



**REPORT ON THE RESOLUTION OF THE DIRECTORATE-GENERAL FOR THE REGULATION OF GAMBLING, WHICH AGREES TO AUTHORISE A METHOD OF LIQUIDITY DIFFERENT FROM THE PARTICIPATION OF SPANISH REGISTERED GAMBLERS FOR ONLINE POKER AND, BY WHICH, SEES CERTAIN RESOLUTIONS ON GAMBLING ACTIVITIES MODIFIED PROVIDED FOR IN LAW 13/2011 OF 27 MAY, ON GAMBLING REGULATION.**

## Introduction

The liquidity in any given game is the sum or common pool of the bets made by gamblers in said game.

International liquidity suggests that the bets of gamblers are not only nationally but from several countries. In the international liquidity environment, not all gamblers contributing to the common pool are subjected, due to the inherent dynamics of it, to the same national jurisdiction.

The Spanish legal regime related to the international liquidity of gambling activities is set forth in the third additional provision of Royal Decree 1614/2011, of 14 November, implementing the licensing, authorisation and registration of gambling activities under the Law 13/2011, of 27 May on gambling regulation.

This order indicates that, with the concurrence of duly accredited exceptional circumstances or, where appropriate, upon the Spanish authorities signing an agreement with other European Economic Area member states, the DGOJ would be permitted to authorise international liquidity in a given game.

In this context, on 6 July 2017, the online gambling regulatory authorities of Spain, France, Italy and Portugal signed an Agreement on shared liquidity for online poker.

This Agreement grants the enabling budget so that the Directorate-General for the Regulation of Gambling, via Resolution, can expressly authorise shared liquidity with the aforementioned jurisdictions.

Together with the provision, it is necessary to modify certain technical resolutions of the Directorate-General for the Regulation of Gambling so that the technical gambling systems of the gambling operators wishing to access this new framework have sufficient guarantees on security, traceability and control.



## Legal basis

This Resolution is prepared based on articles 21.4, 21.5, 21.9 and 21.14 of Law 13/2011, of 27 May, on Gambling Regulation, which enables the Directorate-General for the Regulation of Gambling<sup>1</sup> to issue instructions of a general nature to the gaming operators, to establish the necessary technical and functional requirements of gambling, to ensure that the interests of the participants are protected and, finally, to comply with legislation for the prevention of money laundering and financing of terrorism and to monitor compliance with it.

In this context, article 23.1 of Law 13/2011, of 27 May, on Gambling Regulation, stating that the Directorate-General *“may dictate those provisions which require the development and execution of the standards contained in this Law, in the Royal Decrees approved by the Government or in the Orders of the Ministry of Economy and Finance, provided that these provisions expressly enable it to do so.”*

Thus, on one hand, article 17.2 of Law 13/2011 of 27 May, indicates that the technical gambling systems of the operators must meet the conditions set out by the Directorate-General for the Regulation of Gambling. And, on the other hand, the third additional provision of Royal Decree 1614/2011 of 14 November enables the Directorate-General for the Regulation of Gambling to authorise the international liquidity itself upon *“prior agreement between the Spanish authorities and the competent gambling authorities of other European Economic Area member states.”*

Therefore, on 6 July 2017, the Directorate-General for the Regulation of Gambling signed a non-regulatory Agreement<sup>2</sup> with the online gambling regulatory authorities of France, Italy and Portugal to enable online poker competitions to be held with shared liquidity amongst users in Spain, France, Italy and Portugal and consequently the supposition allowing this Management Centre to authorise international liquidity in Spain.

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<sup>1</sup> Pursuant to the Tenth additional provision of the Establishment of the National Markets and Competition Commission Act 3/2013, of 4 June, the Directorate-General for the Regulation of Gambling, under the aegis of the Ministry of Finance and Public Administrations, will assume the purpose, functions and powers attributed by the Gambling Act 13/2011, of 27 May, to the now defunct National Gambling Commission.”

