



4.12. FR – France – National legal summary²⁴⁷

4.12.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication modifiée par la Loi du 25 Octobre 2021²⁴⁸ (Law on freedom of communication modified on 25 October, 2021 – Law on Freedom of Communication).
- Code de la santé publique²⁴⁹ (Public Health Code).
- Loi n° 2020-1266 du 19 octobre 2020 visant à encadrer l'exploitation commerciale de l'image d'enfants de moins de seize ans sur les plateformes en ligne²⁵⁰ (Law on commercial use of image of children below 16 years of age on online platforms)
- Code de la sécurité intérieure²⁵¹ (Homeland Security Code).
- Loi n° 2010-476 du 12 mai 2010 relative à l'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne²⁵² (Law about opening of online gambling and money games to competition and regulation).

Secondary legislation:

- *Décret n° 2020-1349 du 4 novembre 2020 relatif aux modalités de régulation de l'Autorité nationale des jeux*²⁵³ (Decree about regulation of the public authority for gambling and money games - VSP Decree implementing the Law on Freedom of Communication).
- Décret n° 2021-1922 du 30 décembre 2021 pris pour l'application de l'article 60 de la loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication et fixant les principes généraux applicables aux communications commerciales audiovisuelles fournies sur les plateformes de partage de vidéos²⁵⁴ (Decree implementing Law on freedom of communication and fixing general principles about commercial communications on VSP).
- Décret n°92-280 du 27 mars 1992 pris pour l'application des articles 27 et 33 de la loi n° 86-1067 du 30 septembre 1986 et fixant les principes généraux définissant

²⁴⁷ The factsheet on France incorporates the feedback received from the French Regulatory Authority for Audiovisual and Digital Communication (Arcom), during the checking round with the national regulatory authorities.

²⁴⁸ <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006068930/>.

²⁴⁹ https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072665/2022-04-27/.

²⁵⁰ <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042439054/2022-04-13/>.

²⁵¹ https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000025503132/LEGISCTA000042501521?idSecParent=LEGISCTA000029658632&anchor=LEGISCTA000042501521#LEGISCTA000042501521.

²⁵² <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000022204510/2022-04-27/>.

²⁵³ <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042500096/2022-04-20/>.

²⁵⁴ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044792286>.



les obligations des éditeurs de services en matière de publicité, de parrainage et de télé-achat²⁵⁵ (Decree implementing articles 27 & 33 of Law on freedom of communication establishing general principles for advertising, sponsorship and tele-shopping).

- Décret n° 2021-793 du 22 juin 2021 relatif aux services de médias audiovisuels à la demande²⁵⁶ (Decree about VOD services)
- Délibération du Conseil supérieur de l'audiovisuel du 16 février 2010 relative au placement de produit dans les programmes des services de télévision modifiée par la Délibération du 24 juillet 2012²⁵⁷ (Deliberation of Superior Audiovisual Council from February 16, 2010 relating to product placement in the programs of television services modified by the Deliberation of July 24, 2012).
- Délibération du Conseil supérieur de l'audiovisuel du 22 janvier 2013 relative aux conditions de diffusion des communications commerciales en faveur des opérateurs de jeux d'argent et de hasard²⁵⁸ (Deliberation of Superior Audiovisual Council from January 22, 2013 relating to the conditions for the dissemination of commercial communications in favour of gambling operators)

Self- and co-regulatory instruments:

- Autorité de régulation de la communication audiovisuelle et numérique Arcom La charte alimentaire 2020-2024²⁵⁹ (Arcom Food charter 2020-2024).
- Autorité de régulation de la communication audiovisuelle et numérique Arcom Recommandations sur les mesures de lutte contre la manipulation de l'information en matière de communications commerciales et de promotion de contenus d'information se rattachant à un débat d'intérêt général (n°12, 13 et 14) au titre de la loi 2018-1202 du 22 décembre 2018 relative à la lutte contre la manipulation de l'information²⁶⁰ (Arcom's recommendations on measures to combat manipulation of information in commercial communications).
- Communication n° 2022-C-001 du 17 Février 2022 portant adoption de lignes directrices relatives aux contenus des communications commerciales des opérateurs de jeux d'argent et de hasard, Autorité nationale des jeux – ANJ²⁶¹

²⁵⁵ <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000346165/2022-04-12/>.

