

MEMORANDUM ON THE REGULATORY IMPACT ANALYSIS OF THE MINISTERIAL ORDER APPROVING THE BASIC REGULATIONS REGARDING EXCHANGE BETTING AND AMENDING VARIOUS MINISTERIAL ORDERS APPROVING THE BASIC REGULATIONS FOR CERTAIN TYPES OF GAMBLING.

EXECUTIVE SUMMARY

<b>Proposing Ministry/Body</b>	Ministry of Finance and Public Administration.	<b>Date</b>	21/07/2014
<b>Name of the regulation</b>	Ministerial Order approving the basic regulations regarding exchange betting and amending various ministerial orders approving the basic regulations for certain types of gambling.		
<b>Type of Memorandum</b>	Normal <input type="checkbox"/> Abbreviated <input checked="" type="checkbox"/>		
<b>PROPOSAL IN QUESTION</b>			
<b>Circumstances regulated</b>	Requirement for prior regulation of this type of gambling as regards its development and operation, in addition to awarding individual licences as set out under Article 11 of Law 13/2011, the Gambling Regulation Act.		
<b>Pursued objectives</b>	<p>Establish the basic regulations for exchange gambling.</p> <p>Facilitate the awarding of the corresponding individual licence.</p> <p>Open the market to various operators.</p> <p>Protect participants and public interests affected by gambling activities.</p>		
<b>Main alternatives considered</b>	-----		
<b>CONTENT AND LEGAL ANALYSIS</b>			

<b>Type of regulation</b>	Ministerial Order.	
<b>Structure of the regulation</b>	Four chapters, nineteen articles, one transitional provision and fourteen final provisions.	
<b>Reports compiled and compliance sought</b>	<ul style="list-style-type: none"> <li>- National Markets and Competition Commission.</li> <li>- Ministry of Health, Social Services and Equality.</li> <li>- Directorate-General of Financing, Taxation and Gambling of the Ministry of Finance and Public Administration of the Regional Government of Andalusia.</li> <li>- Directorate-General for Taxation and Gambling of the Department of Economy and Knowledge of the Regional Government of Catalonia.</li> <li>- Directorate-General for Taxation of the Ministry of Finance and Public Administration.</li> <li>- State Secretariat for Finance.</li> <li>- State Secretariat for Budget and Expenditure</li> <li>- State Secretariat for Public Administration.</li> <li>- Undersecretariat of Finance and Public Administration.</li> <li>- Technical Secretariat General of the Ministry of Finance and Public Administration.</li> </ul>	
<b>Hearing proceedings</b>	Public consultation via the Ministry of Finance and Public Administration website.	
<b>IMPACT ANALYSIS</b>		
<b>ADJUSTMENT TO THE ORDER OF POWERS</b>	No impact on the autonomous communities' scope of powers, as the Order regulates the authorisation and operating system of exchange betting via remote channels as a nation-wide activity.	
<b>ECONOMIC AND BUDGETARY IMPACT</b>	Impact on the economy in general.	Positive impact, allowing for the exploitation of a type of gambling that is currently unauthorised.
	As regards competition	<input type="checkbox"/> The regulation has no significant impact on competition. <input checked="" type="checkbox"/> The regulation has a positive impact on competition. <input type="checkbox"/> The regulation has a negative impact on competition.

	As regards administrative burdens	<input type="checkbox"/> The regulation represents a reduction in administrative burdens. Estimated amount: _____ <input checked="" type="checkbox"/> The regulation generates new administrative burdens. Estimated amount: ___€2,279/unit___ <input type="checkbox"/> The regulation does not affect administrative burdens.
	As regards budgets, the regulation:  <input type="checkbox"/> Affects Central Government budgets.  <input checked="" type="checkbox"/> Affects the budgets of other Territorial Administrations.	<input type="checkbox"/> Represents expenditure.  <input checked="" type="checkbox"/> Represents income. Estimated amount: €1,931,533.75 Estimated amount:
<b>GENDER IMPACT</b>	The regulation has the following impact on gender:	<input type="checkbox"/> Negative <input checked="" type="checkbox"/> Nil <input type="checkbox"/> Positive
<b>OTHER IMPACTS CONSIDERED</b>	None.	
<b>OTHER CONSIDERATIONS</b>	None.	

## MEMORANDUM ON THE REGULATORY IMPACT ANALYSIS OF THE DRAFT MINISTERIAL ORDER APPROVING THE BASIC REGULATIONS OF EXCHANGE BETTING AND AMENDING VARIOUS MINISTERIAL ORDERS APPROVING THE BASIC REGULATIONS FOR CERTAIN TYPES OF GAMBLING.

