

**FRENCH REPUBLIC**

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**National Gaming Authority**  
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**COMMUNICATION NO. 2022-C-003 OF 20 OCTOBER 2022**  
**ADOPTING GUIDELINES AND RECOMMENDATIONS ON COMMERCIAL**  
**OFFERS BY GAMING OPERATORS**  
**OF MONEY AND CHANCE INVOLVING A FINANCIAL REWARD**

The National Gaming Authority,

Having regard to the Internal Security Code, in particular articles L. 320-2 to L. 320-4; Having regard to the Consumer Code, in particular articles L. 121-1 to L. 121-4 ;

Having regard to Act no. 2010-476 of 12 May 2010 as amended relating to the opening up to competition and the regulation of the online gambling sector, in particular Article 34 IV;

Having regard to Order 2019-1015 of 2 October 2019 reforming the regulation of gambling ;

Having regard to Decree no. 2010-518 of 19 May 2010, as amended, on the games and bets offered by gaming operators and the provision of gaming data to the National Gaming Authority;

Having regard to Decree No. 2020-1349 of 4 November 2020 on the regulatory procedures of the National Gaming Authority ;

Having regard to the Order of 9 April 2021 defining the reference framework for the prevention of excessive or pathological gambling and the protection of minors, in particular Article III;

Having heard the observations of the Government Commissioner, and having deliberated on 20 October 2022,

**ADOPTS THE FOLLOWING GUIDELINES AND RECOMMENDATIONS:**

***Introduction: the purpose and legal framework of the guidelines and recommendations***

1. The purpose of these guidelines and recommendations is to deal with commercial offers involving financial rewards made to players by gambling operators. These offers consist of "*commercial techniques designed to increase the attractiveness of the game*", such as "*account topping up [which] is the practice whereby the operator increases the account balance*", "*stake topping up [which] is the practice whereby the operator increases the stake balance*", and "*the operator increases the account balance*".

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*the operator increases the player's stake", as well as "the win bonus [which] is the additional win provided by the operator".<sup>1</sup>.*

2. The drafters of the Act of 12 May 2010 were concerned that the opening up of online gambling to competition should not be an opportunity to undermine public and social order. This is why they took care to state in article 1<sup>er</sup> of this law that: "*Gambling and games of chance are neither an ordinary business nor an ordinary service; in compliance with the principle of subsidiarity, they are subject to strict supervision with regard to the issues of public order, public safety and the protection of health and minors*". Protecting the public, especially the most vulnerable, from gambling addiction was one of Parliament's major concerns back in 2010, leading it to state in Article 3 I of the Act that: "*I. - The aim of State policy on gambling and games of chance is to limit and regulate the supply and consumption of games and to control their operation in order to: 1° Prevent excessive or pathological gambling and protect minors*".

3. The aforementioned Order of 2 October 2019 is part of this protective approach, which it seeks to strengthen. More specifically, it laid down new obligations for gambling and chance operators in order to consolidate advertising regulation, and invested the Authority with new powers, in particular those of approving the promotional strategy of these operators<sup>2</sup> and to limit, if necessary, by means of a reasoned decision, their commercial offers involving financial rewards for players<sup>3</sup>.

4. Proposed by the National Gaming Authority and approved by an order of the Minister for Health on 9 April 2021<sup>4</sup> the reference framework for the prevention of excessive or pathological gambling and the protection of minors sets out, in an operational manner, this protection objective for each of the obligations that gambling operators are required to meet. To this end, it devotes Section III of Article III to financial rewards, recalling, on the one hand, the general principles in this area, in particular that of offering reasonable financial rewards that do not provide an excessive incentive to gamble, and setting, on the other hand, implementation guidelines that these guidelines and recommendations are intended to specify.

5. These guidelines and recommendations complement those on gambling advertising that the Authority adopted on 17 February 2022 with a view to keeping gambling within a sustainable perspective of recreational gambling.<sup>5</sup> These did not specifically concern commercial offers involving a financial reward, even though they constitute an important category of commercial communications. In examining the practices observed in the sector, regardless of the segment of the offer, it appeared to the Authority that

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<sup>1</sup> J.- F. Lamour, Report on behalf of the Committee on Finance, the General Economy and Budgetary Control on the draft law on opening up and regulating the online gambling sector to competition, No. 1549, p. 199.

