

11 November 2022

Legal Bulletin



Gambling Law

Summary:

1. Law No. 262/2022 approving Government Emergency Ordinance No. 83/2022 amending and supplementing Government Ordinance No. 51/1998 on improving the funding system for cultural programmes, projects, and actions, and amending Government Emergency Ordinance No. 42/2019 on establishing financial measures to support the implementation of the National Cultural Programme “Timișoara - European Capital of Culture in 2023”

Entities operating in gambling field must pay a special contribution to the National Cultural Fund

Law No. 262/2022 (“**Law No. 286/2022**”) approving Government Emergency Ordinance No. 83/2022 amending and supplementing Government Ordinance No. 51/1998 on improving the funding system for cultural programmes, projects, and actions, and amending Government Emergency Ordinance No. 42/2019 on establishing financial measures to support the implementation of the National Cultural Programme “Timișoara - European Capital of Culture in 2023” (“**GEO No. 83/2022**”) has entered into force on 3 November 2022.

Among various other amendments introduced by Law No. 286/2022, we note as novelty the obligation for entities operating in gambling field to pay a special contribution to the National Cultural Fund, a special fund aimed at supporting and implementing cultural projects in Romania.

A. GENERAL OVERVIEW

Pursuant to Law No. 286/2022, the National Cultural Fund is an economic-financial instrument intended to support and carry out cultural projects, whose own income is formed of various contributions, including a contribution amounting to “*0.5% of the revenue made by economic operators in the field of gambling, including for activities organised online*”. The contribution must be declared and paid to the budget of the National Cultural Fund on a monthly basis, i.e. by the 15th of the following month.

The wording used by the law which introduces this new contribution is rather ambiguous and may trigger difficulties in determining its scope and how the contribution should be calculated.

Specifically, the following issues can be identified:

A.1. It is not entirely clear which entities must comply with the obligation to pay this new contribution

Under the Romanian gambling legal framework, there are several categories of entities which are involved in or contribute to the operation of gambling operations, namely:

- The entities which are licensed to organise and conduct gambling activities, i.e. gambling operators - entities which hold specific gambling license to organize gambling activities and gambling authorisation to operate gambling activities issued by The National Gambling Office (“ONJN”);

and

- Entities which provide support services to gambling operators, i.e. the providers of platform management and hosting services/data centers, gambling software suppliers (producers/distributors), providers of video-streamed live casino, entities which manufacture, distribute, maintain/repair gambling equipment, payment processors, affiliates, certifiers and testing labs) and which hold a special 2nd class gambling license issued by ONJN.

Pursuant to this new legislation, the contribution is owed by the “*economic operators in the field of gambling*”. However, in the absence of further explanation, there is a degree of uncertainty as to who should be subject to this new obligation, i.e. only entities that are licensed to organise and operate gambling activities or also the entities that provide support services to gambling operators.

Furthermore, it is unclear whether the payment obligation applies to any entities operating on the Romanian territory or only to entities which are also tax residents on Romanian territory.

A.2. The concept "revenue" is not sufficiently clear to accurately determine the basis for calculating the amount of the contribution

The law states that the entities operating in gambling field shall pay a contribution of 0.5% of their **revenues** without any further details or clarification as to what is deemed to be considered the revenue based on which the contribution is calculated.

As such, in the absence of further details it is unclear how the entities subject to the payment obligation should determine the amount of the revenues based on which the contribution is to be computed.

Examples of potential aspects which should be clarified:

- 1) In case of **gambling organisers**:
 - a. should the concept revenue be deemed the same as the one used in the gambling legislation (i.e. the gross gaming revenue)?
 - b. should the calculation basis include or not any taxes paid by the gambling operators under the gambling legislation for the revenues received for the operation of the gambling activities (e.g. the authorisation fees calculated based on the GGR, the 2% tax on players deposits)?
- 2) In case of **entities providing support services to gambling operators** (assuming it is confirmed that those entities are also subject to this new contribution):
 - a. should the income include only the revenues from the services provided to gambling operators or also any other revenues received by said entity (e.g. revenues from the non-gambling related services)?
 - b. should the basis of calculation include the amount of VAT or not?

Hopefully more clarity on the above shall be brought through an amendment to the methodological norms on the establishment, disbursement, and management of the sums constituting the National Cultural Fund.

B. SANCTIONS

Failure to correctly calculate, declare, and pay this special contribution is sanctioned with administrative fine from RON 1,500 to RON 3,000.

Also, the contributions owed to the National Cultural Fund are assimilated to the tax debts. Therefore, the failure to pay the special contribution shall entail the levying of interest and late payment penalties, in accordance with the Code of Fiscal Procedure.

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Editors

Tuca 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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