



MEMORANDUM ON THE DECISION OF THE DIRECTORATE-GENERAL OF REGULATION OF GAMBLING [DGOJ] AGREEING TO AUTHORIZE A LIQUIDITY MODALITY DIFFERENT FROM THAT PROPER TO THE PARTICIPATION OF PLAYERS WITH SPANISH USER REGISTRATION FOR THE GAME OF ONLINE POKER, AND MODIFYING CERTAIN DECISIONS ON THE GAMING ACTIVITIES PROVIDED FOR IN THE GAMING REGULATION ACT Nº 13/2011 OF MAY 27th.

Introduction

The liquidity in a particular game is the sum total or common “pot” of the participations made by the players in that game.

International liquidity means that the players’ participations proceed not only from a national environment but from several countries. In an environment of international liquidity, not all the players who contribute the common pot of the game are subject, due to its own dynamic, to the same national jurisdiction.

The Spanish legal system relating to the international liquidity of gaming activities is contained in Additional Provision Three of Royal Decree nº 1614/2011 of 14 November developing the Gaming Regulation Act nº 13/2011 of May 27th in relation with gaming licenses, authorizations and registers.

This rule states that, in the event of duly justified exceptional circumstances or, as the case may be, with the signing of an agreement of the Spanish authorities with other Member States of the European Economic Area, the DGOJ would be empowered to authorize international liquidity in a particular game.

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

This Agreement confers the qualifying presupposition for the Directorate-General of Regulation of Gambling, by means of a Decision, expressly to authorize shared liquidity with the said jurisdictions.

Along with this provision, it is necessary to modify certain decisions of a technical nature of the Directorate-General of Regulation of Gambling in order for the technical gaming systems of the gaming operators who wish to access this new framework to have sufficient guarantees of security, traceability and control.



Legal basis

The present Decision is drawn up on the basis of Sections 21.4, 21.5, 21.9 and 21.14 of the Gaming Regulation Act nº 13/2011 of 27 May [LRJ], which empowers the Directorate-General of Regulation of Gambling¹ to issue instructions of a general nature to gaming operators, to establish the necessary technical and functional requirements of the games, to ensure that the participants' interests are protected, and finally to collaborate in and oversee compliance with the legislation on prevention of money laundering and financing of terrorism.

In this context, Section 23.1 of the Gaming Regulation Act nº 13/2011 of May 27th states that the Directorate-General *“may issue any provisions which may be required by the development and execution of the rules contained in this Act, in Royal Decrees passed by the Government or in Orders of the Ministry of Economy and Finance, provided such provisions expressly empower it to do so.”*

Thus, on one hand, Section 17.2 of Act nº 13/2011 of May 27th states that the operators' technical gaming systems must fulfill the conditions laid down by the Directorate-General of Regulation of Gambling; and on the other hand, Additional Provision Two of Royal Decree nº 1614/2011 of November 14th empowers the Directorate-General of Regulation of Gambling to authorize international liquidity by itself *“following agreement of the Spanish authorities with the competent authorities in gaming matters of other Member States of the European Economic Area.”*

Accordingly, on 2017 July 6th the Directorate-General of Regulation of Gambling signed a non-regulatory Agreement with the regulatory authorities on online gambling of France, Italy and Portugal to authorize the holding of online poker games with shared liquidity among users of Spain, France, Italy and Portugal, thereby generating the case which permits the authorization by this Directive Center of international liquidity in Spain.

¹ In accordance with the provisions of Additional Provision Ten of Act nº 3/2013 of June 4th creating the National Commission on Markets and Competition, “the Directorate-General of Regulation of Gambling of the Ministry of Finance and Public Administrations shall assume the object, functions and competences which the Gaming Regulation Act nº 13/2011 of May 27th attributes to the extinct National Gaming Commission.”

