

LEXOLOGY GAMBLING LAW - AUSTRIA

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1. Introduction

Perhaps the most important distinguishing feature of the Austrian gambling framework is the historical demarcation drawn between betting and gambling and the drastically different consequences that follow from each – whereas gambling is controlled by a federal monopoly, betting is regulated by the provinces.

Gambling and games of chance are defined as any game, the outcome of which is entirely or predominantly based on luck, whereas a bet is defined as the agreed upon performance based on a prediction about an event the outcome of which is unknown. Traditional casino games, including games with skill elements such as poker, are treated the same as games of pure chance, and any wagers on the outcome of real-world events, even where the benefits of superior knowledge or skill are implausible at best, are generally treated as a bet. This means that products such as fantasy leagues, pool betting, spread betting, over/under, and combination bets are treated as bets and are not subject to the restrictive federal monopoly. While betting on the outcomes of non-sport-related events such as elections is recognised under Austrian law and not universally prohibited, Austrian courts have held that bets on purely chance-based or algorithmically decided outcomes, such as secondary lotteries or simulated horse races (or pre-recorded greyhound races that took place in the past), must be treated as gambling. Other risk-based contracts such as speculative financial products or insurance contracts fall under neither of these regimes, and they are distinguished by their connection to an independent economic purpose, for example hedging risk.

Gambling, as opposed to betting, is carried out exclusively through concessionaires of the federal monopoly, which operate traditional and online lotteries as well as brick-and-mortar casinos. The offering and advertising of gambling services outside this monopoly is prohibited, including by foreign licenced providers offering services purely over the internet, although there are exceptions provided for foreign brick-and-mortar casinos, which may advertise their services based on a pre-approval scheme. Illegal gambling is subject both to administrative fines and absolute nullity of contracts, meaning players can sue to reclaim lost stakes, targeting either the provider itself or its managing directors personally.

Betting, on the other hand, operates on a more liberal model. Each of the nine provinces regulates betting independently, but all require that providers maintain a licence. Notably, none of the provinces regulates purely online betting absent physical presence within its territory. This means that, in reverse of the situation with gambling, foreign online betting is essentially unregulated in Austria.

Finally, Austria's gambling framework is set to undergo a fundamental overhaul starting as early as 2027. On 4 August 2026, a draft of the Gambling Reform Act 2026 was presented to the EU for a three-month standstill period for Technical Regulation Information System (TRIS) review. The TRIS period may be extended to a maximum of six months if other member states have detailed concerns, but the bill is expected to be ready for enactment in November.

At the centre of the proposal is a departure from the current online gambling monopoly: the draft would allow the Gambling Supervisory Authority to grant an unlimited number of online gambling concessions, while a single concession would remain available for the "Specified Lotteries" (which will continue to be permitted both online and offline). Online gambling concessions would be granted on a rolling basis in single-party proceedings, whereas the concession for Specified Lotteries – as well as land-based casino concessions – would continue to require a public call for expressions of interest.

The competitive concession procedures would be subject to strict formal requirements, including filing deadlines, parallel written and electronic submissions, an index of documents and, in principle, a prohibition on subsequent amendments. Even minor formal defects, incomplete minimum requirements or late changes may therefore result in an application being rejected, making careful and precise preparation essential. Applicants would also have to satisfy extensive capital and reliability requirements and, where relevant, demonstrate that outstanding gambling taxes and final Austrian judgments obtained by players have been fully satisfied. This would have to be confirmed by means of a sworn conformity declaration, while operators that previously offered unauthorised online gambling in Austria would additionally be subject to cooling-off and exclusion periods.

The reform would also significantly strengthen player protection through a cross-operator exclusion register, mandatory self-limitation tools, stricter advertising standards and statutory deposit limits of €250 per week for players under the age of 26 and €1,680 per month for older players, subject to limited risk-based exceptions from the age of 23. Enforcement against unlicensed operators would be expanded through test plays, public warnings, payment blocking and network blocking, with the Austrian Tax Office designated as the Gambling Supervisory Authority under the draft. New online gambling concessions could be granted no earlier than 1 October 2027, while the existing online gambling concession may continue on a transitional basis until 31 December 2028; accordingly, the reform should not be understood as taking effect in its entirety on a single date in 2027.

