

ANNEX MEMBER STATES' INFRINGEMENTS OVERVIEW

BELGIUM

On 20 November 2013, the European Commission (EC) [opened an infringement procedure against Belgium](#), and expressed its concerns about the compatibility of national gambling legislation with EU law ([IP 13/1101](#)) by means of a Letter of Formal Notice (LFN), the first escalation step within the formal infringement proceedings pursuant to Art. 258 of the Treaty on the Functioning of the European Union (TFEU). The EC had two main concerns as regards the Belgian gambling legislation. The first relates to the **discrimination between offline and online gambling operators**, which restricts the possibility to obtain a licence for online services only to operators already possessing a Belgian licence for offline gambling, thus prohibiting all purely online operators from entering the Belgian market. At the same time, the maximum number of each category of offline licences is limited and such licenses have already been granted to Belgium-based companies or persons, rendering it **impossible for non-Belgium based operators to enter the Belgian online gambling market**. Moreover, the Belgian gambling framework requests the operators to **locate their servers and technical equipment in Belgium**. These establishment requirements clearly and evidently violate the freedom to provide services as well as the freedom of establishment by imposing multiple and serious requirements, including the requirement of setting up local presence, upon operators located in other Member States and thereby (indirectly) discriminating against the latter. In this regard, the Belgian legislation is in clear violation of fundamental principles of the Internal Market.

The second concern is, in general, the lack of transparency of the Belgian legal framework, and, in particular, the opaqueness with which the National Lottery grants betting licences according to the Royal Decrees. **The dialogues that the EC has held with the country have produced no result and the Belgian legislative framework remains without having changed the issues criticized by the EC.**

CZECH REPUBLIC

The [EC opened an infringement proceeding and sent a Letter of Formal Notice in 2013](#) to the Czech Government inquiring about the establishment requirements present in the Czech legislation ([IP 13/1101](#)), which required online gambling operators, *inter alia*, to have a local entity and conduct customer verification in brick-and-mortar establishments, which are clear violations of EU law. In practice, no international operators without a physical presence in the Czech Republic obtained a Czech license but six local operators were granted online gambling licenses.

Despite the adoption of a new gambling legislation that was intended to rectify certain issues criticized by the EC in the past and was only introduced given the heavy criticism that the EC had pointed towards the Czech governments in the past, **several substantial issues related**

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to the implementation and enforcement of the current Czech gambling legislation remain. In 2017, complaints were submitted due to the legal uncertainty and numerous administrative delays in the process of applying for a license, making it virtually impossible to do so. In fact, to date only one foreign operator has been granted a license, while numerous local operators hold online gambling licenses. The Czech authorities have consistently communicated their intention to have an open dialogue with operators but have ultimately changed procedures in the course of the license application process, making it completely non-transparent and unpredictable. Further, **the Czech gambling framework has created significant discrimination between incumbent local operators and new licensees by granting the former a grace period but not the latter, in addition to the unique requirement to identify online customers face-to-face in land-based establishments, which creates an obvious advantage over those operators aiming at targeting the Czech market from other EU Member States.**

CYPRUS

Discriminatory provisions targeting foreign operators in the Cypriot gambling law already caught the EC's attention back in 2013. Concerns were also raised by provisions requiring online gambling operators to appoint a local representative, to maintain IT equipment and a branch office on Cypriot territory, all together constituting a requirement of local establishment in breach of fundamental principles of the EU Internal Market. In that regard, Cyprus, whose licensed offer is restricted to betting services, [received a Letter of Formal Notice from the EC](#) in 2013 ([IP 13/1101](#)), and was required to amend its legislation. **Even though Cyprus has notified certain amendments to its gambling legislation, unlawful provisions have, *de facto*, been maintained.**

GERMANY

Following a number of national court rulings as well as judgments issued by the Court of Justice of the European Union (CJEU) that pointed to the non-compliance of the German legislative framework on gambling with EU law, Germany adopted its current legislation in 2012. This new legislation, known as **the Amended Interstate Treaty on Gambling** (*Glücksspieländerungsstaatsvertrag*), aimed, in general, at preserving the national lotteries monopoly, maintaining a total ban on online casinos and poker while at the same time introducing a limited number of licenses for sports betting for a limited and "experimental" period of seven years (expiring in mid-2019). However, several courts in Germany, as well as [the CJEU in its ruling for the *Ince* case of February 2016](#)¹, have raised serious doubts on, and in some cases, ruled against the compatibility with EU law of the Interstate Treaty. In addition,

¹ CJEU case C-336/14 *Sebat Ince*, ruling of 4 February 2016.

