

1.1.1. Gambling

The proposed amendments respond to existing experience with the practical application of the Gambling Act, new trends and conclusions of the analysis of the *Regulatory Impact Assessment of the Gambling Act and related legislation* (hereinafter the ‘ex post RIA’), approved by the Government of the Czech Republic on 13 September 2021¹. The purpose of this analysis was a comprehensive review and evaluation of new legislation regulating gambling effective since 2017. According to the ex post RIA analysis, the regulatory principles of the Gambling Act are set optimally, lead to set goals and the regulation is effective, comprehensive and modern gambling legislation has brought about the overall cultivation of the market, greater transparency and regulatory conceptuality. In spite of this, the ex post RIA indicated partial areas where it is appropriate to intervene in the regulation, as the practical application of the original institutes does not appear to be fully optimal or in the interim period between the adoption of the regulation and the date of the ex post RIA, changes in social, economic and technical/technological conditions have occurred that require changes in the regulation. The draft amendment implements these changes. The aim of the legislation is primarily to supplement and refine selected measures in order to better fulfil their function, to improve the efficiency of the administrative procedure, to improve the protection of players in gambling, to adapt to technological progress and to reduce administrative burdens. Although the proposed legislation entails, in particular, the costs of the necessary adaptation and completion of information systems, the overall impact on public budgets after taking into account the new costs and benefits of the proposed legislation on gambling is estimated to be positive.

The following is a brief description of the individual measures sorted by topic.

a) Need to respond to the increased risk of online gambling

Description and assessment of the current situation:

Due the general trends and technological advances that have taken place since the adoption of the Gambling Act, which have also been significantly boosted by the COVID-19 pandemic, when, due to restrictive anti-pandemic measures, the proportion of online gambling being operated (and being searched out by players) has significantly increased, the existing legislation no longer sufficiently takes into account the risks of online gambling.

Proposed solution:

In the case of technical games, the riskiness of both modes of operation is similar, but in the case of all other types of gambling, there is a significant increase in risk when operating via the Internet, which is mainly due to the speed of the game and the possibility of uninterrupted participation. In this spirit, clarification and amendment of online gambling regulation is proposed.

b) More effective fight against illegal online gambling

Description and assessment of the current situation:

The Gambling Act introduced a set of mechanisms and measures for the supervision of the operation of gambling by legal or illegal operators and increases the powers of supervisory authorities. However, some tools have proved to be ineffective, in particular the rather complex and lengthy process of proving infringements and the subsequent blocking of illegal gambling websites.

¹ Regulatory Impact Assessment of the Gambling Act, 2021. Ministry of Finance https://www.mfcr.cz/assets/cs/media/Analyza_2021-09_Analyza-regulace-hazardu-v-Ceske-republice.zip (accessed Feb 15, 2023).

Proposed solution:

The amendment proposes to clarify and amend the legal regulation of the definition from '*targeting*' gambling games to '*availability*' of gambling games and simplifying the process of blocking illegal gambling websites so that the whole process is simpler, clearer and quick to respond to infringements.

c) Security deposit

Description and assessment of the current situation:

In particular, the existing deposit system and the licensing process involve administrative burdens both on the part of the state and on the part of operators (e.g. upon a change to or termination of a permit to situate gaming premises, or, for example, upon a change to or termination of a basic permit and granting a subsequent new basic permit). Changes are especially recommended in the area of calculation and use

Proposed solution:

A security deposit is now a condition for the issuance of the initial permit. On the basis of the newly standardised legislation, the legal regulation of security deposits is simplified and clarified and only the fate of the initial permit will be relevant to the fate of the deposit, regardless of the change or termination of the related basic permits or authorisations for the situation of gaming premises. The new deposit legislation will be more responsive to the scale of the operator's business activity - the amount of the deposit will be based on the last legally determined gambling tax. This will ensure that a gambling operator with a larger scale of activity puts up a higher deposit to cover any arrears associated with the gambling operation. It is therefore an objective and fair determination of the amount of the deposit to be paid, which does not take into account the number of basic permits or gaming premises licences issued, but depends on the actual scale of the operator's activity. As a result, the overall deposit management process should also be simplified for both the operator and the state.

d) Permit proceedings

Description and assessment of the current situation:

At the request of the operator, the Ministry of Finance issues a basic permit to decide on the authorisation to operate a type of gambling game [Section 86(1) of the Gambling Act]. The operator must have a separate basic permit for each type of gambling game. If an operator intends to operate more than one type of gambling, it must also prove in each authorisation procedure that it meets the general conditions for the operation of gambling games.

