

## Regulation

# Market Focus: Portugal

## A rundown of the latest regulatory developments in the Portuguese online gambling market

Robert Simmons | 16 July 2019



The regulation of gambling, and particularly online gambling, has been a relatively new development for **Portugal**, only occurring within the last 20 years. The legal framework for gambling in Portugal consists of a diaspora of individual laws, covering both land-based and online gambling, specific products and interactions with the wider Portuguese economy.

Principal pieces of legislation governing the online part of the Portuguese market include Decree-law 66/2015 (Regime Jurídico do Jogo Online), which concerns online casino gaming, poker, bingo, online fixed-odds sports betting and online horserace betting (which has since been amended twice in May 2017 and August 2017). The regulation of online lotteries and online pari-mutuel sports betting is governed by Decree-law 282/2003.

In addition to these main acts, gambling in Portugal is covered by anti-money laundering measures covering financial transactions, data protection regulation and the publicity code, which covers advertising. Two authorities hold responsibility for supervising gambling regulation in Portugal – **Serviço de Regulação e Inspeção de Jogos (SRIJ)** and Santa Casa da Misericórdia de Lisboa (SCML) – with each holding responsibility for different areas.

SRIJ holds responsibility for regulation, inspection and ongoing monitoring of both online gambling and land-based games of chance while SCML is responsible for inspection and monitoring of land-based fixed-odds sports betting, land-based mutual betting on horseracing and the Portuguese national lottery. SCML is a public entity funded by the Portuguese state. Licences to conduct online gambling in Portugal are issued solely by SRIJ.

Online fixed-odds sports betting and betting on horseracing is allowed, as long as it is on sports and horseracing events that are mentioned within a list of sporting events which has been approved by the SRIJ.

Under current Portuguese regulations, the provision of online gambling is limited to legal corporate entities or limited liability companies with a registered office within the European Union or in a country which is a member of the European Economic Area (EEA). Companies which act as suppliers to operators with Portuguese licences are not required to obtain their own licences to operate in the Portuguese market.

### **Portugal in numbers**

**Population:** 10.2 million

**GDP per capita:** \$24,500

**Internet penetration:** 70.3%

**President:** Marcelo Rebelo de Sousa

**Principal regulatory body:** Serviço de Regulação e Inspeção de Jogos (SRIJ)

### **Licensing**

There are currently four types of online gambling licences available via the SRIJ: fixed-odds sports betting, pari-mutuel and fixed odds betting on horseracing, bingo and a licence which covers online casino and poker. No current limits to the number of licences exist and companies can apply for licences at any desired point, as the licensing process is not limited to specific licensing windows.

Upon receipt of an application, SRIJ is required to verify both the applicant's good reputation and check that the company fulfils certain economic, technical and financial requirements. Applicants are required to submit a detailed plan of their technological systems, which must be consistent with industry best practice. In addition, documentation must be provided which confirms the type of systems employed, the territory in which both the main servers and database will be located, and the type of online gaming being offered.

Operators are also required to provide information about their self-exclusion mechanisms, betting limits, available payment methods, prize methodology, transaction processing methods and site security details. Upon approval, operators are required to pay licence fees, provide safety deposits and obtain certification of their systems, only then will a licence be issued. Licence fees are unspecified, but all licences are valid for a period of three years and can be renewed if operators maintain good conduct.

Any operator who breaches SRIJ regulations or ceases to adhere to these standards may have their licence suspended or revoked, depending on the gravity of the offence.

## **Taxation**

Online gambling in Portugal is subject to a special online gambling tax, known as the IEJO. The rates charged under the IEJO vary according to the type of gaming being offered. In games of chance, which includes online casino, poker, bingo and pari-mutuel horseracing betting, the IEJO is based on the gross gaming revenue of the operator, with rates varying between 15% and 30%.

In cases where fees being charged are the sole source of revenue for the operator, the IEJO is levied on these fees charged at a rate of 15%.

## **Restrictions**

Operators are generally obligated to provide gambling related services to customers in a socially responsible way and although deposit and jackpot limits are not directly specified in Portuguese regulations, operators are obliged to establish limits for players consistent with a responsible gambling theme.

Advertising of online gambling is allowed if it protects minors, highlights the entertainment value of gambling and does not encourage excessive gambling practices. Any targeting by operators of underage players is expressly forbidden by Portuguese law.

Portuguese operators are obliged to hold prevention awareness-raising activities, draft codes of conduct in relation to operations and foster good practices at all levels of their operations.

In addition, before commencing operations, online firms must draw up a detailed plan which includes all information on the firm and the service it plans to offer, all policies pertaining to responsible gambling, deposit/withdrawal limits, self-exclusion and the timings of the game and bet.

The SRIJ has regulatory powers to block unlicensed gambling operators from targeting Portuguese citizens and all operators are liable under existing anti-money laundering and financial transaction laws.

