



# ICLG

The International Comparative Legal Guide to:

## Gambling 2019

**5th Edition**

A practical cross-border insight into gambling law

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# France

Cloé Si Hassen



Marine Travailot



## Startlaw

### 1 Relevant Authorities and Legislation

#### 1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Forbidden.	Minister of the Interior.
	Poker	<i>Autorité de régulation des jeux en ligne (ARJEL).</i>	Minister of the Interior.
	Bingo	Budget Minister and Minister of the Interior.	Budget Minister and Minister of the Interior.
Betting	Betting	ARJEL.	Budget Minister and Minister of the Interior.
	Sports/horse race betting (if regulated separately to other forms of betting)	ARJEL.	Budget Minister, Minister for Agriculture and Minister of the Interior.
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	Forbidden.	Forbidden.
Lotteries	Lotteries	Budget Minister and Minister of the Interior.	Budget Minister and Minister of the Interior.

Relevant Product	Who regulates it in digital form?	Who regulates it in land-based form?	
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Does not fall within the scope of the gambling ban. Authorised subject notably to compliance with the provisions of the Consumer Code.	Budget Minister and Minister of the Interior.
	Skill games and competitions with no element of chance		

#### 1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

Gambling is subject to a general prohibition (Article L. 322-1 of the Internal Security Code) with limited exemptions for:

- Gambling played in a physical and online network under exclusive rights and as part of a qualitative and quantitative regulatory policy. The monopoly operating model has been maintained for physical ("hard") and online lottery games (draws, scratching, etc.) as well as physical points of sale in the case of sports and horse betting, and for physical casinos.
- Three sectors of the online gambling market (sports betting, online horse racing, online poker) following the opinion delivered by the European Commission on 27 June 2007, asking France to open up the online sports betting sector to competition.

Act No. 2010-476 of 12 May 2010 put into practice this opening to competition limited to the three types of online gambling mentioned above. The monopoly of *La Française des Jeux* (FDJ) has been maintained over online and hard scratch and draw games as well as over hard sports betting. The monopoly of racing companies (and in particular the *Pari mutuel urbain* (PMU)) has been maintained over hard horse betting. Similarly, casinos have retained their monopoly over casino gaming (including slots and casino table games such as roulette and blackjack), such only being allowed on a hard basis.

According to Article 3 of the law of 12 May 2010, "minors, even emancipated minors, may not take part in gambling whose public offer is authorised by law. Legally authorised gambling and betting operators are required to prevent the participation of minors, even emancipated minors, in the gambling or betting activities they offer".

Any commercial communication in favour of a legally authorised gambling and gambling operator is prohibited in the various media accessible to minors.

## 2 Application for a Licence and Licence Restrictions

### 2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, “Licences”) are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?

- **Casinos and gaming circles:** opening authorisation issued by the Ministry of the Interior, after consulting the Consultative Commission for Circle and Casino Games (CCJCC).
- **FDJ, PMU and lottery:** approval issued by the FDJ after approval by the Ministry of the Interior (Decree No. 2017-1306 of 25 August 2017 on the operation of registration posts for lottery games, sports prognostic games and horse betting and racing companies Decree of 5 December 2017 establishing the list of documents to be provided for applications for authorisation to operate registration posts for lottery games, sports prognostic games and horse betting).
- **Online games and betting (horse betting, sports betting and online poker):** the ARJEL’s operator licence.

### 2.2 Where Licences are available, please outline the structure of the relevant licensing regime.

- **Casinos and gaming circles:** authorisation to operate takes place after the opinion issued by the deliberative assembly of the local authority concerned, the implementation of a public service delegation procedure and a *commodo-incommodo* investigation. A set of specifications sets out the conditions of operation and the relationship between the designated *cessionnaire* and the local authority.

Authorisations are granted “after an investigation, and in consideration of specifications drawn up by the municipal council and approved by the Minister of the Interior” and are temporary. The authorisation order sets their duration and defines: the nature of authorised gambling; their operation structure; the measures for monitoring and controlling the enforcement officers; the conditions for admission to gaming rooms; the opening and closing hours; and the rate and method of collection of levies on gambling proceeds.