### 1. Abbreviated memorandum

This memorandum has been created pursuant to the provisions of **Article 24.1 a) of Government Law No. 50/1997**, of 27 November and **Article 1.2 of Royal Decree No. 1083/2009**, of 3 July, which regulates the memorandum of regulatory impact analysis.

Its structure complies with the **Abbreviated Memorandum** model referred to in Article 3 of Royal Decree 1083/2009, of 3 July and Section V of the Methodology Guide for creating the memorandum of regulatory impact analysis.

The grounds on which it has been deemed unnecessary to create an ordinary memorandum, without prejudice to its scope, and on which it has been decided to create an abbreviated memorandum is that it is not considered that any scopes to which Article 2 of Royal Decree No. 1083/2009, of 3 July alludes are significantly affected, including impacts on the constitutional order regarding the distribution of powers.

### 2. Legal basis and legal standing of the draft

This regulatory draft is legally based on the **requirement for prior regulations that, in order to award individual licences for each type of gambling**, is established by Article 11 of Law No. 13/2011, of 27 May on gambling regulations.

The **legal standing** of the draft is regulated by Article 5 of Law No. 13/2011, of 27 May on gambling regulations, which states that the Ministry of Finance and Public Administration will establish, **by Ministerial Order, the basic regulations for conducting each type of gambling**. This basis is reinforced by the provisions of **Article 19 of Law No. 13/2011**, of 27 May on gambling regulations, which recognises the powers of the Ministry of Finance and Public Administration as regards gambling; said instrument also establishes that the Minister of Finance and Public Administration is responsible for establishing basic regulations for each type of gambling.

Pursuant to Article 6 of **Royal Decree No. 256/2012**, of 27 January, which develops the basic organic structure of the Ministry of Finance and Public Administration, the Directorate-General for the Regulation of Gambling is responsible for the regulation,

authorisation, supervision, co-ordination, control and, where applicable, sanctioning of state-wide gambling activities. The same Royal Decree, No. 256/2012, of 27 January, attributes the Ministry of Finance and Public Administration, namely to the State Secretariat of Finance, the powers to regulate gambling.

As a result, **the proposing Ministry is the Ministry of Finance and Public Administration.**

### 3. Basis of the regulation

Ever since gambling was decriminalised by Royal Decree-Law 16/1977, of 25 February, which regulates the Penal, Administrative and Fiscal Aspects of Games of Chance, Betting and Gambling, substantial changes have been witnessed in the traditional conception of gambling, with **new online gambling participation channels** currently taking shape, mainly due to the advent of new electronic communication services and the use of interactive online gambling.

In light of the emergence of these new participation channels, it has become **necessary to regulate exchange betting** that forms part of the "Betting" form of gambling and that is regulated by Law No. 13/2011, of 27 May on gambling regulations to facilitate their release for use.

Article 3, section c) of Law No. 13/2011, of 27 May, defines exchange betting as **betting in which an operator acts as an intermediary and guarantees the amounts gambled between third parties, less the amounts or percentages previously set by the operator.**

As regards the grounds for this regulation, it is worth noting that the wording of the Gambling Regulation Act (LRJ) outlines the **initial desire of the legislature to regulate these types of betting**, although this is not a condition required to regulate a type of betting, as exchange betting is expressly included in Article 3 of the LRJ, which defines the types of betting and Article 48 as regards tax regulations on gambling activities.

As has been mentioned previously, the LRJ establishes that only an individual licence may be requested; as a result, gaming operators may only conduct and offer gambling activities for which they have received approval and for which regulations have been published.

Furthermore, the **protection of participants and public interests affected by gambling activities** must be emphasised as an objective of this regulatory draft; this applies in particular to the protection of minors and dependants and the prevention of compulsive gambling, in addition to compliance with the regulations of Law No. 10/2010, of 28 April on the prevention of money laundering and the

financing of terrorism.

As a result of the failure to regulate exchange betting, **there is a market for this type of gambling** that operates outside the constraints of Spanish regulations; such types of gambling can be accessed by means of several tools and technological procedures used by gamblers from Spanish territory. Regulatory inactivity would serve to strengthen the existence and importance of said illegal market, as part of which both participants and public interests fail to receive the sufficient levels of protection required.