<sup>2</sup> Prior to its signing, the Agreement was reported by the State Legal Services in the State Secretariat for Finance and by the Technical Secretariat-General of the Ministry of Finance and Public Administrations.

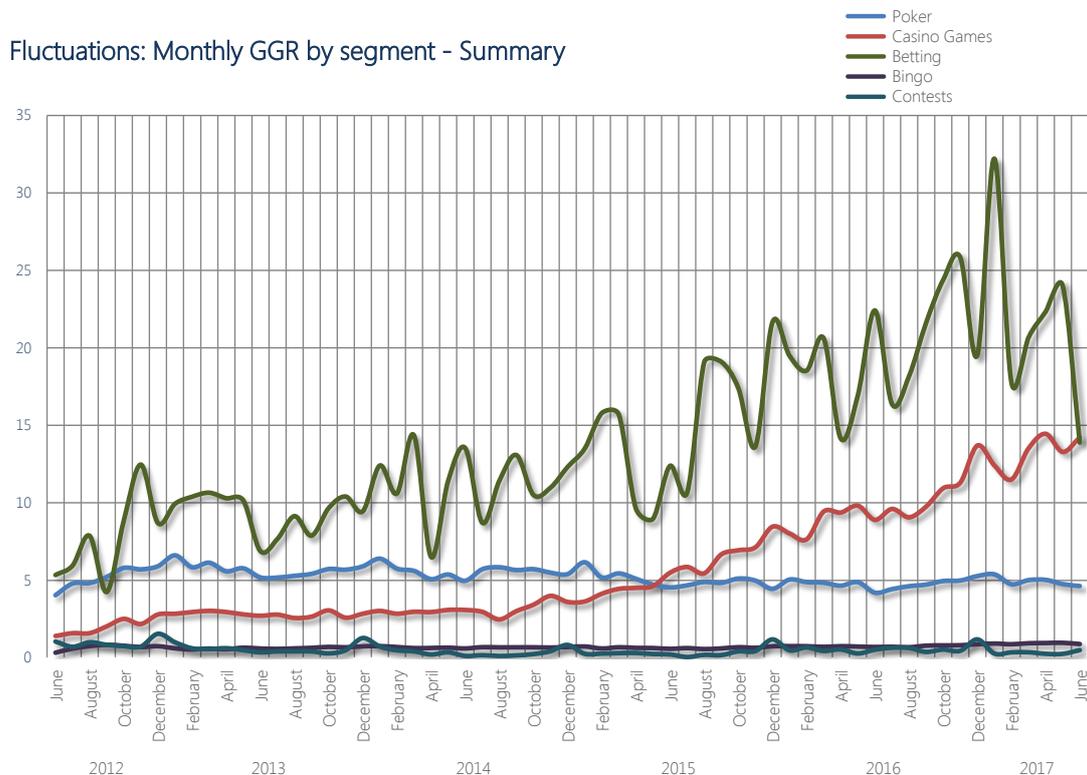


Context and justification of the opening of liquidity for online poker provided for in the first section of the Resolution

The banning of international liquidity was due, at the time Law 13/2011 was published, to the need to develop a new regulated market as tightly controlled as possible.

Limiting liquidity to Spanish registered gamblers supposes a restriction to the potential development of a given game, especially pool or fee betting as with poker where gamblers take part or compete against each other.

With it being impossible to establish a single cause, the evolution of the online poker gambling market in recent years at a national regulated level has not been positive as can be inferred from the data in the following graphic which shows the evolution of the various gambling segments in terms of GGR<sup>3</sup>:



<sup>3</sup> GGR (Gross Gaming Revenue): Total amounts spent on participating in gambling, less the prizes paid by the operator to the participants, i.e., the net income of the operator.