- **FDJ, PMU and lottery:** originally, SCCJ’s (the Central Racing and Gaming Service) investigations focused exclusively on the morality of candidates. They have evolved to include a financial component related to the fight against money laundering. The PMU operating licence is granted to the person managing the establishment and not to the point of sale and therefore cannot be included in the sale of an establishment.
- **Online games and betting (horse betting, sports betting and online poker):** the ARJEL’s licence is issued after inspection of:
  - the software used by the operator which needs to be compliant with a standard called the Technical Requirements File as per the 2010 law and Decree No. 2010-509 dated 18 May 2010.
  - Legal representatives and directors responsible for gaming and betting operators referred to in Articles L. 561-2 9 and L. 561-2 9bis of the Monetary and Financial Code who are subject to compliance with prudential measures in the fight against money laundering and terrorist financing.

These operators are required to exercise due diligence on transactions, monitor suspicious financial commitments, and have Know Your Customer procedures in place in compliance with TRACFIN regulations. They must also provide for internal risk analysis systems and ensure the identity of the winning players.

### 2.3 What is the process of applying for a Licence for a Relevant Product?

- **Casinos and gaming circles:** the CCJCC reviews all requests for the introduction of a new game made by one or more casinos. These requests are examined by the CCJCC, after advice from the SCCJ on the report issued by the Directorate of Public Freedoms and Legal Affairs (DLPAJ). The SCCJ also launches a procedure for the approval of equipment with a technical examination. Once authorisation has been obtained, the game is put into operation for a limited period.
- **Online games and betting:** the applicant, a natural or legal person who wishes to market online games and betting, must submit an application for approval by category of game or betting to the ARJEL. The approval is issued by the ARJEL for a renewable period of five years. The ARJEL issues authorisations only to applicants who have the technical, economic and financial capacity to meet, on a long-term basis, the obligations attached to its activity and its obligations to safeguard public order, combat money laundering and terrorist financing and the fight against excessive or pathological gambling.

Pursuant to Article 1012 of the French Tax Code, a fixed fee is payable by each operator for any request for the issuing or renewal of an authorisation. The amount of this fee varies according to the number of authorisations (horse bets, sports bets, circle bets).

Subject to exception, the ARJEL shall decide on the application for approval within a period which may not exceed four months from the date of submission of the application for approval.

Article 23 of Act No. 2010-476 requires authorised operators to obtain two certifications:

- The first certification must be obtained within six months of the operation of the hardware support as defined by Article 31 of the same Act.
- The second certification must be obtained within one year of the date of approval. It concerns compliance by the licensed operator with all legal and regulatory obligations applicable to its activity. It must be updated annually.
- **FDJ, PMU and lottery:** to obtain approval, a file must be lodged with the FDJ or PMU. This file is sent to the SCCJ for advice. The FDJ or PMU shall communicate to the operator the notice received from the Ministry. The licence will be effective after the approval issued by the SCCJ.

### 2.4 Are any restrictions placed upon licensees in your jurisdiction?

Licensees must provide all information relating to:

- their identity and the structure of their possible company in the case of a legal person; and
- any criminal convictions or administrative penalties relating to the owner (natural person or corporate officer of the company).

Licensees must also be able to prove their ability to maintain the compliance of the games they propose with the applicable regulations and need to designate the person or persons domiciled in France who are responsible for them.



A set of specifications also needs to be presented by the licensee, including obligations related to the organisation of games and betting as well as the guarantee of respect for public and social order in the field of games.

In support of their application and throughout the duration of the authorisation, these operators must demonstrate their ability to fulfil these obligations and be transparent both for the organisation and supply of games or bets and for the management of the company or, in the case of a legal person, its capital structure.

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## 2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.

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- **Casinos and gaming circles:** The SCCJ controls licensed businesses. It fulfils a preventive and administrative role in casino or gambling circles. The SCCJ is present for the administrative openings and closures of casinos and gambling circles. It also carries out the audit and technical and regulatory control of the establishments. At the end of the audit, written observations shall be notified to the establishment's management. The conclusions of these audits are sent to the Central Directorate of the Judicial Police (DCPJ), the DLPAJ and the Prefect. These conclusions are used during the CCJCC's review of the renewal of ministerial gaming licences.
- **Online games and betting:** The approval is issued for a period of five years and is renewable.

