
Law 13/2011, of 27 May, on Gaming Regulation

TITLE VI

Sanctioning system

Article 36. *Competence.*

1. The National Gaming Commission and, in those cases mentioned in article 42.3 herein, the Minister of Economy and Finance, shall exercise sanctioning power in relation to any administrative breaches committed concerning the gaming activities subject to this Law.

2. In the event that the breach is committed by an entity subject to the supervision or inspection of a Regulatory Body other than the National Gaming Commission or when, due to the issue in question, another administrative body is responsible, the National Gaming Commission shall, for the purposes of processing the relevant sanctioning proceedings, forward the events that allegedly constituted the breach. In any case, the National Gaming Commission shall be responsible for penalising any breaches committed as set forth in letter e) of article 40 herein.

3. In particular, audiovisual communication, electronic communication and information society service providers will be responsible as administrators for the promotion, sponsorship or advertising of gaming activities as referred to herein when undertaken by persons without an authorisation or when distributed without the licence to advertise them or beyond the limits set therein or in breach of the current rules in force in this regard. The authority to launch proceedings and penalise audiovisual communication service providers lies with the State Council of Audiovisual Media, and in these cases the sanctioning system set forth in Law 7/2010 of 31 March, the General Audiovisual Communication Act, shall apply, except in the case of the exception set forth in the previous section with regard to breaches of article 40, letter e).

4. When the breach is committed by an intermediary whose scope of action is limited to an Autonomous Region or when the promotion, sponsorship and advertising of games through in-person means is undertaken in the territory of an Autonomous Region, then the relevant body in this Autonomous Region shall hold the power to apply sanctions.

Article 37. *Breaches.*

1. The actions or omissions specified herein and that may be specified in the regulation that implement this Law are considered administrative breaches.

2. Administrative breaches in this area are classified as very serious, serious and minor.

Article 38. *Offenders.*

1. Those individuals or legal persons who carry out the actions or omissions specified as breaches herein, support, advertise, promote or obtain benefit from same are considered offenders.

2. Those individuals or legal persons who gained a relevant benefit directly associated to developing gambling activities as a result of the actions or omissions mentioned in the previous section are also considered offenders and gaming organisers for the purposes of this article and are equally liable.

Article 39. *Very serious breaches.*

The following are considered

very serious breaches:

a) The organisation, holding or operation of the activities included within the scope of application of this Law without the relevant authorisation.

b) Performing, promoting, expressly or tacitly permitting or allowing the organisation, holding or operation of the activities subject to this Law in unauthorised media or formats or

distribution channels and, in particular, using unauthorised or unapproved software, communication systems, materials or equipment.

c) Assigning the authorisation, as well as transferring the same in the circumstances set forth in article 9.3 herein, without prior authorisation from the National Gaming Commission.

d) Obtaining the relevant authorisations or licences by providing false and inaccurate documents or data.

e) Unjustified and repeated non-payment of the prizes that are owed to the participants in the games.

f) Altering or manipulating previously approved technical systems or any other element relating to obtaining prizes to the participants' detriment.

g) Carrying out gaming activities infringing on the reserve established in article 4 herein.

h) Committing two serious breaches within a two-year period, with a final penalty through administrative proceedings.

i) The development and online marketing of gaming activities that fall within the scope of application of this Law, that are not carried out on the specific website under the ".es" domain mentioned in article 10.4.d) herein.

j) Failure to fulfil the rerouting obligation mentioned in article 10.4. e) herein.

Article 40. *Serious breaches.*

The following are considered serious breaches:

a) Failure to comply with the requirements and conditions set in the authorisation and, in particular, the control duties to guarantee the security of the games.

b) Allowing banned persons to access gaming activities, in accordance with article 6 herein, provided that the entity operating the games knows or should be aware of such bans.

c) Granting loans or any other form of credit to participants by operators.

d) Promoting, sponsoring and advertising games subject to this Law, or intermediation actions, when the persons doing so do not have an authorisation or when these are distributed in breach of the conditions and limits set in the permit or in breach of the current rules in this regard, irrespective of the medium used.

e) Failure to fulfil requirements for information or cutting off the provision of services as required by the National Gaming Commission and directed towards payment service providers, audiovisual communication service providers, information society services or electronic communication providers and social media.

f) Obstructing, resisting or refusing the inspection and control duty as well as hiding or destroying information, documents or formats of same.

g) Repeated refusal by operators or organisers to provide the information requested by the National Gaming Commission.

h) Repeated refusal to handle the claims or complaints made by participants or the National Gaming Commission.

i) Failure to fulfil the obligations to report those amendments made to the composition, registered office, capital and ownership of shares in authorised legal persons within three months from the date such changes take place.

j) Failure to comply with the technical requirements of the regulations or the tender specifications in relation to the software and the communication systems.

k) The use of unapproved or unauthorised technical systems.

l) The manufacture, marketing, maintenance or distribution of gaming material owned by the operators that develop gaming activities subject to the reserve in article 4 herein without due authorisation.

m) Non-payment of any prizes that may be owed to participants in the games.

n) Committing two minor breaches within a two-year period, with a final penalty through administrative proceedings.

Article 41. *Minor breaches.*

The following are considered minor breaches:

a) Participating in gaming activities in contravention of the bans established in article 6.2, letters c), d), e), f), g) and h) herein.

b) Failure to fulfil the obligations contained herein, where these are not expressly specified as serious or very serious breaches.

c) Failure to cooperate with the authority's inspectors or agents in relation to the

development of gaming activities or aspects relating to checking the draw or event through which prizes are obtained.

d) Not duly informing the public that minors and persons on the General Register of Gaming Access Bans are prohibited from participating.

e) Not informing the public about the content of the gaming operator's authorisation.

