

Carolina Meireles

De: Bruno Mourão <bmourao@llorenteycuenca.com>
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Para: Comissão 6ª - CEIOPH XIV
Cc: Maria Eça
Assunto: Pedido de audiência Betting and Gaming Council | Proposta OE 2020
Anexos: 200121_Pedido de Reunião Comissão de Economia.pdf; RGA Reply to SRIJ - Portugal - February 2018.pdf

Sinal. de seguimento: Dar seguimento
Estado do sinalizador: Sinalizado

Excelentíssimos membros da Comissão Parlamentar de Economia, Inovação, Obras Públicas e Habitação,

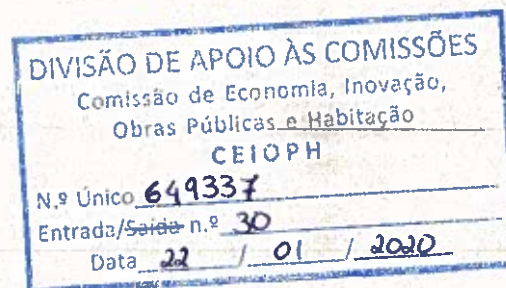
No seguimento da proposta de Orçamento do Estado de 2020 apresentada pelo Governo, que inclui propostas de alteração ao regime do jogo online e ao Imposto Especial sobre o Jogo Online, remetemos uma carta oficial com o mais recente posicionamento do The Betting and Gaming Council sobre o mercado do jogo online em Portugal, em particular relativamente à proposta a ser apresentada à Direção Geral da Concorrência da Comissão Europeia.

Anexamos, também para vosso enquadramento, a proposta entregue ao SRIJ no processo de consulta pública que decorreu no início de 2018.

Teremos toda a disponibilidade para esclarecer algum ponto da carta em anexo, ao mesmo tempo que Pierre Tournier, diretor internacional da organização, reitera a vontade e disponibilidade para se deslocar a Lisboa para uma audiência presencial nas próximas duas semanas, dada a urgência do tema.

Com os melhores cumprimentos,

Bruno Mourão
Consultor



T.: +351 21 923 9700 (ext. 1532)
Av. da Liberdade, nº 225 - 5 Esqº, 1250-142 Lisboa - Portugal

www.llorenteycuenca.com

Consultora de Comunicação do Ano na América Latina (Latin American Excellence Awards e International Business Awards 2018)

No Top 15 das empresas de comunicação mais influentes do mundo (Ranking Richtopia)

Agência de Relações Públicas do Ano em Portugal (Prémios Lusófonos 2018)

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Excelentíssimos membros
Comissão Parlamentar de Economia, Inovação, Obras Públicas e Habitação
Palácio de S. Bento
Praça da Constituição de 1976
1249-068 Lisboa

Lisboa, 21 de janeiro de 2020

Assunto: Pedido de Audiência

Excelentíssimos membros da Comissão Parlamentar de Economia, Inovação, Obras Públicas e Habitação,

Recebam as nossas cordiais saudações.

Contactamos os excelentíssimos membros da Sexta Comissão Parlamentar permanente no seguimento das alterações ao regime fiscal para o jogo online no âmbito do Imposto Especial sobre o Jogo Online (IEJO) propostas pelo Governo português na proposta de Orçamento do Estado para 2020, atualmente em fase de discussão no âmbito parlamentar.

Apesar da nossa constante disponibilidade para discutir o modelo fiscal para o jogo online em Portugal, reiterada ao longo do tempo em comunicações constantes com o Governo e autoridades portuguesas, a proposta apresentada não resolve o problema de discriminação fiscal gerado pela legislação criada em 2015 para regular o mercado de jogo online em Portugal, que serve de base ao processo interposto pelo BGC contra o Estado português na Direção-Geral de Concorrência da União Europeia (DG COMP) em 2015 e que ainda decorre.

Enquanto as apostas desportivas à cota continuariam a ser taxadas de acordo com as receitas totais de jogo, referentes ao valor total apostado pelos jogadores, outros produtos como as bolsas de apostas (*betting exchanges*) e os jogos de fortuna e azar (*online gaming*) seriam taxados de acordo com a receita bruta de jogo (*Gross Gaming Revenue*) calculada através da subtração dos prémios pagos pelos operadores ao valor total apostado pelos jogadores.

