Message 201

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Forwarding of the response of the Member State notifying a draft (Czechia) to of Malta.

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2. Czechia

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4. 2023/0448/CZ - H10 - Games of chance

5.

6. In accordance with Article 6(2) of Directive (EU) 2015/1535, in the context of Malta's detailed opinion, the Czech Republic explains why, in its view, the given rules cannot create obstacles to the freedom to provide services, or rather that this is taking place for the following reasons in accordance with EU law:
Regarding the national licensing requirement as a prerequisite for the legal operation of gambling in the Czech Republic, the Czech Republic states the following. Inasmuch as the CJEU recognised the special nature of gambling, including the existence of related harmful effects, it simultaneously conferred on Member States the authority to regulate this sector: 'In that context, moral, religious or cultural factors, as well as the morally and financially harmful consequences for individuals and for society associated with betting and gaming, may serve to justify a margin of discretion for the national authorities - sufficient to enable them to determine what is required in order to ensure consumer protection and the preservation of public order' (Case C243/01 Gambelli and Others [6 November 2003] ECR I 13031(63), and Joined Cases C338/04, C359/04 and C360/04 Placanica and Others [6 March 2007] ECR I 1891(47). Simultaneously, the Court of Justice gave Member States the opportunity to choose their own system for achieving the goals of internal policy, provided that the measures taken comply with primary EU law. This was stated not only in the first decision on gambling games – the judgment of the Court of Justice of 24 March 1994 in Case C-275/92 Schindler, in particular the third sentence of point 2 and paragraph 31 – but also in the judgment of the Court of Justice in this area, Case C-42/07 Liga Portuguesa, paragraphs 57-61 (see, for example, judgment of the Court of Justice of 21 September 1999 in Case C 124/97 Läärä, paragraphs 14 and 36; judgment of 21 October 1999 in Case C 67/98 Zenatti, paragraph 15; judgment of 6 November 2003 in Case C 243/01 Gambelli and Others, paragraph 63, and judgment of 6 March 2007 in Case C-338/04 Placanica and Others, paragraph 47.
It thus follows from the established case-law of the CJEU and the principle of subsidiarity that Member States can set their

