

Gambling-like mechanics in video games: A challenging regulatory framework

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INTRODUCTION

As video games raise, more than ever, concern over rising overconsumption and addiction, the regulation of addictive processes in video games is a complex issue. Since the addictive processes in video games are not subject to any dedicated framework, they are indirectly subject to pre-existing regulations derived from positive law, alongside dedicated rules that specifically target certain video game mechanics.

Gambling/gaming: a dissolving legal distinction. Historically, the gambling and betting sector on one hand, and the video game industry on the other, evolved with little interference. However, the transformation of monetisation models — driven in particular by the rise of mobile devices — has progressively erased this boundary. While loot boxes triggered a strong reaction from regulators worldwide, other mechanics are now attracting increasing scrutiny: intermediate virtual currencies, battle passes, daily login rewards conditioning player reconnection, and behavioural profiling-based dynamic pricing all sit at the intersection of gambling and game design.

Consumer law: ill-equipped for sector-specific practices. These mechanics do not necessarily meet the legal definitions of gambling in most jurisdictions, creating a structural grey area that existing regulatory frameworks struggle to address. Traditional consumer law mechanisms — withdrawal rights, conformity guarantees,

contractual consent defects — were not designed for the accumulation of repeated micro-decisions embedded in interfaces far more complex than the conventional commercial environments on which legal categories were built.

The legal characterisation of digital content compounds the difficulty. The French Supreme Court (Cour de cassation), in its October 2024 ruling (UFC-Que Choisir v. Valve Corporation), confirmed that dematerialised games and content acquired on platforms are governed by a licence of use rather than a sale. While this decision reinforces publishers' business models, it shifts the litigation battleground: liability now concentrates on continuous conformity obligations and unfair contract terms. Terms and Conditions clauses authorising the unilateral modification, degradation or removal of content — illustrated by "nerf" practices and server shutdowns such as the The Crew case (Ubisoft, 2024) — present a serious legal risk in this regard.

The concept of dark patterns, central to this debate, operates more as a standard than as a legal category with an established regime. Identifying these practices within the video game environment is particularly challenging given the complexity of game interfaces: grinding, dynamic difficulty adjustment, and AI-driven personalised recommendations may equally optimise or exploit the player's experience.

A rethought regulatory framework. Faced with the inadequacy of traditional frameworks, public authorities are deploying new regulatory strategies. With respect to loot boxes, the response of States has been profoundly fragmented, revealing an absence of consensus on the applicable legal characterisation.

Belgium, as early as 2018, ruled that loot boxes constituted illegal gambling on the grounds that items obtained could be resold on secondary markets for real-world money, compelling several major publishers to withdraw them from the Belgian market under threat of criminal sanctions. The Netherlands adopted a similar position, conditioning their lawfulness on odds disclosure and the absence of cash-out mechanisms. Other States opted for targeted restrictions focused on minors: Brazil enacted legislation in 2025 prohibiting the sale of loot boxes to under-18s; Australia now mandates a minimum 15+ classification for games containing them. In the United States, in the absence of federal legislation, the New York Attorney General initiated proceedings in 2025 against Valve Corporation, alleging that loot boxes in Counter-Strike 2 constitute illegal gambling under state law. However, research has revealed an apparent contradiction between formal legal prohibition and continued market practice and demonstrates that unilateral, unenforced bans are structurally vulnerable to circumvention.

France chose a more targeted response by creating, through the SREN Act of 21 May 2024, a sui generis legal category: jeux à objets numériques monétisables (JONUM — games with monetisable digital objects). As a three-year experiment, the framework requires operators to file a prior declaration with the Autorité Nationale des Jeux (ANJ), implement strict age verification, provide spending and playtime self-limitation tools, and comply with ancillary reward caps. This represents an unprecedented attempt to regulate the interstitial space between video gaming and gambling.

Intensifying oversight of the video game sector. The European regulatory framework is progressively deploying a range of increasingly stringent consumer protection measures, the scope of which is extending to video games. At EU level, the Digital Services Act, fully in force since February 2024, prohibits interfaces that impair users' decisional autonomy. Its application to video game dark patterns is

promising, yet hampered by the difficulty of identifying and measuring their effects within complex gaming environments.

The Digital Fairness Act (DFA), whose legislative proposal is expected in the fourth quarter of 2026, explicitly targets addictive mechanics in video games — loot boxes, virtual currencies, retention design — as a priority area. In the context of the DFA's active preparation, the European Parliament's IMCO Committee formally reaffirmed its position calling for the future text to impose a strict prohibition on randomised purchase mechanics in games accessible to minors across the European Union. In parallel, PEGI undertook in March 2026 the most significant reform of its classification framework in over a decade, integrating monetisation mechanics into age classification criteria for the first time: games incorporating paid random items now receive a minimum PEGI 16 rating, “time-limited and/or quantity-limited offers” receive a minimum PEGI 12, NFT receive a minimum PEGI 18 and mechanics designed to encourage players to come back every day in order to acquire content received a minimum of PEGI 7.

These converging developments outline the contours of a co-regulatory model under construction, combining hard law (DSA, DFA), national experimental frameworks (JONUM) and strengthened sectoral self-regulation (PEGI). Their coherence remains to be built.

An effective co-regulatory framework to construct. The regulation of gambling-like mechanics in video games appears to be developing in successive layers, without adequately accounting for its impact on the industry. The French JONUM experiment, the DSA, PEGI's reforms and the forthcoming DFA together constitute fragmented and complex responses that may severely affect the broader ecosystem and the business models of numerous studios.

Publishers must now navigate these evolving regulatory requirements and conduct careful analyses of their own mechanics: the boundary between legitimate incentivisation and prohibited manipulation remains difficult to draw contractually; algorithmic transparency obligations remain unclear; and the international fragmentation of applicable regimes generates considerable compliance costs.

The French JONUM experiment, still in its infancy, may offer the most instructive laboratory for assessing whether purpose-built regulation can bridge the gap where general consumer law has failed. Time will tell.

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BIO

Pierre-Xavier Chomiac de Sas. French lawyer specialising in digital law, video game law and esports, advising publishers, studios and platforms on contractual, regulatory and compliance matters.

He teaches at several higher education institutions, including the Faculté Libre de Droit de Paris and the University of Reims Champagne-Ardenne, where he lectures in digital and technology law. A dual practitioner and academic, he publishes regularly on emerging legal issues in the video game sector, with a particular focus on player protection, dark patterns and the regulation of monetisation mechanics.

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CONFLICTS OF INTEREST

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