

**International
Comparative
Legal Guides**



Gambling

2024

10th Edition

Contributing Editor:

Chris Elliott
Wiggin LLP



glg Global Legal Group

Introductory Chapter

1

Opening up the World: New Frontiers, New Opportunities
Quirino Mancini, International Masters of Gaming Law

Q&A Chapters

3

Argentina
MF Estudio – Abogados: Tomás Enrique García Botta & Agustín Díaz Funes

9

Australia
Senet: Julian Hoskins, Daniel Lovecek, Bree Ryan & Alexander Norrish

19

Austria
BRANDL TALOS: Thomas Talos & Nicholas Aquilina

27

Belgium
Sirius Legal: Bart Van den Brande

33

Brazil
MYLaw – Maia Yoshiyasu Advogados:
Luiz Felipe Maia & Flavio Augusto Picchi

41

Canada
Borden Ladner Gervais LLP: Cameron A. MacDonald & Galen Flaherty

48

Croatia
Law Firm Anđelović, Siketić & Tomić Ltd.:
Marko Tomić & Domagoj Perić

54

Czech Republic
WH Partners: Robert Skalina

62

Denmark
Mazanti-Andersen: Nina Henningsen

70

Finland
Legal Gaming Attorneys at Law: Minna Ripatti & Antti Koivula

75

Germany
Melchers Law Firm: Dr. Joerg Hofmann,
Dr. Matthias Spitz & Michelle Hembury

83

Hungary
DLA Piper Hungary: Viktor Radics, Dániel Élő & András Nemescsófi

90

India
IndusLaw: Ranjana Adhikari, Sarthak Doshi & Shashi Shekhar Misra

104

Ireland
Fieldfisher Ireland LLP: Barry Fagan,
Natalie Quinlivan & Ciara McGuinness

110

Isle of Man
Appleby (Isle of Man) LLC: Claire Milne & Sophie Corkish

117

Israel
M. Firon & Co.: Jacob (Koby) Sarov & Ido Nahon

122

Japan
Nagashima Ohno & Tsunematsu: Masayuki Fukuda

129

Kenya
Ong'anya Ombo Advocates LLP: Ombo Malumbe & Jack Ong'anya

135

Macau
Rato, Ling, Lei & Cortés – Advogados e Notários | Lektou:
Pedro Cortés

143

Malta
GTG: Dr. Terence Cassar & Reuben Portanier

150

Mexico
Portilla, Ruy-Díaz y Aguilar, S.C.: Carlos Portilla & Ricardo Valdivia González

157

Netherlands
Kalff Katz & Franssen: Dr. Alan Littler & Joris Crone

164

Norway
Brækhus Advokatfirma DA: Brede A. Haglund & Alexander Mollan

169

Poland
WH Partners: Ewa Lejman-Widz

176

Portugal
Abreu Advogados: Alexandra Courela & Ricardo Henriques

182

Romania
Nestor Nestor Diculescu Kingston Petersen (NNDKP):
Mihai Fifoiu, Lucian Barbu & Laurentiu Neacsu

192

Slovakia
NOMUS, Law Firm: Marián Bošanský, Ivan Gašperek & Klaudia Mrázová

199

Spain
LOYRA Abogados: Patricia Lalandá Ordóñez & Fernando A. Martín Martín

206

Sweden
Nordic Gambling: Maria McDonald, Elvin Sababi & Karl-Oskar Hokkanen

215

Switzerland
MME Legal | Tax | Compliance: Dr. Andreas Glarner & Stefan Keller

221

United Kingdom
Wiggin LLP: Chris Elliott & Oliver Tenzer

227

USA – Arizona
Snell & Wilmer LLP: Heidi McNeil Staudenmaier,
Megan Carrasco, Marsha Cotton & Amanda Weaver

Q&A Chapters Continued

234

USA – Illinois

Taft Stettinius & Hollister LLP: Paul T. Jenson,
Erin Lynch Cordier, Anne Kremer & Alexandra Van Dusen

