INSTITUTE FOR GAMBLING REGULATION

NEWSLETTER

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Although the second month of the year is nicknamed "dry", it certainly did not live up to its nickname in terms of news, events and interesting information. On the next few pages, we provide a detailed overview of the most interesting and useful information of the past month.

EVENTS IN THE CZECH REPUBLIC

MINISTRY OF FINANCE DID THEIR BEST AND ISSUED FOUR NEW STATEMENTS

After a long time, the Ministry of Finance (MoF) issued several new interpretative statements. These statements provide information on how the Ministry and, consequently, the Customs Administration will proceed in the areas. On the other hand, as confirmed by the Ministry itself in the text of the statements, only the court in specific cases has jurisdiction over the binding interpretation of legal regulations. The statements issued are as follows:

- **Information on the change in the definition of net loss and the definition of identification data as a result of the amendment to the Gambling Act**
- **The matter of issuing follow-up basic licences and licences for the placement of gambling premises**
- **The procedure for bettors to claim unpaid winnings**
- **The issue of paying out the winnings in the case of gambling games with an established user account**

The Institute always analyses statements issued and prepares for its members a summary of their main conclusions. Here you can read the conclusions of the statement on the issuance of follow-up licences, where we consider the requirement of "double" deposit (deposit for "old" licence and deposit for "new" licence) or the change in determining the deferred effect of a ruling to be the most important information. We are currently working on a summary of the last two statements that Institute members will receive in the coming days. They are being prepared at the time of preparation of this newsletter.

COURTS CONTINUE TO RULE ON THE (UN)CONSTITUTIONITY OF THE PROVISIONS MADE

In mid-February, the Constitutional Court (CC) ruled on the **unconstitutionality of a government resolution requesting the closure of certain retail businesses**, when it annulled the resolution in question as part of the closure of these businesses (you can find the ruling here) due to its insufficient legitimacy. The CC stated: *"…even in proceedings before the Constitutional Court, where a specific crisis measure is under review, the government is unable or unwilling to give any relevant and concrete reasons for why the ban is necessary, why less strict interference with fundamental rights cannot be enough, and what the rationality of stated exceptions is."* The Constitutional complaint was filed by 63 senators and is not their first nor last complaint. Currently, the CC is ruling on their complaint about the unconstitutionality of the currently valid state of emergency, which was declared by the government despite the disagreement of the Chamber of Deputies.

The Supreme Administrative Court (SAC) has recently ruled on a decision of the Municipal Court in Prague (MC in Prague), issued last year, by which this court annulled the then measure of the Minister of Health, because **according to the court, such a fundamental restriction of business activity should have been regulated by the government, not by the Minister of Health**. This was the situation at the time, when the government was afraid of making provisions under the Crisis Act, which directly regulates damages, and the prohibiting provisions began to be made under the Public Health Protection Act by the Minister of Health. **However, the SAC annulled part of this MC Prague ruling** as it did not agree with its conclusion that *measures representing a more extensive restriction of rights can only be issued by the government through crisis measures, because the above does not follow from the legal text*. The SAC could not comment on the legality of these measures but provided important guidelines according to which the courts should assess these measures in the future (assess especially the scope of the Ministry's authorization and the adequacy of these prohibitions and restrictions). You can find the ruling on the SAC website here.

CLAIMS FOR DAMAGES SHOULD BE ADDRESSED BY THE GOVERNMENT

According to available information, the Ministry of the Interior is rejecting claims for damages claimed by affected entrepreneurs during the closure of their establishments, but the Minister of Justice informed that the **government should discuss a systemic offer of compensation for coronavirus measures**. The reasons for the action of the Ministry of the Interior are based on the opinion of some lawyers that, according to the Crisis Act, damages are compensated on the principle of the so-called individual sacrifice, i.e., those damages caused by individuals for forced individual sacrifice of their cause for the benefit of society, not those caused by the so-called normative act or a government resolution. However, most of the professional public does not share this opinion, because they consider it to be purely purposeful, not supported by any legal provisions and consider it *another attempt by the government to get rid of its responsibility for the damage caused by its measures*. It will be interesting to see how the judiciary responds to the current attempt. However, the judge emeritus of the Central Committee, Stanislav Balík, has already made it known that the government should be supportive of negotiations and compensation for damages and proceed constructively. *"If every businessman filed a lawsuit, the justice system would collapse,"* he said.

JAN ŘEHOLA PARTICIPATED IN A ROUND TABLE DISCUSSION ON REGULATION IN PRAGUE

Following its study on the controversial regulation of gambling in the capital city of Prague and the possible shift of players from the land-based to the online environment, the Centre for Economic and Market Analysis (CETA) organized an open discussion with the representatives of the Prague municipality (Hana Kordová Marvanová, Patrik Nacher), the professional addictology public (František Trantina, Ivan Douda), CETA (Aleš Rod, Jakub Žofčák) and representatives of the gambling industry (Jan Řehola and Stanislav Brunclík).

