
CHAMBERS GLOBAL PRACTICE GUIDES

Gaming Law 2024

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**Spain: Law & Practice
and Trends & Developments**

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SPAIN



Law and Practice

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Asensi Abogados is a boutique law firm specialising in the gaming and gambling sector. It represents and advises a large number of international gaming companies with interests across the Spanish and Latin American markets. The firm works for the largest online betting and casino operators, software providers, skill games operators, affiliates and payment-solution providers, as well as land-based operators, slot-machine manufacturers and suppliers. Asensi Abogados has offices in Madrid, Mallorca and Bogotá, and is part of the Spanish Digital Gam-

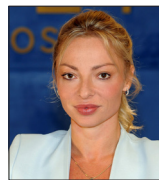
ing Association (Jdigital). A team of two partners and nine associates operates in Spain, while the Colombian office is composed of one partner and three associates. Recent work by the firm includes licensing procedures at both online and land-based levels, providing detailed advice on the practical application of the new regulatory developments for online operators in Spain, and assisting international operators in relocating to Ceuta and Melilla, Spain's two gambling business-friendly jurisdictions.

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1. Introduction

1.1 Current Outlook and Recent Changes Regulatory Trends

The regulatory regime for gambling in Spain is aimed at reinforcing:

- the protection of players;
- public order; and
- the prevention of addictive behaviour, fraud and money laundering.

In this sense, the trend for protecting public health, minors, consumers and society as a whole has been clearly expressed and strengthened by the most recent and relevant developments in the sector – ie, with the approval of one of the most restrictive regimes on gambling advertising through the entry into force of Royal Decree 958/2020, of November 3rd, on commercial communications for gambling activities and the publication of Royal Decree 176/2023, of March 14th, aimed at the development of safer gambling environments. This latter regulation seeks to offer a comprehensive protection framework for all participants in a game and establishes an enhanced protection model for certain groups of players based on their specific characteristics.

Gambling Sector Growth

According to the latest quarterly report (Q2 2024) issued by the Spanish gambling regulator, the online gambling industry showed a growth of 10.39% in gross gaming revenue (GGR) compared to the same quarter of 2023. While this does not represent a significant increase, the key point is that the GGR continues to rise annually.

Recently, the data for the Spanish gaming market in 2023 was published, showing GGR figures of:

- EUR1.1701 billion for regional private gaming;
- EUR1.2367 billion for federal private gaming (online); and
- most notably, EUR4.994 billion for state lotteries and betting (public gambling).

2. Jurisdictional Overview

2.1 Online General Regulation

Gambling regulation in Spain is divided between online gambling that is offered at a federal level and land-based or online gambling that is offered within one region. Online games offered at a federal level require a federal licence that entitles the holder to operate online in the whole territory. However, land-based gambling or online games offered at a regional level (in one or several regions) require the relevant licence from the relevant autonomous region.

Therefore, online gambling in Spain is regulated at both a federal and regional level; the applicable regulation, and which gambling products will be legally approved, depends on whether these are commercialised at a national level or only at a regional level in one or several autonomous regions in Spain.

Online gambling at a national level is regulated by the Spanish Gambling Act (*Ley 13/2011, de 27 de mayo, de regulación del juego*), and each gambling product has its own regulation approved by a ministerial order. A game is not permitted if it is not regulated or is not covered under any of the regulations in force.

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The following games have been regulated so far, and are therefore permitted to be offered at a federal level:

- pools on sports betting;
- fixed-odds sports betting;
- pools on horse racing;
- fixed-odds horse racing;
- other fixed-odds betting;
- exchange sports betting;
- exchange horse racing;
- other exchange betting games;
- contests;
- poker;
- bingo;
- roulette;
- complementary games;
- blackjack;
- baccarat; and
- slots.

Land-based gambling and online gambling at a regional level are regulated by each of the 17 autonomous regions in Spain and the autonomous cities of Ceuta and Melilla.

Sector-Specific Regulation

Loterías y Apuestas del Estado (LAE) and the National Organisation of the Blind in Spain (ONCE) maintain the monopoly on lotteries offered at a federal level. Only charitable organisations can organise lotteries, which are therefore a restricted product.

Fantasy sports can be offered at a federal level if they fit under any of the single licences approved by the regulation. Depending on the autonomous region, they can also be offered at a regional level; in both cases, they are subject to licensing.

Social gaming is permitted, and these games are not subject to any licence, at a federal or regional

level. Games of skill are outside the scope of the current Spanish regulatory framework and thus are not subject to licensing.

2.2 Land-Based

Betting, poker, bingo, casinos and gaming machines are permitted and subject to licensing.

LAE and ONCE maintain the monopoly on lotteries offered at a federal level, and only some regions allow lottery operators.

As explained in 2.1 Online, land-based gambling (and online gambling at a regional level) is regulated by each of the 17 autonomous regions in Spain and the autonomous cities of Ceuta and Melilla, and therefore each autonomous region has its own catalogue of approved and permitted games. There are certain differences between the regions, but the following gaming products are generally permitted:

- roulette;
- blackjack;
- boule;
- trente et quarante;
- craps;
- baccarat;
- poker;
- slots and other machine gaming;
- bingo;
- raffles;
- tombola or charity raffles;
- betting;
- sports betting;
- horse racing; and
- Wheel of Fortune.

It is important to highlight that the various formats of gambling products approved and listed above might be permitted in different forms, at

both the federal and regional levels (different forms of blackjack, roulette, poker, etc).

3. Legislative Framework

3.1 Key Legislation

Federal Legislation

The key legislation for online gambling at a federal level is as follows:

- the Spanish Gambling Act;
- Royal Decree 958/2020, of November 3rd, on commercial communications for gambling activities (*Real Decreto 958/2020, de 3 de noviembre, de comunicaciones comerciales de las actividades de juego*);
- Royal Decree 176/2023, of March 14th, developing safer gambling environments (*Real Decreto 176/2023, de 14 de marzo, por el que se desarrollan entornos más seguros del juego*);
- secondary regulation on licences, authorisations and gaming registries (*Real Decreto 1614/2011, de 14 de noviembre, por el que se desarrolla la Ley 13/2011, de 27 de mayo, de regulación del juego, en lo relativo a licencias, autorizaciones y registros del juego*);
- secondary regulation approving technical requirements (*Real Decreto 1613/2011, de 14 de noviembre, por el que se desarrolla la Ley 13/2011, de 27 de mayo, regulación del juego, en lo relativo a los requisitos técnicos de las actividades de juego*);
- resolutions of the General Directorate for Gambling Regulation (*Dirección General de Ordenación del Juego – DGOJ*); and
- ministerial orders approving each type of game subject to a single licence.

Regional Legislation

The key legislation for land-based and online gambling at a regional level is approved by each of the 17 autonomous regions in Spain and the autonomous cities of Ceuta and Melilla, so each autonomous region has its own Gambling Act and secondary regulations developing the Gambling Act.

3.2 Definition of Gambling

The Gambling Act defines gambling as an activity in which amounts of money or economically measurable objects are put at risk on uncertain and future events – dependent at least to some extent on chance – and that allows these sums to be transferred between the participants, regardless of whether the level of skill of the players is decisive in the results or whether they depend wholly or fundamentally on luck or chance. The prizes can be in cash or in kind, depending on the type of game.

For clarification purposes, the definition contains three essential components, which are “chance”, “pay-to-play” and “prize”. If any of these elements is absent, the game will fall outside the scope of gambling; thus, the corresponding gambling regulation will not be applicable (for example, pure skill games will be excluded or so will prizes in virtual currency with no monetary value).

3.3 Definition of Land-Based Gambling

There is no specific or separate definition for land-based gambling.

3.4 Definition of Online Gambling

The Gambling Act defines online gambling as games performed through electronic channels, IT and interactive systems, when any device, equipment or system is employed to produce, store or transfer documents, data or information,

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including through any public or private communications network. The communications network can include television, the internet, landlines, mobile phones or any other interactive communications system, in real time or recorded.