This online poker market evolution in Spain does not align with that which would be expected considering that it is based on a previous non-regulated market and that the first years of the regulated market (2012 and 2013) coincide with significant investment of the operators on advertising and promotions which should have led, in following years, to a clear net effect of market generation and an increase in its competitiveness, and with a greater protection of public interests which the LRJ specifically protects, in addition to a greater tax return on the activities carried out by gambling operators.

Additionally, the banning of international liquidity in the online poker sector may be generating a series of adverse effect for the market, amongst which are:

- Reduction in market size: The restriction of international liquidity eliminates the benefits of network externalities<sup>4</sup> for users, making poker much less attractive to consumers, by reducing the range of products, the availability of bets and their amount.

As a result, there is a loss of the products potential which the consequent dissatisfaction of the average user who then seeks more interesting alternatives which causes a reduction in channelling demand towards the Spanish regulated environment. This increases the risk of turning to a non-regulated operator.

On the other hand, market contraction results in a decrease in competition as it forces out those operators with a lower pool of consumers and limits the growth aspirations of those who remain. Likewise, such a market is not attractive when trying to attract new operators.

- Low profitability of the companies: In this situation, companies -especially small ones- and those offering products whose attractiveness depends on the common pool they are able to attract find difficulties in getting a sufficient number of users to achieve adequate profitability.

All this takes place in an intense tax and regulatory context which the high level of public intervention which exists in the regulated online gambling market, combined with the high weight of fixed costs in the operators' costs structure, typical of an e-commerce business, and the substantial investment required in advertising and

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<sup>4</sup> In economic terms, network externalities allude to the fact that the use obtained from an asset, person, depends on the number of individuals consuming it.



promotions to be competitive -over 280 million euros in 2016 for national online gambling as a whole.

With the inability of being able to reach minimally profitable scales of operation or critical mass for network effects to materialise, the profitability of companies falls which leads to the inevitable exit of some operators from the market, usually those having a smaller scale or customer base. This is evident in the available data: we have moved from a situation in 2014 where there were 27 operators with a specific licence for poker to, in June 2017, there only being four active platforms offering this game.

- Decrease in tax revenues: The migration of consumers and operators exiting the market is detrimental to tax revenues when dealing with the environment subject to taxation.

An increase in the illegal gambling industry results in a greater number of operators not paying IAJ (Tax on Gambling Activities) nor the amounts corresponding to obtaining the required licences.

In this context, it is considered that a dramatic measure such as opening up liquidity in poker to users registered outside Spain would favour its viability.

In the game, greater "liquidity" corresponds to an environment in which the volume of bets is higher, either due to an increase in the number of participants, the average amount gambled per participant or a combination of the two. Predictably, this will result in a strengthening of competitiveness by improving the fundamental quality variables of the product, for example the prizes awarded, the differentiation in games and platforms or greater innovation to make the game more attractive to participants and, consequently, the greater potential for operators and the tax income derived from it.

By introducing international liquidity, the aim is to stimulate demand for regulated gambling, allowing companies to achieve sufficient income to be profitable and to compete in suitable conditions with the corresponding benefits for consumers who could be offered more advantageous conditions such as a more diverse offering, innovative products, etc.



In short, the configuration of an international liquidity model for online poker aims to revitalise the market and provide positive effects for both operator and consumer.

- On one hand, consumers could access more interesting tables for both the level of prizes as much as the quality of the game to increase the number of gamblers on the tables.
- On the other hand, operators can develop a more interesting offering, which will predictably attract more customers and, therefore, more profits and also result in greater tax revenues derived from the profits of this activity.

