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And here comes Spain... Law 13/2011: uncertainties, challenges and opportunities Article by Cristina Romero Alba of Loyra Law Firm, Madrid



Finally, following a surprisingly quick parliamentary fast-track procedure (after four whole years of inactivity from the Government, which was mandated in 2007 by the Parliament to tackle the regulation of online gambling), Law 13/2011, on Gambling Regulation came into force on the 29th May 2011 despite the constitutional problems it poses regarding the powers of the Spanish regions. A complex transitory regime is now in place up until the earlier of 1 January 2012 or the date on which the first licence is granted under its provisions, which establishes, among others, that the rendering of online gambling services to Spanish residents without a licence is strictly forbidden and categorized as a criminal offence.

The purpose of Law 13/2011 is twofold: to shape and regulate online gambling in Spain and to enshrine the monopoly re state wide lotteries for two incumbent operators, ONCE (National Blind

Organization) and SELAE (*Sociedad Estatal de Loterías y Apuestas del Estado*) in light of the imminent IPO of the latter, that has been announced for autumn 2011 and which will put 30% of the entity in private hands after its projected flotation.

Gambling is widely defined and encompasses the usual categories of bets (*pari-mutuel*, exchange and fixed-odds), raffles and “other games” (casino games and poker, mainly and bingo being the big question mark as not expressly mentioned), contests and so-called “sporadic games”.

A two-tier licensing system is set up by “general licences” (by category of game) and “specific licences” (by each particular type of game within each category) that will be granted by the future National Gambling Commission. Licences are unlimited and may be obtained after an application process and

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compliance with strict requirements on solvency, technical and professional soundness and reliability of the operator. A public limited liability company (*Sociedad Anónima*) will have to be set up with specific and exclusive corporate purpose to operate games (it is yet to be précised whether equivalent EEA companies will be recognized).

Furthermore, Law 13/2011 regulates, advertising, promotion and sponsorship, which is prohibited unless a prior authorization or licence is granted, sets up the National Gambling Commission as the competent authority for the granting of licences, supervision and monitoring of the market (which will be up and running within six months) and the Council for Gaming Policies to coordinate actions among the Spanish Autonomous Regions, which, so far, have had exclusive constitutional powers in regulating gambling and lotteries within their territories. The Law also creates a complex and unbalanced taxation system and sets out a civil sanctions regime, which, once effective (it is suspended until the transitory period is over) will substitute the criminal regulations that are currently in force.

Despite its pretended comprehensiveness, there are more than a few open issues that need to be urgently resolved in order for Spain to be defined as a well-monitored and regulated market with a real level playing field (and for SELAE to be able to boost its market value) such as: the coexistence with regional gambling laws and regulations, the detailed definition of games, the regime applicable to operators that have been carrying out activities in Spain during the past black market period, technical means and system requirements etc.

Spanish waters will be difficult to navigate without in-depth insight, proper counseling and a lot of patience.

The devil will most definitely be in the details to come as three pieces of developing legislation that are currently “in the oven”. To be continued...

Cristina Romero Alba of **Loyra Law Firm**

Denmark



While Denmark (the country that banned Marmite, can you believe it?...) is still waiting for the outcome of the EU Commission’s findings on the “discriminatory” tax regimes, the Danish Government recently agreed that online gambling operators may locate their servers outside Denmark. This is conditional upon the regulators in the countries where the server is located entering into an agreement with the Danish gaming authority to maintain Danish standards. This “Server Memorandum of Understanding” will cover the exchange of information and control of the gaming operator, as well as suspicious transactions.

This liberal approach is in direct contrast to French and Italian regulations, which require servers to be located within the European Economic Area. It will be interesting to see whether Denmark’s “open door” policy will bar it from any future MoUs with French and Italian regulators and whether this additional (tax/ server) flexibility for online gambling operators will have an impact on the current tax “inequalities” being evaluated by the European Commission.