É essencial que todos os produtos do mercado de jogo online sejam tratados de forma igual, garantindo um tratamento justo e igualitário de todos os operadores. A taxação de todas as atividades de jogo online de acordo com as receitas brutas de jogo cria as condições necessárias para uma regulação mais eficiente do mercado e para a atração de novos operadores e utilizadores para o mercado regulado. O BGC partilhou com as autoridades e o Governo português múltiplos estudos realizados na União Europeia, incluindo Portugal, que demonstram inequivocamente que os modelos fiscais de jogo online baseados na taxação das receitas totais de jogo não são eficientes e criam condições para que os operadores e jogadores se afastem do mercado regulado.



O Betting and Gaming Council identifica como principais problemas do regime tributário em vigor – e do proposto pelo governo – o facto de ser ineficiente e discriminatório:

Ineficiente porque não permite que o regulador atinja os objetivos estabelecidos na lei pelo governo, ou seja, reduzir a dimensão do mercado não regulamentado. De acordo com um inquérito realizado em 2017, 68% dos jogadores online portugueses jogam com operadores offshore: 38% dos jogadores portugueses admitem jogar apenas com operadores offshore e 30% admitem jogar com operadores offshore e onshore.

Discriminatório, porque tributa produtos similares com diferentes esquemas e taxas.

Tivemos oportunidade de expor esta nossa posição, ainda enquanto Remote Gambling Association, na Comissão Parlamentar de Economia, Inovação e Obras Públicas da anterior legislatura. Infelizmente, não se verificaram progressos positivos por parte do executivo. Como é sabido publicamente, após a consulta pública em que participámos, uma alteração ao regulamento de jogos de azar online que previa a mudança de volume de faturação para receitas brutas como base de imposto sob as apostas desportivas foi incluída numa versão preliminar do Orçamento do Estado para 2019. Como a versão final excluiu essa alteração, mantivemos os contactos com as autoridades e não podemos deixar de ficar surpreendidos com esta proposta mais recente, que consideramos um revés.

O Betting and Gaming Council é a maior associação comercial de jogo online do mundo, contando entre os seus associados com os maiores operadores do planeta. Acreditamos que o mercado português tem enorme potencial de crescimento e desenvolvimento, desde que sejam implementadas as medidas regulatórias adequadas.

Ficáramos muito agradecidos de ter a oportunidade de discutir este assunto pessoalmente numa audiência no âmbito da Comissão Parlamentar de Economia, Inovação, Obras Públicas e Habitação durante as discussões da proposta de Orçamento do Estado 2020. Acreditamos que o tema em causa é de elevada urgência para o mercado de jogo online em Portugal e como tal, demonstro a minha total disponibilidade para deslocar-me ao Parlamento durante as próximas duas semanas em data que considerem relevante.

Com os melhores cumprimentos,

Pierre Tournier
International Director
Betting and Gaming Council (BGC)



Teresa Monteiro
Director
Serviço de Regulação e Inspeção de Jogos
Tourismo de Portugal
Portugal

28 February 2018

Re: Review of Portugal's online gambling regulations

Dear Ms. Monteiro,

We are hereby replying on behalf of the RGA to the public consultation organised by SRIJ about the regulation of online gambling in Portugal as set out in the Decree Law n.º 66/2015 (hereafter the '2015 Gambling Act'), which entered into force in June 2015. We would like to thank SRIJ for giving us the opportunity to share our comments about the current online gambling regime and recommendations as to how improve it. We hope that our submission will be useful to SRIJ in preparing its report to the Ministry of Tourism, which we understand is due by May 2018, and we are looking forward to discussing it in further details during our meeting of 15th March.

Our submission consists of the present report, which primarily aims at setting out our recommendations to amend the current online gambling regime in Portugal, and two studies, which provide relevant data to support our views. The first study is based on a survey that was conducted last year and provides an assessment of the channelling rate¹ in Portugal expressed in turnover. Based on the most up-to-date data, the second study provides a comparative analysis of the Portuguese market with a selection of European countries in relation to market size, tax revenues, channelling rate, sports catalogue, and cannibalisation².

¹ In a gambling context, the channelling rate can be defined as the proportion of players that gamble with operators that are licensed in the country.

² In a gambling context, cannibalisation can be defined as the proportion of business that is taken away from local incumbents/monopolies by online gambling operators.

