

# Online gambling regulation in Spain

**If you would be wealthy,  
think of saving as well as getting.**  
Benjamin Franklin  
(1706-1790)

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## ***I. Introduction***

Before December 2007 the Spanish Government had not worked on online gambling legislation. December 28<sup>th</sup> the Parliament passed the *Society of Information Act*<sup>1</sup>. The objective of this Act is to motivate to use of technology and to protect the Spanish citizen's rights.

After passing this Act Spanish Government realised that deeper regulation is needed and in May 2011 passed the first *Gambling Act*<sup>2</sup>. The purpose of this Act is to: “*regulate gaming activity taking place on a nationwide basis in all its different forms, in order to maintain public order, fight against fraud, prevent addictive behaviour, protect the rights of minors and safeguard the rights of participants in this activity, without prejudice to the provisions of the Statutes of Autonomy*”<sup>3</sup>.

In the same year 2011 the DGOJ<sup>4</sup> (Directorate-General of Gambling Regulation) is created as a part of the Ministry of Finance and Public Administrations and is responsible to the Secretary General of the Treasury. That institution regulates, authorises, supervises, controls and if necessary penalises gambling activities in the Spanish State.

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<sup>1</sup> See Medidas de Impulso de la Sociedad de la Informacion [Society of Information Act] (B.O.E. 2007, 22440) (Spain), available at <http://www.boe.es/buscar/doc.php?id=BOE-A-2007-22440> (containing measures to boost Society of Information).

<sup>2</sup> Ley de Regulacion del Juego [Gambling Regulation] (B.O.E. 2011, 9280) (Spain), available at <http://www.boe.es/boe/dias/2011/05/28/pdfs/BOE-A-2011-9280.pdf>.

<sup>3</sup> **13/2011**, Article 1.1

<sup>4</sup> Direccion General de Ordenacion de Juego

The State has the competence to regulate and control the online game, while each Autonomous Community has the competence on the online and face-to-face games in their own community. That is why in 2011 another authority is created, called *Consejo de Politicas del Juego*, to coordinate the work between the State and the Autonomous Communities.

The regime regulates in particular: "*gaming operations through electronic, interactive and technological means*" which includes the internet, television, mobile phones, land lines and any other interactive communication system where physical means have an ancillary role. The Law also controls the provision of games by the incumbent monopoly lottery operators ONCE and LAE in spite of the channel through which those games are provided.

The gambling is consisted of pari-mutuel sports betting, straight sports betting and other types of straight betting, pari-mutuel horse betting, straight horse betting, Blackjack, Bingo, Contests, Baccarat, Poker, Roulette and complementary games<sup>5</sup>. Apart from those gambling activities, the law regulates also occasional or sporadic raffles (taking place once a year or less frequently). Other gambling activities that does not appear in this list are forbidden, all the non-regulated gambling activities are prohibited.

## ***II. How to access to the market***

The law lays down certain licensing categories and entitlement procedures. The operators which want to provide services to the Spanish territory have to obtain the relevant licence granted by the National Gambling Commission.

There are two different types of Licences and also there is a permit for occasional gambling. Licences are not transferable and their grant implies payment of administrative taxes.

- **General Licences:** These licences are a prerequisite to be able to entering the market and are required for the operation of betting games, raffles, contests and other gambling games. The licences have duration of ten years and these ten years are renewable for other additional ten years through an administrative procedure which is available only every eighteen months. The administrative procedure will be subject to be passed by the Economy and Treasury Ministry. Those are the specifications that are going to take into account: the experience of operators, their economic solvency and means at their disposal to operate the licence. When the applicants ask to participate, they must submit and operational plan that takes into account

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<sup>5</sup> "Complementary games" are different types of games (combining chance with abilities, skills, culture, knowledge, etc.) which are not just played for money but mainly for entertainment. The prizes are determined by basic regulations and by the particular operator's rules.

the principles of responsible gaming, training of employees, distribution channels, game design and other aspects of their activity that may be established by future regulations.