An inspection is carried out by the ARJEL after one year of operation. Audits are then carried out by the authority throughout the duration of the licence.

Sanctions ranging from a simple warning to the withdrawal of the licence may be imposed by the ARJEL in the event of non-compliance with legal and regulatory obligations (Article 43 of Act No. 2010-476 of 12 May 2010 on the opening to competition and regulation of the online gambling sector).

- **FDJ, horse betting (PMU) and lotteries:** Decree No. 2015-338 of 25 March 2015 amended Article 27 of Decree No. 97-456 to specify that "at the request of the Minister of the Interior, [the authorisation] may be suspended for a maximum period of six months or withdrawn [...] after an adversarial procedure initiated at the request of the Minister of the Interior".

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## 2.6 By Relevant Product, what are the key limits on providing services to customers? Please include in this answer any material promotion and advertising restrictions.

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The payback ratio is the proportion of bets that operators return to players in the form of winnings. Regulations may determine minimum or maximum proportions for the ratio because it can have an effect on a game's addictiveness or the propensity for a game to be defrauded.

### Online games:

- Horse betting and online sports betting: the Decree of 4 June 2010 sets a limit of 85% on the payback ratio. Control of this is entrusted to the ARJEL.
- Online circle games: the payback ratio is not capped.

### Hard games:

- Games under exclusive rights of the FDJ: for lottery games, Decree No. 78-1067 of 9 November 1978, as amended, stipulates that the share allocated to winners must be between 45% and 75% (it must be less than 70% on average for scratch cards); for sports betting, the payback ratio is capped for all games in the range of 75%.

- Casino games: the payback ratio is only fixed for slot machines, as Article R. 321-17 of the Internal Security Code stipulates that it must not be less than 85% of the stakes.
- Horse betting (PMU): under Article 18 of the aforementioned Decree of 13 September 1985, the TRJ is regulated between 60% and 90%. Its determination varies according to a calculation of the operator for each bet according to the mass of issues to be shared.

The management of the gambling ban file is carried out by the Gaming Facilities Office of the Ministry of the Interior, attached to the DLPAJ, which is competent to impose a restriction on individual freedom to gamble, either on the basis of a person's voluntary request or on the basis of an administrative police measure taken in response to public disorder caused by a person in a gambling establishment. The SCCJ receives people who wish to be banned from gambling. Online gaming operators are, each month, recipients of this file. For online games and betting, consultations must be carried out at each account opening request and at least once every eight days. If the answer is yes, the opening or use of the corresponding player account is blocked.

The 2010 Act, in its Article 7, issued commercial communication requirements that apply to both hard and online games. The CSA intervened on numerous occasions after having noted various breaches in the broadcasting of advertisements and sponsorships in favour of these operators. In June 2009, the Professional Advertising Regulatory Authority (ARPP) adopted an ethical recommendation. A partnership agreement was signed with the ARJEL on 23 May 2013.

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## 2.7 What are the tax and other compulsory levies?

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The profits made from gambling do not constitute a lucrative occupation or a source of profit that should give rise to taxation. The main issue is the qualification of the gain according to its risk. Indeed, gains made by professional players under conditions that eliminate or significantly reduce the risk normally inherent in gambling are considered taxable. This position, confirmed by case law, is applicable to the usual practice of poker, including online poker, provided that the game of poker cannot be regarded as a game of pure chance and provided that it is played under conditions comparable to a professional activity.

Businesses involved in the gambling industry are subject to special taxation rules. In addition to the ordinary taxes and social security contributions applied to gaming operators (corporate income tax (CIT), VAT, etc.) (with the notable exception of the PMU with regard to the CIT), gambling is subject to a special tax system based on bets, with the exception of land-based casinos, whose taxation is based on the gross proceeds of the games. In addition, the calculation of VAT follows specific rules: casinos, circles and gaming houses are exempt from VAT, while the VAT applicable to sports betting and online circle games is based on the net proceeds of the games, less the bonuses granted to players by operators.

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## 2.8 What are the broad social responsibility requirements?