Proposed solution:

Changes are also proposed in the very process of 'licensing' gambling operations, not only with regard to its efficiency, but also in relation to the stability of individual operators and the market itself. The process to issue a permit will be divided into two phases. Before commencing the operation of gambling games, the operator must have:

- *an initial permit* certifying compliance with the general conditions for the operation of gambling games; an initial permit is needed for the issue of a basic permit.
- *a basic permit*, which is issued for every type of gambling game.

If the operator will be operating *land-based* Bingo, a technical game, or a live game, it must also have a permit to situate gaming premises prior to the start of operation.

e) Unification of requirements for selected similar aspects of gambling games

Description and assessment of the current situation:

The requirements imposed on different types of gambling games are standardised differently, but the inconsistency of the requirements has no support in the actual state of affairs.

Proposed solution:

It is proposed to unify the general requirements.

f) Increased player protection and refinement of addiction measures

Description and assessment of the current situation:

The primary objective of the Gambling Act is, in particular, the protection of participants in gambling games against the negative effects of participation in gambling. Moreover, these impacts are not only limited to the players themselves, but also to their family and surroundings. For this reason, when the Gambling Act was adopted, a number of *addiction brakes* were already included in the legislation to help limit risky behaviour, be it self-regulatory tools, self-limiting measures, information obligations, a register of excluded persons or other tools. Although these are effective tools, certain aspects need to be added or refined in order for them to operate even more effectively.

Proposed solution:

The proposed legislation regulates addiction brakes that help limit risky behaviour more effectively, be it tools for self-regulation, so-called self-restrictive measures or regulating potentially risky behaviour regardless of the will of the participants in gambling games (information obligation, maximum bet, mandatory break when participating in a technical game, restrictions on advertising, banning free drinks and cigarettes in exchange for playing, mandatory registration of participants in gambling games, etc.). An essential tool is also the Register of Excluded Persons as an important preventive tool for which parametric changes are also occurring with regard to the number of persons registered in it. The combination of responsible gambling measures contained in the Gambling Act ensures a more effective level of protection for gamblers compared to previous legislation and reduces the risk of problem gambling behaviour and other costs associated with such behaviour. A further reduction in the risk of developing pathological gambling is expected as an indirect impact linked to the modification and refinement of the standards for self-restrictive measures and the new restrictive regulation of bonuses, which are one of the risky aspects of gambling. According to several qualitative studies, betting incentives can lead to impulsive in-game betting patterns, especially for problem and frequent players to take increased risk and a strong temptation to abandon controlled gambling solutions for players seeking treatment (Balem, M., Perrot, B., Hardouin, J. B., Thiabaud, E., Saillard, A., Grall-Bronnec, M., & Challet-Bouju, G. (2022). *Impact of wagering inducements on the gambling behaviours of online gamblers: A longitudinal study based on gambling tracking data. Addiction (Abingdon, England), 117(4), 1020-1034.* <https://doi.org/10.1111/add.15665>). In view of the conclusions of studies that it is extremely unethical, predatory and harmful to offer a bonus to a person who has expressed a desire to restrict or stop gambling and according to which the provision of bonuses should be limited for persons under the age of 26, for seniors and for persons who are evaluated by a system for early detection of risky gambling behaviour, a positive impact of this legislation on potential risky behaviour can be expected. From the point of view of the public, the simplification of self-exclusion from gambling can be perceived positively (e.g. a new option of short-term exclusion from gambling; *a panic button*), the strengthening of certain rights in the context of their participation in gambling or their clearer definition.