3.5 Key Offences

Given the regulatory distinction regarding the gambling sector in Spain, infractions and the related sanctioning regime are approved by the Spanish Gambling Act and by each autonomous region with respect to its territory and competence.

In both cases, administrative infractions are divided into three groups: very serious, serious and minor. From the different regulations, the key offences can be summarised as below.

Very serious infractions include:

- operating without the necessary licence;
- the organisation, commercialisation, exploitation or promotion of illegal games;
- transferring a licence without the prior consent of the relevant gaming authority;
- the manipulation of technical systems or the use of systems or terminals not authorised by the relevant gaming authority;
- the unjustified and repeated non-payment of prizes to gambling participants; and
- the supply of technical support to unlicensed operators.

Serious infractions include:

- the granting of loans to participants;
- permitting access to gambling to individuals who are prohibited from taking part in it (for example, minors and the self-excluded);
- carrying out unauthorised advertising;
- non-processing of participants' claims;

- lack of collaboration with the gaming authority or inspection controls;
- non-compliance with the requirements and obligations regarding responsible gaming and the protection of players established in the regulations in force; and
- promoting or facilitating the participation from Spain in gambling activities through websites other than those legally authorised by gambling operators with a licence in Spain.

Minor infractions include:

- non-compliance with the obligations contained in the applicable regulations, provided that they are not explicitly typified as serious or very serious infractions;
- not properly informing the public about the prohibition on participation or access for minors and persons included in the General Game Access Interdiction Register;
- a lack of mandatory information being provided from the operator to players; and
- the participation from Spain, through the use of Spanish territorial IP address-masking techniques, in gambling activities offered through websites other than those legally authorised by gambling operators with a licence in Spain.

3.6 Penalties for Unlawful Gambling

Unlawful gambling is classified as a very serious infraction at both a federal and regional level.

Unlawful gambling is sanctioned under the Gambling Act with a fine of between EUR1 million and EUR50 million. In addition to the fine, the regulator is entitled to:

- revoke the licence of the entity carrying out the unlawful gambling;

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- disqualify it from carrying out gambling activities for a maximum of four years; or
- close the media through which information society services were delivered and that supported the unlawful gambling activities.

Each regional gaming regulation – both online and land-based – approves its own sanctioning regime; however, in most of them, unlawful gaming is sanctioned with a fine of up to EUR600,000. In addition to the fine, regulators are entitled to revoke the licence or to impose a temporary removal of the licence for a maximum of five years.

3.7 Recent or Forthcoming Legislative Changes

With the regulation on online gambling advertising published in 2020 and the Royal Decree on safer gambling published in 2023, the legal regime for online gambling at a federal level was duly consolidated. Regarding recent legislative changes, although they will be addressed in more detail in other sections of this chapter, the authors would like to highlight the following.

- Entry into force of the Protocol of action developed by the DGOJ – in collaboration with the Spanish Tax Agency and the State Security Forces – for taxpayers who may have been victims of identity theft on gambling platforms.
- Publication of the Supreme Court's ruling 527/2024. This ruling voids several articles of the Royal Decree on commercial communications.
- Publication of the new Data Model and modification of the Resolutions of 6 October 2014 and of 12 July 2012, on 6 June 2024. Its entry into force is expected on 22 March 2025.

Regarding forthcoming legislative changes, the most relevant (already included in the previous edition and currently in the process of approval) is the draft Royal Decree amending Royal Decree 1614/2011, of November 14th, developing the Gambling Act and introducing a system of joint deposit limits among licensed operators and for the Royal Decree on safer gambling.

At the regional level, the most relevant pending legislation in most autonomous regions is still the regulation on advertising and responsible gambling.

4. Licensing and Regulatory Framework

4.1 Regulatory Authority

The regulatory authority for online gambling at the federal level is the DGOJ. Since November 2023, this authority has been put under the umbrella of the new Ministry of Social Rights, Consumer Affairs and Agenda 2030 (prior to this, it was under the umbrella of the Ministry of Consumer Affairs for almost four years and under the Ministry of Finance before that). At the federal level, it is competent to:

- issue federal licences;
- draft regulation;
- supervise games; and
- supervise the enforcement and sanctioning of gambling activities.

The regulatory authority for regional gambling – both online and land-based – depends on each autonomous region. These authorities are usually under the umbrella of the relevant regional departments of finance or the interior.

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4.2 Regulatory Approach

Before discussing the approach to gambling regulation in Spain, a differentiation should be made between:

- regulation at a federal level, which only refers to online gambling; and
- regulation at a regional level, which includes both online and land-based gambling.

Online Gambling

Online gambling can be offered at a federal or regional level. Customarily, entities apply for federal licences, since this way they can offer online gambling in the whole territory without having to apply for licences at a regional level.

The aim of the Gambling Act is to regulate all those types of games that take place at a federal level in order to protect public order, combat fraud, prevent addictive behaviour, protect minors and safeguard players' rights, without affecting what is established in the regional regulations.

To offer online gambling in Spain at a federal level, entities must obtain a general licence for each category of game (betting, contest or other games) and a single licence for each type of game included in its general licence category.

Land-Based Gambling

The regulatory approach to land-based gambling is based on the licensing or authorisation regime approved by each autonomous region. The requirements and conditions vary depending on the region and type of licence that an entity is interested in applying for.

4.3 Recent or Forthcoming Changes

Please refer to sections 3.7 Recent or Forthcoming Legislative Changes, 5.2 Recent or Forth-

coming Changes and 6.6 Recent or Forthcoming Changes for discussion of developments in the Spanish gambling sector. Other than these, there have been no significant changes to the licensing and regulatory framework in Spain over the past year.

4.4 Types of Licences

Federal Level

At a federal level, the available licences are classified as follows.

- General licence for betting, which covers the following single licences:
 - (a) pools on sports betting;
 - (b) pools on horse racing;
 - (c) fixed-odds sports betting;
 - (d) fixed-odds horse racing;
 - (e) other fixed-odds betting; and
 - (f) exchange betting.
- General licence for contests, which also covers a single licence for contests.
- General licence for other games, which covers the following single licences:
 - (a) poker;
 - (b) blackjack;
 - (c) bingo;
 - (d) slots;
 - (e) roulette;
 - (f) baccarat; and
 - (g) complementary games.

For example, an entity that wishes to commercialise bingo, baccarat and poker will need one general licence (other games) and three single licences (bingo, baccarat and poker). In other words, general licences per se are not valid to offer games; to do so, the entity will also need to obtain a single licence for each type of game within its category. General licences can only be obtained through a public tender process announced by the DGOJ. Entities can apply for

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single licences together with the general licence or at any other time, provided that they have already been granted and still hold the relevant general licence.

Regional Level

Each region has competence to establish its own licences and its own licensing procedure and regime.

4.5 Availability of Licences

There have been three public calls for general licences for online gambling at the federal level since the approval in 2011 of the Spanish Gambling Act: in 2011, 2014 and 2017. None of the three public tenders limited the number of operators that could be granted a licence, nor the number of licences to be granted. In other words, all those operators that met the requirements established within the tender obtained the licence.

The Spanish regulation permits any interested party to request a new call for gambling licences at least 18 months after the previous call.

The processes for regional land-based licences are approved by each autonomous region and, depending on the type of licence and region, there can be limits on the number of licences available (for example, licences for betting shops in the Canary Islands) or the licences can be limited to one and subject to a public tender process (as is the case, for example, for licences for land-based casinos).

4.6 Duration of Licences

Online Gambling at Federal Level

General licences are valid for ten years, extendable by another ten. Single licences have a minimum duration of one year and a maximum duration of five, depending on the type of gambling

product, and these are also extendable by successive periods of the same duration. The expiry of the general licence that the single licence is linked to implies the expiry of the single licence as well.

