



Notification Number: 2011/366/E

## Draft Royal Decree developing Gaming Act 13/2011 on gaming licenses, authorisations and registers

Date received : 14/07/2011  
End of Standstill : 17/10/2011 ( 14/11/2011)  
Issue of comments by : Commission  
Issue of detailed opinion by : Malta

### Message

Message 002

Communication from the Commission - SG(2011) D/51688  
Directive 98/34/EC  
Translation of the message 001  
Notification: 2011/0366/E

No abre el plazo - Nezahajuje odklady - Fristerne indledes ikke - Kein Fristbeginn - Viivituste perioodi ei avata - Καμμία έναρξη προθεσμίας - Does not open the delays - N'ouvre pas de délais - Non fa decorrere la mora - Neietekmē atlikšanu - Atidėjimai nepradedami - Nem nyitja meg a késések - Ma' jiftaħ il-perijodi ta' dawmien - Geen termijnbegin - Nie otwiera opóźnień - Nao inicia o prazo - Neotvorí oneskorenia - Ne uvaja zamud - Määräaika ei ala tästä - Inleder ingen frist - He ce предвижда период на прекъсване - Nu deschide perioadele de stagnare - Nu deschide perioadele de stagnare.

(MSG: 201101688.EN)

#### 1. Structured Information Line

MSG 002 IND 2011 0366 E EN 14-07-2011 E NOTIF

#### 2. Member State

E

#### 3. Department Responsible

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### 3. Originating Department

Ministerio de Economía y Hacienda

### 4. Notification Number

2011/0366/E - H10

### 5. Title

Draft Royal Decree developing Gaming Act 13/2011 on gaming licenses, authorisations and registers

### 6. Products Concerned

Gaming. Gaming licenses, authorisations and registers.

### 7. Notification Under Another Act

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### 8. Main Content

The purpose of this draft Royal Decree is to develop Act 13/2011, of 27 May, in particular regarding the procedure for obtaining the necessary authorisation certificates to carry out gaming activities not reserved under the abovementioned Act and the functioning of the Gaming Register.

The Draft Royal Decree is divided into four Titles, 66 articles, six additional provisions, one transitional provision, one repealing provision and one final provision.

The preliminary Title "General provisions" determines the subject of the standard and defines non-occasional gaming and occasional or sporadic gaming, given its importance when granting a licence or an authorisation for such activities. The exercise of non-occasional gaming activities shall previously require a general license for the game modality in question and an individual license for each game category. The exercise of occasional gaming activities shall be subject to previously obtaining an authorisation from the National Gaming Commission.

The first Title "Licenses and authorisations" is divided into three chapters.

Chapter I establishes the common provisions on obtaining authorisation certificates and the provisions on transfer and expiry.

Chapter II on licenses is divided into three sections, whereby the first section establishes the common provisions on license types, who is entitled to obtain a license, the time periods for the issuance of a positive or negative decision, remedies against said decisions and the validity period of licenses. The second section establishes the necessary requirements for obtaining general licenses, the characteristics of the notification of the procedure which shall conform with the principles of publicity, competition, equality, transparency, objectivity and non-discrimination and which shall be governed by the specifications approved by the Minister of Economy and Tax, on the request of the National Gaming Commission, and shall be published in the Official State Gazette. The specifications for the notification shall not limit the number of licenses that can be awarded, except if so requested by the National Gaming Commission, and following proceedings instructed to that effect, awarding a hearing to the interested parties, considering it necessary to set parameters on the game offer and limit the number of operators. The restriction on the number of operators shall be based exclusively on grounds



of protection of the public interest, minors and the prevention of game addiction phenomena. Moreover, the abovementioned section establishes the procedure for the award of general licenses which shall be determined by legal, economic and safety criteria, and criteria on software security, the security of the operations and transactions to be carried out and the implementation of responsible gaming policies, protection of minors and the control of fraud and money laundering. The gaming operator, whether a legal or physical person, must have its registered seat in one of the member States of the European Economic Area; in the case of a legal person, it must be constituted as a public limited liability company or similar under European Union jurisdiction. In addition the public limited liability company is required to have a minimum registered capital.

The third section refers to the application and award procedure for individual licenses. The holders of a general license for a determined game modality may request one or more individual licenses from the National Gaming Commission for each of the game types of modalities for which basic regulations have been published.

Chapter III on authorisations, establishes its scope and limits, the requirements for obtaining an authorisation, the procedure, time limits and the contents of the resolution and relevant resources.

Chapter IV establishes the authorisation system for the marketing of lottery games under article 4 and the first additional provision of Gaming Act 13/2011, of 27 May.

The second title "Guarantees in the game relationship" has three chapters.

Chapter I regulates the relationships between the game operators and the game participants. The gaming contract shall govern the relationship between the gaming operator and the player, detailing its contents, scope and duration. Likewise it establishes that the player must hold a user account to participate in games requiring the identification of the participant. The gaming account shall be linked to the user account, without generating interest, listing all economic transactions, linked to gaming activities and to the additional services offered by the operator.

