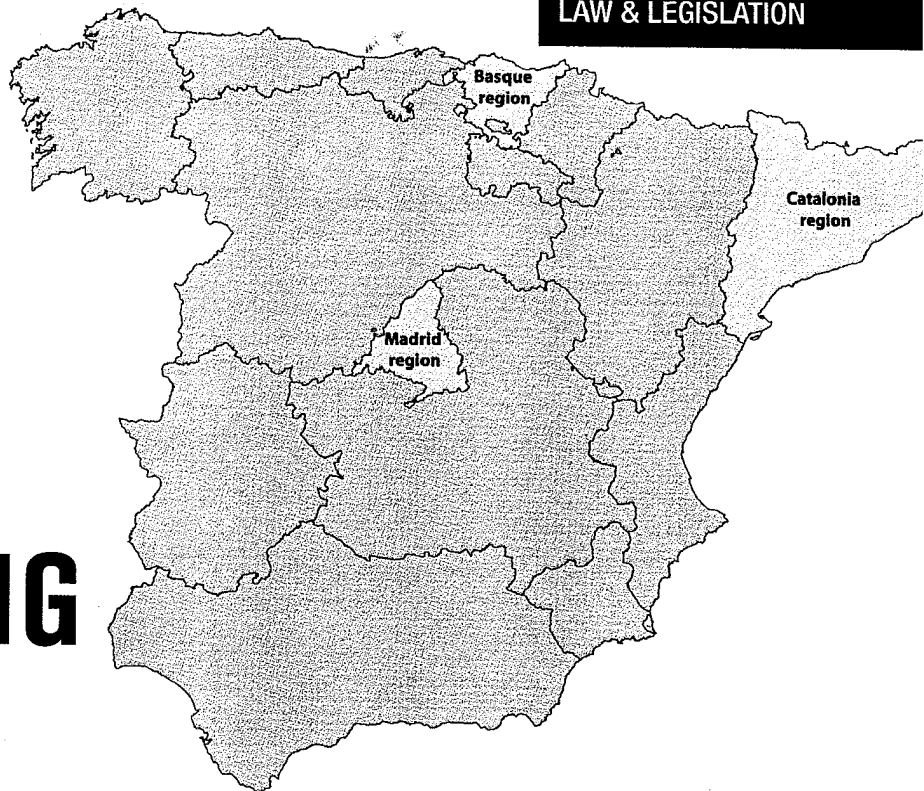


ONLINE GAMING AND BETTING IN SPAIN



ON 28 DECEMBER 2007, the Spanish Congress passed a motion within a Law obligating the Spanish Government to develop nationally-binding regulations allowing for remote gaming and betting activities. Following the motion, the Spanish Gaming Commission met in June of this year with the aim of working on the future regulations to be passed. After that, on 18 June, the Director General for Spanish Lotteries and Bets passed a Resolution setting out the requirements for taking bets on the Internet exclusively applicable to the State-owned Lotteries and Bets organization (Loterías y Apuestas del Estado). Such new regulations and requirements will be reviewed later in this article as they have become a reference of how these activities will be regulated in the future.

These are the latest steps taken by the Spanish government which we think will lead to the drawing up and approval of the relevant regulations allowing for the provision of these activities in the whole of Spain and with a nationwide regulation.

The expected legal framework would grant the necessary legal certainty to remote gambling operators: they should be able to apply for an authorization in Spain but unauthorized operators would be subject to fines through appropriate administrative action.

However, current legislation is still relevant to operators already active in Spain as the 2007 law does not establish a deadline for the new regulations. This article analyzes the relevant legal provisions regarding online gaming and betting in Spain as they currently stand and the tendencies for the new regulations to come.

DISTRIBUTION OF POWERS BETWEEN STATE AND AUTONOMOUS REGIONS

Article 149.1 of the Spanish Constitution does not grant the Spanish State jurisdiction over the activities of casinos, gambling and betting. Thus the 17 autonomous regions, with the exception of Ceuta and Melilla, have assumed exclusive

jurisdiction over such activities by including them in their respective Statutes of Autonomy.

