# EXECUTIVE SUMMARY

<table>
<thead>
<tr>
<th>Promoting Ministry/Body</th>
<th>Ministry of Finance and Public Administrations.</th>
<th>Date</th>
<th>30/11/2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title of the standard</td>
<td>Royal Decree on commercial communications related to gambling activities and responsible gambling.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report Type</td>
<td>Pursuant to article 3 of Royal Decree 1083/2009 of 3 July regulating regulatory impact analysis reports.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## OPPORTUNITY AFFORDED BY THE PROPOSAL

<table>
<thead>
<tr>
<th>Regulated situation</th>
<th>Regulatory development of commercial communications on gambling and responsible gambling (articles 7 and 8 of Law 13/2011 of 27 May on Gambling Regulation).</th>
</tr>
</thead>
</table>
| Goals to be achieved| - Protect public interests (public health) coming together in gambling activities and, especially, in the protection of those who are underage and other vulnerable groups, to prevent gambling addiction and other risks associated with gambling.  
- Protection to consumers and users, participants and citizens in general  
- Complete and update the regulation of the gambling market at a national level  
- Provide greater legal security to gambling operators, setting transparent rules applied uniformly in the sector, without unjustly discriminating the agents involved.  
- Strengthen and adapt monitoring, control and the penalty system in regulation issues, bringing in administrative mechanisms to promote self-regulation and co-regulation. |
| Main alternatives considered | - The alternative of not addressing these modifications would not be appropriate.  
- The limited regulation to strengthen the advertising self-regulation system would not be sufficient.  
- Establishing regulation based around prohibition would, in general, be disproportionate and unjustified.  
- Modifying Law 13/2011 of 27 May is neither appropriate nor necessary. |

## CONTENT AND LEGAL ANALYSIS
<table>
<thead>
<tr>
<th>Type of standard</th>
<th>Royal Decree.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Structure of the Standard</strong></td>
<td>Thirty articles grouped into three Titles, two transitional provisions, one exemption provision and two final provisions.</td>
</tr>
</tbody>
</table>
| **Reports to request** | - National Markets and Competition Commission  
- Ministry of Health, Social Services and Equality  
- Audiovisual Board of Andalusia.  
- Audiovisual Board of Catalonia.  
- Spanish Data Protection Agency  
- Other ministerial departments  
- Management Centres of the Ministry for Finance and Public Administration  
- Technical Secretariat-General  
- Council of State |
| **Audience consultation** | Public consultation through the websites of the Ministry of Finance and Public Administration and the Directorate-General for the Regulation of Gambling. |

## IMPACT ANALYSIS

### SUITABILITY TO THE ORDER OF POWERS
The project is in accordance with the distribution of powers system

### ECONOMIC AND BUDGETARY IMPACT

- **Effects on the general economy.** Positive due to strengthening the channelling of the gambling on offer to the regulated market and providing legal certainty to the agents involved. Costs derived from compliance with the contained and proportional standard.

- **In relation to the competition.**
  - □ The standard has no significant effects on competition.
  - □ The standard has positive effects on competition.
  - □ The standard has negative effects on competition.
<table>
<thead>
<tr>
<th>From an administrative burden standpoint</th>
<th></th>
<th>From a budgetary standpoint, the standard</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Supposes a reduction in administrative burdens. Estimated amount:___________</td>
<td></td>
<td>■ Involves new administrative burdens. Estimated amount: 45,032 euros</td>
<td>□ No effect on administrative burdens.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GENDER IMPACT</td>
<td>The gender impact of the standard is</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>□ Negative  ☑ Zero  □ Positive</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OTHER IMPACTS CONSIDERED</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OTHER CONSIDERATIONS</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling.**
*Version dated 30/11/2017.*

This text of this site is an unofficial English translation of the official texts in Spanish. The latter will prevail in case of discrepancies.
REGULATORY IMPACT ANALYSIS REPORT OF THE ROYAL DECREE ON COMMERCIAL COMMUNICATIONS RELATED TO GAMBLING ACTIVITIES AND RESPONSIBLE GAMBLING.

CONTENTS

EXECUTIVE SUMMARY ....................................................................................................................... 1

CONTENTS ......................................................................................................................................... 4

1.- INTRODUCTION ............................................................................................................................ 6

2.- LEGAL BASIS AND LEGISLATIVE STATUS OF THE PROJECT ......................................................... 6

3.- OPPORTUNITY AFFORDED BY THE STANDARD ............................................................................. 7

3.1 Context of the initiative ....................................................................................................................... 7

3.2 European and comparative initiatives .............................................................................................. 12

3.3 Advertising: the need to rationalise, give coherence and consistency to the current regime .......... 13

3.3.a) The strengthening of the enforceability and correction mechanisms currently in force .......... 13

3.3.b) The review of the current Code of Conduct content ................................................................ 16

3.4 Responsible gambling: the appropriateness of reinforcing the content of current regulations ..... 17

3.5 Alternatives ....................................................................................................................................... 18

4.- LEGAL ANALYSIS: CONTENT, OBJECTIVES AND JUSTIFICATION OF THE MEASURES INCLUDED IN THE REGULATION ........................................................................................................... 19

4.1 Description and structure of the royal decree .................................................................................. 19

4.2 The protection of public health as a starting point ........................................................................... 20

4.3 Gambling advertising: adopted measures and reasoning ................................................................. 25

4.3.a) Description of the measures ..................................................................................................... 25

4.3.b) The reconciliation of the objective pursued with regulated gambling advertising .................. 31

4.3.c) The subjective scope: the subjecting of all gambling operators to a single regulatory instrument ...................................................................................................................................................................... 36

4.3.d) The material scope: Analysis of the justification and proportionality of the measures in the royal decree ...................................................................................................................................................................... 39

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling.

This text of this site in unofficial English translation of the official texts in Spanish. The latter will prevail in case of discrepancies
4.3.e) Co-regulation, self-regulation and administrative supervision ................................................ 63

4.4 Responsible gambling: measures adopted and justification ................................................................. 64

4.4.a) Description of the measures ........................................................................................................... 64

4.4.b) Analysis of the justification and proportionality of the measures .................................................. 67

4.4.c) Measures related to responsible gambling which were initially considered and then discarded ........................................................................................................................................................................ 73

4.4.d) Modification of the deposit time limits scheme ............................................................................... 73

5.- PROCEEDINGS ............................................................................................................................. 74

5.1 Public consultation period .................................................................................................................. 74

5.2 Procedures, consultations and reports collected .................................................................................. 75

Reopening of the proceedings in 2017 ................................................................................................... 76

6.- STANDARDS WHICH ARE REPEALED ............................................................................................. 76

7.- ECONOMIC IMPACT AND THE COMPETITION ............................................................................. 76

7.1 Impact on the structure of the offer and competition in gambling at a national level .................... 76

7.2 Impact on gambling at a regional level .............................................................................................. 77

7.3 Impact on the costs of the operators and other agents involved ....................................................... 77

7.4 Impact on the markets related to national level gambling, in particular to advertising .................. 78

8.- IMPACT ON THE CONSTITUTIONAL ORDER OF POWERS ............................................................... 78

9.- BUDGETARY IMPACT ................................................................................................................... 78

10.- ADMINISTRATIVE BURDENS ...................................................................................................... 79

11.- IMPACT DUE TO GENDER ........................................................................................................... 80

APPENDIX I ...................................................................................................................................... 80

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling.

This text of this site in unofficial English translation of the official texts in Spanish. The latter will prevail in case of discrepancies.
1.- Introduction

The current version of the regulatory impact analysis report of the Royal Decree Project on commercial communications and responsible gambling corresponds to the version of the aforementioned project which was put out to public consultation on 30 November 2017.

The standard began its journey on 23 March 2015 before the entering into force of the reformed Law 50/1997 of 27 November, of the Government, by final provision 3.12 of Law 40/2015 of 1 October on the Legal Regime of the Public Sector. It results, therefore, in application of that pursuant to the third transitory provision of Law 40/2015, of 1 October, which states "the procedures for the preparation of standards which are being processed in the Central State Administration to the entry into force of this Law will be substantiated in accordance with the provisions of the regulations in force at the time they were initiated."

This is, therefore, the second public consultation to which to the project has been subjected. Given the time which has elapsed, the body responsible for preparing the project has deemed carrying out a new public consultation to be suitable, from the position of transparency and the will to reinforce the success and the timeliness of the text.

This report has been prepared pursuant to the provisions of article 24.1 a) of Law 50/1997, of 27 November, of the Government, and article 1.2 of Royal Decree 1083/2009, of 3 July, regulating the regulatory impact analysis report, in force at the time of the start of the project, in accordance with the provisions of the sole transitional provision of Royal Decree 931/2017, of 27 October, regulating the Regulatory Impact Analysis Report.

Its structure is in response to the model referred to in article 3 of Royal Decree 1083/2009, of 3 July, and section V of the Methodological Guide for preparing the regulatory impact analysis report.

2.- Legal basis and legislative status of the project

The legal basis for moving forward to this regulation is constituted by articles 7 and 8 of Law 13/2011, of 27 May, on gambling regulation (hereinafter, either, Law 13/2011, of 27 May or LRJ), as well as the Second final provision of the aforementioned legal standard, which enables regulatory development of the LRJ by the Government.

The legislative status of the initiative, a royal decree from the Council of Ministers, is justified, starting from the general authorisation for the exercise of the regulatory power afforded to the Government in article 23 of Law 50/1997, of 27 November, of the Government and, more specifically in regard to gambling, in article 23.1 of the LRJ, in the cross-cutting nature of this regulation and in its importance for the government action itself, developed by the Government, as a whole.

Notwithstanding the foregoing, the function of the proposing body corresponds to -in accordance with the aforementioned second final provision of the LRJ- the Ministry of Finance and Public Function, with the function of its technical preparation falling to the Directorate-General for the Regulation of Gambling (DGOJ), in accordance with, at this current time, article 7 of Royal Decree 769/2017, of 28 July, implementing the basic organisational structure of the Ministry of Finance and Public Function and modifies Royal Decree 424/2016, of 11 November, establishing the basic
organisational structure of the ministerial departments and, at its beginning, the equivalent article of Royal Decree 256/2012, of 27 January, implementing the basic organisational structure of the Ministry of Finance and Public Administrations.

3.- Opportunity afforded by the standard

3.1 Context of the initiative

The processing of this royal decree began in 2015 in response to a series of opportunities which are still current at this time.

The entry into force of Law 13/2011, of 27 May, on gambling regulation involved recognising a national level gambling market, including the creation of a legal online gambling market in order to prioritise certain general interests, in particular the fight against fraud and citizen protection. The intention of this standard is to guarantee the compatibility of the aforementioned general interests with the viability of the regulated market. In fact, as a suitable and proportionately regulated, robust and viable market, which serves to channel the gambling activity to the detriment of the unregulated market results in greater protection of public interest, both objectives are not contradictory but synergistic.

In regard to ensuring public health and, from a broader standpoint, consumer protection, among the many implications and reporting policies of gambling regulation, those relating to commercial communications and responsible gambling stand out in the scope of applying the legal standard. Respectively, articles 7 and 8 of the LRJ contain the general provisions relating to them at the legislative level.

The first of these principles is based on the need to have a licence carry out gambling activities and the authorisation to carry out the advertising activity therein contained and then, in its second section, the regulatory development of the conditions to consider for such purposes, referring in particular to:

- The sending of advertising or promotional communications by e-mail or any other equivalent means of electronic communication, which will only be possible if previously authorised by the addressee, in accordance with the provisions of section one of article 21 of Law 34/2002, of 11 July, on Information Society Services and Electronic Commerce.

- The inclusion of advertisements or other advertising means of gambling in the media and advertising media.

- Sponsorship in sporting events which are subject to betting.

- The placing of billboards for gambling activities in the places where events are held whose results are subject to betting or lotteries.

1 According to the definition in article 3 section a) of the LRJ, gambling means any activity in which sums of money or items of economic value in whatever form are staked on future and uncertain results, depending on chance to some extent, and which allow these sums to be transferred between the participants, regardless of whether the skill level of the gamblers is decisive in the results or whether they wholly or fundamentally on luck, stakes or chance. The prizes may be in cash or kind depending on the form of gambling.
The holding of television contests and the obligations regarding information on the essential requirements of the game.

Any others established by regulation.

Article 8 of the LRJ states the content of responsible gambling policies, approached from gambling being a complex phenomenon where preventive, awareness-raising, intervention and control actions must be combined, in addition to measures to remedy any negative effects caused, and establishing certain obligations for operators. These obligations are reinforced in the case of public lottery operators which, in accordance with article 4 of the LRJ and notwithstanding compliance with the obligations referred to in article 8 of the Law, must draw up a Plan of Measures which specifies the additional commitments acquired by the operator stemming from responsible gambling management, participation in repairing its negative effects and their contribution to plans, projects or actions in benefit of society.

Responsible gambling should therefore be understood as the set of elements making up the offer and consumption of gambling, which promote an informed and sensible decision by consumers, and which lead to a reduction in the risk of problematic, compulsive or pathological gambling behaviours arising.

The current royal decree develops these two very important regulatory dimensions of gambling regulation coherently and systematically as they have an intimate relationship in one of its central objectives; the protection of public health in the execution of gambling activities.

The task of developing the two aforementioned legal principles does not start, in any case, from a total absence of regulation on these matters at a national level. At present, different provisions in Law 13/2011, of 27 May, and its implementing standards are already contemplated, albeit in a scattered manner, affecting the wider responsible gambling policies and those with a greater degree of completion.

In regard to the advertising framework:

The Ministerial Orders through which the basic regulations of the different games are approved contain different provisions on the generic conditions to carry out the promotional activity to which each game is subject.

This framework is complemented by the co-regulation agreements and self-regulation systems implemented under the provisions of section 5 of article 24 of the aforementioned state law on gambling regulation.

Thus, on 17 November 2011, the Co-regulation agreement on advertising, sponsorship and promotion of gambling activities was signed between the Directorate-General for the Regulation of Gambling (DGOJ) of the then Ministry of Economy and Finance, and the Association for the Self-Regulation of Commercial Communications (Autocontrol) to establish a relationship framework which would allow mutual cooperation in the monitoring of advertising of gambling activities at a national level. On 7 June 2012, this Agreement was complemented by a new Agreement signed by the two previous bodies and the General Subdirectorate for Content of the Information Society (Secretary of State for Communications and the...
Information Society) to establish a Code of Conduct for Commercial Communications on Gambling Activities.

- The aforementioned Code of Conduct, of which there are currently 67 member entities (between providers of audiovisual communication services, press editors, advertising agencies, information society service providers, associations and gambling operators),

 establishes a series of ethical principles, in addition to specific additional rules for the issuance of commercial communications through electronic communications services. Likewise, it coordinates implementation rules, such as the creation of a Monitoring Commission, a system to resolve disputes and claims out of court, or the possibility of using a consultation mechanism prior to publishing advertising.

On the other hand, various standards contain provisions related to responsible gambling:

- For example, Royal Decree 1613/2011, of 14 November, implementing the technical requirements of gambling activities under Law 13/2011 of 27 May on gambling regulation, establishes related to the identification of the gambling participants as well as the enforcement of gambling exclusions to those underage or self-excluded. Likewise, Royal Decree 1614/2011, of 14 November, implementing the gambling licences, authorisations and registries under Law 13/2011 of 27 May on gambling regulation, includes provisions relating to gambling access, information for the participant about their gambling activity, the deposit limits and the possibility of reducing them, or the General Register of Gambling Access Bans (hereinafter RGIAJ), under which, along with other aspects, the rights of citizens to be prohibited from participating in gambling activities can be made effective.

- Likewise, the Ministerial Orders which approve the basic regulations of the different types of gambling contain specific measures in terms of responsible gambling in relation to specific types of gambling. As examples, we can highlight those relating to slot machines, with provisions related to the prior configuration of the session, the closing of it when determined thresholds are exceeded or the establishment of periodic user notifications about the time spent playing.

- Equally, the Ministerial Orders which have been approved so far to regulate the respective calls for general gambling licenses at a national level have included the obligation that applicant companies submit an Operating Plan, pursuant to article 10.2 of the LRJ. The Operating Plan should contain details of the operator’s responsible gambling policy, including measures aimed at preventing addictive gambling, raising awareness on the risks associated with excessive gambling and alleviating the detrimental effects of gambling with a minimum determined content.

- Finally, at a technical level, the obligations established in the various regulatory instruments are reflected in the DGOJ Resolutions, in particular with regard to responsible gambling:

  - Both on technical specifications, which regulate the obligations established for the operators' technical systems.

---

2 Initially there were 69 entities. Seven have been terminated as gambling operators and, at the date of this report, where are five new members.

3 Principally, the Resolution of 6 October 2014 of the Directorate-General for the Regulation of Gambling (DGOJ), which approves the provision implementing the technical specifications of gambling, traceability and security which non-
those of an administrative or operational nature, and related to certain specific aspects of the operation particularly related to responsible gambling.

Notwithstanding the above, six years since the bringing into effect of the regulated market, for several reasons, now particularly opportune to complete the regulatory development of both principles.

Firstly, the journey followed since the enactment of the LRJ and the start of the regulated online gambling market at a national level allows precise differentiation between those aspects of the regulation and the functioning of the market which have worked reasonably well and, in fact, contributed to achieving the standard’s purpose, and those which need correction or reinforcement.

Secondly, certain structural changes in the configuration of the online gambling market have appeared which, once consolidated, will suppose a reconfiguration in their breadth and depth. Thus, the forms of gambling approved by the respective Ministerial Orders of July 2014, relating to betting-exchange and online slot machines—whose regulation has included remarkable measures in terms of protecting gamblers—have made it possible to complete the regulated gambling on offer in Spain and, therefore, have encouraged the full operation and consumption of this type of gambling in the legal environment. On the other hand, and in parallel with this, the call for general licences published in October 2014, the first since the initial call which took place in 2011, has allowed the entry of a considerable number of new operators into the regulated market, which is expected to be repeated in successive calls, such as the one planned to begin in December 2017.

Finally, throughout this regulated market period, all players involved in the gambling market, both regulators as well as operators and consumers, have been developing awareness and the perception of the appropriateness of reinforcing protection to gamblers and, more broadly, to citizens, set in the commercial communication and responsible gambling policies as keys to that protection, in counterbalance to an increasingly less prescriptive approach regarding the configuration and the development of the different games.

Thus, at a regulatory level, the European Commission Recommendation of 14 July 2014 on principles for the protection of consumers and users of online gambling services and the prevention of online gambling among minors is of particular relevance at a European level.

reserved technical gambling systems subject to licences granted pursuant to Law 13/2011, of 27 May on gambling regulation, and Resolution of 12 July 2012, of the DGOJ, approving the provision implementing articles 26 and 27 of Royal Decree 1613/2011, of 14 November in relation to the identification of gambling participants and the control of the individual gambling exclusions must meet.

For example:
- Resolution issued on 16 November 2011 to set the responsible gambling and problem gambling prevention test, in accordance with article 36 of Royal Decree 1614/2011 of 14 November, which implements Law 13/2011 of 27 May regulating gambling matters pertaining to licences, authorisations and gambling registers.
- Resolution issued on 12 July 2012 approving the provision implementing articles 26 and 27 of Royal Decree 1613/2011 of 14 November with regard to identifying gambling participants and monitoring individual gambling exclusions.

Specifically, Order HAP/1369/2014 of 25 July, approving the basic regulations for betting-exchange, and which amended various ministerial orders that approved the basic regulations for particular games, and Order HAP/1370/2014 of 25 July, approving the basic regulations for slot-machine gambling.

Implemented through the aforementioned Order HAP/1995/2014, of 29 October, approving the terms of reference that shall govern the invitation to apply for general licences for engagement in and operation of gambling activities under Law 13/2011, of 27 May on gambling regulation.

For example, in addition to those mentioned, Order HAP/1998/2013, of 22 October modifying various ministerial orders relating to different types of gambling, which relaxed certain elements in the conditions of running bingo and betting.

In addition, within its **Responsible Gambling Strategy**, the DGOJ has launched its website dedicated to responsible gambling (www.jugarbien.es), which aims to be an active space to promote the healthy taking part in this entertainment activity and for awareness-raising and information about the emergence and development of problematic, obsessive and pathological gambling behaviours and, where appropriate, assisting in their detection and, if necessary, their channelling and remedy.

- Likewise, the regulation of advertisement of national, public and private-level gambling has been demanded from different academic, scientific and consumer protection forums, as a means to modulate the negative impact of gambling on minors, young people and problem gamblers, as well as intensifying regulatory provisions regarding responsible gambling.

- Also in the **parliamentary sphere**, there have been pronouncements in this regard. For example, in February 2015, a motion was presented in the Senate, for debate in the Plenary, urging the Government to statutorily regulate gambling advertising at a national level and adopt certain measures in that area to protect the minors and heighten awareness of the youth population, a motion which was approved on the 18th of that month by the Senate Plenary. Likewise, and once the parliamentary activity was resumed throughout the current legislature, in 2017 several parliamentary initiatives have been presented to the Congress of Deputies requesting the enactment of a Royal Decree on commercial communications of gambling activities at a national level.

- Finally, the Government has included the addiction to gambling, within addictions without substance, in its renewed **National Strategy on Addictions**, to be approved shortly and in force for the next few years, which will include addictions without substance or behavioural, and may include actions relating to the way in which gambling is presented and affects our society.

---

9 For example, amongst other documents "Los menores y la publicidad de los juegos de azar en línea", Fórum d’entitats de persones usuàries de l’audiovisual, from October 2014.

10 The motion states:

   "The Senate urges the Government to:
   1. Start formal processing to enact the Regulation of advertising and responsible gambling, for gambling activities at a national level, in development of articles 7 and 8 of Law 13/2011, of 27 May on gambling regulation.
   2. Restrict schedules, in order to protect minors from the dissemination of commercial communications online gambling.
   3. Establish, in order to protect minors, the total ban on advertising online gambling in spaces specifically aimed at them such as websites, social networks, games or applications.
   4. Carrying out of awareness-raising and prevention campaigns aimed at the youth population.
   5. Restriction, in order to protect minors, from the promotion or advertising of the names or gambling products through sports team sponsorship.
   6. Continue developing clear, concise and strict regulation on the different induction programmes for the different forms of online gambling, with an emphasis on regulating advertising, especially to minors. And, as an action point, study the possibility of including the elimination of gambling induction techniques in the responsible gambling strategy in relation to the most vulnerable sectors of the population, such as minors."

   Available at: [http://www.senado.es/legis10/publicaciones/pdf/senado/bocg/BOCG_D_10_475_3195.PDF](http://www.senado.es/legis10/publicaciones/pdf/senado/bocg/BOCG_D_10_475_3195.PDF)

11 For example, in March, a proposal was submitted for a Law of the Citizens Parliamentary Group in which the Government is urged to approve, upon prior consultation with specialised organizations on these issues as well as expert associations in the prevention of online gambling addictions, a new Royal Decree on commercial communications of gambling activities and responsible gambling; and in April a proposal for a Law of the Socialist Parliamentary Group in which the Government is urged to regulatory develop articles 7 and 8 of Law 13/2011, of 27 May on gambling regulation in relation to the advertising of gambling activities and consumer protection and responsible gambling policies at a national level.
The specific reasons which have led to the timely enactment of this royal decree in relation to each of these two elements are specified below.

3.2 European and comparative initiatives

At the international level, we can say that the decision to regulate online gambling with the fundamental objective of protecting gamblers and, more broadly, citizens of the corresponding jurisdictions is a clearly consolidated trend. Thus, the countries of a certain importance which had already chosen such an option since the beginning of online gambling regulation in their jurisdictions, such as France, Italy, Denmark, Belgium or Spain itself, have joined others such as Portugal, Ireland, the Czech Republic or the United Kingdom itself, which with its 2014 Gambling Act changes the philosophy of its regulation to the "point of consumption". All these countries, among others, have standards in which the protection of public health, and the advertising and responsible gambling framework within it has significant importance.

At a European level, of particular note is the enactment of the aforementioned European Commission Recommendation of 14 July 2014 on principles for the protection of consumers and users of online gambling services and the prevention of online gambling among minors stands out at a European level. This document, which follows up on the previous work of the Commission and the European Parliament, proposes a catalogue of measures which can be divided precisely into two large groups. On one hand, those of consumer protection on gambling and citizens in general, with particular emphasis on the groups susceptible to special consideration; and on the other, those relating more specifically to the commercial conditions, including commercial communications, of the gambling on offer online.

Appendix I to this Regulatory Impact Analysis Report lists all the measures proposed by the European Commission Recommendation, detailing in which regulation of the current legislation the measure in question is incorporated and, if not, indicating if it is going to be incorporated into this Regulation. In any case, the analysis of this Recommendation's content, whose proposals are non-binding for the Member States, shows that the Spanish state regulations already comply with the vast majority of the measures included in it, as shown in the following Table and which is detailed in the aforementioned Appendix.

Table 1. Relative importance of the measures currently in force, including those included in the European Commission Recommendation of July 2014.