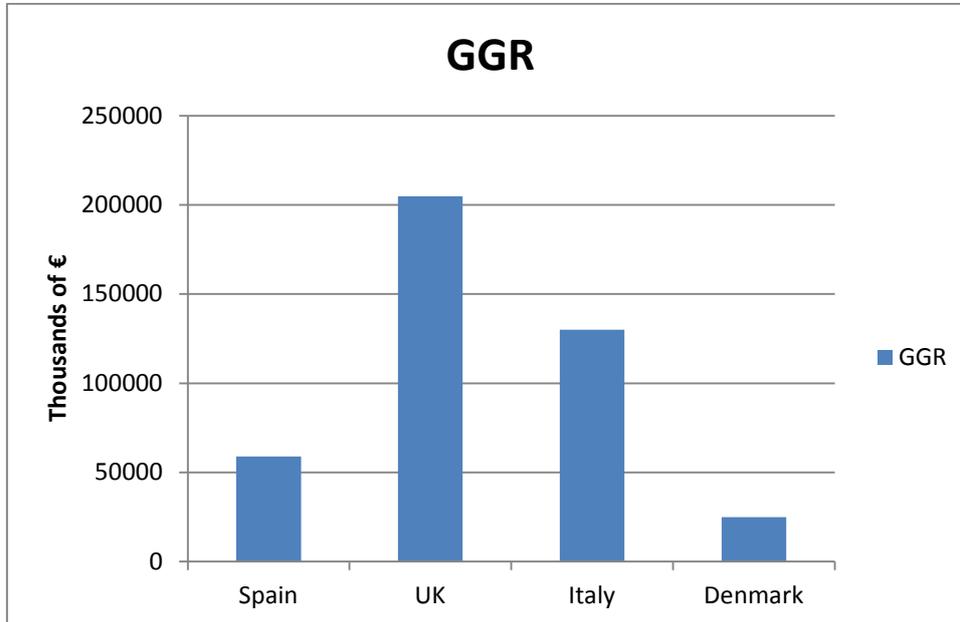
All this will result in greater channelling to the online gambling activity, in this case poker, through the regulated market.

#### **Comparison with the international situation**

The absence of EU regulation on online gambling results in a diverse set of regulations and markets in which some States have authorised, or at least haven't banned, liquidity (such as the United Kingdom, Denmark, Belgium, Czech Republic, Malta, Austria or Finland) and others have not.

In respect of the circumstances which have led some to establish these different regulations, what we are trying to show in this section is that the situation of the online poker markets which allow international liquidity is better than those which don't; as liquidity has fundamentally more positive effects.

Thus, in terms of GGR, a comparison can be made between two markets which allow international liquidity, the UK and Denmark, and two whose regulation doesn't, Spain and Italy.



Data from September 2015 to September 2016

Spanish Source: DGOJ quarterly report/International Source: Gambling Compliance; iGaming

If we take into account that the population of Denmark (5.7 million) is more than eight times less that of Spain (46.5 million), or ten times less that of Italy (60.8 million), it can be concluded that the Danish online poker market generates a higher net income *per capita* than either the Spanish or Italian markets.

In this sense, the UK, with its population of 65 million -4 million and 18 million more than Italy and Spain respectively- logically shows a higher GGR but with a population difference with Spain and Italy much less than that between those and Denmark.

Context and justification for modifying the Resolutions of 6 October 2014 set out in the second and third sections of the Resolution

Notwithstanding the modifications which exclusively affect the opening of international liquidity in the online poker market, whose context and justification have been explained throughout the previous section of this report, this resolution has a much broader scope.



The second and third sections of this resolution modify, on one hand, the Resolution of 6 October 2014, from the Directorate General for the Regulation of Gambling, approving the regulation which elaborates on the technical specifications for gambling, traceability and security that must be met by the non-reserved technical gambling systems licensed under Law 13/2011 of 27 May on Gambling Regulation, and on the other hand, the Resolution of 6 October 2014, from the Directorate General for the Regulation of Gambling, approving the data model of the information monitoring system corresponding to the gambling operations records.

The purpose of the modification to these two sections is to determine the technical basis on which any opening of liquidity in Spain will occur. That is, these modifications will not only affect online poker in an environment of international liquidity, but also any other game -after receiving the express authorisation of the Directorate-General for the Regulation of Gambling- may be offered in the future with a liquidity different to that of the participation of Spanish registered users.