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the sports betting licensing procedure that commenced back in 2012 has meanwhile been halted by the German courts due to its material and procedural shortcomings, including lacking transparency, and is widely considered to have failed since, five years after its entry-into-force, not a single license has been granted.

The EC had already, during the initial notification procedure in 2011, as well as, the subsequent PILOT procedure in 2015 (the last step prior to commencing formal infringement procedures), pointed to: the **lack of transparency of the highly restrictive licensing system for sports betting**; the **lack of any justification for the prohibition of online poker and casino in particular**, considering that the Interstate Treaty foresees – at least in theory – licensing of online sports betting, online horse race betting licenses have been granted, the lottery operators offer a considerable number of products via the internet and the broad availability of land-based casinos and particularly land-based slot machine venues throughout Germany; and, resulting from that, the **overall lack of consistency of the German regulatory framework questioning the necessity of the limitation of the number of licenses for achieving public policy goals**. The EC held the appropriateness and proportionality of the German legislation to be at the very least doubtful with regard to the public policy objectives that must guide any national gambling and betting legislation. **To date, despite a two-year grace period granted by the EC, Germany has failed to implement a functioning and consistent framework for gambling and betting and there is currently no rectification of the situation on the horizon.**

Yet, the German federal states are aware of the EC being highly critical with regard to the current legislative and regulatory situation in Germany. More and more German federal states are openly and publicly calling for a substantial reform of German gambling legislation, including the regulation of online casino and poker, which is fuelled by the EC's constant criticism of the current inconsistencies within German legislation and primarily results from the prohibition of online casino and poker in the current Interstate Treaty.

GREECE

In 2013, Greece notified a draft legislative regulation amending the Law on the Regulation of the Gaming Market. The regulation causes serious concerns as it extends OPAP's monopoly, which the CJEU had already found to be in breach of EU law (C-186/11, *Stanleybet et al*) in the case of online sports betting and online casino games. Moreover, the notification sets out a series of draft regulations, which place prohibitions on unlicensed operators and penalties for conducting unlicensed gambling, while also providing for ISP and PSP blocking measures, and leaving numerous serious breaches of EU law in the Greek gambling legislation which do not ensure an appropriate level of consumer channelling to an attractive regulated offer. **The dialogues that the EC has held with Greece have produced no result.**

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HUNGARY

A new draft legislation was notified to the EC in 2015, intended to keep gambling services under the scope of the Hungarian monopoly, which currently remains applicable. The Act creates ambiguity and legal uncertainty by providing for two different terms, “*license*” and “*concession*”, remaining vague on the details of such a differentiation. The amended legislation contains also various contradictions regarding the tender for concessions and the number of available concessions, while doing nothing to remedy the **numerous serious breaches of EU law in the Hungarian gambling legislation** or to ensure an appropriate level of consumer channelling to an attractive regulated offer. In particular, the Hungarian law allows only land-based Hungarian casinos to offer online casino or partner with a B2B operator for offering casino games via the internet, while, however, all land-based casinos have already launched an online offer or partnered with Hungarian companies servicing the online offer. The Hungarian law therefore makes it **almost impossible for non-Hungarian companies to participate in the market, which constitutes a situation of indirect discrimination on grounds of nationality**. Furthermore, there are strong arguments to believe that the conditions on which the monopoly on certain games has been awarded to Szerencsejáték Zrt (the public monopoly operator) are also in breach of EU law.

In addition, Hungary failed **to notify significant amendments to the Hungarian Gambling Act**, violating the notification requirement as established in Art. 8 of the Directive 98/34/EC (currently Directive (EU) 2015/1535², the "Notification Directive"). It is settled CJEU case law that **measures falling within the scope of the Notification Directive which have not been notified at the draft stage cannot be enforced by the respective Member State**³.

Furthermore, [the recent judgment of the CJEU in the Unibet case in June 2017](#)⁴ confirms that Hungary is still not compliant with EU law and that the dialogues which the EC has held with the country have produced no result. Instead, **the Hungarian authorities have decided to apply harsh enforcement measures on EU-licensed operators, thereby openly denying the application of EU law and, in particular, the principle of supremacy of EU law and non-applicability of sanctions of any nature. Two further court cases against Hungary are currently pending before the CJEU.**

LATVIA

² Directive (EU) 2015/1535 of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society Services, former Directive 98/34/EC.

³ CJEU case C-194/94 *CIA Security*, ruling of 30 April 1996.