Firstly, we outline below the main findings of the study of the Portuguese market (Section 1.) and those of the study providing a comparative analysis of the Portuguese market with a group of selected European countries (Section 2.). These findings will help us draw a number of conclusions about the shortcomings of the online gambling regime in Portugal, most especially in the light of the objectives pursued by the Portuguese Government (Section 4). Based on this background, experiences from our members operating or supplying operators in Portugal, and best practices from well-regulated jurisdictions, we provide in the last section a set of recommendations to amend the current regime with the view to addressing the shortcomings of the current legislation and designing a more workable regime that would be beneficial to the government, the industry, and customers (Section 5.).

1. Study of the Portuguese online gambling market

In July 2017, the RGA commissioned Euro-group Consulting (EgC) in Lisbon to develop and conduct a survey primarily aimed at ascertaining the channelling rate of the Portuguese online gambling regime, i.e. the proportion of online gamblers playing with operators licensed in Portugal³. The survey was based on a total of 1042 complete and valid responses and the profile of the respondents was very similar to that of online players as described by SRIJ in its quarterly reports. The main findings of the survey can be summed up as follows:

a. 68% of Portuguese online players gamble with offshore operators

38% of the respondents admitted to gamble with offshore operators only and 30% admitted to gamble both with offshore and onshore operators.

b. 39% of the funds gambled online are placed on onshore sites

This figure gives an indication in terms of overall turnover for the onshore market and is not necessarily a good reflection of the channelling rate in terms of Gross Gaming Revenue (GGR). In the absence of available figures for the turnover generated by onshore operators (the SRIJ reports do not provide such figures), one cannot determine precisely the GGR/Turnover ratio of the onshore market. However, considering the regulatory and taxation constraints under the Portuguese legislation, one can assume that this ratio is much lower for offshore operators than it is for onshore operators, which must generate higher GGR to pay the gambling tax, most especially with regard to sports betting.

³ RGA Press Release: <https://www.rga.eu.com/portuguese-online-gambling-law-failing-to-reduce-the-unregulated-market/>

c. Most Portuguese online gamblers prefer sports betting

86% of the respondents chose sports betting as their favourite online gambling product.

d. Better odds are online gambler's main reason to choose offshore platforms

Portuguese gamblers responded that the most important reason why they choose offshore operators is that these operators offer better odds. This is consistent with the fact that online sports betting constitutes the biggest segment of the online gambling market in Portugal. It is also the most restricted segment due to the current taxation model.

2. Comparative analysis with a selection of European markets

In February 2018, the RGA commissioned Regulus Partners⁴ to conduct a comparative analysis of the Portuguese online gambling market with a selection of European countries that have also regulated the sector in order to put the Portuguese market into perspective and underline its overall performance⁵. The main findings of the comparative analysis can be summed up as follows:

a. Very low channelling rate in comparison with well-regulated jurisdictions

Whereas the EgC survey provides an estimate of the channelling rate expressed in turnover, Regulus' study provides a figure expressed in GGR. Their assessment is that only 50% of the GGR generated in Portugal goes to licensed operators. The figure is much lower than in all the countries selected for the purpose of the comparative analysis with the noticeable exception of France. It must be pointed out that the 2015 Gambling Act shares many requirements and restrictions with France's online gambling law as laid down in the 2010 Gambling Act, including, similarities in relation to taxation, the sports catalogue and shared liquidity requirements. It is worth pointing out that the French Parliament⁶, the French Court of Auditors⁷, the Government's Gambling Observatory⁸, and the French regulator ARJEL⁹ have all underlined the

⁴ Regulus Partners is a strategic consultancy focused on international gambling and related industries. For more information, please visit their website: <http://reguluspartners.com/>

⁵ For the purpose of the study, the countries were chosen based on a number of criteria, including availability of market data, length of the licensing experience, variety of tax regimes, and variety of market size.

⁶ <http://www2.assemblee-nationale.fr/15/les-delegations-comite-et-office-parlementaire/comite-d-evaluation-et-de-contrôle/evaluations-en-cours/mission-d-evaluation-sur-le-suivi-de-l-evaluation-de-la-regulation-des-jeux-d-argent-et-de-hasard>

⁷ <https://www.ccomptes.fr/sites/default/files/EzPublish/20161019-regulation-jeux-argent-et-hasard.pdf>

⁸ <https://www.economie.gouv.fr/observatoire-des-jeux>

⁹ <https://fr.pokernews.com/news/2011/09/arjel-fiscalite-jeux-argent-ligne-9391.htm>

shortcomings of the gambling turnover taxation and have all recommended a change towards GGR-based tax.

b. Overall good performance of national monopolies

Just as for Santa Casa, national lotteries & monopolies have continued to grow in Denmark, France, and Spain. The opening of the online gambling sector is proven to have a limited impact on the business of national lotteries & monopolies. It is worth noting also that in those countries, national lotteries and monopolies have benefited from the online market opening and developed well-performing online operations acquiring significant market shares, which has also driven their overall growth. There is no indication that more competition with the online gambling market as a result of more workable requirements would affect this trend negatively.