242

USA – Iowa

Butler Snow LLP: Sean McGuinness

246

USA – Nevada

Lewis Roca: Karl F. Rutledge & Glenn J. Light

252

USA – New Jersey

Saiber LLC: Jeremy Kleiman & Ariana LoGiudice

**International
Comparative
Legal Guides**

Spain



Patricia Lalanda Ordóñez



Fernando A. Martín Martín

LOYRA Abogados

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	The Directorate General for the Regulation of Gambling (<i>Dirección General de Ordenación del Juego</i> – “DGOJ”), part of the Ministry of Consumer Affairs.	The relevant authority within the competent Autonomous Region, of which there are 17.
	Poker		
	Bingo		
Betting	Betting	DGOJ.	The relevant authority within the competent Autonomous Region, of which there are 17.
	Sports/horse race betting (if regulated separately to other forms of betting)		
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	Not regulated yet; however, some forms have been considered pool betting.	Not regulated yet.
Lotteries	Lotteries	The Spanish State.	Only in Catalunya. The relevant authority within the competent Autonomous Region.

Relevant Product	Who regulates it in digital form?	Who regulates it in land-based form?
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Not regulated, if the game does not imply any profit for the promoter or operators.
	Skill games and competitions with no element of chance	Not regulated.

1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

Gambling activities in Spain can be divided into the following categories:

- “public gambling”, which is a State monopolistic activity entrusted to two incumbent operators, *Sociedad Estatal Loterías y Apuestas del Estado* (“SELAE”) and *Organización Nacional de Ciegos Españoles* (“ONCE”), which manage a series of passive, deferred, result-type lottery games and sport and charity pool betting within the Spanish territory; and
- “private gambling”, made up of licensed private operators who are subject to an intense regulatory burden, and which comprises all other types of gambling (land-based and online).

The Spanish Constitution divides regulatory and other powers over a series of matters between the central State and the Autonomous Regions (*Comunidades Autónomas*) (“Regions”). The Regions have taken on the regulation, authorisation, taxation and supervision of private and public gambling activities within the scope of their respective territories.

Any State-wide gambling offering is subject to the competence of the Ministry of Finance and General Government. Within the same, the DGOJ regulates, authorises, supervises, controls and, if necessary, penalises gambling activities in the Spanish State.

Gambling is understood to be any activity involving risking sums of money, or items of economic value in whatever form, on future and uncertain results which depend to some degree on chance, and which allow these sums to be transferred between the participants, regardless of whether the level of skill of the players has a decisive impact on the results, or if the results depend wholly or fundamentally on luck, stakes or chance. The prizes may be in cash or in kind, depending on the type of game. Any activity falling within this definition is subject to specific gambling legislation. Social games are commonly understood to have no cash or prizes of economic value; hence they are not considered part of this definition.

Common legislation for land-based and online gambling: gambling operators and activities are subject to the relevant laws governing the environment, zoning, advertising, and anti-money laundering (“AML”), in addition to gambling regulation and taxes.

Land-based gambling

a) Casinos

Each Region has established a licensing regime to install and operate casinos. Usually, whenever a certain Region intends to grant a licence for a new casino, it must call and conduct a public tender, where applicants submit their proposal, which must comply with the requirements of the tender in terms of investment size, technical and financial suitability, location, potential for employment creation, guarantees, feasibility study, etc. The licence is granted to the applicant who attains the best score according to a scale provided in the tender. Typically, the total number of casinos that can be authorised within a concrete Region, as well as the number of casinos that can be operated by the same operator (and its group of companies), are limited.

Once the licence to install the casino has been granted, the applicant must obtain the authorisation to operate it, which is not transferable. However, transfers of ownership of the applicant/operator are permitted, provided the Region is notified or, in some Regions, approved.

Generally, any company that intends to operate a casino must be duly incorporated in Spain, have a certain minimum share capital and have the operation of casinos as its primary business purpose. Shareholders, directors and top-level management need to undergo a suitability analysis and comply with regulatory requirements.

