

Online Gambling Law Malta

The recent detainment and release of Bwin.party co-chief executive Norbert Teufelberger by Belgian police highlights the discrepancies between European Union trade agreements and national laws enacted by some EU member states. To explore the issues surrounding gambling law further, *Lawyer Monthly* speaks to Dr Malcolm Falzon, Partner at leading Maltese law firm, Camilleri Preziosi.

Can you give me an overview of the legalities of the online gambling industry in your country at the moment?

The online gambling industry in Malta is regulated by the Lotteries and Other Games Act and, more specifically, the Remote Gaming Regulations (the 'RG Regulations'), originally introduced in 2004 and a first for Europe. The Lotteries and Gaming Authority (the 'LGA') is the single regulatory body responsible for the supervision of all gaming activities in Malta including but not limited to remote gaming.

Regulation 3 of the RG Regulations lays down the licensing requirement for any entity seeking to operate or promote or sell or abet remote gaming in or from Malta. Such licence need not necessarily be issued by the LGA but could potentially be an equivalent authorisation issued by the government or competent authority of an EEA Member State, or any other jurisdiction approved by the LGA. This expression of mutual recognition of licences highlights the drive to liberalise the gaming market and facilitate the gaming operations offered by foreign-based providers within the territory albeit to an extent limited by the fact that licensed operators must necessarily be a body corporate established in Malta in terms of domestic company law. The RG Regulations were amended by Legal Notice 90 of 2011, which introduced, inter alia, an important proviso to Regulation 3 empowering the LGA to impose proportionate requirements and conditions, which comply with EU law, as it may deem necessary. All licences are issued for a five-year period and are renewable subject to continuous compliance by the licensee with the relevant regulations and directives issued by the LGA.

Players wishing to participate in an authorised game conducted by the licensee must necessarily be registered and licensees are bound

to maintain a secure online list of all registered players. Player protection is a top priority for the local regulator. The safeguarding of vulnerable player groups is given particular attention, with various measures in place including the blanket prohibition against registration of minors and an obligation to advertise remote gaming services responsibly.

The Second Schedule of the RG Regulations lays down the application and licence fees payable by online gaming operators. In terms of the Fourth Schedule to the RG Regulations, licensees are also subject to gaming tax, calculated depending on the license class held though subject to the maximum cap of €466,000 payable by one licensee in respect of any one remote gaming licence per annum.

Although the global nature of the online market has created vast opportunities, it raises even more challenges for companies. What are the main challenges?

In my view the major obstacle faced by operators is the navigation of the heterogeneous and as yet unpredictable nature of the online gambling regulatory framework across Europe and indeed the rest of the world. This aspect is discussed in more detail in Question 7, but suffice to say at this stage that the uncertainty created by the current state of affairs, compounded with the cost and complexity of compliance with diverse jurisdiction-specific license application requirements, pose a key challenge to multinational operations.

A natural consequence of the globalisation of the market is increased competition both domestically and internationally. With competition comes the need to persistently innovate and diversify the product range on offer, which in an industry experiencing constant technological development entails investment in

R&D, with the obvious costs and use of allocation of resources this requires.

Companies operating across borders expose themselves to higher levels of gambling fraud. With particular reference to the risks posed by identity theft, operators face difficulties in identifying their clients and verifying and authenticating the information provided. As in any other industry where online products and services are offered, cybercrime remains a real threat to be contended with.

What are the key challenges operators are facing in Europe relating to discrepancies in legal frameworks?

As highlighted in the European Commission's Summary of Responses to the 2011 Green Paper on online gambling in the Internal Market¹, the field of online gambling profiles in Europe is characterised by three main models of national legal frameworks: (i) the complete prohibition of remote gambling services; (ii) controlled monopolies and (iii) licensed operators providing services within a regulated market. In addition, within each of these classes, there are inconsistencies in the creation and implementation of such frameworks from one jurisdiction to another. Overcoming the difficulties caused by the fragmented regulatory backdrop will require a concerted effort by the European Commission and member states alike. To this end, the European Commission followed up on its 2011 Green Paper with its two-year action plan, seeking to identify and consequently target the public policy challenges faced by member states and ultimately determine how the differing national regulatory profiles could be reconciled within a comprehensive European structure in the pursuit of compliance with European law and its underlying principles and freedoms.

In addition to the uncertainty and lack of consistency inherent in the above, operators are also faced with increasing compliance costs, the alleviation of which is one of the key drivers for a push towards initiatives such as cross-border regulatory relief and a reconsideration of liquidity requirements taking into account the demographic and economic context within which the market and its players operate.

What do you think the future holds for the gambling industry in your country?

The Maltese Government and the LGA have recognised the need for Malta to foster the competitive and business-oriented environment for operators which the country already has to offer. During the LGA's tenth year anniversary conference, held on 11 December 2012, a number of proposed initiatives currently in the pipeline were discussed, including the adoption

of a regulatory framework for online skill with prize (which regulation would constitute a world first) aimed at giving assurance that such games are fair, a pilot regulatory approach to the hosting of gaming systems in cloud environments, and the setting up of a fund for the promotion of responsible gaming intent on addressing and delving deeper into the study of problem gambling.

Sound regulation which gives operators and investors certainty in an otherwise increasingly convoluted market – an approach to regulation which is widely recognised as being pragmatic and predictable – the maturity, credibility and approachability of the local regulator – an increased drive to grow the software development segment in Malta through the use of its highly specialised IT workforce – the absence of infringement proceedings by the European Commission against Malta – the constant efforts in keeping up with technological innovation these are amongst the more important considerations on the basis of which my outlook on the future of the online gambling industry in Malta remains positive, notwithstanding the challenges. **LM**

Contact Details:



Malcolm Falzon
Email: malcolm.falzon@camilleripreziosi.com
Tel: (+356) 2123 8989

Dr Malcolm Falzon forms part of the firm's Corporate & Finance group, with responsibility for engagements in the remote and land-based gaming sector. He holds a LL.D from the University of Malta and a LL.M (Corporate and Commercial Law) from University College London. Camilleri Preziosi, which assists both online and landbased gambling operators on operational, regulatory, corporate and dispute resolution matters, is a leading Maltese law firm with a commitment to deliver an efficient service to clients by combining technical excellence with a solution-driven approach to the practice of law, taking a multi-disciplinary integrated approach to its practice.

CAMILLERI PREZIOSI

ADVOCATES

¹ Green paper on on-line gambling in the Internal Market (COM(2011) 128 final)

² European Commission, 'Towards a comprehensive European framework for online gambling' (COM(2012) 596 final)