<table>
<thead>
<tr>
<th>SCOPE OF THE MEASURE</th>
<th>Recommendation of the Commission</th>
<th>National legislation in force</th>
<th>Current compliance %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Website elements</td>
<td>10</td>
<td>10</td>
<td>100</td>
</tr>
<tr>
<td>Terms and conditions of the gambling contract</td>
<td>4</td>
<td>4</td>
<td>100</td>
</tr>
<tr>
<td>Measures to protect minors</td>
<td>10</td>
<td>7</td>
<td>70</td>
</tr>
<tr>
<td>Measures related to identifying the user</td>
<td>10</td>
<td>7</td>
<td>70</td>
</tr>
<tr>
<td>Responsible gambling measures</td>
<td>10</td>
<td>9</td>
<td>90</td>
</tr>
<tr>
<td>Commercial communications</td>
<td>6</td>
<td>1</td>
<td>16.7</td>
</tr>
</tbody>
</table>

12 That is, regulation - and consequently the tax regime - is established having the territory in which the gambling activity is consumed as a reference, not that from which it is offered.

13 The 2011 Green Book on online gambling in the Internal Market; Communication "Towards a comprehensive European framework for online gambling", of 23 October 2012.

14 Resolution of the European Parliament of 10 September 2013 on online gambling in the internal market.
For its part, at a regional level regulatory changes in the sphere of gambling advertising and responsible gambling are occurring which suggest that, from the state point of view it provides a true, stable and lasting mark in such aspects.

Thus, in the last few years, different Autonomous Communities have approved specific rules for regulating the advertising of gambling in their respective Autonomous Community. This is the case of, for example, Castilla-La Mancha (2013), Castilla-Leon (2013) or Valencia (Decree of 2011, modified in 2014), which are added to existing regulations such as those of Aragon (2006). The remaining Autonomous Communities have regulated advertising in their general rules on gambling. Although the majority of them subject advertising activity to prior authorisation, or limit it to operators with a gambling licence in that Autonomous Community, the different regulatory philosophies are not convergent, existing from more liberalised contexts and without specific conditions beyond general advertising, audiovisual and e-commerce regulations—in the case of the Community of Madrid, Castilla-Leon or the Canary Islands—to other more prescriptive and restrictive ones.

Likewise, responsible gambling and the problems derived from pathological gambling have also been of interest to Autonomous Communities. In this regard, the specific reference made by the Gambling Law of Asturias is noteworthy, or the references which exist in the regulation on drug addiction—one of La Rioja or the Balearic Islands or Law 1/2016, of 7 April on Comprehensive Addiction and Drug Addiction Care in the Basque Country.

In this context, the regulation of the advertising and responsible gambling framework applicable to gambling at a national level is appropriate for several reasons. Firstly, for what is a possible reference model for, where appropriate, the Autonomous Communities which decide to enact similar gambling regulation subject to their scope of application. Secondly, because some Autonomous Communities may decide to make total or partial referrals to the content of the state framework for their own field of application.

3.3 Advertising: the need to rationalise, give coherence and consistency to the current regime

There are certain reasons which lead to the current regime being deepened and updated through regulatory development.

3.3.a) The strengthening of the enforceability and correction mechanisms currently in force

The regulatory development will reinforce the capacity to supervise and control commercial communications on gambling both from the point of view of administrative action and from the perspective of the co-regulation agreements currently in force—today the fundamental channel of controlling advertising—and those which may exist in the future.

Thus, from the point of view of administrative responsibility, to illustrate the current situation it is sufficient to refer to article 40.d) of the LRI, which establishes as a serious breach, with fines of between 100,000 and one million euros, "promoting, sponsoring and advertising gambling subject..."
to this Law, or intermediation actions, when the persons doing so do not have a licence or when these are distributed in breach of the conditions and limits set in the permit or in breach of the current rules in this regard, irrespective of the medium used”.

The royal decree will imply the completion of that framework’s content, to the extent that this will be the reference standard in the matter, which today does not exist in the legal system.

The non-existence of an LRJ development standard which establishes the principles and conditions of the advertising activity systematically and fully causes the effectiveness of the administrative control of gambling commercial communications subject to the scope of the LRJ to be limited. With this, the possibility of redirecting problematic behaviours is left to the ethical principles and the adjustment and supervision mechanisms envisaged in the existing co-regulation and self-regulation agreements, currently the Code of Conduct on gambling activities which operators adhere to voluntarily.

A first undesirable consequence of the above is the excessive disparity between adherence and non-adherence to the Code of Conduct: the former, both gambling operators and other agents in the advertising chain, are subject to a more or less demanding degree of control in their commercial communications, while in the latter, beyond the fact that advertised gambling corresponds to licensed operators, no contrast can be made, at least directly. From a material point of view, this means that the current supervisory regime rests almost exclusively on the incentive of the interested entities to adhere to the code, which introduces risks to its effectiveness in the future. In particular, taking the current market context into account, general licences to new operators whose adherence to the code is to be verified will shortly be granted, and the two most important national operators have not yet signed it.

The regulation of such an important and transcendental element to achieve the objectives of the LRJ, such as the regime of advertising gambling activities, cannot rest exclusively in a co-regulation system without a regulatory framework which eliminates that absolute material difference of scenarios depending on the adherence or not to it.

This is because said system, by its very nature, is based on the will of the agents involved in the advertising process; not only gambling operators, but also advertising agencies, the media, information society services, etc. Said will rests not only in the ability of the interested parties to adhere or not to the agreement and the code of conduct which complements it, but also in the ability to resort or not to the control mechanisms of this type of agreement, such as the report of previous consultation or the reporting of practices contrary to the code before the claims resolution systems. Similarly, the adherence of an operator or other interested entity does not prevent a subsequent withdrawal from the agreement in the case, for example, that a future modification of the code is promoted.

This circumstance is likely to generate significant differences in the regime applicable to advertising gambling activities depending on whether the operator or, even, the means of communication through which the advertising is disseminated, do or do not adhere to the Agreement which can generate, in addition to considerable competitive distortions, dysfunctions which are difficult to explain in the development of responsible gambling policies which all operators included under the

---

16 Indirectly, the principles and mechanisms of the Code of Conduct are applied to media which have signed the Code to issue commercial communications on gambling within the scope of application of the LRJ.
application of the LRJ must carry out in accordance within its articles 4 and 8. With this, in short, the ultimate achievement of pursuing public health protection objectives is undermined.

Additionally, the existence of a legal reference framework at the regulatory level will positively affect the effectiveness of the mechanisms provided for in the Code of Conduct in relation to controlling commercial communications of those adhering to it.

In this regard, it is possible to start from what the data relating to the prior consultations received since the implementation of the Code show, as shown in the following table.

**Table 2. Results of the prior consultations or "copy advice" of adverts on gambling. Period 2012-2016**

<table>
<thead>
<tr>
<th>Feeling of the prior consultation</th>
<th>2012 (since July)</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>Total period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Num.</td>
<td>%</td>
<td>Num.</td>
<td>%</td>
<td>Num.</td>
<td>%</td>
</tr>
<tr>
<td>Positive</td>
<td>332</td>
<td>78.12</td>
<td>452</td>
<td>85.44</td>
<td>454</td>
<td>89.72</td>
</tr>
<tr>
<td>With modifications</td>
<td>75</td>
<td>17.65</td>
<td>69</td>
<td>13.04</td>
<td>50</td>
<td>9.88</td>
</tr>
<tr>
<td>Negative</td>
<td>18</td>
<td>4.24</td>
<td>8</td>
<td>1.51</td>
<td>2</td>
<td>0.4</td>
</tr>
<tr>
<td>Total</td>
<td>425</td>
<td>100</td>
<td>529</td>
<td>100</td>
<td>506</td>
<td>100</td>
</tr>
</tbody>
</table>

*Source: Annual Autocontrol reports.*

It can be seen that, in the whole period, 83% of commercial communications subject to prior consultation did not present any problem, and of those which did, the initial issues were satisfactorily resolved through the modifications required and made in 15% of the cases, and only in 2% was the withdrawal of the advertising recommended. These figures are generally in line with the activity of Autocontrol, in which positive inquiries are around 87%, communications needing modifications at 10% and negative inquiries at 3% in the period considered.

For 2015-2016, the number of prior consultations on gambling activity increased slightly, supposing 3.2% of the total queries issued by Autocontrol in this period (in 2015, it represented 3.6% of a total of 21,716 queries, in 2016, 2.9% of a total of 26,199 queries and, in the period 2013-2014, this was 2%). That is, a weight relatively similar to that represented, in terms of advertising investment, by online gambling on total advertising in conventional media (according to INFOADEX the advertising for the total gambling activity, whether at the national or regional level, was 3.01% for 2015 and 3.69% in 2016). This trend is also reflected in the number of prior consultations on gambling requested, greater in the period 2015-2016 than in 2013-2014.

However, the above data should be viewed in context with others, such as:

- If we look at the number of consultations per month to compare the different years, we find that in 2012 the figure was 60.7; in 2013, 44; and in 2014, 42, which reflects a decreasing trend, even if we abstract the first years to the extent that the entry into force of the regime logically implied greater uncertainty regarding its applicability. Likewise, although consultations in 2015 increased to 784 (very possibly related to the fact that new operators entered the market as a result of the general licensing procedure of 2014), in 2016 the figure decreased again, reaching 752 consultations.
If we separate it according to the means of dissemination, requests for prior consultation are very unequally distributed. Here, 72% of the consultations in 2013-2014 (743 out of a total of 1035) are related to television communications, many of them requested by audiovisual operators based on the Code itself and the remainder from the regulations applicable to them, which reverts to the number of prior consultations requested. They are followed by consultations regarding radio communications, with 18% of the total (186 queries in the period), leaving the internet only 5.4% of the total (56 queries).

This polarisation has increased in recent years: 89% of the consultations in 2015-2016 (1374 from a total of 1536) relate to television advertising; those relating to radio communications are 5% of the total (68 queries), and the internet only 2.5% of the total (38 queries).

There may be reasons contributing to this difference, such as the greater pre-eminence of television campaigns or the fact that certain interpretations of the Code made at this time have affected communications through specific channels, but the differences are appreciable. To the above it must be noted that the pattern of this evolution is not consistent. Thus, in 2013-2014, while the consultations related to television witnessed an increase of close to 50% (from 298 in 2012 to 445 in 2013), those related to radio decreased by more than 75%. The trend is consolidated in 2015-2016: consultations related to television (674 in 2015 and 700 in 2016) continue to increase, whilst those related to radio decrease by 87% (60 in 2015 and 8 in 2016).

Finally, the proportion of claims resolved extra-judicially is very low. For 2013-2014, it was 4.1% of the total claims in the period (22 of 529, of which 5 were dismissed). For 2015-2016 this was 4.5% (26 of 586, of which 9 were dismissed). These numbers are above the relative importance of the prior consultations on gambling over the total number of consultations, which may indicate that the conflict in this sector is relatively greater than in others, without the extra-judicial claims appearing to become a widespread resource. In any case, it would be a contentious conflict. However, it must be taken into account that, according to the global data from Autocontrol, 64% of the claims received in 2014 (58% in 2015-2016) were related to commercial communications related to media other than television, a medium which in 2014 accounted for 88% of the previous consultations on gambling and 89% in 2015-2016.

The previous data, on which the decision to address the 2015 project was founded, continue to advise optimising the use of the snagging and dispute resolution mechanisms provided for in the co-regulation system.

In short, the establishment of standards and principles at a regulatory level, binding on all agents related to gambling commercial communications, whether or not they adhere to the Code, and with legal consequences from the administrative head office in the absence of compliance, will strengthen the legal security of operators, consumers and other agents involved. This will also strengthen the existing system, increasing the incentive of those adhering to the Code to use the prior consultation and extra-judicial claim means.

### 3.3.b) The review of the current Code of Conduct content

From a substantive point of view, currently the regulation of gambling advertising within the scope of the LRJ is contained in the ethical standards of the Code of Conduct for commercial MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling. Version dated 30/11/2017.

This text of this site in unofficial English translation of the official texts in Spanish. The later will prevail in case of discrepancies.
communications on gambling of June 2012, instrumented through a series of Operators' principles of operation: legality, loyalty, identification, truthfulness, social responsibility, responsible gambling, and specificities for audiovisual communication services and the information society. With this royal decree, such content, in general, will be incorporated into a regulatory provision.

The fundamentally positive assessment of the Code of Conduct’s role as a material instrument of content management and the running of gambling commercial communications, in the terms set out, does not preclude the adaptation of such material content to the new scenario, derived from the experience acquired, the appearance of new games and the guides contained in the European Commission Recommendation of June 2014. When incorporating it into the regulatory standard, the current context suggests refining the material content of the existing Code, fundamentally in regard to:

- Developing certain specifications related to some of the incorporated principles, in the form of specific conditions and obligations.
- Rationalising the differences in processing currently existing between games, as well as its content, strengthening in the general framework proportionally.
- Including some additional provisions, justified in terms of consumer protection in its various aspects and duly provided to strengthen the guarantee of public interest.

The analysis of the scope and justification of these changes will be made in the section related to the project’s content.

3.4 Responsible gambling: the appropriateness of reinforcing the content of current regulations

In regard to responsible gambling policies, there are several specific reasons which motivate the processing of the requirements and obligations to which gambling operators must subject themselves.

Firstly, the strengthening of the corporate social responsibility framework, an area in which, through the inclusion of specific regulatory measures which attempt to address needs or omissions perceived throughout the regulated gambling market development period, the companies themselves undoubtedly have to play a leading role and be proactive. It is fair to say that at present and, in general, operators go beyond what they are obliged by the rules, including measures on their own initiative in relation to their customers which can be considered the seed of some of the measures which are now considered in regulation. However, in the absence of such regulation, the level of protection is relatively unequal among them and it is appropriate to provide a clear minimum standard of protection at a regulatory level.

Secondly, the weight of the specific measures in terms of responsible gambling, across all gambling activity, must be greater as moves are made towards a less prescriptive regulatory model in terms of the conditions to run the different games, of which a good example is the 2014 gambling regulation of online slot machines, which leaves the fundamental variables of its design to the operators' initiative.

Finally, the overall map of regulatory obligations in terms of responsible gambling is relatively unbalanced, with specific provisions which already regulate certain elements with a relative degree of certainty— for example, user identification or inclusion in the General Register of
Gambling Access Bans, and other areas where regulatory provisions are minor or even non-existent, such as in the case of information obligations, promotion of awareness-raising studies, mechanisms for detecting problematic gambling behaviours or, once detected, the channelling of gamblers towards timely means to help.

3.5 Alternatives

From that stated above, the appropriateness of addressing the regulatory development of advertising and responsible gambling can be reasoned in relation to gambling activities subject to the LRJ’s scope of application, under the following key points:

- Regulation of commercial communications on gambling applicable to all operators, allowing such advertising activity to be carried out as a basic mechanism to channel gambling activity into the regulated market, making this compatible with adequate citizen protection, for which:
  - In material terms, deepening and modifying part of the content of the current Code of Conduct, in specific aspects where this is justified.
  - In effectiveness terms, it becomes possible to establish clear legal and administrative consequences for behaviours not in line with its content while, at the same time, reinforcing existing co-regulation mechanisms and those which may arise in the future.

- Regulation of responsible gambling obligations for gambling operators which complete the existing framework, reinforcing it in the areas where the regulation does not currently have effect, establishing requirements which do not involve a disproportionate cost.

To achieve the above, certain alternatives have been ruled out, as summarised in the following table.

Table 3. Alternative to the advertising framework and responsible gambling regulation

<table>
<thead>
<tr>
<th>Alternative</th>
<th>Implications</th>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Keeping the current situation</td>
<td>No regulatory initiative adopted</td>
<td>No significant additional cost for operators</td>
<td>Gambling advertising: reduced efficiency in administrative monitoring and less strength in the co-regulation regime. Responsible gambling: incomplete and asymmetric regime</td>
</tr>
<tr>
<td>Minimal draft legislation</td>
<td>Advertising: include ethical principles based on regulation as they appear in the Code of Conduct. Does not apply regulatory framework to reserved operators. Responsible Gambling: no provision whatsoever included</td>
<td>No significant additional cost for operators</td>
<td>Framework which is incomplete and lacking in coherence. Proposals included in the European Commission Recommendation of 14 July 2014 not included</td>
</tr>
</tbody>
</table>

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling.
<table>
<thead>
<tr>
<th>More in-depth regulatory development</th>
<th>Advertising: introduce measures which are excessively misaligned with the current Code of Conduct.</th>
<th>Increase in additional gambler protection</th>
<th>Need not contrasted. Substantial increase in gambling operators’ costs. Possible impact on channeling gambling towards a regulated environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Modification of Law 13/2011 of 27 May on gambling regulation</td>
<td>Elevation of the measures' legislative status</td>
<td>Strengthening of procedure (legislative instrument)</td>
<td>The measures are a direct development of articles 7 and 8 of the LRJ. Less flexibility in the future.</td>
</tr>
</tbody>
</table>

In short, it is considered that the net result in terms of public health protection deriving from undertaking said regulation, in the terms of the project, is clearly positive for social welfare.

4.- Legal analysis: Content, objectives and justification of the measures included in the regulation

4.1 Description and structure of the royal decree

The royal decree is made up of thirty articles grouped into four titles, four additional provisions, two transitional provisions, one exemption provision and two final provisions.

The Preliminary Title, "General Provisions", establishes the purpose of the royal decree and specifies its scope of application, both subjective and objective, with the latter encompassing all gambling activities carried out at a national level, in its different forms. Various definitions are also included and an area for institutional collaboration and coordination is provided between the authority responsible for gambling regulation with other bodies and public entities in matters subject to present regulatory development.

Title I, "Commercial communications of gambling activities", part of the regulatory development provision contained in article 7 of Law 13/2011, also deepens different aspects related to advertising, sponsorship or any other form of promoting gambling activities. For this, the essential content of the Code of Conduct for commercial communications on gambling activities of 2012 has been used, although updated with adaptations and various modifications. Therefore:

- **Chapter I** contains the legal regime of the commercial communications, the principles to be observed in gambling commercial communications and certain specific points of them.

- **Chapter II** deals with certain specific provisions. They affect, in some cases, certain forms of commercial communication, such as sponsorship or bonuses and other promotional initiatives and, in others, the different means of disseminating advertising and the different forms of gambling.

- **Chapter III** includes provisions to promote and reconcile the various co-regulation and self-regulation mechanisms in regard to commercial communications, conceived as systems which raise the level of consumer protection, ensure greater voluntary involvement of the main agents in the sector and which serve as an effective complement in fulfilling the objectives of the rules regulating gambling in advertising.
Title II, called "Responsible gambling policies and user protection", is devoted to the regulatory development of the provisions established in article 8 of Law 13/2011, of 27 May. A series of mechanisms and specific actions have been included in this area which a complementary to the current measures. Therefore, in addition to a general provision on corporate social responsibility, a series of obligations and action measures to be implemented by gambling operators have been introduced, guided by the purpose of preventing, detecting and, where appropriate, mitigating pathological phenomena -as that of gambling addiction or compulsive gambling- or other risks or problems associated with gambling. Additionally, the regulatory and control powers of the competent state body on these issues have been tightened. The different measures have been categorised into three areas:

- **Prevention**, centred on transparent and easily accessible information mechanisms to be provided to users by operators, taking the requirements and characteristics of submission, access and minimum content of such information into account, or additional aspects such as the use of public personalities on the operators' websites.

- **Awareness-raising mechanisms**, against the adverse effects of gambling, including the promoting and dissemination of studies by operators on responsible gambling, and the collaboration of operators with the Administration in the dissemination of initiatives aimed at obtaining enhanced knowledge of the activity's workings, the perception its users have of it and the risk factors linked to gambling.

- The implementation of **control systems**, among which include the obligation of operators to monitor their participants' activity to detect possible risk behaviours and the subsequent actions to be taken if detected; the provisions on temporary suspension of gambling accounts, or the implementation of a user information and assistance telephone service.

Title III refers to the **supervisory regime**. The LRJ provisions in such aspects are developed under this title, such as the termination or information requirements, and it establishes provisions on the responsibility of those subjected to the royal decree, including that derived from administrative breaches.

The final part of the standard comprises:

- **Four additional provisions** regarding certain minors, students or members of schools or charities participating in lottery draws; the specific regime of ONCE in terms of its supervision and its advertising other than that related to gambling activities; and the advertising of general or charitable interest activities, other than gambling which may be carried out, respectively, by the public operator SELAE or by public associations or foundations linked to gambling operators.

- Other **provisional provisions** on the adaptation of the current Code of Conduct to the content of the royal decree and on the applicability of the decree to sponsorship in place prior to its entry into force.

- **Two final provisions**: one concerning the modification of the current regime on limits of deposits and another on the entry into force of the Royal Decree, three months after its publication.

4.2 The protection of public health as a starting point
Pursuant to the principles of good regulation established in Law 2/2011, of 4 March on the Sustainable Economy in its article 4, the provisions contained in the regulatory initiatives must be:

- Necessary, being justified by reasons of general interest, specifically public health, and linked to the achievement of these objectives.

- Proportional, ensuring the objective pursued is achieved, after finding that there are no other less restrictive and less distorting measures which achieve the same result.

- Facilitators of stability and predictability, generating certainty, which facilitate the performance of gamblers and operators and the adoption of their economic decisions.

- Effective, starting from a clear identification of the purposes pursued, establish direct objectives, and avoiding unnecessary and incidental charges for the achievement of those final objectives.

Based on this approach (confirmed, in particular in regard to necessity and proportionality, by Law 20/2013, of 9 December, on the guarantee of market unity in its article 5, and by Law 39/2015, of 1 October, on the Common Administrative Procedure of the Public Administrations, in its article 129) the regulatory development of the regulatory framework applicable to the advertising gambling and responsible gambling must relate very closely to the protection of public health. Therefore, from the configuration of gambling as a legitimate economic, leisure and entertainment activity, and its advertising as a means to channel said gambling activity towards the regulated environment, precisely for the benefit of consumer protection, among other aspects, the limitations to both dimensions established in the royal decree must be proven to be closely linked to the proposed objective, as well as being proportionate in relation to the costs to the operators and other involved agents.

From a more specific standpoint, the royal decree’s content affects the following specific aspects, all of which are related to public health and consumer protection.

1. The protection of minors, both children and adolescents.

2. The protection of young and legal age adults, as a group that is particularly sensitive to inappropriate messages and patterns of gambling, in view of their greater neuronal plasticity.

3. The protection of gamblers, irrespective of age, with the possibility of developing a risky gambling behaviour in gambling activities, or other citizens who have already developed such behaviour.

4. And more broadly, the protection of any type of gambler, regardless of the risk presented from the previous point of view.

All of them are reflected, albeit to differing extents depending on the case, in the two dimensions of the royal decree, advertising and responsible gambling. Therefore:

---

17 The evident economic, leisure and entertainment nature of gambling, within the service sector, as opposed to other consumption, basic provision, intermediation, or public nature, etc. activities are reflected in the National Catalogue of Economic Activities, where gambling and betting is included in Group R, "Artistic, recreational and entertainment activities".

---

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling. 
With regard to advertising, the regulation includes the four aforementioned objectives, basically seeking to establish restrictions on how they are received by minors, provide a suitable perception of gambling as a complex activity which is potentially risky to consumers, prevent impetuous or compulsive gambling behaviour, and ensure that the information transferred is true and sufficient to form a true and non-distorted idea of what gambling entails.

For its part, the regulation of responsible gambling focuses significantly on objective number 3 of those previously mentioned —although it also impacts the rest to a certain extent— by pursuing specific and express actions by gambling operators. These essentially consist of: proactively informing gamblers of the risks inherent to it and its conditions; make the society aware of its potential adverse effects; detect problematic consumption patterns and channel and adequately assist players who present such patterns.

The pursuit of these objectives is not unreasonable. The most serious consequence which gambling produces is the occasional appearance of impetuous, compulsive and, ultimately, pathological consumption behaviours, based on the mechanics of psychological activation which can arise when taking part in this activity. This can interrupt the correct perception of the relationship between risk and reward in some gamblers, who lose control over their behaviour and are not able to stop gambling, despite the multiple negative implications (economic, family, social, work, personal, etc.) which this may entail. This is a situation which frequently affects not only the gambler themselves but also their socio-family environment.

These risks have been recognised through the inclusion of compulsive gambling in the DSM-V catalogue of addictive pathologies from the American Psychiatric Society, being, in fact, the only “addiction without substance” deserving of such consideration.

In Europe, Point 11 of the European Commission 2014 Recommendation mentions that, based on the comparative data collected in its Regulatory Impact Analysis Document, between 0.1 and 0.8% of the adult population in general suffer some type of disorder associated with gambling and that between an additional 0.1 and 2.2% present a potentially problem gambling relationship.

In Spain, data from the Study on the prevalence, behaviour and characteristics of gamblers in Spain, commissioned by the Directorate-General for the Regulation of Gambling in 2015, reveal that in our country 0.3% of the population over 18 has developed pathological gambling signs according to their behaviour in the last year (0.9% if we consider their behaviour throughout their lives). These data, aligned with the trend recorded in other studies which consider subsequent periods, reveal that, at a comparative level, Spain is one of the countries in which the problem gambling rate is more contained. That being said, the seriousness of these problems, as well as the wider proportion of gamblers who, not exhibiting pathological gambling behaviours themselves, are at risk of developing them, make taking the risks mentioned into account advisable.

All the above has led to the different groups for scientific, medical and consumer protection demanding measures to control the gambling activities and advertising similar to those established for other addictions, such as those associated with alcohol or other addictive...
substances, stressing measures which consider the potential vulnerability of minors and young people. In this regard, it is not possible to ignore the existing evidence regarding the influence of advertising on patterns of starting using potentially addictive substances, such as alcohol or tobacco, with the consequent risk of trivialising the risks of such consumption which an overexposure to such advertising entails—in particular depending on its content—on pre-adulthood minors.