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The objective of the State's gambling and gambling policy is to limit and control the supply and consumption of gambling and to control its operation in order to:

1. prevent excessive or pathological gambling and protect minors;
2. ensure the integrity, reliability and transparency of gambling operations;
3. prevent fraudulent or criminal activities as well as money laundering and terrorist financing; and

4. ensure the balanced and equitable development of the different types of game in order to avoid any economic destabilisation of the sectors concerned.

### 2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

In casinos, all payment methods, plates, tokens and tickets available are subject to the reporting obligation provided for in Article 464 of the Customs Code.

Cash payments are capped by Article D. 112-3 of the Monetary and Financial Code in order to limit the risk of money laundering and terrorist financing.

For social games and video games, the question of the supervision of loot boxes is currently being debated in France. A senator referred this question to the ARJEL to determine whether loot boxes could be qualified as gambling. While the ARJEL has indicated that there may be excesses in the loot box offers, a reflection on a framework for these practices is on its way.

## 3 Online/Mobile/Digital/Electronic Media

### 3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?

As the law currently stands, French residents are prohibited from participating in gambling through a site or application that has not been approved by the ARJEL.

Pursuant to Act No. 2010-476 of 12 May 2010 on the opening to competition and regulation of the online gambling sector, it is prohibited for natural and legal persons:

- to propose to the public an offer of bets or gambling without being a licensed person. The penalties are three years' imprisonment and a fine of 90,000 euros; and
- to advertise for an unauthorised site. The sanction is a fine of 100,000 euros.

The gaming regulatory authority may also impose additional penalties and block unauthorised gaming sites in France.

### 3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?

It is formally forbidden for minors to participate in gambling, whether online or physical.

In addition, online gambling operators must also ensure compliance with French regulations applicable to consumers (Consumer Code), to the processing of users' personal data (GDPR) and to the banking regulations.

### 3.3 What terminal/machine-based gaming is permitted and where?

For online casino games, only circle games are allowed; online slot machines are prohibited.

Slot machines may only be installed and operated in casinos that have the necessary approvals.

## 4 Enforcement and Liability

### 4.1 Who is liable under local law/regulation?

Operators (natural and legal persons) may be held civilly and criminally liable in the event of illegal gambling and, in particular, in the event of the absence of a licence.

### 4.2 What form does enforcement action take in your jurisdiction?

Decree No. 2008-612 of 27 June 2008 on the organisation of the central administration of the Ministry of the Interior assigns to the Central Directorate of the Judicial Police the supervision of gambling establishments and racecourses.

The SCCJ is responsible for the supervision of gaming establishments, racecourses, horse and sports betting and games related to new technologies. It fulfils an administrative and judicial police role, and ensures that the regularity and sincerity of the games are respected, as well as the protection of players and the defence of the interests of the State.

Within the ARJEL, a team of investigators is dedicated to the search for illegal sites. This team issues formal notices to illegal operators to stop their activity.

In the event of non-compliance with the formal notice, the Paris Regional Court (TGI) is asked to order Internet service providers (ISPs) to block access to these sites.

In addition, a so-called "reminder to the law" (RAL) procedure was introduced at the beginning of 2015. Out of 373 sites that were the subject of a reminder to the law, 239 were brought into full or partial compliance, without initiating any more cumbersome procedure.

Finally, the effectiveness of blocking orders sent to ISPs has been strengthened by an agreement with Google (the preferred search engine for 92% of the French population) which, upon receipt of these orders, delists the domain names reported to it.

With regard more specifically to sports betting, any person betting on a competition and having specific information about it is liable to be punished for fraud.

In the event that an outside person tries to "buy" an athlete, the specific offence of sports corruption applies.

### 4.3 Do other non-national laws impact upon liability and enforcement?

The opening up of the sector to competition is the result of the implementation of EU legislation. Indeed, by decisions of 1994 (ECJ, 24 March 1994, Case C-275/92; ECJ, 26 April 1994, Case C-275/92; ECJ, 26 April 1994, Case C-275/92, C-272/91), the EU Court of Justice held that the organisation and operation of a lottery or game of chance in a Member State by a public or private entity was a "services" activity within the meaning of Article 50 EC and should, as such, be subject to the freedoms of provision of services and establishment enshrined therein.