²⁵⁶ <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000043688681/2022-04-27/>.

²⁵⁷ <https://www.csa.fr/Reguler/Espace-juridique/Les-textes-adoptes-par-l-Arcom/Les-deliberations-et-recommandations-de-l-Arcom/Recommandations-et-deliberations-du-CSA-relatives-a-d-autres-sujets/Deliberation-du-16-fevrier-2010-relative-au-placement-de-produit-dans-les-programmes-des-services-de-television-modifiee-par-la-Deliberation-du-24-juillet-2012>.

²⁵⁸ <https://www.csa.fr/Reguler/Espace-juridique/Les-textes-adoptes-par-l-Arcom/Les-deliberations-et-recommandations-de-l-Arcom/Recommandations-et-deliberations-du-CSA-relatives-a-d-autres-sujets/Deliberation-du-22-janvier-2013-relative-aux-conditions-de-diffusion-des-communications-commerciales-en-faveur-des-operateurs-de-jeux-d-argent-et-de-hasard> (en cours de modification : <https://www.arcom.fr/vos-services-par-media/consultations-publiques/consultation-publique-sur-un-projet-de-deliberation-relative-aux-jeux-d-argent>).

²⁵⁹ <https://www.arcom.fr/ressources/espace-juridique/textes-juridiques/la-charte-alimentaire-2020-2024>.

²⁶⁰ <https://www.csa.fr/Informer/Toutes-les-actualites/Actualites/Lutte-contre-la-manipulation-de-l-information-le-CSA-publie-le-bilan-des-mesures-mises-en-oeuvre-par-les-plateformes-en-ligne-en-2020>.

²⁶¹ https://anj.fr/sites/default/files/2022-02/Communication%202022-C-001_Lignes%20directrices%20PUB.pdf.



(National authority for games ANJ communication adopting guidelines on the content of commercial communications by gambling operators).

- Ministère de la Transition Écologique et Arcom : Guide Méthodologique à l'élaboration d'un contrat climat et la déclaration sur la plateforme publicité-responsable²⁶² (Ministry of ecological transition and Arcom Guide for drawing up a climate contract and signing in on the platform²⁶³).

4.12.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual Media Services Directive (AVMSD). Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

4.12.2.1. Definitions

Table 38. Definition of the main concepts related to commercial communications

Concept	Existence of a definition
Audiovisual commercial communications	Yes.
Television advertising	Yes.
Advertiser	No.
Surreptitious commercial communication	Yes.
Misleading commercial communication	Yes.
Virtual advertising	No.
Sponsorship	Yes.
Sponsor	No.
Sponsored content	No.
Product placement	Yes.
Other: (Specify)	Teleshopping.

²⁶² <https://www.publicite-responsable.ecologie.gouv.fr/IMG/pdf/guide.pdf>.

²⁶³ <https://www.publicite-responsable.ecologie.gouv.fr/IMG/pdf/guidelines.pdf>.



Source: French response to European Audiovisual Observatory standardised survey

4.12.2.1.1. Audiovisual commercial communications

Article 2, 1° of VSP Decree implementing the Law on Freedom of Communication defines audiovisual commercial communications by transposing the text of the revised AVMSD verbatim as follows:

Images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme or a user-generated video in return for payment or for similar consideration or for self-promotional purposes. Audiovisual commercial communications are in particular television advertising, sponsorship, telesales, product placement and any other technically feasible means.

4.12.2.1.2. Television advertising

Article 2 of Decree implementing articles 27 & 33 of the Law on Freedom of Communication, applicable only to television and on-demand audiovisual media services, defines television advertising by transposing the text of the revised AVMSD verbatim as:

any form of television message broadcast against payment or other consideration aimed at either promoting the supply of goods or services, including those presented under their generic name, in connection with a commercial, industrial, craft or professional activity, or at the commercial promotion of a public or private company.