<sup>2</sup> Law no. 2010-476 of 12 May 2010 as amended, art. 34-VI, para. 1<sup>er</sup>.

<sup>3</sup> *Idem*.

<sup>4</sup> Ministerial Order of 9 April 2021 "*defining the reference framework for the prevention of excessive or pathological gambling and the protection of minors*", issued on the basis of the provisions of IX of article 34 of the amended Act of 12 May 2010 (published in the Official Journal on 15 April 2021, which came into force immediately on the same day by virtue of Decree no. 2021-437 of 14 April 2021).

<sup>5</sup> Communications [No. 2022-C-001](#) and [No. 2022-C-002](#) of 17 February 2022 respectively adopting guidelines for the content of commercial communications by gambling operators and adopting recommendations for commercial communications by licensed gambling operators or holders of exclusive rights.

considered that this particular subject called for the adoption of specific guidelines and recommendations that complemented the previous ones, especially as they are part of a specific context marked by the forthcoming Football World Cup, which is both a major event that will structure the activity of the sports betting market in 2022 and a major point of vigilance for the Authority, given the excesses that have sometimes been observed during Euro 2021 football.

**6.** These guidelines and recommendations are also intended to draw the consequences, with specific regard to financial bonuses, of the Conseil d'Etat's decision of 24 March 2021<sup>6</sup> which enshrines the application to gambling and games of chance of the relevant rules of the Consumer Code, in particular those relating to unfair commercial practices, which result in an obligation of transparency and clarity on the part of gambling operators.

**7.** The guidelines express the Authority's interpretation of the positive law applicable to these commercial offers involving a financial reward, without claiming to be exhaustive and bearing in mind that, in any event, the assessment of the compliance of these offers with the legislative and regulatory framework in force is carried out on a case-by-case basis. The recommendations, on the other hand, should be seen as the expression of good practice, neither exhaustive nor prescriptive, which operators are invited to implement when they offer commercial services including a financial reward.

**8.** The purpose of these guidelines and recommendations is to shed light on the implementation of the various powers available to the Authority to ensure compliance with the rules on commercial offers involving a financial reward. In this respect, it should be remembered that each year the ANJ approves the promotional strategy for all media of operators holding exclusive rights and licensed operators,<sup>7</sup> where applicable subject to conditions<sup>8</sup>. In addition, it may, by means of a reasoned decision, limit commercial offers involving financial rewards for players<sup>9</sup>. Lastly, it may refer to the Enforcement Committee any failure by an operator to comply with its legal or regulatory obligations or with an order issued by the College.<sup>10</sup>

**9.** These guidelines and recommendations are divided into two parts, dealing successively with the transparency **(1)** and moderation **(2)** requirements applicable to commercial offers involving a financial reward. The first part is based on the observation that gambling operators' offers sometimes lack clarity, which prevents consumers from properly understanding them. The second part is explained by the multiplication of these commercial offers and the sometimes very high amounts of financial rewards; it recalls the rules applicable in this area and encourages more moderate practices in order to limit excessive or pathological gambling behaviour.

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<sup>6</sup> Conseil Etat, 24 March 2021, no. 431786.

<sup>7</sup> Law no. 2010-476 of 12 May 2010 as amended, art. 34-VI, para. 1.

<sup>8</sup> Decree no. 2020-1349 of 4 November 2020, art. 9.

<sup>9</sup> Act no. 2010-476 of 12 May 2010 as amended, art. 34-VI, para. 1.

<sup>10</sup> Law no. 2010-476 of 12 May 2010 as amended, art. 42-II.

## **1. Transparency of commercial offers involving a financial bonus**

### **1.1. Guidelines on the transparency of commercial offers involving a financial reward**

#### *1.1.1. Indicate the essential information required for an initial clear understanding of the commercial offer proposed*

**10.** Commercial offers involving a financial reward are governed by Articles L. 121-1 et seq. of the French Consumer Code<sup>11</sup> which prohibit unfair commercial practices, in particular misleading practices<sup>12</sup>. In this respect, it should be noted that 1° of article

L. 121-2 of the French Consumer Code states that a commercial practice is misleading if *"when it is based on false or misleading allegations, indications or presentations relating to one or more of the following: a) The existence, availability or nature of the goods or service / b) The essential characteristics of the goods or service"*.