In reality, this is not an understanding that the current gambling regulation at a national level, as well as that developed in the royal decree subject to this report, rejects or ignores. On the contrary, if the measures traditionally employed to reduce the harmful use of, for example, alcohol, with those included in gambling regulation are compared, we find that the starting philosophies are not excessively divergent, and that most of the measures recorded are already present in the regulation or will be as a consequence of the royal decree, as the following Table makes clear.

Table 4. Measures included in the Global Strategy to reduce the Harmful Use of Alcohol (WHO, May 2010). Comparison with national gambling regulation

<table>
<thead>
<tr>
<th>Scope of the intervention</th>
<th>General measure of the intervention</th>
<th>Specific measure (alcohol)</th>
<th>Equivalent measure in national gambling regulation (in force or in the royal decree)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scope 5. Availability of alcohol</td>
<td>a) implementation, start-up and enforcement of a suitable system to regulate the production, wholesale and service of alcoholic beverages and impose reasonable limits on the distribution of alcohol and the operation of its points of sale</td>
<td>i) introduce, as appropriate, a system for authorising retail marketing or state monopolies aimed at public health</td>
<td>General and specific gambling licensing, and lottery reservation regime</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ii) regulate the number and location of points of sale for alcohol, whether or not located in retail premises</td>
<td>Identification of authorised gambling websites</td>
</tr>
<tr>
<td></td>
<td></td>
<td>iii) regulate the opening days and schedules of retail outlets</td>
<td>Not applicable</td>
</tr>
<tr>
<td></td>
<td></td>
<td>iv) regulate retail sale methods of alcohol</td>
<td>Types and forms of gambling</td>
</tr>
</tbody>
</table>

This is the case, for example, of the Joint Congress-Senate Committee Report on the Study of the Problem of Drugs, published in the Official Bulletin of the Parliament on 25 March 2014. The Report includes two recommendations specifically aimed at gambling (Nos 13 and 14):
- 13. Carry out studies on addictions not linked to substances, which will allow their knowledge and approach to be advanced, their conclusions linked to the application of measures which promote the prevention and promotion of health, and regulating the use of advertising for activities which may generate addictive behaviours.
- 14. Dedicate the necessary efforts to the prevention and the approach of the addictions to new technologies, to gambling and, more specifically, online gambling, in the context of that established by the Responsible Gambling Strategy from the Directorate-General for the Regulation of Gambling, attached to the Ministry of Finance and Public Administration, approved in 2013.

ALICE RAP (Addiction and Lifestyles in Contemporary Europe Reframing Addictions Project), financed by the European Commission, follows a similar pattern in organising its research areas and comparing the different measures adopted to tackle gambling and other pathological addictions.
### Scope 6. Marketing of alcoholic beverages

<table>
<thead>
<tr>
<th>Interventions</th>
<th>Specificmarketingprovisions (for example, livebetting)</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) establishment of regulatory or co-regulatory frameworks, preferably of a legislative nature and supported, where appropriate, by self-regulatory measures, with respect to the marketing of alcohol through the following interventions:</td>
<td>i) regulation of the content and scale of the marketing</td>
</tr>
<tr>
<td>b) establishment of an appropriate minimum age to purchase or consume alcoholic beverages and adoption of other policies to hinder the sale of alcoholic beverages to adolescents and their consumption</td>
<td>ii) regulation of direct or indirect marketing in all or some media</td>
</tr>
<tr>
<td>c) adoption of policies to prevent the sale to drunk people and those who do not meet the minimum legal age, and consideration of implementing mechanisms to demand responsibility from sellers and waiters in accordance with national legislation</td>
<td>iii) regulation of sponsorship activities promoting alcoholic beverages</td>
</tr>
<tr>
<td>d) creation of policies regarding the consumption of alcohol in public places and in official activities and functions of public bodies</td>
<td>iv) restriction or banning of promotions in relation to activities aimed at young people</td>
</tr>
<tr>
<td>e) adoption of policies aimed at reducing and eliminating the availability of alcoholic beverages produced, sold and distributed informally or illegally, as well as regulating or controlling informally produced alcohol</td>
<td></td>
</tr>
</tbody>
</table>

**Banning of those under 18**

**Verification of identity, in relation to the banning of those under 18 and the self-excluded**

**Not applicable**

**Scope reinforced by the royal decree**

**Fight against illegal gambling through the penalty system and closure of illegal websites**
v) regulation of new forms of alcohol marketing, for example social media

| a) regulation of alcohol consumption to minimise violence and disruptive behaviour |
| b) requirement to comply with laws preventing alcohol being served until the drinker is intoxicated and legal responsibility for the consequences of the damages resulting from the intoxication caused by serving alcohol |
| c) adoption of management policies in relation to the responsible serving of alcoholic beverages in premises and training of staff in the relevant sectors on the best way to avoid situations of drunk and aggressive drinkers and how to identify and treat such persons |
| d) reducing the alcohol content of different types of beverages |
| e) provision of the necessary care or shelter for people with severe alcohol intoxication |
| f) supply of information to consumers about alcohol-related harm, and labelling of alcoholic beverages indicating such harm |

Addressed through regulatory development at different levels

| Not applicable |
| Deposit limit provisions |
| Obligations to detect problem gambling patterns established in the royal decree |
| Specific obligations established in certain games |
| Obligation to assist established in the royal decree |
| Information obligations established in the royal decree |

The foregoing shows that, from the standpoint of creating public policies and the general objectives of gambling regulation, protection of public health is perhaps the fundamental axis, and the degree of intensity of such protection is comparable to that demanded in relation to other consumptions susceptible of causing pathological addiction, and will be reinforced with the entry into force of the royal decree subject to enactment.

4.3 Gambling advertising: adopted measures and reasoning

4.3.a) Description of the measures

In the case of gambling advertising, the objective of protecting public health is based on:
The side of the **scope of application**: it implies all gambling and operators in the scope of the LRJ being subject to the royal decree.

In terms of the **content of commercial communications**, it aims to:

- Provide a truthful information framework to the consumer.
- Protect minors both as participants in commercial communications (banning such participation) and as receivers of them, reducing the risk of trivialising their perception of the gambling activity with an eye on their future approach, where appropriate, to consumption of the activity.
- In line with the above, avoid a distortion or simplification of the complexity of the gambling phenomenon and the trivialisation of its negative effects, by itself or through excessive highlighting of the benefits and supposed positive consequences of chance.
- Decrease the invitation to unthinking or compulsive consumption in commercial communications broadcast at certain times or under certain circumstances which may enhance the desire for immediate consumption.
- Accommodate the regulation specifically applicable to advertising different games to its characteristics, in particular to the immediacy in knowing the result and the continued or successive consumption as factors, if not in creating long-term addictions, but of unthinking consumption.

From the standpoint of the **conditions of receiving advertising** by those it is aimed at, the regulation seeks to additionally protect minors and, where possible, those who are self-excluded.

In terms of the **institutional protection** framework, it aims to strengthen the enforceability of compliance with the rules and principles in the administrative area and strengthen the effectiveness of co-regulatory mechanisms.

The following table analyses the **causality and proportionality of the main new ideas** contained in the royal decree regarding advertising, highlighting particularly those differences with the situation in the current Code of Conduct. Subsequently, the justification and coherence of these measures will be studied in depth. The table includes the approaches and drafting as a consequence of possible modifications which have taken place since the first version of the project.

**Table 5. Main new ideas of the royal decree in terms of commercial communications on gambling**

<table>
<thead>
<tr>
<th>Article</th>
<th>Purpose</th>
<th>Description of the measure</th>
<th>Purpose sought</th>
<th>Link with the purpose</th>
<th>Proportionality</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Scope of application</td>
<td>Includes operators within the scope of the LRJ; including those with reserved lottery.</td>
<td>Coherence. Assimilate protection standards, without prejudice to justified specificities between games</td>
<td>The measure is strictly necessary for this purpose</td>
<td>Non-discriminatory measure and without significant cost for operators</td>
</tr>
<tr>
<td>Article</td>
<td>Purpose</td>
<td>Description of the measure</td>
<td>Purpose sought</td>
<td>Link with the purpose</td>
<td>Proportionality</td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
<td>-----------------------------</td>
<td>----------------</td>
<td>-----------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>10</td>
<td>&quot;Gamble responsibly&quot; message</td>
<td>Commercial communications will include it and, if possible, it must be clearly visible at all times</td>
<td>Reinforce the impact of the message</td>
<td>Recurrent presence of the appeal to gamble responsibly</td>
<td>No significant cost. Characteristics included in the case of radio communications. An exception in the case of contests.</td>
</tr>
<tr>
<td>10-11</td>
<td>Participation of significant persons or public personalities</td>
<td>Ban their participation if they are specifically attractive for children or young people. Outside of such cases, they can be referenced or participate in commercial communications provided the responsible gambling or &quot;minors banned&quot; message is prominent and subject to additional conditions</td>
<td>Protection of minors. Do not associate images of success with gambling, particularly attractive to young people or minors. Awareness of the various gambling risks</td>
<td>The ban reinforces the protection of minors. When allowed, the message by the public personality increases its spread and sharpness</td>
<td>No significant cost. Cost insofar as it is included in the message itself. Less restrictive regulation than the exhaustive ban.</td>
</tr>
<tr>
<td>11</td>
<td>Advertising media related to minors</td>
<td>Ban the placing of advertising in physical or online spaces aimed primarily or exclusively at minors, as well as advertising related to betting on events related with minors</td>
<td>Separate the advertising message and reception from the minor’s sphere</td>
<td>The ban reinforces the protection of minors</td>
<td>No significant cost in terms of availability of advertising spaces.</td>
</tr>
<tr>
<td>11</td>
<td>&quot;Minors banned&quot; message</td>
<td>Commercial communications will include it and, if possible, it must be clearly visible at all times</td>
<td>Reinforce the impact of the message</td>
<td>Recurrent presence of the appeal to gamble responsibly</td>
<td>No significant cost. Characteristics included in the case of radio communications.</td>
</tr>
<tr>
<td>Article</td>
<td>Purpose</td>
<td>Description of the measure</td>
<td>Purpose sought</td>
<td>Link with the purpose</td>
<td>Proportionality</td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
<td>-----------------------------</td>
<td>----------------</td>
<td>-----------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>11</td>
<td>Protection of minors on social networks, in environments, media or content aimed at or attractive to minors</td>
<td>Avoid advertising in channels, media, programmes, websites, events aimed at minors. On social networks, advertising can only be disseminated through corporate profiles or to users of legal age.</td>
<td>Protection of minors</td>
<td>Social networks are used extensively by minors and it is appropriate to prevent excessive gambling advertisements in environments which are non-exclusively for adults. This reasoning similarly applies to channels, websites and events</td>
<td>No significant cost for operators who more effectively target their gambling advertising. Limited cost for social networks and channels, media and websites for children or youths</td>
</tr>
<tr>
<td>12</td>
<td>Regulation of sponsorship</td>
<td>Conditions and requirements for sponsoring operators and their dissemination</td>
<td>Complete the commercial communications regulation</td>
<td>Necessary to safeguard the coherence and effectiveness of the standard</td>
<td>Limitations strictly weighted and related to the veracity of the sponsorship and the protection of minors</td>
</tr>
<tr>
<td>12</td>
<td>Sponsorship related to sporting activities</td>
<td>Not allowable in events aimed at minors nor in goods or services designed for minors</td>
<td>Protection of minors</td>
<td>The use of the message in the context of goods and services aimed at minors increases the risk of the activity being trivialised by these</td>
<td>Very limited cost, without loss of sponsorship More considered alternative to a total ban</td>
</tr>
<tr>
<td>13</td>
<td>Promotional bonuses and initiatives</td>
<td>Applicability to all types of commercial promotions (welcome or loyalty bonuses, free bets, etc.). Information on conditions for the commercial communication itself and on the website. Specific rules for short-duration radio pieces</td>
<td>Compatibility of the guarantees of truthfulness and responsible gambling with the possibility of commercial communication in this medium</td>
<td>Appropriate to endorse the threshold at 10 seconds.</td>
<td>Limit provided. In any case, certain information must be mentioned, and the promotion is subject to additional conditions</td>
</tr>
<tr>
<td>13</td>
<td>Promotional bonuses and initiatives</td>
<td>Limit the maximum amount of the bonus to 500 euros, except for tailored promotions to specific customers</td>
<td>Indirect protection of the truthfulness of the promotion in regard to its gratuity. Link with responsible gambling by preventing promotions which lead to gambling after a predetermined threshold</td>
<td>Appropriate to establish a reasonable absolute limit due to the increasing complexity of the commercial promotions regarding the conditions to release the bonus</td>
<td>Limit provided. Impact contained in accordance with current commercial practice.</td>
</tr>
<tr>
<td>Article</td>
<td>Purpose</td>
<td>Description of the measure</td>
<td>Purpose sought</td>
<td>Link with the purpose</td>
<td>Proportionality</td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
<td>-----------------------------</td>
<td>----------------</td>
<td>-----------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>14</td>
<td>Communications of gambling subject to prior user registration aimed those registered in the RGIAJ (self-banned) or voluntarily suspended from the operator’s platform (self-excluded)</td>
<td>Banned</td>
<td>Protection of particularly sensitive groups</td>
<td>Need to protect gamblers in the RGIAJ or ex-gamblers with problem gambling</td>
<td>Can be integrated into the operators’ commercial practice without major technical cost</td>
</tr>
<tr>
<td>14</td>
<td>Online advertising</td>
<td>Cannot automatically overlay the main content of the page or application</td>
<td>Protection of minors and particularly sensitive groups</td>
<td>Suitability of limiting exposure to aggressive and unwanted gambling advertisements when browsing regular websites</td>
<td>Limited scope of the restriction, allowing gambling advertising to be placed on websites beyond such limits</td>
</tr>
<tr>
<td>14</td>
<td>Online advertising</td>
<td>Advertising may not be placed on web pages which in turn promote gambling activities of entities without a licence in Spain where presented as aimed at Spanish users, or on web pages whose content infringes applicable regulations on intellectual property.</td>
<td>Fight against unauthorised gambling; integrity of the web sites through which the advertising activity of operators licensed in Spain is channelled</td>
<td>No linking of the activity of operators to illegal activities, whether related to gambling or of another nature (online content piracy)</td>
<td>Can be channelled through the proper control of the operators and their advertising space providers and affiliates</td>
</tr>
<tr>
<td>14</td>
<td>Online advertising</td>
<td>Obligation to include identifier for parental control tools</td>
<td>Protection of minors</td>
<td>It encourages those responsible for minors to design the protection of minors under their care in relation to the type of advertising they receive</td>
<td>Can be integrated into the operators’ commercial practice and advertising diffusion channels without major technical cost</td>
</tr>
<tr>
<td>14</td>
<td>Online advertising</td>
<td>Obligation of social networks with a user profile to have filtering mechanisms which prevent the appearance of commercial communications</td>
<td>Protection of particularly sensitive groups and additional reinforcement on the protection of minors</td>
<td>Suitability of limiting exposure to aggressive and unwanted gambling advertisements when using social networks</td>
<td>Aligned with existing content filtering mechanisms in social networks which work through popular user profiles</td>
</tr>
<tr>
<td>14</td>
<td>Online advertising</td>
<td>Banned in hours of increased protection. Outside of those hours, limiting the content to certain elements, excluding bonuses, incitements to bet immediately or the ”cash-out” of bets, advertising of ”in</td>
<td>Not encouraging unthinking behaviours at particularly favourable moments such as the broadcast of live matches</td>
<td>The limitation of certain information, and the full identifiability of commercial communication as such, reduce the incentive to become compulsive</td>
<td>No cost for operators nor disproportionate limitation on their ability to decide their commercial strategy. There is a margin to make betting advertising sufficiently</td>
</tr>
</tbody>
</table>

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling. 
<table>
<thead>
<tr>
<th>Article</th>
<th>Purpose</th>
<th>Description of the measure</th>
<th>Purpose sought</th>
<th>Link with the purpose</th>
<th>Proportionality</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>17</strong></td>
<td>Audiovisual advertising of gambling marketed under the &quot;Other gambling&quot; general licence</td>
<td>Possibility that bingo is advertised outside the range established for &quot;Other Gambling&quot;, subject to the functional separation between bingo and other gambling</td>
<td>Allow advertising of bingo according to the specificities of the game, avoiding other gambling to be advertised illicitly at the same time</td>
<td>The specifics for bingo are already contemplated. The functional separation in the presentation of the different games allows for a reasonable amount of bingo advertising</td>
<td>Limitation can be included perfectly in advertising operations and offer of operators who market bingo along with other gambling</td>
</tr>
<tr>
<td><strong>17</strong></td>
<td>Audiovisual advertising of gambling marketed under the &quot;Other Gambling&quot; general licence</td>
<td>Banning of bonuses during live broadcasts of sporting events</td>
<td>Coherence of purpose and effect with the rule established for betting</td>
<td>The betting operators also offer casino games. Convenient to avoid promotions of the globally considered activity in these spaces</td>
<td>Non-absolute limitation, allowing it outside such spaces according to the Other Gambling audiovisual advertising general rules</td>
</tr>
<tr>
<td><strong>18</strong></td>
<td>Audiovisual advertising of lotteries and raffles</td>
<td>They are included in the royal decree, differentiating between the pre-drawn and those time lagged</td>
<td>Distinction between greater or lesser immediacy of the game</td>
<td>The protection to the person seeing the advertising must be adapted according to the game's characteristics</td>
<td>Non-absolute limitation, although it implies a lesser possibility of finding advertising space for the affected operators</td>
</tr>
<tr>
<td><strong>30</strong></td>
<td>Interaction between co-regulation and the penalty system</td>
<td>Existence of a positive prior consultation report will presume the operator's good faith. Additional possibility of favourable decision from the extra-judicial resolution body</td>
<td>Reconciling the co-regulation agreement with that of the penalty administrative authority. Coherence of the system</td>
<td>The capacity of the extra-judicial resolution must be arranged in the context of the possibility of a disciplinary file for the same events. Reconciliation of both systems.</td>
<td>Unobjectionable from the operators' costs standpoint. Effectiveness of the guaranteed system in any case</td>
</tr>
</tbody>
</table>
4.3.b) The reconciliation of the objective pursued with regulated gambling advertising

Recognising the importance of protecting public health as a key objective of gambling regulation and, in particular, the royal decree being processed, there are several reasons which advise, however, a weighted approximation to the specific implementation of the measures gambling advertising and responsible gambling ordination, insofar as they restrict the reserved and non-reserved gambling activity:

- The general principle of recognising gambling as a legitimate leisure and entertainment activity, whose advertising also, in relation to the authorised offer, serves to channel the activity into regulated environments, with the consequent improvement in terms of protecting the consumer among others.

- The possible divergence in the intensity and incidence of gambling activities in relation to other substance consumption. For example, in relation to alcohol, specifically, in addition to its different nature (a product in one case, a service in another), there are indicators which show very different figures; for example, in per capita spending (in 2015, in Spain, spending on alcohol was €709.49 per person per year, and gambling, €77 per person per year)\(^21\).

- In regard to advertising, although the relationship between both variables has been sometimes noted, no scientific evidence has been found which measures or shows a clear correlation, according to recent analyses, between the mere existence of advertising gambling activities and the occurrence of problem gambling patterns based on the available evidence (without prejudice to that which specific advertising practices may have)\(^22\). This can of course be differentiated from the fact that gambling advertising affects

---

\(^21\) Data from the study “El gasto en tabaco, alcohol y juego 2016” (Expenditure on tobacco, alcohol and gambling 2016) EAE Business School (www.eae.es). Note that the concept of per capita expenditure differs from that of expenditure per gambling or, even, that of spending per capita over 18 years old.

\(^22\) Additionally, See. Binde, P. (2014), Gambling Advertising: a critical research review, where it states:
- "It is very difficult, if not impossible, to assess how many people gamble excessively because of direct or indirect influence from advertising. Part of the difficulty of measuring the impact of advertising on problem gambling is that it is, in general, most probably relatively small” (p.1).
- "The impact of advertising on the prevalence of problem gambling is in general likely to be neither negligible nor considerable, but rather relatively small. Advertising is one of many environmental factors that contribute to the prevalence of problem gambling. The total environmental impact may be substantial. Only in particular
some gamblers than to others, in particular those gamblers who develop a more intense23 gambling activity, which clearly reinforces the need to regulate it with particular emphasis on these groups.

- In the case of lotteries, operated by reserved operators through all marketing channels and also included within the scope of the royal decree, their full consolidation in the Spanish socio-economic arena.

- In regard to the online gambling:

  - The particular characteristics of this consumer environment, where accessibility to products and services which are neither legal nor regulated in the consumer’s physical jurisdiction is much greater than in the physical environment, which increases the consumer’s sensitivity to disproportionate restrictions to consumption being imposed and, consequently, strengthens the illegal market.

  - The lack of scientific analysis, beyond the link between the phenomenon with the new technologies young people and minors are particularly familiar with and the observation of a quicker way to the possible generation of problems derived from gambling, from the existence of inherent, differential and qualified harm of online gambling, compared to that marketed by in-person channels24,25.

conditions, such as extensive advertising for especially risky forms of gambling that are offered on an immature market with few if any player protection features (such as stake limits and possibilities for self-exclusion), may one assume that advertising in itself substantially contributes to problem gambling” (p.50)

- The study shows that, in previous contributions, the same author has developed impact indicators on such incidence, albeit entirely conclusive, which in any case advise a cautious approach in this regard: “There is no measurement of any kind of the impact that advertising has on the prevalence of problem gambling in a country. However, the present author (Binde, 2007b) has made an estimate of the scale of impact; recent reviewers of the field have found the estimate to be fair and sensible (Planzer & Wardle, 2011; Williams et al., 2012a). The estimate relies on the scant information that exists, complemented with general knowledge about how advertising works, and results from studies on alcohol advertising, and asks the simple question whether the impact is large, small or none. Although such an estimate certainly is approximate, it is of value because it gives an idea of the possibilities of measuring the impact more precisely – a larger impact would be easier to detect and measure than a small one. The conclusion is that, in general, the impact of advertising on the prevalence of problem gambling is relatively small. However, it is not negligible and in specific circumstances it is likely to be greater” (p.18).


- This study involved more than 6,000 subjects and examined three specific aspects on the impact of gambling advertising: involvement, personal attitudes related to gambling, interests and behaviour of the gamblers; knowledge about the options and offerers of gambling (knowledge) and degree of self-awareness related to gambling advertising.

- The study essentially shows that gambling advertising has an appreciably greater impact on intense gamblers and, therefore, those with the greatest possibility of being or becoming problem gamblers, compared to those taking part occasionally or recreationally, with it acting on the incitement to gamble.

24 In this regard, this may be consulted:

- Gainsbury, S. et al (2014), “The interaction between gambling activities and modes of access: A comparison of Internet-only, land-based only, and mixed-mode gamblers”, whose conclusions are:
  - Internet-only gamblers used the fewest gambling activities and had the lowest proportion of problems.
  - Land-based gamblers were most likely to report problems related to electronic gaming machines.
  - Mixed-mode gamblers played more gambling forms and were more likely to attribute problems to sports betting”.

All of the above points to any general approach based on banning gambling advertising by operators licensed to offer gambling in Spain being ruled out, as well as to conveniently ponder the setting of restrictions on it.

It should be noted that, specific to the context of online gambling, favouring a regulated market which makes the economic activity possible and the establishment of restrictions on it, in this case in terms of advertising, is a symbiotic rather than contradictory objective. Precisely to favour the protection of public health, minors, those self-excluded, gamblers and citizens in general, a viable market is necessary with rules which favour the channelling of supply and demand of gambling into regulated environments, thus weakening the impact of an illegal market which may exist.

- “Token together, the evidence reviewed here suggests that Internet gambling does not cause gambling problems in, and of, itself. However, use of Internet gambling is more common among highly involved gamblers, and for some Internet gamblers, this medium appears to significantly contribute to gambling problems. Internet gamblers are a heterogeneous group, and the impact of this mode of access on gambling problems is moderated by a range of individual, social and environmental variables. As Internet gambling continues to evolve and participation increases, particularly among young people who are highly familiar with Internet technology and online commerce, it is likely that related problems will emerge.
- Research and regulation will have to evolve to further the understanding of the impact of this mode of access on the experience and incidence of gambling disorders. There appear to be some unique differences between Internet and land-based gamblers who experience problems.
- Theoretical models for gambling and problem gambling have been developed based on land-based gambling, largely not considering the recent emergence of Internet modes. It is important to revisit these conceptual models to verify if they account for pathological gambling among Internet gamblers and whether any new variables or interactions should be included to explain the emergence of gambling problems [...].
- The Internet offers a potentially strong environment for the provision of responsible gambling, including player-focused tools and resources for moderating play such as expenditure tracking, self-set spend limits, time outs and information.
- Furthermore, operators can enact strategies to assist customers including targeted notifications (e.g. pop-up messages) based on patterns of play and other tailored contacts derived from analysis of player accounts to identify risky behaviour [...].”


“Gamblers using both land-based and Internet are prone to experience greater levels of loss and hence need for treatment. In support of this contention, online gamblers in this study were significantly more likely to report the absence of gambling related problems compared to the other groups. Although previous research has noted features of online sports and race wagering that are conducive to loss of control over gambling (Hing, Cherney, Gainsbury, Lubman, Wood, & Blaszczynski, 2014), it remains to be determined if there are any specific protective factors of those electing to participate exclusively in online forms”.


