

Art. 1 BGS: Subject Matter and Exclusions from the Scope of the Federal Act on Gambling

Subject matter, constitutional basis and text version

Art. 1(1) BGS defines what the Act regulates: the admissibility of gambling games (Geldspiele), how they are operated, and how their proceeds are used. Paras. 2 and 3 exclude certain games and activities from the Act's scope. The provision is therefore the entry threshold for the whole Act. Anything that falls under para. 1 and is not covered by an exclusion is subject to the general licensing requirement of Art. 4 BGS. In German: "Wer Geldspiele durchführen will, braucht eine Bewilligung oder eine Konzession." In translation: anyone wishing to operate gambling games needs a licence or a concession **Art. 4 BGS**. In practice, the exclusions therefore exempt an activity from the licence or concession requirement, from ongoing supervision and from criminal liability under the BGS. The authorities can still request information (see the features common to all exclusions below).

No official English version of the Act exists. Quotations from statutes, materials and decisions are given in the original language, with English translations added by the author.

Constitutionally, the BGS implements Art. 106 of the Federal Constitution (BV/Cst.). That article:

- gives the Confederation comprehensive legislative competence over gambling;
- assigns to the cantons the licensing and supervision of lotteries, sports betting and games of skill;
- requires the net proceeds of lotteries and sports betting to be used for public-benefit purposes (Art. 106(1), (3) and (6) BV) **Art. 106 Cst.**

The Federal Supreme Court stresses that the Act regulates the admissibility of gambling games "umfassend" (comprehensively). The legislature deliberately created a broad umbrella category that replaces the earlier concepts of lotteries, sports betting, games of chance and games of skill **BGE 148 II 392**. The section on the exclusions below explains what this basic choice means for interpreting them.

The wording of Art. 1 BGS has not changed since the Act was adopted on 29 September 2017:

- The German text published in the referendum bill matches the current text **BBi 2017 6245**.
- A comparison of the consolidated versions **BGS (2021-01-01)** and **BGS (2023-09-01)** shows no change to Art. 1. The amendments between them concern other provisions only.
- The French text of let. e carries a footnote stating that the Drafting Committee of the Federal Assembly rectified it under Art. 58(1) of the Parliament Act **Art. 1 BGS**. This is an editorial correction, not a legislative amendment.
- No revision of Art. 1 was pending in the sources reviewed.

What does matter in substance is the gap between the Federal Council's draft and the enacted text on promotional games (see let. d and e below).

Para. 1 also mentions the use of gaming proceeds. Chapter 9 implements this part of the Act's subject matter:

- the cantons use the net profits from lotteries and sports betting

"vollumfänglich für gemeinnützige Zwecke" (entirely for public-benefit purposes);

- they may not use them to meet statutory obligations under public law;
- net profits from games of skill are not earmarked (Art. 125(1), (3) and (4) BGS) **Art. 125 BGS**.

This earmarking also serves as an argument for interpreting the promotional-game exclusions (see the requirements common to let. d and e below).

The trigger: the broad concept of a gambling game

Two cumulative elements

Whether Art. 1(1) BGS applies depends on the definition in Art. 3 let. a BGS. A gambling game is a game in which a cash prize or another monetary advantage is offered in return for a stake of monetary value or the conclusion of a legal transaction **Art. 3 BGS**. Settled Federal Supreme Court case law identifies two defining elements, the stake and the chance of winning: "Die beiden Voraussetzungen müssen kumulativ erfüllt sein." (Both requirements must be met cumulatively.) **BGE 148 II 392** The more recent judgment 2C_62/2025 expressly confirms this, with reference to BGE 148 II 392 **2C_62/2025**.

An element of chance is not part of the definition. According to the Federal Supreme Court, it makes no difference whether the chance of winning depends on skill or on chance, "da der Geldspielbegriff nicht hierauf abstellt" (since the concept of a gambling game does not turn on this) **BGE 148 II 392**. Chance only becomes relevant at the second stage: classifying the game as a lottery, game of skill or casino game, and with it the exclusion under let. b.

