

Juan Carlos Alfonso Rubio

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(the future Spanish Gambling Commission)

PGRI INTRODUCTION: Everyone knows that LAE is the Spanish National Lottery, one of the largest lotteries in the world, and operates El Gordo. As measured by the total prize payout, El Gordo (also known as the Christmas Lottery, and started in 1812) is considered to be the biggest single lottery game in the world. However, the following interview focuses on a very specific topic not related to the traditional lottery games operated by LAE. LAE is a branch of the Spanish Public Administration and is tasked with drafting the bill that will begin the regulation of the online Internet gaming market in Spain. This is a huge step towards building a rational regulatory framework in Europe. Until recently, Juan Carlos Alfonso Rubio was the Coordination Director for LAE, and led the team that drafted the bill that proscribes the procedures, terms, and conditions, for commercial gaming applicants; as well as the regulatory framework that will govern this industry in Spain. Now Juan Carlos is Deputy General Director of the recently established regulatory body that will become the Spanish Gambling Commission. Juan Carlos continues to lead the process of clarifying and drafting the regulatory framework that will govern the Spanish gaming market. The draft gambling law, after having been approved by the Spanish Congress on 12th May, was published in its Official Bulletin on May 18 and should be made publicly available by the first week of June. This interview was conducted in March while Juan Carlos was Coordination Director with LAE. Still in the vetting process, this bill is due to take effect within the coming six weeks.



Paul Jason, Public Gaming: *The government is in the process of finalizing the draft law that specifies all the ways that Internet gaming is to be regulated in Spain. You and your legal team have been responsible for writing that law. So LAE is, in effect, writing the draft law that stipulates how Internet gaming is to be regulated in Spain?*

Juan Carlos Alfonso Rubio: LAE is a wholly state-owned corporation and operates as the governmental authority for gaming. LAE is part of the Spanish Ministry of Economy and Finance (Ministerio de Economía y Hacienda). We are tasked with writing the draft law that regulates Internet gaming. Once the law is approved by the Spanish parliament, it will be implemented and enforced by the regulator. The office of the regulator is separate from LAE. Presently, I work for both the regulator and LAE. Once the law is approved, or possibly even before then, that will change so that I will work for one or the other but not both.

It has not been decided yet which I will work for. But for right now, LAE is the government ministry that has authority over the regulation of gaming and gambling in Spain. The Spanish presidency formed a working party council to create a regulatory framework for Internet gaming. I am in charge of the working party council that is drafting the law.

What stage is the process of implementing the draft bill right now?

J. C. Alfonso: As regards the regulatory framework for Internet gaming, the draft law is going through revisions as we speak. So the terms and conditions of that law may change between the time of this interview and the time that this is read in June. Parliament is reviewing the input from all the different interest groups, and then sends the draft back to me for revisions. It is very close to final form now, but probably will not take effect until June.

Why is LAE the one to draft this law? Why not form a working council that has no ties to gaming as an operator?

J. C. Alfonso: Our competence for drafting law that pertains to the regulation of gaming and gambling is stated in our royal decree of 1999. That decree assigns LAE the responsibility and what we call competence or authority over all regulatory matters in gambling. In the case of this Internet gaming bill, we will send the draft law to the government, and the final decision will be made by the Spanish parliament.

Have you requested input from the different interest groups in the process of creating this draft law?

J. C. Alfonso: I have had over thirty meetings with all the different interest groups. Of course, the private operators want low taxes and open markets and perhaps other terms that are not necessarily what the government and the people of Spain want. But we listen care-

fully and try to understand everyone's views and work hard to create a regulatory framework that is fair and balanced. The primary objective is to serve the interests of the Spanish people. Protecting the player, minors, preventing fraud and money laundering, and channeling economic benefits back to the people - these are the primary objectives of the draft law. But we also realize we need a framework that enables private operators to conduct business and make a profit themselves. I have personally talked extensively with all the different stakeholders in Europe. The texts have been revised three times already based on their input.

So nobody will be surprised by the resulting draft law.

J. C. Alfonso: People may disagree with some of the provisions and tax structures. For instance, some people do not think that taxes should be based on gross gaming revenue. But they will not be surprised by anything in the draft law because they were all a part of the process and are aware of how it has evolved every step of the way. It's been a fully transparent process.

It is not compulsory in Spain to have an open public consultation. But we announced in advance that the process of producing this draft law would include a public consultation and so it has. In fact, over just the past 14 days, I have received 200 different reports of allegations, requests for changes and such. The stakeholders, all of them including private operators, have received more information about this process than I can ever recall being done in a law-making process like this.

