

CODERE AND THE FUTURE GAMING ACT

INTRODUCTION

This is a time of great relevance for the gaming sector, as the Spanish Parliament is about to enact new legislation to regulate the business activity in this sector.

The Gaming industry in Spain is made up by a large number of companies which employ, directly and indirectly, more than 100,000 workers, contribute more than 5,000 million euros to the various levels of government through gaming taxes and other kinds of taxes and manage, in terms of amounts wagered in the range of modalities authorised in Spain, more than 30,000 million euros per year.

Consequently, the transcendence of proceeding **to regulate an economic sector of such relevance through legislation on the level of a law**, for the first time in our democracy, is evident.

At the beginning of the nineties, a working group was set up in the Congress of Deputies to undertake a study of the status of gaming in Spain and arrived at conclusions which reflected concern about the social impact of the activity on vulnerable groups, the protection and the legal certainty of wagerers, as well as the advisability of planning and limiting the offer of advertising of games of chance, in a context of coordination between the Central Government and the Autonomous Communities.

Since that time, the basic elements of the sector have changed little:

- The State has continued to operate its lotteries on the basis of a monopoly, and the limits of its competencies have been defined by the Constitutional Court.
- The ONCE (National Organisation for the Blind), through an historic concession by the State monopoly, has continued to operate its traditional passive lottery and has gone on to add active lotteries.
- All of the Autonomous Communities, through their autonomy statutes, now have exclusive competencies over games and wagers, with the exception of the State lotteries and the football pools.

In this framework, **a strong authorised gaming industry has developed in Spain, highly regulated and controlled by the government, supporting a very considerable tax burden.** This industry, the authorised industry in Spain, had displaced illegal operations to a marginal presence, however, over the last few years, it has observed with astonishment the birth and growth of gaming in the Internet, offered to residents in Spain from Gibraltar and other tax havens by

operators who justify themselves on inexistent rights derived from the European Treaties.

In the face of this ‘illegal’, rather than “non-legal”, situation, CODERE has decided to bring action before the courts, recently filing a complaint of unfair competition and illegal advertising against one of the operators with a leading role in this activity.

In this context, the regulation of the new on-line channels of gaming is absolutely necessary and has been a Sector demand for a number of years.

ANALYSIS OF THE GAMING ACT

At the end of 2007, the Spanish Parliament approved Act 57/2006 which, in its twenty-sixth additional provision, called upon the Government to submit draft legislation to regulate the various aspects of telematic gaming.

The draft law now being processed in the Chamber addresses a range of issues:

- **The draft legislation establishes a reserve of activity in favour of the public operators, LAE (State Lotteries and Wagers) and ONCE (National Association for the Blind), in relation to the activity of lotteries.** The coexistence of public gaming and private gaming in our traditional model constitutes an essential element of our system which must be ensured in the new regulation.
- The draft law defines the **new model of allocation of gaming licences for on-line operators**. Providing a guarantee of a balanced and objective system for the delivery of a professional gaming offer to the citizenry must be a fundamental part of the new legislation.
- Finally, the new text must address the situation of the **companies which have been carrying out on-line gaming activities illegally** due to their lack of a licence to engage in such activity, to the fact of not paying taxes and of not generating wealth or employment of any kind in Spain.

CODERE’S POSITION ON THE GAMING ACT

With respect to these fundamental aspects structuring the draft legislation for the regulation of Gaming in Spain, the following proposals for the improvement of the text are set out below:

- The public operators, **LAE and ONCE**, maintain a reserve of activity and a number of privileges associated with this reserve which solely extend to the activity of lotteries.
Any other modality of gaming as these operators may undertake in the future must be tied to compliance with the obligations to be met by any company operating in the sector in Spain: payment of taxes, obtaining of approvals from the competent public administrations, and the like, in order to guarantee competition under conditions of equality.
- **The regulation of a domestic market in the context of the European Union and the case law of the European Court of Justice** should ensure the harmonious development of a market with requirements capable of guaranteeing the presence of operators which are experts in the sector and financially sound, and which will have established specific companies headquartered in Spain for the performance of this activity.
The technical support installations of the system should also be located in Spain, in order to guarantee their supervision and control by the competent authorities.
- Finally, **the offer of gaming made from a domain.es** should also be a requirement for operation.

With respect to the situation generated by the **operators which have been engaged in gaming activities and the advertising thereof illegally and without obtaining a licence** issued by the competent authority:

- **The draft legislation appears to support the illegal operators, who have been carrying out their activity, even though their operations are defined as an offence in the current anti-contraband legislation,** as expressly recognised by the Constitutional Court.
The companies which have been engaging in illegal activities in Spain would obtain impunity from the administrative infringements and criminal offences committed in the past, with the revocation of the criminal offence of contraband of prohibited goods, and an unfair advantage in the economic competition with the legal operators who are now commencing their activity legally, based on the law permitting this activity for the first time in Spain.
- The draft legislation recognises the status of the illegal operators, who are going to be able to carry out their activities with the goodwill and the clientele created during the period of illegality, **giving them a discriminatory and unacceptable advantage in the market.**
- **The proposition of an underlying regularisation in the eighth transitional provision, making it possible for unlicensed, that is, illegal operators, to maintain sponsorship contracts is not acceptable.**
- It is an absolute necessity to adopt a number of amendments making it possible to **balance the draft text in its current wording and establish a framework of equality between those companies which have observed the legal requirements in force and, therefore, have not**

operated on-line without a licence over the last few years, in comparison to those who, based in tax havens without any control whatsoever of gaming by minors and by persons with a special need for protection against gaming, have been involved in an activity which, according to their own declarations, has generated significant economic benefits for them. In view of the foregoing, our proposal is:

- **The blocking of the use of the client databases obtained during the exercise of the gaming business in an illegal manner**, as was done in France under the supervision of the market regulatory authority.
- Implementation by the Central Government Taxation Agency of the **inspection plans necessary in order to promote the regularisation of the taxes not paid during the last few fiscal years**
- **To maintain the requirement for sports sponsorship contracts to be made exclusively by companies which are up-to-date with respect to their tax obligations.**
- To maintain in effect the legislation which refers **the operation of unlicensed gaming activities** to the **Contraband Act and to the Penal Code**; blocking their activity during a reasonable period of time -at least two years- in order to operate in the new market being created here, preventing them from obtaining approvals.
- **Harmonisation of the taxation of on-line gaming and physical gaming.**

The CODERE Group insists on the importance of having an adequate regulation in place for a sector which, in Spain, accounts for more than 1% of GDP and which, to date, continues to exist in an environment evidently lacking sufficient regulation. The experience of the CODERE Group, as a company with an international dimension, operating in eight different countries and working under a large number of licences granted by a range of gaming authorities, should serve as a reference for achieving the most adequate gaming model for Spain.

More information:

Video of Mr. Jose Antonio Martínez Sampedro's appearance before the Committee in relation to the processing of the draft Spanish Gaming legislation (begins at: 02:46:00)

<http://www.congreso.es/portal/page/portal/Congreso/Congreso/CongresoTV/HistEmisionFecha>