Faced with the alternative of non-regulation, by **regulating** such activities, it would be possible to channel exchange betting needs towards regulated forms of supply; in doing so, the online gaming market would be strengthened and would gain coherence, with certain **advantages as regards the general interests** that the LRJ seeks to protect. In particular, from a **protection of public health** standpoint, regulation would involve:

- Applying preventive **cross-sectional responsible gaming policies and measures**, to raise awareness and facilitate intervention and control, to which other forms of gaming are already subject. Amongst the regulatory policies and measures applied, the following are worth particular mention: the requirement for the participant to identify him/herself in advance, access control for minors and self-excluded gamblers, or provisions regarding temporary limits to participants' deposits.
- Marrying the above with the **additional corporate social responsibility measures** as regards gambler self-control and the detection of disorderly conduct that operators may establish on an individual basis, maximising their impact.
- Facilitating **the alignment of such gambling regulations with the standard provisions of other basic betting regulations** as regards responsible gambling, for example: setting live deposit limits.
- Aligning both the applicable **advertising and commercial communication regime** which apply to all other regulated forms of gambling, without prejudice to the particularities that may exist as regards different types of gambling.
- Complementing **aspects** shared by all modalities with others **specifically adopted to the type of gambling in question**, which forms part of the basic regulations, thus making it possible to address the specific risks that may arise from this type of gambling. One example may be the obligation included to provide an explanatory tutorial regarding exchange betting to inexperienced users. Said tutorial will be available to users at a later date.
- Likewise, the regulation will make it possible to **include this type of gambling in other measures**, whether regulatory or otherwise, that may be created in the future.

Furthermore, from a more comprehensive gamer protection standpoint as regards **protection of public order and the functionality of gambling on offer**, there are other aspects that would be substantially improved, including:

**1. Eliminating unfair, dishonest and corrupt gambling**

- *Gambling integrity*
- *Banning the provision of loans to gamblers or between gamblers*
- *Access for related individuals and other subjective bans*

**2. Improving the security of the gambler's environment**

- *Information, confidentiality and availability*
- *Guarantees as regards deposits, prizes and participation limits*
- *Enhanced guarantee of compliance with contract conditions*
- *Reduced risk of failure as regards the security of communications*
- *Reduced risk of phishing*
- *Measures to control privacy and personal data protection*

**3. Reduced risk of criminal activity**

- *Reduced risk of money laundering by matching betting offers pursuant to the best price available, their order of arrival and in anonymously; alternatively, by subjecting gambling operations to additional limitations and monitoring requirements.*
- *Reduced risk as regards fraudulent use of personal data, phishing and, in general, the use of gambling platforms for criminal activities*

**4. Reduction in market distortions**

- *Complementing the range of gambling services on offer with an important product, providing a more coherent and integrated framework for the exploitation and consumption of such activities*
- *Reduction of illegal competition from the black market*
- *Promotion of effective competition between licensed operators and the positioning of non-preminent operators*

From the above provisions, the measures established in the Order to reduce the risk of fraud-related public order problems and, in particular, **money laundering** is particularly noteworthy. It is difficult to dispute that proper gambling regulations and the development of gambling under the regulatory provisions applicable to state-wide gaming in general represent an advance as regards the relationship between illegal or unregulated gaming. In any event, irrespective of the foregoing, the

characteristics of this type of gambling, in which one or several participants bet against one another, require particular attention to ensure that the specific regulation does not encourage such conduct and that, furthermore, it reduces risks and facilitates control and monitoring of activities to this end.

To this end, both the **anonymous nature of betting offered** to other gamblers (without the identity of other participants being known) and the **matching of offers** pursuant to the order in which gamblers access the platform and the best price available, represent a strong initial stand against money laundering activities, as it **complicates the transfer of funds between specific participants**. All of the above are elements that are inherent to the traditional nature of exchange betting, in which participants match their bets via an exchange platform, based on the betting odds, under a system similar to the securities market. This is how exchange betting has been considered by the most similar comparable laws under which this modality has been developed, such as in the United Kingdom or Italy, where such provisions have been adopted. These provisions have been included as obligations in the draft Order subject to public consultation.

In any event, as corroborated by the public consultation process, the existence of **alternative operating models** for gambling between participants cannot be ignored; under such models, **direct interaction** between participants would be required, via the gambling operator, to allow authorised gamers to bet against one another.

