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A SHUT-DOWN FOR ON LINE GAMBLING? THE MADRID MERCANTILE COURT CONFIRMS ITS CLOSING DOWN OF UNLICENSED GAMBLING SITES

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Madrid Mercantile Court no. 10 has recently issued a Court Order ratifying its decision closing down the online websites miapuesta.com and miapuesta.es, belonging to the British company Sportingbet. Under article 733.2 of the Spanish Civil Procedural Law, Sportingbet had challenged the Court's judgment of December 15, 2011 which ordered the company to cease its online gambling activities because the company lacked a licence.

This new Court Order ratified its decision that unlicensed online gambling websites violate the legislation currently in force: "any gambling and betting activity that does not have prior administrative authorisation is unquestionably prohibited". However this Order either ignores or fails to apply the temporary provision of the Gambling Regulation Law which provides that companies offering online gambling, or advertising the same, could continue to operate until they obtain the appropriate license, without being penalised for being unlicensed (eighth temporary provision, the term of which was extended to 30 June 2012, or until the establishment of a procedure for granting licenses, by Royal Decree 20/2011, of December 30).

This Court Order therefore creates a paradox: how can companies have online gambling authorisations if the procedure for obtaining those licenses has not yet been set up?

The Gambling Regulation Law postponed the entry into force of its system of penalties until the establishment of a procedure for granting licenses, precisely in order to avoid this type of situation. If the courts do not recognise the moratoria on penalties provided during the transition period, there will inevitably be a shut-down period for online gambling in Spain.

By virtue of the transitional legislation, online gambling companies that have applied for authorisations - and in accordance with the temporary provision of the Gambling Regulation Law should be allowed to continue operating until obtaining such license - are actually acting within the legal framework. The closing down of such companies for violations of the law can inflict huge financial losses; for EU countries it entails a violation of the rights of free establishment and free provision of services provided for in the Treaty on the Functioning of the European Union, as well as a breach of the principle of legitimate expectations recognised by the ECJ.

The Spanish government could therefore be compelled to pay damages to these companies in accordance with the doctrine of the ECJ which declares it liable for its violations of EU law; the courts cannot be excluded from this principle, particularly when issuing a final ruling, because they play an essential role in the protection of individual rights derived from European law. (*vid.*, among others, CJEC of September 30, 2003, Köbler case).