own policy goals in this unharmonised area of gambling according to their own scale of values, and they can strictly limit the desired level and means of protection, provided that all of these measures comply with primary EU law and with the conditions that the extensive case-law of the Court of Justice places on these measures.
In particular, the proposed regulation aims to ensure the protection of the health of gambling players, consumer protection, the protection of minors, the protection of public order and the prevention of sociopathological impacts, health consequences and other negative phenomena related to gambling. Participation in gambling is risky and harmful due, among other things, to the emergence of addictions (1), especially in relation to vulnerable groups, which include risk groups of the population, including children and adolescents (2). This risk is even higher for online gambling games. Allowing illegal operators who do not comply with the conditions of the Act to operate on the market entails considerable social and economic costs in the form of an increased incidence of sociopathological phenomena associated with gambling in society (for example, an increased incidence of gambling addicts due to the failure to ensure self-exclusion measures and to check the records in the register of natural persons excluded from participation in gambling games or the occurrence of gambling addiction in minors).
On the basis of the results of the analysis ('ex-post RIA analysis') (3), prepared by the Ministry of Finance, together with other current studies (4) and the findings of experts dealing with gambling, it is clear that certain anonymity, availability of gambling (both time – 24 hours a day and distance – at home/at work) contribute to the rise of the phenomenon of online gambling, countless opportunities to play, unlimited selection of games, or instant access to funds through internet banking and other factors that make online gambling a more attractive and risky form of gambling. Thus, online gambling poses a greater risk of addiction to gambling games and other negative impacts and, given their riskiness, it is appropriate and necessary to protect players as consumers together with an interest in the protection of public order. For these reasons, the national authorities therefore have sufficient power to implement the proposed regulation in the form submitted in the light of the above case-law.
Online games accessible in the Czech Republic
The increase in the number of blocked sites occurs in accordance with the freedom to provide services guaranteed by European law, with regard to the fact that it targets operators who do not comply with the requirements laid down in the regulation in the area of gambling games in the Czech Republic (meaning they do not have the necessary authorisation to operate gambling games). Operators who fulfil the conditions laid down in regulations in the area of gambling games shall not be subject to these regulations. This increase occurs in connection with contradictions arising in the interpretation of the term 'targeting' used in the existing legislation, where it was difficult to prove this concept with sufficient interpretive certainty, thus leaving room for speculation about its content and making it impossible for the Czech Republic to effectively protect consumers – players of gambling games. The newly introduced term 'accessibility' is much more specific and narrows the scope for interpretation and its possible misuse. According to previous experience, any weaker measures in this area do not appear to be effective enough and thus fail to meet the objectives of protecting consumers – players of gambling games.
Moreover, preventing unauthorised online gambling available in a given Member State concerned is a common tool within the European single market, which is used, for example, in Slovakia, Estonia, Latvia, and Slovenia.
Strengthening blocking measures
The aim of extending the range of service providers subject to the obligations under the Gambling Act is to ensure the protection of public health in relation to participants in gambling games, the protection of minors, the protection of consumers as participants in gambling games and the protection of public order, in particular by preventing, detecting and prosecuting illegal internet gambling games, money laundering and other related criminal activities in this area.
In the case of illegal gambling operators who do not comply with the conditions resulting from the Czech regulation of gambling, persons excluded from participation in gambling on the basis of their registration in the register of persons excluded from participation in gambling and persons under the age of 18 regularly participate in gambling or, in the case of such operators, players are exposed to higher risks arising from gambling due to non-compliance with protective measures (except those mentioned above, e.g. betting limits, self-exclusion measures, etc.). This entails the risk of an increased incidence of sociopathological phenomena in society, such as the overall increased incidence of gambling addicts and, above all, the incidence of such dependence in minors. For example, the failure to check the register of persons excluded from gambling where the player is registered, or the failure to offer adequate self-exclusion measures, may lead to the emergence or exacerbation of gambling addiction, which significantly harms both the player and society as a whole. A crucial category of non-compliance with the conditions of regulation is the lack of age control of gambling participants, where minors, who form a particularly vulnerable group of people with regard to their intellectual and