With regard to video-sharing platforms, Article 2, 2° of the VSP Decree implementing the Law on Freedom of Communication similarly defines advertising as:

Any form of announcement whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking in connection with a trade, business, craft or profession in order either to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment, or promote a company.

4.12.2.1.3. Advertiser

There is no definition of advertiser.

4.12.2.1.4. Surreptitious commercial communication

Article 4 of the VSP Decree implementing the Law on Freedom of Communication defines surreptitious commercial communications by transposing the text of the revised AVMSD verbatim as follows:



Representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in programmes or user-generated videos when such representation is intended to serve as advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration.

4.12.2.1.5. Surreptitious advertising

Article 9 of the Decree implementing articles 27 & 33 of the Law on freedom of communication establishing general principles for advertising, sponsorship and tele-shopping provides for the prohibition of surreptitious advertising and defines it on television as:

Representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in programmes when such representation is made for advertising purposes.

It should be noted that there is a difference between the definition of surreptitious commercial communications on VSPs and the definition of surreptitious advertising on TV: there is a criterion of “intention” in the first definition (“de façon intentionnelle”) which doesn’t exist in the second one (which was chronologically the first one).

4.12.2.1.6. Misleading commercial communication

Article 6 of the Decree implementing articles 27 & 33 of the Law on Freedom of Communication defines and prohibits this type of communication on television:

Advertising must be designed with respect for the interests of consumers. Any advertising containing, in any form whatsoever, claims, indications or presentations that are false or likely to mislead consumers is prohibited.

4.12.2.1.7. Virtual advertising

There is no definition of virtual advertising.

4.12.2.1.8. Sponsorship

Article 2, 3° of the VSP Decree implementing the Law on Freedom of Communication defines sponsorship by transposing the text of the revised AVMSD verbatim as follows:

Any contribution made by a public or private undertaking or natural person not engaged in providing a television network, on-demand audiovisual media service or video-sharing platform or in the production of audiovisual works, to the financing of video-sharing platform services, user-generated videos or programmes, with a view to promoting their name, trademark, image, activities, products or services.



Article 17 of the Decree implementing articles 27 and 33 of the Law on freedom of communication establishing general principles for advertising, sponsorship and tele-shopping defines sponsorship as:

any contribution made by a public or private undertaking or natural person not engaged in providing television services or on-demand audiovisual media services or providing services of video sharing platforms or in the production of audiovisual works, to the financing of television services or programmes with a view to promoting its name, its trade mark, its image or its activities.

4.12.2.1.9. Sponsor

There is no definition of sponsor.

4.12.2.1.10. Sponsored content

There is no definition of sponsored content.

4.12.2.1.11. Product placement

Article 2, 5° of the VSP Decree implementing the Law on Freedom of Communication defines product placement by transposing the text of the revised AVMSD verbatim as follows:

All forms of audiovisual commercial communications consisting of the inclusion of or reference to a product, a service or the trademark thereof so that it is featured within a programme or a user-generated video, normally in return for payment or for similar consideration.

The Conseil Supérieur de l'Audiovisuel (CSA) (now Arcom)²⁶⁴ deliberation on product placement quotes the definition of the AVMSD and adds that:

For the purposes of this deliberation, product placement is considered to be placement made in return for payment, i.e., the supply, formalised by a contract, of goods or services whose brand is identifiable within the program.

4.12.2.1.12. Other definitions

Article 2, 4° of the VSP Decree implementing the Law on Freedom of Communication defines tele-shopping as: "Direct offers broadcast to the public in return for payment with a

²⁶⁴ Former regulatory body, now called *Autorité de régulation de la communication audiovisuelle et numérique* (Arcom - Regulatory Authority for Audiovisual and Digital Communication: <https://www.arcom.fr/>).



view to the supply of goods or services, including immovable property, rights and obligations.”

Article 21 of the Decree implementing articles 27 & 33 of the Law on freedom of communication establishing general principles for advertising, sponsorship and teleshopping defines teleshopping on television as: “Direct offers broadcast to the public in return for payment with a view to the supply of personal or immovable property, services, or rights and obligations.”