The Prague Councillor for Legislation Hana Kordová Marvanová (STAN) presented the main reasons that led her to adopt the regulation in its current form. That is, in one that prohibits the operation of technical games throughout the city. She herself is not happy with the wording of the decree and literally stated that *"she is not a fanatical supporter of zero tolerance for gambling. She also does not mind the luxury casinos of the "Bond" films type, where live games with croupiers take place."* However, she sees the biggest problem in the illogicality of the current act on gambling, which supports the creation of the so-called quasi-casinos. **According to the councillor, the quasi-casinos and the possibility of high fines for restricting competition are the key reasons for why Pra-**

gue adopted the new generally binding decree.

Jan Řehola, who represented the interests of IFGR members in this discussion, stated that Czech municipalities got into an unenviable position, when in preparing decrees, they must balance rules originating from competition law, European law, but also the decision-making practice of the Constitutional Court. *"It's difficult to set the rules, but it's not impossible. If we look at the decision-making practice of the Office for the Protection of Competition, we will find that competition must not be distorted, but also excluded. The criteria must be predefined and systemic. 98% of municipalities managed to get the regulation into a narrow, strictly regulated framework, and in a way other than absolute ban.* ***We must remember that the ban is not a regulation – it is fixed limits and check of their observance."***

Deputy Patrik Nacher and mayor of the Prague 13 district David Vodrážka agreed with this opinion, drawing attention to the trend that very often occurs in municipalities and cities whose representatives have settled on the above-mentioned blanket ban. Not only do they have to deal with a significant loss of income, but new gambling premises of large casinos are being established beyond the borders of such local governments, and Prague is no exception.

The conclusion they draw from the whole discussion is that it is always necessary to have an open dialogue with industry when preparing meaningful regulation.

COMPENSATION PROGRAMS EXTENDED

COVID – Gastro – Closed Establishments Program

The Ministry of Industry and Trade has extended the deadline for submitting applications to the COVID - Gastro - Closed Establishments Program, that is from the original deadline of 1 March 2021 until 15 March 2021 until 16:00. Simultaneously with this extension, the limit for the provided support increased, that is from the original EUR 800,000 to the already declared EUR 1.8 million. Further details related to this program should be unchanged; more details can be found at this link.

Antivirus Program

The Antivirus Program was also extended, that is to 30 April 2021. In connection with this extension, the Antivirus Program also had an increase in the Temporary Framework limit to EUR 1.8 million. This increase will be applied to the fee for the month of February 2021 and the following months, i.e., for the first time for the statement submitted in March of this year. Details about the changes made can be found here.

COVID RENT 3 Program

MIT Deputy Tauberová, with whom we communicated extensively about the re-notification of the COVID RENT 3 Program, informed that the European Commission approved the re-notification, which increased the subsidy limit under this program to EUR 1.8 million. Newly, this program can also be used by operators who have already drawn the original limit of EUR 800,000. Applications for drawing on the program can be submitted until 8 April 2021. You can find more about the conditions of the program here.

BANKING IDENTITY WILL BE UNIFIED IN THE DEADLINE, BUT THE COMPANIES WILL PAY EXTRA MONEY FOR THE ACTIVATION

In mid-February 2021, the banks reached an agreement that will lead to the creation of a unified environment for the identity verification on the Czech market.

Banks Air Bank, Equa bank, Fio banka, mBank, MONETA Money Bank, Raiffeisenbank and UniCredit Bank have decided to cooperate in the unification of the banking identity standard with company Bankovní identita, a.s. (current shareholders - Česká spořitelna, ČSOB, Komerční banka).

The unified identity verification environment, which will operate under the name BankID, is great news for all interested parties, including gambling operators, who will be able to use it to verify the identity of players. Al-

though the law allows the construction of an unlimited number of such aggregators (solutions), or each bank can provide the bank identity verification service separately, such a solution would not only increase the costs of private online service providers, as they would be forced to implement several different technical solutions, but would also confuse the public, i.e., banking identity users who would find it difficult to understand why they can only use services from some private online service providers with their banking identity.

As for the **launch** date of **BankID for private companies, it is still scheduled for June of this year**. On the contrary, the worse news is that companies will pay extra money for activating the service. A revised price list was published a few days ago. Newly, as an activation fee, the company will pay CZK 30,000 as opposed to the original CZK 18,000. Filip Haering, CEO of Banking Identity, explained this by saying that *"the scope of the work involved will be greater than anticipated."*

GOVERNMENT REQUESTS THAT COMPANIES TEST THEIR EMPLOYEES

On the first day of March, a regular meeting of the government took place, the central point of which was the discussion of the strategy for testing employees in companies. In the end, the government agreed that mandatory testing in companies would be carried out in two phases, based on the number of employees.