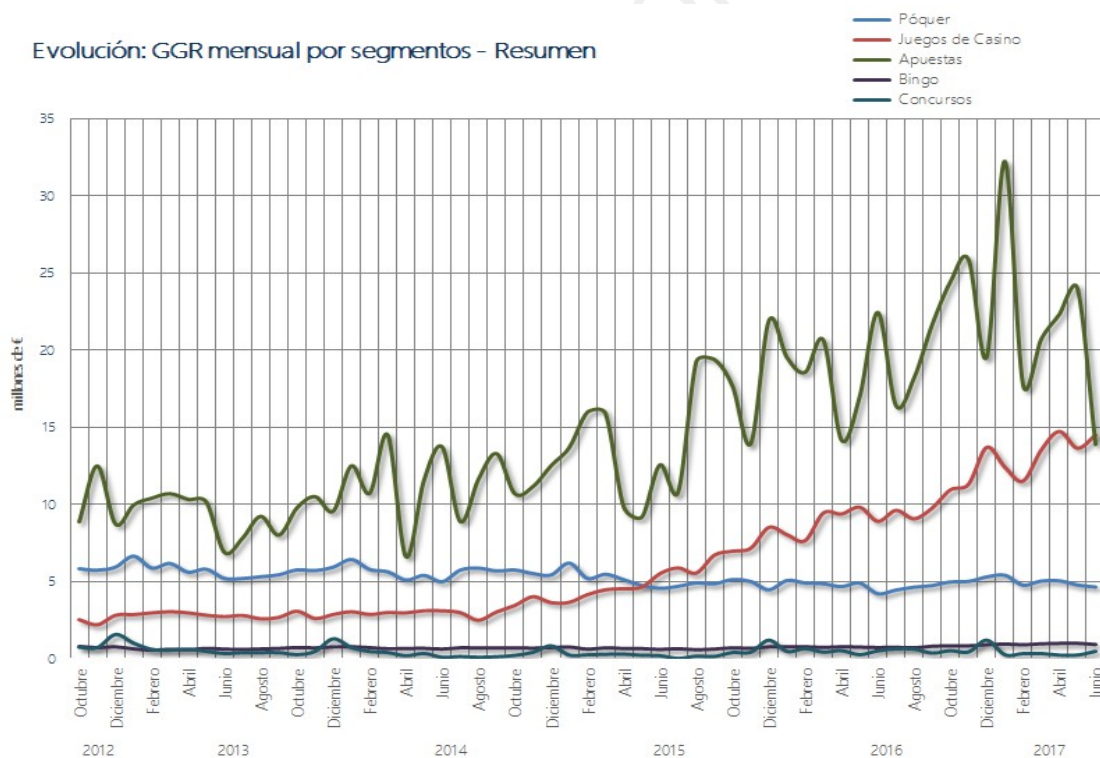


Context and justification of the opening of liquidity in the game of online poker in Spain provided for in Section One of this Decision.

The prohibition of international liquidity responded, at the moment of the publication of Act nº 13/2011, to the need to develop a market in the new regulated environment in the most controlled manner possible.

The limitation of liquidity to players with Spanish user registration signifies a restriction on the potential operation of certain games, in particular mutual or commission games, as is the case of poker, in which the players participate or compete among themselves.

While it is naturally impossible to establish a single cause in this respect, the evolution of the online poker market in these years of a regulated state market has not been positive, as can be seen from the data contained in the following graph showing the evolution of the various segments of the game in terms of GGR²:



Evolution: monthly GGR by segments – Summary
Poker – Casino games – Betting – Bingo – Competitions
October – December – February – April – June – August

² GGR (Gross Gaming Revenue): the sum total of the amounts dedicated to participation in gambling, deducting the winnings paid out by the operator to the participants, that is, the operator's net revenue.



This evolution of the online poker market in Spain does not correspond to what could be expected, taking into account that its starting point was the existence of a previous unregulated market and that the first years of development of this regulated market (2012 and 2013) coincided with a great investment by the operators in publicity and promotions, which should have produced in successive years a clear net effect of market generation and an increase of its competitiveness, along with better protection of the public interests which the LRJ specifically protects, in addition to a greater tax yield from the activities carried out by the gaming operators.

Additionally, the prohibition of international liquidity in the online poker sector may be generating a series of adverse effects for the market, notably the following:

- Reduction of the size of the market: the restriction of international liquidity eliminates the benefits of network externalities for the users³, making poker much less attractive for consumers by reducing the variety, availability and quantity of products.

As a result, there is a loss of the potential of the product, with the consequent dissatisfaction of the average user, who decides to seek more interesting alternatives, thus producing a reduction in the channeling of the demand toward the Spanish regulated environment, which increases the risk of switching to a non-regulated operator.

In addition, the contraction of the market results in a decrease of competition since it forces out operators with a lower mass of consumers and limits the growth aspirations of those who remain. Moreover, a market with such little attraction lacks capacity to motivate the entry of new operators.