In the last few years, both the Regions of Madrid and Catalonia have approved legislation framing the licensing of “integrated resort”-type casinos to be installed and operated in their territory.

b) Bingo halls

Regions have passed legislation for the installation and operation of bingo halls, including many requirements as to registration with the competent authority, incorporation, corporate purpose and the provision of financial guarantees. In addition, bingo hall operators must comply with filing requirements related to employees and obtain authorisations for transfers of ownership or variations in the terms and conditions of the licence. Over the past few years, electronic and inter-connected bingos have been regulated in several Regions. Bingo halls may also, under certain conditions, operate Type B machines.

c) Sports betting

Regarding sports betting, regulation is variable across the Regions and sports betting terminals and counters can only be installed in certain gambling locations. Dedicated sports betting locations may also be opened in certain Regions.

d) Gambling machines

Manufacturers and distributors must comply with legislation regarding the physical characteristics of the machines, amounts wagered, prize payout statistics and locations where each type of slot machine may be placed. In certain Regions, transfers of ownership interest in machine manufacturers and distributors are subject to prior authorisation or notification to the relevant Region.

Registration and homologation of each machine model is mandatory. Additionally, each machine must be labelled with the name of the manufacturer and the relevant operating permit. Moreover, machine manufacturers, distributors and operators must register with and be approved (in terms of technical, reputational and financial suitability and compliance) by the gambling authority of the Region in which they intend to conduct business. Machine operators are also required to deposit financial guarantees, which vary across each Region, and must keep records and documentation related to the machines they operate. In addition, there are regulations on the types of locations at which machines can be installed and the number of machines that can be placed in each of them.

Regulations refer to three general types of machines: Type A (amusement only – although excluded from Directive 123/2006/CE); Type B (amusement-with-prize – “AWP”); and Type C (casino-type). There are sub-types and other classifications that are omitted herein for the sake of simplicity. AWP machines installed in bars are the most common (maximum payout: €500).

Multi-position machines, and the possibility of linking them in certain locations and under a number of requirements, are generally allowed in the Spanish Regions and may offer larger prizes (i.e., the highest is €80,000 in the Madrid Region for bingo).

e) Gambling arcades

Regional laws and regulations have some differences, but the key requirements for the grant of a licence for the operation of gambling arcades are the following: (i) registration with the regional registry as a gambling arcade operator (including a statement as to the machine type(s) that are intended to be installed); (ii) a specific gambling arcade licence; (iii) provision of financial guarantees; (iv) municipal licences for the operation of the location of the gambling arcade; and (v) communication to the competent gambling authority of any change in the information supplied.

f) Regional lotteries

The Regions may also regulate public gambling activities (lotteries) that take place within their respective territories. Up until now, only the Region of Catalunya has regulated lotteries within its territory.

Online gambling operations – State level

Online gambling is regulated by Law 13/2011, of 27 May 2011, on the regulation of gambling (“Law 13/2011”), which applies to the offering of gambling via interactive means both from Spain and to Spain.

There are three types of general licences: “bets”; “contests”; and “other games”. In addition, the online gambling verticals that can be offered via a singular licence are as follows: “bingo”; “blackjack”; “roulette”; “baccarat”; “slots”; “poker”; “complementary games”; “fixed-odds betting”; “fixed-odds sports betting”; “sports pool betting”; “fixed-odds horse betting”; “horse pool betting”; and “exchange betting”. If not comprised within the latter definitions, they cannot be offered.

Law 13/2011 has been implemented with the approval of a long set of regulations (Royal Decree 1613/2011 on technical requirements,

and Royal Decree 1614/2011 regulating licences, authorisations and gambling registers), resolutions (technical, regulatory implementation, procedures and responsible gambling) and ministerial orders (one for each type of gaming vertical, i.e., singular licences). The DGOJ grants the relevant licences following a public call for applications. The procedure may be opened *ex officio* or at the request of the interested party, in which case at least 18 months must elapse from the date of the previous call.

Three tenders have been called to date. The last tender was called on 17 December 2017 (Ministerial Order HFP/1227/2017, published in the Official State Gazette of 16 December 2017); this third call for tender carried various amendments to the previous ones, but the most relevant was the one-year period for submission of the documentation and application for the general licences (the submission deadline was 17 December 2018).

2 Application for a Licence and Licence Restrictions

2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, “Licences”) are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?

Please see question 1.2 above.

2.2 Where Licences are available, please outline the structure of the relevant licensing regime.

Licences are granted by compliance with a certain framework that is predefined in applicable laws and regulations (from the competent Regions or the central State, as the case may be) and, thus, any applicant interested in the grant of a licence will know *a priori*, with a significant degree of legal certainty, if they have the capabilities (and suitability) to comply or not.