National lotteries & monopolies have, however, declined in Italy and the UK. It must be stressed that in these two countries, although those companies enjoy exclusive rights on specific products, they are private entities. Therefore, their situation is not comparable to that of Santa Casa.

3. Main lessons from the Portuguese market's performance

In order to make a general assessment of the Portuguese online gambling regime, it is essential to remind the main objectives pursued by the Portuguese Government when the legislation was put forward. In its message accompanying the notification of the Draft Gambling Act in 2014 to the European Commission¹⁰, the Portuguese government stated that the new piece of legislation was primarily meant to combat illegal gambling and protect consumers. In light of market data we have been able to collect, there is no doubt that the 2015 Gambling Act has failed to achieve the Portuguese Government's public policy objectives in that the vast majority of consumers are not protected and the market remains mostly in the hands of operators that are not licensed in the country.

Secondly, although it was never put forward as an objective formally pursued by the 2015 Gambling Act, we understand that the Portuguese Government was also concerned about the economic stability of both Santa Casa and local casinos, which were facing new competition. In the light of the market data we have been able to collect, there appears to be no cause for concerns as both Santa Casa and local casinos can benefit from the growth of the online gambling market and are not negatively affected in their traditional retail/land-based business¹¹.

¹⁰ Notification Ref: 2014/431/P

¹¹ According to recent press reports, Portugal-based casinos have all experienced growth in 2017: see <http://www.jornaldenegocios.pt/empresas/turismo---lazer/detalhe/casinos-crescem-mas-queixam-se-de-garrote-fiscal> and <http://www.jornaldenegocios.pt/empresas/turismo---lazer/detalhe/todos-os-casinos-facturaram-mais-em-2017-menos-troia>

4. RGA Recommendations for regulatory change

a. Taxation

We are of the view that when designing a tax regime for online gambling, at least three aspects have to be taken into consideration:

- It is essential that all online gambling products must be treated equally in order to guarantee that all operators are treated fairly and on an equal footing. This approach will also guarantee that EU state-aid rules, which set out that products/companies that are factually and legally placed in a comparable situation must be treated identically, are being complied with.
- It is also critical that online gambling operators be liable to a taxation model that is based on Gross Gaming Revenue (GGR)¹² as opposed to Turnover. We have already shared with you in the past a number of tax studies that we have commissioned about the regulation and taxation of online gambling, including the provision of information about Italy¹³ and Poland¹⁴ and we have also shared with you a report that was produced by the French Parliament. All of the reports consistently highlight the greater efficiency of a GGR based taxation model.
- With regard to the applicable rate, we are of the view that tax rates ranging from 15% to 20%, which can be found in the UK and Denmark respectively, constitute adequate and sensible rates as illustrated by the successful regulation of online gambling in those two countries. In that sense, we consider the current rate applicable to gaming and betting exchanges in Portugal to be a sensible and attractive rate and we argue that the taxation of traditional sports betting should be aligned to it.

We recommend the Portuguese Government to switch from turnover to GGR taxation with a rate ranging from 15 to 20%.

b. Sports catalogue

We are of the view that the sports catalogue is one of the major obstacles to an efficient online gambling market in Portugal as it severely and unnecessarily restricts the online sports betting offering.

¹² Gross Gaming Revenue (GGR) is traditionally calculated as the difference between the total amount of stakes collected by the operator and the winnings paid out to its customers, including bonuses and rebates, or by the amount of rake, commission or an equivalent fee retained from customers in the case of games that generate revenue by charging a fee, for example online poker or betting exchanges.