Positive impacts in terms of gamblers may not only affect them, but also their families and surroundings.

g) General requirements for the operation of gambling games

Description and assessment of the current situation:

A number of gambling operators' obligations are currently laid down in the Gambling Act in a relatively general or insufficiently precise way, and the specific definition of these obligations is sometimes translated into individual operating conditions under the basic permits for the operation of gambling games.

Proposed solution:

The proposed legislation eliminates this deficiency and defines in detail the individual obligations directly in the legislation. In general, and on the basis of past experience, the new legislation is driven by an effort to increase legal certainty for all stakeholders. As a result, the Act supplements or modifies selected provisions which in practice have caused interpretation difficulties.

2.1. Changes in the area of gambling games

As far as gambling is concerned, the proposed legislation is also in line with Article 10(3) of the Charter, according to which everyone has the right to protection against unauthorised collection, disclosure or other misuse of personal data, since it imposes a new obligation of confidentiality on all authorities exercising state administration in the field of gambling and their authorised officials, in addition to the operator and its employees, in matters of gambling reporting and the register of excluded persons. At the same time, the basic principles of the activity of administrative bodies according to Section 2(2) and (3) of the Administrative Code shall be applied, according to which the administrative body exercises its authority only to the extent defined by the Act and in doing so protects the rightful interests of entities whom its activities concern. Any information will therefore be collected, maintained, used and transmitted to the extent and in the manner expressly provided by the Act, in such a way as to protect the rights of the persons concerned as much as possible.

7.1. Changes in the area of gambling games

In accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), hereinafter 'GDPR', and Act No 110/2019 on the processing of personal data, on the basis of the Gambling Act, the supervisory authorities and operators of gambling games obtain and process the information necessary for the performance of their obligations arising from the regulation of gambling. This is personal data of natural persons (in particular gambling participants) within the scope defined by the Gambling Act.

The draft amendment to the Gambling Act introduces new processing of personal data:

- in Section 10b(5)(b) and (h), in connection with the establishment of the Institute *confirmation of claim to win*. The personal (identification and payment) data of the participants of a gambling game who have not been established a user account and their prize has not been paid to them immediately, as well as personal data (name, surname and signature) of the natural person authorised by the operator to issue a confirmation of the claim to the prize will be processed. The purpose of the processing is to unequivocally identify the participant in a game who is entitled to claim a prize and the person on the part of the operator who issued the confirmation of the claim to the prize. The data processed for the purpose of issuing the confirmation shall be minimised to an extent that increases the legal protection of the player in terms of the possibility of claiming the prize and equips him with evidence from which all relevant facts are clearly demonstrable.
- in Section 16a(1)(g) in connection with the new legislation allowing a player to use a means of preventing participation in gambling. Information on the use of a means to prevent a player from participating in a game of chance will now be processed through a *pseudonymised, meaningless player identifier (HID)*. Its use will only be possible after login to the user account. The purpose of the processing is to unequivocally link the player to his user account so that player protection is enhanced.
- in Section 17a(1)(b), it introduces registration of a player as a condition of participation in a totaliser game not operated by remote access via the Internet. For the purpose of registration, the gambler is obliged to provide the operator with his/her identification and contact details (as is the case with technical games, live games and internet games). The aim of this provision is to align the conditions with other types of gambling games and to ensure compliance with the elements of player protection.
- in Section 17d, new legislation is added regarding *recording obligations*. The purpose of the processing of personal data in connection with the management of the user account is a clear link between the established account and the identified player. This processing achieves increased legal certainty for stakeholders and supervisory authorities. The Operator is now obliged to record cash and play funds (including bonuses) on the user's account as well as all movements of these funds.

Existing regulation in relation to the protection of privacy and personal data does not change significantly in other ways. Only a partial aspect of the regulation is amended, consisting of modifying or adding to the period for which personal data will be processed. This section does not extend the categories of data subjects whose data are processed or the categories of data being processed.

Based on practical knowledge, the amendment to the Act proposes changing the statutory periods for retaining or processing selected personal data. The aim of the regulation is to strengthen the legal certainty of stakeholders and to increase the protection of data subjects.