#### Alternatives to the implementation of the liquidity model derived from the Agreement of 6 July 2017

The implementation of an international liquidity model requires weighing the degree of openness that one wishes to achieve with the control over the information of users and operators. This dichotomy gives rise to two distinct variants, from less to more openness:

- In the first, operators are authorised to allow their users with a Spanish gambling account to compete with gamblers from certain countries, so that the liquidity will be that resulting from combining the common pool of users of those countries.
- In the second, liquidity would be authorised in such a way that users with a Spanish gambling account could compete with users from any country in the world.

When choosing which model is most suitable, it would be the one which would allow opening in the most streamlined and effective manner possible for the market whilst having sufficient guarantees on controlling the activity.



In the present case, international liquidity in online poker which is going to be authorised through this Resolution, as it is linked to the Agreement of 6 July 2017 between the online gambling regulatory authorities in France, Spain, Italy and Portugal, will be exclusively between countries of the European Economic Area, with similar regulations not only in regard to online gambling but also other equally sensitive areas such as the protection of personal data, prevention of money laundering and financing of terrorism or the fight against fraudulent activities.

Notwithstanding that which is appropriate in relation to other games or in future contexts, there are several reasons why a liquidity shared mechanism for poker has been chosen at the present time from the signing of an agreement with certain countries of the European Economic Area.

First, it is a project on which the signatory jurisdictions of the agreement have been working with a high level of involvement and reciprocal commitment for a long time, albeit in some cases, i.e. France, legislative amendments have been needed to allow this possibility.

Secondly, it is considered particularly appropriate for poker to establish a reinforced framework of collaboration between jurisdictions in order to strengthen the prevention and fight against fraud. This is notwithstanding the fact that control of the co-organising operators and platforms will mainly fall on the Spanish side in their capacity as operators licensed in Spain, which allows a high degree of enforceability of the regulatory conditions which may be applicable, under penalty of sanctions or even removal of the licence.

Third, from the standpoint of the mechanism's effectiveness, it is considered that, taking into account the sizes of the poker markets of, in particular, France and Italy, the shared liquidity mechanism will guarantee a substantial improvement in the size of the common pool which, at the moment, is capable of bringing together the demand of the regulated Spanish poker market itself.

Additionally, and beyond the size of the respective markets, it should not be forgotten that with poker, a game in which all participants play against each other simultaneously, and unlike other games, the optimisation of the consequences of an increase in liquidity or common pool of players (more attractive prizes in cash tables and large-scale tournaments, and greater availability of players to set up tables) is to make a greater number of players at tables and tournaments possible. For this purpose, and given the concentration of the gambling activity at certain times of the day, it is foreseeable that the common pool of players with countries from solely our geographical and time zone, such as France, Italy and Portugal, sufficiently favours this.



## Content of the Resolution

The Resolution is structured in two parts. These parts, although having a close relationship with each other, also have a remarkable feature which differentiates them.

On one hand, following the signing of the Agreement of 6 July 2017, this Resolution authorises operators to request a specific licence to develop and operate online poker and for those already holding such a license to offer this game in an international liquidity environment.

In this sense, they must standardise their technical gambling systems to adjust to this new possibility; in addition, they must expressly communicate the date on which they intend to launch this new system, and try to ensure that Spanish gamblers have adequate and sufficient prior knowledge of the new environment in which their participation in the game will take place.

On the other hand, this Resolution also modifies two Resolutions from the Directorate-General for the Regulation of Gambling. Firstly, it modifies the Resolution of 6 October 2014, from the Directorate-General for the Regulation of Gambling, approving the regulation which elaborates on the technical specifications for gambling, traceability and security that must be met by the non-reserved technical gambling systems licensed under Law 13/2011 of 27 May on Gambling Regulation and which the technical gambling system, secondly, also modifies the Resolution of 6 October 2014, from the Directorate General for the Regulation of Gambling, approving the data model of the information monitoring system corresponding to the gambling operations records.

