

**G-Regs™**

## Spain – Law 13/2011 on the regulation of gambling



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Full title of Code                      Law 13/2011, of 27 May, on the regulation of gambling (*Ley 13/2011, de 27 de mayo, de regulación del juego*)

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**TITLE I – Purpose And Scope of Application**

## Article 1

## Purpose

The purpose of this Law is to regulate gambling activities, in their different forms, which are carried out at State-level, in order to ensure the protection of public order, as well as to combat fraud, prevent addictive behaviour, protect the rights of minors and safeguard the rights of those participating in the gambling activities.

In particular, the Law regulates the gambling activities referred to in the previous paragraph when they are carried out via electronic, computerised, telematic and interactive means, in which "in-person" elements play an ancillary role<sup>1</sup>, as well as those games (gambling activities) carried out by the agencies<sup>2</sup> designated by the Act (13/2011) to perform restricted activities, irrespective of the channel through which they are commercialized/ provided.

## Article 2

## Scope of Application

1. Included within the purpose defined in the previous Article, the following gambling/ gambling activities are included in the scope of application of the Law herein, when the activity is carried out on a State level:

- a) Gambling activities associated to lotteries, betting and any other which is understood to mean any activity involving risking sums of money or items of economic value in whatever form, on future and uncertain results which depend to some degree on chance, and which allow these sums to be transferred between the participants, regardless of whether the level of skill of the players is decisive in the results or they depend wholly or fundamentally on luck, stakes or chance.
- b) Raffles and contests in which participation is carried out by means of a monetary consideration.
- c) Gambling activities played occasionally, which are differentiated from the other gambling activities mentioned in previous paragraphs due to their sporadic nature.
- d) Cross-border gambling activities; that are games conducted by legal persons who

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<sup>1</sup> G-Regs note: i.e. in which physical/ personal attendance is of an ancillary nature.

<sup>2</sup> Referring to monopoly lottery operators LAE and ONCE - Sociedad Estatal de Loterías y Apuestas del Estado (The state-owned lottery and gambling entity) and the Spanish National Organisation for the Blind (ONCE - Organización Nacional de Ciegos Españoles). Restricted lottery activities are regulated in Additional Provision 1 of the Gambling Law 13/2011.

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reside outside Spain and who organise or offer gambling activities to Spanish residents.

Likewise, the scope of application of the Law herein includes activities related to advertising, promotion and sponsorship related to the gambling activities listed in this paragraph.

2. The following are excluded from the scope of application of this Law:

a) Games or contests played purely for leisure, as a hobby or for recreational purposes, which constitute social uses and are played within the scope of the State, as long as they do not produce economically assessable transfers, with exception of the cost for using the means required for playing and when this does not represent financial profit for the promoter or operators of any type.

b) Gambling activities carried out via electronic, computerised, telematic or interactive means not included within the scope of the State.

c) Random combinations with advertising or promotional aims, notwithstanding what is established under Title VII of the Law herein

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### Article 3

#### Definitions

For the purposes of the Law herein, the terms used shall be interpreted in the manner established in this Article.

a) Game. Gambling is understood to mean any activity involving risking sums of money, or items of economic value in whatever form, on future and uncertain results which depend to some degree on chance, and which allow these sums to be transferred between the participants, regardless of whether the level of skill of the players is decisive in the results or they depend wholly or fundamentally on luck, stakes or chance. The prizes may be in cash or in kind, depending on the type of game.

b) Lotteries. Lottery is understood to be a form of gambling which involves giving prizes to the holders of a number or combination of numbers and signs on a ticket or electronic equivalent drawn at random on a preset date or prior programme in the case of instant or pre-drawn lottery. Lotteries are marketed in tickets or any other means to participate with a material, computerised, telematic, telephonic or interactive support.

c) Bets. A bet is understood to be a gambling activity in which sums of money are risked on the results of a previously determined event, whose final result is uncertain and unknown to participants. The sum of the prize money depends on the amounts risked or other factors that are previously set by the regulation of the specific type of bet. Depending on the event on whose result the bet is placed, it can correspond to:

1. Sports betting: the competition to predict the result of one or several sporting events, included in the programmes previously established by the organising body, or based on sporting facts or activities that form part or are carried out by the gambling operators within the framework of such events or competitions.