Regional Level

The duration of licences depends on each region and type of licence. Customarily, licences are valid for ten years, extendable by another ten.

4.7 Application Requirements

Although there are differences between the application requirements for land-based operators (with slight differences among the regions) and online operators subject to the Gambling Act, the requirements are always divided into three sections to prove legal, economic and technical solvency.

The main application requirements are as follows.

- It must be a corporate entity with minimum share capital and an exclusive corporate purpose.
- There must be corporate documentation in order to accredit compliance with all the requirements. Among these documents, both the regional and federal regulator requests the submission of an official public deed identifying the ultimate beneficial owner.
- If the entity is not based in Spain, it must have a permanent representative in Spain for notification purposes.
- It must be up to date with the Tax Agency and social security authorities.
- To prove economic solvency, notwithstanding the submission of other documentation, the applicant must deposit an economic guarantee and provide annual accounts or other declarations in this regard.

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- Other documentation must also be submitted, such as:
 - (a) an anti-money laundering (AML) policy;
 - (b) the responsible gambling policy;
 - (c) a business plan;
 - (d) agreements with providers; and
 - (e) a fraud prevention manual.
- Certain declarations must be signed by the directors and shareholders of the applicant entity (ie, that they have not been convicted of a criminal offence).

The Spanish Gambling Act also requires the directors and shareholders of the applicant entity to disclose information about their relatives (spouse, cohabitant, ascendants and descendants older than 18) in order to inscribe them in the registry of individuals linked to the operator, since these individuals cannot gamble on the relevant operator's website.

4.8 Application Timing

The timing of the application process depends on the applicable regulation, type of licence and conditions approved by the corresponding public tender, if applicable. For instance, the last window to apply for general licences for online gambling at a federal level was opened for one year, with interested parties being entitled to apply for their licences between December 2017 and December 2018. The DGOJ had a term of six months from the submission of the relevant applications to issue or refuse the licences.

Initially, the licences are granted with a provisional nature. To obtain definitive licences, operators must submit the definitive certification report of the technical systems to the DGOJ within a maximum term of four months from the provisional granting. Once the certification documentation is submitted, the DGOJ proceeds with the review and the granting of the definitive licences within

a maximum term of two months. Operators can start operating with the provisional licence.

The duration of regional licences depends on each regional regulation and, if applicable, on the conditions of the public tender process. Customarily, it takes between three and six months from the submission of the application for the regulator to review and proceed with the granting of the relevant licence.

4.9 Application Fees

For online gambling licence applications at a federal level, entities must pay the following administrative fees:

- EUR10,615.20 for each general and single licence that the entity is applying for;
- EUR2,653.81 for each general and single licence for the inscription in the General Registry of Gaming Licences; and
- a one-off fee of EUR40,337.76 for the homologation of the licences by the DGOJ.

For regional licence applications, the cost depends on the region and the type of licence applied for.

4.10 Ongoing Annual Fees

For online gambling licences at a federal level, there is an annual fee of 0.075% of turnover, which operators need to pay by January 31st each year.

For regional licences, the ongoing annual fee depends on the region and type of licence.

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5. Land-Based Gambling

5.1 Premises Licensing

Each region has its own regulation for each type of premises licensing: casinos, gaming halls, bingos and betting shops. Therefore, the requirements for licensing depend on the premises and the autonomous region in question.

While the approach in some regions – regarding requirements such as the number of slots/betting terminals, establishments or installations, or the minimum size (in square metres) – is more restrictive, in others it is more flexible. Also, in some cases (casino premises for example), licensing is subject to a public tender process.

Notwithstanding the above-mentioned regional variation, in general terms the requested documentation aims to prove the legal, technical and economic solvency of the applicant. The main requirements and differences that can be identified are as follows.

- Corporate form – some regions request a specific form for the corporate entity; the region of Madrid, for instance, requests the corporate form of an SA (equivalent to a standard PLC) for casino licence applications, while in Catalonia there is no specification regarding the corporate form for casinos or gaming halls.
- Minimum share capital – most of the regions require a minimum share capital for betting shops and casinos; for example, in Aragon or the Basque Country, the minimum share capital for a betting shop is EUR1 million. In Madrid, the minimum share capital for casinos is EUR12 million.
- Economic guarantees – these also vary by region and type of premises licence; for example, the bank guarantee for a casino in

Catalonia is EUR601,012.10 and EUR60,000 for a gaming hall; in the Balearic Islands, the guarantee is EUR30,000 for a gaming hall and EUR1 million for betting shops.

- Certification reports proving compliance with technical requirements.
- Certificates and documents proving legal solvency (for instance, articles of association and deeds of incorporation of the company).
- Certificates and documents proving economic solvency (for instance, annual accounts and certificates that prove the entity is up to date with the Tax Agency and the social security authorities).

5.2 Recent or Forthcoming Changes

The land-based gambling sector is still implementing certain changes, with the aim of reinforcing the protection of vulnerable individuals and tightening the regulation of gambling advertising. The main changes in this regard are as follows.

Approval of New Regulations in the Canary Islands and Castilla y León

Canary Islands

In 2023, the government of the Canary Islands presented a draft law to modify their previous Gambling Law, 8/2010, with the aim of strengthening gambling regulations and enhancing minors' protection.

In July 2024, a new Royal Decree, 7/2024, was approved in the Canary Islands, imposing significant restrictions on the location of gambling establishments.

In September 2024, the Canary Islands Parliament approved the draft law to modify their previous Gambling Law, 8/2010. This approval complements Royal Decree 7/2024, introducing further restrictions, such as limitations on gam-

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bling advertising and specific measures to control minors' participation in gambling activities.

Castilla y León

On 15 March 2024, Law 2/2024 was approved in Castilla y León, which modified their previous Gambling Law.

This new regulation introduces significant changes, including specific measures for gambling establishments, players and business owners, along with advertising regulations.

Key updates involve increasing the minimum distance between gambling establishments to 300 metres and 150 metres from educational centres. Each establishment will now require a visitor registry and access control services similar to those mandated for casinos. This new law also contemplates the implementation of a strategy for preventing and treating gambling addiction, and provides a framework for enhanced advertising control.

Moreover, the law establishes a new sanctioning regime, directing the revenues from fines toward funding prevention programmes and rehabilitation initiatives for gambling addiction.

These measures reflect a concerted effort to address gambling-related issues and to align regional regulations with modern societal need.

Advertising

The recent ruling by the Spanish Supreme Court voiding several provisions of Royal Decree 958/2020 on commercial communications of gambling activities represents a warning to the autonomous communities – although they still have the competence to set their own regulations, they will have to do so within certain limits.

In response to rising concerns about gambling addiction, particularly regarding minors' protection, various autonomous communities are reinforcing their own laws to impose stricter measures on advertising. Regions such as Castilla y León, Galicia and the Balearic Islands are actively enhancing their local regulations to protect vulnerable populations.

Therefore, while the federal framework is changing, local authorities retain the competence to implement stringent measures that reflect their specific policy priorities.

6. Online Gambling

6.1 B2C Licences

Spanish gambling regulation does not distinguish between B2C and B2B licences, nor between the law applicable to the operations of one operator and of another.

The definition of “gaming operator” states that an operator needs to obtain a licence in Spain in the following cases.

- If it conducts gambling activity, either wholly or partly, and if its income is linked to gross or net revenue, commissions and any other amounts related to gaming services.
- If it concurrently undertakes any commercialising gambling activity, such as:
 - (a) determining the prizes for tournaments;
 - (b) managing players' rules, transactions and payment settlements; and
 - (c) managing the gaming platform or the registration of users.

Entities that meet the above requirements and that also manage gaming platforms in which they are members, or that other gaming opera-

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tors join, pooling together stakes coming from their respective users, will be considered as gaming operators and gaming co-organisers.