### 4.4 Are gambling debts enforceable in your jurisdiction?

According to Article 1965 of the Civil Code: "the law does not grant

any action for a gambling debt or for the payment of a bet” which allows the courts to declare the nullity of contracts, and particular loans, intended for a prohibited gambling activity.

## 5 Anticipated Reforms

### 5.1 What (if any) intended changes to the gambling law/regulations are being discussed currently?

The Court of Auditors, in an investigation report commissioned by the National Assembly’s Public Policy Evaluation and Control Committee, made several recommendations:

#### Gaming policy and regulation

- To create an inter-ministerial committee responsible for defining public policy on gambling, including the ministries in charge of the budget, the interior, agriculture, health, sports and the economy; and
- to entrust the regulation of all hard and soft gambling and online gambling to an independent administrative authority comprising the Online Gaming Regulatory Authority, the Commission for Exclusive Rights Gaming, the Advisory Commission on Circle and Casino Gaming and the Gaming Observatory.

#### Effectiveness and proportionality of regulations

- To strengthen the powers of the regulatory authority to better fight illegal supply; and
- to reduce the duration of experimentation with new games by reducing the authorisation procedure.

#### Protection of players and fight against fraud

- To make use of the player card or any other means of identification mandatory, starting with the games most likely to lead to addiction, fraud and money laundering;
- modernise the file of gambling bans and extend its use, including at points of sale in the physical network, in order to better protect problem gamblers;
- establish a legal framework strengthening the ethics of horse racing along the lines of what has been done in the field of sport: provide for criminal offences in the field of doping and race fixing; strengthen the prevention of conflicts of interest by extending betting bans and controlling them; and regulate the activity in relation to horse prognoses; and
- standardise cash usage limits for both betting and winnings in order to fight fraud and money laundering.

#### Taxation

- To carry out a comprehensive study of the impact of gambling taxation under the aegis of the Inter-ministerial Gaming Committee.

As mentioned in question 2.9, the question of the supervision of loot boxes is being examined within the ARJEL and by several European regulators.

Similarly, although betting on e-sports is currently prohibited in France, a change on this subject is requested by some players and could be accepted by the legislator in the coming years.





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Admitted to the Paris Bar in 2012, Cloé Si Hassen assists and represents entrepreneurs, companies and their managers in all areas of business law in both advisory and litigation.

As such, she supports her clients on a day-to-day basis and for specific operations related to their development and growth.

Cloé holds degrees in litigation and business criminal law from the Universities of Paris 1 Panthéon Sorbonne and Versailles. She worked for several years in a Parisian business law firm before creating Startlaw.

Cloé has developed legal and technical expertise in the field of e-sports, gaming and media.

Aware of the need to structure e-sports in France, Cloé is involved in developing understanding in the sector and lobbying the French authorities.



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A business lawyer admitted to the Paris Bar since 2011, Marine Travailot assists and represents companies and their managers, particularly in the startup ecosystem. She decided to specialise in this field following a simple observation: despite the development of innovative companies and the multiplication of incubators, startups meet difficulties in finding legal help adapted to their specific needs and environment.

A holder of diplomas in business law and corporate tax law obtained respectively at the University of Paris 1 Panthéon Sorbonne and Paris 2 Panthéon Assas, Marine obtained an executive MBA in International Economic Strategy in order to offer to her clients a global strategy and to provide them with a more complete response to the issues raised.



Startlaw is a law firm for innovative companies and start-ups, founded by Cloé Si Hassen and Marine Travailot, two professionals specialised in business law and trained respectively in litigation and tax law.

Startlaw defines itself by combining its dynamism and understanding of its customers' environment.

Startlaw's lawyers assist their clients both in the creation and structuring of their financing and in their day-to-day legal needs.

The goal of StartLaw's lawyers is to create a sustainable and dynamic partnership that will enable innovative companies to no longer consider the legal and tax aspect as a burden but as a differentiation tool at their disposal.

Startlaw is resolutely a modern law firm and has developed partnerships with legal-technology companies and a specific expertise in the emerging sectors of e-sports and the collaborative economy.

### Current titles in the ICLG series include:

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