Recently, specific analysis has begun on what the central risk factors related to, specifically, online gambling, are in order for gambling problems to occur.

- This study identifies problematic consumption (online and in-person) and, at the same time, the most problematic forms from the standpoint of the different games (slot machines, sports betting, race bets), establishing specificities regarding the risk factors related to each game in, specifically, the online channel. Other efforts try to appreciate a greater relative incidence of pathological gambling in young people in recent times and the particular prominence of the online channel in such a group, a logical consequence of the greater familiarity with this channel of the younger audience and the general increase in gambling activity through these channels. See. Cholitz, M. (2015), The Challenge of Online Gambling: The Effect of Legalization on the Increase in Online Gambling Addiction, Journal of Gambling Studies.

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling.
In this regard, advertising has been one of the main instruments to consolidate the national level regulated gambling market in Spain, it being possible for citizens and potential gamblers to know a regulated offer exists and to contribute to the standardisation of the gambling activity as a leisure and entertainment option over recent years.

The intensity and consistency of the investment made by the gambling operators on this idea demonstrates the importance of advertising in this regard. Thus, according to data from INFOADEX, advertising investment by national level gambling operators on press, radio, television, internet and outdoor advertising in the period 2014-2016 was 386 million euros, 3.21% of the total advertising investment in the same tranche. The same source shows that, in relation to the total advertising activity by sector, the evolution of the national level gambling sector's weight remains stable, albeit increasing slightly: 2.9% in 2014, 3.1% % in 2015 and 3.21% in 2016.

At the same time as the above, the data available to the DGOJ as a result of the periodic submissions from operators shows that, between January 2014 and September 2017, advertising expenditure excluding bonuses has accounted for 29.8% of the cumulative GGR (413.3 million euros out of 1.3874 billion). If the bonuses are included, which have meant a total of 219 million in the period, the weight of the advertising and promotional investment on GGR amounts to 45.6%.

The following Graph organises the previous information by month, allowing the relative seasonal fluctuation in the intensity of the advertising investment to be appreciated, whose peaks tend to coincide with the emergence of certain consumption determinants, such as specific events likely to receive sports bets.

Graph 1. Investment in gambling advertising activities between January 2013 and September 2017. Monthly evolution.

Source: author's own from quarterly DGOJ reports.

The Graph, beyond the upward trend in advertising expenditure, reveals the strong relationship between the evolution of advertising expenditure and the economic aspect of the market: the
second is in proportion to the first. In fact, if we add the evolution of online gambling advertising investment by quarter and compare the advertising investment with gross gambling revenue (GGR), we can see that the relationship remains relatively constant in each timeframe and that the amount allocated to commercial communications does not deviate much from the overall average of the period, where it represents 47% of the total GGR.

**Graph 2. Investment in gambling advertising activities between January 2013 and September 2017. Quarterly evolution**

![Investment in Gambling Advertising Activities](image)

Source: author's own from quarterly DGOJ reports.

It is therefore true that advertising investment is an instrument of significant significance and relatively constant in its use by the operators throughout the entire period and thus decisively contributes to consolidating the regulated market and consequently weakening illegal or unregulated gambling. Any regulation of commercial communications on gambling of national level licensed gambling operators should aim, therefore, to reconcile the guarantee of public health with the restrictions on advertising activity which, in view of its protection, they impose.

As an opposite to the foregoing, entities advertising gambling activities accessible within Spain or to Spanish residents without a licence is strictly prohibited; and this regardless of whether or not the activity of the entity is available to users geolocated in Spain.

This is clearly derived from the way in which the penalty system on gambling activities is designed in articles 39 and 40 of Law 13/2011. Thus, article 39.a) defines a very serious breach as "the organisation, holding and operation of activities included within the scope of application of this Law without the relevant licence". And article 40.d) determines a serious breach, and therefore independently of the previous, as promoting, sponsoring and advertising gambling subject to this Law when the persons doing so lack the corresponding licence.

This is why it is clarified in the royal decree (article 6) that the absence of a licence to offer gambling activities in Spain will lead to it being impossible to offer commercial communications directed towards Spanish residents, be they directly accessible from Spain or located in Spain.
4.3.c) The subjective scope: the subjecting of all gambling operators to a single regulatory instrument

To be coherent with the rule from which the royal decree emanates, and with the intention of providing a rational and comprehensive framework for advertising gambling, it is included in the scope of application to all national level gambling operators.

Article 1 of the LRJ defines the purpose of the aforementioned legal standard as follows:

"The purpose of this Law is to regulate gambling activities, in their different forms, developed at a national level in order to guarantee the protection of public order, as well as to fight against fraud, prevent addictive behaviour, protect the rights of minors and safeguard the rights of whoever participates in the games, without prejudice to that established in Statutes of the Autonomous Regions.

In particular, the Law regulates the gambling activities referred to in the previous paragraph when they are carried out via electronic, computerised, telematic and interactive means, in which "in person" means having an accessory nature, as well as the games developed by bodies assigned by the Law herein to carry out activities marked as reserved, regardless of the channel used for advertising them”.

In its scope of application, the standard therefore includes games whose marketing is reserved exclusively to the operators designated for that purpose. Specifically, it deals with national level non-occasional lotteries in its different forms, which the LRJ itself reserves to Sociedad Estatal Loterías y Apuestas del Estado (SELAE) and to the Spanish National Organisation for the Blind (ONCE). These games are marketed through multiple channels, both in-person and online, and enjoy great prominence in the national gambling market. For example, in 2013, lotteries marketed by these public operators accounted for 64.04% of the total sales or amounts gambled in all games26.

Regulation of national level gambling advertising which includes all its operators, including those which market reserved games, is appropriate for the following reasons:

- Its greater compatibility with the full idea of the gambling market. Pursuant to this idea, without prejudice to the differences between the different types of gambling, the general principles which regulate and inform commercial communications should apply to all operators subject to the national standard, without differentiation which is not justified or appropriate. This is all the more important when one of these operators –SELAE- sells not only lottery games, whose running is reserved to them, but also sports betting.

- An optimal impact of the regulation of gambling advertising on the general interests it seeks to protect. Regulation which excludes SELAE and ONCE leaves out the two most prominent national actors from the economic standpoint and their public presence in the gambling market. Two pieces of data show this importance. On one hand, we could refer to the advertising expenditure of these entities. For example, the data on advertising, promotion and public relations of SELAE show that expenditure on such items amounted to 79.3 million euros in 2015 and 71 million in 201627. According to the 5th Social Perception

---

26 Financial results section of the 2016 SELAE annual report.
27 All data pursuant to the budget forecast is contained in the corresponding Advertising and Institutional Communication Annual Plans of the Government, Ministry of the Presidency. Available at: http://www.lamoncloa.gob.es/serviciosdeprensa/cpci/Paginas/PlanEInformes.aspx.

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling. Version dated 30/11/2017.
Report on games of chance in Spain, prepared by the Institute of Policy and Governance (2014), 82% of respondents can recall the Christmas Lottery advert, and the level of recall of both the ONCE Eurojackpot and the advertising for the El Niño Lottery, considered individually, is similar to that of online gambling websites considered overall (respectively, 52.6% and 51.1% of respondents, compared to 57.3%).

➢ **The consistency of the reserved lottery activity from the European Law standpoint.** Applying European principles of free movement of services and freedom of establishment to the gambling industry affords a greater margin than in other areas of economic activity, based on the principle of subsidiarity, where Member States decide conditions of access to the activity and consequently establish a reserve regime for certain operators, as is the case in Spain in relation to lotteries. Based on this, the jurisprudence of the Court of Justice has been establishing justifications of public interest which allow limits to be set on the access of the activity, as well as measuring the proportionality of such restrictions. Thus, the **reserving of the activity** to certain operators **can only be restricted** for reasons of controlling the development and consumption of the activity, **for reasons of public order, such as the fight against fraud, and public health** related to the protection of citizens. However, the other measures present in the regulatory framework, as well as the commercial policy of the operators enjoying the reservation, **must be consistent with this purpose**. Such consistency will be reinforced if these entities are subject to the same regulatory instruments, principles and rules relating to commercial communications applicable to other operators.

Notwithstanding the foregoing, the **royal decree includes certain specificities in its additional provisions** relating to each of the reserved operators which are understood or proportionate or in any case consistent with the provisions of the LRJ.

➢ On one hand, **the possibility remains that students and members of schools or charities take part in the National Lottery draws** in which they had been participating. The participation of these minors drawing the balls with the different numbers which make up the winning tickets is a well-established tradition with its roots in Spanish society. In particular, the students of the "San Ildefonso" School who have, for almost 250 years, sung the numbers of the National Lottery, with the first draw in which they take part being on 9 March 1771. The additional provision that this waiver establishes does not include the participation of minors in the advertising and commercial activities of the operator's gambling activities other than the participation in the draw itself. Such specificity is, therefore, fully consistent with the projected advertising regime and, at the same time, sensitive to a deep-rooted reality, in any case a moderate and timely impact, and not capable of supposing nor increasing the risk of trivialising gambling in general, nor lottery games in particular, in Spanish society.

➢ On the other hand, it **sets down the specific supervisory regime for ONCE**, already established in the LRJ. Thus, in accordance with the provisions of section three of said legal

---

28 For an analysis of the jurisprudential treatment of these elements, in particular referring to the compatibility of the reserving of the gambling activity with the commercial and advertising policy of the operators concerned, see the Working Document of the European Commission, October 2012, "Online gambling in the Internal Market accompanying the Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions ‘Towards a comprehensive framework for online gambling’", pages 31 to 40 and, in particular, page 37 onwards.

Available at: [http://ec.europa.eu/internal_market/gambling/docs/121023_online-gambling-staff-working-paper_en.pdf](http://ec.europa.eu/internal_market/gambling/docs/121023_online-gambling-staff-working-paper_en.pdf)
standard, in order to preserve strict public control of the ONCE gambling activity, the
powers which this royal decree attributes to the authority in charge of gambling regulation
will be exercised by the Protective Council of ONCE in relation to the activities subject to
reservation which said organisation carried out, with the exception of the powers
Corresponding to the Council of Ministers. This disposition of the draft legislation therefore
reproduces the existing provisions in this regard, clarifying the supervisory authority,
notwithstanding that the provisions of the royal decree are applied without distinction to all
Gambling operators.

Finally, a specificity is established for both ONCE and SELAE in relation to the proviso that
the royal decree makes for the advertising of general interest or charity activities, given
the evident public aspect of both operators. In general, the fourth additional provision of
the royal decree determines that the advertising of these activities by public charitable
organisations or foundations constituted by or linked to gambling operators will not be
applicable to the provisions of Title I (commercial communications). This general regime,
whose proportion is explained below, will be directly applicable to the non-gambling
advertising carried out by SELAE, without the need for linked charitable associations or
foundations to intervene -as SELAE is a public operator and carries out activities directly to
promote the social, cultural, sports and other general interest aims- provided that the
advertising is not oriented to the gambling activity or does not contain references to them.
Likewise, given the assistance nature of ONCE and its Foundation and the instrumental
character of its gambling activity for this purpose, it is established that the provisions of the
royal decree will not be applicable to its own institutional commercial communications nor
the dissemination of its activities for the provision of services, provided that there are no
references to gambling activities or products.

An additional question related to the subjective scope of the royal decree’s application is related to
the express subjection to it in its article 2, not only of gambling operators but also of other agents
present in the advertising value chain, as well as media for broadcasting it in audiovisual, physical,
internet or press channels, as well as participants in the intermediate stages of preparation. This
realisation derives directly from Law 13/2011 itself, which in its article 7 on advertising, sponsorship
and promotion activities as well as gambling activities, and especially in its article 36, related to the
sanctioning powers, mentions the different participant agents and determining their liability regime
and the competent administrative authority as the case may be.

In addition, as a measure of due diligence and reinforcement of the administrative responsibility of
the different agents involved, the Royal Decree specifies in its article 30 that gambling operators
will be responsible for adopting the necessary measures to guarantee that the affiliates through
which they advertise comply with the provisions of the decree in relation to their activity in
Spain. This provision moves away from that already established in article 3 section 4 of Royal
Decree 1614/2011, of 14 November, which implements Law 13/2011, of 27 May on gambling
regulation, pertaining to licences, authorisations and gambling registers and, beyond that, aims to
ensure that entities holding online gambling licences in Spain exert sufficient control over the
integrity of the advertising behaviour of said affiliates from an overall standpoint.

29 The affiliation activity consists of the promotion or acquisition of potential customers for a gambling operator, provided
they don’t register customer or have a contract or gambling account with them.
30 This precept establishes that gambling operators will be responsible for the breach of the standard and the requisites
required for the advertising and promoting of gambling, which are committed to by the companies developing the
affiliation when the advertising and promoting of gambling is done on account of or by order of these.
4.3.d) The material scope: Analysis of the justification and proportionality of the measures in the royal decree

The reconciliation of the aforementioned aspects, the favouring of the regulated market through advertising activities and the protection of public health make it necessary to **scrupulously link the objectives with the regulatory instruments used** to ensure that the measures are justified in their need. The following table summarises such relationship.

**Table 6. Objectives protected, aims pursued and measures used in the regulation of gambling advertising**

<table>
<thead>
<tr>
<th>Aims pursued</th>
<th>Employed in specific measures</th>
<th>Public interest objectives of the regulation (public health)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Protection of minors</td>
</tr>
<tr>
<td>Measures on diffusion: communication channels and specificities between games (audiovisual channels)</td>
<td>Time limitations on audiovisual content; limitations on active marketing to certain groups; limitations on advertising on social networks</td>
<td>x</td>
</tr>
<tr>
<td>Measures on content: general principles and limitations</td>
<td>Protection of minors, truthfulness, responsible gambling, social responsibility, sponsorship, commercial promotions</td>
<td>x</td>
</tr>
<tr>
<td>Content measures: responsible gambling message</td>
<td>Gamble responsibly message, participation of public personalities, banning of sponsorship aimed minors</td>
<td>x</td>
</tr>
</tbody>
</table>

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling. 
*Version dated 30/11/2017.*

This text of this site in unofficial English translation of the official texts in Spanish. The later will prevail in case of discrepancies.
### Public interest objectives of the regulation (public health)

<table>
<thead>
<tr>
<th>Aims pursued</th>
<th>Employed in specific measures</th>
<th>Public interest objectives of the regulation (public health)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Protection of minors</td>
<td>Protection of other sensitive groups (problem and pathological gamblers)</td>
</tr>
<tr>
<td>Measures on content: specificities between games</td>
<td>Limitations on the advertising of prizes and jackpots; obligations regarding information in contests</td>
<td>X</td>
</tr>
</tbody>
</table>

From the material standpoint, therefore, two types of measures are distinguished: on the dissemination and on the content of commercial communications.

#### 4.3.d.I) Measures related to the dissemination of commercial communications

The essential proportion of these measures resides fundamentally in the **protection of minors**, as a group particularly susceptible to such protection, insofar as their lower degree of maturity and development does not guarantee full awareness of the complexity and implications of the gambling activity and of its risks to public health, and it is therefore advisable to **limit their exposure to gambling advertising under the precautionary principle** enshrined in European jurisprudence. Likewise, some of these measures are intended to protect other particularly sensitive groups, for example by restricting the availability of gambling advertising to those registered in the General Register of Gambling Access Bans.

Measures of this nature are developed in **article 11** on the protection of minors, as well as **articles 14 to 18** of the royal decree, and are different based on the different communication channels, due to the specificities of each of them.

The communication channels on which specifications are introduced from the cross-section of applicable provisions are:

- Information society services.
- Audiovisual communication services

#### 4.3.d.I.1) Advertising through information society services

---

31 The precautionary principle is mentioned in Article 191 of the Treaty on the Functioning of the European Union. It aims to guarantee a high level of protection of the environment through preventive decision making in case of risk. However, in practice, its scope is much broader and also extends to consumer policy, European legislation on food, and human, animal and plant health. According to the guidelines of the European Commission in this regard, the precautionary principle can be invoked when a phenomenon, a product or a process may have potentially dangerous effects identified through a scientific and objective evaluation, if such evaluation does not allow risk to be determined with sufficient certainty. Recourse to the principle falls within the general framework of risk analysis, and must be exercised in accordance with certain principles, insofar as it entails a restriction of the European freedom of movement: proportionality, non-discrimination, coherence, cost-benefit analysis and dynamic review of measures in light of scientific evolution.

---

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling. Version dated 30/11/2017.
With regard to **commercial communications through information society services**, a generally non-restrictive approach to their accessibility has been adopted, taking into account considerations of proportionality and ultimate effectiveness of the absolute restrictions which may be imposed in this sense, notwithstanding the possible use of parental control mechanisms which may be applicable. Based on this approach, however, different limitations have been introduced, of particular relevance at the present time given its growing importance: according to INFOADEX data, commercial communications through the internet have increased from 12.3% of the advertising of national level operators in 2014 to 21.9% in 2016.

Thus, regarding the protection of minors (Article 11), there is an absolute limitation regarding the dissemination of commercial communications in the media, channels, web pages, programs or content intended for minors.

In line with the above, the same article 11 on the protection of minors expressly includes a **provision on advertising on social networks**, consistent with the fact that the dissemination of commercial communications by gambling operators may only be disseminated on corporate profiles or corresponding to users of legal age –and therefore the restrictions will only be applicable to social networks which associate participation to a user profile in which the user declares their age, among other data, and always according to what the user says-. This measure aims to reduce the specific risks arising from advertising on social networks, based on the new marketing possibilities they entail and which basically introduce the risk that minors:

- Receive commercial communications about gambling in their profile from gambling operators or other users.
- Receive and actively participate in the dissemination of these commercial communications about gambling through the different relevant content actions typical of social networks.

Certain provisions are already introduced in **article 14** aimed at reinforcing the protection of users in terms of advertising through information society services. Thus, continuing with the protection of minors, it includes the obligation that advertising incorporate an identifier related to games of chance, to allow their categorisation in order to assist parental control mechanisms.

Likewise, beyond the protection of minors, article 14 establishes that social networks with a user profile must have filtering mechanisms which prevent the appearance of commercial communications on gambling. It also incorporates a provision stating that advertising should not overlap the main content of the page or application without prior action by the user and, outside of the foregoing, that advertising does not block impede and can be closed or stopped easily. These two measures are intended to allow, as far as possible, that users of these services can modulate or even minimise their contact with gambling advertising, in the case of not wanting it.

On the other hand, and in line with that established in jurisdictions such as Britain or Belgium – currently in the project phase, it establishes that advertising may not be placed on web pages which in turn promote gambling activities of entities without a licence to operate in Spain when

---

presenting them as aimed at Spanish users. Neither can content violating the applicable rules on intellectual property rights be placed on web pages. Both provisions strengthen the operator’s responsibility and diligence towards advertising practices of its brand on the internet and their obligation that they respect legality at all times. In relation to the first measure, the purpose of the web pages which systematically include advertisements of different gambling entities—for example as affiliates of the latter—do not include advertisements of entities aimed at the Spanish market not licensed to operate gambling activities in Spain according to the mission to comprehensively fight against the illegal gambling industry and decreasing its ability to penetrate Spain. The second measure responds to fundamental reasons of social and reputational responsibility of licensed gambling operators from the standpoint of the activity of their partners and commercial suppliers, preventing them from channelling their advertising into environments where illegal activities take place.

Finally, article 14 contemplates that, in games whose participation is subject to prior user registration, no commercial communication may be sent by email or equivalent means addressed to users registered in the General Register of Gambling Access Bans or those who have exerted their right to self-exclusion. This will result in greater protection for groups deserving of special protection, such as those who are self-banned and those who have temporarily decided to exclude themselves from carrying out gambling activities with specific operators.

4.3.d.I.2) Advertising through audiovisual communication services

In terms of commercial communications through audiovisual communication services, the regulation is primarily aimed at establishing time restrictions for the broadcast of gambling advertising (beyond the general banning of commercial communications for gambling being disseminated on media, channels and programmes specifically aimed at minors, which is equally applicable in this scope). This approach is derived from article 7 of Law 7/2010, of 31 March, on General Audiovisual Communication (LGCA), aimed at the protection of minors, in particular its section 2, which distinguishes between several time slots in this regard; and it is also followed by the current Code of Conduct for Commercial Communications on Gambling.

This qualified degree of protection in terms of audiovisual communication services deriving from time restrictions responds to several issues.

- First, the lower degree of availability on the advertising content which recipients have in this type of audiovisual channel, both from a standpoint of general accessibility and the perspective of control or rejection of the communication, unconnected to the audiovisual content itself, once that is taking place.

- Second, the importance traditional audiovisual channels (television and radio, without forgetting the growing importance of online audiovisual media) still have: again, according to INFOADEX, the advertising investment of state gambling operators through radio and television in the period 2014-2016 accounts for 72% of the total advertising investment of the period. These are also the channels to which minors are fundamentally exposed. In this regard, different General Studies of Media show that radio and television are, jointly with the internet, the most used media by this population sub-segment: in 2016, 56.7% of the population aged between 14 and 19 listened to the radio daily (58.3% in 2014), and 84.7% of minors watch television daily (85.9% in 2014).
The launch point of the regulation has been the existing situation in the current Code of Conduct, which basically establishes a distinction in the processing according to the different games and audiovisual channels (radio and television). The changes are summarised in the following table.

Table 7. Rules on audiovisual broadcast for advertising the different kinds of games.

<table>
<thead>
<tr>
<th>Gambling</th>
<th>Structural characteristics</th>
<th>Rules on broadcast on television audiovisual communication services</th>
<th>Rules on broadcast on radio audiovisual communication services</th>
<th>Innovation compared to current Code of Conduct</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blackjack, roulette, baccarat, poker, fixed-odds betting, betting-exchange, slot machines, additional games</td>
<td>Greater immediacy between bet and result; successive or iterative character of the game or the typical consumption pattern</td>
<td>Broadcast only permitted between 10:00pm and 6:00am, except for commercial communications of bets during live sporting events (subject to particular rules and never during a reinforced protection time, see below)</td>
<td>Broadcast banned during a reinforced protection time (in accordance with article 7.2 of the LGCA: 8:00am-9:00am and 5:00pm-8:00pm on working days; and 9:00am to 12:00pm on Saturdays, Sundays and Bank Holidays) and on programmes or with programmes aimed specifically or mainly at children. Limitations on commercial promotions in advertising during the broadcast of live sports events.</td>
<td>It reinforces the provision. For reasons of consistency and efficacy with the standard, it includes additional games. It includes slot machines and betting-exchange. It qualifies the regime on advertising betting during the broadcast of live sports events. It subjects commercial promotions or bonuses on the radio to certain conditions</td>
</tr>
<tr>
<td>Pre-drawn lotteries, bingo (subject to certain conditions)</td>
<td>Lower successive or iterative character of the game or the typical consumption pattern according to the established levels of payout</td>
<td>Broadcast banned during reinforced protection times and in or with programs aimed at specifically or mainly to children (subject to specific rules in the case of bingo)</td>
<td>Broadcast banned during reinforced protection times and on programmes or with programmes aimed specifically or mainly at children.</td>
<td>It qualifies the provision in relation to the applicable Code of Conduct rules</td>
</tr>
<tr>
<td>Gambling</td>
<td>Structural characteristics</td>
<td>Rules on broadcast on television audiovisual communication services</td>
<td>Rules on broadcast on radio audiovisual communication services</td>
<td>Innovation compared to current Code of Conduct</td>
</tr>
<tr>
<td>----------</td>
<td>-----------------------------</td>
<td>---------------------------------------------------------------</td>
<td>---------------------------------------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Pool betting</td>
<td>Lower immediacy between bet and result</td>
<td>Broadcast banned during reinforced protection times and on programmes or with programmes aimed specifically or primarily at children.</td>
<td>Broadcast banned during reinforced protection times and on programmes or with programmes aimed specifically or primarily at children.</td>
<td>No change</td>
</tr>
<tr>
<td>Raffles and deferred lotteries</td>
<td>No immediacy between bet and result</td>
<td>Broadcast banned on programmes or with programmes aimed specifically or primarily at children.</td>
<td>Broadcast banned on programmes or with programmes aimed specifically or mainly at children.</td>
<td>No change</td>
</tr>
<tr>
<td>Contests</td>
<td>Non-successive nature of the game; broadcast through audiovisual communication is an unavoidable condition for the realisation of the game.</td>
<td>Broadcast banned on programmes or with programmes aimed specifically or primarily at children.</td>
<td>Broadcast banned on programmes or with programmes aimed specifically or mainly at children.</td>
<td>No change</td>
</tr>
</tbody>
</table>

*Treatment by type of service: radio or television*

As can be seen, according to type of channel in the advertising of television audiovisual communication services, three levels of intensity are established in line with the Code of Conduct; in the case of radio audiovisual communication services, there are only the two least restrictive.

Regarding the appropriateness of maintaining the treatment distinction between audiovisual and radio channels, the preparation of the royal decree studies, for reasons of consistency in the effectiveness of the protection of minors, the possibility of unifying the provisions applicable to both channels, in line with Article 7 of the LGCA, which does not make such a distinction. This possibility was finally discarded for reasons of proportionality, weighing up the effectiveness derived from the measure with the cost for operators and suppliers of advertising spaces in response to the data available.