Greece

The Greek Government survived another day when Parliament passed a second vote on its austerity programme. The measures voted on were opposed by a majority of the population, but essential to allow funding from the EU. Bad news for the majority of Greek citizens who opposed the drastic measures, but good news for the Greek gambling industry which stands on the brink of seeing regulation of online gambling and video lottery terminals for the first time. Let’s hope for the sake of Greece and for the sake of the gambling industry that no other major hiccup occurs before the new Gambling Bill is passed.



France and Italy sign Memorandum of Understanding

On 28 June 2011, Italian and French gambling regulators signed the much anticipated Memorandum of Understanding (MoU). The MoU was also welcomed by the European Commission as an early example of how ring-fenced markets can achieve harmonisation in Europe. Considering the overall lack of enthusiasm for the regulation of gambling at EU level, the MoU may indeed be a first step forward.

According to ARJEL President Jean-Francois Vilotte, the MoU is a tool to regulate online gambling more effectively. M. Vilotte has also emphasised the need to fight illegal sites and confront a number of system risks that would undermine the integrity of the sports sector. It is further understood that both parties would set up working groups on matters such as integrity, player protection, the exchange of information of licensed gambling operators and the fight against illegal gambling. Both AAMS and ARJEL have refuted speculation that the MoU may lead to a shared liquidity over the two jurisdictions. In other words: the MoU will assist regulators in policing licensed gambling operators – it is not intended to make life easier for gambling operators by streamlining the licensing procedure, or by allowing shared liquidity to increase profits. This however is vital for operators. We need regulators and governments to consider commercial necessity to enable the industry to function.

Moreover, does “sharing information” mean that a gambling operator who runs into a problem with the regulator in one country may receive bad marks when applying for a licence in the other country? Will blacklists be combined? Does information sharing mean that regulators have insight into player habits/patterns reported to other regulators outside their jurisdiction? Does anyone care about Data Protection?

The sheer existence of an MoU is, in a way, the last nail in the coffin of EU law. Normally, within the EU, there should not be the need for bilateral agreements between member states – the reason is that having them undermines the point of having the EU in the first place. Let’s be clear about this: the MoU may be a blessing for now and has been long called-for by gambling operators and it may also spread like wildfire across other jurisdictions. However, it may also be the first step in emphasising the fragmentation of the EU gambling market even further; continuing to rely on EU law while at the same time favouring MoUs is just not going to work!

It would make more sense to have MoUs between European regulators and gambling regulators outside the European Economic Area – which is the usual purpose of bilateral agreements. For example, an agreement has been reached between the Alderney Gambling Control Commission (AGCC) and the Nevada Gaming Control Board (NGCB) laying down a framework for cooperation between the two regulatory bodies – which makes perfect sense!



Data Protection – “Sony computer says no”



Here we go again – data protection! A subject loved and cherished by all... so let's get straight to the point: gambling operators who fail to meet set data protection standards are doomed! Not only do gambling operators hold substantial amounts of data, some of which could even be considered to be sensitive, but the reputational damage that may result from a data breach should also not be underestimated.

Sony's Play Station network was recently hacked into and more than 60 million records were stolen – not good. Sony estimated the cost of the data breaches to be in the region of US\$170 million... and this is a conservative estimate!

So what does this have to do with online gambling companies? Needless to say that the online nature of industry makes it a prime target for hackers. In addition, gambling operators hold far more data than Sony's Play Station, including details of player accounts, bank and credit card details, gambling habits and addresses – all required to comply with regulations of course...

Although some Gambling Regulations already have detailed security requirements for storage of data, the gambling operator will remain liable for any loss of data – even if all requirements are met. In the end, it will boil down to the additional bit of “extra security” that needs to be there to demonstrate that the gambling operator has done all things reasonably possible to protect player data.

There are various procedures (paper work and more administration I'm afraid) that can establish how data is handled in an organisation and which in the end may help (or hinder) the gambling operator when the law suits start flooding in. For example: in Canada, Sony will have to defend a civil case because “it failed to notify customers an regulators promptly”.