Stake: a payment of monetary value or a legal transaction

The alternative "conclusion of a legal transaction" considerably widens the stake element. Case 2C_62/2025 concerned online games that only people who had bought digital trading cards on a "marketplace" could play. The Federal Supreme Court upheld the lower court's finding that buying the cards was the conclusion of a legal transaction within the meaning of Art. 3 let. a BGS, because the purchase was economically intertwined with taking part in the game **2C_62/2025**. What mattered was this economic link between purchase and game, not whether the purchase was legally independent. It is irrelevant "ob die Gegenleistung eines Rechtsgeschäfts nach der Teilnahme am Spiel wertlos wird" (whether the consideration received under a legal transaction becomes worthless after taking part in the game) **2C_62/2025**.

Nor does the possibility of recovering the stake rule out a gambling game. In BGE 148 II 392, users could buy virtual units and later sell them again. The fact that some or all of the original purchase price might be recovered made no difference, because "die Definition von Art. 3 lit. a BGS stellt nicht hierauf ab" (the definition in Art. 3 let. a BGS does not turn on this) **BGE 148 II 392**.

Free credits or free access do not remove the stake if participation in fact runs through paid services. In criminal proceedings, the Federal

Supreme Court treated paid "ancillary services" required once free credit was used up as mere pretexts to give the games a free character **6B_995/2021**.

Judgment 2C_62/2025 goes further and states the point as a matter of principle: "Ebenso steht die Möglichkeit, gratis an einem Spiel teilzunehmen, dem Vorliegen eines Geldspiels nicht entgegen." (Likewise, the possibility of taking part in a game free of charge does not prevent it from being a gambling game.) Free participation is "lediglich im Rahmen der Ausnahmebestimmung von Art. 1 Abs. 2 lit. e BGS betreffend die Medienunternehmen von Relevanz" (relevant only within the exclusion in Art. 1(2) let. e BGS concerning media companies) **2C_62/2025**.

This abandons, for the concept of a gambling game, the doctrine under the former law that an equivalent free route already ruled out a lottery. Its continuing role within let. e is discussed below.

Prize: a monetary advantage on offer

It is enough that a cash prize or another monetary advantage is on offer. Gains from reselling virtual objects are monetary prizes, even if the objects are of no use outside the game **BGE 148 II 392**. Nor must a more expensive transaction increase the chances of winning. Whether the prize "bei Abschluss eines teureren Rechtsgeschäfts erhöht oder nicht, ist nicht von Bedeutung" (increases or not when a more expensive transaction is concluded is irrelevant) **2C_62/2025**.

Categories as the second stage

Once a game is a gambling game, it must be assigned to one of the categories in Art. 3 let. b-g BGS: lotteries, sports betting, games of skill, large-scale games, small-scale games or casino games

Art. 3 BGS. For Art. 1, this stage matters mainly in two respects:

- let. b requires a game of skill;
- let. d and e cover only lotteries and games of skill.

A casino game presented as a promotional game therefore cannot rely on let. d or e.

For games of skill, Art. 2 of the Gambling Ordinance (VGS) gives non-exhaustive criteria for drawing the line **Art. 2 VGS**:

- skilled players win more over a larger number of game units;
- the probability of winning when playing blind is low;
- the player has several ways of influencing the game;
- the game requires skills of a certain complexity.

Features common to all exclusions: restrictive reading and continuing information powers

The exclusions in paras. 2 and 3 rest on different grounds:

- social harmlessness (let. a and b);
- avoiding an overextension of the broad concept of a gambling game (let. c and f);
- preserving established advertising practice (let. d and e);
- allocation to another body of rules (para. 3).

What they have in common is that they operate against the background of a deliberately comprehensive scope **BGE 148 II 392**. For the private circle, the Dispatch expressly calls for restrictive application, "Um Gesetzesumgehungen zu vermeiden" (in order to prevent circumvention of the law) **BBi 2015 8387**.

The exclusions do not remove the areas concerned from all oversight. The intercantonal authority may request information and documents "in den Bereichen nach Artikel 1 Absätze 2 und 3" (in the areas under Art. 1(2) and (3)) to establish whether a large-scale game is involved (Art. 108(1) let. b BGS) **Art. 108 BGS**. Anyone relying on an exclusion should therefore expect an inquiry and be able to document the facts on which the exclusion rests. The sources reviewed contain no express rule on the burden of proof for the exclusions.

Gambling in a private circle (let. a)

Cumulative criteria under Art. 1 VGS

In Art. 1 VGS, the Federal Council defined the private circle exhaustively through four cumulative requirements **Art. 1 VGS**:

- the game is neither operated commercially nor publicly advertised;
- the number of players is small, and must be "sehr klein" (very small) if the players have no connection outside the game, in particular of a family or professional nature;
- no costs or fees are charged beyond the stake;
- the total winnings are low and equal the total of all stakes.