Prospective licensees, apart from specific requirements related to each type of gambling type or gambling location licence, generally need to meet the following conditions: (1) personal compliance requirements; (2) registration with the relevant gambling registry; (3) deposit of financial guarantees; and (4) compliance with tax and social security obligations.

2.3 What is the process of applying for a Licence for a Relevant Product?

Land-based gambling

Please see question 1.2 above.

Online gambling – State level

As described above, at least two licences must be applied for (general and singular licence). General licences are granted via an open public tender (no limited number of licences, to date) that contains requirements regarding technical, financial, reputational compliance, software security and reliability requirements, and anti-fraud and AML requirements. A company that seeks to obtain a licence must, among many other requirements, be a public limited company or limited liability company, with the company address in a European Economic Area (“EEA”) Member State (“MS”), which has the sole corporate purpose of organising, marketing and operating gambling activities.

- Process financial obligations: among others, meeting the fees related to the regulated gambling activity, which are: €38,000 for technical reports; €2,500 for registering each licence; and €10,000 for each gambling licence.

- Technical obligations: among others, creating a specific website under an “.es” domain; redirecting to the specific website under an “.es” domain; and implementing an internal monitoring system to capture and register gambling operations and financial transactions in Spanish territory.
- Timing: once the application is submitted, there is a maximum period of six months to award the licence (or not). This term can be increased due to certain legal circumstances. Licences will be granted provisionally and from this moment, gambling operation may begin, with the commitment to submit, within a period of four months, the final report of the gambling technical systems certification.

A guarantee in cash, real estate mortgage, insurance or security for an amount of €2,000,000 for general betting and other games licences, or €500,000 for contest general licences, must be set. The amount of the guarantees is reduced from year two onwards.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

A licensee will not be granted a licence, or it will be withdrawn if it or its management get involved in certain circumstances related to, e.g., crime, bankruptcy, failure to comply with the State or Regions’ gambling regulations, tax, or social security obligations, etc.

2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.

Land-based gambling

- Casinos: 10–15 years, renewable for the same periods.
- Gambling machines: five-year renewable term.
- Gambling arcades (depending on the Region): the licence may be indefinite, e.g., Andalusia; or limited to 10 renewable years, e.g., the Canary Islands.
- Bingo halls (depending on the Region): the licence may be indefinite, e.g., Andalusia; 10 years, e.g., Valencia; or five years, e.g., the Canary Islands.
- Sports betting: Madrid and Valencia – 10 years; and Andalusia and Basque Country – indefinite.

Online gambling – State level

General licences: valid for 10 renewable years. Singular licences: valid for three to five years, depending on the type of game. The licences will be annulled in the following cases: a) by express waiver from the licence holder; b) if the validity period elapses; and c) by termination by the DGOJ for several reasons.

Regulators supervise, inspect and monitor licensed gambling operators as to their compliance with licensing requirements, and respond to breaches by giving directions, imposing penalties or, at the limit, revoking the gambling operator’s licence.

2.6 By Relevant Product, what are the key limits on providing services to customers? Please include in this answer any material promotion and advertising restrictions.

Common restrictions on land-based and online gambling

There are certain groups of people who are restricted from gambling, among others: minors (under 18 years old); people who have been declared disabled by law or judicial resolution; and people who have voluntarily requested that their access to gambling be prohibited.

Depending on the Region, gambling premises can be limited in number (e.g., Basque Country, Catalunya or Galicia). Additionally, all Spanish Regions have set minimum distances between some types of gambling premises and between gambling premises and educational centres. Likewise, the opening hours are different depending on each Region and on each type of gambling facility. This is also the case for bingo halls, which are subject to regulations on size, number, location and opening hours, depending on the regulations of the Regions.

Currently, credit to gambling patrons is generally prohibited under Spanish law.

Online gambling

Only residents from the Region's territory can play on regional online gambling webpages. In terms of the State, Law 13/2011 does not prohibit non-residents from playing in an ".es" gambling webpage or app against a Spaniard, but it is the operator's obligation, in compliance with other jurisdictions' gambling regulations, to block players' IPs from jurisdictions where gambling is prohibited for their residents.

