



POLAND TO RE-TARGET UNLICENSED ACTIVITY

Poland's Ministry of Finance recently signalled its intent to step up the fight against unlicensed gambling over the Internet. **Anna Wietrzynska-Ciołkowska** and **Rafał Burda** from DLA Piper's Warsaw office analyse the context and the various options available to the Ministry.

The last couple of weeks have seen an increasing number of messages emanating from the Ministry of Finance concerning the intensification of its struggle against unlicensed gambling on the Internet. In mid-November, a statement from the Customs Office was published on the Ministry of Finance's website, reminding the public that anybody taking part in games of chance or betting organised by foreign operators which do not have a relevant permit will be subject to criminal liability. Also, according to Jacek Kapica, the deputy minister of finance responsible for gambling issues, not only will people taking part in illegal gambling be prosecuted, but relevant websites may also be blocked.

This is not the first time that the idea of blocking the content of websites in Poland has appeared in the context of gambling on the Internet. It was back in 2009 that the

“Technically, it is possible to apply the provisions of the law allowing for the blocking of websites containing illegal content, but it would be difficult to find a legal basis upon which the websites of foreign bookmakers could be blocked.”

idea was raised of creating a special register of websites to which access in Poland would be restricted. However, both then and sometime later when the international Anti-

Counterfeiting Trade Agreement (ACTA) came into play, the issue of restricting freedom of access to internet content was strongly resisted by the public, as it was perceived to be an attempt to restrict civil liberties by introducing a type of censorship of the Internet. Besides the civil liberties issues raised, the point was also made that, from a technical point of view, any attempt

to block websites would be easy for players to circumvent and, therefore, ineffective in practice. Since then, the government has been much more cautious in its approach

to implementing any ideas around blocking the websites of foreign operators, biding its time until public opinion becomes more inclined towards accepting such a solution. It appears from minister Jacek Kapica's statement that the government does not intend to create a black list of websites. However, he himself sees the "possibility of

and considering that Polish laws are being questioned by the European Commission (which actually triggered the current work on the revision of the Act on Gambling), it is impossible to say with any certainty that we are dealing with evidently illegal content under the provisions of Art. 180 of the Telecommunications Law.

“Another proposed solution is to restrict foreign operators’ ability to pay player winnings in Poland. However, given the legal uncertainty over the consistency of the Polish Act on Gambling with EU law, it may be hard to substantiate the application of such mechanisms.”

using tools that would impede the operation of foreign gambling sites in our country: such as, for example, a graphic curtain/non-removable warning placed in some part of the site which will hamper the use of the portal and make the player aware that by participating in the game on this site he/she is committing a premeditated crime.”

It is also worth noting that it would be difficult to find a legal basis upon which the websites of foreign bookmakers could be blocked. Technically, it is possible to apply the provisions of the law allowing for the blocking of websites containing illegal content. This refers, primarily, to Art. 180 of the Telecommunications Law, which obligates telecommunications operators to immediately block any telecommunications connections or transfers of information, upon the request of eligible entities, if those connections may jeopardise the national defence system, the security of the State, and public safety and order; or to allow those operators to block them. Nevertheless, until the issue of the compliance of the Act on Gambling with EU law is resolved, considering the fact that foreign bookmakers expressly refer to the principle of the freedom to provide services and to the licences obtained in other EU states,

Apart from the idea of combating illegal gambling on the Internet by blocking websites, proposals have been put forward to amend current laws in order to encourage foreign entities to obtain the relevant permits in Poland and fully legalise their activities. The above-mentioned amendment is aimed at allowing foreign bookmakers which register their branches in Poland to obtain a relevant gambling licence (however, it should be pointed out that the requirements which foreign operators would have to meet are so detailed and complex that they will undoubtedly be challenged as not being proportional to the purpose that they are designed to serve). Both foreign bookmakers and those licensed in Poland have called for a reduction in the so-called gambling tax or a change in the basis of taxation (i.e. moving this from a tax on turnover to a tax on income). Another proposed solution under consideration is to restrict the ability of foreign operators to pay winnings to players in Poland, based on the US model. However, given the current legal uncertainty around whether the provisions of the Polish Act on Gambling are consistent with EU law, it may be difficult to substantiate the application of such mechanisms on the

basis that they would not pass the test of proportionality (i.e. that the actions should not exceed what is necessary to achieve the objective of the Treaties).

Naturally, one can fully understand the reasons behind the measures taken by the Ministry of Finance, which are intended to maximise budget revenues from gambling and effectively enforce the provisions of the Act on Gambling. However, one cannot forget that there are professional private operators licensed in other EU states, and that the Polish Act on Gambling must be consistent with EU law.



Anna Wietrzynska-

Ciołkowska is a Counsel in the Warsaw office of DLA Piper.

Anna is a corporate lawyer with a particular focus on advising the gambling and betting sectors on the legal aspects of undertaking gambling and online betting activities as well as setting up operations in Poland. She also specialises in restructuring, corporate matters, advising on mergers and acquisitions, in both share and asset transactions, including the coordination of due diligence processes. She assists in the establishing and liquidation of Polish subsidiaries and branches of foreign entrepreneurs, including all the required court and regulatory registrations. She provides on-going corporate advisory services, including changes to share capital and composition of companies' boards, share transfers, ensuring the fulfilment of annual reporting obligations, and corporate compliance. She also has experience in the telecommunications sector, as well as in the area of data protection. Anna has authored articles on gambling, corporate and civil issues in various Polish and foreign legal journals.



Rafał Burda is an advocate trainee in the Warsaw office of DLA Piper. He specialises in commercial law, and in particular matters related to corporate, civil, and gambling law.

He advises clients on day-to-day corporate matters and also has also worked on a number of due diligence reviews. He also provides support in M&A transactions and on global reorganisation and restructuring processes.