Commercial Internet operators like Betfair and Bwin protest that they are willing to do whatever is necessary to comply with the laws and tax obligations. But then they proceed to protest mightily when the taxes are too high.

J. C. Alfonso: And so they operate in Spain without paying taxes. They are not authorized to conduct online wagering in Spain which means they are acting illegally when they do take online bets. When the draft law is approved by the Spanish parliament and we implement a system of licensing in which commercial operators pay taxes, we need to ensure that operators based in Malta and other low-tax havens are prevented from doing business here without a license and without paying taxes. That is vital to assuring a fair competitive environment for the operators who are paying their taxes and complying with the laws of Spain. And yes, these commercial online gaming companies say they want to comply with the law, but notice that when the UK raised the tax rate, they moved to Malta and Gibraltar to evade the tax obligation.

Companies that do business without paying the

correct taxes are acting illegally and that makes them, in effect, criminal enterprises.

J. C. Alfonso: You said it, I didn't. But it's hard to disagree with that logic. It is sometimes difficult to understand how they can operate illegally and then expect to be considered for a license. They will all end up complying with the laws, but only because we now have the technological capability to stop them from doing business if they don't comply with the law and pay their taxes.

Too, it is a fact that strict oversight is needed to prevent outright consumer fraud. There are more and more instances of i-gaming operators promising more than they intend to deliver. For instance, the whole concept of bonusing can get confusing. Operators use that confusion to promise free bonuses and then make it impossible to actually claim the bonuses. We need to have the regulatory and enforcement mechanisms to prevent that kind of fraud. Player protection is a top priority and is the reason for strict laws requiring transparency and rigorous auditing procedures. Operators may claim it is unnecessarily burdensome to have this high a level of accountability. We really are trying to build a framework that is rational, functional, efficient, and no more costly to administer and comply with than necessary. But we are tasked first and foremost with protecting the interests of the consumer and the fiscal objectives of the government.

All the member states have different regulatory frameworks. So without a mutually agreed upon set of standards, and mutually agreed upon processes for enforcing violation of those standards, the concept of "mutual recognition" doesn't make sense.

J. C. Alfonso: Exactly. This I think is the main issue and we made it central to the conclusions of the Spanish presidency (the presidency of the EU was held by Spain last year). Do you know how much it costs to incorporate a gambling company in Malta? 45,000 Euros, which is around \$60,000 U.S. With \$60,000 you have the bylaws, the board member, the website, the technological system, and one or two years of free maintenance. That gets you set up and compliant with Maltese laws and regulations. And the tax rate on the Maltese gambling companies is 1%. 1% would not produce a significant tax receipt if it were collected only on the gambling revenues generated by the citizens of Malta. But if a small country like Malta can collect 1% on gambling revenues generated in the more populous countries like Spain, Germany, France, Italy, etc., then that would add up to a lot. Now, we don't have the right to tell the Maltese how to do business in their own country. But we do have the right to require a standard of performance that may exceed the ability of these low-cost operators to comply with. We are not obligated to reduce our stan-

dards because these private operators can't afford to raise their level of performance. It costs money to build the systems that provide sufficient protection of the consumer and business accountability that guarantees the transparent tracking of online transactions and remission of taxes to the state. The operators would all be based in Malta and Gibraltar where the taxes are low. And the nations where all the players reside would have no recourse to enforce their laws and protect the players. Gambling is clearly a case where the subsidiarity principle confers the authority onto the member state government to determine the regulatory framework that is best for its citizens.

And since the governmental authority best able to determine the acceptability of an operator is the member state, that means that the European Court of Justice and the EU Commission could and should simply refer all these disputes back to the court of the member state.

J. C. Alfonso: The member state still must comply with EU laws requiring consistency in the application of its laws. But yes, the ECJ and EU Commission do not want to be in the middle of these disputes. As long as the member state is not showing unfair favoritism to one group over another, the state government should be the arbiter of gaming applications and claims to have the right to operate. And if an operator is not complying with Spanish law, we should have the right to deny their license and prevent them from doing business with the people who live in Spain.

Would you consider giving value or recognition to an applicant that has a license in another state that does enforce higher standards, like France and Italy.