2. Horse racing betting: the competition to predict the result of one or several horse races included in the programmes previously established by the organising body.

3. Other betting: the competition to predict the result of one or several events other than those listed above included in the programmes previously established by the gambling operator. Depending on the organisation and distribution of the sums bet, the bet can be:

1. Pari-mutuel / pool betting: a game in which a percentage of the sum of the amount bet is distributed among the betters who have correctly guessed the result associated

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with the bet.

2. Fixed odds betting: a game in which the person betting bets against a gambling operator. The prize is obtained by multiplying the sum of the winning predictions by the coefficient the operator has previously validated for the same.

3. Cross betting: a game in which an operator acts as an intermediary and guarantor of the amounts bet between third parties, subtracting the amounts or percentages the operator has previously set.

d) Raffles. A raffle is understood to be a type of game that consists in adjudicating one or several prizes by means of holding a raffle or random selection among the people who have purchased tickets or any other documents or supports for participating that are different to one another, whether they are of a material, computerised, telematic or interactive nature. The raffle takes place on a previously determined date and always when an economic contribution has been required for playing. Raffle prizes may include movable or fixed assets, livestock or rights linked to the same, as long as the prizes are not money.

e) Contests. A contest is a type of game that is offered, played and resolved via a means of communication, whether it be television, radio, the Internet or any other, as long as the gambling activity is connected or subordinated to the main activity. In order to have the right to obtain a prize, either in cash or in kind, participation in this type of game is carried out either directly, by means of a financial outlay, or through telephone calls, the sending of text messages or any other electronic, computerised or online procedure for which there is an additional tariff system. It does not matter if prizes are awarded only on the basis of chance or if they are also based on successfully completing contest, knowledge or skills tasks.

For the purposes of the present definition, contests will not be understood as those programmes in which although there is a prize, the contestant does not have to pay any money to participate, whether directly or by means of telephone calls, sending text messages or using any other electronic, computerised, telematic or interactive procedure for which there is an additional rate.

f) Other games. These correspond to all games that do not match the definitions above, such as, for example, poker or roulette, in which there is a component of randomness or luck and those in which sums of money or financially assessable items are risked.

g) Games played "in person". These correspond to the games in which the bets, predictions or combinations have to be formulated inside an establishment of a gambling operator via an online terminal, either by presenting a ticket, pamphlet or a specially established document on which the predictions, combinations or bets have been assigned, either typing them into the corresponding terminal or requesting the terminal to automatically assign them, based on luck. Any one of the previously mentioned formulas will be transmitted to a central system and then the terminal will issue one or several receipts, which will contain at least the following information: the type of game and the form in which the participant can access or obtain the regulations or terms and conditions of the game, the predictions made, date, event or period in which the person is participating, number of bets or combinations played and control numbers. Besides the said receipt or receipts, there will be a sole receipt issued by the terminal located at the point of sale in question, which will contain at least the previously mentioned information, and which constitutes the only valid instrument to request the payment of the prizes and the only evidence that the person has participated in the contest.

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h) Games played by electronic, computerised, telematic and interactive means. These games use any mechanism, installation, equipment or system that makes it possible to produce, store or transmit documents, data and information, including any open or restricted network such as television, the Internet, mobile and landline telephones or any other, or interactive communication, whether it is in real or delayed time.

i) Random combinations with advertising or promotional purposes. These are understood to be raffles aimed exclusively at advertising or promoting a product or service, whose sole consideration is the consumption of said product or service, without surcharge or tariff, which offer cash, in kind or service prizes and, in certain cases, require registering as a client of the entity being advertised or promoted.

