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Legal Bulletin



Gambling Law

Romanian Online Gambling Industry at Crossroads with the Amendment of the Gambling Law

The Government Emergency Ordinance No. 82/2023 (“GEO No. 82/2023”) for the amendment and supplementation of Government Emergency Ordinance No. 77/2009 on the organisation and operation of the gambling activities and for the amendment of Government Emergency Ordinance No. 20/2013 on the establishment, organisation and operation of the National Office of Gambling has entered into force on 06.10.2023.

The GEO No. 82/2023 significantly overhauls Romania’s gambling industry, as the changes brought by this legal enactment affect both licensed gambling operators and the service suppliers they contract to run their businesses.

This article highlights the key changes brought by the GEO No. 82/2023 that are most relevant to online gambling organizers holding a Class 1 gambling license and service suppliers holding a Class 2 gambling license.

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I. IMPACT ON THE HOLDERS OF ONLINE CLASS 1 GAMBLING LICENSES

A. Stricter eligibility rules for obtaining and holding Class 1 gambling licenses and authorizations

The GEO No. 82/2023 narrows down eligibility for B2C gambling licenses (i.e., 1st class gambling licenses) to the following entities:

- a) entities incorporated in Romania; and
- b) entities incorporated in a Member State /EEA country/Swiss Confederation which have a permanent establishment registered in Romania with all revenues from the gambling operations conducted in Romania recognised at the level of the said permanent establishment.

Therefore, to obtain an online gambling license and authorisation, the new entrants on the Romanian market have to: (i) incorporate a Romanian company or (ii) use an entity incorporated in EU/EEA/Swiss Confederation with the obligation to register in Romania a permanent establishment. In either cases, the revenues from the gambling activities shall be taxed in Romania in accordance with the Romanian tax legislation. In case the gambling operator in an entity incorporated in a Member State/EEA country/Swiss Confederation which has a permanent establishment registered in Romania, the gambling operator is obliged to appoint an authorized representative in Romania.

Foreign gambling operators already licensed in Romania upon the entry into force of the GEO No. 82/2023 have **6 months** to comply with the requirements mentioned above if they wish to continue operating in the Romanian market. If a gambling operator fails to comply with the new requirements by the lapse of the above-mentioned transition period, their Class 1 gambling license/authorisation will be revoked.

The following options are available to the existing foreign gambling operators to comply with the new requirements:

- a) **Requesting the transfer of the Class 1 gambling license and authorization, to an existing or newly registered company in Romania or to another foreign legal entity (incorporated in EU/EEA/Swiss Confederation)**

The gambling operators may request the Romanian National Office of Gambling (“NOG”) to approve the transfer of the Class 1 gambling license and authorization, to an existing or newly registered company in Romania or to another foreign legal entity (incorporated in EU/EEA/Swiss Confederation) that has a registered permanent establishment in Romania.

The GEO No. 82/2023 allows Class 1 gambling licenses and authorizations to be transferred through spin-offs, mergers, or business transfers.

According to the provisions of the GEO No. 82/2023, the National Gambling Office (NOG) shall issue an order within 15 days of the entry into force of the GEO No. 82/2023, detailing the conditions for approving transfers.

b) Register a permanent establishment (PE) in Romania

Another option for the foreign gambling operators would be to register a PE in Romania and request the NOG to allocate the Class 1 gambling license and authorization to the PE.

As a general comment, only in very rare cases, online gambling businesses carried in Romania by foreign entities may fulfil the criteria provided by the Romanian tax legislation to trigger the PE.

However, the changes brought by the GEO No. 82/2023 basically force the foreign gambling operators to register a PE even though the criteria for PE are not formally met. It remains to be seen how, in practice, the fiscal authorities will handle the process of PE registration of the foreign gambling operators which formally do not meet the criteria provided by the tax legislation to trigger a PE.

Foreign gambling operators should be aware that the requirement to establish a permanent establishment (PE) in Romania may create additional tax compliance challenges. Taxing PE profits is complex, as both the home country and Romania have a financial stake. To avoid conflict, companies must carefully follow the arm's length principle when allocating revenues and expenses between the PE and the parent company.

Additionally, foreign gambling operators must carefully consider the risk of creating a fixed establishment from a VAT perspective when setting up a PE in Romania. If a fixed establishment is created, additional Romanian VAT requirements will apply.

c) Obtaining a new Class 1 gambling license / authorisation

In addition, the GEO No. 82/2023 states that the gambling operators may seek to obtain a new Class 1 gambling license / authorisation on the name to an existing or newly registered company in Romania or to another foreign legal entity (incorporated in EU/EEA/Swiss Confederation) that has a registered permanent establishment in Romania.

While this option is specifically mentioned by the legal enactment, it may seem less practical given the logistic / financial implications triggered by a new licensing process, while the same eligibility requirements would apply (using a Romanian based entity or an EU/EEA/Swiss Confederation entity with a Romanian PE).

B. Increased guarantee fund for securing the risk of non-payment

Online gambling operators are required to set-up a guarantee fund for securing the risk of nonpayment of their tax obligations towards the Romanian State budget.