Thus, the penetration of the radio channel towards minors is noticeably lower than in television, as evidenced by the distribution by age data from the aforementioned General Study on Media for 2016, shown in the next table.
Table 8. Media penetration in Spain, 2016. Horizontal percentages

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Population (000)</th>
<th>Daily</th>
<th>Supplements</th>
<th>Magazines</th>
<th>Radio</th>
<th>Televisión</th>
<th>Cinema</th>
<th>Online</th>
<th>Overseas</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL</td>
<td>39,716</td>
<td>26.5</td>
<td>9.5</td>
<td>35.2</td>
<td>60.0</td>
<td>87.8</td>
<td>4.0</td>
<td>71.9</td>
<td>74.7</td>
</tr>
<tr>
<td>14 to 19</td>
<td>2,628</td>
<td>15.9</td>
<td>4.8</td>
<td>35.7</td>
<td>56.7</td>
<td>84.7</td>
<td>7.0</td>
<td>90.4</td>
<td>81.5</td>
</tr>
<tr>
<td>20 to 24</td>
<td>2,271</td>
<td>19.4</td>
<td>5.0</td>
<td>37.1</td>
<td>58.8</td>
<td>83.2</td>
<td>7.0</td>
<td>91.4</td>
<td>87.2</td>
</tr>
<tr>
<td>25 to 34</td>
<td>5,648</td>
<td>23.7</td>
<td>6.5</td>
<td>37.6</td>
<td>63.4</td>
<td>88.6</td>
<td>6.1</td>
<td>91.8</td>
<td>81.9</td>
</tr>
<tr>
<td>35 to 44</td>
<td>7,730</td>
<td>27.6</td>
<td>8.9</td>
<td>37.5</td>
<td>68.2</td>
<td>85.4</td>
<td>4.0</td>
<td>91.8</td>
<td>87.2</td>
</tr>
<tr>
<td>45 to 54</td>
<td>7,128</td>
<td>31.0</td>
<td>11.2</td>
<td>37.0</td>
<td>66.0</td>
<td>86.3</td>
<td>6.5</td>
<td>79.3</td>
<td>76.3</td>
</tr>
<tr>
<td>55 to 64</td>
<td>5,618</td>
<td>31.7</td>
<td>13.0</td>
<td>33.1</td>
<td>59.5</td>
<td>90.1</td>
<td>3.2</td>
<td>65.1</td>
<td>72.1</td>
</tr>
<tr>
<td>65+</td>
<td>8,693</td>
<td>25.3</td>
<td>10.8</td>
<td>29.6</td>
<td>47.1</td>
<td>92.2</td>
<td>3.1</td>
<td>51.8</td>
<td>61.1</td>
</tr>
<tr>
<td>Average Age (Years)</td>
<td>47.6</td>
<td>48.9</td>
<td>51.5</td>
<td>46.2</td>
<td>46.0</td>
<td>48.3</td>
<td>40.2</td>
<td>42.0</td>
<td>45.6</td>
</tr>
</tbody>
</table>


It can thus be seen that in the segment of those aged 14 to 19 the penetration of radio is considerably lower than television (56.7% versus 84.5%), and also less, in some cases significantly, than other segments, excluding those aged over 65. Regardless of the group of minors aged under 14, it seems logical to assume that the penetration percentage of radio—in particular in those subjects who do not listen to it of their own volition but via a third party—is similar or even lower.

The above, combined with the fact that the radio channel records a high proportion of the advertising investment by the state gambling operators (more than 31% in the period 2014-2016), allows us to conclude that aligning the treatment of the radio channel to that of the television audiovisual communication service could generate disproportionate effects in relation to the supposed improvement in child protection which this would suppose. Consequently, it has been decided to maintain a generally less restrictive regime for advertising through the audiovisual radio communication service than for television.

This lesser restriction, in view of considerations on proportionality, is not only visible in relation to the rules of broadcasting time, but also, given the peculiar nature of radio communications, with regard to certain content obligations, such as the frequency of the "Gamble responsibly" message, the indication that gambling by minors is banned, or the minimal content of promotional initiatives or bonuses.

Likewise, it has been decided to not establish distinctions between open and coded or conditional access audiovisual communication services, to the extent that a significant part of the gambling advertising is linked to the broadcast of events, mainly sports, accessible to minors—of legal age, accompanied or not—through establishments open to the public, and the inclusion of different conditions could affect the consistency and general effectiveness of the model. This excepts services on demand, where, consistent with the logic of the LGCA, time restrictions are not applicable.

*Treatment by class of game*

In relation to the Code of Conduct, the philosophy of distinguishing between the rules applicable to the different games is maintained, although the situation of some of them is updated, taking into account the different structural characteristics of them. In particular, the greater or lesser closeness in time (or immediacy) between the realisation of the gambling activity (the laying of the...
bet) and the event connected to the bet, or the repetitive, successive or iterative character of the gambling pattern, i.e., the proximity between one match and the next in the typical consumption pattern. These are the fundamental criteria which objectively, and according to vast scientific literature\(^{33}\), determine the greatest addictive potential of one game over another in relation to its endogenous or structural characteristics. The more immediate and repetitive the game, the more addictive potential it presents, giving rise to a greater potential frequency of gamble, the generation of false perceptions such as the feeling of controlling the game or the so-called "near-miss".

From a protection of minors standpoint, the final reason for establishing time restrictions on the dissemination of commercial communications, it is considered that their continued exposure to the advertising of certain types of games, depending on the aforementioned characteristics, can distort the perception and present them as activities lacking potential negative consequences in relation to compulsive and pathological gambling consumption. It is not so much about establishing a relationship between the gambling problems or addictions arising with certain games in particular, a complex issue involving a multitude of factors other than the type of gambling –some of which are more important than the characteristics of the game- but to avoid possibly trivialising the implications of gambling by minors, particularly in relation to those certain games which more susceptible to generating unthinking or repetitive consumption.

In response to the above, action is taken on time availability to realise audiovisual advertising of games through different levels of intensity.

The lower intensity levels correspond to raffles and deferred effect lotteries and contests, which maintain their regime in relation to the current Code of Conduct, on both television and radio.

- **Deferred effect lotteries and raffles** – at this time which are only allowable on an occasional basis- present a wide separation in time between the purchase of the ticket and the lottery draw being held, and an absence of continued succession in the gambling behaviour. The established regime is, moreover, similar to the provision of the penultimate paragraph of article 7.2 of the LGCA in relation to the issue of draws of gambling products and modalities with public purpose, which affects lottery draws, and establishes that restricted hours do not apply for betting schedules and games of chance in those cases.

- **In the case of contests**, the time between the participating in the contest and its resolution is also not always immediate, and in any case, due to how the game is normally, the holding of the contest through a communication medium is an inescapable condition for the very existence and realisation of the game. This compulsory instrumental nature of the audiovisual service advises, for reasons of proportionality, that the applicable regime be maintained.

The greatest intensity level is found in the so-called **casino games (blackjack, roulette, baccarat), poker and non-pool betting (fixed odds and exchange)**. These games maintain their regime in relation to the Code of Conduct, which essentially means that they can only be advertised on television between the hours between 10:00pm and 6:00am. These are the games whose characteristics, based on that previous stated, advise a greater application of the precautionary principle. In the case of **fixed-odds and betting-exchange, the great weight of the bets on events taking place on live events, already started at the time of betting, often on incidents or situations**

---

which have elapsed and resolved before the end of the event, makes them share those characteristics of immediacy and reiteration with casino games. This is notwithstanding the fact that, when such events are broadcast live through a means of communication, certain specifications are provided for in the Royal Decree which are detailed below in relation to the restriction on the advertising content.

At this level, in relation to games which did not exist at the time of the Code of Conduct’s approval, in particular online slot machines and betting-exchange, they are expressly included in this level, insofar as their characteristics are similar to those of the games originally included in it.

Also included in this level are the so-called additional games, framed under the Other Games general licence for systematic reasons, notwithstanding the fact that, given the importance of this very limited game –there are currently no operators marketing them- the impact of the change to the advertising policy of the operators will be inappreciable.

In relation to all these games, television advertising is limited to the times between 10:00pm and 6:00am. Notwithstanding the specificities applicable to advertising by broadcasting live sporting events, advertising outside this slot is allowed on radio provided it is not within the reinforced protection hours or programmes intended for children.

Finally, for certain games it has been decided to establish an advertising regime halfway between both levels.

Thus, pool betting, as in the oft referred to Code of Conduct, is placed between the regime of the other –fixed-odds and exchange- bets, of qualified intensity, and that applicable to lotteries which is less demanding. This is justified in that, if we start from the fact that pool betting is a game relatively close to the other bets, some of their characteristics differ significantly. In particular, the impossibility of holding pool betting on live events, whatever the object of the bet. This implies, on one hand, that exceptions to the regime of live betting do not affect them as directly as the other forms; and, on the other hand, that the characteristics of immediacy and reiteration are not so applicable to them.

Lotteries and bingo are placed at a similar level, insofar as, as the public consultation phase of March 2015 and the comparative experience showed, it is possible and appropriate to modulate and provide intensity in response to their structural characteristics and their consumption patterns.

Thus, in relation to instant or pre-drawn lotteries, which are not expressly referenced in the Code of Conduct regarding schedule rules, their special characteristics of immediacy and possibility of repetitive consumption differentiate them from traditional deferred effect lotteries, which suggests that commercial communications related to these products are not permissible in the reinforced protection time slots.

However, when comparing the characteristics under which the marketing of this product is developing with those related to casino games, it is worth noting that the payout on instant lottery is not comparable to other games. In the first case, there is a regulatory limit of 80% and there is no product amongst those currently marketed which exceeds or has exceeded a 70% payout, regardless of the marketing channel being in-person or online. This contrasts with the payouts normally higher than the 95% which casino games have traditionally exhibited (accumulated in the regulated market: 96.2% slot machines, 97.6% roulette, 97.4% blackjack).
The above is relevant in order to specify the ability of this game to generate repetitive consumption, in relation to the aforementioned casino games. The overall payout level affects the probability of the individual gambler returning. The greater the payout, either in the form of a prize or in the form of a partial refund of the amount wagered, the greater incentive to sustain continuity in the pattern of gambling based on the successive reiteration of the bets.

For all these reasons, and taking into account the payout present in the different games, instant lottery is aligned with that of pool betting. Consequently, such games can be advertised at any time of the day, except during reinforced protection times or in programmes aimed at children.

In the case of bingo, different reasons have suggested maintaining a level of intervention on the game’s advertising schedule similar to the one already existing in the Code of Conduct and in some other jurisdictions, significantly the United Kingdom, and which essentially consists of aligning its treatment to the advertising of pool betting and pre-drawn lotteries, notwithstanding any additional specificity. This treatment is different from that proposed in the first version of the Royal Decree and therefore a detailed explanation is offered below.

The Regulatory Impact Analysis Report which accompanied the first public consultation related to this Royal Decree Project in 2015 started, on one hand, that bingo, in its online format, presents a mechanism similar to that of casino games in terms of speed and the game’s realisation and, on the other, that bingo showed great complementarity, both on the supply and the demand side, with casino games, in particular with blackjack and roulette, resulting in fact the general consumption pattern of concomitant bingo and, in fact, a subsidiary of the consumption of the previous games. In such context of the complementarity of games and identification between bingo players and casino games, a different treatment between bingo advertising and that of casino games could reduce the effectiveness of the time rules for advertising casino games, to the extent that operators who market bingo could take advantage of the additional time availability window to indirectly advertise their casino games. This would also mean competitive asymmetries between operators depending on whether they had a bingo licence or not. Consequently, at that time it was decided to align the advertising regime of bingo with that of casino games.

However, this approach has been revised, to the extent that, as explained below:

- It is true that to date the data confirm that the consumption of bingo, in terms of overall participation, enjoys great complementarity with the other casino games.
- But it is also true that the most representative base of bingo users consumes this game either principally or exclusively, or even also consuming other casino games but not simultaneously with them. This would indicate that bingo is consumed, and therefore perceived, as a relatively differentiated product to the other casino games.

Thus, firstly, it is necessary to confirm the general complementarity between bingo and the other games, specifically casino games. Using data from January to September 2017 only 25.3% of bingo users exclusively played bingo. The remainder also played other games.

Likewise, the complementarity between bingo and the other casino games, in particular blackjack, roulette and, since 2015, slot machines is high: in the period analysed, 47% of bingo players also played roulette at the same time, 60% slot machines and 26% blackjack.
Notwithstanding this, at this time it is possible to refine that relationship between games and the typical consumption pattern of the gambler from the point of view of the gambling session, with the session being understood as the maximum period of one hour in which the gambler is active. This vision allows us to study the possible existence of a significant segment of bingo players for whom this game is their main activity or who, at least, do not combine this with that of casino games. It would not require much to establish a relationship of complementarity between the different games due to the gambling volume and the number of gamblers linked to other games, to determine if the typical bingo player consumes that game in an unequalled manner and differentiated from other games they may consume.

Based on the analysis of gambling sessions from January to September 2017:

- If, based on the activity of the operators which have offered bingo in the period, we isolate the sessions in which bingo has been played from the sessions in which other games but not bingo have been played and, within the first subset, we compare those sessions in which only that game has been played with those in which bingo has been played in conjunction with other games, it works out as, out of a total of 3,003,478 sessions, **gamblers only played bingo and other casino games 14.5% of the time, 434,191 sessions.**

- If we take the overall total of gambling sessions of said operators in the period, 5,212,106, **the percentage of sessions in which users played bingo in addition to other casino games would be 8.3%; while the percentage of sessions in which they only played bingo would be 49%.**

- In terms of participation, based on the total number of bingo entries from January-September 2017, **only 13.5% of the total bingo participation was generated in sessions in which the gamblers played bingo and other games (4,566,707 million euros out of a total of 29,347,283 million).**

That would suggest that **most bingo players tend to play without combining it with other games.** This does not necessarily mean that bingo is the only game they play, but they do consider it a relatively differentiated product from the other casino games.

**The analysis of consumption by time slots seems to be consistent with the above.** For this purpose, we can calculate the average number of the operators’ gambling sessions, separating them according to time slots and according to the different games, and then compare their behaviour throughout the day, as the following graph does.
Graph 3. Distribution by average number of sessions according to time slot and different game.

Source: author's own based on data from the state regulated gambling market. January-September 2017

From this graph it can be seen that the distribution curve of the gambling activity between sessions (understanding session as each period of a maximum of one calendar hour in which the user is active) in which the bingo was consumed is relatively more "flat" than the other compared games, betting, casino and poker, which show a slightly more pronounced behaviour in certain hours of the day and a few hours "trough" which is generally more marked. This is notwithstanding the fact that the orders of magnitude are obviously not comparable between bingo and other games.

Likewise, it can be seen from the graph that the peak hour in the consumption of bingo, measured by the average number of sessions, is the 6:00pm slot, which results in a specificity in relation to the others and, in particular, to casino games.

The following graph shows this relatively less pronounced slope of bingo more clearly, as well as the peak in activity the 6:00pm slot records, taking into account the average number of games taking place in the different time slots.
Graph 4. Distribution by average number of games and by participation volume according to time slot. BINGO

Source: author's own based on data from the state regulated gambling market. January-September 2017

It can also be seen from the previous graph that the consumption pattern according to the participation volume (solid line) differs from the pattern according to the average number of games (blue time bars), with the characteristic peaks and troughs of the casino games, poker and bets displayed on the previous graph.

This allows the conclusion that, although it is true that bingo shows great interrelation with certain casino games in its general volumes, it is also true that the average bingo player registers a clear pattern regarding the differentiated consumption of that game consistent in that the simultaneous consumption of casino games is not significant, either because the bingo player has bingo as their exclusive or main game, or because they differentiate it from other games they may consume.

This differentiated pattern makes it possible to consider whether it is sensible to maintain the differences between the advertising regimes for bingo and other games included under the "Other Games" general licence, as established in the current Code of Conduct.

The chosen option has been to maintain a greater laxity for the former, in particular in the hourly availability for advertising on television, dealing with the following circumstances.

- On one hand, although the structural characteristics of online bingo can, to some extent, approximate those of casino games, closer analysis of some elements allows us to establish some differences dealing with the immediacy and reiteration in consumption of the game. For example, a more restrained payout compared to the historical accumulation between
bingo and online casino (87% compared to 97%), or the purely mutual character of the game in creating the prize, with the impossibility of establishing jackpots financed by the operator.

- On the other hand, the importance of the effective offer of bingo in Spain is limited: 3 operators in 2016, one of which is exclusively dedicated to bingo; 4 in 2017. Also, the advertising investment of it on television (around 9% of the total of the advertising on television, for 2016 and the first half of 2017, according to data from INFOADEX).

- Finally, the contributions to the public consultation of March 2015 showed that there are comparative level solutions which minimise the possible existence of positive externalities of the different bingo advertising regime towards casino games and therefore guarantee that competitive asymmetries will not occur between gambling operators with and without a specific bingo licence. This is the case of the option chosen by the United Kingdom, consisting of functionally separating bingo from casino on the web and operator’s platform.

In conclusion, the proposed solution is that television advertising of bingo may be issued outside the reinforced protection time slots or advertising blocks linked to programmes aimed at children, provided that:

- Commercial communications and possible promotions refer strictly to bingo.
- The URL of the website referenced in the commercial communication contains no information to games other than bingo.
- The operator’s platform separates access to bingo from the other games.

4.3.d.II) Measures related to the content of commercial communications

These measures pursue objectives which are largely related but it is appropriate to distinguish systematic effects.

On one hand, there are the objectives to protect the recipient of the advertising. Where:

- The recipient is not a gambler –in particular, but not only, if they belong to particularly sensitive groups such as minors, children or youths, or self-excluded- with an intention similar to the limitations to the accessibility of advertising already studied (to avoid distortions in the perception of gambling as a complex and potentially dangerous activity). Among the measures pursued by this objective we can highlight the principles of social responsibility (article 9 of the royal decree) or the protection of minors (article 11).

- The receiver is a consumer of gambling, in order to adequately raise awareness and contextualise said risks; for example, through certain projections of the responsible gambling principle. These include the inclusion of a positive action such as a message with calls to gamble responsibly (article 10 of the royal decree) or the exemption of certain prohibitions in relation to the appearance of public personalities or sponsorships of gambling activities in products aimed at minors based on the fact that responsible gambling messages or awareness campaigns are carried out by the participants (articles 10 and 12).

On the other hand, there are other objectives connected to the relationship between the specific content of commercial communication and the gambling activity advertised, regulating aspects
such as the information provided being true (principle of truth, article 8) or other elements designed not to favour unthinking consumption of gambling:

- Due to a distorted perception being generated regarding the true elements which shape the game or any element of its commercial offering.
- Due, again, to the specific characteristics of the game itself.

### 4.3.d.II.1) The messages related to responsible gambling

These actions aim to influence commercial communication by **incorporating proactive messages** rather than omitting unwanted elements in advertising. They are to a certain extent already in line with standard practice, derived from the current Code of Conduct, supplemented by some additional measures to deepen certain provisions contained in the July 2014 European Commission Recommendation.

The first of these new items is the possibility of using **public personalities in advertising**. In the process of drafting the royal decree, the possibility of banning appearance of prominent figures or personalities out of hand has been assessed, but banning it only in very specific circumstances is considered more effective and proportional to the objective sought and in other cases allow it with certain limitations and subject to certain conditions.

Taking the above into account, this possibility is **prohibited when** attractive for, specifically, children or young people. Outside of these cases, it will be allowed when a responsible gambling message is carried in the commercial communication itself and, additionally, there is no direct association between the gambling activity and the success, relevance or notoriety of them. The rule is transformed with several additional provisions to achieve the proportionality of it:

- When it comes to communications on static media, the obligation for the message to be the focus will be understood fulfilled if it is on or next to the image of the person or character used. Similarly, in the case of radio communications, the frequency of the message may be changed to one out of three times.
- If there are several people or characters or public personalities in the commercial communication, it will be sufficient when at least one of them to stars in the message.

It also introduces the possibility that when, according to what is allowed in the decree, a public personality is used, the message "gamble responsibly" can be complemented by or alternated with "except minors" or similar, in order to expand the type of messages of a reasoned nature whose power can help to amplify the personality.

In short, whenever the operator chooses to use personalities in its advertising, this possible influence will contribute to the promotion of responsible attitudes towards the gambling activity, with greater impact for the recipient.

This approach of protecting minors from the attractive effect of the public personality, especially when related to them is consistent with the solution adopted in terms of sponsorship, in line with the European Commission Recommendation, which establishes in its section 47 that **sponsorship should not adversely affect minors or influence them**. To this end, this Recommendation encourages Member States to ensure that sponsorship intended for minors or primarily intended
for them is not allowed, and promotional material from the sponsor is not used in advertising products for minors or aimed mainly at them.

Consistent with the above, the article of the royal decree relating to sponsorships prohibits the use of the brand image, commercial name, company name, material or promotional messages of the sponsor of an event, competition or sports team, or athletes, in goods or services specifically aimed at minors or primarily intended for them.

In the version of the Project subject to public consultation, the possibility of exempting this ban was contemplated in the event that the sponsor and the person/event sponsored jointly developed, during the course of the sponsorship, initiatives or educational campaigns specifically for minors, with the purpose of informing and raising awareness of the risks to public health that gambling may cause. In view of the available scientific evidence in relation to the familiarisation and generation of patterns of consumption of potentially addictive substances in minors and pre-adults, and the scarce or even counter-productive influence of the messages of responsible consumption in these age bands, this possibility was rejected.

4.3.d.II.2) Truthfulness of the advertising: promotional initiatives or bonuses

As a specific example of the group of measures aimed at guaranteeing the truthfulness of commercial communications, in addition to the principle of truthfulness itself, the rules on promotional initiatives and the so-called bonuses stand out (article 13 of the royal decree).

It should be noted that the proposed regulation focuses primarily on the transfer of the promotion’s content to the recipient and not on the specific conditions established by the operator.

It is known that, in parallel to the progress of the practice of online gambling companies in relation to commercial promotions, a growing interest in observing and analysing the content of the bonuses is being generated at a comparative level from an objective fairness standpoint of the conditions imposed by one contracting party, the operator, and the other, the gambler. Thus, the research carried out in the United Kingdom by the Competition and Markets Authority and the Gambling Commission in relation to the terms and conditions of, specifically, bonuses. From this project, although not yet concluded, it is already possible to foresee that some prescriptive indications will be released for gambling operators.

In any case, in royal decree project, it has been decided not to regulate these issues other than stating that compliance with the requirements set forth in it will evidently not affect the possible consideration of the specific contractual conditions established by the operator in relationship with the promotion as abusive or unfair. For the purposes of the royal decree, it guaranteeing the truthfulness in the transfer of information, notwithstanding the fact that the issue may be addressed in the future through different means, is not considered a priority at the present time.

To this end, the regulation starts from interpretative criteria related to this issue, outlined by the Directorate-General for the Regulation of Gambling in 201334, within the framework of the Code of Conduct Joint Monitoring Committee. The royal decree incorporates this regulation for any promotional activity of attracting, loyalty or maintenance of clients, either relating to all games

---

34 Available at: [http://www.ordenacionjuego.es/es/acuerdo-de-corregulacion](http://www.ordenacionjuego.es/es/acuerdo-de-corregulacion) .

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling.
offered by the operator, already related to some specific games or to specific participation or bets (the so-called free bets or free games).

Such criteria aim at ensuring the adequacy of the information transferred to the actual conditions of enjoyment of the bonus and to avoid a false perception of its gratuity –if this is not the case-, by including certain information. In order to maintain a criterion of proportionality, these conditions are adapted to certain channels whose nature does not make the inclusion of all the required information feasible, in particular limited duration radio mentions and communications through banners and microbanners on the internet. In the case of the radio advertising microspaces, after the public consultation of 2015, the provision has been rationalised in relation to that which is currently planned through co-regulation, establishing the threshold for the full applicability of the obligation at 10 seconds (previously it was 6).

The obligations of clarity and comprehensibility of the conditions of the bonuses are completed with the provision to include, not within the commercial communication of the bonus but within the terms and conditions to be referenced on the operator’s website, information on other elements which the practice of recent years has also revealed to be sensitive, such as, where appropriate, the maximum amounts of bet, the time at which the gambler can have unrestricted winnings from the use of the bonus or the such winnings being limited to a certain amount.

As a new issue and the only occasion in which the specific content of the bonus is addressed, fundamentally reinforcing the principle of truthfulness, it has been decided to complete the above with a general ban that the total amount of the promotion, in the form of quantity provided by the operator to gamble, does not exceed a certain and determined amount, in the manner of countries such as France. The reason lies in the fact that, since the criterion mentioned in the Code’s Joint Monitoring Committee was set, various promotional initiatives of a very high amount have been confirmed (sometimes in excess of several thousand euros) in which the temporary conditions of use of the bonus and redemption of the total winnings obtained with it (with burdensome conditions of deposit or circulation of the money deposited by the gambler) jeopardise the true promotional nature of the offer and, with it, the truthful transfer of it. Likewise, promotions of this nature, accompanied by these conditions of release, put excessive pressure on the gambler to gamble.

Specifically, a limit of 500 euros per operator is set, an objective threshold and sufficiently proportionate and flexible for them to design attractive promotions without distorting the real content of the promotion nor inducing sudden consumption so that the gambler can obtain the economic benefits derived from it. Having verified that, as at 15 October 2017, only 2 operators had offers higher than the amount indicated, it is considered that the provision is sufficiently proportionate to the current commercial practice in terms of promotions and at the same time allows a certain safeguard against the potential future escalation of aggressive promotions. Also excluded from this are personalised promotions for existing specific customers, which fall within the policy of the operators for qualified customers and which are a key means of loyalty for them, because they understand that this type of customer is perfectly aware of the implications of the promotions without needing the additional protection that the absolute limit affords.

