

PokerStars restricts player software use

PokerStars confirmed on 7 July that it will go ahead with a series of policy changes to ban certain third party assistance software used by players to access data or obtain advice during poker play.

PokerStars will, subject to final tweaks to the prohibitions, ban "Any tool or reference material that offers commentary or advice that goes beyond a basic level, such as stack-size-based starting hand tables, decision trees or heads-up displays that dynamically change based on player action or card values" as part of changes first proposed on 11 June on the online forum twoplustwo.

Previously PokerStars allowed play recommendation charts as they could be printed and therefore were undetectable by operators, or were very limited in scope. However, the changes follow player complaints concerning a piece of software designed, according to PokerStars, to "replicate the utility of a complex bot in a chart format."

PokerStars has further advised players that software restrictions will in all likelihood become tighter, stating that it is "headed firmly toward further restrictions on [third] party software in the future."

UK High Court to refer PoC tax regime challenge to CJEU

The UK High Court has found in a 14 July judgment that there is a need to refer to the Court of Justice of the European Union ('CJEU') issues of European law raised by the UK Finance Act 2014, which implemented the point of consumption ('PoC') tax regime and is the subject of judicial review proceedings brought by the Gibraltar Betting and Gaming Association ('GBGA'), in which the Gibraltar Government has intervened.

The GBGA describes the PoC regime, *inter alia*, as contravening Article 56 of the TFEU, and as discriminatory in that it subjects operators based outside the UK who offer to UK consumers to double taxation.

Mr Justice Charles will ask the CJEU to decide whether a restriction on Gibraltar providing services to the UK engages the right to free movement under Art 56 of TFEU; whether

the taxes operators pay under the PoC regime are restrictions on the right to free movement of services for the purpose of Art 56 of TFEU; and whether the UK's aims, relied on to justify the new regime and which include increasing its tax revenue, are legitimate.

The CJEU will potentially rule on two issues, one being the constitutional issue for Gibraltar raised by its Government. "As Gibraltar is not an EU Member State, there is a question of whether, and how, Art 56 applies to nationals of (and so companies incorporated in) Gibraltar," explains Andrew Danson, Partner at K&L Gates. "The second issue is whether the new tax regime is incompatible with Art 56 or whether it falls within the UK's fiscal competence."

"The absence of any decided case law providing clear guidance, coupled with Mr

Justice Green's conclusion in last year's GBGA judicial review challenge against the new licensing regime that the constitutional issues raised by the Gibraltar Government were 'par excellence issues for the CJEU,' provided Mr Justice Charles with plenty of reasons to make the CJEU reference," said David Clifton, Director at Clifton Davies Consultancy Ltd.

Should the CJEU issue a ruling, Danson believes the matter will likely revert to the High Court. "In applying the CJEU's ruling on the legal principles, the High Court may conclude that the PoC tax regime is incompatible with EU law and make a declaratory order to this effect," said Danson. "This has the potential to lead to HMRC being ordered to repay all, or some, of the tax obtained from remote operators during the period that the PoC tax regime was in force."

Bill to create fixed odds sports lottery passed by Brazil's Senate

Brazil's Senate approved on 13 July Provisional Measure ('MP') 671/2015, which would create two new lotteries: an instant win lottery - 'Lotex' - involving the iconography of football clubs, and a fixed quota lottery on the results of sporting competitions, which some commentators have hailed as the emergence of legal sports betting in Brazil.

"MP 671/2015 has emerged as an aid to the difficult financial situation of soccer teams in Brazil," explains Isabel Andrade, Senior Associate at Felsberg

Advogados; clubs would receive a share of profits from the lotteries. "There have been a number of legislative efforts to liberalise gambling but none have got as far in the process as this MP," adds Andrade.

The MP refers to Lotex being implemented online; however the bill is less clear on the online implementation of the fixed-odds sport lottery, requiring 'adequate technology' to be used in implementing the lottery but without clarifying the exact technology referred to.

Andrade explains that the

Caixa Econômica Federal public bank would oversee the lotteries, either directly or via a third party operator holding a concession.

The bill will now advance to President Dilma Rousseff, who will decide whether to pass, veto the bill or veto parts therein. "It seems to us that there is a good chance that the Measure will be sanctioned," said Andrade. "However, it is too early to fully predict whether the President will sanction it or veto it, and if a partial veto, what it would cover."

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