The purpose of modifying these two resolutions is to design a technical system which affords sufficient guarantees to be able to implement any game offered in an international liquidity environment in Spain, regardless of what type of liquidity (open or shared) is referred to.

This means that the technical design which derives from the modification of the two aforementioned resolutions must serve not only to be able to develop, thanks to the Agreement of 6 July 2017, online poker in a shared liquidity environment, but also accommodate, in the future, the possibility of marketing other games with international liquidity, under a shared model (prior Agreement with certain jurisdictions) and fully open.



### **Special reference to the processing of personal data.**

The new model designed by this Resolution affects the processing of personal data which has been made from the online gambling environment by the Directorate-General for the Regulation of Gambling as follows:

*1.- Inclusion of personal data of gamblers with non-Spanish user registration in the technical gambling system of operators offering games in an international liquidity environment.*

On one hand, the technical gambling system of those operators wishing to offer online poker in an international liquidity environment will keep records and logs of all transactions which have taken place between the with a Spanish user record and the remaining gamblers, which means that this system now holds data corresponding to gamblers with a Spanish user record (as is currently the case) in addition to the personal data of gamblers without a Spanish user record.

The preservation of this data, to which the Directorate-General for the Regulation of Gambling, in exercising its investigative and control powers provided for in Law 13/2011, of 27 May, could have access (as derived from the provisions of articles 18.4 and 21 of Law 13/2011, of 27 May, and sections 5 and 6 of the Resolution of 6 October 2014, of the Directorate-General for the Regulation of Gambling, which approves the provision by which the technical specifications of the game, traceability and security are developed) is essential to guarantee adequate control and a sufficient degree of inspection of the gambling operations carried out in an environment in which players from different jurisdictions coexist, thus contributing to the fight against fraud and in compliance with legislation for the prevention of money laundering and financing of terrorism.

Naturally, said data, whose collection and inclusion into the technical gambling systems by the respective operator must have been carried out in accordance with the provisions of Organic Law 15/1999 and its development provisions, will be dealt with by the Directorate-General for the Regulation of Gambling in accordance with the same regulations.

In any event, and to clarify the scope of the processing of personal data described in this section more specifically, this new framework will be common to all games in which international liquidity is gradually authorised, either by means of an Agreement or generic authorisation, in accordance with that set out in the third additional provision of Royal Decree 1614/2011.

This means that, if in the future, the Directorate-General for the Regulation of Gambling expressly authorises the opening of international liquidity in an open liquidity context compared to other games or broadens the scope of liquidity which is now being implemented



for online poker, the model would remain the same, i.e., the Directorate-General for the Regulation of Gambling would still be able to access personal data related to the unique user identifier and its jurisdiction.

## *2.- International transfers of personal data.*

On the other hand, the Agreement of 6 July 2017, which has the legal nature of a non-regulatory Agreement, provides for the possibility that online gambling regulators exchange personal data about the gamblers of their respective jurisdictions, in accordance with their respective regulations regarding personal data.

In this regard, the Directorate-General for the Regulation of Gambling, by virtue of the powers attributed to it in article 21 and article 24 of Law 13/2011, of 27 May, and the fact that the countries have signed the Agreement are part of the European Economic Area, can communicate personal data of gamblers with a Spanish user record to the online gambling regulatory authorities of France, Italy and Portugal or of those who have signed the Agreement, as long as its Member States are part of the European Economic Area. This communication of data must, in any event, comply with the regulations on personal data in Organic Law 15/1999 and its implementing provisions. In turn, the Directorate-General for the Regulation of Gambling, after the corresponding request to the online gambling regulatory authorities of France, Italy or Portugal, can receive personal data from gamblers who interact in the field of any of those jurisdictions, which logically must be collected in accordance with the provisions of Organic Law 5/1999 and its implementing regulations.

