this respect, foreign betting agencies conduct online betting without having the relevant authorisation. In addition, the majority of these entities are not registered in the Commercial Register and therefore have no license to undertake business activity in the Czech Republic. Under the provisions of s21(4) of the Commercial Code, a foreign person's authorisation to undertake business activity in the Czech Republic takes effect on the day on which this person, or the person's branch, is entered in the Czech Commercial Register. Such a foreign person is authorised to engage in the range of business activities specified in his (its) entry in the Commercial Register.

Under the provisions of s118(a) of the Penal Code, the unauthorised running of lotteries or similar odds betting is a crime in the Czech Republic. The Ministry of Finance lodged a report on the commission of a crime against some of these foreign entities, but all of the reports have been delayed.

On the other hand, under the current Act on Lotteries, particularly the provisions of s1(6), the authorisation may be granted only to legal entities with their registered seat in the Czech Republic. Despite foreign entities wanting to apply for authorisation to conduct betting, they have no chance of being granted it with respect to the above mentioned provision. This provision seems to be inconsistent with European Union law, mainly with the principle of free movement of services and capital and the freedom of establishment. No dispute has occurred in the Czech

Foreign betting agencies conduct online betting without having the relevant authorisation

Republic so far concerning the compliance of Czech legal norms with the regulations of the European Union.

A major discussion arose as a result of the recent decision of the European Court of Justice in the so-called 'Placanica' case concerning the compliance of Italian regulations on lotteries with European Union law. The judgment confirmed that the legislation of one EU member state may not restrict betting providers from other member states, as this limitation would represent a limitation of the freedom of establishment and free movement of services. Nevertheless, the Court pointed to the fact that limitation on the grounds of public interest is an exception to this principle. It is obvious that this decision of the European Court of Justice is being interpreted by the Ministry of Finance and the representatives of foreign betting agencies operating on the Czech market to their benefit.

A discussion of online betting was also held in connection with the draft of the Directive on Services in the EU Internal Market. The Czech Republic was one of the opponents who disagreed with the integration of lotteries and games of chance in this Directive. With respect to the major consensus of EU member states, lotteries and games of chance were excluded from the draft directive in the end, due to the risky nature of these services. The regulation of lotteries, betting and games of chance thus remains mainly the responsibility of national states; compliance of national regulations with the regulations of the European Union should comprehensively be observed.

It is obvious that the current Act on Lotteries is outdated and does not reflect the situation in the market. Despite the Ministry of

Finance claiming that online betting is illegal, it grants to local betting agencies authorisation for telephone betting where the ticket may be filled in online, sent to the relevant branch and confirmed by phone. It is evident by these means that the Ministry of Finance is trying to allow Czech betting agencies to compete, at least partially, with foreign betting agencies offering online betting services to their clients.

Local betting agencies declare their readiness to offer online betting services to their clients as soon as the necessary legislative changes are implemented and their disposal of necessary programs which may compete with online betting programs used by foreign betting agencies.

Before such changes are implemented, the owners of certain local betting agencies have decided to conduct online betting from abroad. According to information published on the Ihned internet portal on 16 March 2007, the owner of the Czech betting agency Fortuna applied for the relevant licence in Malta and a project called Fortunawin is ready to be launched on a Czech web server in the second half of this year. Tipsport wishes to render online betting services via the Slovakian company Doxxbet, as online betting is legal in Slovakia.

According to a government resolution, the Ministry of Finance is to submit a new draft Act on Lotteries by 31 December 2007. Dr. Zichová of the Ministry of Finance has confirmed that the new legislation should govern online betting too. According to her, however, the Ministry of Finance favours the complete prohibition of online betting.

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