



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Single Market Enforcement

Notification of Regulatory Barriers

Message 201

Communication from the Commission - TRIS/(2024) 3307

Directive (EU) 2015/1535

Notification: 2024/0453/LT

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

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1. MSG 201 IND 2024 0453 LT EN 19-12-2024 12-12-2024 LT ANSWER 19-12-2024

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4. 2024/0453/LT - H10 - Games of chance

5.

6. Commission Notice - TRIS/(2024) 3098

Directive (EU) 2015/1535

Notification: 2024/0453/LT

Lithuania, having taken note of the views expressed by Malta in the European Commission's communication TRIS/(2024) 3098, puts forward arguments in support of measures to combat illegal gambling.

We emphasize that, following the legalization of remote gambling organization in the Republic of Lithuania in 2015, the Law on Gambling of the Republic of Lithuania also provided for measures to combat illegal remote gambling operators, which included, among other measures laid down, the blocking of payments made for the benefit of illegal gambling operators. The Gaming Control Authority under the Ministry of Finance of the Republic of Lithuania (hereinafter 'the Control Authority') constantly monitors the market and issues binding orders to block both websites related to illegal remote gambling and payments made for the benefit of an entity that organises illegal remote gambling, i.e. to implement blocking on the basis of a 'blacklist'. Since 2016, the Lithuanian Gaming Control Authority has blocked more than 1,780 illegal websites, accordingly issuing binding orders for payment service providers to block payments. However, practice has shown that the blocking of payments on the basis of a 'blacklist' is not sufficiently effective, both due to the technical solutions known to the player to avoid blocking and the ability of payment service providers to block all payments based on a mandatory instruction issued by the Control Authority, as the different methods of payment for participation in games chosen by the player require different technical solutions. Lithuania, while enhancing measures against illegal gambling operators, does not propose to introduce new prohibitions or restrictions, but only improves the existing payment blocking model, providing payment service providers with more tools to implement mandatory instructions more effectively, and to identify and block payments made for the benefit of an illegal gambling operator



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more efficiently. It should be noted that the blocking of payment transactions is in no way related to the provision of payment services in countries other than the Republic of Lithuania.

Gambling activities are not harmonised at European Union level and therefore, in accordance with the principle of subsidiarity, it is up to each Member State, in accordance with its own values, to decide and determine the conditions for gambling activities based on the grounds of general interest such as the protection of players, the prevention of money laundering and terrorist financing, the circumvention of international sanctions, consumer fraud and incitement of citizens to squander money on gambling. In the light of these considerations, an entity seeking to provide gambling services, including remote gambling services, in a given Member State must comply with the requirements of that Member State's legislation governing the organisation of games, such as licences, authorisations, etc. The fact that an operator acquires the right to provide remote gambling services in one Member State does not in itself mean that it is free to provide such gambling services in another Member State. An entity shall be regarded as an illegal gambling operator if it is not authorised, in accordance with the legislation of the Republic of Lithuania, to provide gambling services in the Republic of Lithuania.

It should be noted that the regulation of gambling in Lithuania is reviewed in a proportionate and consistent manner, taking into account the damage caused by gambling, the effectiveness of the already established legal regulation, the challenges faced by the entities involved in the implementation process, etc.

The findings of a 2021 study by H2 Gambling Capital, a data analyst from the gambling industry, on the size of the market for legal and illegal remote gambling in the European Union and the United Kingdom revealed that the market for illegal remote gambling in Lithuania accounted for 15%. In financial terms, this means more than EUR 18 million of Lithuanian players' money spent on illegal remote gambling. Meanwhile, according to an assessment carried out by the public opinion research company Sprinter Tyrimai in 2023, the market share of illegal remote gambling in Lithuania amounted to 25%, which, taking into account the significantly increased demand for remote gambling, would mean almost EUR 50 million spent by Lithuanian players on illegal remote gambling. However, in addition to financial losses, the social damage caused by illegal gambling is even more significant, as participation in illegal gambling does not ensure compliance with the principles of responsible gambling, the application of measures for the protection of players, the payment of winnings, and other rights established by the laws of the Republic of Lithuania and guaranteed to players. The legal regulation of gambling in Lithuania establishes the age limit for participation in gambling. In addition, it is prohibited to promote participation in gambling by any means or actions, including offering discounts, bonuses, free games, or advertising of gambling (except for specified exceptions) or the like. There is also a register of persons who have restricted their chances to gamble (hereinafter referred to as the 'Register'), in which persons who are registered as having gambling problems and are unable to control their own gambling cravings are not allowed to participate in gambling, i.e. such persons are not allowed into gambling venues and are blocked from accessing remote gambling. However, if safeguards are not applied, illegal gambling is open to adolescents and young people, the non-prohibited promotional activities on sites offering illegal gambling make the gambling process even more attractive, and those who are registered on the Register or those who have been ordered by a court decision not to participate in gambling, have the opportunity to gamble undisturbed.

