

Guidance Note on the Impact of the United Kingdom's Exit from the European Union

Malta Gaming Authority

These guidelines are being issued by the Malta Gaming Authority in preparation of the United Kingdom's exit from the European Union. The purpose of these guidelines is to provide an indication of the potential impact on the gaming industry operating in or from Malta, and the transitory measures that may be availed of in order to ensure minimal impact on regulatory efficiency and the ongoing business. These guidelines only relate to regulatory matters falling within the remit of the Malta Gaming Authority, however entities should seek advice and inform themselves of other areas that may impact business, including but not limited to data protection, immigration, employment, duty and copyright matters.

1. Regulation 10 of the Gaming Authorisations Regulations

Regulation 10 of the Gaming Authorisations Regulations (S.L. 583.05) prescribes a pre-requisite that a person that holds a licence must be a person established within the European Economic Area. The United Kingdom's exit from the EU shall mean that persons and entities established in the United Kingdom will no longer meet this criterion, and thus are required to take the necessary measures in order to ensure that the entity that holds the licence meets this pre-requisite. This principle is based on the prohibitions on restrictions to the freedom of establishment as per Article 49 of the Treaty on the Functioning of the European Union (TFEU), and the prohibition on restrictions to the freedom to provide services as per Article 56 of the TFEU, and as subsequently interpreted by various judgments of the Court of Justice of the EU (CJEU).

Measures undertaken may include transferring the licence to another company within the same corporate group in terms of regulation 17 of the Gaming Authorisations Regulations, and which requires the Authority's prior approval, and re-domiciliation, which would require the Authority to be notified within thirty days, in terms of article 37 of the Gaming Authorisations and Compliance Directive (Directive 3 of 2018).

A transitory period of twelve months will be applicable, starting off from the effective date when the EU acquis is no longer applicable to the United Kingdom.

2. Regulation 22 of the Gaming Authorisations Regulations

Regulation 22 of the Gaming Authorisations Regulations prescribes an obligation on entities providing a gaming service, or a critical gaming supply in or from Malta, without having a licence issued by the Authority, but with a licence issued by another Member State of the EU or the EEA, to apply for a recognition notice with the Authority. The purpose of the recognition notice procedure is for the Authority to recognise and rely on the licence issued to the operator by the EU/EEA Member State, to ensure that by operating from Malta, there would be no regulatory gaps and the operations in or from Malta would be covered by the EU/EEA licence and overseen by the relevant regulator, and to impose any additional measures as may be necessary to entities operating in Malta. The recognition of licences issued by other EU/EEA Member States principle is based on the prohibition on restrictions to the freedom to provide services as per Article 56 of the Treaty on the TFEU, and as subsequently interpreted by various judgments of the CJEU.

Operators making use of, or who intend to use regulation 22 in relation to licences issued in the United Kingdom will be impacted in a number of ways following the United Kingdom's exit from the European Union:

- a) The validity of existing recognition notices; and
- b) A potential breach of regulation 3 of the Gaming Authorisations Regulations.

In relation to (a) above, the Authority shall process all applications for a recognition notice submitted prior to the actual effective date when the EU acquis is no longer applicable to the United Kingdom. Furthermore, recognition notices issued in this regard will enjoy the full twelve-month term of validity of that recognition notice, which will however not be renewed. Should such entities wish to continue operating in or from Malta, they would need to take the necessary actions, which may include either applying for a licence with the Authority, or apply for a recognition notice in relation to any other EU/EEA licence they may have, for it to be recognised accordingly by the Authority.

Entities which are operating in or from Malta without a licence issued by the Authority, or a recognition notice certificate recognising their EU/EEA licence recognised for the purpose of the activity being undertaken in or from Malta would be in breach of regulation 3 of the Gaming Authorisations Regulations, as mentioned in (b), above. In terms of the Third Schedule to the Gaming Act (Cap. 583 of the Laws of Malta), this breach is classified as a criminal offence.

Following the entry into force of the new regime, including the procedure laid down in regulation 22 of the Gaming Authorisations Regulations on 1 August 2018, entities operating in or from Malta with an authorisation issued to them by a competent authority in an EU/EEA Member State were already given a transitory period to comply with the new provisions of law.

Following the United Kingdom's exit from the European Union, entities operating in or from Malta, on the strength of an authorisation issued to them by the competent authorities in the United Kingdom will no longer be able to make use of the procedure laid down in regulation 22, and thus run the risk of committing a criminal offence. Such entities are directed to take the necessary measures which may include either applying for a licence with the Authority, or applying for a recognition notice in relation to any other EU/EEA licence they may have, for it to be recognised accordingly by the Authority.

3. Ancillary Matters

Notwithstanding the above, the United Kingdom's exit from the European Union will not impact a number of regulatory causes, and these include:

- The Authority's recognition of random number generator or game certificates issued according to UK standards;
- The Authority's acceptance of UK licensed and regulated credit, financial and payment institutions for the purpose of holding player funds;
- The Authority's acceptance of the use by licensed entities of UK licensed and regulated payment methods;

- The Authority's acceptance of essential components located in UK territory (without prejudice to the position that may be taken by the European Commission, the European Data Protection Supervisor, and the Information and Data Protection Commissioner in Malta); and
- The Authority's no objection for licensed operators having offices, including key function holders performing their duties from the UK.