Specifically, the proposed amendment now defines a period of 3 years for the retention of personal data pursuant to:

- Section 17b(4) (user account of a gambling participant);
- Section 17c(2) (verification of user account data);
- Section 17k(1)(b) (cancellation of an unused user account);
- Section 17f(4) (recording obligation in the user's account);
- Section 71(3) (identification in a gaming establishment and casino);
- Section 109a(6) (repair and change records).

In particular, the proposed legislation adds the retention period for personal data to provisions where it has not yet been expressly provided for. This change gives data controllers and data subjects certainty about the retention period. The proposed legislation also unifies the retention period for personal data throughout the Gambling Act to ensure the fulfilment of the purpose of tracking personal data, which is usually effective inspection and supervision activities.

Personal data will only be stored for as long as is necessary to ensure effective supervision and inspection activities. The proposed period of 3 years therefore reflects the statutory limitation period for infractions linked to this obligation and other obligations related to a user account. The setting of the retention period also reflects knowledge gained from experience, or the length of the administrative and infraction proceedings, which are usually initiated after a certain time interval. If the period were less than 3 years, it could happen that the relevant entity would no longer have the relevant records at their disposal when evidence collection started.

Furthermore, the proposed amendment to the Act provides for a retention period of 10 years in Section 60b(2) (transactions with tokens). This period was stipulated taking into account the maximum time limit for tax assessment.

The proposed period of time for all the above provisions respects the principle of proportionality; therefore, personal data will be stored only for as long as necessary for the purpose of their processing.

Controllers, or processors, will act in the same way as they do today for the collection and processing and security of the personal data they obtain in order to comply with the obligations established by the Gambling Act. It is their responsibility to take or continue to take such measures as to prevent unauthorised or accidental access to, alteration, destruction or loss of personal data, unauthorised transmissions or unauthorised processing.

Personal data collected pursuant to existing and the proposed legislation will not be processed in a public manner. Personal data is processed both manually and in an automated manner. Automated processing will take place in the AISG Information System. The data is accessible only to authorised employees, who are obliged to maintain confidentiality regarding data that becomes known to them.

In view of the changes described above, there are no changes in the rights of data subjects.

The following are relevant from the data subjects' rights contained in the GDPR:

- a. right of access to personal data by the data subject (Article 15) - this right pertains to every data subject and consists of the right to obtain from the controller confirmation

as to whether or not personal data concerning him or her are being processed; in the context of the processing of personal data under the proposed amendment to the Act, any data subject who wishes to verify whether or not his or her personal data is being processed will be able to exercise this right;

- b. right to rectification (Article 16) - the data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her; the implementation of this right in the context of processing under the proposed amendment to the Act will probably only be possible if the data subject first obtains information pursuant to Article 15 GDPR, i.e., in particular, whether or not the controller processes his or her personal data;
- c. right to erasure (Article 17) - the data subject may exercise this right only under the conditions laid down in Article 17;
- d. right to restriction of processing (Article 18) - this right may be exercised by any data subject whose personal data are processed by the controller, subject to the conditions set out in Article 18 GDPR; in the context of the proposed amendment to the Act, this right may be exercised against the controller if the data subject denies the accuracy of the personal data; however, in connection with the processing of personal data under the proposed amendment to the Act, Section 130a(2)(a) of the Gambling Act applies, according to which the controller will identify the data whose accuracy has been denied and will deal with this initiative in the light of the basic principles, but this initiative does not in itself constitute an obstacle to further processing of personal data without the consent of the data subject;
- e. right to object (Article 21) — may be exercised by the data subject under the conditions laid down in Article 21, the successful exercise of this right is a prerequisite for the application of the right to erasure pursuant to Article 17 and the right to restriction of processing pursuant to Article 18; in the context of the processing of personal data under the proposed amendment to the Act, the right to object pursuant to Section 130a(3) of the Gambling Act is realised by lodging a complaint.

The proposed amendment to the Gambling Act adds some new processing of personal data. The purpose of the new processing is clearly defined, the group of controllers and processors remains unchanged. The processing of personal data continues to be non-public, and existing measures to prevent unauthorised or accidental access to, alteration, destruction or loss of personal data, unauthorised transmissions or unauthorised processing are also taken.

Building on practical knowledge and in order to increase legal certainty, the retention period for personal data has been established and adjusted.