Under Portuguese egaming law, player registrations on gambling websites only become active after their identities have been verified, after which players may engage in online gambling. Operators are only allowed to use electronic payment methods which are authorised by SRIJ and must register all gambling and financial transactions. Only electronic payment methods which meet standards of financial security and anti-money laundering will be authorised by the SRIJ.

## **Local expert view**

*Tiago Bessa, managing associate at Portuguese legal firm Vieira de Almeida & Associados, has worked in the Portuguese legal industry for almost 15 years. He shares his thoughts on the Portuguese egaming sector*



**EGR Compliance: Where are the biggest opportunities for operators looking to enter the Portuguese market?**

**Tiago Bessa (TB):** The Portuguese online gambling sector is still a very recent and fresh market. Since the approval of the legal framework (in 2015), the number of licensees, the number of users and the revenues of the sector have grown steadily. Currently, there are 11 licensees and 18 licences. The number of users registered in all operators is well above one million and the gross revenues of the sector increased 24% in 2018.

However, bearing in mind the following, there is still plenty of room for growth: (i) the number of licensees is still low when compared with other countries and it is noteworthy that major European operators continue to be outside the market; (ii) although there are no official figures, the channelisation rate is still very low in Portugal and (iii) the black market consumes an important chunk of the sector – in 2017 the Remote Gambling Association

presented a study which mentioned that the black market represented 68% of the total market and a more recent study (from Universidade Nova and Qdata) mentioned that this value had risen to 75%.

Despite the facts above, I believe that one of the biggest opportunities is clearly the fact that the market is not saturated and there is a clear inclination by Portuguese consumers to adhere to gambling products and services. In fact, in 2018 the global amount of wages submitted by Portuguese was around €2,431.8m, which represented 0.5% of the Portuguese GDP. This was the highest amount in the history of the online gambling sector in Portugal.

**EGR Compliance: In your opinion does the current taxation rates prevent operators entering the Portuguese market?**

**TB:** The current taxation is different for sports betting and for casino and games of chance. In the first case (sports betting), the IEJO (Imposto Especial de Jogo Online) is calculated based on stakes and can go up to 16%. This is considered the most important barrier for the entry of new operators in the market. For the second case (casino and games of chance), IEJO is calculated on GGR and can go up to 30%. It has been mentioned several times that the taxation regime is the biggest problem in the Portuguese online gambling sector, particularly for sports betting, which is perhaps the most important segment in the online gambling sector in Portugal.

It is public that at the beginning of 2019 the Portuguese government convened a group of specialists to assess the current taxation regime and that in May a proposal was submitted before the European Commission. Although the content of the proposal is not public, we are aware that the regulator (SRIJ) was in favour of a more market-friendly regime in terms of taxation.

In my opinion, the current taxation regime (namely for sports betting) is not adequate and does not promote competition. By the contrary, it is the main barrier preventing new operators from entering the market.

**EGR Compliance: Where is the biggest deficiency in Portuguese gambling legislation and how would you address it?**

**TB:** I should start by saying that an assessment and possible revision of the online gambling framework was expected to be published until May 2018 (two years after the issuance of the first licence). We know that SRIJ was working on this assessment and that a position document was presented to the government last year. However, until now and despite the revision of the taxation regime, we are not aware of the government's intention to change the online gambling regime.

In my view, in addition to the tax regime, one important point that could be addressed is the different taxation regime between land-based operators and online operators. This would be an important point to construct a better level playing field between different operators in the same sector. Another point that could be improved in the legal framework is related to the

tools that public authorities may use to address problems around the black market, namely online operations from unlicensed operators and online advertising. In my opinion, the legal framework could be improved on this matter to allow public authorities to better tackle this issue. Possible solutions to consider would be the involvement of banking authorities in terms of online payments, the co-responsibility of entities that make online advertisements to unlicensed operators and a new set of rules relevant for the app ecosystem. In fact, the current rules are devised for traditional webpages and does not cover the important app ecosystem where it is extremely easy to find unlicensed products and services.

Finally, the procedure to obtain a licence takes too long and should be streamlined considering the experience gathering by the regulator in the last three years, and the level of administrative fees to be paid could also be reduced to foster more competition in the market. It would also be important to consider possible regulatory solutions that would allow licensed operators to swiftly present new and more innovative offers to its users. This would also be relevant to reduce the incentive for users to refer to black market operations.

### **EGR Compliance: Is the regulator doing the best job in excluding unlicensed operators from entering the Portuguese market?**

**TB:** According to recent statistics, until 31 December 2018 a total of 338 unlicensed operators were notified to cease their operations in the Portuguese market. Until the same date, the regulator notified the Portuguese ISP to block 270 websites. However, only 13 participations were presented to the public prosecutor's office in order to start a criminal procedure.

I believe that despite the limitations in the current legal framework, the regulator is trying to do the best job to exclude unlicensed operators from conducting their business in the Portuguese market. The problem in this case is that most operations are not national and the legal tools to react to such activities sometimes are not the most adequate. International cooperation could also be important on this matter.

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