2. Legal and regulatory framework

The Austrian constitution designates the regulation of gambling as a competence of the federal government, which maintains a monopoly on the provision of legal gambling in Austria. Betting, on the other hand, is regulated by the nine provinces and follows a more liberal, market-based approach. Consequently, the Austrian gambling market (provision of lotteries, slot machines, poker, and other casino games, whether online or off) is essentially closed, while the betting market is open to both physical betting parlours and especially to purely online offerings. Gambling is currently supervised by the Federal Ministry of Finance, while supervision of betting lies with the relevant provincial government. Purely online betting services (lacking any physical nexus) are currently not regulated in Austria. Gambling in Austria is regulated by the Austrian Gambling Act (GSpG). Section 1(1) GSpG defines games of chance (synonymous with gambling) as games in which the outcome is entirely or predominantly based on luck. Section 1(2) GSpG designates specific games and their variations as ex lege games of chance (roulette, optical roulette, poker, blackjack, etc). Additionally, the GSpG introduces the term *Ausspielung*, which is often translated to lottery or draw but essentially means commercial gambling organised by an entrepreneur.¹

The distinction between which games are predominantly chance-based and which are predominantly skill-based might theoretically pose difficulties, but in practice, historical distinctions tend to decide. Even where litigants have put forth credible arguments that certain bets or combinations of bets cannot meaningfully be influenced by the bettor's skill or knowledge, courts have upheld the general rule that wagering on the outcome of a real-world event is a bet and thus does not fall under the federal gambling monopoly. One exception is Toto, where players must correctly bet on

the outcome of several sporting events in order to win a prize. Toto is defined in section 7 GSpG as a specific form of lottery and thus falls under the federal gambling monopoly. In contrast, outside the specific context of Toto, Austrian courts have held that similar combination bets are generally to be treated as bets, not games of chance.² Betting on past races, which are then selected at random, has been found to constitute gambling, as the players' knowledge and skill is not decisive in determining the outcome of the bet.³ Similarly, secondary lotteries, that is, bets on the outcome of a lottery, are also considered gambling, not betting.⁴

The GSpG enumerates the specific kinds of lotteries that may be conducted under the federal monopoly, and it groups them, along with online games of chance, into a single licence that may be tendered for a maximum period of 15 years. This licence includes the right to operate, among others, instant lotteries, scratch-off games, and video lottery terminals. Premises wherein video lottery terminals are installed may contain 14 to 54 machines and cannot contain other kinds of gambling machines. Individual locations must also receive a permit before installation. The GSpG also provides for the possibility of 15 licences for physical casinos to be tendered, again for a maximum period of 15 years. Any commercial gambling not conducted under the auspices of these licences is prohibited and subject to administrative fines up to €60,000. Additionally, participation in prohibited games of chance as a player is also subject to an administrative fine, €1,500 for negligent participation and €7,500 for wilful participation.

Whereas gambling is regulated federally by the GSpG, betting is regulated by a separate statute for each of the nine provinces. Critically, in provinces that regulate online betting, each statute requires territorial presence by a betting provider before regulations apply. For provinces that do not explicitly regulate online betting, the Supreme Civil Court has ruled that regulations do not apply *mutatis mutandis*.⁵ The result is that betting offered purely online by providers with no physical presence in a province is not subject to local betting laws. Betting offered within the territory of a province, either in a betting parlour or online by way of a local server, requires a licence in the specific province or provinces in which it is offered, although the provincial licensing systems are not monopolised.

