

SPAIN - Battle of the Government protecting public versus private gambling sector

Industry consultant Eduardo Morales-Hermo deciphers Spain's Royal Decree and asks why the Spanish government is unfairly targeting private gambling firms with tighter advertising restrictions

Finally, the Spanish government has approved the Royal Decree that establishes highly restrictive and, to a certain extent, prohibitive measures for advertising and commercial actions of the online gambling industry legally operating in Spain based on Law 13/2011.

As with other "political" decisions, the government of Spain approved the Royal Decree that came in to force on 4 November during a pandemic that has plunged the country into a deep health crisis and especially in a serious economic crisis that will last for many years.

Without justification and lacking any scientific and statistical support, the government, through the Ministry of Consumption, has implemented a series of absolutely unjustifiable measures to favour the transfer of a significant volume of demand for online gambling and betting to operators that have a more competitive offer from offshore and extraterritorial territories, lacking licences, guarantees for consumers and lacking any control over compliance, both technological and fiscal and responsible gaming.

The lack of regulation, incomplete regulation of product and content offer, high direct taxation on gambling or advertising restrictions, commercial actions and other activities necessary and intrinsic to online gambling and betting, is proven and we all know that they lead to reducing the absorption of consumption in the regulated market and the transfer of a very relevant part to the illegal online gambling offer.

One feels ashamed of the expressions that the most illustrious minister comes to use to justify the unjustifiable, to the point that due to the lack of truth of the data and reasoning that is offered, it disqualifies him as responsible for the position he occupies.

It is unfortunate that the decision taken by the Ministry of Consumer Affairs, which is going to have consequences contrary to the intended objectives, is a classic shot in the foot.

With this Royal Decree, the government of Spain becomes an ally of the online gambling and betting offer from extraterritorial offshore jurisdictions, seriously damaging the competitiveness of the legally authorised operators with licences in force based on Law 13/2011.

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Demonisation of gambling

These are limitations and restriction of advertising activities and commercial actions that are common and necessary to carry out an activity such as online gambling and betting such as those related and contained in the Royal Decree. For the legally authorised operators of online gambling and betting in Spain, it means taking them into a situation of helplessness and lack of capacity to compete with the illegal offer of operators from offshore territories that are not authorised to offer gambling in a perfectly regulated market without paying taxes, turning the Spanish market into a favourable scenario for "illegal gambling".

The Royal Decree demonises and even criminalises the activity of gambling and betting without reason, without arguments that provide evidence to justify these measures, which seem to be the result of an ill will and political opportunism against a lawful and perfectly regulated activity.

Irreparable economic damages are caused to companies that from both sides have signed service, advertising and commercial contracts based on established regulation, leading the industry to legal uncertainty.

The Royal Decree is also discriminatory and establishes a division between good gambling and bad or evil gambling, not applying the same rules to public gambling - SELAE (National Lottery) or ONCE (badly called Lottery of the Blind) - whose activity in sponsorship and advertising is exponentially more important and invasive than that carried out by online gambling and betting operators.

It is scandalous that the government quasi eliminates advertising and commercial actions of online gambling and betting, while allowing the public gambling offer of the National Lottery or the pseudo-public gambling Lottery of the Blind (ONCE), which promotes its gambling offer by all channels and means of communication without limits in the expressions and messages that promise enrichment or solving their lives to those who participate in their "games".

Contradicting some of the non-arguments of the minister, the National Lottery and Lottery of the Blind not only offer games with results shown via a televised draw but also offer instant response games - scratchcards and assimilates - which are nothing more than games that simulate slot machines.

These "public" gambling operators can carry out their draws by broadcasting their advertising and giveaways during child audience viewing hours, something they have been doing for ages.

There is also a disproportion in the participation of consumers in the overall gambling offer, demonstrated by the participation of more than 30 million added people in the National Lottery or Lottery of the Blind games, while an estimated 10 million participate occasionally in the different segments of private gambling, reaching around 1.5 million people who participate occasionally in online gambling and betting.

There can be more and more examples and demonstration of discrimination and unfairness in the disparate treatment of private gambling compared to state-sponsored gambling.

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Alarmist fabrication

On the other hand, the social alarm referred to by the minister does not exist except in his mind and there is no evidence whatsoever to confirm its existence. They are simply inconsistent statements with a lack of support and "fabricated" for ideological reasons, incredibly admitting that he has no data to lean on. And he dares to speak of intuition or perception in order not to justify the measures taken, when it was simply a supine ignorance of what gambling is as a human recreational, entertaining and intrinsic activity.

Not even gambling consumption during the pandemic gives him the excuse. You just have to look at the statistics to verify that the confinements, the longer time at home and the change of habits of society towards greater digitisation, has not seen an increase in the proportional spending of consumers in gambling activity. This evidence applies to all types of gambling, land-based, digital and the different public lotteries; all are suffering the economic and social consequences of the pandemic.

Finally, and without wanting to further disavow the Ministry of Consumer Affairs and its non-arguments, with respect to what it refers to as an increase in problematic gambling, it is enough to provide some data corresponding to verified reports - some of them official - that show a very different reality of which the minister intends to "sell" to justify this disastrous Royal Decree:

- *The incidence of problem gambling in Spain is between 0.3% and 0.5% of the population between 15 and 65-years-old - EDADES and ESTUDES, from the National Plan on Drugs.*

- *It is about equating the reason for applying prohibitive restrictive measures to the online gambling and betting sector, with those applicable to tobacco and alcoholic beverages, which are medically ruled substances with a level of addiction of 34% and 5.1 % respectively – EDADES and ESTUDES, of the National Plan on Drugs.*

- *Spain is the second country in Europe to have the lowest incidence of problem gambling with 0.3% of the population between 15 and 65 years of age.*

Little more can be said, although to demonstrate the unjustifiable nature of this Royal Decree, we would have it very easy, given the innumerable non-arguments that are exposed to justify its publication.

Time will put everyone in their place and there is only hope that at some point common sense and reason will prevail over the intellectual destitution of those who make this type of decision solely based on ideology, personal intuitions and false assumptions.

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