It is therefore no surprise that Data Protection Regulations are currently under review in Brussels – and we all know what that means... more fun of course!

Full Tilt Poker tilted

The Alderney Gambling Control Commission (AGCC) has suspended the licence of Full Tilt Poker pending a public hearing to be held in London next month.

Following the US indictments which revealed information on charges of money laundering and bank fraud against the company, the AGCC believes that the company is operating contrary to Alderney legislation. According to AGCC CEO Andre Wilsenach, “material new information surfaced that was prompted by, but not directly related to, the charges in the US incitements.” In addition, evidence has been mounting that players in a number of European countries have not been able to withdraw funds from the company's site.

The AGCC's decision to suspend Full Tilt Poker's gambling licence demonstrates it is serious about maintaining its high standards and enforcing the rules to ensure player protection.

You say tomato... I say Bribery Act



“Oh, say can you see, by the dawn's early light, What so proudly we hailed at the twilight's last gleaming...?” Of course it's the Bribery Act! Thanks to US thoroughness in investigating corruption claims in US gambling company Las Vegas Sands Corporation, we can expect the aftermath of the US earthquake on Britannia's shores any time now – so put on your lifejackets and enjoy the show. Black Friday? You ain't seen nothing yet!

The Bribery Act came into force on 1 July 2011 (already?) – and with the US corruption scandal on-going, the gambling industry is once again in the spotlight. And – it is not the first time that US anti-corruption investigations start in the land of the free and spread out to deflower the English rose.

With the gambling sector singled out (once again), we can expect some interesting new enquiries being raised in the UK, not least given the bribery tempting leisure activities that make this industry what it is: very vulnerable to attacks!

The consequences of being involved in or even falling foul of these investigations are not only embarrassing but also a tiny bit costly, with US fines equalling the GDP of an African state. So what constitutes bribery? For example: a UK company wants to enter the Chinese market and all of us know that China is “special”, where deals require “special attention” from special people with contacts in high places. Well, how do you want to put that “Chinese speciality” down in your accounts? Wining

and dining? No, that in itself, if unreasonable, could constitute a bribe as well! And what happens if the CEO of an influential state lottery agrees to accept an invitation to London but insists on bringing his family as well? Difficult to say “no” to this request, however, agreeing to it may indicate corruption...

What this means to most companies is that decision makers must accept having their expenses checked by enterprise averse accountants who must now approve major expenses beforehand...

Whether we are going to get a EU gambling friendly legislation if we can only invite politicians out for a kebab is questionable, however, at least the kebab shops should make a profit out of the Bribery Act.

If you require more (serious) information on the Bribery Act and on the ways in which you can protect your organisation, please get in touch with us.

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Update on UK casino competition process

Since the grant of the first large casino licence in Newham to Aspers earlier this year, two further licences have been granted. Recently, Apollo has been awarded the large casino licence in Kingston upon Hull (in an uncontested competition) and Genting has been granted the large casino licence in Solihull. In Great Yarmouth, two bidders have proceeded to stage 2, which will commence in August 2011. Two applications have also been submitted in the Middlesbrough competition. Five applications have been made for the Milton Keynes licence, with Stage 1 hearings to be held in early July.

Bath has a small casino licence to award, and four applicants have progressed to Stage 2. In Scarborough, Nikolas Shaw Ltd and Apollo progressed to Stage 2 of the small casino competition, however proceedings have been held up as Nikolas Shaw appeals the decision to let Apollo through.



Gambling

Julian Harris
harris@harrishagan.com

John Hagan
hagan@harrishagan.com

Melanie Ellis
ellis@harrishagan.com

Liquor & Entertainment

Liz Southorn
southorn@harrishagan.com

Francesca Burnett-Hall
burnett-hall@harrishagan.com

Corporate

David Stevens
stevens@harrishagan.com

Technology, Media & Telecommunications

Marcos Charif
charif@harrishagan.com

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