

FRENCH REPUBLIC

National Gaming Authority

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

**ADOPTING GUIDELINES AND RECOMMENDATIONS FOR COMMERCIAL OFFERS
BY GAMING OPERATORS
OF MONEY AND CHANCE INVOLVING FINANCIAL REWARD**

The National Gaming Authority,

Having regard to the Code de la sécurité intérieure, in particular articles L. 320-2 to L. 320-4; Having regard to the Code de la consommation, in particular articles L. 121-1 to L. 121-4;

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

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

Vu le décret n° 2010-518 du 19 mai 2010 modifié relatif à l'offre de jeux et de paris des opérateurs de jeux et à la mise à disposition de l'Autorité nationale des jeux des données de jeux ;

In view of Decree no. 2020-1349 of November 4, 2020 on the regulatory procedures of the Autorité nationale des jeux ;

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

After hearing 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 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 tending to increase the attractiveness of the game*", such as *account top-up [which] is the practice by which the operator increases the account balance*", *stake top-up [which] is the practice by which the operator increases the stake balance*", and "*the use of the odds*".

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

2. The drafters of the Act of May 12, 2010 were concerned that the opening up of online gambling to competition should not be opportunity to undermine public and social order. This is why they took care to state in article 1^{er} of this law that: "*Gambling is neither an ordinary business nor an ordinary service; in accordance with the principle of subsidiarity, it is subject to strict supervision with regard to public order, public safety and the protection of health and minors*". Protecting the public, particularly the most vulnerable, from gambling addiction was a major concern of Parliament back in 2010, which led it to state in Article 3 I the Act that: "*I. - The aim of State policy on gambling and games of chance is to limit and supervise 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 Ordinance of October 2, 2019 is part of this protective approach, which it has set out to strengthen. More specifically, it set new obligations for gambling operators in order to consolidate advertising regulation, and invested the Authority with new powers, notably those of approving the promotional strategy of these operators² and of limiting, where appropriate, through a reasoned decision, their commercial offers involving financial rewards for players³.

4. Proposed by the National Gaming Authority and approved by an order of the Minister of Health on April 9, 2021⁴, 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, Article III, Section III is devoted to financial rewards, recalling 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 out the implementation guidelines that these guidelines and recommendations are intended to specify.

5. These guidelines and recommendations complement those on gambling advertising adopted by the French Gaming Authority on February 17, 2022, with a view to keeping gambling in a sustainable recreational perspective⁵. These did not specifically concern commercial offers involving financial rewards, even though they constitute an important category of commercial communications. fact, when examining the practices observed in the sector, the Autorité found that, whatever the offer segment

¹ J.- F. Lamour, Rapport fait au nom de la commission des finances, de l'économie générale et du contrôle budgétaire sur le projet de loi relatif à l'ouverture à la concurrence et à la régulation su secteur des jeux d'argent et de hasard en ligne, n° 1549, p. 199.

² Loi n° 2010-476 du 12 mai 2010 modifiée, art. 34-VI, al. 1^{er}.

³ *Idem*.

⁴ Ministerial order of April 9, 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 article 34 of the amended law of May 12, 2010 (published in the JO on April 15, 2021 entered into force that same day immediately by virtue of Decree no. 2021-437 of April 14, 2021).

⁵ Communications [no. 2022-C-001](#) and [no. 2022-C-002](#) of February 17, 2022, respectively adopting guidelines for the content of commercial communications by gambling operators and recommendations commercial communications by licensed gaming 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, all the more so as they part of a specific context marked by the forthcoming Football World Cup, which is both a major event that will structure activity in 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 soccer.

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 March 24, 2021⁶, which enshrines the application to gambling 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 bonus, without claiming to exhaustive, and bearing in mind that in any case, 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 practices, 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 governing commercial offers involving financial rewards. In this respect, it should be remembered that the ANJ approves each year the promotional strategy on any medium of operators holding exclusive rights and licensed operators⁷, where applicable subject to conditions⁸. In addition, it may, by means of a reasoned decision, limit commercial offers involving financial rewards for players⁹. Lastly, it may refer to the Sanction Commission any breach by an operator of its legal or regulatory obligations, or of an order issued by the College¹⁰.