⁴ CJEU case C-49/16 *Unibet International Ltd. V Nemzeti Adó- és Vámhivatal Központi Hivatala*, ruling of 22 June 2017.

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Latvia failed to notify its **Electronic Communications Law, which allows the blocking of gambling websites by ISPs**, violating the notification requirement as established in Art. 8 of the Notification Directive. This legislation, currently in force, **obliges online gambling companies operating in the country to place IT equipment in Latvian territory**, a requirement clearly contrary to the freedom to provide services and of establishment. It is settled case law of the CJEU that measures falling within the scope of the Notification Directive which have not been notified at the draft stage cannot be enforced by the respective Member State⁵. This breach of the Notification Directive has not been remedied.

Furthermore, **the Latvian Government adopted in 2014 measures to block the websites of online gambling operators not having a license in Latvia**. The Latvian gambling legislation has not been amended since, even though the EC initiated the PILOT procedure in 2015.

LITHUANIA

Establishment requirements in the Lithuanian legislation brought the [EC to send a Letter of Formal Notice](#) to the Lithuanian Government, launching the infringement procedure in 2013 (IP 13/1101). The requirements to become eligible for an online license included the **obligation to operate in Lithuania by means of a local branch and to maintain land-based facilities and remote gaming equipment (i.e. servers) in Lithuanian territory**, which clearly not in line with EU law as they create **grave restrictions to the freedom of establishment and the freedom to provide services**. The obligation to offer services through a local branch and to operate land-based facilities have been maintained by the Lithuanian Government.

Besides that, the Lithuanian Government adopted, on 5 June 2015, amendments to its gambling legislation in disregard of the Notification Directive (which obliges Member States to notify the EC any draft legislation before its adoption). While the Lithuanian Government notified the drafts to the EC, measures intended to block the provision of online gambling operators' services (ISP and PSP blocking) were also adopted before the aforementioned period elapsed. Therefore, Lithuania is in breach of the obligations contained in Arts. 8 and 9 of the Notification Directive. Furthermore, various provisions of the adopted law, e.g. the requirement to operate offline gambling to be able to operate online gambling.

The **dialogues that the EC has held with the country have produced no result** despite the fact that the EC issued a further Detailed Opinion on proposed amendments, signalling Lithuania's continued non-compliance and disregard for EU law.

⁵ CJEU case C-194/94 *CIA Security*, ruling of 30 April 1996.

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THE NETHERLANDS

The EC initiated an infringement proceeding against the Netherlands in 2006, followed by a Reasoned Opinion in 2008. Restrictions on the provision and advertising of online gambling did not meet the requirements of being necessary, suitable, proportionate and non-discriminatory as required under EU law and consistent CJEU case law to justify such restrictions. In its letter, **the EC stated that the single-license system for online gambling creates a monopoly, which is not compliant with the freedom to provide services** and asked the Dutch government to change its current regulations in a way compatible with EU law, as the Dutch system prevents, in this way, gambling operators licensed in another Member State from offering online gambling in the Netherlands.

Since then, the gambling legislation in the Netherlands has remained unchanged despite the Dutch government's long standing discussions on amendments to their laws and the introduction of a licensing framework. Despite this, **the Netherlands has increasingly enforced this legal framework against online gambling operators via the so-called "prioritization criteria"**, being certain requirements that operators licensed in other Member States needed to adhere to, such as refraining from using the Dutch language or Dutch top level domains (.nl), which, however, have become more stringent over time, including a total ban on advertising to Dutch consumers or targeting in any way the Dutch market, such as displaying Dutch symbols (e.g. windmills or tulips) on the respective offer – all of this notably despite the Dutch legislative framework for online gaming being in breach of EU law. For all these reasons, pursuing the Dutch infringement case would be a very logical next step for the EC.

The non-compliance with EU law is further fuelled by the prohibition on advertising introduced by the Dutch Gaming Authority on remote gambling operators not applying to incumbent operators, which can continue their activities without any limitations, thus constituting an (indirect) discrimination on grounds of nationality. The incumbent operators also express aggressive commercial behaviour in terms of marketing and product expansion in breach of their monopoly role and clearly contrary to the principles set by consistent CJEU case law (CJEU *Markus Stoß et al*, para 103), in particular via those channels that are prohibited for online operators. Therefore, the differential treatment between the online activities of remote operators and the online activities of incumbent operators is clearly discriminatory and provides the latter a competitive advantage, which constitutes a particularly serious concern given the envisaged opening of the Dutch market for international competition. All this is just a part of many serious breaches, which have not been remedied over the past years.