The definitive version of the Order maintains the above-mentioned provisions as regards anonymity and marrying the best odds based on order of arrival. Notwithstanding the above, in order to make the level of protection required as regards preventing and counteracting money laundering compatible with the principles of necessity, proportionality and minimal restrictions, and under the general approach of exchange bet gambling as a traditional exchange platform, it has been decided to **assess the possibility of requesting an exemption from said obligations as part of the Order**.

Such an exemption may be granted by the Directorate-General for the Regulation of Gambling **subject to the conditions and economic limits deemed necessary in each instance** to avoid increasing the risk of money laundering and other types of fraud. Such limits may address the maximum assumed risk amount per bet and/or period of time.

Likewise, to avoid generating additional difficulties as regards controlling or monitoring the activity, as a result of the ban on direct interaction between participants being inherent to the type of gambling in question and not indicative in itself of fraudulent activity, **additional methods would be established to monitor gamblers' activities**, for which the operator would be responsible; such activities would be specifically set forth for this type of gambling and designed to facilitate the detection of such activities.

These measures would make it possible to reduce the risk of money laundering and facilitate ex-post control of possible suspicious activities; they would not jeopardise the level of protection to this end for these games as regards exchange betting as market or exchange platforms.

It has been established, definitively, that **the net result as regards protection public health to be tackled by these regulations, is evidently positive for the purposes of social well-being.**

## 4. Content

This Ministerial Order is divided into four chapters, nineteen articles, one transitional provision and fourteen final provisions.

**Chapter I** contains the general provisions and includes the definitions that are useful for suitably understanding the text.

**Chapter II** refers to the licenses that the operators interested in developing and operating exchange betting must hold, stipulating that they must obtain a general licence for "Betting", and an individual licence for marketing each of the three types of exchange betting. This chapter also establishes that the individual licence will be valid for five years (the maximum period allowed under Law No. 13/2011, of 27 May) renewable for periods of an identical length, and empowers the Directorate-General for the Regulation of Gambling to determine the guarantees associated with the aforementioned licences through a resolution, establishing a range of between 5% and 12%, which will be defined, where appropriate, pursuant to the economic cost criteria as regards the volume of activity.

**Chapter III** establishes the framework for relations between the operator and participants. It also refers to the procedure for addressing and resolving complaints and grievances implemented by the operator and placed at the disposal of the participants. Moreover, it specifies several obligations on gambling operators in respect of participants, authorises the promotion of gambling under the provisions of Article 7 of Law No. 13/2011, of 27 May on gambling regulations, and regulates the channels and means of participation.

**Chapter IV** establishes the procedure for the development of exchange betting and establishes the financial limits for participation. Moreover, this Chapter includes the rules for participation in gambling, in relation to operators and participants, in particular regarding compliance with and confirmation of the betting offer and formalising exchange betting, in addition to special circumstances involving interaction between participants in exchange betting, the annulment of events and the general dynamics of this kind of gambling. Lastly, it also regulates establishing, assigning and paying prizes.

The **Appendix** to the Order approves the limits of the guarantee amounts linked to each individual licence for the operation of each of the types of exchange betting,

which will be set between 5 and 12% of operators' net income from activity under the individual licence for the preceding year.

The establishment of said guarantees seeks to ensure coverage of the obligations that the different gambling operators may assume in the development of gaming activities with participants or with Public Administrations. As a result of the implicit risk that this type of gambling activity entails, it may only be conducted by solvent companies.

Lastly, this Ministerial Order contains one transitional provision and fourteen final provisions. The **transitional provision** establishes that gambling operators may not offer exchange betting on horse races in their schedule of events until the tax rate applicable to this type of exchange betting is legally determined. As regards the **final provisions**, the first relates to the ability of the Directorate-General for the Regulation of Gambling to establish the authorisation procedure for gambling activities of an occasional nature. The following twelve provisions amend ministerial orders approving the basic regulations for different types of gambling, the object of which is to: ensure the free nature of information provided by the operator to the gambler; incorporate the text of certain betting order provisions in the articles of the regulation; and, technically improve the wording of the article that sets out the participation channels and methods in the corresponding regulations. The last provision establishes the date on which the regulation comes into force.

In particular, the proposal to amend Article 10 of the basic regulations that have already been approved responds, within the framework of the legal precept from which the paragraph in question derives (Article 9.1, paragraph three of the LRJ and any other provisions set out in the LRJ), to the desire to **adapt the wording of Ministerial Orders to the provisions set forth by Law No. 20/2013, of 9 December, on the Guarantee of Market Unity (LGUM)** and, in particular, Articles 17.1.b), 20.4 and 21.3 therein, to facilitate compatibility between the existence of such regional authorisation, where applicable, and the provisions of said Law. The joint application of these precepts establishes that regional authorisation as regards the installation of a gambling terminal at a given location, where applicable, shall not readdress elements that have already been approved by the original authority, in this case, the Directorate-General for the Regulation of Gambling.