The last requirement rules out any skimming in favour of the organiser. A "rake" or table fee therefore defeats the private circle under the fourth criterion, and an entry fee under the third. The connection between participants works as a yardstick: the closer the relationship outside the game, the larger the group may be. The Dispatch speaks of a narrowly limited circle of participants **BBi 2015 8387**.

Applications: automated games and poker rounds

Automated games. In a 2025 penal order, the Federal Gaming Board (ESBK) held that the exclusion "nicht auf automatisierte Spiele beziehen" kann (cannot apply to automated games)

ESBK 62-2020-067-02. The accused had made two devices with casino games available to third parties in her flat, against stakes. She argued that she had neither advertised nor acted commercially. The ESBK held this irrelevant: "Ausschlaggebend ist einzig, dass der Besucher bei den in der Wohnung angebotenen, automatisierten Spielen jeweils für sich allein spielt und es hierbei folglich auch nicht darum gehen kann, freundschaftliche, soziale oder familiäre Beziehungen zu pflegen." (The only decisive point is that, in the automated games offered in the flat, each visitor plays alone, so the purpose cannot be to cultivate friendly, social or family relationships.) **ESBK 62-2020-067-02**

This purposive reasoning is persuasive: the exclusion protects sociable play, not play that merely takes place in private premises. It is, however, the administrative practice of the prosecuting authority. The sources reviewed contain no court decision on the question.

Poker rounds. For poker rounds in club premises, decision BV.2022.51 of the Federal Criminal Court on a seizure shows which facts point against a private circle **BV.2022.51**:

- ten players at one poker table;
- a dealer who held the key and most of the cash;
- participants who largely did not know one another;
- chip purchases of CHF 300 to 500;
- entry without any check ("Kontrolliert wurde ich dann aber nicht" - "But then I was not checked").

The court only found sufficient suspicion of unlicensed casino games under Art. 130(1) let. a BGS and did not decide the private-circle question on the merits **BV.2022.51**. The decision therefore illustrates the relevant facts but does not interpret Art. 1 VGS.

Local games of skill (let. b) and residual cantonal law

Three negative, cumulative features

The exclusion covers games of skill that are operated "weder automatisiert noch interkantonal noch online" (neither automatically, nor intercantationally, nor online). The Dispatch stresses that these requirements are cumulative. It gives as examples socially harmless games "wie etwa verschiedene Jass-Formen" (such as various forms of Jass, a Swiss card game) **BBi 2015 8387**.

The exclusion mirrors the definition of large-scale games: games of

skill operated automatically, intercantationally or online are large-scale games (Art. 3 let. e BGS) **Art. 3 BGS**. Lotteries, sports betting and poker tournaments have a small-scale category, but the BGS provides none for games of skill (Art. 3 let. f BGS) **Art. 3 BGS**. A local, non-automated game of skill therefore falls outside the Act altogether.

The route to let. b opens only once the game has first been classified as a game of skill under Art. 3 let. d BGS and Art. 2 VGS. A local game of chance remains a casino game or a small-scale game.

The decisions reviewed have not interpreted "automated", "intercantational" or "online" for the purposes of let. b. The ESBK's reasoning on the private circle (each individual plays against a device) suggests why the Act treats automation as increasing the risk **ESBK 62-2020-067-02**.

Cantonal regulation of excluded and large-scale games of skill

Two levels must be distinguished for games of skill.

Large-scale games of skill. For games of skill that fall under the BGS as large-scale games, Art. 28 let. c BGS gives the cantons federal power to prohibit their operation entirely "in rechtsetzender Form" (by legislative act) **Art. 28 BGS**.

- The Canton of Ticino has used this power. In abstract review of that prohibition, the Federal Supreme Court declined to hear the case because the applicants had only sought a reformatory order (a transitional rule for existing licences). It did not examine the competence question on the merits **2C_251/2023**.
- Since the Act came into force, the intercantonal authority has supervised games of skill operated automatically, online or intercantationally (Art. 142(4) BGS) **Art. 142 BGS**.

Games excluded under let. b. The BGS does not regulate these games. The sources reviewed do not expressly answer whether the cantons may legislate on them independently.