Advertisements

Regarding State-wide online gambling activities, to carry out gambling activities on audio-visual programmes, news media or websites, operators must have an authorisation. The applicable regulations are: (i) Royal Decree 958/2020 on Commercial Communications of Gambling Activities (please see question 5.1 below); (ii) general Law 34/1988, on publicity; (iii) the code of conduct of AUTOCONTROL, which is not mandatory; (iv) the existing provisions of Law 13/2011, in particular articles 7 and 8, as well as several provisions contained in regulations that develop Law 13/2011; and (v) Law 13/2022 of 7 July on audio-visual communication.

At regional level, general publicity regulations also apply. Lately, gambling advertisements have been increasingly restricted by laws and implementing regulations passed by the Spanish Regions. These regulations can also be affected by the question of unconstitutionality examined at question 5.1 below.

2.7 What are the tax and other compulsory levies?

Generally, gambling taxes are imposed on the operator, i.e., the person or entity holding the relevant gambling licence.

Gambling machine operators are required to pay gambling taxes on a quarterly basis to the Region in which the gambling machine is operated. It is an annual fixed amount that is paid that varies from Region to Region, depending on the type of machine (annual average at approximately €3,500 for machines not operated in casinos).

Casino taxes are based on a sliding scale of gross gaming revenue ("GGR") for table games activity, and machines pay the corresponding fixed tax rate. These taxes are paid quarterly. The sliding scale goes from 15% to 58% depending on the Region, and Type C machines are taxed at an annual average of €5,300 (per position) fixed rate.

Sports betting operators pay a variable tax (depending on the Region, 10%, 12%, 15% or 20% in the Region of Valencia) on GGR.

Also, gambling operators must pay certain one-off administrative taxes in relation to the grant of authorisations, installation of machines, renewals, homologation of machines, systems and gambling equipment, etc.

Gambling activities are VAT-exempt, but gambling operators must bear VAT on any other services acquired from third parties and/or offered to customers. Corporate tax (statutory rate: 25%)

and economic activities tax ("IAE") further apply to their activities and locations. The IAE is a municipal tax, with fixed rates for conducting land-based gaming activities. Particularly noteworthy are the rates applied per gaming machine unit, with specifically high rates applied to gaming tables in casinos.

Online gambling

Depending on the specific type of gambling activity, Law 13/2011 establishes a tax of 20% of stakes or GGR (Net Profit), defined as the total amount wagered plus any other income that would be directly derived from the organisation or operation of the game, less the prizes paid out to players. This tax is called Tax on Gambling Activities (*Impuesto de Actividades de Juego* – "IAJ").

Law 13/2011 was amended and now establishes that gambling operators who have their tax residence in Ceuta or Melilla and are actually located/based in these territories will be taxed at 10% instead of 20% GGR.

The IAJ must be filed and paid quarterly, within a month from the end of every quarter.

In addition, there is a yearly levy applied of 0.75 per thousand of gross operating revenue.

Gambling activities are exempt from VAT.

Players' tax

Players must declare winnings from gambling in their Personal Income Tax return; however, they can also deduct losses (leveling the winnings at the maximum). Winners of lottery prizes of over €40,000 awarded by SELAE and ONCE are taxed 20% of the winnings.

2.8 What are the broad social responsibility requirements?

Gambling operators must draw up a series of measures related to mitigating the possible damaging effects that gambling may cause to persons and must incorporate the basic regulations for a responsible gambling policy. Therefore, regarding consumer protection, it is necessary to: a) pay proper attention to risk groups; b) provide the public with the information needed to make a conscious choice about their gambling activities, promote moderate, non-compulsive and responsible attitudes to gambling; and c) inform of the prohibition on participating in games by minors and persons included in a registry ("RIAJ"), or in the Register of People Linked to Gambling Operators.

Online gambling operators (national) and gaming operators shall establish financial limits for the deposits each participant may make daily, weekly or monthly in the different games.

2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling?

Gambling operators and activities are subject to the relevant laws governing AML and terrorism prevention regulations. Law 10/2010 on prevention of money laundering and terrorism financing, as amended from time to time, and Royal Decree 304/2014, implementing the Law, include specific regulation on payment of prizes and client identification which apply to providers. In particular, AML regulations require operators to apply customer due diligence measures for prizes equal or greater than €2,500. The internal control measures applicable to the payment of lottery or other gambling prizes are set out in article 43 of Royal Decree 304/2014.

