

Translation note

This is an unofficial and non-binding translation of the ANJ's Notice 2022C03 relating to gambling operators' financial incentivisation/ bonusing communications (both 'welcome' and 'loyalty'). Only the original French text, linked below, applies. The French term for the outlined activity is '*gratification financière*', which translates broadly as 'financial reward'. We tend to use the term 'incentive' or 'bonus' in the text.

<https://anj.fr/sites/default/files/2022-10/Communication%202022-C-003%20Gratifications.pdf>

FRENCH REPUBLIC

---

National Gambling Authority

---

NOTICE NO. 2022-C-003 OF OCTOBER 20, 2022

ADOPTING GUIDELINES AND RECOMMENDATIONS RELATING TO COMMERCIAL OFFERS FROM GAMBLING AND BETTING OPERATORS THAT INCLUDE A FINANCIAL INCENTIVE

The National Gambling Authority,

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

Having regard to the Consumer Code, in particular its articles L. 121-1 to L. 121-4;

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

Having regard to Ordinance no. 2019-1015 of October 2, 2019 reforming gambling and betting regulation;

Having regard to decree no. 2010-518 of May 19, 2010 as amended, relating to the gambling and betting offer of gambling operators and the provision of gambling data to the National Gambling Authority;

Having regard to Decree no. 2020-1349 of November 4, 2020 relating to the regulation methods of the National Gambling Authority;

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

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

ADOPTS THE FOLLOWING GUIDELINES AND RECOMMENDATIONS:

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

1. These guidelines and recommendations relate to commercial offers involving financial bonuses allocated to players by gambling operators. These offers consist of "*commercial techniques tending to increase the attractiveness of gambling*", such as '*account matching/ top-up [which] is the practice by which the operator increases the balance of the account*', '*betting matching [which] is that by which the operator increases the player's bet*', as well as '*additional win [which] is the additional win provided by the operator*<sup>1</sup>.

---

<sup>1</sup> J.-F. Lamour, Report made on behalf of the Committee on Finance, General Economy and Budgetary Control on the

2. Those who drafted the law of 12 May 2010 were driven by the concern that the opening up of online gambling and gambling to competition should not lead to breaches of public order and social order. This is why they took care to set out in article 1 of this law that: *'Gambling and games of chance are neither an ordinary trade nor an ordinary service; in compliance with the principle of subsidiarity, they are subject to strict supervision with regard to issues of public order, public safety and the protection of health and minors'*. The protection of the public, in particular the most vulnerable, against addiction to gambling constituted thus, from 2010, a major concern of Parliament, which had led it to indicate in I of Article 3 of this law that: *'I. State policy on gambling and betting aims to limit and supervise the offer and consumption of games and to control their exploitation in order to: 1. Prevent excessive or addictive gambling and protect minors'*.
3. The ordinance of October 2, 2019 referred to above is part of this perspective of protection, which it endeavours to strengthen. More specifically, it set new requirements for gambling operators in order to strengthen advertising regulation, and invested the Authority with new powers, in particular those consisting of approving the promotional strategy of those operators<sup>2</sup> and to limit, if necessary, by means of a reasoned decision, their commercial offers involving financial bonuses for gamblers.<sup>3</sup>
4. Proposed by the National Gaming Authority and approved by order of the Minister of Health on April 9, 2021<sup>4</sup>, the reference framework for the prevention of excessive or addictive gambling and the protection of minors sets out, in an operational manner, this protection objective for each of the requirements that gambling operators are obliged to respect. As such, it devotes Section III of its Article III to financial bonuses, recalling, on the one hand, the general principles in this area, in particular that of offering reasonable financial bonuses that do not involve excessive incitement to gamble and by fixing, on the other hand, implementation directions that these guidelines and recommendations are intended to specify.
5. These guidelines and recommendations supplement those relating to gambling advertising that the Authority adopted on 17 February 2022 with a view to keep gambling within a sustainable recreational role<sup>5</sup>. These did not specifically relate to commercial offers involving financial bonuses, although they are an important category of commercial communications. It had indeed appeared to the Authority, on examining the practices noted in the sector, whatever the type of offer considered, that this particular subject called for the adoption of guidelines and recommendations specific and complementary to the previous ones, all the more so as they are part of a specific context marked by the forthcoming holding of the Football World Cup, which constitutes both a major event that will shape the activity of the sports betting market in 2022 and a major oversight point for the Authority, given the excesses that have sometimes been observed during the Euro 2021 football tournament .
6. These guidelines and recommendations are also intended to draw conclusions, with regard specifically to financial bonuses, from the decision of the Council of State dated March 24, 2021<sup>6</sup>, which enshrines the application to gambling of the relevant rules of the Consumer Code, in particular those relating to unfair commercial practices, from which results a requirement of transparency and clarity for gambling operators.
7. The guidelines express the Authority's reading of the positive law applicable to these commercial offers

---

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

<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 adopting, respectively, guidelines on the content of commercial communications by gambling operators and recommendations on commercial communications by licensed or exclusive rights operators.

