

The principal objections to the Swiss draft gambling law

Dr Andreas Glarner and Noemi Valloni of MME Partners, Switzerland, examine the responses to the Swiss Federal Council's draft gambling law. The consultation period, which ran until 20 August, garnered over 1,500 responses both in support of and proposing objections to the proposals put forward by Switzerland's new draft gambling law.

On 30 April 2014, the Swiss Federal Council published its draft of a revised gambling law (Money Gaming Act¹) for consultation². The Money Gaming Act shall replace the current regulatory regime which governs gambling activities via two sets of laws: casino gambling is regulated under the Federal Gaming Act ('FGA') and lotteries, bets and games of skill by the Lottery Act ('SLA'). Accordingly, the proposed bill refers those decrees into a single federal law aiming to guarantee a coherent gambling regulation in Switzerland.

The essential innovations of the proposed law, in a nutshell, are:

- Online gambling ban removed:

The Money Gaming Act aims to replace the existing online gambling ban with a system that allows online gambling based on a concession. However, only the holder of a licence for a land based casino will qualify to apply for an online licence. Hence, the draft does not contain the possibility for foreign operators to enter into the Swiss market without partnering with a local terrestrial licence holder. Furthermore, in order to be able to extend an existing terrestrial concession to online gambling services, the applicant will have to establish the commercial viability of the planned service.

- Blocking of foreign operators:

The proposed regime does not introduce a prohibition on the use of foreign online gambling services in Switzerland. However, the activities of non-licensed (foreign) providers shall effectively be reduced by technical and non-financial blocking measures. In particular, the Federal Council intends to technically block access to foreign online gambling providers operating without a Swiss licence.

- Tax exemption: The draft

Money Gaming Act also provides for a tax exemption for all gains resulting from real money gambling and introduces new guidelines for the charitable use of incomes from lotteries and sports betting services.

- Player protection: The revision aims to strengthen player protection with different measures such as play suspensions, offers of treatment and advice against gambling addiction etc.

- Secure gambling: Further, a number of provisions are in place to ensure secure and transparent gaming operations (e.g. measures against the manipulation of sports competitions).

After the release of the first draft, the Swiss Federal Council invited the Cantons, political parties and other interested groups to submit their comments on the draft to check the acceptance of the planned revision and conduct amendments prior to releasing it to the Parliament for deliberation. This consultation period ended on 20 August 2014 and the authorities received over 1,500 statements. Due to the vast number of statements only a few have been released to the public so far. But most of the important voices can be heard and for the time being, the Cantons, Comlot³, the political parties (e.g. SP, CVP, FDP, Die Liberalen and SVP)⁴ and the Association of Addicts are - in principle - in favour of the Money Gaming Act, whereas the Swiss Casino Federation and the Pirate Party reject the proposed law. Based on these statements, it is already possible to make a first assessment as to in which direction the further discussions on the proposed law will go.

Principal objections

The Pirate Party - traditionally the voice for an uncensored internet and very low regulatory

interference in private matters - calls for an entirely different approach, to delete the gaming regulations without substitution and to focus on player protection only. The Pirate Party also rejects both the proposed technical blocking measures as well as the concept of only granting online gambling licences to land based casino licence holders. According to the Pirate Party, the concept proposed by the Federal Council is based on the technical foreclosure of the Swiss online gambling market. However, as technical measures may easily be circumvented, the Swiss operators will still have to compete in a global market, which will not be possible under the proposed regime.

Technical objections

For the Swiss Casino Federation the main shortcomings are - in their view – the entirely wrong definition of casino plays, the anti-innovative overregulation of casinos as well as the insufficient measures against illegal and uncontrollable gambling options. All in all, the Swiss Casino Federation argues that the draft law weakens the position of Swiss casinos and does not improve competitiveness. Therefore, the Swiss Casino Federation proposes the following amendments in their consultation paper⁵:

- A positive and competitive definition of ‘casino plays.’
- The ability to rapidly allow for amendments in order to enable innovations: Under the draft law internationally approved casino plays are not automatically authorised under Swiss law. This unnecessarily restricts the competitiveness of Swiss casinos.
- Cash play machines and poker tournaments outside licensed casinos should be illegal. Only in this way is effective youth and

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social protection possible.

- Faster implementation of internet gambling: The internet gaming ban will not be lifted prior to the enforcement of the new act, currently planned for 1 January 2018. The Swiss Casino Federation considers this to constitute a huge competitive disadvantage to operators in other jurisdictions.
- Dropping the preventive consultative commission because it leads to unclear responsibilities.

Tax exemption

In consideration of the current financial situation of some Cantons the left wing party SP objected to the intended tax exemption for all winnings (lottery and casino plays). Other political parties (amongst others the CVP) are in favour of the tax exemption as it is congruent with the current treatment of casino plays. According to the Federal Council’s estimates, the intended tax exemption leads to a tax loss of around CHF 120 million per year. However, these losses shall be compensated in the long run through the expected increase in players and turnover - a likely scenario if the intended technical blocking measures are effectively put in place.

Small cash plays

Another objection was raised against the provisions regarding ‘small cash plays.’ Under current law (the Lottery Act) the Cantons have the power to regulate tombola plays and small lotteries. Under the Money Gaming Act these games will be regulated on a federal level (including the licencing requirements and enforcement regulations). The Cantons reject this change by stating that the proposed change has no objective grounds and is not in line with people’s needs.

Player protection

The various addiction prevention associations have submitted their statements that stress that player protections and preventions regarding gambling addiction should be strengthened and the proposed law is not sufficient in this regard.

So far, most statements on the draft have been positive and did not raise fundamental objections. However, we expect more critical voices to rise once the amended draft has been released to the Parliament for deliberation, especially in regards to the proposed ISP blocking of foreign gambling sites. As the new Money Gaming Act will not enter into force prior to 2018, there is still plenty of time for political discussions and changes. We will keep you updated.

Dr Andreas Glarner Partner
Noemi Valloni Associate
 MME Partners, Switzerland
 andreas.glarner@mmepartners.ch
 noemi.valloni@mmepartners.ch

1. See <https://www.bj.admin.ch/dam/data/bj/wirtschaft/gesetzgebung/geldspielinitiative/vorentw-d.pdf>
2. See the World Online Gambling Report, May 2014, p. 14-15. Available at http://www.e-comlaw.com/world-online-gambling-law-report/article_template.asp?Contents=Yes&from=woglr&ID=2060
3. Comlot is the supervising authority for lottery and betting services.
4. SP = Social Democratic Party of Switzerland; CVP = Christian Democratic People’s Party of Switzerland; FDP = Liberal Democratic Party of Switzerland; and SVP = Swiss People’s Party of Switzerland.
5. See consultation paper of the Swiss Casino Federation at http://www.switzerlandcasinos.ch/fileadmin/user_upload/Geldspielgesetz/Vernehmlassung_definitiv_unterzeichnet_alle.pdf