¹³ KPMG report dated July 2012 about the impact of gross profits tax on Italian sports betting

¹⁴ Roland Berger report dated September 2016 about the regulation of online betting in Poland

As per Article 5 of the 2015 Gambling Act, SRIJ has created a specific list of sports events on which the licensed operators may offer bets on and has updated this list on average on a quarterly basis. The RGA strongly believes that such a restriction is counterproductive and runs against the Portuguese Government's public policy objectives by pushing players away from the regulated offer. Importantly, relevant experiences show in Europe that the sports catalogue must be replaced by a much more workable system or repealed altogether.

The same requirement was previously in place in Italy, where the regulator issued the so called "palinsesto" ("betting catalogue"), which was a detailed list of authorised events. However, following concerns expressed both by the industry and regulatory authorities, the Italian gambling legislation was amended in 2013 to allow licensed operators to offer bets outside the official catalogue by establishing a procedure where operators submit their own additional list of events for approval by the regulator (the so called "complementary palinsesto"). Moreover, in early 2017, the Italian regulator dismissed the official catalogue completely, giving the licensees the freedom to propose and customise their entire catalogue (subject to a preliminary approval by the regulator itself). Italy's market data illustrate par excellence the failure of such a system. While the online sports betting market experienced a steep decline in 2011-2012, the market increased by 25% in the year following the launch of the complementary Palinsesto.

Repealing the sports catalogue increases competition among licensees, which are not forced to offer an identical product, improves the variety of the offering and makes the regulated market more attractive compared with the unregulated sector. Ultimately, it would contribute to achieving the Government's public policy objectives.

Finally, the underlying reasons for setting out a sports catalogue are not clear to us but we presume that the sports catalogue aims to pursue at least two sets of objectives: i) protecting the integrity of sports and ii) ensuring a fair re-distribution of tax revenues to sports federations whose sport events are used for the purpose of online sports betting. Our view is that there exist much more efficient mechanisms to protect the integrity of sports, such as information sharing mechanisms deployed by ESSA and individual betting operators¹⁵. With regard to the redistribution of tax revenues to sports federations, the same end could be achieved by using more workable means, such as requiring online sports betting operators to provide detailed statements with the breakdown of bets placed on each sport and competition. Operators' statements would then be used to ascertain the proportion of tax revenues to be redistributed to Portuguese sports federations.

¹⁵ For more information on this mechanism, please see <https://www.rga.eu.com/sports-betting-integrity/> and <http://www.eu-ssa.org/protect-integrity/>

We recommend the Portuguese Government to repeal the sports catalogue entirely and replace it with a system based on licensees' statement to the regulator.

c. Sharing of liquidity

We have already shared our positions with the European Commission and SRIJ with regard to the draft regulation on shared liquidity following its notification under the TRIS Directive (Notification Reference: 2017/2/P). We reiterate below some of the concerns already raised in our previous letter as they remain unresolved.

The Regulation on liquidity sharing only authorises the sharing of liquidity for certain products. We are of the view that not only is it inconsistent with the list of products regulated under the 2015 Gambling Act but such a restriction is also detrimental to the success of the liquidity sharing mechanism and can affect the overall attractiveness of the Portuguese online gambling regime.

We recommend SRIJ to amend the Regulation on liquidity sharing in order for it to cover all the products regulated under the 2015 Gambling Act.

The Regulation also lacks clarity on a number of issues, in particular with regard to the international sharing of liquidity and the related responsibilities of operators licensed in Portugal, which creates legal uncertainty and is detrimental to the success of the liquidity sharing mechanism.

We recommend SRIJ to either amend the Regulation or issue guidance with the view to clarifying operators' responsibilities when sharing liquidity internationally.

The international sharing of liquidity is only possible with a small number of countries. We are of the view that such a restriction is detrimental to the mechanism and bringing more countries in would contribute to the overall attractiveness of the licensing regime.

We recommend SRIJ to ensure that the international sharing of liquidity can be put in place with a much larger number of countries.

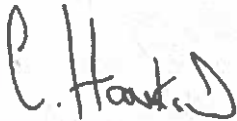
d. Communication with operators

It is our understanding that detailed technical documentation involving access to services supported by SRIJ, such as national self-exclusion and connection between the SAFE and the control infrastructure, are not publicly available. Therefore, this creates hurdles for operators to develop their solution in advance, depending on case-by-case information made available by SRIJ during the licensing process.

We recommend SRIJ to make all the technical information publicly available and publish it on its website.

We again welcome this consultation and are looking forward to discussing our contribution in more detail at the RGA meeting next month.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Hawkswood', written in a cursive style.

Clive Hawkswood
Chief Executive