<sup>6</sup> State Council, 24 March 2021, no. 431786

involving a financial bonus, without claiming to be exhaustive and recalling that in any case the assessment of the conformity of these offers to the legislative and regulatory framework in force is made on a case-by-case basis. The recommendations, for their part, must be seen as the expression of good practices that are neither exhaustive nor prescriptive, which operators are invited to implement when they propose commercial offers involving financial bonuses.

8. These guidelines and recommendations are intended to inform the implementation of the various powers available to the Authority to ensure compliance with the rules relating to commercial offers involving financial bonus. In this respect, it should be remembered that the ANJ approves each year the promotional strategy on all media of holders of exclusive rights and licensed operators<sup>7</sup>, if necessary subject to conditions<sup>8</sup>. In addition, it may, by reasoned decision, limit commercial offers involving players' financial bonuses<sup>9</sup>. Finally, it can refer to the Sanctions Committee any breach by an operator of its legal or regulatory obligations or of a requirement from the college<sup>10</sup>.
9. These guidelines and recommendations consist of two parts applied respectively to the requirements of **(1)** transparency and **(2)** moderation related to commercial offers involving a financial bonus. The first part stems from the observation that gambling operators' offers sometimes lack clarity, which prevents good understanding by consumers. The second part is explained by the proliferation of such commercial offers and the prominence of sometimes very high bonus amounts; it reminds of the applicable rules in this area and encourages more moderate practices in order to limit excessive or addictive gambling behavior.

### 1. *Transparency of commercial offers involving financial bonuses*

#### 1.1. *Guidelines relating to the transparency of commercial offers involving financial bonuses*

1.1.1. State the material information required for an initial good understanding of the proposed commercial offer

10. Commercial offers involving financial bonuses are governed in particular by the Consumer Code<sup>11</sup> article L. 121-1, and those following, which prohibits unfair commercial practices, in particular those that are misleading<sup>12</sup>. In this respect, it is recalled that point 1 of Article L. 121-2 of the Consumer Code provides that a commercial practice is misleading '*when it is based on claims, statements or presentations that are false or likely to mislead and relating to one or more of the following elements: a) The existence, availability or nature of the good or service b) The essential characteristics of the good or service*'.  
11. Article L. 121-3 of the Consumer Code provides in its first two paragraphs: '*A commercial practice is also*

---

<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> Law 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.

<sup>11</sup> These provisions are the transposition into domestic law of Directive No. 2005/29/EC of May 11, 2005, relating to unfair business-to-consumer commercial practices in the internal market

<sup>12</sup> Article L.121-1 Consumer Code provides: "*Unfair commercial practices are prohibited. A commercial practice is unfair when it is contrary to the requirements of professional diligence and when it alters or is likely to alter in a substantial way the economic behavior of the consumer who is normally informed and reasonably observant and circumspect, with regard to a good or service. The unfair nature of a commercial practice targeting a particular category of consumers or a group of consumers who are vulnerable on account of mental or physical infirmity, age or credulity is assessed with regard to the average capacity of judgment of the category or group. Misleading commercial practices defined in Articles L. 121-2 to L. 121-4 and aggressive commercial practices defined in Articles L. 121-6 and L. 121-7 constitute unfair commercial practices.*"

*misleading if, given the limits inherent to the means of communication used and the surrounding circumstances, it omits, conceals or provides in an unintelligible, ambiguous or untimely manner material information or fails to indicate its true commercial intention whenever this is not already made clear from the context. / When the means of communication used imposes spatial or temporal constraints, due consideration should be given, when assessing whether material information has been omitted, to take account of these constraints and of any other measure taken by the professional to make this information available to the consumer by other means [...]*