Finally, there is also a specific ban on advertising bonuses during the live broadcast of sporting events, which will be detailed below.

4.3.d.II.3) The specificities in certain games to limit unthinking gambling and avoiding trivialisation
The different characteristics of the different games included in the LRJ’s scope of application, already highlighted, also advise introducing certain additional limitations to the content of the communications related to some of them; in particular the advertising of bets in the context of the broadcast of live events and the advertising of the games marketed under an "Other Games" general licence. The content of the royal decree reinforces the intensity of protection in relation to both classes.

**Advertising bets during the broadcast of sporting events**

The regulation of audiovisual advertising of gambling activities, in particular betting, during the broadcast of live sporting events, irrespective of the broadcast schedule, constitutes one of the most delicate aspects of any regulatory exercise of gambling advertising, as this is demonstrated by comparative experience, in which there are several options which have been handled in this regard, from the prohibitionists to the tolerant.

This advertising is fundamentally related to fixed-odds betting and betting-exchange, to the extent that pool betting, unlike those and due to their regulatory configuration, must be closed before the event related to the bet in question begins.

The current **Code of Conduct establishes the possibility** of advertising bets on live events **whenever the event corresponds to the bets which are made**, whether on the event itself which is broadcast or on others which are framed in the same sporting competition, even if they are not broadcast at that time.

The **version of the royal decree initially submitted to public consultation** allowed this possibility **subject to various additional limitations**, in particular: that specific information about prizes or odds of the bet was not included in the commercial communication; that the commercial communication of the event itself was clearly differentiated, so that the former did not appear to be integrated into the narrative or the dialogues of those responsible for it, and that it did not include information about commercial promotions or bonuses.

The multiple answers which were received after the public consultation, as well as the perspective of the time elapsed since then and the new comparative experiences now allow the measures to which this possibility is subject to be assessed, maintaining it but reinforcing the direct link between their scope and the objectives pursued and, at the same time, their effectiveness, as explained below.

Thus, from a point of view of the **necessity and effectiveness of the measures**, it is worth reiterating the relevance of establishing limitations to unconditional advertising of this type of bet during the broadcast of live events, in order to protect certain susceptible groups: minors; gamblers in general and the group with problem gambling, although, in this case, in a manner complementary to other means involving more direct protection (such as the Self-Banned Registry).

In the case of advertising relating to bets in the context of broadcasting live sporting or equestrian events, the **concern for the possible trivialisation of the betting activity and the decontextualisation of the risks** among minors and young people –that they cannot gamble- has been highlighted on many occasions, enhancing the attractiveness of it by linking it to sport and
providing an image of comparability between them. Likewise, for any type of gambler, live betting may entail a greater possibility of repeated and potentially unthinking consumption, derived from the greater immediacy in the resolution of the bets, based on the subject of the bet, and of the succession of events on which to bet within the same event or, if desired, simultaneously in several events happening at the same time within a competition. Finally, different studies suggest that this type of promotional initiative may be related to an increase in participation in the game and an increase of certain elements influencing the creation of future problem gambling patterns. Additionally, amongst gamblers, the problem gambler is particularly susceptible to these messages, presented dynamically through scrolls, banners or mentions inserted into the broadcast itself, in particular those which include certain elements such as promotional initiatives such as welcome or top-up bonuses.

It can therefore be assumed that the reception of betting advertising during the broadcast of live sports or equestrian events reinforces the incitement to bet, both for ordinary gamblers as well as for those who have gambling problems and, alternatively, the frequency of gambling, which, without being an element of concern per se, is related to the generation of problem gambling patterns.

Therefore, measures on restricting advertising should focus on addressing the above issues, which are those identified as dangerous.

Once these objectives have been set, the regulation must also be proportionate, i.e., establish the essential degree of restriction -in this case, the freedom of the company and the margin of the operators' commercial decision to develop their advertising policy- to meet the need to cover the standard.

In this sense, it cannot be ignored that the holding of live sporting events constitutes an environment of particular connection with the placing of bets, as a consequence of the link between the event and the opportunity of the spectator to bet. This can be derived from the betting activity both in-person and online, which usually provides the means for gamblers to view such sports events as part of the operator's infrastructure.

The increasingly marked tendency of consumers to place fixed-odds bets live, regardless of whether such events are effectively broadcast, seems to also support this relationship, as the following chart shows: the proportion of bets relating to a specific event made at a time when said event had already started, in relation to total bets, ranges between 67% and 75% of total bets, depending on the month in question.

Graph 5. Proportion of bets placed on events related to events already started and bets in which the event has not yet begun ("conventional") measured in amounts gambled. Data from January to September 2017.

Source: author's own based on reporting data from operators.

Therefore, reasons of proportionality in relation to the existing situation advise protecting the previously identified groups without outright banning the possibility of advertising betting, a game which accounts for around 50% of the total online market, in live sports broadcasts, until it is established that the banning is essential to achieve the aforementioned objectives, taking into account the potential impact of this ban on not only gambling operators, but also in related sectors such as the providers of advertising space and the sports competitions themselves.

Finally, the regulation must seek consistency, not only with the remainder of the legal system but also with the philosophy and set of measures contained in the royal decree itself; all for the ultimate reinforcement of the measure’s effectiveness.

In this regard, this specialty for the advertising of bets during the audiovisual broadcast of sports shows supposes a certain detraction from the applicable standards to the bets themselves and to the other general casino games, although justified in the special relationship between the broadcast of events and the generation of opportunities to bet. But a total ban of this possibility would be inconsistent with the standard’s other general provisions not related to the audiovisual diffusion of advertising. These provisions are based on the prioritisation of company freedom (regulating the necessary aspects in different cases in a timely manner) on absolute bans and, in the context of sporting events for example, allowing the advertising of games in premises and sports venues or the sponsorship of sports activities and entities by gambling operators; advertising mechanisms which would also display their existence in events broadcast live.

In other words, an absolute ban on advertising of bets in live sports broadcasting would not be entirely effective in a context other than the total ban or at least a considerably higher restriction on gambling advertising, options which, for the reasons explained in sections 3.5 and 4.2 of this report, have not been considered suitable.

On the other hand, such consistency determines that certain elements of the regulation on audiovisual advertising in the broadcasting of live sporting events are not only applicable to
scheduling before 10:00pm, but also afterwards, given that the risks mentioned above exceed the protection of minors, the subject of the protection according to different time slots.

In view of that stated above, it is proposed to regulate the advertising of bets on live broadcasts of sporting events which will allow the practice to be adapted with a sufficient degree on the protection of the risks specifically pointed out.

This extends the line followed in 2015, albeit with a reconfiguration of the elements to be addressed, given that the evolution of the activity and the current state of the issue from a scientific point of view allows the problem elements to be specified further.

Thus, during live broadcasts of sporting or equestrian events or any other of a competitive nature by any medium, commercial communications of bets may be broadcast, from start to finish, including breaks and regulatory interruption, provided that, cumulatively, the conditions detailed in the following table are met.

### Table 10. Requirements of advertising betting during the broadcast of live sports events.

<table>
<thead>
<tr>
<th>Precaution</th>
<th>Justification</th>
<th>Time slot in which the restriction applies</th>
</tr>
</thead>
<tbody>
<tr>
<td>The broadcast should be outside the reinforced protection time slots stated in article 7.2 of the LGCA</td>
<td>Protection of minors, aligned with the General Law on Audiovisual Communication (LGCA)</td>
<td>Work days: 8:00am-9:00am and 5:00pm-8:00pm. Saturdays and holidays: 9:00am-12:00pm</td>
</tr>
<tr>
<td>When advertising bets on specific events, they must be strictly related to the event that is broadcast or with others of the same competition</td>
<td>Consistency with the general principle of subjection of the advertising bets to certain time slots according to the characteristics of the game. Advertising, within the time exception, must strictly refer to reporting the commercial conditions relating to events broadcast or those strictly related to them. A transgression in the above leads to perverting the scope of the general rule in terms of audiovisual gambling advertising (fixed-odds betting and betting exchange after 10:00pm)</td>
<td>From 10:00pm to 6:00am</td>
</tr>
<tr>
<td>Advertising doesn’t include Promotions or bonuses</td>
<td>Limitation of advertising aimed at attracting new customers, promoting the globally-considered betting activity and, in general, the incitement to gambled derived from the promotions</td>
<td>At all times</td>
</tr>
<tr>
<td>Precaution</td>
<td>Justification</td>
<td>Time slot in</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Appeals or incitements to the immediate placing of bets (including</td>
<td>Limitation of the incitement to bet.</td>
<td>At all times</td>
</tr>
<tr>
<td>evolution of odds on the same event)</td>
<td>Call-to-action messages such as &quot;What are you waiting for?&quot;, &quot;Bet now&quot;,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&quot;Don’t waste time&quot;, together with the reiterative nature of the advertising,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>reinforce the incitement to gamble</td>
<td></td>
</tr>
<tr>
<td>Information about the possibility of reimbursing the amount bet in</td>
<td>Limitation of the incitement to bet.</td>
<td>At all times</td>
</tr>
<tr>
<td>advance</td>
<td>The anticipated cash-out formulas reinforce the incentive to re-bet the</td>
<td></td>
</tr>
<tr>
<td></td>
<td>recovered amount</td>
<td></td>
</tr>
<tr>
<td>Betting odds relating to events which may occur before the end of the</td>
<td>Limitation of the incitement to bet and the repeated realisation of bets.</td>
<td>At all times</td>
</tr>
<tr>
<td>match (in-play bets).</td>
<td>The reiteration and proximity elements are more present in relation to</td>
<td></td>
</tr>
<tr>
<td></td>
<td>bets on events which can be resolved before the end of the match</td>
<td></td>
</tr>
<tr>
<td>Information exclusively related to the best odds paid and highest risk</td>
<td>Limitation of incitement to bet from incomplete information of the situation.</td>
<td>At all times</td>
</tr>
<tr>
<td>on a specific event</td>
<td>Appropriateness of the recipient of advertising derived avoiding bias in the</td>
<td></td>
</tr>
<tr>
<td></td>
<td>relation to the risk of certain bets</td>
<td></td>
</tr>
<tr>
<td>Links between betting and a greater enjoyment and socialisation of the</td>
<td>Limitation of trivialisation derived from the link between sport and bet.</td>
<td>At all times</td>
</tr>
<tr>
<td>entertainment derived from the sports event or the loyalty to the</td>
<td>Appropriateness of avoid presenting the bet as an element which enhances</td>
<td></td>
</tr>
<tr>
<td>sporting affinity of the person betting with certain participants or</td>
<td>the experience derived from the enjoyment of the sport and the involvement</td>
<td></td>
</tr>
<tr>
<td>athletes</td>
<td>of the viewer, through messages such as &quot;be faithful to your team&quot;,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&quot;increase the excitement of the clash&quot;, etc.</td>
<td></td>
</tr>
<tr>
<td>The commercial communication is perfectly identifiable as such in the</td>
<td>Correct identification of the advertising nature of the communication.</td>
<td>At all times</td>
</tr>
<tr>
<td>context of the narration of the event, without placing the</td>
<td>Need for commercial communication to be identifiable as such. Appropriateness</td>
<td></td>
</tr>
<tr>
<td>narrator or interlocutors as the focus of the betting action or of their</td>
<td>of not generating biases of &quot;prescribers&quot; derived from the way advertising is</td>
<td></td>
</tr>
<tr>
<td>incitement</td>
<td>presented</td>
<td></td>
</tr>
</tbody>
</table>

Source: author's own.

As can be seen, the provisions will apply to advertising inserted into events broadcast live, be they strictly sporting, equestrian or more broadly of a competitive nature. This is so because the risks which are intended to be alleviated would also arise from the broadcasts of any competition, even if they are not considered sports (such as so-called e-sports or videogame competitions). These competitions already enjoy some media appeal, which may increase in the future, and interest make be piqued by their broadcast.

Beyond this, it can be seen that the only measure strictly aimed at limiting the availability of advertising opportunities within these events consists of the banning of such advertising in the reinforced protection time slots. This constitutes a minimum consistent with the rules on

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling. Version dated 30/11/2017.
audiovisual advertising in other games and particularly necessary in the light of the increasing tendency to the time spread of these broadcasts.

Beyond the previous impossibility, the regulation would not aim to directly affect the availability of advertising space, but rationalise its content, with the triple objective of protecting minors, people with gambling problems and gamblers in general from the damages which repeated exposure to them can cause.

In relation to the current regime, the link is maintained between the advertising of the bets specifically offered and the event which is broadcast or with others of the same sports competition. The reason is that the purpose of establishing a specialty in audiovisual advertising for fixed-odds betting and betting exchange is not to generate a window to attract customers but to promote a reasonable knowledge of the operator’s offering in relation to certain bets. However, this limitation will not apply between 10:00pm and 6:00am, as it is understood that within that range the possibility of extending advertising to other events is consistent with the possibility of advertising bets in general, without additional risks being generated. This, unlike the other proposed measures, intends to affect risks which would be generated both before and after that time.

Thus, as already established in the first version of the royal decree, both direct and indirect advertising is banned if it includes bonuses or promotions -for example, by incorporating references to their existence and availability on the operator’s website. It is noted that live broadcasting usually appeals to these conditions as a means for mainly attracting customers, but also for maintenance. The reiteration of this practice generates a continuous incentive to access the operator’s services, largely dissociated from bets on the specific event broadcast; in particular, taking into account that the regulations do not allow betting on an ongoing event with funds deposited after the start of the event. The appropriateness of limiting that this incitement is further enhanced as a result of the message’s reiteration, together with the measure’s consistency and effectiveness, suggest that this ban be maintained both before and after 10:00pm, avoiding said message in the same broadcast intensifying from that time.

From a presentation of advertising standpoint, the guarantee that commercial communication is identifiable is also maintained. This does not imply that advertising, particularly on the radio, must be separated from the narrative or preceded by "advertising content" warnings. If the identification is clear for a reasonably informed average recipient, the advertising will be admissible regardless of the format and the subject used, in line with the possibilities afforded to audiovisual standards currently in terms of advertising formats in these channels36. In any case, notwithstanding that those responsible for the narration are those who carry out or participate in it, the commercial communication of the bet cannot place the narrator or interlocutors as inciters or the focus of the betting action. This prevents the advertising content presentation format from creating an improper incitement to bet or, in a more broader manner, the perception of a link of inevitability between betting and sport which trivialises the presentation of the bet as a gambling product.

The remaining provisions are closely linked to the desire to limit the incitement to gamble derived from including or referring to certain elements as part of the advertising content. These elements are very specific, considering that a generic limitation of banning information on odds of bets, as dealt with in the version submitted to public consultation, could be disproportionate and, possibly, less effective. In this respect, the regulations on fixed-odds betting and exchange betting, which ban

---

36 See. Royal Decree 1624/2011, of 14 November which approves the Regulation for the implementation of Law 7/2010, of 31 March on General Audiovisual Communication, in relation to television commercial communications, in particular its article 16
new deposits being used to bet on in-play events, should be taken into account again. Likewise, the odds are an informative element of interest for the natural competitive positioning of the operator which can be considered relatively aseptic if stripped of incitements to bet.

Therefore, **instead of the generic ban on odds**, in line with the current scientific literature on the subject, **it has been decided to limit the following aspects**:

- **The direct or indirect incitement to bet**, including the appeals of the narrator or the comparison between past and present odds.
- **The possibility of publicising the "cashing-out" option**, i.e., of reimbursing the amount bet, in whole or in part, prior to the verification of the event being bet on.
- **The specific odds on "in-play" bets** strictly refers to bets on events whose result could be resolved before the end of the sporting event.
- **Information exclusively related to the best odds paid and highest risk** on a specific event

All of them contribute to fixed-odds betting or betting exchange to move from being a mere prediction made in advance on a specific result, to a continuous activity, based on the constant quasi-immediate participation/resolution sequence with possible total or partial reimbursement of the prize/new bet on another imminent resolution event. This point is not to ban such bets, which undoubtedly constitute one of the great attractions for consumers, but to eliminate the reiterated and renewed appeal to place bets within a uniform consumer spread throughout the broadcast event.

Finally, it includes the **banning of links between betting and a greater enjoyment and socialisation of the entertainment derived from the sports event, or between that and the loyalty or affinity of the person betting with certain participants or athletes**. It is a question of not creating the image that betting enhances the experience of the sport’s spectator through a proactive attitude and involvement towards the eventual outcome of the meeting.

In short, it is considered that the proposed provisions will contribute to streamlining the content of this form of advertising and, indirectly, the advertising flow related to the information on bets, based on the systematic reiteration of elements such as those addressed, resulting in the protection of minors and gamblers themselves, whether problem gamblers or not.

**Advertising of gambling marketed under the "Other Gambling" general licence**

In the Code of Conduct, there is no specific provision regarding the content of commercial communications of these games. However, **its unique characteristics**, already analysed above, and the greater possibility that they involve inciting unthinking or compulsive gambling, both by gamblers without problems and those who already have, have suggested assessing the possible introduction of limitations in this regard, notwithstanding the communication channel chosen for the dissemination of advertising.

The analysis carried out in 2015 based on the observation of data from the then-existing national level online gambling market pointed to the possibility that the advertising of these games was directly related to the immediacy of the gamblers’ decision as to when to take part in gambling activities, doing it at a moment close to receiving the advertisement. **Based on the most up-to-date data for 2017, it is plausible to maintain such presumption**, according to the curves shown in Graph 3 regarding the time distribution according to the number of sessions related to the behavioural analysis of bingo. This graph shows that poker, betting and casino games register greater activity,
measured in number of sessions, in the time slots in which advertising is allowed (from 10:00pm to 6:00am). However, bingo, which has greater advertising freedom, registers a flatter curve in terms of the time distribution of the sessions.

Based on this analysis, in 2015 it was concluded that the reception of advertising, notwithstanding other reasons, may have a conditioning effect on the gambler’s decision when taking part in gambling activities, both depositing funds and participating, immediately afterwards. Consequently, once the total ban of prizes or jackpots being referenced in commercial communications was rejected as being considered disproportionate and even harmful for the gambler themselves, in the version of the royal decree subject to public consultation in March 2015 it was decided to allow advertising to include objective and truthful information about the amount of prizes or specific jackpots, provided they do not constitute the main element of the commercial communication, either due to the size of the on-screen graphics, its location within the it, or its importance within the message.

However, after the public consultation, it has been considered appropriate to simplify the rule and remove the provision, without generally influencing the presentation of prizes or jackpots in the context of commercial communication, seeking certainty and predictability in the application of the rule, given the high value of the elements originally introduced. Likewise, it has been witnessed that, even after the effective introduction of slot machines in 2015, the advertising of these games does not rest so much on the prize variable but on the bonuses or promotions.

In this sense, the general regulation of bonuses has been reinforced in article 13 (absolute limit of 500 euros) and also, in order to avoid possible competitive asymmetries or advertising behaviours susceptible to committing regulatory fraud, an express ban is established on carrying out commercial communications which include promotions or bonuses if they take place during the broadcast of live sporting events. The main reason is consistency with the same ban on advertising bonuses in betting adverts during live events, since many betting operators offer promotions for these and their casino games simultaneously, and the legitimacy of guaranteeing the effectiveness of the first.

4.3.e) Co-regulation, self-regulation and administrative supervision

The royal decree includes certain provisions aimed at promoting co-regulation (sponsored and validated by the authority responsible for gambling regulation) and knowledge by the authority in charge of gambling regulation of self-regulation agreements which operators outside of co-regulation agreements subscribe to. In particular, within the framework of co-regulation agreements, the possibility of developing codes of conduct, as well as their minimum content, is provided (article 19):

- Measures of prior advertising content self-control, which allows presuming the good faith of adherence to the code in the presence of legality of commercial communications.
- Extra-judicial resolution systems of claims and controversies, to which the signatories are obliged.
- Supervision and a posteriori control mechanisms of their compliance, including the monitoring and supervision of the resolutions adopted by the body or entity in charge of resolving the claims.
The regulatory development of gambling advertising has the inescapable, and desired, consequence of reinforcing the applicability of the administrative penalty system to gambling advertising, which at present is limited. One of the aims underlying the strengthening of the sanctioning powers of the authority responsible for gambling regulation which the royal decree supposes is precisely to enhance the legal effect of the co-regulation mechanisms in the LRJ and, therefore, its usefulness for arranging and, where appropriate, redirecting the behaviour of the operators and agents within it, based on the applicable framework. For this, it is vital that the interaction between both mechanisms, the public body and the private ones:

- Is coordinated and not redundant.
- Includes the appropriate incentives for operators, both in their own advertising work and in the reporting of behaviours of third parties potentially deviating from the norm.
- Respects the respective scope of action of all those involved.
- Is compatible with an effective and efficient use of resources, including public resources.

The model, which complements the legal provisions in relation to self-regulation (for example, the good faith value which article 7.4 of the LRJ establishes for positive prior consultation reports, therefore seeks to strengthen the co-regulation system without otherwise establishing an ex lege obligation -which is burdensome for operators- to always and in any case use these mechanisms or, even, to adhere to the code, or other similar obligations such as the obligation of prior review of the advertising carried out. It is the operator who has to derive the appropriate use of the co-regulation instruments and, in this sense, the standard aims to strengthen the incentives and use them to confirm their importance in different phases of the process.

Likewise, this design will make it possible to appropriately measure the respective costs of the different entities involved in the supervision and control of the advertising activity; the authority charged with gambling regulation (and, where appropriate and in what corresponds to it, the audiovisual authority) and the one charged with ensuring compliance with the code.

With regard to self-regulation, processing in accordance with the LRJ itself has been chosen, which opts decisively for co-regulation but without closing the door to this other type of agreement. In this sense, it is established that the self-regulation agreements which the operators subscribe to outside the provisions of the previous section on aspects of their activity related to the content of the royal decree will be communicated to the authority charged with gambling regulation.

4.4 Responsible gambling: measures adopted and justification

4.4.a) Description of the measures

In the case of the provisions on responsible gambling, its reasoning responds, as already stated, to the fundamental objectives of the responsible gambling policy established in article 8 of the LRJ.

The specification of the justification of necessity and proportionality of the main measures in this matter is contained in the following table. Subsequently, this justification is developed in response to the main philosophy and content of the royal decree. The table includes the approaches and draftings as a result of possible modifications which have taken place after the period of public
consultation and the request for the reports demanded. To see the meaning of these changes more clearly, see Appendix II, which arranges them systematically.