In principle the number of general licences that are conceded is unlimited. But the National Gambling Commission has the power to limit the number of licences to some types of game only based on reasons as public interest protection, child protection and prevention of gambling addiction.

The operators which are willing to get a general licence must apply in advance for provisional registration in the General Register of Gambling Licences.

Besides is forbidden by the law the granting of licences or authorisations to those who fall within certain categories of illegality or non-compliance with tax or social security obligations, in this way the Law controls the solvency of the operators.

Operators that haven a general licence must supply a guarantee. Additional guarantees might be linked to single licences.

- **Single Licences:** The operators have to apply for this kind of licence to require each type of gambling game. The duration of these is between one and five years. The withdrawal of a general licence implies the withdrawal of all single licences linked to it.

- **Permits:** The operators which want to give occasional gaming activities have to apply for a permit.

### ***III. Tax system***

All legal persons and individuals authorised to conduct occasional gambling activities are subject to the Gambling Activities Tax under the conditions and rates laid down in Article 48 of Law 13/2011.

The Spanish Tax Administration Agency (AEAT) is the one that collect taxes. Tax rates and taxable income depend on the kind of game, the kind of event upon which the bet is made, and how the sums at stake are organized and distributed.

Most form of online gambling will face a gross profit tax. The taxes rate varies from 10% to 25%. Fixed occasional horse betting will bear a 25% gross profit tax as well as other fixed odds games and exchange betting. Sports pool betting (22%), horseracing, pool, and pari-mutuel bets (15%) continue to be taxed at the turnover rate.

Furthermore Autonomous Communities are free to raise the rates within their borders up to a certain limit. These regions may raise by as much as 20 percent the taxable rate for activities

made by operators with tax residence in their territory. In any case profits from sports and horse race betting are always considered State revenue, while profits from other online gambling activities are shared between Autonomous Communities' governments in proportion to the amount of money gambled by their populations.

To financing the National Gambling Commission's regulatory activities, the Law has established an administrative fee of 1%. This fee is payable on an annual basis.

From May 2011 all gambling operators providing services to the Spanish territory will be required to pay the taxes and administrative fees if they already had a licence. For the pertinent taxes, the operators must make the declaration and self-assessment of the tax on a quarterly basis and at least within a month following the ending of each quarter.

### ***IV. Illegal Gambling***

The Illegal Gambling is gambling which goes against the law. As I mentioned before, in Spain a certified authorisation is required to offer state level online gambling activities. Under the law state-wide lotteries are only administered by *Sociedad Estatal de Loterías y Apuestas del Estado* (State Lottery and Gambling Company) and ONCE.

Logically the operators can only offer regulated gambling for which they were licensed. Those licences must be obtained in Spain.

The Article 3 of the Act gives a definition of Gambling; there are some conditions that have to be followed:

- There must be a bet for money; the gambling for fun does not require any licence.
- Bets must be made on future or random results.
- There must be prizes, in cash or in kind.

Taking part in an illegal game has its risks. Citizens who enter an illegal gambling site may compromise their funds, their personal data, suffer fraud or be defrauded, become victims of dishonest practices and even unknowingly collaborate with criminal organizations.

Because all those risks, before taking part in a gambling site, it's better if at the beginning to identify the operator behind the gambling offer and check whether it has a licence (the Directorate General for Gambling Regulation publishes an updated list of licensed operators).

The operators which offer an illegal gambling activity are committing a very serious offence and as a result they will have to attract with the consequences:

- A penalty of up to €50 million.
- Disqualification from the practice of gambling activities for up to four years.
- Closure of the means used to provide information society services.

The DGOJ has the power of prosecuting any illegal gambling activity. Once the illegal nature of the gambling service is confirmed, a penalty will be imposed and its marketing will be interrupted using the means provided by the Act. The Citizens can collaborate to combat illegal gambling; they can report them.