2.10 Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

Regarding online gambling, cryptocurrencies, such as bitcoin, can be implemented as a means of collection/payment and an electronic collection/payment utility with bitcoins, provided that the gambling account of the player is nominated in euros. Regarding land-based gambling, the analysis of playing with bitcoins is a bit different – the rules expressly refer to monetary units in euros (the price of games or bets, the number of prizes, etc.); hence, playing with bitcoins is not possible *a priori*.

3 Online/Mobile/Digital/Electronic Media

3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?

Online gambling activities are defined as those games that are played with electronic, computerised, telematic and interactive means and those in which personal attendance is of an accessory nature. This scope encompasses the so-called “auxiliary terminals and machines” that are used for the organisation, operation or development of gambling activities. The latter plus the software used are understood to be part of the gambling platform and hence subject to the same gaming regulations on approval and certification. However, the process of obtaining the Regions’ authorisations to install such terminals is complicated.

Licences for the offering of online gambling are intended only for Spanish or overseas-based operators – only EEA entities – that target only Spanish or Spanish-resident consumers.

3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?

State-wide online gambling is restricted to the regulated gambling verticals, previously licensed and to be offered according to the technical homologations granted, if breached sanctions are applicable – e.g., offering gambling to the Spanish territory without a licence is a very serious infringement of the law and a fine of between €1,000,000 and €50,000,000 might be imposed.

3.3 What terminal/machine-based gaming is permitted and where?

Currently, online gaming operators are allowed to operate terminals in gaming venues, subject to regional regulation. To date, only Castilla y León Region has explicitly regulated this type of gaming.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

In Spain, the general rule is that liability for gambling infringements corresponds to those who operate these activities.

Only in very exceptional cases are third parties liable, such as athletes, coaches or other direct participants, referees performing or acting in the event or sport activity on which they place their bets, as well as the people who resolved appeals against the decisions of those referees.

Audio-visual or electronic communications service providers, mass media, advertising agencies and advertising networks will be responsible for the promotion, sponsorship and advertising of gambling when organisers do not have the necessary authorisation to legally advertise those games.

In terms of gambling advertisements, whoever facilitates a gambling advertisement (i.e., affiliates) may also be subject to the sanctioning regime established by Royal Decree 958/2020 on Commercial Communications of Gambling Activities.

4.2 What form does enforcement action take in your jurisdiction?

Please see question 2.5 above. Regulations distinguish between several types of infringements/sanctions: very serious; serious; and minor offences. The most serious may lead to revocation of the licence.

4.3 Do other non-national laws impact upon liability and enforcement?

General EU rules and principles under the Treaty on the Functioning of the European Union (“TFEU”) apply to gambling activities, and EU case law has a great impact on the way national markets are and may be shaped, but not upon liability and enforcement.

The MS are free to pursue their own policy, set relevant restrictions on betting and gambling activities and define the required level of protection to safeguard the MS’s regulations. Nevertheless, any restrictive measures (such as gambling monopolies or licensing systems) that any given MS may impose in its gambling legislation may constitute restrictions to the freedom to provide services in the internal market of the EU (article 56 of the TFEU) and must satisfy the conditions laid down in relevant case law of the Court of Justice of the European Union about their proportionality, suitability and coherence with regard to achieving the policy objectives of the MS.

4.4 Are gambling debts enforceable in your jurisdiction?

While legal gambling contracts are valid and amounts won can be claimed, the amounts won through illegal gambling (operated without the relevant authorisations) cannot be claimed before any court.

4.5 What appetite for and track record of enforcement does your local regulatory authority have? Have fines, licence revocations or other sanctions been enforced in your jurisdiction?