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 financial rewards. The first part stems from the observation that gambling operators' offers sometimes lack clarity, making them difficult for consumers to understand. The second part is explained by the multiplication of these commercial offers and the sometimes very high amounts of financial rewards involved. It recalls the rules applicable in this area and encourages more moderate practices in order to limit excessive or pathological gambling behavior.

⁶ Conseil Etat, March 24, 2021, no. 431786.

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

⁸ Decree no. 2020-1349 of November 4, 2020, art. 9.

⁹ Law no. 2010-476 of May 12, 2010 as amended, art. 34-VI, para. 1.

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

1. Transparency of commercial offers involving financial rewards

1.1. Guidelines for the transparency of commercial offers financial rewards

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

10. Commercial offers involving financial rewards are governed articles L. 121-1 et seq. of the French Consumer Code¹¹, which prohibit unfair commercial practices, particularly misleading ones⁽¹²⁾. In this respect, we remind you that 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 concerning one or more of the following: 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 French Consumer Code states in its first two paragraphs: "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 substantial information, or when it does not indicate its true commercial intention, where this is not already apparent from the context. / Where the means of communication used imposes limits space or time, in assessing whether substantial information has been omitted, account must be taken of these limits and of any measures taken by the trader to make such information available to the consumer by other means. [...]".

12. In addition, article L. 121-4, 19°, of the same code states that commercial practices are deemed misleading if "describe a product or service as 'free', 'free of charge', without 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 clearly and distinctly describes the mechanisms enabling players to benefit from these rewards"¹³.

¹¹ These provisions transpose into national law Directive 2005/29/EC of May 11, 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.

¹² 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 normally informed and reasonably attentive and circumspect, with regard to a good or service.

The unfairness of a commercial practice aimed at a particular category of consumers or a group of consumers who are vulnerable by reason of mental or physical infirmity, age or credulity is 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".

¹³ 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 whose absence could mislead the consumer¹⁴. In other words, consumers who are reasonably well-informed and reasonably observant and circumspect must have a good initial understanding of the offer, so that they can make an informed decision to accept or reject¹⁵. 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 Article L.121-4, 19° of the aforementioned Consumer Code, prohibited if the gratuity is not real;
- 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;
- other essential conditions for benefiting from the offer, when their indication is necessary for a proper understanding of offer (e.g. making a deposit of a certain amount or having lost a bet).

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

16. In any case, the determination of the substantial information that must appear on the medium of an offer, and the assessment of the potentially misleading nature of its omission, must be carried out on a case-by-case basis according to 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 complete offer regulations, written in a legible and comprehensible manner, on an easily accessible durable medium.

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

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

¹⁵ It follows that the offer must be unambiguous and must not contain any information that could lead the player to form an erroneous belief that can only be dispelled by a thorough reading of the relevant regulations. See in particular on this point: Cass.crim.19 avril 2017, n° 16-84.659.

first and second paragraphs of article 1^{er}: "The games and bets offered by operators are offered in the French language. / The regulations governing the general terms and conditions of the games or bets offered, as well as the specific regulations 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 under article 104 of the aforementioned law of January 6, 1978.

18 It follows from these provisions that the complete rules and regulations of the commercial offer of financial rewards 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. A "durable medium" is defined as an instrument that enables information to be stored and dated for future reference over a suitable period of , and which allows identical reproduction of the information stored (for example, a downloadable file in "PDFformat).

1.2. Recommendations to improve the transparency of commercial offers involving financial rewards

19. Whenever possible, the Authority invites operators to use concrete examples to illustrate the different ways in which players can obtain the financial reward offered, and the actual amounts they can expect to receive.