If in the future the Directorate-General for the Regulation of Gambling expressly authorises the opening of international liquidity with jurisdictions outside the European Economic Area, whether for poker or for any other game, with the added intention of being able to communicate personal data to the gambling regulatory authorities of those jurisdictions, it would be an international transfer of data which should be in accordance with the regime established in Organic Law 15/1999 and its implementing regulations and, from 25 May 2018, that provided in Regulation (EU) 2016/679. In this regard, it is necessary to emphasize that the mere signing of a memorandum of understanding with the regulatory authorities of these other States would not be sufficient basis in itself to make such an international transfer of data, unless such document establishes the guarantees appropriate in this regard and, in addition, was at the same time subject to express authorisation by the Director of the Spanish Data Protection Agency.



### *3.- Modification of Order HAP/2478/2013, of 20 December.*

As a result of both types of personal data processing, and in parallel to the processing of this Resolution, Order HAP/2478/2013, of 20 December, which regulates the personal data files in the department and in certain public bodies attached to it, must be modified in order to adapt the files of the Directorate-General for the Regulation of Gambling which are affected by this new legal framework.

#### Description of the process

The project was open for public consultation between 28 July 2017 and 1 October 2017, with no formal allegations received during said process.

In addition, the following reports were requested and received in this project's process:

- National Markets and Competition Commission, which generally assessed the project positively and, in addition, offers some recommendations for the writing of the MAIN, which has been attended to.
- Spanish Data Protection Agency, which validates the model of collecting and processing personal data expressly developed in this report, suggesting some details to include, which have been addressed.
- State Legal Services in the State Secretariat for Finance: which reported on the project favourably.

#### Impacts

It is estimated that no increase in public spending or a decrease in public income, either financial or non-financial, derives from this draft legislation.

Therefore, it has no impact on General State Budgets or on those of the Autonomous Communities or Local Entities.

As for the effects which will occur from an economic and competition in the market standpoint, as has been reflected throughout this report in detail, these will be positive. On the other hand, after assessing the principle of necessity and proportionality provided for in



article 17 of Law 20/2013, of 9 December, guaranteeing market unity, it has opted for the communication of the beginning of the activity with the purpose of knowing the number of economic operators putting this new environment into practice, discarding other more intrusive intervention modalities in economic activity and thus minimising the administrative burdens borne by the economic operators involved.

It would also be possible to analyse the possible impact which opening liquidity could have on public health, one of the elements whose protection is a fundamental objective of all gambling regulation. In this sense, all gambling regulation measures provided for in the Spanish legal system specifically aimed at the protection of public health continue to be fully applicable in this new environment, without there being any additional risk due to it.

To conclude, and regarding the gender impact assessment, there are no inequalities in relation to equal opportunities and treatment between men and women and, in relation to this matter, no modification of this situation is foreseen with this project, so the impact is zero.

### **Administrative burdens**

Administrative burdens are those activities of an administrative nature which must be carried out by companies and citizens to comply with the obligations derived from the regulation. In the case of companies, the administrative burdens are those which must be borne in order to comply with the obligations to facilitate, preserve or generate information about their activities or production, to make them available and for enactment, where appropriate, by public authorities or third parties.

From this point of view, and notwithstanding the costs for operators which may derive from it in different orders, the provided regulation involves the emergence of an administrative burden only for those operators already holding a specific licence for poker, in that they will have to submit a request to approve their technical gambling systems, on the understanding that said changes are substantial.

The following table states them, with reference to the article where they are included, and calculates them according to the methods and estimates established in the Methodological Guide for the preparation of the Regulatory Impact Analysis Reports:



Administrative burden	Origin	Cost	Units	Frequency	Population	Subtotal
Authorisation report request	First section of the Resolution	€5	1	1	11	€55
Submission of communication to start the activity	First section, letter c) of the Resolution	€2	1	1	11	€22

<sup>5</sup> After the entry into force of law 39/2015, of 1 October, of the common procedure of the Public Administrations, it is understood that the submission is made electronically.