In pursuit of illegal gambling, the DGOJ tries to ensure unlicensed online gambling in Spain is suppressed mainly by maintaining a register of gambling websites that allow connections from within Spain and verification procedures on websites subject to a complaint, report, claim or *ex officio* investigation by the DGOJ. The website register seeks to identify the unauthorised gambling offer, its scope and positioning in the market. Once a website has been registered, it is regularly monitored in order to verify its activity in Spain and, where appropriate, the initiation of a preliminary information file. The preliminary information procedures are started when a website is subject to a report, complaint or claim. From that moment on, a procedure

begins in which, through the check phases, the DGOJ communicates with the operator, initiates the recording of evidence and, finally, proposes opening the sanctioning procedure. According to the DGOJ's 2020 Annual Report, in 2020, 180 webpages were closed. In addition, the DGOJ's main sanctioning activity in 2020 (latest official data) can be summarised by 197 disciplinary proceedings initiated and 240 punitive resolutions worth €55,839,370. Sanctioning proceedings have grown in terms of amount and quantity of fines over the last few years. Since 2022, the DGOJ has published a list of sanctioned companies on its webpage.

In April 2017, the DGOJ created the Betting Market Global Investigation Service (*Servicio de Investigación Global del Mercado de Apuestas* – “SIGMA”) within the Gambling Inspection Sub-Directorate to collaborate on the prevention and control of fraud and, in particular, the fight against match-fixing, protection of the integrity of sports and sports ethics, and protection of integrity in betting markets.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling law/regulations are being discussed currently?

Online gambling

Laws

Loot boxes

A law regulating loot boxes in videogames is foreseen in Q4 2023 or Q1 2024.

Implementing regulations

DGOJ monitoring

On 7 July 2023, the DGOJ opened a public information period so that interested persons could make their contributions to the draft resolution of the DGOJ, which approves the data model of the information monitoring system, and modifies Annex I of two resolutions of the DGOJ, relating to the technical specifications and the identification and subjective prohibitions on participation in gambling activities provided for in Law 13/2011. The amendment is mainly due to the new obligations established in Royal Decree 958/2020 on Commercial Communications of Gambling Activities and Royal Decree 176/2023, of 14 March, which develops safer gambling environments. It is expected to be passed during Q1–Q2 of 2024.

Responsible gambling

On 31 April 2023, the DGOJ opened a public information period so that interested persons could make their contributions to a resolution which would amend Royal Decree 1614/2011, which develops Law 13/2011, with regard to licences, authorisations and gambling registers, aimed at introducing an economic limit for the set of deposits that each player can make in all the authorised gambling operators, as opposed to the limitation of deposits per each enabled gambling operator. At the time of writing, it is not clear when this resolution will be passed.

Advertisement

In July 2022, the Administrative Chamber of the Spanish Supreme Court raised a question of unconstitutionality before the Constitutional Court regarding article 7 paragraph 2 of the

Gaming Law, as this article allows a regulation lower than the law (i.e., Royal Decree 958/2020 on Commercial Communications of Gaming Activities) to regulate matters essentially linked to advertising and to the core of the free enterprise right.

If this Constitutional Court declares the unconstitutionality of article 7 paragraph 2 of the Gaming Law, Royal Decree 958/2020 on Commercial Communications of Gaming Activities – legally grounded on the Gaming Law – would be invalid for having regulated matters over which it has no competence: the free enterprise right, reserved to law. Likewise, article 7 paragraph 2 of the Gaming Law should be eliminated from the legal system for being unconstitutional.

Lottery

The DGOJ published in January 2023 a draft resolution to regulate (i) the requirements that must be met by the collaborating entities in the commercialisation of lottery games, when through electronic, computer, telematic or interactive channels, and (ii) the obligations of lottery operators related to marketing through these collaborating entities and the webpages, applications or other electronic, computer, telematic or interactive channels owned or operated by the external marketing network.