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#### Article 4

1. State lotteries shall be reserved for the operators appointed by Law<sup>3</sup>.
  2. It corresponds to the Minister of Economy and Finance to authorise the marketing of state-wide lotteries. The authorisation will set the conditions for gaming management regarding:
    - a) The minimum and maximum percentage destined for prizes.
    - b) The conditions and requirements for holding lotteries, when applicable, and the setting of the number of lotteries held.
    - c) The participants' rights and claim procedures.
    - d) The conditions under which it is allowed to carry out activities related to advertising and sponsoring of the authorised activities.
    - e) Measures to protect minors, dependent persons and to prevent fraud and money laundering and terrorist financing under the terms stipulated in Law 10/2010, of 28 April.
  3. In regard to the operation and marketing of lotteries, authorised operators shall cooperate with the State to eradicate illegal games, pursue fraud and crime and prevent the harmful effects of gaming.
  4. Authorised operators, notwithstanding compliance with the obligations referred to in Article 8 of the Law herein, will notify the National Gaming Commission about a Plan of Measures which specifies the additional commitments acquired by the operator stemming from responsible gaming management, participation in repairing its negative effects and the authorised operator's contribution to plans, projects or actions in benefit of society
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## TITLE II: GENERAL PROVISIONS

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#### Article 5

##### Regulation of gambling activities

1. The Minister of Economy and Finance via Ministerial Order shall establish the basic regulations for developing/implementing each game/ gambling activity, or in the event of one-off games/ gambling activities, the general rules to approve playing and their development.
  2. Setting requirements for the development of games/ gambling activities, shall be regarded as authorisation for new types of games/ gambling activities or permission to modify existing games/ gambling activities
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<sup>3</sup> Sociedad Estatal de Loterías y Apuestas del Estado (The state-owned lottery and gambling entity) and the Spanish National Organisation for the Blind (ONCE - Organización Nacional de Ciegos Españoles).

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3. Any form of gambling activity which is not regulated shall be deemed prohibited

4. Depending on the nature of the game, the regulation or rules will lay down the requirements in such a way as to prevent access to minors or incompetent people and prevent the use of any images, messages or objects that could either directly or indirectly violate the dignity of persons and infringe upon their fundamental rights and freedoms, as well as (prevent) any possible form of racial or sexual discrimination, incitement to violence or offensive activities.

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#### Article 7

Advertising, sponsorship and promotion of gambling activities<sup>4</sup>

1. In accordance with General Law 34/1988, of 11 November, on Advertising, any form of advertising, sponsorship or promotion of games of chance or betting and the advertising and promotion of gambling operators is prohibited when advertising is not authorised in the licence.

To carry out gambling activities via programmes broadcast in audio-visual media, published in the media or online, gambling operators must have the appropriate license authorizing it. This includes gambling activities in which participants must use telephone or text message-based premium rate services to obtain a prize.

2. The requirements/ rules and restrictions pertaining to the respective licences that authorize the advertising activity shall be established by regulation, especially in regard to:

a) Sending advertising or promotional communications by email or any other electronic or equivalent means, which will only be possible subject to the prior approval of the recipient, pursuant to Section one of Article 21 of Law 34/2002, of 11 July, on Information Society and Electronic Commerce Services.

b) Inclusion of gambling advertisements or other advertising methods in mass media and other advertising mediums.

c) Sponsorship of sporting events on which bets can be placed.

d) Inclusion of posters that advertise gambling in places that hold events whose results are the object of betting or lotteries.

e) Television contests and the obligation to provide information<sup>4</sup> about the essential requirements of the game.

f) Any others established in accordance with regulations

3. Any entity, advertising network, advertising agency, provider of audiovisual or electronic communication services, means of communication or information society service that disseminates the direct or indirect advertisement or promotion of gambling activities or their operators shall confirm that whoever has requested the insertion of advertising banners or spots, holds the corresponding licence issued by the authority in charge of gambling, authorizing it to perform / carry out the requested advertising, refraining from doing so where it is lacking.