Further, the transitional period provisions and restrictive priority criteria under which remote operators have to operate in the meantime over many years and without any further guarantees or securities, remain and are being continuously tightened by the local regulator,

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which is cause for **serious concern and puts the channelling objective of the draft Dutch legislation at risk**. The lack of tenability of the situation has been confirmed both by CJEU and national court rulings but nothing has changed.⁶

Although the draft law (from 2013) envisages an open licensing system for remote gambling operators with an unlimited number of licenses to be granted by the Dutch Gaming Authority, **the law has still not been adopted**. The situation of maintaining legislation that is in breach of fundamental principles of the EU Internal Market over years has not been remedied despite the dialogues the EC has held with the Dutch authorities and raises concerns on the consistency of the Dutch gambling policy with EU law. **However, it is clear that only due to the EC's continued intervention and criticism of the legislation in place in the Netherlands, the Dutch gambling regime is about to be changed and allow online gaming operators established in other Member States to obtain Dutch licenses in the future.**

POLAND

The [EC issued a Letter of Formal Notice](#) in 2013 regarding the Polish gambling legislative framework criticizing the establishment requirements in Polish law ([IP 13/1101](#)). The legislation concerned at the time has been amended and thus the EC may choose to close the case.

However, in the meantime, the Polish Government has adopted amendments to its online gambling regulations causing **serious concerns regarding their compliance with EU law**: the changes brought by the Polish gambling framework and the granting of licenses, the creation of a state monopoly for the organization of online casino games while maintaining a restrictive framework of sports betting licensing applying a highly prohibitive taxation rate of 12% on turnover, maintaining establishment requirements and also providing for ISP and PSP blocking measures. **Many of the conditions for obtaining a valid Polish license are more burdensome for foreign operators than domestic operators, hence discriminating against operators from other Member States.** The gambling legal framework creates a situation in which online betting operators licensed in another EU Member State cannot *de facto* apply for a national license, as they are obliged to respect various establishment requirements. This is highly critical in light of the objective of channelling the consumer to a truly attractive offer.

Furthermore, it must be noted that the former Polish legislation had prohibited casino offers via the internet in their entirety. Later, the law was changed to subject online casino to the state monopoly. This poses significant question marks as regards the consistency of the legislation that is currently in place, also given the availability of licenses for online sports betting. It is

⁶ Case C-482/99, 3 June 2010, *Sporting Exchange Ltd v. Minister van Justitie* and Case SGR 15/5144, 16 March 2016, *De Lotto*.

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unclear how the Polish government wants to justify the restrictions to the EU market freedoms within the current legislation and why the channelling of customers would be better achieved by a monopoly than by an open licensing system.

In 2017, complaints were submitted to the EC addressing the mentioned violations of EU law. The dialogues that the EC has held with Poland have produced only limited results (in particular, as regards the burdensome establishment requirements which are among the most problematic issues for EU-licensed operators when it comes to making use of their rights under the EU market freedoms), which still make it very difficult for operators established in other Member States from offering their services on the Polish market.

ROMANIA

Romania received [a Letter of Formal Notice from the EC](#) in 2013 **criticizing establishment requirements in its gambling legislation (IP 13/1101)**, as well as the **lack of consistency** in the Romanian law. Concerns were mainly raised by the fact that gambling services could only be offered through entities having a registered office in the Romanian territory, and that its public monopoly covered only low-risk games, which is both illogical and contrary to CJEU case law according to the justification for monopolies that requires the latter to be based on strict public policy objectives (mainly the protection of consumers and the prevention of gambling-related crime). **Romania has since established a (transitional) licensing framework.** This framework has regrettably maintained several establishment requirements, which include the **obligation for online gambling operators to maintain servers, to open and operate local bank accounts, and to appoint authorized representatives in Romanian territory.**

Furthermore, Romania has, at least in three occasions, infringed the Notification Directive by failing to notify the law which amended the general legal framework on gambling in Romania. This law, among other relevant changes, introduces provisions for the collection of retroactive taxes from online gambling operators and has been adopted by the Romanian Parliament in **disregard of the provisions of the Notification Directive.** Additionally, the adopted text makes the licensing requirements, contained in the Methodological Guidelines no. 870 of July 2009 for application of the law approving the Emergency Ordinance, more restrictive in the meaning of Art. 8(1) of the Notification Directive and, therefore, also the latter piece of legislation should have been re-notified. In addition, Romania adopted an emergency decree, introducing new gambling legislation, notified to the EC under TRIS 2014/547/RO, before the end of the three-month standstill period. Therefore, Romania is in breach of the obligations contained in Arts. 8 and 9 of the Notification Directive. It is settled CJEU case law that measures falling within the scope of the Notification Directive which have not been notified at

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the draft stage must not be enforced by the respective Member State⁷. Further, various provisions of the emergency decree, e.g. the establishment requirement, ISP and PSP blocking measures, are clearly not in line with EU law.