- For companies with more than 250 employees, testing is mandatory from 3 March 2021 and all employees must get the first tests by 12 March 2021 at the latest.
- For companies with 50 – 249 employees, testing is mandatory from 5 March 2021 and all employees must be tested by 15 March 2021 at the latest. The testing must then be repeated regularly at least once a week.

This obligation affects employees in **operating establishments or the place of business of the company**, while employees in the establishments add up to the total limit.

On the other hand, those who are **not affected** by the testing **are employees working from home or those who have had laboratory-confirmed Covid-19** with a positive result under 90 days and do not show symptoms of the disease.

How can companies test employees? Either through an occupational physician, testing centres, or thanks to a new method - self-tests. With these, the test can be performed by a non-medical person or employee themselves. The company will get a benefit retrospectively from the public health insurance in the amount of CZK 60 per test, and, therefore, 4 tests per month will be reimbursed per employee.

Most companies and unions consider the regular testing of employees to be an effective tool to prevent the spread of the disease in companies but point out the lack of self-tests in the market. This may be due to the fact that companies cannot purchase self-tests just from anyone, but must follow the updated list of sellers approved by the Ministry of Health (MoH), which can be found on the MoH website here.

The Ministry of Health does not agree with this opinion and claims that there are enough self-tests on the Czech market. In addition, it states that this is an additional testing and that testing in the antigenic centres, where the check-up is fully covered by public health insurance, is preferred.

What is the risk of non-compliance with the obligation to test? Minister Alena Schillerová commented in this regard, stating that a company may repeatedly face a fine of up to CZK 500,000 or a ban on activities and an employee may face a fine of up to CZK 50,000.

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TURBULENT EVENTS AROUND STATE OF EMERGENCY IN THE PAST MONTH

Although the government repeatedly explicitly stated that the state of emergency is necessary during the existing epidemiological situation, it was not able to secure the necessary support for it in the Chamber of Deputies (CHoD). After experiences from the past in negotiating with the government, the Communist Party proceeded together with other opposition parties and did not support the extension of the state of emergency. The government was therefore exposed to strong pressure to deal with the situation, as the state of emergency was approaching within a few days and not many alternatives remained. The government came up with a solution that it will be the country representatives who will uniformly request the declaration of a new state of emergency. After several days of negotiations and repeated postponement of the outcomes, country representatives informed on Sunday, 14 February, that they will indeed ask the government to declare the state of emergency for 14 days. One of the conditions of the representatives as well as of the opposition was that a pandemic act ignored by the government for a month would be adopted, which would adequately address the pandemic situation without the need to declare the state of emergency.

The government, due to the circumstances, backed up and negotiations with the opposition on the wording of the Pandemic Act commenced and even came to an agreement. The Act allows the Ministry of Health or hygienic stations to close shops, services, various operations, but also leisure activities and public and private events, both across the board and regionally. In addition, they can also order the use of protective equipment or issue an order to test employees. The injured parties will then be able to claim damages from the Ministry of Finance but will have to prove them. State aid to mitigate the effects of the epidemic or restrictions is to be deducted from the compensation and the court will give a ruling on any disputes.

Both sides (the government and the opposition) communicated that it was a compromise. The bill passed the CHoD easily, the state of emergency was even made shorter, that is until Saturday, 27 February, so that the Pandemic Act could continue smoothly from the end of February. Only the response from the Senate was awaited; although they had truly little time to discuss the Act, they announced in advance that some of its parts would be amended.

That is exactly what happened. Contrary to the original proposal, the Senate added that the **restriction of trade or services will be linked to the state of pandemic emergency**, over which the CHoD will have control and which will be able to terminate it at any time. Furthermore, the **measures made by the regional hygienic stations will be subject to prior approval by the government**, as is the case with the Ministry of Health, which was missing in the original proposal. The Senate returned the Act to the Chamber with these changes.

The Chamber supported the amendment proposed by the Senate on Friday, 26 February, and the Pandemic Act was therefore approved.

What the new Pandemic Act does not allow, however, is to restrict public gatherings or movement, which is, of course, exactly what the government was striving for in terms of deteriorating numbers.

Therefore, after an extraordinary meeting on Friday, 26 February, the government informed in the evening that they **declared a new state of emergency for 30 days, i.e., until 28.3**. The reason for its declaration was a bad epidemic situation caused mainly by the rapid spread of the so-called British coronavirus mutation. At the same time, the government tightened some crisis measures (e.g., restrictions on movement) and re-declared all that had been in place in the past.