Chapter II establishes the means of payment for participation in gaming activities, and the payment of prizes by operators and certain operator obligations with regard to gaming funds.

Chapter III establishes the guarantees that may be required of gaming operators that have previously been awarded a licence. The amount of guarantees for general licenses are specified in Annex I of the Draft Royal Decree, and shall amount, in the first year, to between five-hundred thousand euros and two million and a half euros according to the game modality, and in the following years, where a reduction is applicable, to between three-hundred thousand and one million five hundred thousand euros according to the game modality. These guarantees concern compliance with the obligations imposed on the gaming operator by Act 13/2011, in particular regarding the payment of prizes, the responsibilities derived from the disciplinary regime and the payment of amounts accrued where these have not been made effective, and compliance with additional obligations established in the notification. The National Gaming Commission, depending on the nature of the game type, may establish the obligation of imposing an additional guarantee for the award of an individual license under the conditions and limits established in the basic legislation for each game type.

The third title "Gaming Registers" has four chapters.

Chapter I refers to the common provisions specifying that these Registers are under the jurisdiction and control of the National Gaming Commission, and that their contents shall not be made public, using the information contained therein solely and exclusively for the purposes established in Gaming Act 13/2011, of 27 May.

Chapter II refers to the subject, structure and contents of the General Register of Gaming Licenses. Chapter III establishes the subject, structure and contents of the General Register of Gaming Access Interdictions, and Chapter IV established the subject, structure and contents of the Register of Persons Linked to Gaming Operators.

The third additional provision specifies that the National Gaming Commission shall validate documentation already submitted by gaming operators recognised by other States within the European Economic Area, provided that it is analogous to the documentation required from gaming operators to receive the authorisation certificate in Spain, and has been duly verified by the Spanish Authorities.

The fifth additional provision specifies that the liquidity of gaming carried out in Spain shall be limited to the



liquidity resulting from the participation of users with a Spanish user account. However, the National Gaming Commission may authorize gaming with a higher liquidity, pursuant to an agreement between the Spanish authorities and the competent gaming authorities in other States within the European Economic Area.

### **9. Brief Statement of Grounds**

Gaming Act 13/2011, of 27 May, which has already been the subject of a notification under Directive 98/34/EC of the European Parliament and of the Council, of 22 June 1998, establishes the regulatory framework for the gaming activity which, in its different forms, is carried out in the State, to ensure public order, control fraud and prevent addictive conduct, protect minors' rights and protect the rights of gaming participants.

Title III of Gaming Act 13/2011, of 27 May, requires the corresponding authorisation certificate to be obtained for the exercise of non-reserved activities within the scope of the Act. For the purposes of this Act, authorisation certificates refer to licenses and gaming authorisations.

The purpose of this authorisation certificate system is, firstly, to ensure the protection of gaming participants and, secondly, to prevent money laundering activities, the financing of criminal activities and preserving public order, and thirdly, to establish a proportional gaming offer and an adequate level of access for the exploitation of gaming activities in national territory.

This Draft Royal Decree complies with article 10 section 3, article 11 section 4 and article 12 section 1 of the abovementioned Act 13/2011, and provides further detail on the procedures for obtaining general and individual licenses and authorisation. This detailed information is also necessary to improve the access of gaming operators to non-reserved gaming activities restricted to the national domain.

The regulatory measures established in this Draft Royal Decree apply clarity, transparency and guarantees to the procedure for the award of authorisation certificates, and provides legal security and protection for gaming participants, protecting their rights and in particular the rights of minors and the most vulnerable.

By regulating certain aspects concerning gaming operators, their relationships with gaming participants, the payment of prizes and certain obligations on operators in relation to gaming funds, this Draft Royal Decree lends great security and transparency to gaming activities exercised within the Spain, preventing criminal activities and money laundering where possible.

Furthermore the Draft Royal Decree, pursuant to article 22, sections two and three of Act 12/2011, establishes the contracts, organization and operation of Gaming Sector Registers: General Register of Gaming Licenses, General Register of Gaming Access Interdictions and the Register of Persons Linked to Gaming Operators.

The appropriate organization and operation of these Registers is fundamental in allowing the National Gaming Commission to exercise effective control over companies participating in competitive procedures for general licenses, the identification of persons voluntarily excluded from gaming activities, and the identification of persons with a certain level of involvement with gaming operators.

### **10. Reference Documents - Basic Texts**

There are no basic texts

### **11. Invocation of the Emergency Procedure**

No



**12. Grounds for the Emergency**

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**13. Confidentiality**

No

**14. Fiscal measures**

No

**15. Impact assessment**

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**16. TBT and SPS aspects**

TBT Aspect

No – The draft is not a technical regulation nor a compliance-assessment procedure

SPS Aspect

No – The project is not a sanitary or phytosanitary measure

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