12. In addition, point 19 of Article L. 121-4 of the same code provides that commercial practices are deemed to be misleading the purpose of which is *'To describe a product or service as being 'free', 'gratis', 'no charge' or other similar terms, if the consumer must pay any sum over and above the unavoidable cost of responding to a commercial practice and taking possession or delivery of the item;'*
13. The reference framework for the prevention of excessive or addictive gambling and the protection of minors provides: *'In the case of commercial offers including financial bonuses for players, the operator describes, clearly and distinctly, the mechanisms that permit players to benefit from these bonuses.'*<sup>13</sup>
14. It follows from these provisions that, in principle, any commercial offer comprising a financial bonus is intended to include, in the same medium, the indication of those of its material characteristics the absence of which could mislead the consumer.<sup>14</sup> In other words, the normally informed and reasonably observant and circumspect consumer must have directly a good initial understanding of the offer, so that he/ she can make an informed decision to accept or refuse it.<sup>15</sup> Therefore, when relevant, this offer must state:
  - Its duration, when only temporarily valid;
  - Where applicable, that its acceptance is subject to prior expenditure (for example: a prior deposit of a certain amount in the player account), recollecting that the use of the term *'free'* or similar is, under article L.121-4, 19° of the aforementioned consumer code, prohibited if it is not actually free of charge;
  - The nature of the bonus/ incentive (for example: real money that can be directly withdrawn by the player, game credits that are required to be played);
  - The extent of the bonus, in particular whether its amount is fixed or that it can vary;
  - The other essential conditions in order to benefit from the offer, when their communication is necessary for the correct understanding of the offer (for example: making a deposit of a certain amount or having lost your bet)
15. Where applicable, this material information may be communicated by a reference, indicated by an asterisk, to a statement appearing in smaller characters in its medium, provided that it is legible and immediately visible. The other information relating to the commercial offer of financial bonus/ incentive, i.e. the absence of which cannot mislead the player, is likely to be provided in the context of the regulations which govern it, which may mean accessibility in another information medium, in particular the operator's website.

---

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

<sup>14</sup> This is to assess whether the omission of information can lead the consumer to take a commercial decision that he/ she would not have taken otherwise (see, in this sense CJEU, judgment of October 26, 2016, Canal Digital Danmark A/S, C-611 /14, dots 58 to 64). 5 1

<sup>15</sup> It follows that the offer must be unambiguous and not include any information that could lead the player to an erroneous belief that only a thorough reading of the relevant regulations would dispel. See in particular on this point: Cass.crim. April 19, 2017, No. 16-84.659.

16. In any case, the determination of the material information that must appear in the medium of an offer and the assessment of the possibly misleading nature of its omission must be carried out on a case-by-case basis depending on the circumstances and taking into account the limits 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, in an easily accessible and durable medium***

17. Decree no. 2010-518 of 19 May 2010, as amended, on the gambling and betting offer of gambling operators and the provision of gambling data to the National Gambling Authority provides in its first and second paragraphs of article 1: *'The operators' gambling and betting offer is offered in French. / The regulations on the general conditions of the gamble or betting offer as well as the specific regulations for the games or bets offered by the operator, are written in French and made available to the player, in a legible and comprehensible manner, in an easily accessible medium. They include the information required pursuant to article 104 of the aforementioned law of January 6, 1978'*.
18. It follows from these provisions that the complete rules of the commercial offer of financial incentive/ bonus must be written in French, in a legible and understandable manner and be easily accessible on a durable medium for the duration of the said offer. *'Durable medium'* means a mechanism that allows information to be retained and dated in order to be able to refer to it at a later date for a suitable period of time and which allows the identical reproduction of the retained information (for example, a downloadable file in PDF format).

***1.2. Recommendations aimed at improving the transparency of commercial offers involving financial incentives/ bonuses***

19. The Authority invites operators, where possible, to illustrate with actual examples the different scenarios for obtaining the financial incentive offered and the real 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 are particularly complex, the Authority recommends that operators offer a simulation tool allowing the player to identify the assumptions, conditions and methods for obtaining the bonus, as well as its exact amount in relation to, where applicable, its level of bet.

***2. Moderation of commercial offers involving financial incentives***

***1.3. Guidelines for moderating commercial offers involving financial incentive***

- 1.3.1. Take care not to make commercial offers involving financial incentive to people whose gambling is potentially excessive or addictive
21. Paragraph 1 of article L. 320-3 of the Internal Security Code provides that: *' State policy on gambling is intended to restrict and supervise the supply and consumption of games and to control their operation in order to prevent excessive or addictive gambling and to protect minors'*, achievement of which objective is the responsibility of operators to contribute, by virtue of article L. 320- 4 of the same code.
22. The third paragraph of IX of article 34 of the law of 12 May 2010 as amended provides that: *'Operators, casinos and gaming clubs identify people whose gambling is excessive or addictive and support them with a view to moderating their behaviour, within the framework of reference'*, which framework recommends in particular that *'operators implement the necessary means not to offer financial incentives to players identified*

*as potentially excessive or addictive (...)'*<sup>16</sup>

23. It follows from these provisions that gambling operators must refrain from making any commercial offer involving financial reward to persons identified as potentially exhibiting excessive or addictive gambling behaviour. Indeed, such an offer is likely to install or permanently reinforce the addiction to gambling suffered by these people who must, on the contrary, be supported so that they moderate their gambling.