20. With the same objective in mind, 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 stake level.

2. Moderation of commercial offers involving a financial bonus

2.1. Guidelines for moderating commercial offers financial rewards

2.1.1. *Take care not to propose commercial offers involving financial rewards to people whose gambling is potentially excessive or pathological.*

21. Article L. 320-3 1° of the French Internal Security Code stipulates that: "The aim of State policy on gambling and games of chance is to limit and supervise the supply and consumption of games, and to control their operation in order to prevent excessive or pathological gambling and 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 law of May 12, 2010 stipulates that: "Operators, casinos and gaming clubs shall identify people whose gambling is excessive or pathological and support them with a view to moderating their practice, in compliance with the framework of

This framework recommends that "*operators implement the necessary means to avoid offering financial rewards to gamblers identified as potentially excessive or pathological (...)*"¹⁶.

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 behavior. , such offers are likely install or reinforce the addiction to gambling from which these people suffer, and which should instead be supported so that they moderate their gambling.

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

24. Gambling operators are required to contribute to the general objective of preventing excessive or pathological gambling. To this end, paragraph 3 of article L. 320-11 of the French Internal Security Code prohibits them "*sending any commercial communication to holders of a player account or identified players benefiting from a self-exclusion measure [as well as] to former holders a player account subject, in application of II 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 operators must ensure that their commercial offers involving financial rewards "*do not encourage the development, maintenance or resumption of excessive gambling practices*"¹⁷. As a result of these provisions, operators are under a particular obligation of vigilance when it comes to 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 stipulates that: "*Games of money and chance which, by way of derogation, are authorized application of 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 of the initial version of article 1^{er} of the law of May 12, 2010 relating to opening up competition and regulation of the online gambling sector, the normative scope of which has been affirmed by the Constitutional Council¹⁸ - are intended to remove gambling from the scope of entrepreneurial ,

¹⁶ Article III, section III.3, b, indent 2.

¹⁷ Article III, section III.3, a, indent 2.

¹⁸ Decision no. 2010-605 DC of May 12, 2010, loi relative à l'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne, point 29.

This is because of their intrinsic potential danger to those who engage in them. For this reason, gambling operators must refrain from claiming, 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. The reference framework for the prevention of excessive or pathological gambling and the protection of minors¹⁹ draws on operators' obligation to help supply and consumption, and states: "*Operators shall ensure that they offer reasonable financial rewards, which do not excessive incentives to gamble and which do not encourage the development, maintenance or resumption of excessive gambling practices*"²⁰.

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

29. The reasonableness of these offers, both welcome and loyalty offers, will be the subject of particular vigilance by the Autorité when examining the promotional strategy of gambling operators²¹ and approving their action plan to prevent excessive gambling and underage gambling²². In this respect, it should be remembered that the Authority may, by means of a reasoned decision, restrict commercial offers involving financial bonuses where these are unreasonable. Lastly, the granting of unreasonable gratuities may constitute a breach on the part of the operator, which could lead to referral to the Sanction Commission.

2.2. Recommendations for the moderation of commercial offers involving financial rewards

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

- refrain from proposing commercial welcome offers involving one or more financial rewards of a total amount in excess of one hundred euros;
- rebalance their commercial offers and loyalty programs in favor 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 such a

¹⁹ See point 24.

²⁰ Article III, section III.3, a, indent 2.

²¹ L. 12 mai 2010 modifiée, art. 34-IV, al. 1^{er}. It should be noted that this examination does not apply to casinos or gaming clubs.

²² L. 12 mai 2010 modifiée, art. 34-IX.

recommendation is likely to meet the recommendation, expressed by the reference , that *"financial rewards should be subject to special precautions when they are aimed at players whose 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 programs and the specific advantages granted to so-called "VIP" customers"*²³;

- limit commercial offers involving a financial incentive 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;
- integrate with the advertising moderator that the Autorité has already recommended for commercial communications²⁴, 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 the obligations placed on them and to the rights available to players under the General Data Protection Regulation (RGPD) and Act no. 1978-16 of January 6, 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 1st half of 2023.

Paris, October 20, 2022.

The Chairman of the National Gaming Authority

Isabelle FALQUE-PIERROTIN

²³ Article III, section III.3, b, indent 1.

²⁴ Communication no. 2022-C-002 of February 17, 2022 adopting recommendations commercial communications by licensed gaming operators or holders of exclusive rights.