- Art. 106(1) BV establishes federal competence over "die Geldspiele" (gambling games), and para. 3 let. c assigns licensing and supervision of games of skill to the cantons **Art. 106 Cst.**
- The Dispatch assumes that the cantons keep some regulatory room for certain games of skill **BBi 2015 8387**.
- Earlier case law held that the cantons could regulate gaming machines for games of skill "selbständig ordnen" (independently) and ban them entirely **BGE 120 Ia 126**. That case law rested on the former constitutional law and concerned machines that now fall under the BGS as large-scale games. For current law it shows only the historical line of reasoning.

Sports competitions (let. c)

The exclusion follows from the breadth of Art. 3 let. a BGS: a competition with an entry fee and prize money formally meets both elements, stake and chance of winning. The Dispatch states that sports competitions "könnten unter die Geldspieldefinition von Artikel 3 Buchstabe a fallen" (could fall under the definition of gambling games in Art. 3 let. a) and must therefore be excluded **BBi 2015 8387**.

The exclusion covers the competition itself, not bets on its outcome. Sports bets are gambling games in which the prize depends on correctly predicting the course or outcome of a sporting event (Art. 3 let. c BGS) **Art. 3 BGS**. The line therefore runs between a participant staking on their own sporting performance and one staking on someone else's event. The sources reviewed do not decide what counts as a "sports competition" (for example for eSports or fantasy formats).

Promotional games: purchase variant (let. d) and media variant (let. e)

From a free-participation requirement to a two-track system

The Federal Council's draft contained a single exclusion for sales-promotion lotteries and games of skill in which free participation was possible "zu den gleichen Bedingungen wie bei Leistung eines geldwerten Einsatzes oder bei Abschluss eines Rechtsgeschäfts" (on the same conditions as when a stake of monetary value is paid or a legal transaction concluded) **BBi 2015 8387**. The rule was meant to follow existing practice for the mass media and the retail trade, while better ensuring that free participation was genuinely available **BBi 2015 8387**.

The enacted Act splits the exclusion into two provisions with different logic **BBi 2017 6245**:

Feature	let. d	let. e
Organiser	anyone	media companies only
Game types	lotteries and games of skill	lotteries and games of skill
Duration and purpose	short-term, for sales promotion	short-term, for sales promotion
Risk	no risk of excessive gambling	no risk of excessive gambling
Route to participation	only by buying goods or services at prices no higher than market prices	paid participation possible, but free participation also available on equally good access and participation conditions

The Dispatch's explanations of the free-participation requirement therefore now apply only to let. e. For let. d they describe a concept the legislature did not adopt. The sources reviewed do not document why Parliament redrafted the provision.

Requirements common to let. d and e

Both provisions require that the game:

- is operated for a short time;
- serves sales promotion;
- poses no risk of excessive gambling.

Neither the Act nor the VGS gives these terms further content, and no implementing provision on let. d and e was found in the sources reviewed. The requirements are to be read as cumulative.

The Dispatch already justified the cumulative approach by the need to ensure that the constitutional requirement under Art. 106(3) let. a and b BV, that net profits from such games be used entirely for public-benefit purposes, "nicht unterwandert wird" (is not undermined) **BBi 2015 8387**. This purpose suggests that permanent offers, recurring series of games or formats with addictive potential should not be treated as promotional games, even if participation formally runs through a purchase.

Let. d: participation only through a purchase at market price

Let. d builds on the stake variant "conclusion of a legal transaction" in Art. 3 let. a BGS. The Federal Supreme Court accepts a purchase as a stake even where the item bought has value **2C_62/2025**. Without let. d, every draw tied to a purchase would therefore be a gambling game.

The exclusion permits such draws as long as the price is no higher than the market price, so that no hidden gaming surcharge is levied. If the price exceeds the market price, the difference economically becomes a stake in the game and the exclusion no longer applies.

The requirement that participation take place "exclusively" through the purchase rules out additional participation fees, such as premium-rate numbers or paid extra tickets. Let. d does not say whether an additional free route is harmful; in any event it is not required. The sources reviewed contained no case law on "market price", "short-term" or "exclusively".

Let. e: equally good free participation for media companies

Since free participation is now legally relevant only under let. e (see the stake section above), this provision is decisive. In **2C_62/2025**,

the Federal Supreme Court noted that the provider had "zu Recht nicht geltend gemacht" (rightly not argued) that let. e applied. The existing free option therefore did not help the provider **2C_62/2025**.