- Low profitability of companies: in this situation, companies, especially small ones and those who offer products whose attractiveness depends on the total common pot they are capable of generating, encounter serious difficulties in reaching a sufficient volume of users to achieve adequate profitability.

All of this occurs in a context of intensity of regulations and taxation which responds to the high level of public intervention existing on the regulated online gambling market, added to the great weight of overheads in the operators' cost structure which is inherent to e-commerce businesses and to the substantial investments in publicity and promotion that are necessary to be competitive – more than 280 million euros for Spain's online gambling sector in 2016.

³ In economic terms, network externalities refer to the fact that the utility a person obtains from a product depends on the number of individuals who consume it.



Due to not being capable of reaching minimally profitable scales of operations or a critical mass for the network effects to materialize, the companies' profitability falls, which inevitably leads to some operators leaving the market, normally those who have the lowest scale of operations or client base. The available data clearly demonstrate this: the sector has passed from the situation in 2014, in which there were 27 operators with a singular poker license, to June 2017, with a scenario in which there were only 4 active platforms offering this game.

- Reduction of tax revenue: the migrations of consumers and the exit of operators from the market is detrimental to tax revenue due to the contraction of the taxable environment.

An increase in the illegal offering signifies a larger number of operators not subject to the payment of the Gaming Activity Tax or the corresponding amounts for obtaining the necessary gaming licenses.

In this context, it is considered that a stimulating measure such as the opening of liquidity in poker for users with non-Spanish registration would favor the viability of the game.

In the case of gambling, greater "liquidity" corresponds to an environment in which the volume of bets is higher, either due to an increase in the number of participants or the average amount staked per participant or a combination of the two. This will foreseeably result in a reinforcement of competitiveness due to the improvement of the product's fundamental variables of quality, for example the winnings to be paid out, the differentiation in games and platforms or greater innovation, resulting in a more attractive game for the participants and consequently greater potential for operators and greater tax revenue.

The introduction of international liquidity seeks to stimulate the demand for regulated gaming, enabling companies to attain a sufficient operating margin to be profitable and to compete in appropriate conditions with the corresponding benefits for consumers, who could be offered more advantageous conditions, such as a wider range of games, innovative products, and so on.



In summary, the configuration of a model of international liquidity for the game of online poker aims to revitalize the market and contribute positive effects for both operators and consumers:

- On one hand, consumers will be able to access more interesting tables thanks to both the level of winnings and the quality of the rounds, with the increase in the number of players present at the tables.
- On the other hand, operators will be able to develop a more attractive range of products, which will foreseeably attract more clients, therefore obtaining more profits and also increasing the tax revenue deriving from the profits obtained by this activity.

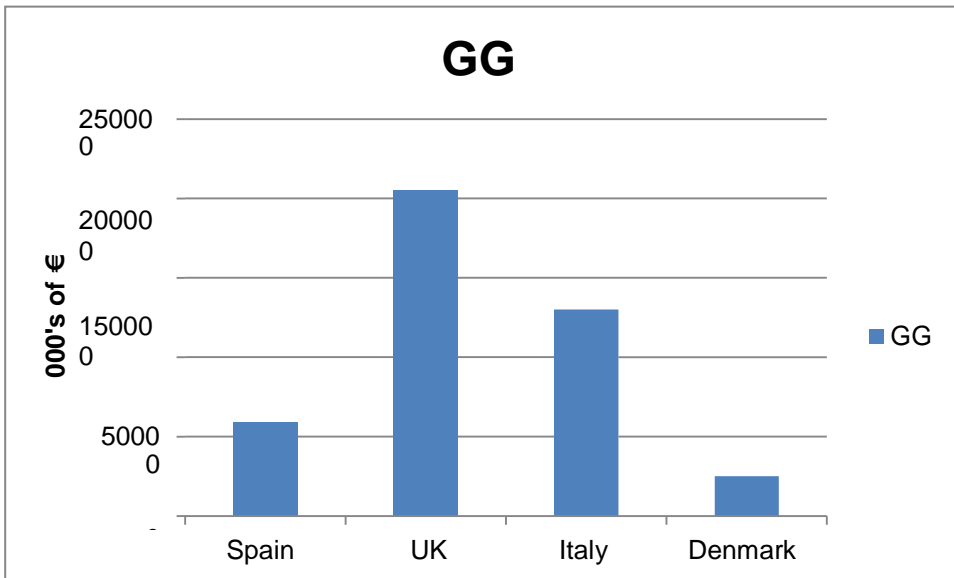
All of the above will lead to a greater channeling of the online gaming activity, in this case of poker, by way of the regulated market.

