

MADRID

Castellana, 216
28046 Madrid
Tel.: (34) 91 582 91 00

BARCELONA

Diagonal, 640 bis
08017 Barcelona
Tel.: (34) 93 415 74 00

BILBAO

Alameda Recalde, 36
48009 Bilbao
Tel.: (34) 94 415 70 15

MÁLAGA

Marqués de Larios, 3
29015 Málaga
Tel.: (34) 952 12 00 51

VALENCIA

Gran Vía Marqués
del Turia, 49
46005 Valencia
Tel.: (34) 96 351 38 35

VIGO

Colón, 36
36201 Vigo
Tel.: (34) 986 44 33 80

BRUSELAS

Avenue Louise, 267
1050 Bruselas
Tel.: (322) 231 12 20

LONDRES

Five Kings House
1 Queen Street Place
EC 4R 1QS Londres
Tel.: +44 (0) 20 7329 5407

LISBOA

Avenida da Liberdade, 131
1250-140 Lisboa
Tel.: (351) 213 408 600

REORGANISATION AND LIBERALISATION MEASURES OF THE PUBLIC LOTTERY AND BETTING SYSTEM

Blanca Lozano Cutanda

*Administrative Law Professor- Universidad del País Vasco
Member of the Academic Advice of Gómez-Acebo & Pombo*

Royal Legislative Decree 13/2010 undertakes a reorganisation and partial privatisation of the national system of lotteries and betting, in line with the liberalisation of this sector already initiated by Law 26/2009 on the General State Budget for 2010.

The most relevant aspects of the reform are the following:

- It creates a State lottery and betting corporation named "Sociedad Estatal Loterías y Apuestas del Estado" ("SELAE"), temporarily under the authority of the Ministry of the Economy and Finance until the future creation of a National Gaming Commission (as stated by the Statement of Motives of the Royal Legislative Decree). The Council of Ministers will approve its articles of association and appoint its board of directors before March 31st, 2011.
- This State Corporation replaces the state-owned company "Loterías y Apuestas" ("ONLAE") as the independent body for the management of gaming and betting under governmental jurisdiction. The state-owned company is wound up and all its current assets, liabilities, property and rights are contributed as equity to the new SELAE. This contribution from the extinct ONLAE includes all of its rights and obligations in relation to the sales outlets and commercial offices.
- Regulatory functions of the gaming market at the Governmental level are assigned to a governing body under the Ministry of the Economy and Finance, which will be designated in the Agreement of the Council of Ministers approving the articles of association and designating the board of the new State Corporation. In this way, the regulatory framework of the gaming industry subject to the Government's jurisdiction is adapted to the doctrine of the Court of Justice of the European Union on market transparency, which requires the separation between operator and regulator. It is interesting to note in this connection that although the Services Directive excludes from its scope "gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions" [art.2.h)], this is an area that is also subject to the freedoms of establishment and provision of services, as such freedoms are embodied in the Treaty on the Functioning of the European Union, and the Court of Justice of the Union has expressly declared its application to the organisation and operation of betting (cf. Gambelli Judgement of 6 November 2003, Case C-243/01).
- It undertakes a partial privatisation and private sector involvement in the new State Corporation. Royal Legislative Decree 13/2010 announces that "investors may participate in the newly created corporation, through the acquisition of an interest of up to 49% of its equity" (Statement of Motives of the Law). The Council of Ministers has approved the privatisation of up to 30% of the State Corporation. The overall aim is, rather than "promoting a more efficient and competitive management" as stated in the Statement of Motives of the Royal Legislative Decree (as the management regime will still be dominated by the public sector), earning income to contribute to cover the public deficit (it is estimated that the inflow of private capital in a sector with a turnover of 10 bil-

lion Euros each year, will generate revenue for the Government of between 4 and 5 billion Euros).

- The legal regime of sales outlets and commercial offices of the system's commercial network (more than 4,000 across Spain) has been modified and subjected to private law by the Law on State Budget for 2010. In accordance with Additional Provision Thirty Fourth, lottery offices are subjected in their selection, hiring, termination and legal regime to private law, without prejudice to the rules of the Law on Public Sector Contracts that may be applicable (especially with regard to public tenders).

Until now, the holder of a concession of a sales outlet was responsible for the commercial management of some or all games under the Government's jurisdiction. Even if selection was competitive, it was accepted the transfer of the lottery office caused by resignation or death of its owner, to a person of his designation among his spouse, parents, children or grandchildren, (cf. Royal Decree 1082/1985, under which the classification, provision, functioning, transfer and elimination of National Lottery offices was regulated). After the reform by the Law on State Budget for 2010, the current holders of sales outlets and commercial offices continue to hold the acquired right of transfer of ownership to their family and must decide, within two years, either to maintain the current concession system (up to death, retirement or resignation of its holder) or be subjected to the new private legal regime.