

Latest Developments in Spanish Online Gambling Regulation

By Blanca Escribano and Marcos Garcia-Gasco

In May 2014, the much-awaited Spanish Law 13/2011 on Gambling Regulation¹ which liberalised online gambling at a national level will have its third anniversary. Before that law was introduced, online gambling was banned in Spain pursuant to certain provisions contained in the anti-smuggling legislation. During the legislative process, the land-based gambling industry pressured the government, first demanding the withdrawal of online market liberalisation, and then, the closure of dozens of gambling websites based abroad and operating in Spain.



Regulatory Framework

Historically, land-based gambling has been overseen by the Spanish Autonomous Communities. With the exception of the lottery monopoly, which has been traditionally – and is still today – a state function, Spanish Autonomous Communities have had, and continue to have, the legislative power over land-based gambling regulations.

This being so, in 2011 the Spanish Government was faced with a bleak picture: dozens of foreign gambling companies *ex lege* operating in the Spanish market, land based operators calling for the illegalisation of such activities (and achieving some success in the Courts), and the existence of very fragmented gambling legislation in the hands of the seventeen Autonomous Communities, which was clearly not appropriate for an eventual regulation of Internet activities (with an obvious supra-regional focus).

Against this backdrop, the Spanish government held the reins in order to approve online gambling regulation that followed a national approach. Indeed, the main aim of this regulation, as stated in its

explanatory memorandum, is to harmonise the regulation of online gambling in Spain, an activity which clearly transcends regional boundaries.

In that context, the new Gambling Regulation was born. Since then, Gambling Regulation rules on online gambling activities operating at a national level regulate all electronic, interactive and technological gaming operations, including the Internet, TV, mobile phones, and any other interactive communication system where physical features play an ancillary role. Concurrently, regional authorities also have the power to regulate online gambling within their respective territories.

Almost three years have passed since the approval of the Gambling Regulation, and we have witnessed the efforts of both private operators and public authorities in order to ensure a solid legal and regulatory framework. However, further developments are now under way, and it seems that dark storm clouds are now gathering over the Iberian Peninsula. Proposals for extending the list of lawful online games,

in particular slot games, and the very real prospect of issuing new online licences, have poured cold water on the hopes of the traditional land-based sector, which is already seriously affected by the economic crisis. In the opposite corner, the online industry welcomes these changes: it appears as though the Spanish economic crisis has been a great opportunity for the development of the online gambling market. We should not forget that the introduction of the Gambling Regulation and future legal developments also bring with them important economic connotations. While the explanatory memorandum of the Gambling Regulation and the recent proposal for the introduction of betting exchanges and slot games established that regulation on online gambling is intended to protect users and participants in gambling activities as well as society as a whole from the potential adverse effects of such activities (money laundering, illegal gambling or other fraud), the Spanish State, which as mentioned bears the powers relating to online gambling, will be the eventual beneficiary of the significant taxes arising from online gambling. For this very reason, some Autonomous Communities have supported land-based operators in order to protect traditional activities from online competition since,

as explained, they continue to have jurisdiction over land-based gambling (and above all, retain their tax revenue).

New regulation on slots and betting exchanges

Under the Spanish Gambling Regulation, gambling comprises any activity in which sums of money (or money's worth) are put at risk on the basis of future uncertain results, which determine the transfer of those goods or money between participants, regardless of whether skill or chance is primarily involved. Based on the wording of the law, any game not expressly contained in the Gambling Regulation (or included by way of future legal developments) will remain prohibited.

Until today, the list of lawful games included the following regulated games: lotteries (which remains a national government monopoly), betting (including sports and horseracing pools and fixed-odds betting and other forms of pool and fixed-odds betting), raffles, contests and other games (in particular poker, bingo, roulette, Black Jack and baccarat).

As a result of pressure from the online sector, and despite the aggressive campaign from some land-based operators against their online gambling rivals, in April 2013, the Spanish gambling watchdog, *Dirección General de Ordenación del Juego (DGOJ)*, announced that it would allow online slots and betting exchanges. The aim of both initiatives is to widen and develop the online offering in order to satisfy the demand of the market relating to those products but with the benefit and protection of the inherent guarantees associated with the regulation.

After nearly a year of cautious consideration, the DGOJ has begun formal proceedings to authorise slots and betting exchanges in the Spanish market. The adoption process has only just begun, and it will be a long and thorny journey, but at the same time these changes offer operators boundless opportunities. On

19 February 2014, both projects were presented by the DGOJ to the Gambling Policy Council⁹ (GPC). Once GPC observations have been assessed, draft Orders shall be made available to the public (gamblers associations, operators and other experts), who will be able to submit their comments to the DGOJ. Despite the challenging debate that will take place in the coming months, regulations are expected to be approved within 2014.

Draft Orders, which have not been published officially, were leaked to the press recently. Although the draft Orders are not definitive and many questions remain open (for instance, limits on stakes, maximum prizes, or technical type-approval requirements), some other attractive elements of the regulation have already been released. For example, new rules will allow progressive jackpots, an innovative automatic gambler mode and B2B operators will not be able to offer casino services to operators who are not legally established in the country.

It is very likely that the most remarkable new development (as explained below) is the official announcement of the DGOJ confirming that the Spanish market will re-open to new operators. Alongside the launch of these draft Orders, the DGOJ has decided to issue, for the second time since the Gambling Regulation was passed three years ago, a new tender that will allow new operators to enter the Spanish market.

New online licences will be issued

The Gambling Regulation established two different licensing categories and entitlement procedures. Operators providing services to the Spanish territory are required to obtain a general licence (as operator) and single licences for any kind of game offered.