**11.** The first two paragraphs of Article L. 121-3 of the French Consumer Code state: *"A commercial practice is also misleading if, taking into account the specific limits of the means of communication used and the surrounding circumstances, it omits, conceals or provides in an unintelligible, ambiguous or untimely manner any material information or if it does not indicate its true commercial intent, where this is not already apparent from the context. / Where the means of communication used imposes space or time limits, in assessing whether material information has been omitted, account shall be taken of those limits and of any steps taken by the trader to make the information available to the consumer by other means. [...]"*.

**12.** In addition, article L. 121-4, 19° of the same code stipulates that commercial practices are deemed to be misleading if they *"describe a product or service as being 'free', 'free of charge', 'free of charge' or other similar terms if the consumer has to pay anything other than the unavoidable costs associated with responding to the commercial practice and taking possession or delivery of the item"*.

**13.** The reference framework for the prevention of excessive or pathological gambling and the protection of minors states: *"In the case of commercial offers involving financial rewards for players, the operator shall describe, clearly and distinctly, the mechanisms enabling players to benefit from these rewards"*.<sup>13</sup>.

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<sup>11</sup> These provisions transpose into national law Directive 2005/29/EC of 11 May 2005 on the approximation of the laws of the Member States relating to the processing, packaging and labelling of foodstuffs.

unfair business-to-consumer commercial practices in the internal market.

<sup>12</sup> Article L.121-1 of the French Consumer Code states: *"Unfair commercial practices are prohibited.*

*A commercial practice is unfair when it is contrary to the requirements of professional diligence and alters or is likely to alter in a substantial manner the economic behaviour of a consumer who is reasonably well-informed and reasonably observant and circumspect with regard to a good or service.*

*The unfairness of a commercial practice aimed at a particular category of consumer or group of consumers who are vulnerable by reason of mental or physical infirmity, age or credulity shall be assessed in the light of the average capacity for discernment of the category or group.*

*In particular, unfair commercial practices include misleading commercial practices as defined in Articles L. 121-2 to L. 121-4 and aggressive commercial practices as defined in Articles L. 121-6 and L. 121-7"*.

<sup>13</sup> Article III, Section III.1, a, indent 3.

**14.** It follows from these provisions that, in principle, any commercial offer involving a financial reward must include, on the same medium, an indication of those of its substantial characteristics the absence of which could mislead the consumer.<sup>14</sup> In other words, a consumer who is reasonably well-informed and reasonably observant and circumspect must have a good initial understanding of the offer, so that he can, with full knowledge of the facts, take the decision to accept or refuse it.<sup>15</sup> Consequently, where relevant, the offer should mention :

- its duration, when it is only temporarily valid ;
- where applicable, that its acceptance is subject to a prior expenditure (for example: a prior deposit of a certain amount on the player account), it being recalled that the use of the term "free" or similar is, by virtue of Article L.121-4, 19° of the aforementioned Consumer Code, prohibited if the free offer is not genuine;
- the nature of the reward (e.g. real money that can be withdrawn directly by the player, game credits that must be played);
- the extent of the bonus, in particular whether the amount is fixed or variable;
- the other essential conditions for benefiting from the offer, where their indication is necessary for a proper understanding of the offer (for example: making a deposit of a certain amount or having lost your bet).

**15.** Where appropriate, this substantial information may be communicated by a reference, indicated by an asterisk, to a statement appearing in smaller type on the medium, provided that it is legible and immediately visible. Other information relating to the commercial offer of a financial reward, i.e. information whose absence cannot mislead the player, may be provided by reference to the rules governing it, which may be accessible on another information medium, in particular on the operator's website.

**16.** In any event, the determination of the material information to be included on the medium of an offer and the assessment of whether its omission is misleading must be made on a case-by-case basis according to the circumstances and taking into account the limitations of space and time specific to the means of communication used, as well as any measures actually taken by the operator to make this information available to the consumer by other means.

*1.1.2. Provision of the complete rules of the offer, written in a legible and comprehensible manner, on an easily accessible durable medium*

**17.** Decree no. 2010-518 of 19 May 2010, as amended, on the gaming and betting services offered by gaming operators and the provision of gaming data to the Autorité nationale des jeux (French Gaming Authority), stipulates the following for gaming operators

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<sup>14</sup> The issue here is to assess whether the omission of information may lead the consumer to take a commercial decision which he would not otherwise have taken (see, to that effect CJEU, judgment of 26 October 2016, Canal Digital Danmark A/S, C-611/14, paragraphs 58 to 64).