### Table 9. Main new ideas of the royal decree in terms of responsible gambling.

<table>
<thead>
<tr>
<th>Article</th>
<th>Purpose</th>
<th>Description of the measure</th>
<th>Purpose sought</th>
<th>Link with the purpose</th>
<th>Proportionality</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>Corporate social responsibility policy</td>
<td>Comprehensive policy development, plan of responsible gambling measures as part of the operational plan, designation of a person responsible within the company, possibility of developing the functions through subsequent DGOJ Resolution</td>
<td>Determination of the operator’s obligation with minimum content</td>
<td>The operator becomes a proactive agent in determining their responsible gambling policy, beyond the provisions of the Regulation</td>
<td>Cost of compliance non-existent. Possibility of further deepening by the operators</td>
</tr>
<tr>
<td>22</td>
<td>Obligations regarding information</td>
<td>Access and content of the spaces dedicated to information on the elements of “Responsible Gambling” and “Safe Gambling”</td>
<td>To provide full information in a single easily accessible place</td>
<td>The centralisation and completeness of the information allows quicker access and reference and greater knowledge and assimilation</td>
<td>Affordable cost, derived from the technical organisation and content of the operator’s website</td>
</tr>
<tr>
<td>23</td>
<td>People of relevance or public personalities in the portal</td>
<td>In web environments accessible without user registration, they may not appear unless linked to messages of responsible gambling and the prohibition of minors</td>
<td>Increase effectiveness of awareness</td>
<td>The person participating amplifies the message</td>
<td>Affordable cost, integrated into the that of the people of relevance or public personalities themselves</td>
</tr>
<tr>
<td>24</td>
<td>Collaboration with the Administration for the awareness-raising and promotion of responsible gambling</td>
<td>Communicating the existence of questionnaires prepared by the regulator on gambling habits available to users, to be filled in voluntarily and anonymously</td>
<td>Increase knowledge of the questionnaires and invite participation</td>
<td>The operator becomes an active and necessary participant in the responsible gambling policy</td>
<td>Cost in time, detailed and appropriate for operators</td>
</tr>
<tr>
<td>25</td>
<td>Studies on responsible gambling</td>
<td>Possibility of communicating the intention to deal with studies and their results with the authority charged with gambling regulation, in order to facilitate their public dissemination</td>
<td>Increase awareness and disclosure of the risks of gambling and responsible gambling solutions. Incentive to carry out the studies</td>
<td>The operator becomes an active and necessary participant in the responsible gambling policy</td>
<td>Voluntary decision of the operator. No cost beyond mere communication</td>
</tr>
<tr>
<td>Article</td>
<td>Purpose</td>
<td>Description of the measure</td>
<td>Purpose sought</td>
<td>Link with the purpose</td>
<td>Proportionality</td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
<td>-----------------------------</td>
<td>----------------</td>
<td>-----------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>26</td>
<td>Detection of risk behaviours in relation to the gambling activity</td>
<td>Establishment of detection mechanisms by the operator, and subsequent action protocols, through feedback and personalised recommendations. Annual communication to the authority changed with gambling regulation on the number of behaviours detected and actions carried out</td>
<td>Enable the identification of problem gambling patterns and proactivity in the initial measures to be adopted by the operator. Reaction to these behaviours when they are identified</td>
<td>The operator becomes an active and necessary participant in the responsible gambling policy</td>
<td>Cost to be assumed by the operator. Concrete definition of the criterion variables subject to the operator’s criterion. Possibility of the DGOJ rolling out uniform criteria in the future through resolution</td>
</tr>
<tr>
<td>27</td>
<td>Suspension of gambling accounts</td>
<td>Regulation consistent with the right of self-banning and the power of voluntary suspension (self-exclusion). It is impossible for the user to make deposits and participate</td>
<td>Help the gambler’s self-awareness and control</td>
<td>A duty to help contain the emergence of problem gambling patterns and, where appropriate, contain their effects</td>
<td>Cost of technical implementation to be assumed by the operator (already exists in the case of self-banning)</td>
</tr>
<tr>
<td>28</td>
<td>Information and help in terms of responsible gambling and risk behaviours</td>
<td>The operator provides telephone customer service, which will include assistance in matters of responsible gambling. Obligation to provide certain information as a minimum</td>
<td>Channel guidance to the gambler with problems or concerns</td>
<td>The proximity and immediacy of the guidance in relation with the time at which the gambler needs it can increase the its perception on the existence of a problem</td>
<td>Cost to be assumed by the operator. Reasoning of the cost through the possible outsourcing or several operators sharing responsibility of the service</td>
</tr>
<tr>
<td>Fourth additional provision</td>
<td>Advertising on charitable or general interest aims promoted by gambling operators.</td>
<td>The restrictions established in Title I will not apply to this advertising, provided that the activities are implemented through charitable organisations or foundations linked (totally or partially) to gambling operators.</td>
<td>Reconciling the promotion of corporate social responsibility and the involvement of gambling companies in activities with a social aspect consistent with the framework provided for the advertising of operators and gambling activities</td>
<td>The greatest ease of advertising associated with these activities will be possible when they are not directly instrumented by the operator.</td>
<td>Voluntary decision of the operator. The cost of the measure is non-existent</td>
</tr>
</tbody>
</table>

Source: author’s own.
4.4.b) Analysis of the justification and proportionality of the measures

The inclusion of a Title in the royal decree which complements existing measures connected to responsible gambling is consistent with the purpose of the standard, related to the protection of public health, as well as its integral approach. There is a clear link between both parties and a duty of reciprocal interrelation, consistency and reinforcement. Proof of this is that there are provisions on both parties which really involve the two sides of the same measure; for example, dealing with public personalities in advertising and on the operator’s own website.

Practically all of the regulation of the royal decree in this respect consists of establishing certain measures applicable by the gambling operators; setting the objectives mentioned in article 8 of the LRJ.

There is a clear and inescapable objective of protecting public health in relation to responsible gambling. In order to explain the justification of the measures included in the royal decree, the justification relies mainly on analysing its relevance to guarantee such an objective, as well as its proportionality and weighting when dealing with it being assumed by the gambling operators.

This weighted approach, in line with the approximation which other jurisdictions had adopted in regard to this issue, for example the British\(^\text{37}\), has the following projections in the royal decree:

- **First**, the cost their inclusion represents for the operators has been assessed in the introduced measures, always choosing the least expensive option (or offering operators different options or even the specific orchestration of the obligation; for example, the detection of risk behaviours or the possibility of outsourcing –and sharing among several operators- the information and assistance service) which allows the objective pursued to be achieved.

- **Second**, the scope of the measures to be incorporated is very specific. There are already a number of measures of this nature currently in force in the applicable regulations and in the requisites required to obtain licences\(^\text{38}\). The duty of this royal decree is to complement those other already existing measures, reinforcing certain areas which are not so robust.

It is important to bear in mind that the oft mentioned European Commission Recommendation of 14 July 2014 proposes a series of measures to the Member States related to the protection of consumers, among which a good number relate to responsible gambling. With regard to Spain, the vast majority of them are already implemented, and through this royal decree we have sought full incorporation of them, except, where justifiable, in relation to some specific measure. Appendix I to this report details each of the measures in the Recommendation; its specific position in the state legal system where appropriate; when they are pending inclusion, if they have been included in the royal decree; and, if not, what was the reason for not doing so.

\(^{37}\) In this respect, for example, the document (February 2015) of the Gambling Commission “Strengthening social responsibility: Amendments to the social responsibility provisions in the LCCP and to Remote technical standards. Summary of key changes”, which summarises the changes at a regulation and co-regulation level in terms of responsible gambling, with regard to the new regulatory framework in that country as a result of its 2014 Gaming Act. Available at: [http://www.gamblingcommission.gov.uk/pdf/LCCP-summary-of-key-changes---February-2015.pdf](http://www.gamblingcommission.gov.uk/pdf/LCCP-summary-of-key-changes---February-2015.pdf).

\(^{38}\) See section “Opportunity of the regulation”, of this Report.
Third, it is intended to leave room for the gambling operators themselves, so that, in their commercial policy framework and, more broadly, their corporate social responsibility, they intensify in the provisions of the royal decree and the others in force. The appropriate framework for this is the plan of measures foreseen in articles 4 and 8 of the LRI and the operating plan which, where appropriate, they must submit to request a licence, in correlation with that.

Finally, there are measures which, due to their nature, are not applicable, or not to the same extent, to all the possible channels of marketing the activity because, by their nature, they are only required proportionally online. This is the case, for example, of the obligations based on the gambling account or user registration and which, consequently, cannot be simply placed on the in-person marketing of certain games, particularly those subject to reservation. The royal decree intends to be consistent with those distinctions.

The areas in which the royal decree is centred correspond to those of information, awareness-raising and control.

4.4.b.I) Information mechanisms

The information on the implications and complexities of the gambling activity and the multiple elements which are part of it and, in particular, the measures which exist both in regulation as well as with the gambler’s ability to exercise volitional control over the activity being carried out at any time, is a fundamental element of the policy to prevent disordered and ultimately pathological behaviours. This is not an action which corresponds exclusively to gambling operators: also, for example, the regulators have responsibilities in this regard and carry out initiatives as such, for example, in the case of the DGOJ, the recent implementation of the www.jugarbien.es website, aimed solely for this purpose.

In any case, from the analysis conducted in relation to the behaviour of operators, it has been concluded that there is a certain degree of divergence in the breadth and depth of the information they provide on responsible gambling and, more broadly, on safe gambling. Consequently, the royal decree intends to state a certain minimum content to the information provided by the operators through their websites and their mobile gambling applications, in order to guarantee a relatively uniform message to citizens and which is, of course, a single voice and homogeneous in its central approaches.

Likewise, and in order not to distort the perception of citizens in their weighing up of the risks of the game, as well as for consistency with the other content, a provision is introduced that in the operator’s gambling portal, specifically in those environments where user identification is not required and therefore also accessible to non-registered users, the image of persons of relevance or public personalities cannot be used without this image being clearly accompanied by a responsible gambling and prohibition of gambling to minors message.

It is considered that all these measures do not suppose a significant cost for the operators which have not yet implemented these information obligations of their own volition at present. Likewise, beyond the will to clearly and systematically organise the information on the operator’s web portal, which implies enabling direct access and specific spaces, and the possible use of standardised icons –to be proposed and approved by the DGOJ- the regulation does not establish the prescriptive manner in which to present the information, leaving the operator some margin of freedom with the sole exception that the link to said information is visible directly when accessing the portals.
4.4.b.II) Awareness-raising mechanisms

The transfer of the potential risks of the gambling activity on public health to the gambler and, more broadly, to citizens, through proactive communication actions, is an inescapable addition to the obligations regarding information. Consequently, the royal decree establishes certain collaboration principles for the industry in the awareness-raising and protection of society against such risks.

Specifically, collaboration mechanisms are established between operators and the authority charged with gambling regulation, for example, in the operator informing gamblers of questionnaires prepared by the regulatory authority and intended for them, in the context of behavioural studies. Likewise, with the aim of encouraging studies to be carried out in this regard, it establishes the possibility that they are communicated to the authority charged with gambling regulation to optimise their diffusion.

It is considered that, in general, the cost of such measures is proportionate:

- In the case of conducting studies, the decision to carry out an initiative of this type or not is in the hands of the operator; the framework provided is intended to encourage such an initiative, which the operator may also be encouraged to perform for other reasons, such as brand image or corporate social responsibility.

- Regarding the submission of questionnaires, after pondering the partnership mechanism and the scope of the obligation for all those involved (operator and gamblers), it has been decided to remove the possible burden derived from the operator's positioning as the intermediary between the regulator and gamblers in respect of sending both the questionnaire and the responses, without establishing a duty to submit. In a context of electronic or telematic communication, the plausible scenario is that the questionnaires are stored on some accessible web host through a link and made available directly to the gambler by the authority charged with gambling regulation, with which the obligation of the operator limited to letting the player know about the questionnaire's existence. It is considered that the cost derived from fulfilling said requirement is fully included in the operator's technical interface in its relationship with gamblers and, in any case, less than the benefit of the general interest derived from having said information. Likewise, the approach to the gambler's response is proportional: this will be voluntary and anonymous in any event, notwithstanding the possibility of identification being required to access the questionnaires in order to preserve the integrity of the data obtained.

4.4.b.III) Control mechanisms

Such control mechanisms must be understood as all those diverse measures designed so:

- The operator provides the gambler with the possibility of increasing their self-awareness in relation to the gambling activity they take part in (detection of risk behaviours in relation to the gambling activity).

- The gambler may act according to their own awareness of potential gambling problems (right of self-exclusion and power of voluntary suspension).
The operator assists or channels assistance to gamblers in trouble or in search of information in relation to these issues (assistance with issues of responsible gambling).

From a more general standpoint, the operator offers certain information to the gambler for their awareness in relation to dealing with problem gambling (information about institutions or organisations which promote responsible gambling or assistance with the risks of gambling).

In relation to the first of these aspects, attention should be drawn to the potential of the online gambling environment, suitably regulated and monitored, to identify the emergence of gambling patterns which may be problematic. It is possible that some operators, in the course of their corporate social responsibility, are already taking advantage of it and offering it to their customers. For this purpose, the operator has a privileged position, not only in terms of the information it has available and its overall vision, but also in all the monitoring processes it already has in place in view of its control and management of the risks incurred, be they in relation to pathological gamblers or not, and the need to respond to other regulatory obligations (for example, in relation to money laundering, with specific obligations of traceability, to know your consumer and due diligence).

It is therefore necessary to optimise the operator’s position to integrate it into the responsibility of gambler control, always proportionally, establishing the obligation to determine a risk behaviour criterion in relation to the gambling activity and an obligation of communication to the gambler who is a victim of it, notwithstanding other actions which the operator may adopt unilaterally. Likewise, it is an obligation which can obtain synergies, for example in relation to the conduct of studies on responsible gambling. To this end:

- Gambling operators must establish mechanisms and protocols to detect risk behaviours in relation to the gambling activity of registered users. The mechanisms adopted must be set objectively and in accordance with quantitative criteria which take into account elements such as the size, frequency or variability of the participation and/or deposits, notwithstanding other quantitative or qualitative elements which may also be relevant, such as the characteristics, design and mechanics of the different games.

- If the result of them suggests that the user may be developing a risk behaviour, and notwithstanding other possible measures taken within their corporate social responsibility framework, the operator will report it by email or equivalent means, accompanied by an explanation of the behaviour according to the available data and with the recommendations of, at least, accessing the responsible gambling area, completing the self-assessment test and querying the existing gambling activity control and expenses tools.

- Before 31 January of each year, the operator must report to the authority charged with gambling regulation on the updated version of the basic description of the mechanisms and protocols implemented to detect risk behaviours, the action protocol if said behaviours are detected, the total number of users with a risk behaviour detected during the previous year according to the established mechanisms, as well as the actions carried out and the follow-up and effect of them.

This approach is considered more proportional than the initial option, based on the version from the public consultation project of March 2015, consisting of setting an increase threshold of more than eighty per cent of the average expenditure of the previous three months in which the gambler had participated in some manner. The simulations carried out as a result of the observations...
received, based on the data then available, allowed us to suggest that this criterion could mean the alert being triggered for a considerable number of users whose gambling activity was very little or insignificant in economic terms and, therefore, presumably not problematic. Accordingly, the possibility of partially containing these "false positives" was established by setting a floor or minimum of target expense at which this risk could be eliminates, with various amounts being assessed.

In fact, the possibility of providing a specific criterion for detecting these behaviours has been ruled out. In relation to the different starting point depending on the type of gambling offered by the operator, the potential richness of the variables to be used and the possibilities of refining the criterion to be constructed from them makes it advisable to grant the operator some leeway, at least in principle.

Such flexibility is accompanied by the **operator's obligation to immediately react to one of these behaviour patterns being detected**, based on an action protocol which the operator must determine and which will include communication by electronic mail or equivalent means. It will include information regarding the participation and gambler's expenses in the recent period determined by the operator and the possible existence, if any, of changes in the gambler's gambling patterns or spending behaviour as well as the recommendations of, at least, accessing the responsible gambling area, completing the self-assessment test and querying the existing gambling activity control and expenses tools. This is all in line with current scientific literature which has demonstrated the effectiveness of **personalised feedback tools based on the specific gambler's history**, as opposed to the sending of generic messages or alerts, in order to make the user who develops any of these behaviours reflect and become self-aware.

The final scope of the measure is strengthened by establishing an **obligation to annually give the operator's accounts** to the regulator, which consists of updating the basic description of established detection patterns and protocols and, in particular, the number of users identified and the actions developed accordingly. The purpose of this obligation is to assess the effectiveness of the mechanisms established by the operator.

In any case, and in the event that it is possible and advisable in the future, the corresponding article establishes that the authority charged with gambling regulation will be able to develop, via Resolution, the specific mechanisms to detect risk behaviours, as well as the protocols which operators must adopt once they are detected.

With regard to voluntary suspension or self-exclusion, it is considered a prior or complementary option to exercising the right to self-ban; the latter being stricter. The idea is to favour an **intermediate space of self-awareness and reflection**, so-called "cooling-off", which results in more responsible gambling or the decision to exclude oneself. It is also a provision in line with the European Commission Recommendation and with that of other jurisdictions and does not imply a higher cost nor subsidiary obligation for the operator beyond its technical implementation.

For its part, **assistance in matters of responsible gambling**, in terms of care and information platforms for those gamblers who proactively demand them, is an **integral element of the activity of promoting responsible gambling, prevention of gambling addiction and, where appropriate, adequate channelling for the treatment of pathologies**. And not only of gambling problems but, from a previous point of view, to help to clarify potential confusions on the perception of the gambling activity itself (a leisure activity and not aimed at economic benefits, the role of luck within...
it, the cognitive fallacies which can be generated, etc.), avoiding the emergence of subsequent problems.

Once again, the operator has a significant position due to their privileged relationship with the gambler and by being a point of direct connection between the gambler and gambling, notwithstanding the initiatives developed by the regulators themselves in the course of their responsibilities.

In this sense, the obligations which are included are guarantees (enabling a telephone service, free and at least in Spanish, for the gambler, with details of the minimum information content which may cover said service) but sufficiently proportionate, to the extent that the service can be provided individually or in conjunction with other operators; or even through third parties, after the appropriate signed agreement for that purpose.

4.4.b.iv. Measures for the general promotion of corporate social responsibility

The royal decree intends to formally include the specific measures already mentioned within the overall feeling of the operator towards corporate social responsibility and to encourage the interrelation of their gambling activity with a broader social aspect which exceeds that.

In this sense, the integral corporate social responsibility policy measures which serve as a framework for Title II, contained in article 21, stand out, aimed at guaranteeing that the operator tackles gambling as a complex activity and plays a proactive role in the prevention and, where appropriate, repair of the possible negative effects which said gambling activity may cause.

As well as the above, the royal decree includes a provision which specifically aims to help operators rise above the strict framework of the gambling activity and strengthen their commitment to social welfare through their possible intervention in civil society via the structures that our regulation makes for that purpose. Specifically, the fourth additional provision exempts the provisions on advertising in the royal decree (Title I) being applied to advertising and promotion of the activities of charitable organisations or foundations which pursue charitable or general interest purposes constituted by or linked to gambling operators, provided that such communications are related to said activities and, furthermore, there are no references to gambling activities or products.

This measure would facilitate the freedom of advertising communication of these initiatives indirectly linked to the operator’s image or brand, provided that the charitable organisation or foundation is used to channel such purpose, even if the latter is related, created or controlled by the operator themselves.

The measure has a modest scope insofar as it deals with a fully operative situation for the gambling operator, to which they are not obliged, as it is to channel resources through the appropriate legal means for public interest purposes typical of non-profit entities whether they are, among others, civic, educational, cultural, scientific, sports, health, work, defence of the environment and many, many more.

Likewise, its differential effect in relation to the full application of the royal decree in these situations is very contained to the extent that the provisions which regulate advertising take priority over the restrictions on the content of the gambling activity communication, both in the principles and the specific provisions. The real effect will be related to the non-applicability of certain measures related to the placement and dissemination of the gambling advertising and

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling.
therefore it will be limited. In any case, it supposes a resolute message towards the promotion of this type of action, increasing the implication of the gambling operators in the society in which they operate.

The measure has its precedent in a precept contained in the initial version of the royal decree, the former article 24, "Awareness-raising campaigns", which provided that the time restrictions provided for in Title I of this Royal Decree would not apply to the dissemination of campaigns whose exclusive purpose was to raise awareness of the adverse effects of gambling. This precept was eliminated after the public consultation phase considering that the effect of raising awareness of the gambling activity could be neutralised by the effect of possible concealed advertising of the operator's gambling activity, which is inconsistent with the established broadcasting times rules and counter-productive to the project's philosophy of protection.

It is understood that the new solution by requiring that, regardless of whether the operator's image or brand is more or less clear, the communication neither directly refers to the operator as such nor contains any reference to gambling activities. This eliminates this risk and, at the same time, provides greater freedom for the operator to transfer all kinds public interest activities being implemented through the organisations or foundations in question.

4.4.c) Measures related to responsible gambling which were initially considered and then discarded

The initial version of the project subjected to public consultation in 2015 proposed regulating certain aspects of the relationship between gamblers and operators, specifically: what to do with prizes obtained by users who are banned from gambling; what to do with monies from accounts cancelled due to inactivity; the cancellation of user records registered in the Register of Gambling Access Bans; the communication of the amount and what to do with funds and prizes; and what to do with funds if an operator stops trading. The idea was to establish a clear plan of action in these situations and to allocate the funds in some of these situations to institutions or organisations promoting responsible gambling or assistance in facing the risks of gambling.

However, after the public consultation, it was decided to delete the aforementioned articles after the cost-benefit analysis of:

- On one hand, the low economic value of the funds in these situations.
- And on the other, the operational difficulty potentially generating uncertainty, consisting of the operator allocating the funds in question to third parties when these amounts may continue to be demanded by the gambler as long as their right to credit has not prescribed according to the general norms of the Civil Code.

4.4.d) Modification of the deposit time limits scheme

The first final provision of the royal decree project modifies article 36 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 rule establishes a daily, weekly and monthly limit for deposits made by the gambler, limits which may be exceeded if the certain requirements established in section 3 of said article 36 are met. At present, by application of Annex II of the same Royal Decree, the limits are 600, 1,500 and 3,000 euros, respectively.

39 Section 3:
The time elapsed since this precept has been applied has allowed certain complexities and weaknesses to be identified in its application which would be appropriate to solve. In particular, the procedure to increase the deposit limit amounts established by the operator established in section 3 of said article 36 is modified. Thus, each user may request such an increase from gambling operators provided that:

- The user passes the tests on preventing addictive gambling behaviours and responsible gambling which the authority charged with gambling regulation has established for that purpose. This provision, which was originally foreseen only for the first increase request, is now established for each request made in this regard.

- The user has not shown a risk behaviour during the last three months, according to the historical analysis which gambling operators must carry out on the participant, based on the criteria established by the authority charged with gambling regulation. In the absence of such criteria, gambling operators will apply their own mechanisms and protocols for detecting risk behaviours of their participants, in accordance with the applicable regulations on responsible gambling (in particular with article 28 of the project).

- The new limits will take effect within a maximum period of three days and an increase to them cannot be requested if three months have not elapsed since the last limit increase.

5.- Proceedings

Proceedings done in 2015

The first phase of the royal decree project proceedings began in March 2015. The main procedures and contributions collected are listed below.

5.1 Public consultation period

The formal proceedings of the project began with the opening of a public consultation period, with the its preliminary versions and its Regulatory Impact Report published on the Ministry of Finance and Public Administrations website on 23 March 2015 A period of 20 working days was granted in which interested parties could submit the observations they deemed appropriate. As a result of this process, responses were received from the entities and organisations listed below:

- Electraworks España Plc (BWIN).

3." Each participant, expressly and individually, may request that gambling operators increase the deposit amount limits or to remove any limit they had established for their deposit account, above the amounts described in the first paragraph of this article. These requests may be granted by the operators if the following conditions are met:

a) When it is the first request by a participant to increase or remove any limits, the participant must pass the gambling addiction and responsible gambling tests established for that purpose by the National Gambling Commission. After the tests are passed the new limits will come into effect after seven days.

b) In the case of the second or subsequent request by the same participant to increase limits, the operator must analyse the aspects of the participant’s gambling records established by the National Gambling Commission, which will relate to their profile, their form of participation in the games, and whether they show any sign of addictive behaviour in relation to gambling. The new limits will come into force three days after this study returns a favourable result.

c) No increase in the limits established by the participant may be requested if three months have not elapsed since the last change to the self-imposed limits".
5.2 Procedures, consultations and reports collected.

The project was brought to the attention of the Responsible Gambling Advisory Board, at its session on 28 April 2015.

Likewise, the project was presented in the institutional framework of the Gambling Policy Board (CPJ), as stipulated in article 35 of the LRJ, specifically in the session of the Regulatory, Registries and Technical Working Groups of 7 May 2015.

The project was brought to the attention of the European Commission, in compliance with the provisions of Directive 98/34/EC and, at the level of domestic law, in Royal Decree 1337/1999, of 31 July, which regulates the submission of information on technical standards and regulations related to information society services. The Project was registered in the TRIS (Technical Regulation Information System) database of the European Commission on 13 April.

In addition, reports were collected on the draft legislation from the following ministerial departments, boards, bodies, entities and agencies:

- Ministry of Health, Social Services and Equality,
- Ministry of Defence.
Reopening of the proceedings in 2017

Given the time elapsed from the initial proceedings of this project, in order to ensure the accuracy and adequacy of the projected text, under the provisions of the third transitional provision of Law 40/2015, of 1 October and in article 24 of Law 50/1997, of 26 November (according to the wording in force until 2 October 2015) it has been deemed necessary to reopen the public consultation process, requesting reports of the bodies and entities which already report on the initial version of this project in 2015.

6.- Standards which are repealed

The royal decree does not repeal existing provisions.

7.- Economic impact and the competition

The proceedings of the royal decree on commercial communications related to gambling activities and responsible gambling have followed the guidelines established in the applicable regulations, principally article 24 of Law 50/1997, of 27 November, of the Government, concerning the procedure for the preparation of regulations.

As a result of these contributions, which are summarised below, certain modifications have been included into the text compared to the version put out for public consultation. Appendix II systematically elaborates on what these changes are.

7.1 Impact on the structure of the offer and competition in gambling at a national level

The royal decree has no appreciable negative impacts on the structure of the offer in the market nor on competition between operators, since they are basically related to the introduction of restrictions by operators to offer their products under conditions on which they decide, and will be applicable to all operators equally, both in terms of advertising and responsible gambling without
any kind of discrimination in terms of the scope of application of the royal decree. It will even suppose a strengthening of competition from this point of view, insofar as the advertising conditions all operators subject to the scope of the Law’s application will tend to be equated.

From the point of view of the gambling advertising, the differences which may exist between different games are, as explained above, proportional to the objective pursued, and in any case it does not seem that they, fundamentally serving the diverse nature of the different forms of gambling, will have a negative impact on the current market conditions.

It is not foreseeable, in any way, that the different conditions existing for each type of gambling will affect the competition conditions, insofar as, on one hand, the forms of gambling are sufficiently different so that the different regulation decisively determines the decision of those who gamble and, on the other hand, there are many operators holding several of the possible general licences, in particular that of other games and betting, which reduces the differentiation of operators to some extent.

7.2 Impact on gambling at a regional level

The royal decree has no impact on the gambling activity included under the powers of the Autonomous Regions depending on the place the activity is carried out. Insofar as, substantially, the project does not suppose a relaxation of the regime to comply with the obligations applicable to gambling in net terms at a national level, it also cannot be said that the standard places the operators subject to it in a comparatively more advantageous position compared to those not subject to it in relation to the previous situation.

7.3 Impact on the costs of the operators and other agents involved

The royal decree involves the introduction of certain costs for gambling operators subject to the scope of its application. In general, it is considered that where such costs exist they are not significant and, in any case, are proportional to the public interest objective achieved in each case.