6.2 B2B Licences (Suppliers, Software, Etc)

Spanish gambling regulation does not make any distinction between B2B and B2C operators.

The regulation provides a definition of “gaming operator”. If a B2B operator meets the requirements established by the regulation, it is subject to licensing and, technically speaking, will be considered a gaming operator.

Consequently, the inclusion of a B2B operator within the definition of a gaming operator, and its requirement to be licensed, depends on the services that said operator intends to provide within Spain, along with the conditions related to that service.

In practical terms, experience has shown that the Spanish regulator understands that a B2B company falls under the definition of “gaming operator” only in exceptional circumstances, such as when:

- offering network jackpots;
- offering shared liquidity; or
- providing all gaming services to a white-label company that only provides the “look and feel”.

6.3 Affiliates

Affiliates do not need to hold a licence in Spain as long as they do not register clients or maintain an agreement or gaming account with them.

6.4 White Labels

White-label arrangements in a B2B scenario are permitted provided the provider operating

behind the website is duly licensed, since in this case the B2B operator is categorised as a “gaming operator”. The new regulation on advertising establishes a new requirement by which an operator is prohibited from using brands or trade names that are not owned by said operator or by the business group to which such operator belongs, to identify and differentiate itself from other operators.

In addition, depending on the activity developed by the white-label operator (which provides the look and feel), an entity may also be categorised as a “gaming operator”. Consequently, it may also be subject to licensing.

6.5 Technical Measures

The regulation does not contain specific technical measures to protect consumers from unlicensed operators. However, the DGOJ is entitled to request that internet service providers and financial entities adopt blocking measures within sanctioning procedures initiated against illegal operators. In this sense, blocking access from Spanish IP addresses and payment-blocking are the most common measures. Indeed, the DGOJ has committed to continuing to intensify the existing policy of domain name system (DNS) blocking and monitoring payment traffic to identify the main black market operators targeting the Spanish market.

6.6 Recent or Forthcoming Changes Protocol of Action for Taxpayers Who May Have Been Victims of Identity Theft on Gambling Platforms

During 2024, the DGOJ has – in collaboration with the Spanish Tax Agency and the State Security Forces – developed a protocol of action for taxpayers who may have been victims of identity theft on gambling platforms.

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The need for this protocol arises from the increasing number of complaints from users whose identities were allegedly stolen to evade the tax implications of potential winnings.

This protocol provides a secure mechanism for victims of identity theft in online gambling that allows them to request a certificate of gaming activity from gambling operators, detailing all transactions and accounts fraudulently opened in their name. To obtain this certificate, the victim must file a complaint before the State Security Forces and must provide a reference number assigned by the DGOJ to the operator. This certificate is crucial for responding to tax requests from the Spanish Tax Agency and for proving that the accounts were created without the consent of the victim.

Voidness of Several Articles of Royal Decree 958/2020 on Commercial Communications of Gambling Activities

On 10 April 2024, the Supreme Court circulated its ruling 527/2024 on the appeal made against Royal Decree 958/2020 on commercial communications of gambling activities.

This ruling has marked a turning point in advertising, which had been exceedingly restrictive since the Royal Decree came into effect.

This topic will be further developed in **9.6 Recent or Forthcoming Changes**.

Resolution Approving the New Data Model and Modifying Annex I of Two Resolutions

On 22 June 2024, the Resolution of 6 June 2024 issued by the DGOJ was published in the Spanish Official Gazette (BOE), approving the Data Model and modifying the Resolutions of 6 October 2014 and 12 July 2012 relating to technical specifications and to the identification of partici-

pants in games, as well as the control of subjective prohibitions on participation regarding the gambling activities foreseen in the Gambling Act.

The most relevant changes approved by this Resolution are as follows.

- The reduction for the data retention periods from six to four years.
- The Internal Control System of operators (technical element in charge of registering the transactions of the technical system, through which the DGOJ monitors the gaming activities undertaken by operators) can be located anywhere in the EU. Previously, it had to be located in Spain (the remaining technical elements of the system can be located anywhere in the world).
- A new Data Model is approved that will introduce, among others:
 - (a) the incorporation of a detailed user registry, including a field for the special player profile according to the player categorisation established by the Royal Decree on responsible gambling; and
 - (b) the incorporation of the gambling session for other games also established in the Royal Decree on responsible gambling.

The purpose of these modifications is to adapt the existing Resolutions to recent regulatory changes – most notably, the Royal Decrees on commercial communications of gambling activities and responsible gambling, which have imposed additional obligations on operators that could be monitored by the DGOJ, through the introduction of the necessary changes to the data model of the monitoring system.

The new Resolution shall enter into force nine months after its publication in the Spanish Official Gazette (ie, 22 March 2025).

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Draft Royal Decree for Introducing a System of Joint Deposit Limits

Primary amendments in this draft Royal Decree include:

- a proposed framework to delineate an aggregate limit on deposits made by a single user across accounts linked to multiple operators; and
- changes in the guarantee required from operators associated with general licences.

The aim of this system of joint deposit limits is to limit player deposits in a universal manner – ie, by establishing a system of deposit limits per player applicable to all operators licensed in Spain.

This new system introduces mandatory caps on the amount players can deposit, set at a maximum of EUR600 per day and EUR1,500 per week, and will be enforced and monitored by the DGOJ to ensure that these limits are strictly adhered to and to prevent players from exceeding them. This new measure aims to promote responsible gambling and to enhance player protection by controlling excessive spending across multiple gambling platforms.

This draft is currently in the notification phase to the European Commission (TRIS), and it is expected to be published in the Spanish Official Gazette in 2025 (the system of joint deposit limits is planned to enter into force 12 months after its publication).

7. Responsible Gambling (RG), Also Known as Safer Gambling (SG)

7.1 RG Requirements

The gambling sector is fully committed to the detection of participation in gambling activities by minors and vulnerable groups. The aim of the responsible gambling requirements is to prevent and correct the negative effects of gambling through the application of different measures.

Most of the responsible gambling requirements are compulsory for online operators. The requirements for land-based operators vary by region and premises, and some land-based operators apply additional responsible gambling measures in their businesses, at their own initiative.

Key requirements include:

- the prohibition of loans to players;
- the need to provide clear and accurate information to participants;
- accessible customer service for player complaints; and
- the facilitation of a customer support hotline by online operators at the federal level.

Operators are also obliged to inform players about the General Register of Gambling Access Bans (RGIAJ) and to offer self-exclusion options. Responsible gambling tests are also mandatory to detect potential gambling issues.

In this sense, the regulation of gambling activities requires the following.

- Identification of participants – operators must establish systems and mechanisms that allow the identification of the participants in the

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games. This is a measure applicable to online and land-based operators.

- Deposit amount limits by default – this is a preventative measure and a mandatory requirement for online operators licensed at the federal level. It also applies to land-based businesses such as casinos. However, “default limits” can be reduced by the participant at any time and can be directly applicable; they can also be increased or removed (when fulfilling certain conditions). The limits by default in online gambling are:
 - (a) EUR600 daily;
 - (b) EUR1,500 weekly; and
 - (c) EUR3,000 monthly.
- Particular requirements for slot games – for example, a minimum duration approved for the slot spin on land-based terminals (eg, five seconds in Madrid but three in the Basque Country and online).
- The regulation applicable to online gambling at a federal level establishes specific responsible gambling requirements for the games grouped under the “Other games session” where players must configure their session before its start, including a limit for the time and money to be spent, and in-play betting products, a special rule regarding the amounts to bet.
- The regulation applicable to online gambling at the federal level also sets forth the obligation for operators to establish mechanisms and protocols that make it possible to detect risky behaviours in registered players.

7.2 Gambling Management Tools

As detailed throughout 7. Responsible Gambling (RG), Also Known as Safer Gambling (SG), the Spanish authorities have created different tools for operators and citizens in order to promote responsible gambling.