The Court of Justice of the European Union (CJEU) has repeatedly pointed out that the regulation of games of chance is one of the areas in which there are significant moral, religious and cultural differences between the Member States. In the absence of harmonisation in that regard at EU level, it is for each Member State to determine in those areas, in accordance with its own scale of values, what is required in order to ensure that the interests in question are protected (Judgment of the Court of 8 September 2009 – Liga Portuguesa de Futebol Profissional and Bwin International, C-42/07, ECR I-7633, paragraph 57 and the case-law cited).

The CJEU has also pointed out that Member States have a margin of discretion in determining the level of protection of consumers and the social order in the betting and gambling sector and may opt for a system of consumer protection which differs from that adopted by other Member States, without it being necessary for a restrictive measure adopted by a Member State to be consistent with the concept of all other Member States as regards methods of consumer protection (Judgment of the Court of 12 July 2012 – HIT and HIT LARIX, C-176/11, paragraph 25 and the case-law cited; Judgment of the Court of 28 April 2009 – Commission v Italian Republic, C-518/06, ECR I 3491, paragraph 83 and 84).

It should be noted that, from 1 May 2017, when the voluntary self-restriction programme from participation in games of chance – the Register – was established and became operational in Lithuania, until 31 December 2017, 2,580 applications for exclusion from gambling and remote gambling were registered in the Register. Meanwhile, as of 31 October 2024, 63,563 applications for exclusion from gambling and remote gambling have been registered in the Register since its



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establishment, of which 17,212 are valid applications.

According to the official data of the Republican Centre for Addictive Disorders (RCAD), the number of people treated for pathological gambling in the branches of the Republican Centre for Addictive Disorders has more than tripled since 2020, from 55 in 2020 to 176 in 2023. It should be noted that the RCAD is a medical institution with a secondary-level addiction psychiatry licence and these data only reflect a portion of people with gambling addiction, i.e. do not reflect the true scale of the problem, which in reality is greater in the population. Therefore, the measures proposed in the amendments to the Law are necessary for the protection of players.

In the absence of a common rule at European Union level, Lithuania is therefore free to establish rules in the field of gambling in accordance with the principles enshrined and protected in the Constitution of the Republic of Lithuania, and the proposed restrictions are justified by overriding reasons of public interest. The dangerous nature of gambling for public security, as well as other public values protected by the Constitution, has been assessed by the Constitutional Court of the Republic of Lithuania. The Constitutional Court stated in the Decision of 21 June 2011 that '[...] organising gambling can lead to negative consequences for human health, public order and public security, and other legally protected values'. So this ruling of the Constitutional Court provides a legal assessment of gambling in view of the social values established by the Constitution. In other words, the Constitutional Court conducted an analysis of gambling based on the scale of values enshrined in the Constitution. According to the case-law of the CJEU, the moral assessment of gambling and its regulation lies within the competence of the Member States. Thus, the above-mentioned requirements laid down in national legislation should be regarded as measures aimed at regulating gambling activities, taking into account the values of public interest enshrined in the Constitution and the negative consequences and dangerous nature of gambling identified in the case-law of the Constitutional Court.

The case-law of the CJEU and the justification of restrictions in the field of gambling were summarised by the CJEU in Cases C-186/11 and C-209/11 *Stanleybet* (2013), where it was held that restrictions on the freedom to provide services are justified on grounds of public policy, public security or public health or justified, in accordance with the case-law of the Court, by overriding reasons in the public interest (judgment of 19 July 2012, *Garkalns*, C 470/11, paragraph 35 and the case-law cited). According to settled case-law of the CJEU, restrictions on gambling activities may be justified by overriding reasons in the public interest, such as consumer protection and the prevention of both fraud and incitement to squander money on gambling (*Garkalns*, paragraph 39 and the case-law cited therein).

In the light of the above, the proposed legal regulation is compatible with the principle of the free movement of services enshrined in Article 56 of the Treaty on the Functioning of the European Union and the case-law of the CJEU, as it pursues both public health objectives and the protection of the public interest in ensuring consumer protection and rights.

European Commission

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