An advertising network<sup>5</sup> is considered a company, on behalf of and in representation of (website) publishers, that offers advertisers, the use of advertising space in information society services and the optimization of advertising results when targeting

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<sup>4</sup> Article 3 and 4 were amended by the final provision of 1.1 and 1.2 of General Telecommunications Law 9/2014, of 9<sup>th</sup> May. [http://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2014-4950](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-4950)

<sup>5</sup> Ad network is a company that connects advertisers to web sites that want to host advertisements.

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public interested in the product or service advertised.

4. The authority responsible for regulating gambling, in the exercise of its administrative authority to request gambling advertisements to be ceased, will address the corresponding body, advertising network, advertising agency, provider of audiovisual or electronic communication services, means of communication or information society service, stating the grounds for the infringement of the applicable regulations.

Within three calendar days of receipt, the entity, advertising network, advertising agency, provider of audiovisual or electronic communication services, or information society service shall communicate compliance with the demand. Where the advertising message relies on a prior consultation/ copy advice report, issued by the advertising self-regulatory system (i.e. Autocontrol) with which the Gambling Regulatory Authority has a collaboration agreement as referenced in Art. 24(5) in this Law, it will be understood that the action was made in good faith provided that the copy advice report in question was complied with, in the event administrative action is taken within the framework of disciplinary proceedings.

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#### Article 8

#### Consumer Protection and Responsible Gambling Policies

1. Responsible gaming policies mean that gambling activities shall be approached from a comprehensive corporate social responsibility policy that considers gambling as a complex phenomenon in which preventive, awareness-raising, intervention and control measures must be combined, in addition to measures to remedy any negative effects caused.

The preventive actions will focus on raising awareness, informing and disseminating good gambling practices, as well as the possible effects that inappropriate gambling practices can cause.

Gaming operators shall draw up a series of measures related to mitigating the possible damaging effects that gambling may cause to persons, and they shall incorporate the basic regulations for a responsible gaming policy.

Therefore, in regard to consumer protection it is necessary to:

- a) Pay proper attention to risk groups.
- b) Provide the public with the information needed to make a conscious choice about their gambling activities, promoting moderate, non-compulsive and responsible attitudes to gambling.
- c) According to the nature and means used in each game, inform of the prohibition to participate in games by minors and persons included in the General Register of Gaming Access Bans, or in the Register of People Linked to Gaming Operators.

2. Operators will be unable to grant loans or any other type of credit or financial assistance to participants.

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#### TITLE IV – Monitoring Activity

CHAPTER II – The National Gambling Commission (Now: **The Directorate General for the Regulation of Gambling** – as The National Gambling Commission was abolished by the second additional provision to Act 3/2013, of June 4, which the Spanish National Commission of Markets and Competition)

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#### Article 24

#### Inspection and Control

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5. The Directorate General for the Regulation of Gambling - DGOJ (previously: National Gaming Commission) can enter into co-regulation agreements that contribute towards the fulfilment of the obligations set forth herein, in particular in relation to advertising, under the terms that shall be defined in regulations. To the extent that such agreements affect the advertising published by audiovisual communication service providers, a report by the State Council on Audiovisual Media must be compiled prior to the signing of these agreements. Self-regulatory systems shall have independent monitoring bodies in place to ensure the effective implementation of the commitments made by the companies. The codes of conduct may include, amongst others, individual or collective advance self-check measures on advertising content and must establish effective extra-judicial claims settlement systems that meet the requirements set forth in EU regulations and, as such, are reported to the European Commission, in accordance with the provisions of the Council Resolution of 25 May 2000 on a Community-wide network of national bodies for the extra-judicial settlement of consumer disputes or any other equivalent provision.

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