This system introduces some difficulties when casino games and gambling activities are carried out via the Internet, offering their services in some or all of the regions, other States or even throughout the entire world. The most respected legal opinion is that State jurisdiction may overrule the regional jurisdiction for any type of gambling or betting activities that exceed the territory of one region. However, this remains a complicated issue.

Both State and the regions have developed specific regulations related to gaming activities. However, most of these regulations refer to more traditional forms of gaming in general and do not make specific reference to online gaming (most of the existing legislation is prior to the emergence of the Internet).

In this regard, it is worth highlighting the laws of the Region of the Basque Country, the Madrid region and the region of Catalonia, all of which mention the possibility of including online gaming amongst those gambling activities catalogued and authorized by the region.

In relation to the Madrid region and the Basque Country, online betting regulations have already been developed to allow the authorization of both physical and online bets. Also, authorizations have already been granted to various betting operators which are already providing their services in those regions.

CURRENT PROHIBITION OF ONLINE GAMING AND BETTING IN SPAIN

At the end of 2006 and within the annual State Budget Law, the Spanish Government changed some laws in order to criminalize online gaming and betting activities provided by national and foreign companies without a Spanish authorization. Thus, under these new regulations companies cannot rely on an authorization from a third country, even from a country within the EU. The law establishes that the following activities

will be considered a crime of smuggling: "the sale, import, traffic and production of tickets, stamps or any other support of lotteries, bets and other games organized or issued by foreign persons or entities is forbidden on Spanish territory."

As a result of these regulations, since January 1, 2007 the offering of games of chance via the Internet by Spanish or foreign entities is clearly illegal if provided without an authorization from the appropriate authority in Spain. It is important to note that this is how the regulations stand at the moment and in spite of the various moves from the Spanish State towards the liberalization of this sector, the mentioned prohibition has to be taken very seriously.

In line with the prohibition above, the advertising of any of these online activities is also clearly forbidden, when those games lack the obligatory administrative authorization.

SPANISH REGULATIONS IN THE LIGHT OF THE EUROPEAN UNION PRINCIPLES

As a member of the EU, Spain is subject to the principle of free provision of services between Member States, which includes gaming and betting. Basically, this means that Spain cannot establish restrictions on a company based in another Member State when offering its services to Spanish users.

Nevertheless, the European Court of Justice, through its landmark Gambelli case (January 6, 2003), has clearly determined that restrictions imposed by one EU Member State on the activities related to gaming, lotteries and bets from another Member State may be perfectly justified for reasons such as public interest, consumer protection, fraud and crime prevention, public order, trade, cultural, ethical and economic reasons of the Member State that receives such services.

Nevertheless, the application of the above mentioned exception to the basic rule of free provision of services between Member States must also be applied in a congruent and fair manner.

In this regard, the ECJ - in its recent resolution of the Placanica case (March 6, 2007) - points out that if the regulation of a Member State restricts the exercise of betting (specifically sportsbetting) to companies established and licensed in other EU countries and denies them the possibility of obtaining an authorization (while these authorizations are obtained by the domestic companies or else the service is lent by means of a state monopoly) that behaviour constitutes a restriction to the freedom of establishment and to the free provision of services as guaranteed by the EC Treaty. Invoking the public order exception when sportsbetting is already permitted in the Member State and other entities are offering it there, is, in principle, not allowed.

In line with European case law, it seems as if Spain may restrict online game and bets operated from third countries on the basis of the public order exception. Nevertheless, to be able to apply the above mentioned exception against the main rule of the free provision of services, it is also necessary to analyze current levels of Internet gambling within Spain and each of its regions where monopolies and other companies are already offering those very same services.

Likewise, as we have indicated, some regions have already granted authorizations for gaming and betting activities and the State has also been approving further regulations which seem to be a sign pointing towards the liberalization of these activities. From this perspective it becomes increasingly difficult to invoke the principle of public order when the activity is being allowed inside the State or within the regions.