RGIAJ

Through an inscription in the RGIAJ, an individual is fully prohibited from accessing gambling activity (applicable to online and land-based gambling). The register is formed of the data of citizens who voluntarily do not wish to exercise their rights to gamble and of those who are declared incapacitated by a legal ruling.

Player Verification Service

The DGOJ offers online operators a tool to proceed with the ID verification of their customers resident in Spain. Operators can also check whether the customer is registered with the RGIAJ with this tool, and whether the data provided by the customer corresponds to a minor or to individuals included in the Civil Registry as deceased.

Phishing Alert

The DGOJ has launched a service addressed to all citizens in order for the operator to detect and communicate an attempt of activation of a user registration when the identity data provided matches the data of an individual who is registered with this service.

7.3 Recent or Forthcoming Changes

The Royal Decree on responsible gambling was finally published on 14 March 2023, and recently, in March 2024, certain new requirements resulting from this regulation entered into force. The most significant are the following:

- young participants (players aged 25 years or less) may not receive any kind of promotional activity whose purpose is unrelated to the gambling activity carried out on the operator’s platform;
- the prohibition of depositing funds with credit cards by customers with intensive gambling behaviour;

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- players with risky behaviour may only use payment methods in their name (nominative) and under their ownership, and will not be able to deposit funds with credit cards either;
- the implementation of the “Other games session”, where players must configure their session before its start, including a limit for the time and money to be spent;
- the sending of a self-assessment message of mandatory reading at least every 60 minutes during the “Other games session”; and
- the implementation of the in-play betting limits.

8. Anti-money Laundering (AML)

8.1 AML Legislation

No specific AML guidance relevant to the gambling sector is available in Spain, nor has anything been published in this regard by the DGOJ or the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC).

Given that the central state has competence over AML regulation, the main applicable AML regulation is composed of:

- Federal Law 10/2010, of April 28th, on the prevention of money laundering and terrorist financing; and
- Federal Royal Decree 304/2014, of May 5th, developing the regulation of the Spanish AML Act.

8.2 AML Requirements

The Spanish AML regulation establishes the instructions, proceedings and duties that online and land-based gambling operators need to apply for the prevention of money laundering.

The main requirements and obligations are as follows.

- Approving a suitable manual for the prevention of money laundering and ensuring its availability to SEPBLAC.
- Applying due diligence measures as per the Spanish AML Act, when a customer engages in transactions amounting to EUR2,000 or more – in a single operation or multiple linked operations – either upon the collection of winnings, the wagering of a stake or both (for online gambling operators), or at the time of receiving gains or purchase or sale of gaming chips (for land-based operators). The operator should implement the corresponding due diligence measures thorough monitoring and investigation into the nature and intention of the business transaction, and not merely through customer ID verification.
- For land-based casinos, ensuring the identification and documentary verification of individuals seeking to enter the establishment. Records of the collected documentation must also be maintained. These establishments must also identify individuals intending to conduct specific transactions including:
 - (a) exchanging of chips for cheques;
 - (b) funding of transfers at customer request; and
 - (c) issuing of certificates regarding customer gains.
- Maintaining records of the documentation gathered for compliance with the Spanish AML Act for a period of ten years, after which the records should be eliminated. Five years after termination of business relationships with the customer, the documentation should only be accessible to the operator’s internal control bodies, including its technical prevention units and the legal defence personnel.

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- Appointing a representative on behalf of the operator before SEPBLAC.
- Establishing an adequate internal compliance unit responsible for implementing the AML policies and procedures.
- Reporting suspicious transactions and collaborating with SEPBLAC.
- Approving a yearly training plan for employees, which must be approved by the internal control body.
- Undergoing an annual external expert review of the operator's manual for the prevention of money laundering.

8.3 Recent or Forthcoming Changes

On 19 June 2024, the European legislative package – including the Regulation establishing the new European authority AMLA, the Regulation harmonising AML rules across the EU, and the 6th AML/CFT Directive – was published in the Official Journal of the European Union. However, generally speaking (that is, with certain exceptions), the first Regulation will not be applicable until 2025, while the other two will be applicable starting in 2027.

9. Advertising

9.1 Regulatory/Supervisory Agency

Contrary to what happens in the UK, for instance, in Spain there is no specific regulatory or supervisory agency for advertising.

Despite this, in the case of online gambling at the federal level, the DGOJ supervises compliance with the applicable advertising rules by the gambling operators and sanctions them if they breach those regulations. For audiovisual communication service providers rendering services to gambling operators, the authority to launch proceedings and to sanction lies not only with

the DGOJ but also with the National Commission of Markets and Competence (CNMC).

9.2 Definition of Advertising

Article 2 of General Advertising Law 34/1988 defines advertising as “any form of communication made by a natural or legal person, public or private, in the exercise of a commercial, industrial, craft or professional activity, in order to directly or indirectly promote the hiring of movable or immovable property, services, rights and obligations”.

Royal Decree 958/2020, of November 3rd, on commercial communications for gambling activities defines commercial communications as “any form of advertising carried out by a natural or legal person, public or private, disseminated through any media or format, meant to promote, either directly or indirectly, the gambling activities defined within the scope of application of Law 13/2011, of May 27th, or the entities that carry out such communications. Broadcasting of game draws or the purely informative dissemination of their results shall not be considered commercial communications”.

9.3 Key Legal, Regulatory and Licensing Provisions

The key legal provisions can be divided into the following groups.

Operator Licensing

Gambling operators must be duly licensed by the regulator to advertise their products. According to Article 7.1 of the Gambling Act, to carry out gaming activities on audiovisual programmes, news media or websites, gaming operators must have an authorisation (ie, the corresponding gambling licence). The same is true at a regional level.

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Advertising Providers' Requirement to Check Licensing

Any advertising third-party provider must confirm that its client (gambling operator) is duly licensed according to Article 7.3 of the Gambling Act. This involves verifying that the advertiser, whether a media entity or service provider, confirms their client's legitimate licensing from the DGOJ. Infringements in the Gambling Law fall into two categories:

- unauthorised promotions, sponsorships, advertisements or intermediary actions concerning games under this law, regardless of methods used, and breaches in compliance with permit conditions and existing rules; and
- the failure to fulfil requirements for information or cutting off the provision of services as required by the DGOJ and directed towards payment service providers, audiovisual communication service providers, information society services or electronic communication providers and social media.

Both infractions are qualified as serious infractions and are therefore subject to fines of between EUR100,000 and EUR1 million and to the suspension of activity in Spain for a maximum period of six months.

Each autonomous region individually approves sanctions for regional land-based and online gambling.

9.4 Restrictions on Advertising Key Legislation

The current legislation applicable to the advertising of gambling operators – and their products – is as follows:

- the General Advertising Act 34/1988, dated November 11th;

- Royal Decree 958/2020, dated November 3rd, on commercial communications for gambling activities;
- the Unfair Competition Act 3/1991, dated January 10th;
- Legislative Royal Decree 1/2007, dated November 16th, approving the recast text of the General Act for the Defence of the Consumers and Users and other complementary laws;
- the Information Society Services and Electronic Commerce Act 34/2002, dated July 11th;
- the General Audiovisual Communications Act 13/2022, dated July 7th;
- the Gambling Act 13/2011, dated May 27th;
- regional gambling regulations for land-based and online gambling at a regional level; and
- the Code of Conduct Regarding Commercial Communications of Gambling Activities issued by Autocontrol (the Association for Advertising Self-regulation), in collaboration with the DGOJ, although this is only binding for companies that adhere to it.

Restrictions

The most important restriction is that gambling products can only be advertised by licensed operators.

The present restrictions on gambling advertising aim to shield consumers. The main principles include legality, honesty, identification, veracity, societal responsibility, responsible gaming and underage protection, especially enforcing restrictions during watershed hours.