### ***1.3.2. Be particularly vigilant with people who have recently come out of self-exclusion or a gambling ban***

24. It has been reminded that gambling operators must contribute to the general objective of preventing excessive or addictive gambling. As such, paragraph 3 of Article L. 320-11 of the Internal Security Code prohibits them *'from sending any commercial communication to holders of a player account or those identified as benefiting from a self-exclusion measure [as well as] to former holders of a player account who are subject, pursuant to II of Article L. 320-9-1, to a voluntary gambling ban'*.
25. To achieve this same general objective, the reference framework for the prevention of excessive or addictive gambling and the protection of minors referred to above provides that gambling operators ensure that their commercial offers including a financial incentive *'do not encourage the development, maintenance or resumption of excessive gambling practices.'*<sup>17</sup> It follows from these provisions that operators of gambling and betting have a very specific duty of vigilance with regard to financial incentives with regard to persons whom they know have recently benefited from a measure of self-exclusion or a voluntary ban on gambling, in order to prevent excessive or addictive gambling.

### ***1.3.3. Avoid any claim of a supposed lack of risk***

26. Article L. 320-2 of the Internal Security Code provides: *'Gambling and betting which, by way of derogation, are authorised pursuant to Article L. 320-6 are neither an ordinary trade, nor an ordinary service; they are subject to strict supervision in order to prevent the risk of harm to public and social order, in particular with regard to the protection of health and of minors.'* These provisions – which take up the substance of those of the initial version of article 1 of the law of 12 May 2010 relating to the opening up to competition and the regulation of the online gambling sector, the legislative scope of which the Constitutional Council affirmed.<sup>18</sup> The purpose of these provisions is to exempt gambling from freedom of enterprise, due to the intrinsic potential danger for those who participate. This is why gambling operators must refrain from claiming, in any way whatsoever, an absence of risk in the presentation of their offers of financial incentives/ bonuses.

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

27. Taking the consequences of the obligation on operators to contribute to the restriction of supply and consumption,<sup>19</sup> the reference framework for the prevention of excessive or addictive gambling and the protection of minors provides: *'Operators shall ensure that they offer reasonable financial rewards, which do not involve excessive incitement to gamble and which do not encourage the development, maintenance or*

---

<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 May 12, 2010, law relating to the opening up to competition and regulation of online gambling, item 29

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

*resumption of excessive gambling practices.*<sup>20</sup>

28. It follows from these provisions that gambling operators must ensure that their commercial offers involving financial incentives – whether welcome or loyalty offers – are reasonable in terms of volume, frequency and amount.
29. The reasonable nature of these offers, both welcome and loyalty, will be the subject of particular vigilance by the Authority when reviewing gambling operators' promotional strategy<sup>21</sup> and approval of their action plan to prevent excessive gambling and underage gambling.<sup>22</sup> It is recalled in this respect that the Authority may, by a reasoned decision, restrict commercial offers involving a financial incentive when this is unreasonable. Finally, the providing of incentives to an extent that would not be reasonable potentially constitutes, on the part of the operator who so proceeds, a breach likely to lead to referral to the Sanctions Committee.

## **2.2. Recommendations aimed at moderating commercial offers involving financial incentive**

30. In order to contribute to the prevention of excessive or pathological gambling, gambling operators are invited to:
- Refrain from proposing welcome commercial offers comprising one or more financial gratuities of a total amount greater than one hundred euros;
  - Rebalance their commercial offers and their loyalty programs in favour of promotional mechanisms 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 recommendation is likely to respond to this recommendation, expressed by the frame of reference, that "*financial rewards be subject to special precautions when they are aimed at players whose gambling practices are the most intensive in terms of frequency and gambling costs, in order to prevent them from encouraging a shift towards excessive or addictive 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 'sponsorship' to five sponsorships per year, which will facilitate the achievement of the objective of limiting the supply and consumption of games that the State is pursuing under the first paragraph of article L. 320-3 of the Internal Security Code;
  - Integrate into the advertising moderator, which the Authority has already recommended setting up in terms of commercial communications<sup>24</sup>, the facility for the player to define the number, frequency and type of notifications relating to financial incentives that may be sent to him. In this respect and for all practical purposes, the attention of operators is also drawn to the obligations incumbent on them and to the rights available to players under the General Data Protection Regulation (GDPR) and Law No. 1978-16 of January 6, 1978, as amended, relating to data protection and civil liberties.

---

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

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

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

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

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

31. An initial evaluation of the implementation of these provisions will be carried out by the Authority at the end of the first half of 2023.

Done in Paris, October 20, 2022.

The President of the National Gambling Authority

Isabelle FALQUE-PIEROTTIN

.....