

GamblingCompliance

Market Barriers

A European Online Gambling Study 2009

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Spain

Regulation of online gambling has proved something of a problem to authorities in Spain, where terrestrial gambling activities are traditionally regulated at a regional level, rather than by the national government in Madrid.

From a national perspective, until December 2007 there was very little regulation dealing with online gambling. Spanish regulation issued in 2006 (Regulation 24 of Spain's Law 42/2006) clarified that the offering of games of chance via the internet by Spanish or foreign entities is clearly illegal without authorisation from the appropriate authority in Spain.

This law states that:

"...the sale, import, traffic and production of tickets, stamps or any other support of lotteries, bets and other games organized or emitted by foreign persons or entities is forbidden on Spanish territory".

In addition, there is national regulation (2007 Annual Budget Law) that penalises the advertisement of online gaming when such games are not properly authorised.

Gambling law expert and founding partner of law firm Legal Link, Xavier Muñoz Bellvehi says:

"With this legal development at the end of 2006, Spanish lawmakers clearly positioned themselves in favour of criminalising foreign betting and casino websites that offer their services in Spain without administrative authorisation. Thus, under this law, it is not enough that they rely on an authorisation from a third country, even from a country within the EU."

Currently, the only entity authorised to offer and promote its products through the internet is Loterías y Apuestas del Estado (LAE). This is a state-controlled entity that with blind charity association, ONCE, has the duopoly on lottery games in Spain at a national level.

From a provincial perspective, just Madrid and the Basque Country of Spain's 17 autonomous regions have issued regulations for online gambling and sport betting. However, until 2008, these local laws failed to entice operators to apply for regional licences for online gambling. This is because relatively high capital requirements and the obligation to solely restrict online gaming offerings to customers from that particular Spanish region have put off operators. Instead, they have joined local groups in their strenuous lobbying for one single, national regulatory and licensing regime in Spain.

Nascent sports-betting markets in Madrid and the Basque Country have, nevertheless, attracted new entrants. UK firms Betfred and William Hill have partnered with local companies Ekasa and Codere to offer sports betting via betting terminals in gaming

parlours and standalone betting outlets, while Ladbrokes has done likewise with Barcelona-based Cirsa in the Madrid region. Austria's Novomatic and Greece's Intralot have also obtained licences to offer terrestrial sports betting in the Madrid region, as has bwin alongside partner, Malta-based Betbull. Whether these firms choose to extend their formal presence in the Spanish market to the online sphere will depend heavily on whether Spain establishes a clear national regulatory framework for online gambling.

The lack of clear national regulation has not discouraged foreign operators from offering online gambling opportunities from abroad. Leading online gaming providers such as bwin and 888 have shirt-sponsorship deals with Spanish football clubs Real Madrid and FC Sevilla. According to the Spanish Association of Internet Bettors (AEDAPI), online gambling providers operating in Spain may have obtained revenues of more than €200m in 2008.

Spanish gaming organisations, consumer associations and local authorities have started criminal proceedings against some foreign online operators offering services in Spain, as well as football clubs and media companies that have taken sponsorship and advertisement deals with online operators. However, in general terms, foreign operators continue to operate without many restrictions in Spain.

The increasing prominence of the activity in Spain led to Spanish consumer groups, as well as lottery provider LAE and charitable organisation ONCE, calling on the government to introduce regulations that either expose gambling websites to formal regulation and taxation in Spain or unambiguously ban internet gambling outright.

As a result of this, in December 2007, the Spanish government enacted the broad Ley de Impulso de la Sociedad de Informacion (LISI). This directly addresses in its 20th additional disposition the issue of remote gambling and obliges the national government to draw up regulations covering the activity.

According to this law, it is now incumbent on the government to establish a regulatory regime for remote gaming and betting services that guarantees the security of the activity for both Spanish consumers and for remote gaming operators by way of a licensing system. Specifically, the law obliges the Spanish government:

“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 authorisation to provide the above mentioned services granted by the authorities of any member state of the European Union.”

Furthermore, the 2007 law states that Spain's first national licensing and regulatory regime for internet gambling should contain provisions prohibiting the advertising and processing of financial transactions for unlicensed websites. The law states:

“[Companies] that do not possess this licence will not be able to conduct any activity related to interactive gaming or betting [in Spain]. In particular, necessary measures will be established to prevent advertising by any means as well as a prohibition on the use of any existing payments system in Spain.”

The 2007 law, therefore, strongly indicates that there will be a ban on payments alongside the establishment of a national licensing regime for internet gambling in Spain. This will place Spain in a similar situation to fellow European Union members France, Estonia and Sweden.

A meeting of regional gambling regulators and representatives of the Spanish Treasury and Ministry of the Interior was held in Barcelona in June 2008 in order to discuss the remote-gambling project. Regional governments agreed that legal counsel to LAE should produce the first draft of the remote-gambling regulations.