Royal Decree 958/2020 on commercial communications of gambling activities was introduced and implemented on 4 November 2020, following publication in the Official Spanish Gazette.

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After the Supreme Court's ruling, the main restrictions regarding advertising are as follows:

- sponsorship bans on shirts or sports equipment;
- restricted commercial communications on audiovisual media services between 1am and 5am;
- specific requirements for advertising on social media;
- restrictions on accounts/channels on video-sharing platforms (as gambling commercial communications can only be placed in those accounts/channels whose main activity consists of offering information on gaming activities); and
- a requirement stating that free-to-play demo games must be linked to the operator's platform and are only available to registered and documentarily verified users.

Please note that social gaming products can generally be advertised without the restrictions applicable to gambling products.

9.5 Sanctions/Penalties

In terms of advertising for online gambling regulated at the federal level, Articles 40 d) and e) of the Gambling Act state the relevant applicable infractions, which are subject to the same sanctions:

- a fine of EUR100,000 to EUR1 million; and
- the suspension of activity in Spain for a maximum period of six months.

9.6 Recent or Forthcoming Changes

On 25 May 2024, the Supreme Court's ruling 527/2024 on the appeal made against Royal Decree 958/2020 on commercial communications of gambling activities was published in the Spanish Official Gazette.

This ruling voided certain essential restrictions for the operator's marketing possibilities. To be precise, the Administrative Chamber of the Supreme Court concluded that certain limitations or prohibitions established in the regulation lack the necessary legal coverage and, in some of the cases, infringe the principle of proportionality in relation to the free enterprise right.

In particular, the following restrictions have been lifted.

- Prohibition of offering welcome bonuses and restrictions on advertising and offering promotions.
- Prohibition of appearance of well-known people/celebrities in advertising.
- Prohibition of the display of commercial communications through information society services.
- Restrictions for gambling advertising on accounts/channels on video-sharing platforms. It should be highlighted that, although such restrictions on video-sharing platforms were voided by the ruling, the General Audiovisual Communication Act already refers to this restriction, so this requirement would remain in place.
- Restriction on the targeting rules for addressing gambling advertising on online social networks, and restrictions for gambling advertising on accounts/channels on such networks.

The basis of the Supreme Court's arguments were:

- the lack of legal coverage, as these regulatory restrictions can only be approved either by a legal text with force of law or by a secondary regulation if it is duly supported by a legal text with force of law; and

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- the lack of the principle of proportionality, since some of the general prohibitions that were approved are not proportional to the purpose of the regulation.

In addition, it should be noted that the Code of Conduct Regarding Commercial Communications for Gambling Activities also includes certain restrictions as to bonuses (maximum limit of EUR200 on welcome bonuses) and advertising with famous individuals (ie, no famous individuals under the age of 25); thus, the adhering operators must comply with its stipulations.

Regarding the upcoming actions from the DGOJ's side, it should be noted that, recently, the left-wing parties introduced a number of amendments to the Draft Law amending the General Law on Public Health in order to incorporate the provisions voided by amending certain provisions of the Spanish Gambling Act.

10. Acquisitions and Changes of Control

10.1 Disclosure Requirements

Acquisitions and changes of control are not subject to the prior approval of the regulator. However, it should always be taken into account that if, as a result of said acquisition, any of the conditions of the operator company that were disclosed to the regulator at the time of applying for the relevant licences were affected or changed (for instance, the solvency of the group, the intercompany agreements for the provision of services or the directors of the operator company), the operator company must then not only notify the regulator of the change of control (within one month from its completion) but must also file the documents evidencing any

of those material changes that have taken place as a result of the acquisition.

Even though a change of control does not require the prior approval of the regulator, it is always advisable to contact the regulator before completing the change of control to ascertain any possible concerns it might have regarding the transaction.

10.2 Change of Corporate Control Triggers

The relevant threshold is set around the concept of the "significant" shareholder, which is defined by the corresponding domestic law of the operator company. For instance, in Spain, a "significant shareholding" of a listed company would be 3% or more of the shares, and for a non-listed company it is a percentage with which the relevant shareholder could effectively, even directly or indirectly, control the company.

Any "significant" change of control should be notified to the regulator within one month of its completion.

10.3 Passive Investor Requirements

No distinction is made for passive investors.

10.4 Recent or Forthcoming Changes

No recent changes have been published on this subject.

11. Enforcement

11.1 Powers

Regulatory bodies are legally allowed not only to impose economic sanctions but also to revoke or suspend licences. Regulators could even suspend gambling licences or seize any assets

or documents related to, and needed for, the licensed activity as a precautionary measure.

11.2 Sanctions

Economic sanctions may be enforced through the exercise of the relevant guarantees submitted by the operators before the regulator to cover their liabilities and potential consequences that arise as a result of a breach of their obligations as operators. If these guarantees are not enough to cover a certain liability, the sanctions imposed by the regulator could be enforced through common civil remedies (the seizure of assets, goods, shares, deposits, etc).

Additional sanctions such as activity suspension and limitations on licence applications may be directly imposed by the regulator or the Ministry of Tax for severe infractions, without requiring further measures beyond the sanction's announcement.

Since 2022, the DGOJ publishes those “serious” and “very serious” sanctions against online operators on its website.

11.3 Financial Penalties

As mentioned in **11.2 Sanctions**, financial penalties are normally first enforced by the execution of the guarantees deposited by the operator before the regulator, and by the seizure of assets of the sanctioned operator company if the guarantees are not sufficient to cover the relevant liability.

11.4 Recent or Forthcoming Changes

No recent changes have been published on this subject.

12. Tax

12.1 Tax Rate by Sector

The tax rate for online gambling at the federal level, subject to the Gambling Act, is 20% on GGR or the total amount of money wagered minus the amount won for all gambling products. This tax rate is 10% on GGR if the licensed operator at the federal level is domiciled in Ceuta or Melilla.

The tax rate for online gambling at a regional level, subject to each regional regulation, is 10% on GGR in most of the regions.

The tax rate applicable to the land-based sector is approved by each regional regulation and therefore varies depending on the region. As an example, in the region of Madrid, the applicable taxes are as follows:

- 20% on GGR general tax rate;
- 15% on GGR for bingo, and 30% on GGR for electronic bingo;
- 10% on GGR for online games developed in the Madrid region; and
- 13% on GGR for betting games and 10% on GGR for sports betting, horse racing and other betting games.

The tax rate applicable to land-based casinos depends on the tax base:

- 22% if the tax base is less than EUR2 million;
- 30% if the tax base is between EUR2 million and EUR8 million;
- 35% if the tax base is between EUR8 million and EUR15 million; and
- 40% if the tax base is more than EUR15 million.

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In Andalusia, for instance, the applicable tax rates are as follows:

- 15% if the tax base is less than EUR2 million;
- 35% if the tax base is between EUR2 million and EUR3.5 million;
- 48% if the tax base is between EUR3.5 million and EUR5 million; and
- 58% if the tax base is more than EUR5 million.

In addition, there are fixed rates that apply to operating betting terminals or automatic appliances suitable for the development of games. The amount depends on the applicable regulation, but the fee generally ranges from EUR3,000 to EUR4,000 per year for terminal type B/AWP and from EUR4,000 to EUR5,500 per year for terminal type C/casino machines.

12.2 Recent or Forthcoming Changes

No recent changes have been published on this subject.

13. Personal Approvals and Licensing

13.1 Types of Authorisations and Licences

In Spain, no authorisations or licences are granted to individuals, as licences and authorisations are issued to gambling operators. Therefore, this section is not applicable under the Spanish regulatory framework.

13.2 Application Process

No information is available on this subject.

13.3 Ongoing Annual Fees

No information is available on this subject.

13.4 Ongoing Requirements

No information is available on this subject.

13.5 Personal Sanctions

No information is available on this subject.

13.6 Recent or Forthcoming Changes

No information is available on this subject.