The GEO No. 82/2023 has significantly increased the amounts of the guarantees online gambling organizers must setup. As such, the following values of the guarantees are now in force:

a) For online casino games:

- For 2024, the amount of the guarantee shall be calculated based on the gambling operator's GGR, as follows:

Gross gaming revenue (GGR)	Guarantee
Up to EUR 5,000,000 / year	EUR 1,000,000
EUR 5,000,001 / year to EUR 20,000,000 / year	EUR 2,000,000
More than EUR 20,000,001 / year	EUR 5,000,000

- Starting with 1 January 2025, the amount of the guarantee shall be of EUR 5,000,000, irrespective of the values of the GGR.

b) For other online games, except online casino games:

- For 2024, the amount of the guarantee shall be calculated based on the gambling operator's GGR, as follows:

Gross gaming revenue (GGR)	Guarantee
Up to EUR 5,000,000 / year	EUR 500,000
EUR 5,000,001 / year to EUR 20,000,000 / year	EUR 1,000,000
More than EUR 20,000,001 / year	EUR 2,000,000

- Starting with 1 January 2025, the amount of the guarantee shall be of EUR 2,000,000, irrespective of the gross gaming revenue of the operator.

The guarantee fund may be set up using any of the following options:

- depositing the relevant amounts with the State Treasury.
- providing a letter of bank guarantee issued by a local bank.
- obtaining an insurance guarantee policy issued by an insurance company registered in a Member State/EEA country/Swiss Confederation.

C. Increased licensing/authorization and administrative fees

a. Licensing fee

Pursuant to the GEO No. 82/2023, the license fee for online gambling organizers is now in the amount of **EUR 300,000/year**, irrespective of the value of the operator's turnover.¹

b. Authorization fee

The GEO No. 82/2023 provides that the annual authorization fee now amounts to **21% of the GGR** of the gambling organizer, but not less than **EUR 400,000/year**.²

c. Administrative fees

Pursuant to the GEO No. 82/2023, the administrative fees owed by online gambling organizers are as follows:

- Fee for the analysis of the license application - **EUR 3,500/licence**.³
- Fee for the issuance of the gambling license - **EUR 10,500/license**.⁴
- Fee for the analysis of the authorisation application - **EUR 250**.⁵
- Fee for the analysis of the application for integration of new games / certification of games on the platform used by the online gambling organisers - **EUR 250**.⁶

D. Increased responsible gambling contribution

Pursuant to the GEO No. 82/2023, the responsible gambling contribution owed by online gambling organizers holding a Class 1 gambling license now amounts to **EUR 500,000/license/year**.⁷

E. Updated rules on outdoor gambling advertising

Pursuant to the GEO No. 82/2023, outdoor gambling advertising exceeding **35 sqm/banner** is prohibited. Violation of this rule represents a misdemeanour and is punishable by an administrative fine from RON 50,000 (approx. EUR 10,000) to RON 100,000 (approx. EUR 20,000). Moreover, the violation may trigger the revocation of the organiser's gambling license.

¹ Under the previous regulation, the annual license fee owed by online gambling operators was calculated by reference to the operator's turnover and ranged from EUR 15,600 (for a turnover of up to EUR 500,000 / year) to EUR 312,000 (for a turnover of more than EUR 10,000,001/year).

² Under the previous regulation, the annual authorization fee owed by online gambling operators was of 23% of the operator's gross gaming revenue (GGR), but not less than EUR 120,000/year.

³ Under the previous regulation, it was EUR 3,000/license.

⁴ Under the previous regulation, it was EUR 9,500/license.

⁵ Under the previous regulation, it was EUR 150/application.

⁶ Under the previous regulation, it was EUR 150/application.

⁷ Under the previous regulation, it was EUR 5,000/license/year.

F. Stricter obligations regarding the list of self-excluded and undesirable persons

The GEO No. 82/2023 provides stricter reporting rules incumbent upon gambling organizers in connection to the registration of self-excluded and undesirable persons.

Pursuant to the GEO No. 82/2023, the gambling organizers are obliged to file with the NOG:

- the requests for self-exclusion received from players, within 2 (two) business days from the date of registration of such requests; and
- the list of persons declared undesirable by the organizer, together with the reasons for imposing such measure, within 5 (five) working days from the date of drafting/amending the list.

II. IMPACT ON SERVICE SUPPLIERS HOLDING A CLASS 2 TECHNICAL GAMBLING LICENSES

A. Increased gambling licensing and administrative fees

a. Administrative fee

As per the GEO No. 82/2023, the administrative fee for the issuance of the license is now of **EUR 10,500 / license**.⁸

b. Annual licensing fee

Pursuant to the GEO No. 82/2023, the annual license fee is now of **EUR 20,000 / license/ year**.⁹

B. Increased responsible gambling contribution

Pursuant to the GEO No. 82/2023, the responsible gambling contribution owed by service suppliers holding Class 2 gambling license is now of **EUR 15,000/license/year**.¹⁰

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⁸ Under the previous regulation, the administrative fee was of EUR 9,500/license.

⁹ Under the previous regulation, the annual license fee was of EUR 9,500/license/year.

¹⁰ Under the previous regulation, the annual responsible gambling contribution was of EUR 1,000/license/year.

Editors

Țuca Zbârcea & Asociații has an unparalleled knowledge and commercial understanding of the **Gambling** legislation. Our lawyers are advising many of the gambling operators active in the Romanian online and offline markets as well as software developers, payment processors and other suppliers of services to the gambling industry.

Our expertise covers an extensive range of legal issues which arise in the gambling industry, including assistance in the applications for gambling licenses to offer online gambling in Romania or specific licenses for the suppliers of services to gambling operators, corporate transactions aiming at businesses consolidation on the Romanian market, the lawful promotion of gambling, negotiation of contracts between gambling operators and services suppliers, AML and data protection compliance, as well as tax treatment of both operators' and players' revenues.



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