Specifically, by eliminating the reference to “applicable state regulations” in the wording of the orders, the objective is to clarify that the granting or denial of regional authorisation, where applicable, cannot be based on exercises to check compliance with state regulations on gambling. At the same time, failure to comply with said state regulations cannot be used by an Autonomous Community as a reason for denying authorisation to install the terminal within its territorial boundaries.

## 5. Processing

The processing of this regulatory provision started with the announcement of the **Gambling Policies Council** for the project in question at the meeting held on 19 February 2014. In response, the Autonomous Communities of Castilla-La Mancha and the Basque Country presented their comments in writing. The former expressed the difficulty it faced in assessing the draft regulation provided and that said regulation should comply with the Orders that had already been approved. In turn, the Basque Regional Government states that it was not against the online exchange betting regulation, notwithstanding certain considerations as regards the participation of Autonomous Communities in the preparatory process for said regulation and the estimated impact of the regulation on onsite gambling, and in particular, collections and taxation on the part of the various administrations affected. Furthermore, the Basque Country submitted observations as regards the public consultation procedure; said observations will be addressed later on in this document.

Said announcement was followed by the **public consultation** process. This ministerial order draft was published on the Ministry of Finance and Public Administration website on 10 March 2014, granting a period of 15 working days in which interested parties could submit the observations they deemed fit. As part of this process, contributions were made by:

- Spanish Federation of Rehabilitated Gamblers (FEJAR)
- Remote Gambling Association (RGA)
- Luckia Games, S.A.
- Directorate of Gaming and Events of the Basque Regional Government.
- Spanish National Organisation for the Blind (ONCE)
- Betfair Group.
- Spanish Association of Digital Gaming (J.DIGITAL)
- UGT Confederal Executive Committee
- Premier Megaplex, S.A.
- Association of Recreational Machines (AEMAR).
- Mr. Mariano Chóliz and Mr. Jerónimo Sáiz, respectively, Director of the Research Unit: “Compulsive Gambling and Technological Addictions” at the University of Valencia and Chief Psychiatrist and Director the Gambling Unit at the Hospital Ramón y Cajal, Dean of the University of Alcalá de Henares, respectively.

The content of the draft was also made public by the **Responsible Gambling Advisory Council** at its meeting of 20 March 2014.

Furthermore, this draft was **submitted to the European Commission**, pursuant to the provisions of Directive 98/34/EC and, domestically, via Royal Decree No. 1337/1999, of 31 July, which regulates the disclosure of information as regards technical regulations and standards and regulations concerning information society services; the purpose of doing so was to provide operators and gamblers with the legal certainty that the regulation is fully compatible with Community Law and, in

particular, the freedom of establishment and freedom to provide services. As a result of this process, before notifying the European Commission, observations on the draft were received from the Directorate-General Support Policies on Disability at the Ministry of Health, Social Services and Equality (DGPAD) and the Spanish Agency for Consumer Affairs, Food Safety and Nutrition (AECOSAN).

Following the deadline of the Royal Decree, pursuant to the provisions of Article 8 of the Directive, no detailed opinion or observations have been received from the European Commission or other Member States, with the exception of Malta, submitting general observations querying the need to subject operators who, without being licence holders in Spain, are licensed to offer this type of gaming according to the other jurisdictions of the European Economic Area to an additional licence or, in the absence therefore, identical requirements. The Directorate-General for the Regulation of Gambling responded to these observations as part of the framework provided for by the above-mentioned Community Directive.

Likewise, the draft has been **made public, following its formal disclosure** by the Directorate-General for the Regulation of Gambling, **by the Ministry of Health, Social Services and Equality through its Technical General Secretariat, and by the National Markets and Competition Commission (CNMC).**

The first of these reports reflects the observations made by the Spanish Agency for Consumer Affairs, Food Safety and Nutrition, as part of which it argued that free gambling applications installed on the platform may lead to gambling addictions as they feature direct links to chargeable versions; furthermore, it stated that it does not believe the regulation makes clear whether access control as regards participation will be employed using physical terminals. Said body believes that said terminals foster compulsive gambling, as it is possible to gamble from different devices. Finally, the report issued by ONCE as part of the consultation process was attached to the above-mentioned report.