Trends and Developments

Contributed by:

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Asensi Abogados

Asensi Abogados is a boutique law firm specialising in the gaming and gambling sector. It represents and advises a large number of international gaming companies with interests across the Spanish and Latin American markets. The firm works for the largest online betting and casino operators, software providers, skill games operators, affiliates and payment-solution providers, as well as land-based operators, slot-machine manufacturers and suppliers. Asensi Abogados has offices in Madrid, Mallorca and Bogotá, and is part of the Spanish Digital Gam-

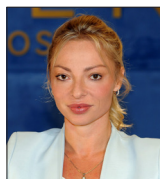
ing Association (Jdigital). A team of two partners and nine associates operates in Spain, while the Colombian office is composed of one partner and three associates. Recent work by the firm includes licensing procedures at both online and land-based levels, providing detailed advice on the practical application of the new regulatory developments for online operators in Spain, and assisting international operators in relocating to Ceuta and Melilla, Spain's two gambling business-friendly jurisdictions.

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SPAIN TRENDS AND DEVELOPMENTS

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ABOGADOS

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This piece aims to examine and analyse the significant developments that have marked 2024 in the Spanish online gambling market, together with regulatory changes and pending updates, and to highlight any major innovations.

Hot Topics in 2024

The Regulator's fight against fraud

In 2024, the Directorate General for the Regulation of Gambling (DGOJ) has placed significant emphasis on combating fraud, particularly through a protocol developed in collaboration with the Spanish Tax Agency and State Security Forces. The aim is to address cases of identity theft on gambling platforms where individuals use the personal data of third parties to open gaming accounts. The need for this protocol arose from a significant increase in complaints from individuals whose identities were misused to evade tax liabilities on potential winnings.

Among other things, this protocol aims to clarify the type of information that operators must provide when a data subject whose identity has been misused requests access to account data, as this enables them to prove to the Spanish Tax Agency that the accounts and winnings attributed to them were not legitimate.

While the fight against identity theft is hugely valid, the practical implementation of this protocol has given rise to much discussion, since the need to disclose certain sensitive information raises concerns regarding data protection.

Also related to fraud, operators facing a major challenge for many years in that fraudulent players cause substantial financial losses, which has a considerable economic impact for the Spanish gambling market. Yet no specific regulatory measures have been taken to address this situation. It would seem that operators are often

overlooked, and it is equally important to adopt measures that consider the protection of operators and foster the growth of the legal market.

Recent implementation of certain responsible gambling requirements

Technical updates by operators

While most of the content of the Royal Decree developing safer gambling environments entered into force back in September 2023, there were still measures and requirements that required specific technical application on the operators' side. The regulator therefore allowed a year from the publication of the regulations in the Official Spanish Gazette, in March 2023, for operators to proceed with the technical updates. As a result, in March 2024, operators were required to adjust their platforms accordingly.

Certain elements of this latest set of restrictions have sparked considerable debate. For instance, operators were required to ensure that players up to age 25 would not be exposed to promotional activities unrelated to the gambling activities offered on their platform so as not to underplay gambling activity for this category of players through the offer of trips, dinners or tickets to shows or football matches, for example.

However, as is the case with other restrictions aimed at young players, these limitations tend simply to be based on the assumption that young participants are not capable of gambling healthily. This could be seen as a discriminatory measure, affecting the right of adults over the age of eighteen to manage and spend their money as they wish and see fit. Furthermore, the restrictive nature of the limitations, together with the fact that those under the age of 25 are the group with the greatest access to – and mastery of – technology, could lead to the displacement

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of this age group towards the illegal gambling market, where they would lack protection.

Given that all players are of legal age, it is appropriate that they be treated equally, with their pattern of play, history of activity and other characteristics the elements considered when defining measures, limitations and restrictions applicable – not simply their age.

Payment methods imposed upon “risky” players

From last March players exhibiting risky behaviour – a definition which has yet to be developed by the regulator – were obliged to use only methods of payment in their name (nominative payment methods) and under their ownership. (Note that this requirement applies only to risky players under Spanish regulations.) In addition, these players and those deemed to demonstrate intensive gambling behaviour were prohibited from depositing funds using credit cards.

Suspension of accounts used by third parties

One of the key gambling-related Royal Decrees includes provisions for the precautionary suspension or closure of a gaming account when it is found to be used by third parties. This would demonstrate that Spanish regulations explicitly prohibit the use of a gaming account by anyone other than the account holder. This measure currently only targets players exhibiting risky behaviour, although it would be logical and appropriate for it to be applied universally to all customers, as it represents an effective due-diligence and customer-identification measure. Operators could choose to implement this measure more broadly by incorporating a prohibition into the terms and conditions that govern their contractual relationship with players.

Spending and time restrictions on gaming sessions

With respect to the implementation of the “other games session”, also one of the recent measures that entered into force last March, operators have had to adjust their platforms to ensure that players set up their gaming session with spending and time limits for all gambling products under the general licence for other games, with the exception of tournament poker.

Although the implementation of the other games session was mandated for March 2024 and operators were required to comply with all associated requirements from that point, they have been unable to submit the necessary files and information related to the session to the DGOJ as the reporting model approved by the latter, which governs the exchange of information between operators and the regulator, was not updated until June 2024. The new reporting obligations outlined in the updated model will not take effect until March 2025, providing operators with additional time to fully comply with the new reporting requirements.

Significant news on gambling advertising

In April 2024, the Spanish Supreme Court issued ruling 527/2024 partially granting the appeal filed by the Spanish Association on Online Gambling (Jdigital) against the Royal Decree on commercial communications for gambling activities and declaring void key restrictions provided by this regulation, basing its decision on a lack of legal coverage and proportionality with the right of free enterprise.

As a result, the advertising framework for gambling has been relaxed. Notable implications include the following.

- Welcome bonuses are allowed.

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- There are no specific requirements governing the offering of promotions to customers.
- The restrictions on the advertising of promotional activities have been lifted.
- The prohibition of advertising with famous or publicly notorious individuals is voided.
- The general prohibition on the display of commercial communications on the internet has been annulled, meaning that there are no regulatory limits on the specific channels where advertising is allowed.
- Following this ruling, the requirements as to the advertising of gambling operators or products on the accounts or channels on social networks and video-sharing platforms have been removed. However, although such restrictions on video-sharing platforms are voided, the General Audiovisual Communication Act already refers to this restriction, since it foresees that audiovisual commercial communications on video-sharing platforms can only be included in accounts/channels whose main activity consists of offering information or content on gaming activities, so this requirement would remain in place.
- The targeting rules for addressing the advertising to specific individuals in social media has been annulled, meaning that there is no restriction in this sense.

In summary, despite the continued enforcement of significant restrictions, such as the restrictions related to sponsorship activities and the time restriction for advertising on television, radio and certain gambling advertisements on video-sharing platforms from 1am to 5am, the Supreme Court's ruling has been received by the industry as a positive development. It presents a valuable opportunity to enhance the visibility of the gambling sector in Spain.

It was not all good news, however, as, by the end of September 2024, left-wing parties proposed the reinstatement of the provisions that were nullified by incorporating them into the Spanish Gambling Act through the Draft Law that seeks to modify the General Law on Public Health – which has absolutely nothing to do with either gambling or advertising.

Upon reviewing the proposed amendments, it has been observed that the absolute ban on welcome bonuses has not been included. This particular remedy could be viewed as legally insufficient, in any case, since many of the annulled provisions were invalidated due to their disproportionate impact on the right of free enterprise. Therefore, although this would not have been the legislator's intention, the content of such limitations could need revising and redrafting.

Notwithstanding the above, the legislative process for amending a law is inherently complex, leading us to believe that, in the short term, no further developments are likely to occur in this regard.

Upcoming joint deposit limits regime

One of this year's hot topics has undoubtedly been the system of joint deposit limits that is set to be introduced in Spain soon.