psychological maturity, and whose interests are emphasised in European regulation, are at risk of becoming addicted to gambling.
According to the findings of a UNICEF study (5), the problem of gambling addiction is particularly relevant in adolescents. The prevalence of gambling among adolescents is 2-4 times higher than among adults. The study concludes with recommendations on how to prevent problematic participation in gambling among minors, where, in addition to raising awareness, it is stated that the gambling regulator should take effective measures to prevent minors from participating in gambling. In the opinion of the Czech authorities, these measures are already implemented in the current version of the Gambling Act, but these measures are complied with only by gambling operators authorised to operate gambling games in the Czech Republic. Illegal gambling operators are not subject to these measures and thus expose minors to gambling and thus put them at risk, which is particularly problematic in relation to online gambling with regard to their availability.
Gambling is not only risky in terms of addiction, but there are also other negative health and social consequences and links with secondary negative effects in the area of public order. In this context, reference can be made to a number of international studies as well. For example: The report on gambling in the Czech Republic 2021 (6), based on a study among players in treatment in 2019, confirmed the high incidence of psychiatric comorbidity. Up to 63 % of players had an anxiety-depressive disorder in the last 30 days prior to treatment, while a further 20 % had an increased risk of this disorder. 49 % of respondents had thoughts of suicide at some point in their lives, and 22 % reported suicide attempts, half of them repeatedly. There is also a higher prevalence of substance abuse among players suffering from gambling disorder. An overall financial loss was reported by 91 % of players, the average being CZK -1.2 million, with the median being CZK -500k . 88 % of respondents were in debt, the average debt was around CZK 800k, with the median debt being CZK 500k . Pathological gambling also has an impact on increased related crime. According to the results of the above study, 51 % of pathological gamblers in treatment have committed theft, 37 % fraud, 33 % embezzlement, 28 % manufacturing and/or selling drugs and 12 % robbery.
The increased protection of the health of gambling game participants, children, adolescents and, in general, society as a whole from the socio-pathological effects of gambling [and thus the protection of public health within the meaning of Article 1(3) of Directive 2000/31/EC] will be achieved by limiting the availability of such gambling operators who do not have the appropriate right to operate online gambling in the Czech Republic and therefore do not operate gambling games in accordance with the regulation of gambling games in the Czech Republic, which imposes obligations on operators relating, inter alia, to measures to protect the gambling participant (e.g. identification of the gambling participant, self-exclusion measures, mandatory breaks, avoidance of participation in gambling in the case of persons entered in the register of natural persons excluded from participation in gambling games, maximum bet, panic button, information obligation, etc.). In the case of illegal gambling operators who do not comply with the conditions resulting from the regulation of gambling games, persons excluded from gambling due to registration, persons under the age of 18 or, in the case of such operators, are exposed to higher risks arising from gambling due to non-enforcement of the protective measures referred to above, are regularly involved in gambling games, thereby contributing to a greater extent to the harmful consequences of gambling and thus harming public health.
These measures are also taken by the Czech authorities in view of social developments, internet availability, technological developments in the field of gambling and the related increase in the proportion of participation in gambling remotely via the internet. The trend in the transition of gambling participants to the online environment was reinforced by pandemic measures to prevent the spread of SARS-CoV-2, during which the operation of land-based gambling establishments was restricted. From their own activities, the Czech authorities know that the trend of increasing participation in internet gambling has not been reversed and that there has been a significant shift of gambling participants to the online environment. These reasons are among those why the Czech authorities are adopting more effective regulation of online gambling, including the corresponding tools, in order to ensure the health of gamblers and public order.
Technological advances and general trends of recent years have led to the widespread use of various applications, not only mobile ones. This trend has also not avoided the area of gambling, where mobile applications are intensively used and further development can be expected. The obligation for the operator of a website or electronic interface not to distribute applications whose identifier appears on the list of unauthorised internet gambling is thus a response to this trend and to technological developments in the gambling market. This is a necessary measure to ensure the same level of protection for affected users of these applications on a par with other users of online gambling services.
Protecting public health is not the only objective of the measures introduced. With a view to ensuring a high level of protection for consumers, i.e. gambling game participants, the Gambling Act (both as it stands and the draft) lays down

obligations for operators to ensure such protection. This includes, for example, an obligation not to operate gambling games that do not guarantee to all gambling game participants (i.e. consumers) equal conditions and equal chance of winning (i.e. non-discrimination), guaranteeing the relevant consumer rights, ensuring adequate information among gambling game participants and other obligations of the operator regarding consumer protection. The gambling game operator is also obliged to have the gambling games being operated and the facilities through which gambling games are operated assessed by a testing laboratory (a so-called authorised person under the Gambling Act). This testing laboratory assesses whether the equipment and gambling game comply with the Gambling Act, i.e. it verifies the winning share of the gambling game, the correct setting of the random number generator (RNG), the maximum allowed bet, whether the gambling game cannot be influenced by the operator, etc. The operators must provide gambling games participants with this information.
In the case of illegal gambling operators (which are especially present in the online environment) who do not comply with Czech legislation on gambling regulation, these obligations are absent and clearly do not achieve the standards of consumer protection in the very specific area of gambling. This situation is particularly evident in the case of illegal third-country operators, who are behind the vast majority of problematic and illegal gambling sites and applications. For these operators, the random number generator may not be set 'fairly', the gambling game operator could influence the outcome of the game to its advantage, or the winning share could in fact be set to a lower level than that reported to the gambling game participant. In such cases, the consumer would be misled and unprotected. As part of their official activities, the authorities of the Czech Republic have also found that in many cases unauthorised gambling game operators do not pay out winnings or account balances to gambling game participants, misuse the data of gambling game participants and in other ways violate the legally protected interests of the persons concerned.
Another objective of the notified legislation is also the protection of public order. There are other related negative externalities associated with gambling on public order, crime, minors, etc. In this context, reference can be made, inter alia, to the above studies and information. The authorities of the Czech Republic also consider that without the adoption of the proposed regulation, the position of the Czech authorities in the enforcement of legislation in the area of combating the legalization of proceeds of crime and terrorist financing (AML/CFT regulations), tax obligations and other manifestations of secondary crime often associated with illegal gambling as a very risky type of activity in this context is significantly weakened, as evidenced by e.g. the European AML/CFT regulation, which classifies operators as obliged persons and stipulates that the operation of gambling must be subject to gambling regulation and therefore operators must not be allowed to operate gambling outside its framework [Article 2(1)(3)(f) and Article 47(1) of Directive (EU) No 648/2012]. High-risk activities primarily concern operators of gambling games and related services from third countries. The Czech authorities are aware from their own activities that these concomitant phenomena may also apply to operators possessing the relevant authorisation under the Gambling Act, all the more reason to be concerned about the circumvention of national regulation by service providers without the appropriate authorisation to operate gambling in the Czech Republic.
In summary, it can therefore be concluded that the inability to block such illegal operators would contribute to an increased extent to the harmful consequences of gambling and the associated negative externalities, since the protection of the health of players in gambling games, consumer protection, the protection of minors, the protection of public order and the protection of sociopathological effects, health consequences and other negative phenomena related to gambling could not be reduced to the desired extent.
As part of the legislative work leading to the extension of the range of service providers subject to obligations under the Gambling Act, a proportionality test was carried out. Theoretically, there may be a conflict of interests in protecting participants in gambling games with the business interests of operators (in most cases illegal ones). In this context, the chosen approach was of increased protection of players, safeguarding public order and other stated objectives, while preserving the fundamental rights to business, because existing legislation did not fully achieve these objectives as well as due to technological and social progress. At the same time, the choice of this instrument does not render the business plans of the given service providers impossible, since these entities are not subject to additional obstacles that would prevent them from providing services in the Czech Republic.
The general regulatory parameters, the regulatory instruments and their suitability in relation to the objectives pursued were subjected to a detailed ex post analysis of the RIA, in which the existing regulation of gambling regulation was assessed and the results of which are reflected in the draft Gambling Act. In this context, the public interest in protecting the health of gambling participants, the protection of consumers, the protection of minors and the protection of public order has been given high priority and appropriate regulatory instruments have been chosen to achieve the above