J. C. Alfonso: Sure. Like I said, we support ways to make the process easier for everyone. We have decided that we are not creating a formal process which obligates us to recognize the licenses of other countries. In the end, the decision of whether an applicant should be granted a license is made solely by the Spanish Gambling Commission, with absolutely no obligation to recognize the validity of licenses held in other jurisdictions. But we do communicate with our colleagues in France, Italy, and other countries. All of us want to make the process efficient and avoid increasing the different administrative requirements for different operators. The license that an operator has in a state like France or Italy would certainly recommend it for being approved in Spain. We would take that into consideration, assess the licensing documentation, and give value to the standards which the applicant has demonstrated in other markets. But we do reserve the right to make our own assessment which may differ from that of France and Italy. In that important sense,

this is distinctly different from 'mutual recognition' which should not apply to the gambling industry.

Don't you need to cooperate to create an international effort to enforce the laws and regulations?

J. C. Alfonso: That's true. There will be an increase in cooperation and information-sharing between all of the highly regulated markets, including the United States. And I hope that we can be mutually supportive of each others' laws. And help each other enforce those laws. For instance, if PokerStars or Full-Tilt Poker violate U.S. laws by operating illegally in the U.S., should we license them here? Wouldn't that be condoning their illegal, criminal activities? Insofar as we respect each others' laws, we should help each other by denying licenses to operators which are violating laws anywhere in the world. Even if these operators have legal licenses in some jurisdictions, even if they could demonstrate that they would comply with all of our own laws and tax obligations, governments everywhere should cooperate to force these companies to comply with laws in all countries, not just their own. Sports betting is another issue entirely. That will absolutely require an international collaboration to get control and prevent corruption.

Are you recommending that there be more than one licensee, that there be more than one operator for the internet games?

J. C. Alfonso: Like other European countries, we will preserve the lottery monopoly. There are different models for governance, ownership, and management of the lottery, but nobody wants to open up the lottery to multiple operators. The commercial operators are all asking the question, How many i-gaming licenses will you assign? The answer is that we do not have a set number, neither a minimum nor a maximum number of licenses to assign. It is completely based on the quality of the applicants and the maintenance of stability and health in the online gambling market. The Spanish Gambling Commission will regulate the markets and award licenses based on the qualifications of the applicant. It's not entirely different from the way business licenses are awarded in other sectors like the stock market, telecommunication, et cetera. The Minister of Finance will be the owner of one of the main operators, LAE. That is why the regulation and licensing will be performed by a different agency, and not LAE. But the position of the Spanish government is to open the market. Open the market for multiple operators of sport betting, Internet gaming of all different kinds including Internet poker, casino games; basically all forms of gaming except lotteries. But it's true that we don't want an absolutely free and open market with too many operators because that would be impossible to control. You can't protect the players and it would not be healthy for the long-term sustainable growth of the industry to saturate the market. I don't think the serious operators themselves would want that either. In fact, the serious operators who comply with all the laws and tax obligations are among the most vocal about wanting us to prevent illegal operators.

Commercial operators who pay their taxes and invest in quality service and effective responsible gaming tools are at a competitive disadvantage to illegals who have lower costs because they don't do those things.

J. C. Alfonso: The Spanish government wants a high quality of services for our citizens. This high quality of services costs money and requires investment and a commitment to support a sustainable growth plan for the industry. You need excellent technical solutions, modernized systems of controls, smart advertising, and these all require investment. The consumer needs to be absolutely confident that they are playing with licensed operators who meet the highest standards of service and integrity.

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Will it be a problem to prevent illegals from accessing the Spanish market?

J. C. Alfonso: Of course it is a challenge. But the technology is there to block consumer access to illegal i-gaming websites. And hopefully an international effort will be made to completely put them out of business, because they continue to try to do business in spite of the laws. The Italian gambling commission is blocking more than 3.5 million attempts each day to access illegal websites.

And even then we can only hope that none of the illegals are slipping through.

J. C. Alfonso: Improving security and fighting illegals will be an ongoing challenge. But the technology is there, and it is improving, and it does appear that we are able to marginalize the illegals, so that they will not be able to run a profitable business. They do seem to realize that since they are all lining up to try to become legally licensed.

Correct me if I misunderstood what you said earlier. Did you say that the draft law will penalize operators, perhaps even deny licenses to them, who violate the laws of other countries? Like the i-poker operators who do business illegally in the U.S.