<sup>15</sup> It follows that the offer must be unambiguous and must not contain any information that could give rise to an erroneous belief on the part of the player, which can only be dispelled by a thorough reading of the relevant rules. See in particular on this point: Cass.crim.19 April 2017, no. 16-84.659.

The first and second paragraphs of article 1<sup>er</sup> : *"The games and bets offered by operators are offered in the French language. / The rules governing the general terms and conditions of the games or bets offered, as well as the specific rules governing the games or bets offered by the operator, are drafted in the French language and made available to the player, in a legible and comprehensible manner, on an easily accessible durable medium. They include the information required pursuant to article 104 of the aforementioned Act of 6 January 1978"*.

**18** It follows from these provisions that the full terms and conditions of the commercial offer of a financial reward must be drafted in French, in a legible and comprehensible manner and be easily accessible on a durable medium for the entire duration of the offer. By *"durable medium"* we mean an instrument that allows information to be stored and dated so that it can be referred to at a later date for an appropriate period of time and that allows identical reproduction of the information stored (for example, a file that can be downloaded in "PDF" format).

### ***1.2. Recommendations aimed at improving the transparency of commercial offers involving financial rewards***

**19.** The Authority invites operators, where possible, to illustrate with concrete examples the different ways of obtaining the financial reward offered and the actual amounts that the player can expect to receive.

**20.** With the same objective, for specific cases where the conditions for implementing the offer in question would be particularly complex, the Authority recommends that operators offer a simulation tool enabling players to identify the assumptions, conditions and procedures for obtaining the bonus as well as its exact amount in relation, where applicable, to their level of stake.

## ***2. Moderation of commercial offers involving a financial bonus***

### ***2.1. Guidelines for the moderation of commercial offers involving a financial reward***

*2.1.1. Ensure that commercial offers involving financial rewards are not made to people whose gambling is potentially excessive or pathological.*

**21.** Article L. 320-3, 1° of the French Internal Security Code states that: *"The aim of State policy on gambling and games of chance is to limit and regulate the supply and consumption of games and to control their operation in order to prevent excessive or pathological gambling and to protect minors"*, an objective to which operators are required to contribute by virtue of article L. 320-4 of the same code.

**22.** The third paragraph of IX of Article 34 of the amended Act of 12 May 2010 stipulates that: *"Operators, casinos and gaming clubs shall identify people whose gambling is excessive or pathological and assist them in moderating their gambling, in compliance with the framework of*

This framework recommends that "*operators implement the necessary measures to ensure that they do not offer financial rewards to gamblers identified as potentially excessive or pathological (...)*".<sup>16</sup>.

**23.** As a result of these provisions, gambling operators must refrain from making any commercial offer involving a financial reward to people identified as potentially exhibiting excessive or pathological gambling behaviour. In fact, such an offer is likely to establish or reinforce the addiction to gambling from which these people suffer, who should instead be supported so that they moderate their gambling.

*2.1.2. Be particularly vigilant with people who have recently been self-excluded or banned from gambling.*

**24.** It has been pointed out that gambling operators must contribute to the general objective of preventing excessive or pathological gambling. In this respect, paragraph 3 of article L. 320-11 of the French Internal Security Code prohibits them "*from sending any commercial communication to holders of a player account or identified persons benefiting from a self-exclusion measure [as well as] to former holders of a player account subject, pursuant to II of article L. 320-9-1, to a voluntary gambling ban*".

**25.** To achieve this same general objective, the above-mentioned reference framework for the prevention of excessive or pathological gambling and the protection of minors stipulates that gambling and chance operators must ensure that their commercial offers involving a financial reward "*do not encourage the development, maintenance or resumption of excessive gambling practices*".<sup>17</sup>. As a result of these provisions, gambling and betting operators are under a duty of particular vigilance when offering financial rewards to people they know to have recently benefited from a self-exclusion measure or a voluntary gambling ban, in order to prevent excessive or pathological gambling practices.