objectives. The existing legislation has not fully achieved these objectives.
The chosen instruments are appropriate in relation to the intended objectives and reflect the rights of businesses in this area, which are not subject to additional obstacles that would prevent them from providing services in the Czech Republic.
The Czech authorities consider the chosen instrument to be fully compliant with the harmonisation requirement in this area as it does not impose requirements for service providers beyond Regulation (EU) 2022/2065. Across the EU, under Article 6 of Regulation (EU) 2022/2065, service providers are obliged to remove illegal content. The proposed legislation assumes that the legality of the recipient of the service under Regulation (EU) 2022/2065 is not assessed by the service provider but by the Czech authorities. Thus, only the obligation to take action remains with the service provider.
The Czech Republic does not deny that the proposed regulation provides the supervisory authorities with stronger tools in the area of blocking websites, applications and payments, but it does so for completely legitimate reasons, also taking into account technological progress and socio-economic developments. The current legislation, which has been notified in the past (2015/424/CZ) and which has been in effect since 1 January 2017, has proved unsustainable in the long term, as it is unable to effectively prevent the operation of gambling games without appropriate authorisation. From this point of view, the most significant obstacle to effective supervision is the relatively easy provision of alternative access to blocked gambling games from a so-called mirror website. The proposed amendment legitimately seeks to prevent this threat of shifting illegal traffic by ensuring the most effective and therefore also the quickest blocking of the entities concerned.
The adoption of such a streamlining of the blocking process was preceded by an analysis of previous cases and the subsequent impacts of the adoption of the proposed amendment. All the risks of illegal and illegitimate interference with the rights of the entities concerned, which could potentially be borne by the proposed regulation, either directly eliminate or at least significantly reduce other newly introduced institutes of the proposed regulation (such as an objection to inclusion on the list of unauthorised online games).
Here, we consider it appropriate to point out that the interest in preventing the illegal operation of gambling games is not solely due to the interest protecting public order or the protection of participants in gambling games. The protection of legal gambling operators and their business and investments, regardless of their country of origin, is also an important parameter.
On the basis of the above, it can only be concluded that the proposed regulation is fully in line with the freedom to provide services and, in general, EU law.

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