Thus, on commercial communications, operators may see their direct costs increase in relation to certain specific provisions, such as the use of public personalities. In any case, they, like the other measures included, are fully incorporated into the chosen advertising activity, allowing such advertising option to be carried out, in principle not allowed, with a very contained cost and without diminishing the effectiveness or efficiency of the latter.

Likewise, from the point of view of the institutional mechanisms for supervision, monitoring and control, the system devised and the interaction between the administrative supervision powers and the co-regulation mechanisms contemplated do not predetermine additional costs for operators, such as those derived from an increase in prior consultations, since, although this is a desirable effect and even encouraged by the measures implemented, the truth is that the request for prior consultation is always subject to the express wishes of the operator or the other agents involved to the Code of Conduct without, in any case, being able to say that the norm obliges it.

On the other hand, in relation to responsible gambling, as witnessed, the fulfilment of some of the included measures will suppose a cost for the gambling operator, in addition to those currently. Sometimes this is due to the necessary adaptation of the technical systems and interfaces with the gambler (mechanisms to detect risk behaviours) and, in others, the need to take an active role in the initiatives related to problem gambling, either through the DGOJ initiatives (knowledge of the
existence of questionnaires prepared by the regulator), or by the operators developing the measures in relation to information, awareness or control themselves. In any event, it is deemed that they do not suppose a substantial change in the conditions of compliance with the regulations to which operators are already subject or those which they themselves have submitted in their operational plans, in terms of the cost incurred.

Finally, from a supervision and control standpoint, it is necessary to assess the impacts for operators, the regulator and the other agents involved in the co-regulation system, which are derived from the enforcement of the rules applicable to advertising gambling from the point of view of the penalty system and reinforcing the role of the code of conduct and its compliance and supervision mechanisms.

➢ Thus, in terms of the operators, the higher cost could come from the increase in prior consultation reports. However, the system guarantees the final decision of the operator in this regard, allowing them to freely decide whether they consider it useful to request the report or not, in which case they will be equally obliged to respect the provisions established in the royal decree.

➢ In relation to the authority charged with gambling regulation and, by extension, the other authorities with supervisory powers in this matter, such as audiovisual in the case of audiovisual communication services operators in the advertising chain, it does not rule out that the very purpose of the royal decree will lead to an increase in penalties. The impact of this on the available public resources has been intended to contain the design of the interaction between the scope of administrative intervention and that of co-regulation, with regard to the value of prior consultation and that of extra-judicial resolutions.

➢ Likewise, for the body overseeing compliance with the code of conduct in the context of co-regulation, the strengthening of the means of the royal decree will predictably entail a greater role and a greater demand for services from the operators.

7.4 Impact on the markets related to national level gambling, in particular to advertising

As before, a significant impact cannot be seen on the conditions of developing the advertising space market. The measures contained in the Title of the royal decree relating to advertising refer mainly to the content of commercial communications, not to the powers of the operators to carry out such commercial communications or not, which is essentially unaltered or barely modified.

8.- Impact on the constitutional order of powers

The project has no impact on the constitutional order of powers as it is only applicable to national level gambling, regulated by Law 13/2011, of 27 May.

9.- Budgetary impact

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.

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling. Version dated 30/11/2017.
10.- 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 them in different orders, the regulation does not entail the emergence of particular severe administrative burdens for the operators concerned, by not creating public intervention schemes public which generate a direct cost for them (such as the establishment of authorisation or licence schemes).

In any case, there are a series of communication and information obligations which may possibly generate an administrative burden on companies. 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.

Table 10. Estimate of administrative burdens.

<table>
<thead>
<tr>
<th>Administrative burden</th>
<th>Origin</th>
<th>Cost</th>
<th>Units</th>
<th>Frequency</th>
<th>Estimated population</th>
<th>Subtotal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Obligations of communication to Public Administrations</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Art. 20. Communication of self-regulation agreements</td>
<td>Voluntary</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Art. 25. Communication of studies on responsible gambling</td>
<td>Voluntary</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>Art. 29. Communication of assistance agreements on responsible gambling</td>
<td>Voluntary</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td><strong>Obligations of communication to the Administration or third parties</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Art. 22. Obligations regarding information</td>
<td>Obligation</td>
<td>100</td>
<td>1</td>
<td>1</td>
<td>60</td>
<td>6,000</td>
</tr>
<tr>
<td>Art. 24. Collaboration with the Administration for the awareness-raising and promotion of responsible gambling. Awareness of questionnaires produced by the DGOJ</td>
<td>Obligation. Uncertain or variable fact</td>
<td>50</td>
<td>1</td>
<td>1</td>
<td>60</td>
<td>3,000</td>
</tr>
<tr>
<td>Art. 26. Detection of risk behaviours in users</td>
<td>Obligation</td>
<td>300</td>
<td>1</td>
<td>1</td>
<td>60</td>
<td>18,000</td>
</tr>
<tr>
<td>Art. 28. Information and help about responsible gambling and risk behaviours</td>
<td>Obligation</td>
<td>300</td>
<td>1</td>
<td>1</td>
<td>60</td>
<td>18,000</td>
</tr>
</tbody>
</table>

When reading the table, it should be noted that:

- Regarding the communication obligations to the Administration detected, these do not arise for each and every operator (and in which case they do not have to be annually), but are the consequence of free commercial decisions of the operator (for example, the decision to

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling.

This text of this site is unofficial English translation of the official texts in Spanish. The later will prevail in case of discrepancies.
conduct a study). In all cases, a speculative estimate has been made on the increase in the number of times in which such situations can occur on an annual basis.

- Regarding obligations of information, to third parties or the Administration itself, in some cases (article 22) the bulk of this cost will take place when the obligation is implemented, notwithstanding the maintenance of information on the web portal, which will happen just once. Likewise, the cost derived from informing customers of questionnaires prepared by the authority charged with gambling regulation (article 24) depends on the fact of such initiatives actually being developed, which neither entails a certain annual cost.

11.- Impact due to gender

This project has a zero-gender impact, insofar as there were no inequalities in relation to equality of opportunity and treatment between men and women and the Order does not provide for any type of measure which could attempt to do so.

APPENDIX I

CONTENT OF THE EUROPEAN COMMISSION RECOMMENDATION OF 14 JULY 2014 ON PRINCIPLES FOR THE PROTECTION OF CONSUMERS AND USERS OF ONLINE GAMBLING SERVICES AND THE PREVENTION OF ONLINE GAMBLING AMONG MINORS: COMPARISON WITH THE STATE GAMBLING REGULATION

<table>
<thead>
<tr>
<th>Website elements</th>
<th>Recommendation of the Commission</th>
<th>National legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company name</td>
<td>☑ Regulated in each MO</td>
<td>Art. 8 Ministerial Order on Gambling: &quot;Information on the gambling operator and, in particular, the licences awarded by the National Gambling Commission and the validity of these, the trade name, business name, registered address and, where applicable, address of the Spanish representative.&quot;</td>
</tr>
<tr>
<td>Place of registration</td>
<td>☑ Regulated in each MO</td>
<td>Art. 8 Ministerial Order on Gambling: &quot;Information on the gambling operator and, in particular, the licences awarded by the National Gambling Commission and the validity of these, the trade name, business name, registered address and, where applicable, address of the Spanish representative.&quot;</td>
</tr>
<tr>
<td>Website elements</td>
<td>Art. 7 Ministerial Order on Gambling: &quot;The customer service and complaints and claim system should be easily accessible to anyone who may need to use it and should, at least, offer electronic access via the operator’s website, which will record the date and time of receipt of any claims filed via this channel.&quot;</td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Email address</td>
<td>☑ Regulated in each MO-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>No gambling symbol for minors</td>
<td>☑ Section 3.4 of Appendix VI of MO 3124/2011 &quot;The operator must inform on its homepage about the prohibition of gambling to minors and persons lacking legal capacity.&quot; <strong>Measure reinforced in the royal decree: obligations regarding information.</strong></td>
<td></td>
</tr>
<tr>
<td>Responsible gambling message</td>
<td>☑ Section 3.2.a) of Appendix IV of MO 3124/2011 &quot;The operator shall have specific content available with information about responsible gambling. The link to the information on responsible gambling shall be visible on all screens, irrespective of the size of the terminal used by the operator.&quot; <strong>Measure reinforced in the royal decree: obligations regarding information.</strong></td>
<td></td>
</tr>
<tr>
<td>Link to websites of associations fighting against pathological gambling</td>
<td>☑ Appendix VI 3.3.b) MO 3124/2011 &quot;Operators shall place a highlighted link on the homepage of their website providing information to allow users to contact institutions, associations and centres offering assistance on responsible gambling matters.&quot; <strong>Measure reinforced in the royal decree: obligations regarding information.</strong></td>
<td></td>
</tr>
<tr>
<td>Show that the operator is authorised</td>
<td>☑ Regulated in each MO Art. 8 Ministerial Order on Gambling: &quot;Information on the gambling operator and, in particular, the licences awarded by the National Gambling Commission and the validity of these, the trade name, business name, registered address and, where applicable, address of the Spanish representative.&quot;</td>
<td></td>
</tr>
<tr>
<td>The rules on gambling and betting must be available on the website</td>
<td>☑ Regulated in each MO Art. 8.c) Ministerial Order on Gambling: &quot;Information on the specific rules of the games offered and on the means of participating in said games, which the operator makes available to the participants. This information must be truthful and easily available before participation begins and at any time during participation.&quot; <strong>Measure reinforced in the royal decree: obligations regarding information.</strong></td>
<td></td>
</tr>
<tr>
<td>The &quot;free&quot; games must follow the same rules as for the real ones</td>
<td>☑ Additional Provision Six RD 1614/2011 &quot;The platforms of gambling operators may not offer free gambling applications which can give participants false expectations regarding their possibilities and probabilities in the game marketed, whether through using different game rules or by the use of a random number generator with different software or programming to that used in the real game, or by any other substantial difference from the conditions found in the commercially marketed game.&quot; <strong>Measure reinforced in the royal decree: promotional activities.</strong></td>
<td></td>
</tr>
<tr>
<td>Website elements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------------</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| **Gamblers must have access to their account at all times to see their balance** | Art. 8.d) Ministerial Order on Gambling: "Information on the prizes that the participants can win, on the amount they have played and on the balance of their gambling account, if they are participating through a registered user account."
Measure reinforced in the royal decree: obligations regarding information. |
| ☑ Regulated in each MO. |

<table>
<thead>
<tr>
<th>Terms and conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recommendation of the Commission</strong></td>
</tr>
</tbody>
</table>
| Information on the periods on time in with to withdraw monies, as well as withdrawal limits on the gambler's account. | Appendix III. Sole MO on Gambling: "The amount of the deposits made into the gambling account will be adjusted to the limits set by the National Gambling Commission in the terms set forth in Law 13/2011 of 27 May on Gambling Regulation, and its implementing regulations."
Measure reinforced in the royal decree: obligations regarding information |
| ☑ Regulated in each MO |
| The terms and conditions must be accepted and confirmed in the registration process | "2. The express acceptance of the gambling contract by the participant shall be made through any valid method under Law. Evidence of such acceptance and its recording shall be the responsibility of the gambling operator in all cases."
| ☑ Art. 31 RD 1614/2011 |
| They must be able to be stored and recovered at any time | "4. Through the user account, the operator will provide the gambler with a copy of the initial gambling contract and any subsequent amendments, and electronic signature tools as necessary for signing it and for any subsequent development of the legal relationship."
| ☑ Art. 31 RD 1614/2011 |
| Changes must be notified | "3. The participant must expressly accept any subsequent amendment to the gambling contract."
| ☑ Art. 31.3 RD 1614/2011 |
| Advertising must not take advantage of the inexperience of lack of knowledge of minors | Art. 9.1.b) Ministerial Order on Gambling: "Also, in the case of minors, they must avoid directing advertising at them or creating advertising which is particularly appealing to children and young people under the age of 18 and must ensure said people do not play a significant role in the promotional activity itself."
Measure reinforced in the royal decree: principle of protecting minors |
| ☑ Regulated in each MO |
### Terms and conditions

<table>
<thead>
<tr>
<th>Advertising campaigns must not use young people and minors</th>
<th>Art. 9.1.b) Ministerial Order on Gambling: &quot;Also, in the case of minors, they must avoid directing advertising at them or creating advertising which is particularly appealing to children and young people under the age of 18 and must ensure said people do not play a significant role in the promotional activity itself.&quot; Measure reinforced in the royal decree: principle of protecting minors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gambling must not be associated with activities specific to young people</td>
<td>Art. 9.1.b) Ministerial Order on Gambling: &quot;Also, in the case of minors, they must avoid directing advertising at them or creating advertising which is particularly appealing to children and young people under the age of 18 and must ensure said people do not play a significant role in the promotional activity itself.&quot; Measure reinforced in the royal decree: principle of protecting minors and rules on the participation of public personalities and sports sponsorship.</td>
</tr>
<tr>
<td>It must not suggest that gambling marks the transition from adolescence to adulthood</td>
<td>Art. 9.1.b) Ministerial Order on Gambling: &quot;Also, in the case of minors, they must avoid directing advertising at them or creating advertising which is particularly appealing to children and young people under the age of 18 and must ensure said people do not play a significant role in the promotional activity itself.&quot; Measure reinforced in the royal decree: principle of protecting minors</td>
</tr>
</tbody>
</table>

### Measures to protect minors

<table>
<thead>
<tr>
<th>Recommendation of the Commission</th>
<th>National legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minors cannot gamble nor have a gambling account</td>
<td>Art. 6.2.a) Law 13/2011</td>
</tr>
<tr>
<td>From a subjective point of view, the following people are forbidden to play the games subject to the Law herein: a) Minors and people who have been declared disabled by law or judicial resolution, pursuant to civil legislation.</td>
<td></td>
</tr>
<tr>
<td>Operators must have age verification procedures for gamblers</td>
<td>Art. 26.2 RD 1613/2011</td>
</tr>
<tr>
<td>Participants will be identified through a single user account which contains at least the identification data necessary to verify that the participant is not affected by any of the subjective prohibitions referred to in Article 6 (a), (b) and (c) of Law 13/2011 of 27 May on gambling regulation.</td>
<td></td>
</tr>
<tr>
<td>Include links on websites for parental control programs</td>
<td>Measure reinforced in the royal decree: obligations regarding information.</td>
</tr>
</tbody>
</table>
### Measures to protect minors

<table>
<thead>
<tr>
<th>Measure</th>
<th>Art. 9.1.b) Ministerial Order on Gambling: “Also, in the case of minors, they must avoid directing advertising at them or creating advertising which is particularly appealing to children and young people under the age of 18 and must ensure said people do not play a significant role in the promotional activity itself.”</th>
<th>Measure reinforced in the royal decree: principle of protecting minors</th>
</tr>
</thead>
<tbody>
<tr>
<td>No advertising in media and on websites aimed at minors nor give an impression of gambling as a form of entertainment or through promotional material</td>
<td>☑ Regulated in each MO</td>
<td></td>
</tr>
<tr>
<td>The advertisement must include a message that minors are prohibited from gambling</td>
<td>☑ Section 3.4.a) of Appendix IV of Order 3124/2011 and regulated in each MO</td>
<td>“The operator must inform on its homepage about the prohibition of gambling to minors and persons lacking legal capacity.” Measure reinforced in the royal decree: principle of protecting minors</td>
</tr>
<tr>
<td>No advertising in places close to where minors spend time</td>
<td>☐</td>
<td>Measure reinforced in the royal decree: principle of protecting minors and sports sponsorships.</td>
</tr>
</tbody>
</table>

### User identification

<table>
<thead>
<tr>
<th>Recommendation of the Commission</th>
<th>National legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member States must give operators access to databases to check user identity</td>
<td>“The National Gambling Commission will provide the necessary means and establish adequate procedures to grant operators online or telephone access to the General Register of Gambling Access Bans. In all cases, during the process of opening a user account, before the account is activated, and for the payment of prizes, the operator must check the data in the user account against that in the General Register of Gambling Access Bans to verify that the participant is not listed in the Register. The National Gambling Commission will establish procedures to be followed by operators when periodically checking data in their user accounts against the General Register of Gambling Access Bans.”</td>
</tr>
</tbody>
</table>
### User identification

<table>
<thead>
<tr>
<th>The following information must be requested: name, date of birth, address, email address or mobile phone number</th>
<th>It follows on from that set forth in article 26 of RD 1613/2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Participants will be identified through a single user account which contains at least the identification data necessary to verify that the participant is not affected by any of the subjective prohibitions referred to in Article 6 (a), (b) and (c) of Law 13/2011 of 27 May on gambling regulation. The user account will also include the participant’s tax identification and residence details and any other data required for the completion of financial transactions, and the details of the gambling operator, as determined by the National Gambling Commission.”</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The email address or mobile phone number must be validated by the operator</th>
<th>Art. 22 RD 1613/2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>“The system must guarantee the identity of the sender and the receiver, the confidentiality of the information transmitted through the use of effective encryption and authentication algorithms, and the integrity of information sent through the communication channels used for participation in and interaction with the gambling systems.”</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Possibility of adopting means for electronic identification</th>
<th>Art. 15.1.g) Law 13/2011 and section 3.4.b) Appendix VI MO 3124/2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law 13/2011: “To provide proof of identity securely using their national identity document, passport or equivalent or through a recognised electronic signature system, as well as having their personal data protected as per the provisions of Organic Law 15/1999 of 13 December, on Personal Data Protection and its implementing regulations.” MO 3124/2011: “The operator must establish passwords for gamblers to access their gambling account which will have to be introduced at the beginning of each session; it is also possible to introduce authentication procedures which can provide greater security.”</td>
<td></td>
</tr>
</tbody>
</table>

| Possibility of creating temporary accounts until the registration is effective | Measure not included. For Spanish residents, the provision is not necessary. For non-residents, article 26 of Royal Decree 1613/2011 establishes: “The operator must verify the data provided by participants who are not resident in Spain within a maximum of one month from the activation of the user account. This will be an essential condition for the payment of prizes won by the participant, of any amount and nature.” |
### User identification

<table>
<thead>
<tr>
<th>Each user must have only one account</th>
<th>Art. 26.2 RD 1613/2011</th>
<th>“The operator shall establish the procedures and mechanisms necessary for ensuring that a player does not have various active user registrations.”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Separating gamblers’ accounts from those of the operator</td>
<td>Art. 39 RD 1614/2011</td>
<td>“1. In relation to the funds deposited by participants in their gambling accounts, operators must: a) Hold one or more current bank accounts in Spain into which they will pay the amounts deposited in order to participate in the games. These accounts will be exclusive and separate from any other accounts the operator may hold [...].”</td>
</tr>
</tbody>
</table>

### Responsible gambling measures

<table>
<thead>
<tr>
<th>Recommendation of the Commission</th>
<th>National legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operators must carry out education activities</td>
<td>Art. 8.1 Law 13/2011</td>
</tr>
<tr>
<td>“Responsible gambling policies mean that gambling activities shall be approached from a comprehensive corporate social responsibility policy that considers gambling as a complex phenomenon in which preventive, awareness-raising, intervention and control measures must be combined, in addition to measures to remedy any negative effects caused.”</td>
<td></td>
</tr>
<tr>
<td>Measure reinforced in the royal decree: collaboration with the Administration, studies on responsible gambling</td>
<td></td>
</tr>
<tr>
<td>Operators must train their staff who interact with gamblers in the problems arising from pathological gambling, including chatting and by telephone</td>
<td></td>
</tr>
<tr>
<td>“Without prejudice to the actions to prevent compulsive gambling set out in its Operating Plan, the operator will tell the participant how much time has passed and the amount they have spent during the slot machine game session by an alert on the game interface.”</td>
<td></td>
</tr>
<tr>
<td>Measure included in the royal decree: collaboration with the Administration, studies on responsible gambling</td>
<td></td>
</tr>
<tr>
<td>Warnings must be given to the gambler about the amounts won and lost and time spent gambling. It is necessary that these warnings are accepted by the gambler</td>
<td>Regulated art. 8.2 MO HAP/1370/2014</td>
</tr>
<tr>
<td>“Without prejudice to the actions to prevent compulsive gambling set out in its Operating Plan, the operator will tell the participant how much time has passed and the amount they have spent during the slot machine game session by an alert on the game interface.”</td>
<td></td>
</tr>
</tbody>
</table>
### Responsible gambling measures

<table>
<thead>
<tr>
<th>Measures</th>
<th>Legal References</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deposits greater than those permitted into accounts must not be allowed</td>
<td>Art. 36 RD 1614/2011</td>
<td>&quot;Gambling operators must establish economic limits on the deposits which each participant in the different games can make each day, week or month.&quot; Cancellation of these thresholds is subject to additional conditions (taking the responsible gambling test in Appendix I of Royal Decree 1614/2011).</td>
</tr>
<tr>
<td>Gambling is not permitted if there are insufficient funds</td>
<td>Art. 8.2 Law 13/2011</td>
<td>Operators will be unable to grant loans or any other type of credit or financial assistance to participants.</td>
</tr>
<tr>
<td>Suspension or self-exclusion must be allowed at any time</td>
<td>Section 3.1.b) of Appendix IV of MO 3124/2011</td>
<td>&quot;Gamblers must have a self-exclusion option available to block their account for periods specified by them during which they will not receive promotional offers or other forms of communication from the operator.&quot; Measure reinforced in the royal decree.</td>
</tr>
<tr>
<td>Suspension of gambling for at least 24 hours</td>
<td>Section 3.1.b) of Appendix IV of MO 3124/2011</td>
<td>&quot;Gamblers must have a self-exclusion option available to block their account for periods specified by them during which they will not receive promotional offers or other forms of communication from the operator.&quot; Measure reinforced in the royal decree. Prohibited to send promotional communications to those self-excluded; voluntary right of suspension.</td>
</tr>
<tr>
<td>Self-exclusion for periods of no less than 6 months</td>
<td>Art. 60.1 RD 1614/2011</td>
<td>&quot;Inclusions made to the General Register of Gambling Access Bans at the request of the interested party will be registered indefinitely. However, the interested party may request to be removed from the Register six months after the date of inclusion.&quot;</td>
</tr>
<tr>
<td>Creation of a national registry of those self-excluded</td>
<td>Art. 22.1.b) Law 13/2011</td>
<td>&quot;1. The National Gambling Commission shall create the following state Registers under its control: [...] b) The General Register of Gambling Access Bans, which shall include the information needed to enforce citizens’ right to be banned from participating in gambling activities in those cases where identification is required.&quot;</td>
</tr>
<tr>
<td>Test to control gambler's behaviour</td>
<td>DGOJ Resolution of 16 November 2011</td>
<td>&quot;First. Approve the responsible gambling and prevention of addictive gambling behaviours test which is attached to this resolution as Appendix I. &quot;</td>
</tr>
</tbody>
</table>

### Commercial communications

| Recommendation of the Commission | National legislation |
|----------------------------------|----------------------|---------------------|

MAIN Royal Decree on commercial communications related to gambling activities and responsible gambling. 

This text of this site in unofficial English translation of the official texts in Spanish. The later will prevail in case of discrepancies.
<table>
<thead>
<tr>
<th>Commercial communications</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Clear identification of the operator</strong></td>
</tr>
<tr>
<td>Art. 15.1.h) Law 13/2011</td>
</tr>
<tr>
<td>“To have information on the identity of the gambling operator at all times, especially in the case of electronic games, as well as knowing the identity of the personnel who interact with the participants in the event of claims or possible breaches.”</td>
</tr>
<tr>
<td><strong>Messages on the risk of gambling on health must be included</strong></td>
</tr>
<tr>
<td>☒</td>
</tr>
<tr>
<td>In its point 40, the Recommendation affords the opportunity to incorporate the measure in an admissibility analysis. <strong>Measure not directly included</strong> in response to the proportionality of establishing additional obligations to the content of the commercial communication. Likewise, attention is paid to the existence of other measures which can contribute to this objective proportionally: responsible gambling message, development of awareness campaigns.</td>
</tr>
<tr>
<td><strong>Unfounded statements which generate false expectations in gamblers must not be made</strong></td>
</tr>
<tr>
<td>☒</td>
</tr>
<tr>
<td>This provision does not appear as such, but in MO (article 9.1.b) Ministerial Order on Gambling: &quot;Advertising should be socially responsible [...]”) speaks about advertising being socially responsible. In dealing with the types of behaviours that are described, they are not socially responsible as they are based on giving a vision which does not coincide with the reality, therefore it ceases to be responsible. Notwithstanding the fact that this recommendation can be considered satisfied, it may be included in the future Advertising Regulation. <strong>Measure reinforced in the royal decree: principles of truthfulness and responsible gambling</strong></td>
</tr>
<tr>
<td><strong>Do not give the idea that gambling can be an alternative to employment or a solution to financial problems</strong></td>
</tr>
<tr>
<td>☒</td>
</tr>
<tr>
<td><strong>Measure reinforced in the royal decree: principle of responsible gambling</strong></td>
</tr>
<tr>
<td><strong>Do not show gambling as synonymous with social success through the use of celebrities</strong></td>
</tr>
<tr>
<td>☒</td>
</tr>
<tr>
<td><strong>Measure included in the royal decree: principle of social responsibility.</strong></td>
</tr>
<tr>
<td><strong>Do not suggest that skill can affect the result when it is not true</strong></td>
</tr>
<tr>
<td>☒</td>
</tr>
<tr>
<td><strong>Measure included in the royal decree: principles of social responsibility and responsible gambling.</strong></td>
</tr>
</tbody>
</table>