NEWS FROM ABROAD

ARTIFICIAL INTELLIGENCE HELPS TO IDENTIFY PROBLEM PLAYERS

During the closure of the economy, British interest in online betting has increased, which has attracted the attention of regulators and legislators. They are considering tough measures in this regard, such as advertising bans and online betting limits. Operators are also under pressure from activists who claim that the industry is harming people and benefiting from its most addictive products.

British operators such as Entain PLC are trying to respond to this wave of possible restrictions. The company has recently announced that they are working on a program that would identify problem players. Entain PLC, which owns brands such as Ladbrokes, works with data science and psychology experts to uncover irregular online gaming behaviour. This will allow the company to turn off riskier features or connect players to customer service before their bets could become harmful to them. According to information, the Advanced Protection & Care or ARC system should be launched in the Great Britain in the middle of the year.

"This product is a kind of self-regulation in every way, designed to help a player enjoy the experience of the game without fear," said Sandeep Tiku, Chief Operating Officer. *"It's almost like driving a car with a very sophisticated braking system."*

Tiku said that ARC will break down customer profiles and determine when an intervention will be needed. He hopes that this idea, and therefore the whole system, will eventually be shared in some form with other companies. Entain maintains the launch schedule as it has already received materials from academics in the GB and Germany. Even after the launch, developers and data scientists will continue to work on ARC, but according to Tiku, this does not prevent part of the company from working to increase the appeal of games.

WILL THE OPENING OF THE NETHERLANDS ONLINE MARKET MEET EXPECTATIONS?

The Dutch online gambling market is slowly preparing to open. The new Gambling Act will enter into force on 1 April 2021, when operators will be able to apply for the licence. The market itself will open six months later.

Expectations from the new regulation are high. In mid-February, the Netherlands Gambling Authority (KSA) presented a report outlining prospects and targets for 2024. According to the report, the Dutch online gambling market is expected to reach € 800 million in 2024, with 9 out of 10 players, according to the regulator's estimates, expected to use legal sites. An equally ambitious goal is that 80% of all bets will be placed on legal websites.

However, there are already concerns that these goals will not be achieved within 3 years. This is mainly due to the high tax rate, which is 29% of GGR, but also to the mindset of some gamblers. Although the new regulation is intended to help protect players and shift them to legal websites, there is still a large group of big players that do not address the question of whether the website operator has the appropriate licence.

However, KSA now faces other challenges: successfully handle the influx of licence applications and deal with the remaining illegal operators.

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FRENCH REGULATOR SEES THE FUTURE OF REGULATION IN DIALOGUE WITH INDUSTRY AND PLAYERS

Founded in June last year, the French National Gambling Authority (ANJ) is the first French regulatory authority to oversee all types of gambling games, including those operated online.

At the end of last year, the competencies of the ANJ were extended to oversee the national gambling exclusion program, which had until then been handled by the local Ministry of the Interior. This change was noticed mainly by the players who wanted to be voluntarily excluded, as since, they no longer must visit a police station for the reason of exclusion but can do so online.

A few days ago, ANJ presented its five-part strategy for the years 2021 to 2023. Among the main goals set are:

- ensuring that gambling remains a sustainable and at the same time safe leisure activity for players.
- protection of minors and 1.4 million players who are considered problem.
- stepping up efforts to combat and block illegal online gambling.
- support of research and "innovation" in gambling and work with other European regulators to combat money laundering and illegal gambling.

ANJ is fully aware that the **set goals cannot be achieved through conflict negotiations with the industry. Therefore, following the example of regulators made aware in this way, the authority wants to involve all interested parties** (including players) **in the whole process** and to establish a *"continuous dialogue"* that will help in *"building an innovative and pragmatic compliance policy"*.

LIST OF COUNTRIES WHERE LOOT BOXES ARE BANNED CAN BE EXPANDED SOON

Developments in the world of video games in recent years have led to the emergence of new business models, which in some cases have come significantly closer to gambling games. These are mainly loot boxes, which allow players to buy random digital items that have value in the game for real money.

It is the elements we know from gambling games that have led countries such as Belgium or the Netherlands to ban them and punish the big gaming giants.

Now, the list of countries where loot boxes are banned could be expanded. This is particularly the case in Spain, which has opened a public debate on this issue. Now, no conclusions are known, so we can only speculate. However, if we look at the restrictions adopted last year in, for example, the advertising and marketing of gambling, we can anticipate that loot boxes will likely be banned here as well.

Another country where loot boxes could be banned is the Great Britain. Although the UK Gambling Commission has always maintained that loot boxes do not fall within the definition of gambling, it is known that loot boxes are one of the areas of the ongoing revision of the UK Gambling Act.

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