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Game on, but with new rules: the amended Romanian gambling law comes with additional rules and burden for gambling community

The Law No. 107/2024 on the approval of Government Emergency Ordinance 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 and for the amendment and supplementation of Government Emergency Ordinance No. 77/2009 (‘Law No. 107/2024’), has been promulgated by the Romanian President and is expected to be published in the Official Gazette of Romania, Part I, very soon. Law No. 107/2024 shall enter into force in 10 days from the publication thereof in the Official Gazette of Romania, Part I.

A. SUMMARY

Law No. 107/2024 builds upon the regulatory framework established by GEO No. 82/2023. This new legislation introduces stricter requirements for both Class I gambling license holders (organizers) and Class II technical gambling license holders (technical suppliers).

Synopsis

Class II license holders become the watchdog for enforcing the illicit gambling in Romania (presumably in the name of the fight against the illegal gambling). Additional actions required from Class II license holders.

Who is impacted

Gambling technical providers:

- Platform management and hosting services providers
- Software supply services providers

Synopsis

The Class II license holders cannot provide services to gambling operators lacking a Class I license and which allow the access by Romanian players to such gambling activities. The ONJN will introduce technical measures to enforce this requirement. Until then, the Class II license holders must implement all necessary technical measures to ensure that Romanian players cannot access the gambling offered by the unlicensed gambling operators. Who should be subject to these new requirements and what are the measures to be implemented by the relevant Class II gambling license holders remains unclear (Section B.1).

Who is impacted

- Suppliers of other gambling means (including the entities which provide maintenance and repair services)
- Payment services processors
- Affiliates
- Live studio providers
- Auditors, certifiers and certification bodies

Synopsis

Joint gambling operations

Only licensed entities can work together for gambling activities. Unlicensed involvement and direct customer interaction by non-affiliated staff are prohibited (Section B.2).

Who is impacted

Primarily, land-based gambling operators, but these rules could apply to online gambling as well.

Synopsis

Extended scope of the outdoor gambling advertising

Large-scale outdoor advertising for gambling is prohibited (exceeding 35 sqm). This requirement covers not only the advertising of the gambling activity per se, but also the advertising of (i) the websites hosting various gambling platforms and (ii) of the branding used by the gambling operators (Section B.3).

Who is impacted

Land based and online gambling operators

Synopsis

Land based slot machine restrictions

Land based slot machines are banned in administrative territorial units with fewer than 15,000 residents (Section B.4).

Who is impacted

Land based gambling operators

Synopsis

New reporting requirements for the gambling industry

Both Class I and Class II license holders must provide detailed information to the NOG for the implementation of the public register regarding the gambling regulated entities (Section B.5).

Who is impacted

Gambling operators (both online and offline)

Class II technical providers

B. DETAILS

B.1. Additional actions required from Class II technical providers to prevent illegal gambling

Probably one of the most controversial provision of Law No. 107/2024 is the new obligations of the Class II technical gambling license holders to refrain from providing their services to gambling operators who do not hold a Class I gambling operation licenses issued by the ONJN and who allow the access to such games to Romanian players (i.e. participants accessing the gaming platform from the Romanian territory and/or Romanian citizens that do not have a tax residence in another country). This provision is aimed at strengthening the fight against the illicit gambling offered to Romanian players (mainly the online gambling).

In 90 days from the entry into force of

Law No. 107/2024, the President of the ONJN is supposed to issue an order detailing the technical measures which should be implemented by the Class II gambling license holders in order to combat the access to the gambling activities of the unlicensed operators targeting Romanian players.

Until the entry into force of said order, the holders of the relevant Class II technical gambling licenses must implement any available technical measures to prevent and combat the participant's access to gambling in violation of this rule.

Sanctions for the violation of the above-mentioned rules:

- Administrative fine from RON 150,000 (approx. EUR 30,000) to RON 200,000 (approx. EUR 40,000), and
- Seizure of the proceeds/income obtained from the activity conducted in breach of this rule, and
- Mandatory revocation of the Class II licenses.

The implementation of this new regulation presents a set of challenges for the Class II license holder community, particularly for international operators who navigate both the Romanian market and foreign markets. To ensure a comprehensive understanding, let's delve into the specific concerns arising from this regulation.

(i) Who Gets Caught in the Crossfire?

Pursuant to the law, the following entities qualify as technical providers for the gambling industry requiring a Class II technical licenses: (i) platform management and hosting services providers; (ii) software supply services providers; (iii) suppliers of other gambling means (including the entities which provide maintenance and repair services); (iv) payment services processors; (v) affiliates; (vi) live studio providers; (vii) auditors, certifiers and certification bodies.

The law says that all Class II license holders supporting gambling operators need to play by these rules. But hold on a minute! Should this really apply to all categories of Class II license holders?

Can an affiliate, a live studio supplier or even a payment services provider tell if a foreign operator is whispering sweet gambling options to Romanian players? Seems a bit of a stretch.

(ii) Who's the Ringmaster in this Online Circus?

The online gambling world is a tangled web, filled with all sorts of service providers – platform managers, software suppliers, game aggregators, even auditors. The question is, who's responsible for making sure everyone follows these new rules? Just a few, or the entire cast of characters?