The National Markets and Competition Commission report welcomes the decision to regulate exchange betting, as it facilitates access to a new type of gambling, thus promoting legal and effective competition between operators and a greater number of potential operators interested in developing the activity. It also highlights the importance of ensuring that the drafted regulation does not grant initial privileges in advance to operators that are already present in other types of regulated gambling, stating its preference for competitive neutrality. Furthermore, it makes a number of detailed observations regarding the articles concerning: the requirement as regards the need for both general and individual licensing systems (Article 3); the validity period (Article 4); the additional guarantee (Article 5); the transitory nature of exchange betting on horse racing (sole transitional provision); and the authorisation of gambling activities of an occasional nature (first final provision)

Likewise, this Ministerial Order draft has been subject to the **procedure set out under the fourth additional provision of Law No. 13/2011**, of 27 May on gambling regulations, as regards the inclusion of Autonomous Communities in the

approval of ministerial orders that establish new types of gambling or that amend existing forms of gambling, Article 81 of the Andalusian Statute of Autonomy and Article 141.2 of Organic Law No. 6/2006, on the reform of the Catalan Statute of Autonomy. As a result, the draft was forwarded to said Autonomous Communities in order for said authorities to issue the corresponding non-binding report.

Directorate-General of Financing, Taxation and Gambling of the Ministry of Finance and Public Administration of the Regional Government of Andalusia and the Directorate-General for Taxation and Gambling of the Regional Government of Catalonia issued the corresponding mandatory reports, which contained a number general and competence considerations that do not affect the nature of the draft. As a result of these reports, the corresponding Bilateral Committee meetings were held to share and discuss the draft with the aforementioned Autonomous Communities on 16 and 18 June 2014 respectively.

Finally, as regards the **internal ministerial procedure**, approval was requested from the State Secretariat of Finance, the State Secretary for Budget and Expenditure, the State Secretary for Public Administration and the Undersecretariat of Finance and Public Administration. As a result of this procedure, the mandatory report from the State Secretariat of Finance from the Ministry of Finance and Public Administration was received.

## 6. Repealed regulations

This Order **does not repeal and foregoing regulations**.

## 7. Economic impact

Based on the experience of other countries with a more established gambling tradition, such as the **United Kingdom**, we can conclude that as part of the online gambling market, exchange betting can have a significant impact. The following table provides an idea of said economic impact as regards income less prizes (Gross Gaming Revenue, GGR), generated from exchange betting by means of the fees that operators charge participants per operation, usually per winning operation.

**Table No. 1. Income from the online operator sector in the United Kingdom. Income less prizes (GGR) (millions of pounds).**

Income from the online operator sector in the United Kingdom.		
	2011/2012	2012/2013
Sports	563,93	648,71
Exchange betting	46,32	35,75
Total	610,25	684,46

Source: Gambling Commission, Industry Statistics 2012-2013.  
Period from 1 April to 31 March of each financial year.

From the above data, to obtain a **rough estimate**, it can be deduced that the market share as regards this type of gambling in the last two years were as follows:

**Table No. 2. Representative percentage of each form of gambling in the United Kingdom.**

	Market share 11/12	Market share 12/13	Average for the period
Sports	92.41%	94.78%	93.59%
Exchange betting	7.59%	5.22%	6.41%
Total	100.00%	100.00%	100.00%

Source: Compiled based on the data from the Gambling Commission, Industry Statistics 2012-2013.

Based on a conservative approach, the estimated average only covers the last two years, as there is a significant variability in the importance of this activity in regulated gambling activities on offer in the United Kingdom; in the period preceding the last two years, this was significantly greater primarily as a result of business decisions to relocate outside the area regulated by the United Kingdom.

In any event, forecasting the proportion represented by each of these types of betting in Net Income (amounts gambled less prizes awarded) obtained from the Spanish market in 2013, based on the Directorate-General for the Regulation of Gambling report for the fourth quarter of 2013, the potential **economic impact** on the Spanish market share in a market similar to the market available in the United Kingdom for the period, **would be of €7.7 million/year**, as shown in the following table.

**Table No. 3. Estimated economic impact on the Spanish market.**

Spanish market forecast. Income less prizes (GGR).		
	Market share	Net revenue for 2013
Bets against the house <sup>(1)</sup>	93.59%	€ 112,806,395
Exchange betting	6.41%	€ 7,726,135
Total	100.00%	€ 120,532,530

Source: Compiled internally.