Case law on free participation under the former law offers a closely related aid for interpreting "equally good access and participation conditions", because it concerned media competitions. It can only be applied by analogy, however: it was decided under the former Lotteries Act and concerned the concept of a lottery itself.

- The average member of the public's impression is decisive. The competition must "unmissverständlich als Veranstaltung erscheint, an der mit oder ohne Einsatz mit gleichen Gewinnaussichten teilgenommen werden kann" (unmistakably appear as an event in which one can take part with or without a stake with equal chances of winning) **BGE 125 IV 213**. In that case, for crossword puzzles, the postcard had been unmistakably announced as an equivalent route alongside the premium-rate 156 number. The Federal Supreme Court held that there was no lottery-like undertaking **BGE 125 IV 213**.
- Equivalence must exist in every phase of the game. Judgment 6B_775/2009 concerned an interactive TV competition. Internet and WAP routes were displayed, but in the average viewer's impression they did not offer the same chances as the premium-rate number "zumindest in bestimmten Konstellationen und Phasen des Spiels" (at least in certain constellations and phases of the game) **6B_775/2009**. The average viewer could not be assumed to have "besondere technische Kenntnisse respektive Fertigkeiten oder eine gewisse minimale Schulbildung" (special technical knowledge or skills, or a certain minimum level of schooling) **6B_775/2009**. Actual behaviour served as evidence: the overwhelming majority chose the paid number despite the cost of CHF 1.50 per call **6B_775/2009**.
- "Free" includes transmission. According to the Dispatch, free participation also covers transmission, and it must be "klar und unmissverständlich kommuniziert werden" (communicated clearly and unmistakably) **BBi 2015 8387**.

The sources reviewed do not define a media company. The Dispatch mentioned Swiss television and print media, whose revenue from increased transmission charges was not subject to the earmarking requirement **BBi 2015 8387**.

Interfaces with unfair competition law and tax law

Unfair competition. Exemption from the BGS does not mean exemption from the Unfair Competition Act (UWG). In particular, anyone who promises a prize in a competition or prize draw acts unfairly if claiming the prize depends on using a paid premium-rate number, paying expenses, buying goods or services, or entering a further draw (Art. 3(1) let. t UWG) **Art. 3 UCA**. Let. d therefore allows a purchase as a condition of entry, but does not allow claiming a prize already promised to depend on a purchase.

Tax. Federal tax law refers expressly to let. d and e. Individual winnings from sales-promotion lotteries and games of skill "die nach Artikel 1 Absatz 2 Buchstaben d und e BGS diesem nicht unterstehen" (which are not subject to the BGS under Art. 1(2) let. d and e) are tax-free up to CHF 1,100 (Art. 24 let. j DBG) **Art. 24 DBG**. Individual winnings above that amount are subject to withholding tax (Art. 6(2) VStG) **Art. 6 VStG**. Classification under Art. 1(2) BGS thus has direct consequences for how prizes are paid out.

Activities under FINMA supervision (let. f)

The Dispatch explains the exclusion as a boundary with the financial services sector. Numerous financial services, such as exchange-traded structured products, could otherwise fall under the definition of a gambling game in Art. 3 let. a BGS, "was verhindert werden soll" (which is to be avoided) **BBi 2015 8387**. The enacted text ties the exclusion more precisely to FINMA supervision under the Financial Market Supervision Act (FINMASA) **BBi 2017 6245**. The

parliamentary materials on this redrafting could not be consulted.

On the wording, what decides is not whether an offer resembles a financial product but whether it is in fact subject to supervision. The following are subject to FINMA supervision (Art. 3 FINMASA)

Art. 3 FINMASA Art. 1 FINMASA:

- persons who need a licence, recognition, authorisation or registration under the financial market acts listed in Art. 1(1) FINMASA;
- collective investment schemes that require authorisation.

An offer marketed as "trading" or "tokens" but not subject to such supervision cannot rely on let. f merely because of how it is presented. It must still be tested against the concept of a gambling game.

The sources reviewed contained no court decisions on this boundary (binary options, crypto games). The line of BGE 148 II 392, under which tradable virtual objects that can be resold at a profit may constitute a gambling game, shows that the gambling classification can apply even to trading-like structures **BGE 148 II 392**.

In civil law, Art. 513(2) of the Code of Obligations (OR/CO) must also be borne in mind. It makes contracts for differences and similar transactions in goods or securities "die den Charakter eines Spieles oder einer Wette haben" (which have the character of a game or bet) unenforceable **Art. 513 OR**.