While the GSpG requires that the Federal Ministry of Finance and its agents have access to inspect gambling machines and their software, it does not specify a particular manufacturer or licence the manufacturer of gambling equipment. Likewise, there are no licences required for the manufacture of betting terminals or other equipment in provincial regulations. The use of Bitcoin and other cryptocurrencies for payment is not specifically regulated, although some authors have proposed that crypto mining itself may fall under the GSpG.⁶ The Supreme Civil Court has considered this view but not decided on it.⁷

3. The licensing process

Under the current GSpG, the federal government exercises its gambling monopoly through a limited number of concessions. One concession covers Specified Lotteries, video lottery terminals and online gambling, while up to 15 concessions may be granted for land-based casinos; at present, the single lottery concession and 12 casino concessions have been awarded. Concessions are granted for a maximum period of 15 years following a public call for bids and by way of an administrative decision. Applicants must generally be established in the EU or EEA, satisfy substantial minimum-capital requirements and demonstrate suitable ownership, qualified management, financial reliability, operational security, player-protection measures and compliance with anti-money laundering requirements.

Betting licences remain subject to the laws of the nine provinces. Although the individual regimes differ, operators with a physical or technical presence generally must demonstrate reliability, financial capacity, suitable management and compliance with player-protection and anti-money laundering requirements. Provincial betting licences are not numerically limited. Purely cross-border online betting without a territorial presence remains largely outside the existing provincial licensing regimes.

The ministerial draft would fundamentally separate the concession procedures for Specified Lotteries, Online Gambling and land-based casinos. Specified Lotteries would remain subject to a single concession following a public call for expressions of interest. By contrast, the Gambling Supervisory Authority could grant an uncapped number of Online Gambling concessions on a rolling basis in single-party proceedings upon application. Land-based casinos would remain subject to competitive procedures, with the draft providing for 13 concessions that may be divided into objectively justified packages. All concessions would continue to be granted by administrative decision. Under the draft, Finanzamt Österreich would act as the Gambling Supervisory Authority.

The competitive procedures for Specified Lotteries and casino concessions would be governed by strict formal requirements. Expressions of interest must be filed within the prescribed period, both in writing and in identical electronic form, together with an index of documents. Late submissions, subsequent extensions and applications covering only part of a concession must be rejected. Once the deadline has expired, amendments are generally prohibited, except where they result from circumstances outside the applicant's sphere of influence or are requested by the authority. Applications that fail to satisfy essential minimum requirements at the deadline – including the applicable corporate-form, seat, capital, reliability or fee requirements – must be rejected without further substantive examination. Decisions of the Federal Administrative Court in concession proceedings would continue to be taken by a panel.

Online Gambling concessions would be granted in separate single-party proceedings and would not depend on a comparison with competing applicants. Nevertheless, applicants would have to satisfy the general corporate, ownership, management, reliability, player-protection and operational requirements and demonstrate that they are capable of exercising the concession properly. The minimum paid-up capital would be €10 million. A first Online Gambling concession could be granted for up to five years, with subsequent concessions limited to a maximum of 10 years.

Operators that previously offered unauthorised Online Gambling in Austria would not automatically be excluded from the new licensing regime. However, they would have to pay all outstanding gambling taxes, satisfy final judgments obtained by Austrian players and discontinue their unlicensed Austrian offering in accordance with the applicable cooling-off rules. They would also have to submit a sworn conformity declaration confirming compliance with those requirements until the concession is granted. If the declaration proves materially incorrect during the proceedings, the concession may not be granted; if the inaccuracy is discovered only afterwards, the concession must generally be withdrawn.

The proposed reform does not materially alter the separate provincial licensing framework for betting.

4. Wrongdoing

The GSpG prohibits all games of chance that are conducted without a concession and which do not fall under an exception to the federal monopoly. Exceptions are narrow and include non-commercial gambling for amusement, one-off lotteries carried out for the alienation of tangible assets,

carnival games, raffles and card tournaments. In these exceptions, stakes are generally limited to small amounts.

For games of chance falling under the federal gambling regime, the Austrian Tax Office (which sits under the Federal Ministry of Finance) monitors licencees' compliance with the GSpG, the terms of the licence itself, and any other relevant provisions. The Tax Office is permitted to conduct in-person audits or to arrange for such to be conducted by third-party specialists. It may also inspect the concessionaire's books and records as well as request interim financial statements or any information regarding businesses transactions.

