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Romania's proposed amendment to prohibit digital gambling ads

Members of the Romania Parliament have put forward an amendment that would prohibit the advertising of gambling, which is registered for debate within the Senate. Cristian Radu and Gabriel Ianculescu of Tuca Zbârcea & Asociații, discuss the proposed amendment and what they believe will be the negative consequences for the Romanian online gambling industry if the amendment is passed.

Rules for advertising gambling activities in Romania: overview

Two years ago, during the summer of 2015, Romanian gambling legislation reached a milestone in its progress towards becoming a modern framework. On 6 June 2015, by passing Law No. 124/2015, the Parliament approved the amendments to Emergency Ordinance No. 77/2009 on gambling activities ('Primary Gambling Legislation'), confirming that the Government and National Office for Gambling are on the right track to improving the regulatory environment in Romania for gambling activities. Apart from the core achievement of the new legislation, which opened the door to online gambling operators, a notable leap forward occurred with the introduction of Article 12 of the Primary Gambling Legislation, which expressly provided that the advertising of gambling activities is permitted on national territory as long as the advertisements comply with a set of regulatory requirements and principles, with a clear focus on the protection of minors and preventing their access to games of chance.

The introduction of Article 12 at the same time as the issuance of the new licensing conditions for remote gambling operators was not coincidental. While this may show the inclination of the legislator to liberalise the market and increase the opportunities available to gambling operators to promote their services, the truth is that the online gambling market would not have survived or prospered in Romania without specialised advertising. Without going into detail, it should be understood that land-based gambling and remote gambling, while part of the same general industry, are actually different types of services and most of the time they cater

to different types of clients. An important component of the online gambling sector is the ability to advertise such activity on online marketing channels, mainly through affiliation systems and the advertisement of bonuses.

The gambling legislation provides only a set of principles to be observed by gambling operators and media providers when advertising gambling products on the Romanian market, and this may have led to a certain amount of ambiguity on how to properly advertise such services in the last two years. However, the regulatory framework is flexible to some degree, allowing regulators to intervene in order to further regulate or provide interpretations of unclear aspects. In this respect, other regulators, such as the National-Audiovisual Council, have passed decisions that further clarify the rules on advertising for the gambling industry, providing clear schedules during which gambling products may be advertised on TV or radio in order to protect the interests of minors.

It is understandable that such industries require a certain degree of effort in order to fairly regulate them, and the knowledge of specialists with an understanding of the industry is key to such a process. In our view, any rules or guidelines on the advertising of gambling products should be issued by the National Office for Gambling, after a thorough analysis of the potential effects. Nevertheless, in April 2016, a group of Members of Parliament submitted a proposal for the amendment of Law No. 148/2000 on advertising (the 'Advertising Law') and Law 504/2002 on audiovisual content (the 'Audiovisual Law') with the main objective being to restrict the advertising of gambling services. The project has been registered by the

Chamber of Deputies under No. Pl-x 178/2016 (the 'Amendment Proposal').

Analysis of the Amendment Proposal

The Amendment Proposal provides for the introduction of certain restrictions to the advertising of gambling activities, as follows: (1) the Advertising Law would include a new article stating that gambling activities may only be advertised within the locations in which such activities are organised (i.e. casinos, betting agencies, slot rooms etc.) and in specialist print publications that focus on gambling events and activities; and (2) the Audiovisual Law would include a new article stating that the advertising of gambling activities through audiovisual channels (TV and radio) is prohibited. In other words, the Amendment Proposal's main purpose is to prohibit any audiovisual or digital types of advertising, significantly impacting the advertising activities of remote gambling operators licensed in Romania.

TV and online advertising, including online marketing affiliation, represent the main channels for promoting online gambling activities in most modern jurisdictions that have regulated the offering of such services. Implementing the proposed restrictions would impact remote gambling operators that are licensed in Romania, and would contravene the objectives of the gambling legislation, such as establishing a fair and functional regulatory framework for both land-based and remote operators, creating a competitive environment based on the models of other modern legislation, decreasing the size of the black market, implementing structures which increase the level of control over such services, and the level of tax collection. The restriction on advertising by licensed online operators

could lead to an increase in the black market, as it would become more visible, given that unlicensed operators do not have to follow any of the regulatory limitations imposed on licence holders.

From a technical perspective, it should be noted that although the Amendment Proposal exclusively deals with the advertisement of gambling activities, the project does not address in any way gambling legislation. Although the Advertising Law and Audiovisual Law are organic laws, and their amended versions would trump the legal power of the Primary Gambling Legislation (making the contradictory provisions of the latter inapplicable), this would lead to a confusing situation and a decrease in transparency on how the offering of gambling activities is regulated in Romania. Furthermore, the implementation of such restrictions would be regarded as a new sign of instability on the market. The European Commission has criticised Romania for its lack of predictability and coherence when regulating the gambling industry in the past.

Status of the Amendment Proposal

Without going into a detailed presentation of the legislative process, we note that the Amendment Proposal refers to the amendment of organic laws, which means that it must be approved by both chambers of the Parliament in succession. The Proposal was approved by the Chamber of Deputies in 2016, and is now registered for debate on the Senate's agenda. The Government has issued two negative opinions regarding the Proposal, but the endorsement of the Government is not required and its opinion is not binding on Members of Parliament. There is no visibility yet on when the Amendment Proposal will be debated by Members of the Senate and a date for the vote has not been set.

Considering the potentially negative effects that may follow the implementation of such restrictions, our view is that the Amendment Proposal should be rejected by Parliament and the important task of regulating the advertisement of gambling services should be left to specialised regulators, such as the National Office for Gambling or the National Audiovisual Council, which could issue specific guidelines similar to those of the British Gambling Commission.