MOVES TOWARDS REGULATION

Last December the Spanish Parliament passed Law 56/2007, containing measures to boost Spanish information society. The 20th Additional Provision of the law obliges the Spanish Government to regulate gaming and betting activities in Spain. It then sets out a list of principles which will need to be followed in the drafting of such new regulations. However, the law does not establish a deadline for all this to happen and it is not clear if the directions now approved will necessarily be followed.

In summary, although it is unclear when the new regulations will be approved, the Spanish Government has now expressed its opinion on online gambling in a law and has been obliged to draft a future law to regulate the activity.

The principles that will guide the Spanish Government are as translated from the law's 20th Additional Provision below:

"The Government will present a Proposal of Law in order to regulate gaming and betting activities, in particular those activities developed by means of interactive systems based on electronic communications. The above mentioned proposal shall follow the principles set out below:

1. To ensure the compatibility of the new regulations with the applicable regulations in other areas that are related to these types of services; in particular, with regard to the regulations relating to the protection of minors,

the protection of youth, the protection of especially sensitive groups of users as well as of the protection of consumers in general, and of personal data and electronic services regulations.

2. To establish new regulations on the provision of gaming activities by means of interactive systems following the rules and the general principles of European Union law.
3. To create a system of control for gaming and betting activities provided by means of interactive systems, which ensures secure and fair market conditions for the operators of such systems as well as suitable levels of protection for users. In particular, the new regulations shall regulate the activity of those operators which already hold an authorization to provide the above mentioned services granted by the authorities of any Member State of the European Union.
4. To establish a tax system for gaming and betting services provided by means of interactive systems taking into account the origin of the transactions being subject to taxation. The above mentioned regulation shall also foresee a tax distribution system between the State and the Autonomous Regions with regard to the revenues obtained from the taxation of gaming and betting activities provided by electronic means within Spain, and taking into account the specific tax status of the historical regional regimes.
5. Gaming and betting activities using interactive systems based on electronic communications shall only be provided by those operators duly authorized to do so by the competent Public Administration (authorization), which can be obtained by fulfilling the established conditions and requirements. Operators that have not received such an authorization shall not be allowed to perform any activity related to interactive gaming and betting. In particular, the necessary measures to prevent advertising in any way shall be put in place, as will the prohibition of using any existing payment system in Spain. Furthermore, the operation of gaming and betting activities by means of interactive systems without holding the relevant authorization shall be fined in accordance with regulations relating to the repression of smuggling/contraband.
6. The jurisdiction for organizing gaming and betting activities developed by means of

interactive systems shall correspond to the General Administration of the State whenever the scope of such activities is the whole national territory or more than one Autonomous Region."

Besides these principles, as initially explained, it is important to know that the Spanish Gaming Commission met last June in order to work on these future regulations. Also the Resolution approved by the Director General for Spanish Lotteries and Bets on June 18 set out the following requirements for online betting, applicable exclusively to the activities of the State-owned Lotteries and Bets organization:

1. Bets will be made at the website www.loteriasypuestas.es, although the Loterías y Apuestas del Estado organization is allowed to use other domain names.
2. Participants must register completing their user name, password, date of birth and email address. However, additional data may be requested.
3. If the participant wins a price above €600 he will need to identify himself properly in order to obtain payment.
4. Bets from users in other countries are not allowed and shall be prevented.
5. Participants must use an electronic bank account authorized to operate in Spain and from a bank registered within this system. Such bank account must belong to a person with residence in Spain.
6. Bet payments can also be made with secured bank cards issued in Spain, in which case participants will also need to provide a bank account to receive any payment of prices.
7. Taking bets with this system will only be possible when the central system of Loterías y Apuestas del Estado is generally taking bets.
8. The maximum amount to have in the participant's betting account will be €200. This will also be the maximum amount for any bet.

Finally, for those operators interested in entering the Spanish market, there is one important step to take, which is keeping abreast of the developments on the new State and regional regulations being discussed at the moment. ■

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