By way of background, operators are currently required to establish economic limits on the deposits that they receive from each participant on a daily, weekly or monthly basis in different games. There is a series of maximum amounts that may not exceed the deposits made by players in these time periods. These deposit limits may be lowered immediately, or they may be increased, or even removed, provided that the player meets certain responsible gambling criteria.

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These limits, as they are configured, are set independently for each operator, which means that the total volume of deposits that can be made by a participant in the gambling market ultimately depends on the number of operators with which it operates and maintains an open gaming account. Thus, the current model of deposit limits is not fully satisfactory from the responsible gambling perspective.

The DGOJ has therefore proposed a framework that introduces an aggregate deposit limit for individual users across accounts held with multiple operators. This system is intended to function independently while complementing the existing deposit-limit control mechanisms already upheld by each operator.

As is well known in the gambling sector, this system has already been implemented in other countries, including Germany and Sweden. However, the Spanish regulator has clarified that the technical framework that it is developing is neither based on nor inspired by these existing models, but will be entirely new.

This is intended to increase the level of protection for players and strengthen the tools available to them to manage their spending and, ultimately, prevent the emergence of addictive behaviour. However, it is widely acknowledged that applying such interventionist measures to control users' gambling habits may lead to players becoming disenchanted with regulated gambling options and drive them towards the less restrictive alternatives offered by unlicensed or illegal operators.

On the system itself, we found the report published by the National Commission on Markets and Competition (CNMC), following its analysis of the project, to be particularly insightful.

While the relevant authority concluded that, in broad terms, the proposed system did not present unjustified restrictions on competition, as it was based on a compelling reason of general interest (prevention of addictive or pathological behaviours) and it was properly aligned with the principles of good regulation, it made a series of considerations. Particularly, that:

- users will have reduced incentives to switch operators, especially multi-operator users (around 30% of players in Spain), who will likely concentrate their activity with their main operator due to the decreasing marginal utility of having multiple accounts; and
- this will lead to greater market concentration among gambling operators. Smaller operators, with a smaller player base, might see their business models threatened.

It should be added that, while the DGOJ foresees an ex-post evaluation of the functioning of the new system of joint deposit limits per player, this evaluation will be carried out two years after the entry into force of the measure. Thus, the CNMC understood that it seemed reasonable to shorten this period as far as possible in order to be able to draw potential conclusions earlier.

To conclude this overview of the upcoming joint deposit limits model, it should be noted that, although the publication of this system in the Spanish Official Gazette is planned for 2025, operators are expected to be granted a one-year period to adapt to the new deposit limits model.

Changes to financial guarantee requirements for operators

Mortgages on properties located in Spain are to be removed as an option to put before the DGOJ as a financial guarantee option. The required amounts for these guarantees are also set to

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increase significantly increase – for the initial period of about two years from EUR2 million to EUR2.4 million; and after that period, from EUR1 million to EUR1.2 million.

Although the DGOJ justifies the increase in the guarantee amounts as necessary to preserve their real value, this increase would appear excessive, as it further illustrates a clear trend towards imposing increasingly stringent burdens on operators.

While the removal of the mortgage option is expected to take effect the day following the publication of the relevant Royal Decree in the Spanish Official Gazette (expected in 2025), the updates on the guarantees amounts are expected to take effect on 1 January of the year following the publication.

Recent developments regarding loot boxes

In recent years, Spain has made many unsuccessful attempts to regulate loot boxes. Loot box products or the random reward mechanism is understood to be “any virtual functionality that can be activated using legal tender or through a virtual item, such as a code, key, in-game currency, cryptocurrency, or another element acquired directly or indirectly with money. The outcome of such activation is uncertain and consists of obtaining a virtual item that may be exchanged for money or other virtual items”.

In June 2024, the Spanish Council of Ministers approved the Preliminary Draft of the Organic Law for the protection of minors in the digital environment. This draft introduces new provisions, including a ban on loot boxes for minors. This regulation is still in its early stages, and it will be necessary to monitor its progress to understand how this issue unfolds.

Navigating the Spanish Market

The licensing window for the Spanish online gambling market is currently closed, with no expectations of upcoming public tenders to apply for new general licences, which are mandatory for operating in the country, in the near future. Against this backdrop, it is interesting to note how the chips are currently stacking up in the market to obtain a licence.

The transfer of licences is disallowed on Spain unless it results from a corporate restructuring of the operator’s entity – generally via the contribution of a branch of activity or a merger or spin-off – in which case it is permitted but subject to prior authorisation from the DGOJ.

However, it has become a common practice to transfer licences by purchasing the shares of a company that already holds a gambling licence. Since this involves acquiring the entire company rather than just the licence itself, it results in a change of ownership, but not in the transfer of the licence directly. This approach is permissible under Spanish law, as it is considered a change in the company’s ownership structure rather than a licence transfer. Therefore, it is currently possible to obtain a licence in Spain provided that there is a company willing to sell it.

Challenges and Opportunities

After more than thirteen years, it goes without saying that the regulated online gambling sector in Spain has become a mature and consolidated market that has achieved a level of professionalism and that the industry would like to see continuing to improve and to grow.

The sector has witnessed how licensed operators have been able to adapt their business to the numerous restrictions imposed in the past years, relying on increasingly skilled profession-

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als and teams to ensure strict regulatory compliance. Operators must deal with a multitude of requirements on a daily basis before the relevant authorities, ranging from the continuous adaptation of their procedures and policies (to be aligned with the different regulations related to consumer rights, anti-fraud or anti-money laundering) to strict compliance with reporting obligations, product certification, deposit and the update of economic guarantees, payment of taxes and levies, among others.

Technological innovations

The Spanish online gambling regulations have been in place for over thirteen years and are therefore partly obsolete in relation to recent technological innovations, which are always ahead of regulations and legislative developments. This inevitably means that today we are noticing significant legislative shortcomings, which is obviously frustrating the industry.

The gambling sector is also thirsty for further innovation in order to expand and improve its offering to customers. The Spanish regulator could focus on motivating the current market and licensed operators by offering new products to make their business more attractive and more competitive.

Among others, DGOJ has received from the industry regulatory proposals related to the extension of the current allowed gambling offering in Spain to other live products, particularly live blackjack (at present, live roulette is the only regulated product allowed in the jurisdiction). Although these types of regulatory projects are not among the regulator's priorities, it is hoped that they will be put on the table and included in the DGOJ's agenda in the short to medium term.

Improving business efficiency via tax benefits

Besides the need to improve the gambling offering, operators are seeking opportunities to improve the efficiency of their businesses. In this vein, both international online operators operating in Spain, ie, from companies based in other countries and operators already based in Spain, have wanted to take advantage of the favourable tax conditions provided by the Spanish autonomous cities of Ceuta and Melilla, as these are very attractive regimes, by offering companies domiciled in these cities a tax rate of 10% on GGR (instead of 20% on GGR).

There has therefore been a massive relocation of operators to Ceuta and Melilla, either through an international transfer of domicile or through specific corporate operations in this respect. Ceuta and Melilla are gambling-friendly jurisdictions in Spain to which – in addition to allowing an attractive special tax regime for online gambling operators and for new technologies businesses in general – the regional regulators are trying to attract activity, services and talent.

Lastly, as anticipated previously, the recent Supreme Court ruling on gambling advertising has brought a breath of fresh air to the sector. The previous restrictive legal framework governing advertising made the gambling sector a less attractive market so, as a result of changes to gaming rules when it comes to advertising, operators are also becoming increasingly interested in marketing-related activities, resulting in a revitalisation of advertising campaigns and proposals.

In summary, we can conclude that it is essential that both the regulations and the DGOJ ensure that the gambling sector is regulated and treated in a manner that meets its needs and expectations, promoting innovation and competitiveness for the continued growth and vitality of Spanish online gambling.

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