Article 42. Administrative penalties.

1. Breaches classified as minor shall be penalised by the National Gaming Commission with:

a) A written warning.

b) A fine of up to one hundred thousand euros.

2. Breaches classified as serious shall be penalised by the National Gaming Commission with the following penalties:

a) A fine of one hundred thousand to one million euros.

b) Suspension of the activity in Spain for a maximum period of six months.

3. Breaches classified as very serious shall be penalised by the Minister of Economy and Finance, at the National Gaming Commission's proposal, with a fine of one million to fifty million euros. In addition to the fine, the authorisation may be lost, the authorisation to undertake the activities set forth in article 1 herein may be lost for a maximum of four years or the means through which the information society services that support the gaming activities may be closed down.

4. In those cases where the offender does not have an authorisation or this permit has been revoked, the National Gaming Commission may also decide to seize and destroy any component pertaining to carrying out the activity.

5. The amount of the penalties shall be commensurate to the nature of the personal rights affected, the volume of the transactions affected, the benefits obtained, the degree of intent, the recurrence of breaches, the damage and harm caused to the stakeholders and to third parties, and any other circumstance that may be relevant in determining the degree of illegality and guilt in the specific offending action.

6. If, based on the circumstances, there is deemed to be a qualified reduction in the offender's guilt or in the illegality of the event, the sanctioning body shall establish the amount of the penalty applying the scale relating to the class of breaches that immediately precedes the category to which the case in question falls in terms of seriousness.

Article 43. Statute of limitations.

1. Very serious breaches shall expire after four years, serious breaches after two and minor breaches after one year.

Penalties imposed for very serious breaches shall expire after four years, those imposed for serious breaches after two, and for minor breaches after one year.

2. The limitation period for breaches shall be counted from the day the breach is committed. In the case of ongoing breaches, it shall be calculated from the date the last breach was committed. This period shall be interrupted with the launch of the sanctioning proceedings, with the stakeholder's knowledge, and the limitation period shall resume if the sanctioning case is held up for more than three months for reasons not attributable to the alleged offender.

3. The limitation period of the penalties shall be counted from the day following the date on which the final ruling is made imposing the penalty. The limitation period of the penalties shall be interrupted with the launch of the enforcement proceedings, with the stakeholder's knowledge, and shall resume if the proceedings are held up for more than three months for reasons not attributable to the offender.

Article 44. Sanctioning proceedings.

1. The proceedings shall commence automatically by agreement of the National Gaming Commission on its own initiative, as a result of an inspection, due to a justified application from other bodies or as a result of an accusation.

2. The sanctioning proceedings, which shall be resolved within six months from the date of

the agreement, and shall follow the provisions set forth in this Law and its implementing regulations, with the provisions of Law 30/1992, of 26 November, on the Legal System for Public Administrations and Common Administrative Procedure, and Royal Decree 1398/1993, of 4 August, which approves the Regulation for the Exercise of Sanctioning Power in the General State Administration being applicable.

Article 45. *Appeals system.*

Rulings issued by the National Gaming Commission in sanctioning cases shall put an end to administrative proceedings and an appeal for reconsideration may be lodged in accordance with the provisions of Law 30/1992, of 26 November, on the Legal System for Public Administrations and Common Administrative Procedure or may be directly challenged in the contentious-administrative jurisdiction in accordance with the provisions set forth in the law governing said jurisdiction.

Article 46. *Precautionary measures.*

1. The National Gaming Commission may agree on one or more of the following provisional measures when the proceedings are being conducted or in the commencement agreement itself:

- a) Temporary suspension of the activity that is the subject of the corresponding authorisation.
- b) Seizure or impounding, where applicable, of any asset or documentation related to developing the activity that is the subject of the corresponding authorisation.

2. By justified agreement and before the sanctioning proceedings commence, the National Gaming Commission may take any of the provisional measures highlighted in the previous section, in accordance with the provisions of articles 72.2 and 136 of Law 30/1992, of 26 November, on the Legal System for Public Administrations and Common Administrative Procedure and which are necessary in order to ensure the efficacy of the resolution that may be issued, that the proceedings are completed successfully or to meet the demands of general interests and, more generally, any others that may be declared in other orders.

3. When executing the relevant deed, the National Gaming Commission's duly empowered and authorised inspection and control officials may take the precautionary measures mentioned in the previous section, as well as impounding and storing any elements, equipment, assets and documentation relating to the activity subject to this Law. This precautionary measure must be confirmed or recorded by the body responsible for launching the sanctioning proceedings, under the terms, timeframes and effects established in Law 30/1992, of 26 November, on the Legal System for Public Administrations and Common Administrative Procedure.

Article 47. *Measures in relation to intermediation service providers.*

1. In exercising its powers under this Law, the National Gaming Commission shall prevent illegal gaming activities carried out by gaming operators through information society service providers.

2. The National Gaming Commission may adopt precautionary or definitive measures in order to stop illegal gaming activities carried out by gaming operators through information society service providers or in order to remove the content that constitutes gaming activities carried out without the relevant authorisation.

3. If the enforcement of a Resolution which stops illegal gaming activities carried out by gaming operators through information society service providers or the removal of certain content or promotion of activities related to the illegal gaming activity requires cooperation from intermediation service providers, the National Gaming Commission can order the abovementioned providers to suspend the intermediation service or remove the content under the terms set forth in articles 8, 11 and related provisions of Law 34/2002, of 11 July, on Information Society and Electronic Commerce Services.

4. The measures mentioned in this article shall be objective, proportionate and non-discriminatory and shall be adopted as precautionary measures or to enforce any relevant sanctioning resolutions.