The continuation of the case against Romania is warranted by the current and ongoing infringement of EU law and the lack of promise in the proposed amendments to remedy the said non-compliance. **The dialogues that the EC has held with Romania have so far produced no result.**

SLOVAKIA

In 2017, complaints were submitted to the EC regarding the overall non-compliance of the Games of Chance Law with overriding EU law, as it maintains a monopoly on online gaming and establishment requirements enforced by Slovakia in the form of ISP and PSP blocking measures in contravention of EU law, which clearly provides that a national law non-compliant with EU law must not be enforced (see **most recently the *Unibet case***⁸ that also expressly refers to administrative enforcement measures, such as fines and blocking measures, as being in violation of EU law if they are enforced for breach of legislation in violation of higher-ranking EU law). Further, **the provisions of the law related to gambling taxation are ultimately pursuing financial purposes**, which is in clear violation of the case law of the CJEU as to the justification of restrictions.

The dialogues that the EC has held with the country have produced only limited result so far. However, they have led the Slovak Government to consider a reform of its gambling legislation. This is a clear sign that Slovakia has understood that there are areas of non-compliance of its laws with higher-ranking EU law and that the various enforcement measures taken against operators duly licensed within the EU and offering their products to customers located in the Slovak Republic on the basis of the freedom to provide services, must not be applied. However, as long as this is a mere intention, there is still urgent need for action from the perspective of the EC in its role as Guardian of the EU Treaties, as the current Slovak local legal framework on online gaming remains in violation of fundamental EU Internal Market rules.

SLOVENIA

The government of Slovenia has been working during the recent years on the reform of the Slovenian Gambling Act. Whilst, in general, the Slovenian Government seems to aim to reform,

⁷ CJEU case C-194/94 *CIA Security*, ruling of 30 April 1996.

⁸ CJEU case C-49/16 *Unibet International Ltd. V Nemzeti Adó- és Vámhivatal Központi Hivatala*, ruling of 22 June 2017.

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some of the requirements that online gambling operators would be obliged to observe are in obvious breach of EU law and *de facto* serve to protect the local monopoly offer, as is the still applicable current gambling framework in spite of the numerous public consultations and announcements issued by the Slovenian Government. In particular, providers of online gambling services are required to establish local presence and maintain servers in Slovenian territory. Further, the monopolies are allowed to establish partnerships with foreign operators, however, they alone are allowed to decide whether and with whom they are willing to establish such partnerships. Such procedure is **lacking transparency** and furthermore leads to a situation of **indirect discrimination on grounds of nationality** as local operators are much closer to the monopoly operators and hence better placed to enter into the abovementioned partnerships than their competitors from other Member States, who would require a transparent and clear process in order to have the same chances for accessing the Slovenian market. **Such provisions run against the freedom of establishment and freedom to provide services established by the EU Treaties.**

SWEDEN

In November 2013 ([IP 13/1101](#)), the [EC sent two Reasoned Opinions against Sweden](#) for failure to comply with Art. 56 TFEU. The EC's concern was that the Swedish gambling legislation is not applied in a consistent manner. Consequently, in 2014, [the EC decided on referring Sweden to the CJEU](#) due to its persistent failure to address the EC's criticisms and to comply with the provisions of the EU Treaties as regards the gambling sector ([IP 14/1150](#)). The first referral deals with the way that the Swedish exclusive right system for sport betting is organised, deemed inconsistent with the aim of achieving the public policy objectives of preventing problem gambling and criminal activities and lacks the necessary state control. In the second case, the referral to the CJEU is based on restrictions on the provision and promotion of online poker games. Both were never initiated in practice. Yet, the decision to refer was not implemented.

EGBA is aware that – prompted primarily by the ongoing and harsh criticism from the EC – the Swedish Government is taking significant steps towards reforming its gambling legislation in order to ensure compliance with EU law. **EGBA welcomes the preparatory stages of the Government on a new legislation, which should ultimately follow the Danish licensing model.**