

## ROMANIAN LAWS ON ONLINE GAMBLING. WHAT THE FUTURE MAY HOLD

Over the last 10 years, the popularity of online gambling has made this industry one of the most profitable at an international level, and an important source of revenues for states that have secured a mutually beneficial and attractive legislative framework to operators.

In Romania, although online gambling has been regulated since December 2010, the first functional regulatory framework only took shape following legislative efforts over 2015-2016. To a great extent, it is the Romanian National Gambling Office (ONJN) that reformed the legislative framework further to dialogue with all stakeholders, *i.e.*, the associations representing online gambling operators and the state institutions in charge of monitoring, checking and penalizing industry-related activities. The current regulatory framework covers stakeholders' needs and supports the development of this sector.

It is our view that Romanian laws are modern, efficient, fair, completely functional and aligned to the regulations of other successful states in this sector, such as Malta, Denmark or the UK.

It is nevertheless true that the current laws are still perfectible, as per the opinion of other industry stakeholders. A first improvement could be the taxation of online players' revenues by enacting regulations on the withholding of revenue tax so the Romanian State could improve its capacity to collect such taxes.

Moreover, to support the organic development of online gambling and foster solid competition between operators, Romanian lawmakers must find ways to allow other interested operators to enter the local market. For instance, they could approve a regulation similar to Law No. 124/2015, to help operators that missed the brief window of opportunity offered by this law. However, this would exceed the ONJN's regulatory capacities and would require a Parliament-approved legislative enactment to guarantee interested operators that they would be exempt from any criminal or tax liability, similar to the exemption provided by Law No. 124/2015, even if such a solution were offered for higher fees than those stipulated by the 2015 law.

In these times of fast-paced technological development, not only have online gambling operators kept improving their services, but new types of games are being created. The competent regulatory authorities have the difficult task of implementing regulations to keep up with the continuous development of this industry.

In recent years, several entertainment products classified as online "*games of skill*" have caught the public eye. The main types are *Daily Fantasy Sports games (DFS)* and *Electronic Sports*.

Although so far no DFS or Electronic Sports platforms have been actively offered to Romanian players, given the fast spread of these games and the issues raised by regulatory institutions from other jurisdictions an analysis of these games from the perspective of applicable Romanian laws would be useful.

DFS are a type of online game where a player can create his or her own virtual team and compete against other players' teams. A player's team is created by choosing real players from real-life leagues or competitions. After each game, some players are awarded points for achievements in real games (goals, assists, passes, cards, successful defences, etc.). The sum of points won by all the players on a virtual team represents that team's score. DFS can be played for free or in exchange for an entry fee which gives the player an opportunity to win significant amounts of money. The prize pool is divided similarly to the poker system, i.e. the aggregate amount is divided between the best players minus the fee retained by the organizer. Although this type of game mainly relies on the player's skill, in certain jurisdictions it has been considered similar to games of chance due to the existence of factors beyond the player's control.

Electronic Sports are a new segment of competitive online games where two or more players compete against others (or on teams) and have control of how the game is played. More precisely, in the Electronic Sports segment, contestants control units or unit teams and direct their actions using strategy and skills. Players must pay an entry fee and compete for significant monetary prizes. Although all eSports games rely, to a large extent, on the player's skill, some jurisdictions (such as Japan) deem some types of eSports games of chance and prohibit their organization without a special license. Also, other jurisdictions maintain that the existence of a RNG (*random-number-generator*) in the game platform gives an element of hazard to the game at critical times.

According to Government Emergency Ordinance No. 77/2009 on the organization and operation of games of chance, they are defined as an activity which *"cumulatively meets the following requirements: material winnings, usually money, are awarded, further to the public offering of a potential win by the organizer and the acceptance of the offer by the player, against an overt or covert entry fee, winnings being awarded in line with the gambling regulation approved by the National Gambling Office, hereinafter called the ONJN, **further to a random element affecting the outcome of the events that are the subject matter of the game, no matter how they are generated**"* (emphasis added).

Therefore, a game of chance mainly involves (1) a stake from the player, consisting of an entry fee; (2) potential winnings for the player; and (3) a random element in the outcome of events. Unless such elements are cumulatively met, the activity cannot be considered a game of chance.

The first two conditions do not raise many problems, as they can be easily verified on a case-by-case basis. Nevertheless, just as with other regulations, Romanian gambling laws do not clarify to what extent a player's intervention in the competition affects the random element of the game, and so the third condition often leaves room for debate in the specialized literature.

Romanian laws do not draw a distinction between various levels of hazard or the value of the player's intervention from time to time. More precisely, from the broad wording of Article 3 of

Government Emergency Ordinance No. 77/2009, it follows that any activity involving an element of hazard, irrespective of the degree to which the outcome is affected, is deemed to be a game of chance.

From this perspective, DFS could be considered games of chance under Romanian law, because the outcome also rests on elements of hazard, even though the game mainly relies on players' knowledge and skills.

As to the eSports industry, although not all games can be classified under the umbrella of gambling, those relying on an RNG system which may influence some stages of the game could be considered games of chance to the extent that the other legal requirements are met.

As regards the possibility of legally organising and operating these new types of games under the current regulatory framework, the legislature anticipated the potential development of new types of games in this industry and provided, in Article 10(1)(o) of Government Emergency Ordinance No. 77/2009, for the possibility for operators to obtain a license for *“any other types of games of chance, i.e. new games or combinations of the games defined at letters a) to n)”*.

On 24 January 2017, Malta approved the Regulation on Games of Skill providing for the obtaining of distinct licenses for games relying on players' knowledge and skills. The new legal framework implemented in Malta covers the regulatory needs of these new types of games and is a worthy model for jurisdictions which, in their turn, intend to officially open the market to such activities.

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