12. Amendments to the Gambling Act

The proposed legislation has no territorial implications. From the point of view of impacts on territorial self-governing units, the proposed amendment does not interfere with their rights or obligations, but it will affect the exercise of their agenda within the scope of delegated powers. These will be positive impacts of simplifying and streamlining processes, reducing administrative burdens and increasing legal certainty. More precise legislation will also reduce the risk of potential disputes and damages. In terms of the impact on public budgets, a positive effect can be expected, especially in the medium and long term. The indirect positive effect of addiction measures on players, which in the medium term should also bring about a reduction in the potential costs of treating people at risk of problem gambling and addressing other negative phenomena related to gambling, can also be mentioned.

II Special part

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On Part Fifty-three - Amendment of the Gambling Act

Until 31. 12. 2016, the area of gambling, lotteries, betting and other similar games was regulated by Act No 202/1990 on lotteries and other similar games, as amended. As of 1. 1. 2017, Act No 186/2016 on gambling (hereinafter the 'Gambling Act') entered into force, the adoption of which represented a key shift in the Czech Republic in terms of the overall regulation of gambling, mainly in connection with the use of modern information technologies, but also the compliance of the regulation of gambling in the Czech Republic with the rules of the internal market of the European Union (especially in the field of online gambling). The Gambling Act and Act No 187/2016 on gambling tax (hereinafter the 'Gambling Tax Act') were drawn up in connection with the need to regulate the legal situation in the field of lotteries and betting in response to the new approach to regulating the operation of gambling games in the Czech Republic resulting from two interrelated main factors. The first factor was the very high social costs of gambling in the Czech Republic and the second was, or is, the development and use of modern technology, especially information technology and the resulting need for modernisation and regulation as such. Last but not least, this concerns the need to align regulation in the area of lottery and betting games in the Czech Republic with the rules of the internal market of the European Union, especially in the area of online gambling. The primary objective of the legislation was, in particular, to protect bettors and their surroundings, to ensure measures to prevent and combat socially pathological phenomena associated with the operation of gambling games, including the Register of persons excluded from participation in gambling games (hereinafter also referred to as the 'Register of Excluded Persons' or 'REP'). The introduction of a new procedure for permit proceedings and an effective inspection mechanism, including tax collection, were important. The Gambling Act has introduced a number of instruments through which the objectives of the legislation are achieved.

Building on the initial practical experience with the adoption of the Law on Gambling, the Ministry of Finance has carried out an analysis of the Regulatory Impact Assessment of the Gambling Act and related legislation (hereinafter the 'ex post RIA'), which on 13. 9. 2021 was approved by the Government of the Czech Republic. The purpose of this analysis was a comprehensive review and evaluation of new legislation regulating gambling effective since 2017.

Based on the ex post RIA, it can be concluded that regulatory principles are set optimally, lead to set goals and the regulation is effective. Since 2017, comprehensive and modern gambling legislation has brought about the overall cultivation of the market, greater transparency and conceptuality of regulation. In general, there is no need to make significant changes to the legislation and to intervene more deeply in the basic concepts of regulation. Despite this, individual areas exist in which it is appropriate to intervene in the regulation were indicated in the ex post RIA, as the practical application of the original concepts does not appear to be entirely optimal or since the adoption of the regulation to the date of the ex post RIA, there has been changes in social, economic and technical/technological conditions that require regulatory changes.

Following the conclusions of the ex post RIA, the aim of the legislation is primarily to supplement and refine selected measures in order to better fulfil their function, to streamline

administrative procedures, to adapt to technological progress and to reduce administrative burdens.