J. C. Alfonso: Definitely that will be taken into consideration and potentially be a reason to deny a license. Nobody likes operators who break the laws of other countries. I know that we would not like it if the U.S. and others were to provide good business opportunities for companies that violate Spanish laws and so we should act accordingly ourselves. Obviously, if all countries were to apply this logic, denying licenses to operators who violated laws anywhere in the world, that would make it very, very hard for illegals to do business. And why shouldn't we? We don't provide asylum for people who commit other crimes in other countries, so why should we make an exception for the illegal gaming operators? We want all operators in Spain to comply with our laws and hope that other nations like France, Italy, the U.S., and eventually even Malta, will help us make it impossible for the illegals to do business anywhere. And we will do the same for them. All of us are set up to block financial transactions associated with illegal operations and to penalize the operators who do not comply with the law. In spite of the Internet's ability to create connectivity that is virtual and borderless, there are ways to prevent criminal activities and we will succeed at marginalizing illegal operators.

The ultimate sanction would be to make it impossible for i-gaming operators to access the major markets throughout the world. I was told that Betfair was rejected in Italy.

Maybe that is evidence that even giant i-gaming operators can be held accountable.

How does your draft law differ from France and Italy? Sounds like it will be more open than France?

J. C. Alfonso: Like other European countries, we are preserving the monopoly lottery model. As regards the other forms of gaming, we are opening more than some others in principle. Our point of view is that we will not compromise when it comes to protection of the consumer and enforcement of laws and tax obligations; but that the best way to do that is to proactively regulate all the games. Instead of prohibiting them we want to actively regulate and control the way in which the industry evolves. All countries have their own public policy priorities and legacy gaming industries that inform the decisions they make as to the right kind of regulatory framework. Those will differ from place to place and that is why it is perfectly logical that the resulting regulatory framework be different as well. For us, we want to design a framework that will encompass all aspects of gaming and wagering and we want to have flexibility to evolve as technology and the markets evolve. We'll study the games, the markets, the competitive environment, and the ways that others like France, Italy, Finland, and the UK are regulating to guide our efforts to evolve the most effective approach for Spain.

Having flexibility to adapt to changes in the marketplace and technology would seem to be so vital, and what is missing in some frameworks, like the U.S. Is there a conflict between the goal of providing clear, unambiguous terms, conditions, guidance, etc. and the goal of being flexible to adapt to changes in markets and technology?

J. C. Alfonso: The bottom line is that it has to be done. Things change and the framework needs to adapt. Too, the fact is that we don't have perfect knowledge and need to be able to change to improve upon our original framework. This is a very complex sector. We do not have perfect visibility into how technical requirements and capabilities, market conditions, and the competitive economic environment will all coalesce into a functioning gaming industry. We are doing everything we can to anticipate and prepare for everything, but you simply must have the flexibility to adjust as circumstances change and new information becomes available.

Does the bill empower the Spanish Gambling Commission to discuss with other governments and regulatory bodies ways in which you can share procedures for licensing, perhaps even co-

ordinating some commonalities into a standardized template?

J. C. Alfonso: There is certainly the potential for us to share information and learn from each other, and even factor in the track record that an applicant has established in other jurisdictions. But we feel that it is difficult and undesirable to try to formalize a coordinated approach to licensing operators. Licensing procedures should be wholly controlled by each member state. The business of enforcing policy can certainly be shared. And as we go forward, I'm sure there will be other aspects in which we can cooperate more with other jurisdictions. But the business of licensing and policy making itself should remain within the government and the regulator of the member state.

Does the draft bill require the operator to incorporate in Spain and/or have their transaction processing servers physically located in Spain?

J. C. Alfonso: Incorporating as a Spanish company is not a requirement, but the applicant does need to be incorporated in a member state of the European Union. We don't require that the applicant for a gaming license locate the central servers in Spain or even in Europe. We need to have 100% certainty that we can see the transactions and verify accurately the volume, prize payouts, and other elements that define a transaction. But we do have the technological ability to do that without requiring that the main server be based in Spain. And as long as we can do that, we don't mind if the server is based in Palo Alto, Mumbai, Bucharest, or Malta. Online operators do business in multiple countries and we do not feel that it is necessary to require them to have numerous servers based all over the place.

This is a good example of how the bill is genuinely intended to open up the market while protecting the citizens, and ensuring your ability to enforce tax collection. You are giving attention to doing those things necessary to protect the players, etc., but trying to minimize the cost burdens and barriers to entry for the operator.

J. C. Alfonso: We will demand that they comply with the highest technical standards and that will cost them money. It's true that we do not intend to impose costly requirements that do not serve a useful purpose. Make no mistake; the investment to meet those high standards of performance that qualifies an applicant to operate in Spain will be significant. But it is all highly focused on achieving the objective of building a healthy, sustainable gaming industry that serves the interests of the Spanish people. ♦