Comparative international situation

The absence of Community legislation on online gambling results in a diversity of regulations and markets in which some States have decided to authorize liquidity or at least not to prohibit it (such as the United Kingdom, Denmark, Belgium, the Czech Republic, Malta, Austria or Finland), while others have not done so.

Respecting the circumstances that have led both sets of countries to establish these different regulations, what this section seeks to demonstrate is that the situation of the online poker markets which have permitted international liquidity is better than that of those which have not done so, thus providing further evidence of the positive effects of liquidity.

In this way, a comparison can be made in terms of GGR between two markets which permit international liquidity, namely the United Kingdom and Denmark, and two whose regulations do not permit international liquidity, namely Spain and Italy.



Data from September 2015 to September 2016

Spain source: Quarterly report DGOJ; International source: Gambling Compliance; iGaming

If it is taken into account that the population of Denmark (5.7 million inhabitants) is more than eight times smaller than that of Spain (46.5 million), or more than ten times smaller than that of Italy (60.8 million), it can be concluded that the Danish online poker market generates more net revenue *per capita* than the Spanish or Italian markets.

In this respect, the United Kingdom, with 65 million inhabitants – slightly over 4 million more than Italy and 18 million more than Spain – presents a logically greater GGR result but with a difference of population with Spain and Italy much smaller than that between these two countries and Denmark.

Context and justification of the modifications of the Decisions of 2014 October 6th, provided for in Sections Two and Three of this Decision.

Without prejudice to the modifications which exclusively affect the opening of international liquidity in the online poker market, the context and justification of which have been duly explained throughout the previous Section of this Memorandum, this Decision has a broader scope.



Sections Two and Three of this Decision modify, on one hand, the Decision of 2014 October 6th of the Directorate-General of Regulation of Gambling passing the provision developing the technical specifications of play, traceability and security to be met by the technical systems of non-reserved gaming subject to licenses granted under the Gaming Regulation Act n^o 13/2011 of May 27th, and on the other hand the Decision of 2014 October 6th passing the data model of the monitoring system of the information corresponding to the register of gaming operations.

The purpose of the modifications of these two Decisions is to determine the technical basis on which any opening of liquidity in Spain is to be developed. That is to say, these modifications will affect not only the game of online poker offered in an environment of international liquidity but also any other game which, following the express authorization of the Directorate-General of Regulation of Gambling, may be offered in the future with a liquidity different from that proper to the participation of users with Spanish user registration.

Alternatives to the implantation of the liquidity model deriving from the Agreement of 2017 July 6th

The implantation of a model of international liquidity requires weighing the degree of opening which it is desired to achieve with control of information on users and operators. This dichotomy gives rise to two different variants, from lesser to greater degree of opening:

- The first authorizes operators' users with Spanish playing accounts to participate with players from certain other countries, meaning that the liquidity will be that resulting from totaling the common pot of the users of those countries.
- The second would authorize the liquidity in such a manner that users with Spanish playing accounts could participate with users from any country in the world.

At the moment of choosing which is the most suitable model, it would be the one that permits the most agile and effective opening possible toward the market while maintaining sufficient guarantees of control of its activity.



In the present case, the international liquidity in online poker which is to be authorized by the present Decision, being linked to the Agreement of 2017 July 6th between the regulatory authorities of online gambling of France, Spain, Italy and Portugal, will be developed exclusively between countries of the European Economic Area, with similar regulations not only in online gambling matters but also in other equally sensitive spheres such as personal data protection, prevention of money laundering and financing of terrorism or the fight against fraudulent activities.

Without prejudice to what may be seen to be appropriate in relation with other games or with future contexts, there are several reasons why, for the game of poker, it has been opted at the present moment for a mechanism of shared liquidity on the basis of the signing of an Agreement with certain countries of the European Economic Area.

In the first place, this is a project in which the signatory jurisdictions of the Agreement have been working for some time with a high degree of involvement and reciprocal commitment, having obliged legislative modifications to be made in some cases (France) to permit this possibility.

In the second place, in the case of poker it is considered particularly advisable to establish a reinforced framework of collaboration between jurisdictions with a view to strengthening the prevention of and fight against fraud, without prejudice to the fact that the control of the co-organizing operators and platforms will correspond to the Spanish sphere, basically due to their condition of operators with licenses in Spain, which permits high enforceability of the applicable regulatory conditions, under pain of penalties or even termination of the license.