Snowball, avalanche and pyramid schemes (para. 3)

Para. 3 excludes these schemes from the Act and refers them to the UWG. The Dispatch describes this as continuing the existing legal position, because these schemes were already governed by Art. 3 let. r UWG **BBi 2015 8387**. Under that provision, the test is whether benefits are offered on terms that mean an advantage "hauptsächlich durch die Anwerbung weiterer Personen ... und weniger durch den Verkauf oder Verbrauch von Waren oder Leistungen" (mainly through recruiting further persons ... rather than through selling or consuming goods or services) (Art. 3(1) let. r UWG) **Art. 3 UCA**.

The referral marks a change of system from the former lottery law. The Zurich High Court noted that the revised UWG, in force from 1 April 2012, moved the rules on snowball schemes from the Lotteries Ordinance into the UWG, and decided an old case under Art. 43 no. 1 of the former Lotteries Ordinance **RT130005**.

On the substance, the court looked at two points:

- whether the purchase contract and the intermediary contract formed a single whole;
- whether the purchase, "für sich allein betrachtet aufgrund des Missverhältnisses zwischen Leistung und Gegenleistung für den Abnehmer nachteilig" (taken on its own, was disadvantageous to the buyer because of the imbalance between performance and consideration), became attractive only by recruiting further customers **RT130005**.

These criteria help in interpreting Art. 3(1) let. r UWG. The classification as a lottery under the former law no longer does.

Criminal liability. Unfair competition under Art. 3 UWG is punishable only if committed intentionally and only on complaint. The Confederation has the rights of a private claimant in the proceedings (Art. 23 UWG) **Art. 23 UCA**. The intent requirement is often decisive in practice.

- In 6B_538/2022, a platform for foreign exchange and crypto trading offered training products and a remuneration plan for recruiting others. The Federal Supreme Court left open whether the objective elements of the offence were met, because the accused had believed the business model was lawful: "Damit fehlte es ihr am Vorsatz" (She therefore lacked intent) **6B_538/2022**.
- Fraud also remains possible for manipulated schemes. Under the former law, the Federal Supreme Court held that even an operation with all the features of a lottery can amount to fraud if it

is deceitfully manipulated **6B_564/2009**.

Mixed models remain unresolved: models that contain both a game with a stake and a chance of winning and a recruitment structure. The wording of para. 3 excludes "snowball, avalanche or pyramid schemes" as such. The sources reviewed do not decide whether a separately identifiable gambling game within such a scheme is nevertheless subject to the BGS.

Consequences of classification: licensing, supervision and criminal liability

Licence or concession requirement and competent authorities

The licence or concession required by Art. 4 BGS (see above) is valid only in Switzerland **Art. 4 BGS**. The category of game determines the competent authority:

- the ESBK supervises casinos;
- the intercantonal authority (Gespa) supervises large-scale games;
- both combat illegal gambling (Art. 97(1) let. a and c, Art. 107(1) let. a and b BGS) **Art. 97 BGS Art. 107 BGS**.

The cantons license and supervise small-scale games. On the basis of the intercantonal concordat, Gespa may review cantonal licences for small-scale games "umfassend auf ihre Bundesrechtskonformität" (comprehensively for compliance with federal law), not merely on the boundary with large-scale games **BGE 151 II 710**.

Before the licensing decision, the intercantonal authority determines whether a game applied for is a large-scale game, in consultation with the ESBK. If they disagree, the coordination body is called upon (Art. 27(1) BGS) **Art. 27 BGS**. According to the case law reported by the Federal Criminal Court, Gespa is responsible for classifying large-scale games and the ESBK for classifying casino games **BV.2021.24**.

Criminal liability without a prior classification ruling

The offences are as follows:

- Misdemeanour. Anyone who intentionally operates, organises or makes available casino games or large-scale games without the required concessions or licences commits a misdemeanour (Art. 130(1) let. a BGS) **Art. 130 BGS**.
- Fine. Operating other gambling games without a licence, and advertising gambling games not licensed in Switzerland, are punishable by a fine of up to CHF 500,000 (Art. 131(1) let. a and b BGS) **Art. 131 BGS**.
- Prosecuting authorities. The ESBK prosecutes offences relating to casino games under the Federal Act on Administrative Criminal Law (VStrR). The cantons prosecute offences relating to other gambling games (Arts. 134 and 135 BGS) **Art. 134 BGS Art. 135 BGS**.