(iii) Waiting for the Green Light

The Technical Measure Mystery

The legislation outlines the necessity for technical measures to prevent access. However, the official list of such measures from the National Office for Gambling (ONJN) remains pending. This lack of clarity creates uncertainty for Class II technical suppliers, whose diverse areas of expertise make a unified understanding of "appropriate" technical measures particularly challenging.

(iv) Proportionality Police

Are Punishments Fair?

Finally, a critical consideration concerns the associated penalties for non-compliance with these regulations. We must evaluate whether the proposed sanctions strike an appropriate balance between fairness and deterrence. Furthermore, it is essential to determine if the proposed shift in liability, placing a greater burden on suppliers who may have limited control over gambling operators' activities, is a just and proportionate measure. Let's hope the ONJN order detailing the list of technical measures will shed some light on the matter, including who (reasonably) should be responsible for the implementation of such measures.

Until then, the Class II license holders working both for Romanian licensed entities and foreign gambling operators must address this matter with their clients (i.e. gambling operators). Based on the services they provide, they must assess whether they may have the information whether the non-licensed gambling platforms may offer the gambling content to Romanian players and implement some ad hoc measures, such as: (i) contractual commitments with the gambling operators that they do not offer the gambling content to the Romanian players unless they have the required licenses issued by the ONJN and (ii) where possible (e.g. platform management and hosting providers) implement some technical measures aimed at preventing the access thereto by the Romanian players (e.g. geo-blocking of the IP addresses).

B.2. New rules on joint operation of gambling activities

Exception to single-operator rule: Law No. 107/2024 has introduced an additional exception to the general rule that gambling is operated directly by a single Class I licensed operator. The law now provides that the gambling can be operated jointly by two or more companies holding Class I licenses and/or Class II licenses, subject to these entities entering a contractual relationship covering the joint operation of the gambling operations.

There seems to be a bit of a snag in the wording of the law. A literal reading could support the interpretation that companies with only Class II licenses (technical support licenses) could also jointly operate gambling games.

This new provision seems to contradict the general principle that only

entities with special gambling licenses and authorizations can run the gambling games, potentially opening a loophole. We expect the ONJN to clarify this ambiguity to avoid any confusion for gambling industry.

Categories of allowed joint operation activities: Gambling activities that can be subject to the joint operation should cover at least one activity specific to the operation of gambling activity, consisting of operating gambling equipment, collecting, and recording bets, and/or paying and recording winnings. Other such activities are to be established by order of the President of the ONJN within 90 days of the entry into force of Law No. 107/2024.

Exclusive interaction with qualified personnel: Also, the law provides that the interaction with the gambling client can only be carried out through the qualified staff employed by the gambling operator or of an affiliate entity of the gambling operator.

Sanctions for the violation of the above-mentioned rules:

- administrative fine from RON 150,000 (approx. EUR 30,000) to RON 200,000 (approx. EUR 40,000) and
- seizure of the proceeds/income obtained from the illicit activity.

B.3. Tighter Restrictions on Outdoor Advertising

As you may know, Government Emergency Ordinance No. 82/2023 established a limit of 35 square meters for outdoor gambling advertising. Now, Law No. 107/2024 takes things a step further.

This law clarifies that the 35 sqm limit applies not only to gambling advertisements themselves, but also to:

- Outdoor advertising promoting websites hosting gambling platforms; and
- General branding that uses trademarks associated with a gambling operator.

Sanctions for the violation of the above-mentioned rules:

- Administrative fine from RON 50,000 (approx. EUR 10,000) to RON 100,000 (approx. EUR 20,000) and
- The violation may also trigger the revocation of the organiser's gambling licenses

B.4. Ban of land-based slot machines in small towns/villages

Law No. 107/2024 prohibits the installation of slot machines in locations situated within administrative-territorial units where the population falls below 15,000 inhabitants.

To obtain new authorisation and to maintain the authorisations currently in force for the operation of land-based slot machines, the gambling operators must obtain and submit with the ONJN the evidence from the relevant town halls that the administrative-territorial units where they wish to operate slot machines have above 15,000 inhabitants.

B.5. New reporting obligations for the entire gambling industry

The final part comes with a head-scratcher too. Law No. 107/2024 throws a new hoop for licensees to jump through. Class I and Class II license holders must now electronically send the ONJN details like their name, address, and locations of gambling activities. This supposedly feeds into a public register held by ONJN.

Much of this information likely already resides with the ONJN as part of the licensing process. Furthermore, the law provides no clear timeframe for submitting this data, and it's unclear how this relates to the existing 5-day notification period for changes to licensing files.

So, is this a genuine effort towards transparency, or just creating unnecessary busywork for licensees? Only time will tell. One thing's for sure: violating this new rule comes with a hefty fine of RON 100,000 to RON 150,000 (approx. EUR 20,000 to EUR 30,000).

To avoid potential sanctions, we recommend submitting first time the required information to the ONJN the latest the first day Law No. 107/2024 becomes enforceable. Also, for the future, at least until the procedure is clarified by the ONJN, we recommend to send any updated information immediately upon the relevant changes become effective.