The primary objective of the Gambling Act is, in particular, the protection of participants in gambling games against the negative effects of participation in gambling. For this reason, a number of addiction brakes have been included in the Gambling Act, which help to limit risky behaviour, be it tools for self-regulation, so-called self-restrictive measures or regulating potentially risky behaviour regardless of the will of the participants in gambling games (information obligation, maximum bet, mandatory break when participating in a technical game, restrictions on advertising, banning free drinks and cigarettes in exchange for playing, mandatory registration of participants in gambling games, etc.). The Register of Excluded Persons is also a key preventive tool. The combination of responsible gambling measures contained in the Gambling Act ensures a more effective level of protection for gamblers compared to previous legislation as well as regulation in other countries, and reduces the risk of problem gambling behaviour and other costs associated with such behaviour. This claim is supported by gradually decreasing numbers of people with problematic gambling behaviour. Estimates of the number of persons at risk related to gambling have decreased by almost a quarter compared to 2013-2014. Nevertheless, provisions have been indicated that, in order to increase the effectiveness of these institutes and legal certainty of the persons concerned, are proposed to clarify or supplement – e.g. the regime for extending the protection period of registration in the Register of Excluded Persons, the regime of setting self-restrictive measures, etc.

An important area that needs to be further addressed is the availability of online gambling. In the light of the results of the ASTERIG analysis, it seems appropriate that the legislation responds to the increased risk associated with gambling games operated as online games by adopting new or modifying existing responsible gambling measures. In the case of technical games, the riskiness of both modes of operation is similar, but in the case of all other types of gambling, there is a significant increase in risk when operating via the Internet, which is mainly due to the speed of the game and the possibility of uninterrupted participation. This is a result of the general trends and technological advances that have taken place since the adoption of the Gambling Act, which have also been significantly boosted by the COVID-19 pandemic, when, due to restrictive anti-pandemic measures, the proportion of online gambling being operated (and being searched out by players) has significantly increased.

An important pillar of the new legislation was the introduction of the so-called black-list and the related measure of blocking websites and payments, which plays an important role in combating illegally operated gambling games on the internet. The Gambling Act introduced a set of mechanisms and measures for the supervision of the operation of gambling by legal or illegal operators and increases the powers of supervisory authorities. However, some tools have proved to be ineffective, in particular the rather complex and lengthy process of proving infringements and the subsequent blocking of illegal gambling websites. The amendment proposes to clarify and amend the legal regulation of the definition from 'targeting' gambling games to 'availability' of gambling games. According to the new legislation, any gambling game that is available in the Czech Republic will be considered to be operated in the Czech Republic, not only those that target citizens residing in the Czech Republic. It is also proposed to simplify the process of blocking illegal gambling websites so that the whole process is clearer and allows for a quick response to infringements.

One of the objectives of the proposed legislation is also to reduce the administrative burden on operators and state authorities. This intention is mainly reflected in the new deposit legislation, which will better respond to the extent of the operator's business activity – the amount of the deposit will depend on the last definitive tax on gambling games. In this way,

it will be guaranteed that a larger-scale gambling operator pays a higher deposit to cover any arrears associated with the operation of gambling games. This is therefore an objective and fair determination of the amount of the deposit that does not take into account the number of basic permits issued or authorisations for the situation of gaming premises, but depends on the actual scope of the operator's activity. As a result, the overall deposit management process should also be simplified for both the operator and the state. Changes are also proposed in the very process of 'licensing' gambling operations, not only with regard to its efficiency, but also in relation to the stability of individual operators and the market itself.

The proposed legislation eliminates the lack of a relatively general or insufficiently precise and specific legal definition of the obligations of gambling operators. It defines in detail the individual obligations directly in the given legislation.

Streamlining the regulation of gambling. In order to make the system more efficient, it is necessary to make individual changes in the area of gambling authorisation (requirements for operators and their obligations, authorisation to operate, etc.), in the legal regulation of bets, winnings, payouts, registrations, user accounts, etc.

Unification of requirements for selected similar aspects of gambling games The inconsistency of the requirements imposed on certain types of gambling games has no support in the actual state of affairs. It is proposed to unify the general requirements.

Unification and refinement of self-restrictive legislation. The legislation on the setting of self-limiting measures establishes differences for different types of gambling without any relevant reason for the differences; there should be a unification and a more detailed legal basis.

Clarification of the legal regulation of the information obligation. The current legislation on the regulation of information obligations is not sufficient and in practice may lead to inconsistent practice and interpretation difficulties.

Review of infractions The facts of infractions and their sanctions are subject to review, in particular in relation to their proportionality, but also with respect to criminal law.