Section 168 of the Austrian Criminal Code makes the organisation of games of chance for the purpose of monetary gain (outside the purview of the Federal monopoly) a criminal offence punishable by imprisonment for six months or a fine of up to €360 daily rate which must be between €4,000 and €5,000, adjusted to the financial circumstances of the accused. However, pursuant to section 52(3) GSpG, an act that constitutes an offence under both provisions is to be punished only according to the GSpG.

The organisation, arranging, or making available of commercial gambling from within Austria subject to administrative fine of up to €60,000 under the GSpG, largely replacing the penalties under the commercial code, at least for commercial providers. Other offences subject to a smaller fine, up to €22,000, include the commercial transferring of lottery tickets or similar shares in a game of chance, failure to comply with conditions of a gambling licence, failure to provide adequate descriptions of licensed games and their rules, promotion or advertising of illegal games of chance (for example by posting internet links), and possession or use of technical devices for cheating.

To combat illegal gambling, the municipal police are empowered to enter private premises, seize gambling machines and potentially close businesses where illegal games of chance are operated. These powers are also generally granted with regard to betting operations under the provincial betting laws.

For online gambling based outside of Austria, fineable offences are deemed to have taken place from within Austria when participation takes place within the country. That means that foreign providers offering services purely online may still be subject to administrative penalties if players participate from within Austria. The GSpG also contemplates administrative fines for players who pay their stakes from Austria, up to €7,500 for knowing violations and €1,500 for negligent violations.

Finally, contracts for gambling that are not concluded under the auspices of the federal monopoly are void. As a consequence, players may sue to reclaim their losses. It is also worth noting, however, that the reverse is also true, and providers are entitled to rely on the nullity of the contract to reclaim players' net winnings. The Austrian Supreme Civil Court has also held, and the CJEU confirmed, that the managing directors of a gambling provider may also be personally held liable in tort for gambling losses, opening another pathway for gamblers based in Austria to reclaim losses from unlicensed gambling operators.

5. Taxation

The central basis for tax liability in gambling is found in sections 57 et seq of the GSpG. All commercial gambling contracts are covered provided participation takes place from within Austria. Although online activities may pose a challenge in determining from where participation takes place, providers are expected to infer from available information, for example use of site with an Austrian

domain, IP address, and player self-identification, to infer whether gambling takes place from Austria.⁸ All parties that participate in the organisation of games of chance are jointly and severally liable for the payment gambling taxes. Betting activities are not subject to the provisions of the GSpG but are covered by the Federal Fees and Duties Act (GebG).

The GSpG distinguishes between various enumerated forms of gambling permitted to concessionaires, with tax liability and tax base dependent on the type of gambling conducted. The basic rule is that games in which participation takes place from within Austria are subject to a gambling tax of 17.5% of the stake. In the case of tournament-style games, the stake is not used as the tax base; instead, the monetary prizes offered in the tournament are used. For online gambling, the tax base is GGR, the total stakes minus paid out winnings within a calendar year. With effect from 1 July 2025, the taxation for online gambling (electronic lotteries) in Austria has been increased from 40% to 45% GGR. For video lottery terminals and slot machines, the tax base is calculated by subtracting applicable sales tax from GGR. Specific tax rates then range from 5% to 45%, depending on the specific form of gambling. Betting, either in-person or online, is subject to a 5% tax on the stake, up from 2% as of 1 April 2025.⁹

Depending on the type of gambling, tax liability arises either at the time the gaming contract is concluded, at the end of the calendar year in which the game is published, or at the time a specific act triggering liability is performed. Taxpayers are then obligated to calculate their own liabilities and pay them to the Austrian Tax Office by the 20th of the calendar month following accrual of liability. Whether the game is licensed or unlicensed and therefore legal or illegal, is irrelevant for tax purposes.¹⁰ A recent ruling of the Austrian Highest Administrative Court (VwGH) stated, however, that any reimbursements of players losses based on unauthorised and invalid gambling contracts may not reduce the tax base for the gambling tax.