In Spain, the number of general licences to be granted by the DGOJ is, in principle, unlimited. Nevertheless, the

gambling authority is entitled to limit the grant of licences based on the protection of public interest and prevention of gambling addiction.

On 1 June 2012, the DGOJ issued the first online gambling licences in Spain. A total of fifty-three online companies (both national and foreign) were legally authorised to develop their gambling activities in the country (only two operators have given up their licence since then). These licences were granted not only to gambling operators but also to media groups and advertising companies. To date, this has resulted in what seems to be an excessive number of licences for the size of the Spanish market and, even though some licensed operators have never operated in the market before, just a handful of operators (*Bet365*, *PokerStars*, *Bwin.Party*, *William Hill* and *888*) hold 85% of the market share.

As indicated in the previous section, one of the most significant milestones of the new regulation is the re-opening of the Spanish market through a call for tenders in respect of the grant of new general online licences to operate in Spain. The Gambling Regulation imposes an obligation to wait at least eighteen months between any two licensing tenders. This time period has already passed since the last tender in June 2012, and while it is true that no precise target dates have been set yet, the DGOJ has officially confirmed that a new tender, linked to the approval of the new drafts, will take place. Despite the market structure concerns highlighted above, legalisation of slot games, one of the most popular gambling games amongst Spaniards, will address the long overdue demands. This would make the Spanish market a more attractive field for operators and, at the same time, will help to readjust the number of competitors operating in Spain in the near future, some of which plan to use this market as a bridge to the Latin American market.

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DGOJ extends the list of other online lawful games

Slot games and betting exchanges have not been the only privileged games that have slipped into the Spanish market. The Ministry of Finance, through the DGOJ, has also recently published the Order HAP/1998/2013³ amending the pre-existing rules for several types of games, in particular, betting and bingo.

In the betting field, the existing restrictive obligations have been relaxed by the new Order, allowing online gambling operators to decide the type of bets they want to offer within the framework of betting activities. Until the approval of this Order, the entitlement to determine the betting catalogue of events (the list of betting games which Spanish licensees can lawfully offer) had been reserved to the DGOJ. New Order HAP/1998/2013 enables online operators to create their own product catalogue without specific consent from the DGOJ.

Notwithstanding the foregoing, there are some rules that new betting catalogues must comply with: bets contrary to the Spanish Constitutional principles and rights are prohibited; operators must keep a copy of the catalogue offered for a six-year period (notification to the DGOJ in case of amendment is not required); and general provisions from the Gambling Regulation are still applicable to new betting catalogues approved by online operators.

In a further extension to the bingo market, online operators are now entitled to offer any variety of bingo (e.g. not only based on numbers but also in colours, symbols and so on).

Impact of future legal developments

Very recently, the Market Unification Act⁴ has also been approved. This Act seeks to ensure the development of trade and service activities under the same conditions throughout Spain, regardless of the regional legal barriers already described, and seeks to address the existing inconsistencies. However, some Autonomous Com-

munities have already expressed that this law encroaches upon or undermines their competences; therefore, they are determined to contest this in Court.

The other focus of attention has to be the huge number of regulations that are still pending approval. Although they are not specifically related to gambling, they will have an impact on the provision of online services and so their approval, scheduled for 2014, is eagerly anticipated. Examples include the forthcoming new EU Data Protection Regulation, the Network Security Directive, the General Telecommunications Act and the Intellectual Property Act at national level. All of these laws will have a major impact on the online gambling industry.

Land-based turbulences

Continuing turbulences have swept the traditional land-based industry for some time. Las Vegas Sands (LVS) finally dropped plans to develop the mammoth *EuroVegas* resort-casino project in Spain. The traditional land-based industry saw this project (with an estimated investment of US\$35 billion and led by the gambling industry tycoon Sheldon Adelson) as a kind of massive icebreaker in support of their historical claims. The national government and Madrid regional government prepared a battery of regulations and incentives in order to bring considerable legal concessions to resort-casinos. Such measures could not involve the grant of aid to a single enterprise as that would infringe competition law rules; therefore, incentives had to be applicable to the whole land-based sector. Indeed, the regional government has already authorised the opening of two casinos in metropolitan Madrid. Unfortunately, strong demands from the investors overstepped the mark, and negotiations broke down at the end of 2013 when LVS decided to re-route the investment towards Asia.

Added to this is the difficult situation that Codere, the biggest Spanish gambling



firm, is on the verge of insolvency. Talks with creditors to renegotiate the company's debt have not yet borne fruit, and the group is getting ever closer to insolvency.

The seriousness of the crisis hitting the traditional gambling industry has given the online sector support to grow. After all, a government deprived of income has found a source in online which it did not have in the traditional sector. In fact, online gambling in Spain offers an exciting panorama from both the regulatory and economic perspective. There are challenging regulations around the corner and other crucial questions still to answer. One such debate, the possibility for Spanish operators to share liquidity with other Member States, continues unabated. Nevertheless, some strides have been made on this matter; proposals are on the table and some countries are still considering this possibility. This is just one example of how the gambling industry is responding to the current challenges facing it in Spain. ♣

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¹ <http://www.boe.es/buscar/act.php?id=BOE-A-2011-9280&tn=1&vd=&p=20130605&acc=Elegir>

² The Gambling Policy Council (Consejo de Políticas del Juego) is a body responsible for leading and coordinating the activities carried out by the Central Government and the Autonomous Communities on gambling policies.

³ <http://www.boe.es/boe/dias/2013/10/30/pdfs/BOE-A-2013-11335.pdf>

⁴ <http://www.boe.es/boe/dias/2013/12/10/pdfs/BOE-A-2013-12888.pdf>