Under the former Casinos Act, criminal liability required a final classification ruling by the ESBK. The Solothurn High Court therefore acquitted for the periods before the classification rulings were published **STBER.2020.70**.

The position under the BGS is different. The Federal Criminal Court reports the Dispatch as saying that the adjudicating authority may classify the games itself "pour autant qu'aucune autorité administrative n'ait encore pris de décision exécutoire à ce sujet" (provided that no administrative authority has yet issued an enforceable decision on the matter) **BV.2021.24**. This statement appears in a decision not to hear the case, so it is part of the reasoning rather than the basis of the decision.

The criminal authority therefore also decides incidentally whether an exclusion under Art. 1(2) or (3) BGS applies.

Network blocking

Online gambling games not licensed in Switzerland are blocked if both

conditions are met (Art. 86(1) and (2) BGS) **Art. 86 BGS**:

- the operator has its registered office or domicile abroad, or conceals it;
- the games are accessible from Switzerland.

Blocking presupposes that the game is a gambling game. Both leading Federal Supreme Court decisions on the concept of a gambling game were handed down in blocking proceedings **BGE 148 II 392 2C_62/2025**. According to the Federal Administrative Court, mere geoblocking is not a suitable technical measure for being removed from the blocking list **2023iv-1**.

Transitional questions

For acts committed before 1 January 2019, the former law is often more lenient. The Federal Supreme Court held that Art. 130(1) let. a BGS is not the more lenient provision, because the legislature deliberately upgraded former contraventions to misdemeanours. A fine for a contravention is more favourable than a monetary penalty "indépendamment des modalités d'exécution et de l'ampleur du montant" (regardless of how it is enforced and of the size of the amount) **6B_995/2021**.

In administrative law, Arts. 140 et seq. BGS govern the transition of concessions and licences granted under the former law, including licences for gaming machines for games of skill (Art. 142 BGS) **Art. 142 BGS**. These transitional periods have since expired.

Civil-law consequences inside and outside the BGS

Art. 1 BGS does not regulate whether claims are enforceable; that follows from the Code of Obligations.

- Rule. Gaming and betting do not, in principle, give rise to an enforceable claim, nor do loans knowingly made for gaming (Art. 513 OR) **Art. 513 OR**.
- No recovery. Payments made voluntarily can be reclaimed only exceptionally (Art. 514(2) OR) **Art. 514 OR**.
- Enforceable claims. Claims from officially licensed lotteries and prize draws (Art. 515 OR) **Art. 515 OR** and from games of chance in licensed casinos (Art. 515a OR) **Art. 515a OR** are enforceable.

The Vaud Cantonal Court concluded from these rules that a loan for sports betting with the licensed Loterie Romande is not a natural obligation, so provisional removal of the objection to debt enforcement could be granted **CPF kc22-045172-141/2024**.

For games excluded under Art. 1(2) BGS, such as those in a private circle, it follows that they need no licence. But because they have no official licence, claims arising from them are likely to fall under Art. 513 OR and remain unenforceable. The sources reviewed do not confirm this conclusion in a court decision. Nor do they say expressly how the terms in Arts. 515 and 515a OR ("Lotterie- oder Ausspielgeschäfte", lottery and prize-draw transactions; "Glücksspiele in Spielbanken", games of chance in casinos) map onto the BGS categories.

For snowball schemes excluded under para. 3, practice under the former law held the contract void **RT130005** and ruled out recovery under Art. 66 OR **CC.2007.42**. Both decisions, however, based the unlawfulness on the former lottery law, not on the UWG.

Practical notes

- Classify first. Test for a stake and a monetary prize before considering any exclusion (see the trigger section above).
- Private circle. Document each of the four criteria of Art. 1 VGS, and do not rely on let. a for automated games in view of ESBK practice (see let. a above).
- Promotional games. First establish whether the organiser is a media company. Only then can let. e, with an equally good free route, apply; otherwise let. d, with participation exclusively through a purchase at market price, must be met. In either case,

check Art. 3(1) let. t UWG (see the interfaces with unfair competition law above).

- Document exclusions and factor in criminal risk. Be ready to answer an inquiry under Art. 108 BGS (see the features common to all exclusions above). Do not treat the absence of a classification ruling as protection against prosecution (see criminal liability above).