<sup>(1)</sup>Pool betting, which only accounts for 0.19% of all bets, has not been included.

## 8. Budgetary impact

The budgetary impact analysis should facilitate identifying its impact on the **State General Budget. Under these circumstances, no repercussion is expected on public expenditure.**

Notwithstanding the above, opening a new market to gambling operators would entail said organisations paying the tax on gambling activities set out under Article 48 of Law No. 13/2011, on gambling regulations, in addition to the gambling administrative management fee set out under Article 49 of the same Law.

As a result, this regulatory proposal would see **an increase in public revenue because new taxable individuals and taxable transactions would be generated.**

As regards the **taxable element**, using the data provided in the above tables, and in particular the representative market shares for each type of gambling (exchange betting 6.41% and bets against the house 93.59%), we can estimate an approximate budgetary impact applying the applicable interest rate of 25% on the taxable base, which would represent the fees obtained by gambling operators. In order to establish the tax implications, we must absorb the GGR obtained by gambling operators into the profits obtained by said operators from exchange betting by means of charging fees, on which said interest rate would be applied.

**Table No. 4. Estimate budgetary impact as a result of introducing exchange betting**

Estimated budgetary impact	
Net revenue A. Exchange betting (fees)	€7,726,135.00
Budgetary impact	€1,931,533.75

*Source: Compiled internally.*

As is the case with all other State-level gambling, it is reasonable to assume that **the estimate increase in income would be transferred almost in its entirety to the various regional finance departments**, in compliance with the regulations governing allocation to the fiscal residence of gamblers, pursuant to Article 48 Section 11 of the LRJ. Only a very small percentage would be payable to the central finance department, for gambling income obtained from gamblers for whom a permanent residence in Spain cannot be established (mainly for non-residents).

Irrespective of the above, **it has been established that a negative impact on regional finance or local departments is unlikely** as regards taxable income obtained from other gambling activities, as online exchange betting represents a new activity that does not currently exist at a regional level.

As regards **income from state-level taxes paid for the start of activities**, the estimate cost thereof is contained in the following section on administrative burdens. In any case, an estimate of aggregate revenue for this item has not been included as it is impossible to forecast the number of operators that may eventually request the corresponding licences.

## 9. Administrative burdens

The proposed regulation entails the **generation of administrative burdens** as it involves the generation of currently non-existing circumstances: The possibility of marketing this form of gambling. That is to say, this administrative burden **will only affect legal entities that, as of when the Order comes into force, wish to implement and offer exchange betting via remote channels at established terminals.**

As regards forecasting the administrative burdens to be generated following the approval of this draft, the following **considerations** must be taken into account:

- Pursuant to Law No. 13/2011, of 27 May, there are two **types of licences** that operators may request to offer the service: On the one hand, the **general licence** to operate and market types of gambling; and on the other hand, the **individual licence** for each form of gambling.
- Applications from those interested in the **general licence** will be conditioned by a **notification published by a Ministerial Order** that approves tender specifications proposed by the Directorate-General for the Regulation of Gambling.
- Operators that already hold the **General Betting Licence** will only need to request the **individual licence for the type of exchange betting that they wish to offer and market.**
- The **administrative burdens of the general licence** were booked when approving Order EHA/3124/2011, of 16 November, which approved the tender specifications that regulate the general licence notification to offer and market gambling activities under Law No. 13/2011, of 27 May.
- The **assessment as regards the cost of administrative burdens** has been carried out on maximum amounts bearable by an interested party that already holds a general licence for the activity and that does not have to request two licences. As a result, this solely applies to **individual licences.**
- The **documents and procedures to be followed**, against which the administrative burdens have been assessed, are set out by the Resolution of the Directorate-General for the Regulation of Gambling of 16 November 2011, which sets out the request and approval procedure for individual licences.

The following table indicates the **valuation of burdens** pursuant to the criteria established under the Methodology Guide for Creating the Memorandum of Regulatory Impact.

The licence only need be requested once and will remain valid for a renewable period of 5 years (Article 4.1 of the draft Ministerial Order).

The cost of the range of added burdens per taxable subject affected and per licence is €2,279, although it is noteworthy that under the order, a single operator could request up to 3 individual licences: Sports, horse racing and other bets. As regards calculating the affected population, based on the fact that such gambling activities have not been regulated previously, an overly generous estimate has been made considering the number of operators that currently hold general gambling licences (24), multiplied by three, as there are three categories of exchange betting licences. It is believed that this estimate is overly generous because, although it does not consider that there may be operators currently not present on the market that wish to start operations following the opening of the market that will be subject to general licence notifications in the future, it estimates that each of the operators present would request each of the 3 licences available.