In the third place, from the point of view of the effectiveness of the mechanism, it is considered that, taking into account the sizes of the poker markets of, in particular, France and Italy, the shared liquidity mechanism will guarantee a substantial improvement of the size of the common pot which the demand of the Spanish regulated poker market is currently capable of achieving by itself.

Additionally, and above and beyond the size of the respective markets, it must not be forgotten that in the case of poker, a game in which all the participants play simultaneously among themselves, and in contrast with other games, the optimization of the consequences of an increase of the liquidity or common pot of players (more attractive winnings in cash tables and large tournaments, and greater availability of players to fill tables) revolves around making possible the actual coincidence of a greater number of players in tables and tournaments. To this effect, and given the concentration of the gaming activity at certain times of day, it is foreseeable that the common pot of players precisely with countries of our geographical region and time zone, such as France, Italy and Portugal, will sufficiently propitiate this confluence.



Contents of the Decision

The Decision is structured in two parts, which, although closely related, also have a notable feature which differentiates them.

On one hand, following the signing of the Agreement of 2017 July 6th, this Decision authorizes operators who apply for a singular gaming license to operate and exploit the game of online poker and those who already have the said license to offer this game in an environment of international liquidity.

In this respect, they must homologate their technical gaming systems to adapt to this new possibility; in addition, they must expressly communicate the date on which they intend to put this new system into operation, and they must ensure that Spanish players have adequate and sufficient prior knowledge of the new environment in which they will participate in the game.

In another respect, this Decision also modifies two Decisions of the Directorate-General of Regulation of Gambling. On one hand, it modifies the Decision of 2014 October 6th of the Directorate-General of Regulation of Gambling passing the provision developing the technical specifications of play, traceability and security to be met by the technical systems of non-reserved gaming subject to licenses granted under the Gaming Regulation Act nº 13/2011 of May 27th and the technical gaming system; and on the other hand, it also modifies the Decision of 2014 October 6th passing the data model of the monitoring system of the information corresponding to the register of gaming operations.

The purpose of the modification of these two Decisions is to design a technical system which provides sufficient guarantees in order to implement in Spain any game offered in an environment of international liquidity, irrespective of what type of liquidity is involved (open or shared).

This means that the technical design which derives from the modification of the two above-mentioned Decisions has to serve not only to operate, under the Agreement of 2017 July 6th, the game of online poker in an environment of shared liquidity, but also to accommodate in the future the possibility of marketing other games in international liquidity, under a model which is both shared (following agreement with certain jurisdictions) and entirely open.



Special reference to the processing of personal data.

The new model designed by means of this Decision affects the processing of personal data which is carried out from the online gambling environment by the Directorate-General of Regulation of Gambling in the following manner:

1.- Incorporation of personal data of players with non-Spanish user registrations in the technical gaming system of the operators who offer games in an environment of international liquidity.

On one hand, the technical gaming system of those operators who wish to offer the game of online poker in an environment of international liquidity must maintain registers and logs of all the transactions which have taken place between the players who use a Spanish user registration and the other players, which means that the system now conserves, in addition to the data corresponding to players with Spanish user registration (as it was already doing), personal data of players with non-Spanish user registration.

The conservation of the said data, to which the Directorate-General of Gambling, in the exercise of its powers of investigation and control provided for in Act nº 13/2011 of May 27th, may have access (as derives from the provisions of Section 5 of the Decision of 2014 October 6th of the Directorate-General of Regulation of Gambling passing the provision developing the technical specifications of play, traceability and security), is understood to be indispensable for guaranteeing adequate control and a sufficient degree of inspection of the gaming operations carried out in an environment in which players of different jurisdictions participate, thus assisting in the fight against fraud and compliance with the legislation on prevention of money laundering and financing of terrorism.

Naturally, this data, which has had to be gathered and incorporated into the technical gaming systems by the respective operator in accordance with the provisions of Act nº 15/1999 and its implementing regulations, will be processed by the Directorate-General of Regulation of Gambling in accordance with those same regulations.

In any case, and in order to clarify more specifically the scope of the processing of personal data described in this Section, this new framework will be common to all the games in which international liquidity will progressively be authorized, either by means of Agreement or by means of generic authorization, in accordance with the provisions of Additional Provision Three of Royal Decree nº 1614/2011.