However, LAE has not yet made public the first draft of the online regulation. According to an article published recently in the Spanish business magazine *La Gaceta de Negocios*, LAE is reorganising its operations in order to introduce new online products.¹ Potentially, this reorganisation will further delay the drafting of the new online regulation.

Frustrated with an evident lack of progress by the Spanish government and LAE in introducing nationally-binding, remote-gambling regulations, several Spanish regions are now considering introducing legislation at a regional level in order to guarantee local consumer protection and tax revenue. Officials of the regions of Rioja and Castilla y Leon announced in a conference held in Madrid in March 2009 that they will issue their own online regulation to deal with online activities within their territories.²

Madrid's own regional government is also intent on establishing itself as a remote-gambling hub within Spain. The Madrid government now plans to grant the first online licences and allow for Madrid-based operators to accept bets from Madrid residents regardless of whether the bets are physically placed via an IP address within the region. The government will use the criteria established in the EU and Spanish information society and electronic commerce regulations and VAT legislation in order to establish whether a consumer is located in Madrid, according to Madrid's general director of taxation and gaming, Fernando Prats.

Kevin O'Neal, a bwin spokesperson, recently confirmed to GamblingCompliance that bwin had already applied for an online gambling licence in the Madrid region. "We are currently in constructive discussions with the Madrid government about a gaming licence," said O'Neal. "This is a very much a pioneering and forward-looking approach as Bwin is the first company to apply for an online licence in the region."³

A potential outcome of all the 17 Spanish autonomous communities enacting their own unique set of remote gaming rules could represent a huge headache for operators. This scenario could create the possibility of companies requiring 17 licences in order to

¹ 'El Gobierno busca subir sus ingresos sacando al mercado nuevos juegos' <http://www.negocios.com/negocios/> (Accessed April 27, 2007) http://www.negocios.com/negocios/noticia_1img.php?s=36&sm=36&posEnc=¬i=54981

² 'Spanish Regions Moving To Fill National Regulatory Void' www.gamblingcompliance.com (Accessed April 2, 7 2009), <http://www.gamblingcompliance.com/node/36321>

³ 'PAF Nets Atlético Tie-Up As Madrid Kicks Off Online Licensing Regime' www.gamblingcompliance.com, (Accessed April 28, 2009), <http://www.gamblingcompliance.com/node/36546>

operate in Spain, on top of a raft of overlapping regulatory and tax obligations. This could also greatly undermine attempts to introduce effective controls on the activity in Spain.

In that sense, both online and land-based operators still consider national regulation as the best tool to develop the Spanish online market to its real potential and remain hopeful of a national regime coming to fruition.

“I still believe that regulation represents a window of opportunity for Spain, but time is of the essence now and it is important that Spain takes action soon,” says Thomas Talos, chief legal counsel to bwin.⁴

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⁴ PAF Nets Atlético Tie-Up As Madrid Kicks Off Online Licensing Regime’
‘www.gamblingcompliance.com’,(Accessed April 28, 2009),
<http://www.gamblingcompliance.com/node/36546>

SPAIN: BARRIERS TO PROVISION OF ONLINE GAMBLING SERVICES

Prohibition	Licensing Barriers	Marketing Barriers	Additional Barriers	State Level Action	European Level Action
<p>National Level: Offering games of chance through the internet is illegal without authorisation from the appropriate Spanish authority: (Regulation 24 of Spain's Law 42/2006).</p> <p>In practise only state-owned monopoly operator, <i>Loterias y Apuestas del Estado</i> (LAE), is authorised to offer online gambling.</p> <p>Regional Level: Two regions (Madrid and Basque Country) have regulated online gambling to create a regional licence.</p>	<p>National: Monopoly system - only LAE is authorised to operate lotteries and sports betting at national level, including online.</p> <p>Regional: Where a regional authority has regulated online gambling, an operator may apply for a regional licence. Currently Madrid and Basque Country have legislated to issue region l licences. No entities currently hold regional online gambling licence. Regional licence holders can only offer gambling services to customers within that region.</p>	<p>National: Advertising online gaming which is not properly authorised is prohibited (2007 Annual Budget Law).</p> <p>Spanish gaming organisation and local authorities have commenced criminal proceedings against some foreign operators offering products or marketing in Spain. Foreign-based operators however continue to enter high profile sponsorship deals with Spanish sports clubs.</p>	<p>National: Payment blocking is likely to be a means of enforcement under the proposed new national law on online gambling.</p>	<p>National: Spanish government announced in 2007 that it will reform its online gambling laws to introduce a national system of licensing.</p> <p>Monopoly operator LAE has been charged with producing the first draft of the remote gambling regulations.</p> <p>Regional: Given the slow progress of the national legislation, two more Spanish regions, Rioja and Castilla y Leon, have announced they will introduce their own online gambling legislation.</p>	