*2.1.3. Avoid all claims of an alleged absence of risk*

**26.** Article L. 320-2 of the French Internal Security Code states: "*Gambling and games of chance which, by way of derogation, are authorised pursuant to article L. 320-6 are neither an ordinary business nor an ordinary service; they are subject to strict supervision in order to prevent the risks of undermining public order and social order, particularly with regard to the protection of health and minors*". These provisions - which take up the substance of those in the initial version of Article 1<sup>er</sup> of the Law of 12 May 2010 relating to the opening up to competition and the regulation of the online gambling sector, the normative scope of which was affirmed by the Constitutional Council<sup>18</sup> - are intended to remove gambling and games of chance from the scope of entrepreneurial freedom,

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<sup>16</sup> Article III, section III.3, b, indent 2.

<sup>17</sup> Article III, section III.3, a, indent 2.

<sup>18</sup> Decision no. 2010-605 DC of 12 May 2010, Law on the opening up to competition and regulation of the online gambling sector, point 29.

This is because of their intrinsic potential danger to those who engage in them. This is why gambling operators must refrain from alleging, in any way whatsoever, an absence of risk when presenting their offers of financial rewards.

#### *2.1.4. Ensure that offers are reasonable in terms of volume, frequency and amount*

**27.** Drawing on the consequences of the obligation on operators to help limit supply and consumption<sup>19</sup> the reference framework for the prevention of excessive or pathological gambling and the protection of minors states: "*Operators shall ensure that they offer reasonable financial rewards that do not provide excessive incentives to gamble and do not encourage the development, maintenance or resumption of excessive gambling practices*".<sup>20</sup>

**28.** As a result of these provisions, gambling operators must ensure that their commercial offers involving a financial reward - whether welcome offers or loyalty offers - are reasonable in terms of volume, frequency and amount.

**29.** The Authority will pay particular attention to the reasonableness of these welcome and loyalty offers when examining the promotional strategy of gambling operators<sup>21</sup> and approving their action plans to prevent excessive gambling and underage gambling<sup>22</sup>. In this respect, it should be remembered that the Authority may, by means of a reasoned decision, limit commercial offers involving a financial bonus where this is unreasonable. Finally, the granting of unreasonable bonuses may constitute a breach by the operator that could lead to a referral to the Enforcement Committee.

#### ***2.2. Recommendations concerning the moderation of commercial offers involving a financial reward***

**30.** To help prevent excessive or pathological gambling, gambling and betting operators are invited to :

- refrain from proposing welcome offers involving one or more financial rewards totalling more than one hundred euros;
- rebalance their commercial offers and loyalty programmes in favour of promotional mechanisms that are less linked to the level of gaming intensity (volume, frequency, duration of play) of the players to whom they are offered. The implementation of such a

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<sup>19</sup> See point 24.

<sup>20</sup> Article III, section III.3, a, indent 2.

<sup>21</sup> L. 12 May 2010 as amended, art. 34-IV, para. 1<sup>er</sup>. It is important to specify that this examination does not concern casinos or gaming clubs.

<sup>22</sup> L. 12 May 2010 as amended, art. 34-IX.

The recommendation is likely to meet the recommendation, expressed by the reference framework, that "*financial rewards should be subject to special precautions when they are aimed at players whose gambling practices are the most intensive in terms of frequency and expenditure, in order to prevent them from encouraging a shift towards excessive or pathological gambling. This vigilance particularly concerns loyalty programmes and the specific advantages granted to so-called "VIP" customers*".<sup>23</sup> ;

- limit commercial offers involving a financial reward known as a  
"This will make it easier to achieve the State's objective of limiting the supply and consumption of games, as set out in the first paragraph of Article L. 320-3 of the French Internal Security Code;
- incorporate the advertising moderator that the Authority has already recommended for commercial communications<sup>24</sup>the possibility for players to define the number, frequency and type of notifications relating to financial rewards that may be sent to them. In this respect and for all practical purposes, operators' attention is also drawn to their obligations and to the rights available to players under the General Data Protection Regulation (GDPR) and Law No. 1978-16 of 6 January 1978, as amended, relating to information technology, files and freedoms.

**31.** An initial assessment of the implementation of these terms and conditions will be carried out by the Authority at the end of the 1<sup>er</sup> semester 2023.

Paris, 20 October 2022.

**The Chairman of the National Gaming  
Authority**

**Isabelle FALQUE-PIERROTIN**

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<sup>23</sup> Article III, section III.3, b, indent 1.

<sup>24</sup> Communication No 2022-C-002 of 17 February 2022 adopting recommendations relating to commercial communications by licensed gaming operators or holders of exclusive rights.