

LATEST DEVELOPMENTS IN GAMBLING ADVERTISING

In this legal briefing, we analyse Royal Decree 958/2020, on Commercial Communications of Gambling Activities ("**RDCCAJ**"), which regulates the advertising of games of chance and online gambling, and which was published in the Official State Bulletin on 4 November.

Until now, this sector has been regulated by (i) Law 13/2011, of 27 May, regulating gambling (hereinafter, the "**Gambling Act**"); (ii) Law 34/1988, of 11 November, General Advertising Law; (iii) the Co-regulation Agreement between the General Directorate of Gambling and Self-regulation; (iv) Law 7/2010, of 31 March, General Law of Audiovisual Communication (hereinafter, the "**LGCA**"); (v) Law 34/2002, of 11 July, on Services of the Association for Information and E-commerce; and (vi) Law 3/1991, of 10 January, on Unfair Competition.

1. Key features in the Royal Decree on Commercial Communications of Gambling Activities

The purpose of the RDCCAJ is to implement the Gambling Act, specifically with regard to:

- (i) advertising, sponsorship, promotion or any other form of commercial communication of gambling activities; and
- (ii) responsible gambling policies and the protection of gambling consumers.

A. General Obligations

The key features introduced by the RDCCAJ are as follows:

- (i) The commercial communications of gambling activities must be identifiable and recognisable as such, either by including the word "advertising" or the abbreviation "publi", or by including the commercial communication in advertising spaces that are identifiable as such (Art. 7.1).
- (ii) The obligation to include the operator's corporate name, commercial name or image in commercial communications in order to avoid any misleading advertising (Art. 7.2).

- (iii) Operators are prohibited from using the trademarks or trade names of third parties, which are not owned by the operator or the business group to which the operator belongs (Art. 7.3).
- (iv) Commercial communications should include information messages regarding responsible gambling (such as "if you play, play responsibly") or the risks involved in gambling (e.g. "uncontrolled gambling can have harmful psychosocial consequences") (Art. 10.3).
- (v) Commercial communications should warn against the involvement of minors in such activities, with wording such as "no minors" or "18+", depending on the medium of transmission of the commercial communication (Art. 11.3).

B. Restrictions on sponsorship and promotional activities

Regarding the sponsorship and promotion of gambling activities, the RDCCAJ includes the following new features:

- (i) The use of the sponsor's trademark, commercial name, company name or promotional messages with regard to events, goods or services aimed at minors is prohibited. Similarly, the sponsorship of activities, sporting events, or broadcasts thereof, which are specifically aimed at minors, is also prohibited (Art. 12.1 and 12.2).
- (ii) Furthermore, sports clubs may not promote gambling activities on sports jerseys or equipment, nor may they use an operator's brand name for the purpose of identifying a sports facility, nor may they substitute or incorporate the name of an operator into the name of a team, competition or any entity outside the gambling sector (Art. 12.3 and 12.4).
- (iii) Regarding promotion, the acquisition of new customers is prohibited, as well as promotions aimed at individuals with high-risk gambling behaviour (Art. 13.1).
- (iv) The broadcasting of commercial communications by well-known figures is prohibited (Art. 15).

However, the RDCCAJ establishes a period of transition, until 31 August 2021, so that operators may adapt to the new regulations in contracts signed before its entry into effect. This transitional period is valid until 1 April 2021 regarding contracts signed with important or well-known individuals.

C. Regulation of commercial communications according to the advertising medium

- (i) Commercial communications carried out through **face-to-face communication** must be carried out in accordance with current regional regulations and state regulations on commercial communications. (Art. 17).
- (ii) Commercial communications by gambling operators in **audiovisual communication** services may only be broadcast between 1am and 5am, even if they are live events (Art. 18).
- (iii) Regarding advertising on **services of the association of information** (Art. 23), the general principle of its absolute prohibition is established, except in the following circumstances:
 - a. Where it is featured on websites or applications that support prize competitions, regarding this type of gambling.
 - b. Where it is featured on websites or applications whose main activity is the offering of products or information on gambling activities, as long as these websites or applications have mechanisms to prevent access by minors and periodically disseminate messages on safe gambling.
 - c. Where it is the result provided by search engines. If the result is the consequence of a commercial agreement between the advertiser and the owner of the search engine, the advertising will be lawful in circumstances where that search uses words or phrases directly connected with the gambling activities defined by the Gambling Act.

Additionally, advertising must include parental control mechanisms, shall not be overlaid on the main content of the page or application and may not be included on websites that include gambling activities by entities without an authorisation in Spain or websites that breach intellectual property regulations.

- (iv) **Video exchange services** provided through Internet platforms (Art. 25) may only advertise gambling activities if they have (i) instruments to prevent commercial communications from being directed at minors; (ii) mechanisms to block and hide pop-up ads; and (iii) mechanisms to control time slots, which shall be the same as those established for audiovisual commercial communications.

- (v) Commercial communications on **social media** may only be carried out on social networks that have (i) parental control measures; (ii) mechanisms for blocking or hiding pop-up ads; and (iii) tools to segment the audience to which the commercial communications are aimed. Gambling operators may only send commercial communications to their followers on social media.

In this regard, the RDCCAJ also establishes a transitional period until 30 August 2021, during which commercial communications from gambling operators may continue to be transmitted on Internet video platforms and social media, although only in respect of contracts signed before the entry into effect of the Royal Decree.

D. Prevention, awareness and control mechanisms

Operators' web portals and mobile gambling applications must include a direct link to "safe gambling" or "responsible gambling" information, informing users about safe gambling and the possible risks of gambling, as well as the option for users to seek help for gambling addictions. In addition, operators must set up a customer service helpline to provide information and assistance on safe gambling. They must also establish protocols that allow for the detection of high-risk behaviour by users.

Lastly, regarding liability, the disciplinary regime will be that of the Gambling Act, except for audiovisual communication service providers, to whom the disciplinary regime of the LGCA will be applicable. Gambling operators will be responsible for commercial communications in circumstances where they are disseminated, posted or carried out on their own behalf.

2. Entry into effect

The RDCCAJ enters into effect the day after its publication in the BOE, i.e. **5 November 2020**, with the following exceptions:

- (i) Article 13 (promotional activities); paragraphs b) and c) of Article 23.1 (commercial communications in services of the association of information); Article 24 (on commercial communications by e-mail or other equivalent means); Article 25.3 (on rules for the dissemination of audiovisual commercial communications in video exchange services through a platform); Article 26.3 (on specific rules on commercial communications on social media); and Article 27 (on specific rules on commercial communications issued by betting forecasters), which will enter into effect on **1 May 2021**.

- (ii) The first final provision (amending Royal Decree 1614/2011, of 14 November, which implements Law 13/2011, of 27 May, on gambling regulations, with regard to gambling licences, authorisations and registrations), which will enter into effect on **1 January 2021**.

This Legal Briefing was prepared by Andy Ramos, Counsel of the Intellectual Property and Technology practice area.

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