### ***V. Advertising***

Eventually the Act in its Article 7 covers advertising, promotion, and sponsoring of gaming activities. According to the 34/1988 November 11 Act (General Advertising)<sup>6</sup> the advertising, promotion or sponsoring of unlicensed gaming operators is forbidden.

The 13/2011 Law states that advertising, sponsoring, and promotion activities carried out by media operators regarding gaming or gaming operators will need additional licensing. Sport sponsoring, advertising and promotion is regulated also by the Law establishing a transition period for it.

Online gaming operators must use Spanish domain ending in “.es” to allow the government to have more control, to prevent tax evasion, and to dissuade money laundering and terrorist financing.

The Parliament is drafting a Act for the protection of the underage and vulnerable players; the current law protects those kinds of players, but it has to be more regulated. The National Lottery vendors’ associations pointed out the issue of responsible gaming management. They underlined the importance of a careful and responsible gambling situation, especially regarding vulnerable groups.

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<sup>6</sup> Ley 34/1988, de 11 de noviembre, General de Publicidad [General Advertising] (B.O.E 1988, 26156) (Spain) available at [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-1988-26156](https://www.boe.es/diario_boe/txt.php?id=BOE-A-1988-26156)

In Spain is an association to contribute to ensure high ethical standards in advertising in the benefit of consumers, competitors and the marketplace. It's name is *Asociación para la Autorregulación de la Comunicación Comercial* (AUTOCONTROL) and it is the Spanish advertising self-regulation organisation, similar to all those existing in the EU countries.

It is composed of the main advertisers, agencies and media (TV, press, radio, Internet...) in Spain, as well as the main advertising industry associations.

There are four key instruments in AUTOCONTROL, as in most advertising SROs:

- Codes of conduct. It is an agreement in which a number of principles and rules are established to get that the commercial communication of the gambling online will be:
  - Veracious and not misleading.
  - Eco-responsible gaming; advertisements must include messages of the type “play responsibly”.
  - Socially responsible, the game does not have to be associated to personal, social or professional success, or does not have to be compared to work, study or effort, underestimating them.
  - The children have to be protected, that is why they have to be informed that underage (less than 18 years) people is banned to play.
  - Adequate to protect other vulnerable groups, such as the disable people, which cannot receive individualized advertising.
  - The promotional bonuses will be done conform to criteria of clarity and transparency, informing about essential characteristics (amount, duration, other requirements, etc.).
- Out-of-court dispute settlement system: Complaints Committee.
- Pre-launching advice (Copy Advice®).
- Cookie Review (Cookie Advice®).

## ***VI. Conclusions***

The Gambling Act is a very recent law and as being drafted in 2011 and has a “lot of gaps”. But in last very few years a significant progress has been made, even when the Act still needs further improvement.

For a better understanding, let's aim at the advertising. The advertising is regulated by the Act in its article 7. It says that it is legal to advertise, sponsor or promote any kind of online or face-to-face game. This article establishes the main objectives and rules of advertising but it should be more specific, especially to protect the more vulnerable people.

Law does not establish any schedule of advertising, so all operators can advertise, sponsor and promote at any time, provided that the advertising fulfils the four instruments mentioned before. Despite the fact that the law says so, I think that some kinds of advertising must be prohibited only because of minorities, disabled or addicted people. These groups are more vulnerable and they can be very easily influenced, as the Law and the Government has a duty to protect them, this advertising should be prohibited or at least regulated by a more strict regulation.

For example I consider not all films recommendable to minorities or the gambling advertisement should be announced in a schedule that the vulnerable people were not be damaged. But why does the government allow this kind of advertisement? In the Tax System section, we saw that the percentage that the operators have to pay is very high.

In fact in Spain there is a website, called jugarbien.es, which is a public governmental web page; where some characters are described and which says that playing in a responsible way is not wrong and addictive. That kind of message makes people incited to play and to spend money onto gaming, and as a public website can also effect vulnerable people.

In conclusion the Act has generally brought progress to the Gaming market but still there is a very long way to go.