

REGULATING SECURITY AND RESPONSIBILITY IN GAMBLING: THE SPANISH EXTRAVAGANZA

New regulations aren't born out of the blue, there is always context to them, whether economic, demographic, technological, ideological, political (not that the later could be separated from the rest) and others. In this case, it is important to understand that both political parties who form the Government in coalition, PSOE and Unidas Podemos, signed an agreement in December 2019, which made it very clear that both parties wanted to "regulate gambling" (yes, more regulation to an over-regulated sector) "in a similar way as tobacco, to prevent fraud and pathological gambling."

Online gambling advertisement was first on the 'to do' list; November 5, 2020, the Royal Decree 958/2020 on gambling commercial communications (the "Advertisement Regulation"), came into force and apart from the 30 articles dedicated purely to advertisements, it also included a section of seven articles on secure and/or responsible gambling measures. This notwithstanding, July 2021 a new draft Royal Decree was published titled "Regulation on Implementing Safer Gambling Environments" which would repeal those seven articles of the Advertisement Regulation. The Administration alleged that the current regulation, including the Advertisement Regulation, had gaps and shortcomings which leaves an awkward feeling on how the previous regulation could become outdated in half a year. Had the context in Spain changed that much?

Apparently, there is a growing social concern about the serious consequences that the consumption of gambling may have on certain individuals, which serves as a driving force to achieve a more adequate level of protection for those most vulnerable groups and those who may be experiencing a gambling problem. However, the data (or its interpretation) is contradicting, and depends on the source that is managed. In any case, the demonisation is such that the Spanish gambling authority has ruled against opening a new window to request new licences for operating gambling in Spain, until further notice.

THE NEW DRAFT OF ROYAL DECREE ON IMPLEMENTING SAFER GAMBLING ENVIRONMENTS

The latest draft publicly available, dated September 30, 2021, and which supposedly includes all the contributions provided by stakeholders during the public allegation period, has 36 articles, eight additional provisions, a transitional provision, a repealing provision and five final provisions making this regulation very exhaustive and detailed. It is applicable to entities with a licence issued by the state-wide



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gambling regulation authority and gambling activities subject to user identification and gambling account identification.

CHAPTER I.

This chapter contains a set of definitions, some of them never defined previously by any gambling regulation in Spain (neither online nor landbased). Various of these definitions have raised debate in the industry such as "Participants with intensive gambling behaviours", "Vulnerable participants or groups at risk" and, "Young participants" (persons 25 years or under).

CHAPTER II.

Titled "Active information policies and protection of users" contains (i) regulatory provisions on the safe gambling officer, which, with all due caution, reminds me of the status of the Data Protection Officer; (ii) the plan of active measures and the training obligations with which gambling operators must comply; (iii) obligations on the general information on the web pages and apps the operators must provide to potential or existing customers.

Thus, this section contains certain information obligations for web portals, applications and establishments open to the public of these operators; a set of obligations are laid down for the configuration of the gaming sessions of participants, the setting of limits on participation in live betting, the presentation of the outcomes of the games imposing so much detail as not allowing the operators to put certain comments if the player loses such as "you almost won", "you were close" and similar (here is obviously a misconception on the concept of consumer as the CJUE has ruled against treating consumers as below average intellect); specific self-assessment messages namely messages to self-evaluate every 30 minutes must pop up, be read and signed by the player in order to continue playing; as well as the articulation of a monthly summary of the activity of all participants.

One of the shocking obligations that is set out is the provision of assistance to players or potential players on safe gambling and risky behaviours through telephone service in Spanish and in the other co-official languages. One must consider this would add up to six different languages which may seem somewhat burdensome for the operator; Young players cannot be VIP. In this chapter the gambling authority is also further empowered to set a risk assessment model for an operator's games prior to their marketing from the perspective of those design factors likely to influence players in

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terms of their addictive potential. In addition, the gambling authority may also determine the specific measures to minimise such risks.

CHAPTER III.

Titled "Additional active information and protection policies for certain groups of vulnerable participants or groups at risk", sets out a set of protective measures beyond those provided for in Chapter II, for certain groups of players, for example, the deposit of funds with credit cards by participants with intensive gambling behaviour is prohibited. This chapter also incorporates certain requirements aimed at protecting young participants, such as setting up a personalised message, as well as prohibiting the offer of gifts, advantages or compensations.

This chapter also disposes specific obligations to be deployed in the environment of gamblers with risky gambling behaviours; in this regard, in addition to proper detection, operators must put in place a group of additional protective measures, such as the establishment of a specific interaction with those participants, their exclusion from promotional activities and the list of VIP, restrictions on commercial communications, the setting of limitations on the means of payment (cannot use payment methods which are not nominal such as prepaid cards and cannot use credit cards) and the imposition of due diligence measures on the financial source of such players in a very UK Gambling Commission style.

Finally, this chapter lays out measures aimed at participants who have self-excluded and self-banned (there is a quite redundant self-exclusion regime in Spain), such as the suspension of their gambling accounts, the restriction of commercial communications, specific messages, and the establishment of processes for monitoring and detecting possible impersonations by participants registered in the General Register of Gaming Access Bans, which is a very unique registry where you can self-exclude from all online gambling websites and to which operators must be connected to.

THE FUTURE HORIZON

Considering that reputable studies indicate that Spain has a problem gambling rate of 0.3 per cent it may be difficult to state that draft Royal Decree on Implementing Safer Gambling Environments, the principles of necessity, effectiveness, proportionality, legal certainty, transparency, and efficiency are complied with.

As could not be otherwise, the industry awaits the approval of the text with great concern and expectancy.