As a result, the total estimated cost would be €164,088.

**Table No. 5. Cost estimations of the administrative burdens required to request each of the individual exchange betting licences.**

ADMINISTRATIVE BURDEN	COST	UNITS	FREQUENCY	POPULATION	SUBTOTALS
Submission of a request in person	€80	1	1	72	€5,760
Conventional submission of documents, invoices or requirements	€5	15	1	72	€5,400
Provision of details	€2	7	1	72	€1,008
Submission of a report and memorandum	€500	4	1	72	€144,000
Conventional record entry	€110	1	1	72	€7,920
<b>TOTAL</b>					<b>€164,088</b>

*Source: Compiled by the Directorate-General for the Regulation of Gambling*

The generation of new administrative burdens is an **unavoidable consequence of the option of offering this type of gambling** as set out in the Order, as, to date, offering this type of gambling in Spain has been prohibited, pursuant to the provisions of Article 5, Section 3 of the LRJ.

As regards the above legal rights that the aforementioned Law seeks to protect (public order, the fight against fraud, the prevention of compulsive behaviour, the protection of the rights of minors and the rights of those participating in gambling activities), different administrative mechanisms must be designed to provide the Administration with sufficient information to establish, prior to the start of activities, that said activities do not represent a danger to citizens' rights and interests. To this end, a **prior authorisation system** has been created, to which operators of this type of gambling activity will be subject.

Likewise, and in line with the scope of the damage that such an activity could cause if the provision does not comply with the parameters set out in the ministerial order, it is recommended that an **individual licence renewal system** be created in order to ensure that the conditions in place when the authorisation was granted remain in place over time.

In short, **new administrative burdens will be created, although they can be justified in light of the objectives set out by Law No. 13/2011 as fundamental to the implementation of regulations.**

## 10. Impact on competition

As regards the impact on competition, it is noteworthy that the Order in itself **does not entail negative impacts.**

- The **requirements as regards access to the online gambling market** in Spain (need for a general and individual licence and economic and administrative implications of said procedure) **are not covered by this order, but rather by the corresponding legal and regulatory standards** (LRJ and Royal Decree No. 1614/2011, of 14 November); therefore, they are aligned to the system set out for other types of regulated gambling. Furthermore, **the justification of needs and proportionality was performed on the basis of processing said standard.**
- In general, the **requirements as regards pursuing the activity** established in the basic regulations approved by this Order, that may limit the competitive capacity of operators, are closely linked to operating gambling activities and are based on entrepreneurial freedom as regards establishing the main competitive variables and do not cover limitations irrespective of the decision pursuant to which operators may conduct their business policies. Limitations that may exist to this end that stem from, for example, the gambling operating specifications, are clearly exceptional and are proportional to protection of public order and public health.
- **There are no** regulatory provisions in the Order that may **limit operators' incentive to compete.**
- Lastly, from a factual standpoint, **access and implementation requirements are set forth on an equal basis for all operators interested**

in offering gambling activities, as there are currently no providers of such activities as the provision of this type of gambling is currently not regulated. As a result, no asymmetries or discriminations will be taken into account between current providers and new operators. All those interested in accessing these types of gambling activities must comply with the established access and implementation requirements.

Indeed, considering the lack of negative impacts, **the impact on competition will be unmistakably positive**, both statically or immediately as well as dynamically or in the medium-to-long term. Firstly, the order entails the opening of a regulated market for **a form of gambling that is currently banned**. Secondly, facilitating this form of gambling will also involve **incentives as regards innovation and improvements in quality and attractiveness of other types of gambling**. Opening this market will have a positive impact on competition as regards other existing betting products, such as pool betting and betting against the house; said forms may be galvanised as a result of this new competition. Finally, the cautions adopted as regards the entry into force of the order by means of the final provision set forth to this end will ensure a certain level of **competitive neutrality** concerning the moment at which the different operators may start offering this form of gambling.

Furthermore, recognition and authorisation of these operators by the Administration **will strengthen the regulated services on offer** to users, increasing the positive impact on competition.

The aforementioned opinion issued by the National Markets and Competition Commission, which analyses the impact on competition, confirms the assessments made above.

## 11. Gender impact

The draft has **no gender impact**, as it does not contain any measure that could affect equal opportunities between men and women.