6. Advertising and marketing

Gambling advertising is regulated by section 56 GSpG, which imposes a "responsible standard" on holders of gambling licences. Casino operators within the EU or the EEA may also advertise in Austria under this standard with prior approval from the Austrian Tax Office. These advertisements are only permitted to invite players to visit these casinos and not, for example, to promote online offerings, in which participation from Austria is prohibited.

Section 56 also empowers Austria's Minister of Finance to flesh out the responsible standard through further regulation, but to date, this power has not been exercised. Instead, in 2016, the Ministry of Finance released a report containing non-binding recommendations for the content and placement of gambling advertisements,¹¹ for example:

- Gambling advertisements should not contain content aimed at increasing the frequency of play or raising of stakes.
- Gambling advertisements should not focus their message on the "joy of playing", "feelings of happiness", or the "thrill" resulting from excessive or risky gambling.
- Gambling advertisements should not portray non-participation in gambling in a negative light.
- Gambling advertisements should not suggest that participating in gambling promotes individual, social or sexual success or serves as a solution to personal or private problems.

- Gambling advertisements should not suggest that participation in gambling constitutes a desirable and meaningful form of financial investment or a means of settling outstanding bills.
- Gambling advertisements on television and radio should not be broadcast in close proximity to programmes for children and adolescents and should not be placed in media specifically targeted at young people.

Provincial betting laws do not generally regulate advertising, although the Vienna Betting Act also contains a responsible standard for betting advertisements.

As mentioned above, advertising unlicensed games of chance (except in the case of pre-approved brick-and-mortar casinos outside of Austria), is not permitted and subject to an administrative fine of up to €22,000.

7. Year in review

The past year has seen several significant developments in Austrian gambling and betting law. The most important legislative development is the already discussed ministerial draft published in June 2026, which proposes replacing the single online gambling concession with an uncapped licensing model and combining the opening of the market with stricter licensing requirements, enhanced player protection and stronger enforcement mechanisms. Judicial developments have likewise addressed several central aspects of the Austrian gambling framework. In OGH 6 Ob 228/24h, the Austrian Supreme Civil Court ruled on the classification of lootboxes used in FIFA Ultimate Team, rejecting their treatment as unlawful gambling on the specific facts of the case. At EU level, the CJEU's judgments in the Wunner and Mr Green cases further clarified the legal and procedural framework for claims brought by Austrian players against foreign gambling operators and, potentially, their managing directors.

A years-long series of cases revolving around digital lootboxes connected to the video game series FIFA was also decided by the Supreme Civil Court in favour of the games' designer and publisher.¹² Lootboxes are digital mystery boxes that contain virtual goods usable within the video games to which they are connected. They are often purchasable separately, allowing players additional chances to win especially rare content.

In OGH 6 Ob 228/24h of 18 December 2025, the Supreme Civil Court held that the FIFA Ultimate Team lootboxes at issue were not to be assessed in isolation. Their objective purpose was to obtain digital content for use within the football simulation; the purchase was technically embedded in the game; the content was not technically transferable outside it; and every item could be used in the game. The decisive question was therefore whether the videogame as a whole was predominantly chance-based. Because tactics, strategy and controller skill allowed players to form a rational expectation of success, the claimant failed to establish gambling within section 1(1) GSpG. The ruling is fact-specific and does not exclude a different result for lootbox models with materially different functionality, especially standalone cash-out or technical transferability.