Land-based gambling

- *Region of Castilla y León:* The regional government of the Region has approved changes to the Gaming Law. The changes include: setting minimum distances between gaming venues (300 metres) and schools (150 metres); requiring authorisation for advertising related to gaming and betting activities; promoting safe gaming by providing clients with information and complaint forms in gaming venues; controlling access and registering visitors in gaming arcades; and allocating fines resulting from infringements to prevention and rehabilitation programmes. The changes to the Gaming Law are still awaiting approval from the Regional Parliament, but they are expected to be passed into law in the coming months.
- *Region of the Canary Islands:* The regional government of the Region has approved a partial amendment to the Gaming Law. The changes include: the prohibition of betting terminals within hospitality establishments; and setting a minimum distance of 200 metres between gaming establishments and 300 metres from educational institutions. The changes to the Gaming Law are still awaiting approval from the Parliament of the Canary Islands, but they are expected to be passed into law in the coming months.
- *Region of Valencia:* The regional government was in the process of drafting new implementing regulations for the Gaming Law and specific modifications to the Law itself. However, the recent change in the regional government is likely to result in the suspension of these processes and could potentially lead to a modification of the gaming regulations in a different direction.
- *Region of Navarre:* The Government of Navarre has submitted to the Council of Gambling the draft Decree Foral that will approve the Regulation of Games and Betting in Navarre. The goal is to reduce addiction risks, strengthen controls on access by minors and vulnerable groups, work on educating students, and prevent gambling addiction.

(We would like to thank Carlos Lalanda for his assistance on this section.)



Patricia Lalanda Ordóñez is a Partner at LOYRA Abogados, where she leads the intellectual property, new technologies and data protection department, and her practice revolves around the latest innovating products of the gaming industry. Patricia is a lecturer on subjects such as land-based and online gaming, blockchain, cryptocurrencies and esports, in various educational centres such as the Autonomous University of Madrid, Complutense University, IE Business School and the Foundation for Investigation for Law and the Company ("FIDE") and participates in national and international conferences. She frequently publishes on regulatory developments and her opinions in leading industry journals. In 2015, Patricia was awarded the title of "40 Under 40 Emerging Leader" by the American Gaming Association (*Global Gaming Business Magazine*, November 2015, Issue: Emerging Leaders). Patricia studied law at Carlos III University in Madrid and obtained her LL.M. degree in IP, IT and NNTT from the Autonomous University of Madrid. Although currently living in Spain, she lived and studied for six years in New York.

LOYRA Abogados
Calle de Goya 15
28001, Madrid
Spain

Tel: +34 699 682 833
Email: patricia.lalanda@loyra.com
URL: www.loyra.com



Fernando A. Martín Martín has been a Partner at LOYRA Abogados since 2007, specialising in the public law, litigation & dispute resolution aspects of the gambling law practice. He holds a Degree in Law, a Master's in Corporate Legal Advisory and Corporate Law from the University of Navarra, plus a specialisation in litigation procedures from the Universidad Nacional de Educación a Distancia ("UNED"), in addition to Ph.D. courses and ongoing specialisation in Corporate Compliance. He has obtained the title of Compliance Officer and advises on plans, programmes and procedures of compliance to clients. He has led key gambling court proceedings in Spain. Additionally, he is the co-author of the gaming sector compilation *Legislación sobre el Juego* (Gaming Legislation), published by Thomson Aranzadi, and *El Nuevo Régimen Jurídico de los Juegos de Azar* (Gaming Legislation), published by La Ley (Walter Kluber), among other collaborations with prestigious law journals.

LOYRA Abogados
Calle de Goya 15
28001, Madrid
Spain

Tel: +34 609 584 559
Email: fmartin@loyra.com
URL: www.loyra.com

LOYRA Abogados was the first, and continues to be, the most specialised law and advisory firm dedicated to gaming and leisure in Latin America and Spain, having also worked in many other jurisdictions. It is proud of having retained clients ever since its establishment in 1981. The firm has paved the way for governments and gaming companies for over three decades, in navigating the transition from traditional brick-and-mortar casinos to the internet and technologically progressive gaming formats of today. LOYRA has highly qualified teams of lawyers with different specialisations, such as Public Law, Corporate Advisory, Tax, IP, Litigation and Labour Law, making the firm a "one-stop shop". Due to its international practice, the firm's working languages are English, German, French, Portuguese and Spanish.

www.loyra.com

LOYRA
A B O G A D O S

International Comparative Legal Guides

The **International Comparative Legal Guide (ICLG)** series brings key cross-border insights to legal practitioners worldwide, covering 58 practice areas.

Gambling 2024 features one introductory chapter and 36 Q&A jurisdiction chapters covering key issues, including:

- Relevant Authorities and Legislation
- Application for a Licence and Licence Restrictions
- Online/Mobile/Digital/Electronic Media
- Enforcement and Liability
- Anticipated Reforms