This means that if in the future the Directorate-General of Regulation of Gambling expressly authorizes the opening of international liquidity in a context of open liquidity in regard to other games or enlarges the scope of the liquidity which is now implemented for the game of online poker, the model would continue to be the same:



that is to say, the Directorate-General of Regulation of Gambling would continue to access the personal data relating to the users' unique identifier and their jurisdiction.

2.- International transfers of personal data.

In addition, the Agreement of 2017 July 6th, which has the juridical nature of a non-regulatory agreement (as is reflected in the report of the State Legal Service which forms part of the processing record of the said agreement) provides for the possibility of the regulatory authorities of online gambling exchanging personal data on the players of their respective jurisdictions, in accordance with their respective legislations in matters of personal data.

In this respect, the Directorate-General of Regulation of Gambling could transfer personal data of players with Spanish user registration to the regulatory authorities of online gambling of France, Italy and Portugal. This international transfer of data must adhere to the personal data legislation which is based on Act n^o 15/1999 and its implementing regulations. In any case, as long as these transfers adhere in full to the said regulations, there will be no need to have the express authorization of the Spanish Data Protection Agency for each transfer made, following the provisions of Article 67 of the Implementing Regulations of Act n^o 15/1999 of December 13th and the Order of 1995 February 2nd passing the first list of countries with personal data protection comparable to the Spanish system, which expressly includes France, Italy and Portugal with a protection level equivalent to that of the Spanish legislation.

In turn, the Directorate-General of Regulation of Gambling, following the corresponding request to the regulatory authorities of online gambling of France, Italy or Portugal, could receive personal data of players who interact in the scope of one of those jurisdictions, which logically will have to be gathered in accordance with the provisions of Act n^o 5/1999 and its implementing regulations.

If in the future the Directorate-General of Regulation of Gambling expressly authorizes the opening of international liquidity in a context of open liquidity in regard to other games or enlarges the scope of the liquidity which is now implemented for the game of online poker, enlarging the number of countries with which Spanish players can interact, any international transfer of personal data would have to adhere expressly to the provisions of Act n^o 15/1999 and its implementing regulations, which may imply, in the cases provided for in the said regulations, that the authorization of the Director of the Spanish Data Protection Agency is fully required.



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

As a consequence of both types of personal data processing, in parallel with the processing of this Decision, Order HAP/2478/2013 of December 20th regulating the personal data files existing in the Department and in certain public bodies linked to it must also be modified in order to adapt the files of the Directorate-General of Regulation of Gambling which are affected by this new juridical framework.

Impacts

It is estimated that the present regulatory project will not give rise to any effects which entail an increase of public cost or a reduction of public revenue, either financial or non-financial.

Consequently it has no impact on the General State Budgets and does not entail any impact on the budgets of the Autonomous Communities or the Local Entities.

In addition, following the evaluation of the principle of necessity and proportionality provided for in Section 17 of Act nº 20/2013 of December 9th guaranteeing market unity, it is opted for the communication of the commencement of the activity with the purpose of knowing the number of economic operators who put this new environment into practice, discarding other more intrusive modalities of intervention in the economic activity and thus minimizing the administrative charges borne by the economic operators involved.

Administrative charges

Administrative charges are considered to be those activities of an administrative nature which have to be carried out by companies and citizens to comply with the obligations arising out of the regulations. In the case of companies, the administrative charges are the costs they must bear to comply with the obligations of providing, conserving or generating information on their activities or production for presentation to and, as the case may be, approval by public authorities or third parties.

From this point of view, without prejudice to any costs for operators which may arise out of the regulations in different orders, the said regulations signify the emergence of an administrative charge only for those operators who already have a singular license for the game of poker, since they will have to file an application for homologation of their technical gaming systems, understanding that the said changes are of a substantial nature.



The following table mentions them, with reference to the Article in which they are included, and the calculation in accordance with the methods and estimations laid down in the Methodological Guide for the Preparation of Memoranda of Regulatory Impact Analysis.

The said administrative charge would be the following:

Administrative charge	Origin	Cost	Units	Frequency	Population	Subtotal
Application for homologation report	Section One of the Decision	€5	1	1	11	€55
Submission of communication of commencement of activity	Section One, letter c) of the Decision	€2 ⁴	1	1	11	€22

⁴ Following the entry into force of Act n° 39/2015 of October 1st of the Common Procedure of the Public Administrations, it is understood that the submission is made in electronic format.