A preliminary reference from the Austrian Supreme Civil Court in the Wunner case was decided by the CJEU in January 2026, confirming the (mere) possibility of holding the managing directors of an unlicensed gambling provider directly liable in tort for gambling losses.¹³ The provider in question was based in Malta and operating without an Austrian licence. The CJEU found that company law exception in article 1(2)(d) of the EU Rome II Regulation did not apply in this case,¹⁴ and that the applicable law, decided by the place where the harm occurred, must in the case of online gambling contracts be located where the player has their habitual residence, Austria. As a result, Austrian

players can now, at least in principle, hold managing directors personally liable for gambling losses resulting from unlicensed games. In practice, courts will still have to find some misconduct attributable to a director and to what extent a director is responsible for the player's losses. Several cases are pending in Austrian lower courts, and it remains to be seen how they will be decided.

Finally, in another preliminary reference, the CJEU delivered its judgment in the Mr Green case on 21 May 2026.¹⁵ The Vienna Regional Court for Civil Matters asked the CJEU for guidance on when a European order for provisional account seizure is appropriate. The CJEU held that the court hearing such an application must carry out an overall assessment of the circumstances relied upon by the creditor in order to determine whether there is a real risk that, without the preservation order, enforcement of the claim would be impeded or made substantially more difficult. In that assessment, the court may take into account conduct of the debtor dating back several years, including previous steps to terminate relationships with payment service providers or transfer assets following adverse judgments. It may also consider legislation in the member state where the debtor is established that is capable of obstructing the recognition or enforcement of the creditor's claim, such as Malta's legislation shielding locally licensed gambling operators from certain foreign judgments. The existence of such circumstances does not automatically justify an account preservation order, but they may contribute to establishing the urgency and real enforcement risk required under Regulation (EU) No 655/2014. The judgment may therefore make it easier for successful claimants to seek provisional preservation of assets held by Maltese gambling operators in appropriate cases, although the ultimate assessment remains with the competent national court.

8. Outlook and conclusions

Austria's gambling framework will soon undergo substantial changes. The draft of the Gambling Reform Act 2026 proposes replacing the current single-concession model for online gambling with an uncapped licensing system, combined with stricter market-entry requirements, enhanced player protection and stronger enforcement against unlicensed operators. As the proposal is not yet law, its final content and timing remain uncertain.

Recent case law will continue to shape the market alongside the legislative reform. In the Wunner case the CJEU clarified that Austrian law may apply to tort claims brought by Austrian players against directors of foreign gambling operators. The judgment does not itself establish personal liability, which remains subject to proof of misconduct, causation and individual responsibility before the Austrian courts.

In OGH 6 Ob 228/24h, the Austrian Supreme Civil Court held that the FIFA Ultimate Team lootboxes at issue were not to be assessed separately from the videogame as a whole. Because player skill permitted a rational expectation of success, the claimant failed to establish that the game was predominantly chance-based. The decision remains fact-specific and does not exclude a different classification of other lootbox models.

Overall, Austria appears to be moving towards a regulated multi-licence online gambling market, while purely cross-border online betting remains largely outside the existing provincial regimes. The practical impact of the reform will depend on the final legislation and its effective enforcement.

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¹ Section 2 GSpG.

² See, for example, OGH Ob 58/15y, where the Supreme Civil Court found that combination bets of 10 games were not to be treated as a game of chance, citing similar previous cases with the same outcome.

³ VwGH Ra 2018/09/0095.

⁴ BFG RV/7102180/2024

⁵ OGH 1 Ob 176/22x.

⁶ Ehrke-Rabel/Eisenberger/Hödl/Zechner, "Bitcoin Miners as Prosumers: A Question of State Regulation?" ALJ 3/27, pp. 188–223; also Varro, "Bitcoin Mining: Non-Taxable Gambling?", taxlex 2017, 399.

⁷ OGH 5 Ob 95/21p.

⁸ BFG RV/7100702/201.

⁹ Section 33 GebG, Tariff Item 17(1).

¹⁰ BFG RV/7100702/201.

¹¹ Available in German from the Ministry of Finance website [here](#).

¹² OGH 6 Ob 228/24h.

¹³ Case C-77/24 *Wunner* EU:C:2026:1.

¹⁴ *Wunner* [33].

¹⁵ Case C-198/24 *Mr Green* EU:C:2026:415.