4.12.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

As a general note, it should be highlighted that Article 60 of the Law on Freedom of Communication, which was modified in 2021 as part of the transposition of the revised AVMSD, provides an obligation for the newly established Regulatory Authority for Audiovisual and Digital Communication (Arcom) to ensure that the VSP providers under French jurisdiction comply with the following provisions vis-à-vis commercial communications:

1. – The Audiovisual and Digital Communication Regulatory Authority shall see to it that video-sharing platform providers:

- 1. Take appropriate measures so that the programmes, user-generated videos and audiovisual commercial communications they provide comply with the provisions of Article 15 of this Law;*
- 2. Comply with the requirements laid down by decree of the Council of State concerning audiovisual commercial communications that they market, sell or arrange themselves and take appropriate measures so that those rules are also followed with respect to audiovisual commercial communications marketed, sold or arranged by third parties;*
- 3. Clearly inform users of the existence of such commercial communications within programmes and user-generated videos, where such communications have been declared by the users uploading them or they have knowledge of them.*

The VSP Decree implementing the Law on Freedom of Communication, as well as the Decree implementing articles 27 & 33 of the Law on Freedom of Communication further clarify the obligations related to commercial communications stemming from relevant legislation, details of which can be found further below in this section.

It should be noted that Article 3 of the VSP Decree requires that ACCs be easily recognisable as such.



4.12.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

According to Article 8 of the Decree implementing articles 27 & 33 of the Law on Freedom of Communication, advertising for alcoholic beverages is prohibited on television when the beverage has an alcohol content of more than 1.2 degrees.

Article 30 of the Decree on VOD refers to the same prohibition with regard to on-demand media services.

It is, however, not forbidden for video-sharing platforms, as Article L. 3323-2, 9° of the Public Health Code only prohibits commercial communications for alcohol on online websites aimed primarily at young people.

With regard to tobacco and tobacco-related products such as electronic cigarettes, all commercial communications for such products are prohibited under Articles L3513-4 and L3512-4 of the Public Health Code. Therefore, it is also forbidden for VSPs to host or edit tobacco ACCs.

4.12.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article L. 5122-6 of the Public Health Code prohibits advertising for medicinal products and medical treatment available only on prescription: “Advertising to the public for a medicinal product is only permitted on the condition that this medicinal product is not subject to medical prescription ...” The general prohibition applies to all media.

4.12.2.2.3. Surreptitious audiovisual commercial communications

Surreptitious audiovisual commercial communications are prohibited as per Article 4 of the VSP Decree implementing the Law on Freedom of Communication.

Surreptitious advertising on television and on on-demand media services is prohibited as per Article 9 of the Decree implementing articles 27 & 33 of the Law on Freedom of Communication and Article 30 of the Decree about VOD services.

4.12.2.2.4. Subliminal techniques in commercial communications

Article 5 of the VSP Decree implementing the Law on Freedom of Communication states that: “Audiovisual commercial communications on video-sharing platforms do not use subliminal techniques.”

The same rule can be found in article 10 of the Decree implementing Articles 27 & 33 of the Law on Freedom of Communication and Article 30 of the Decree about VOD services.



4.12.2.2.5. Prejudice with regard to human dignity

Article 6, 1° of the VSP Decree implementing the Law on Freedom of Communication specifies that audiovisual commercial communications available on video-sharing platforms “must not undermine the human dignity and image of women”.

The same principle can be found in article 3 of the Decree implementing Articles 27 & 33 of the Law on Freedom of Communication and Article 30 of the Decree about VOD services.

4.12.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g., sex, racial or ethnic origin, nationality, religion, etc.)

As per Article 6, 2° of the VSP Decree implementing the Law on Freedom of Communication:

Commercial communications available on video-sharing platforms must not include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age, sexual orientation or gender identity.

4.12.2.2.7. Encouragement of behaviour prejudicial to health or safety

Article 6, 3° of the VSP Decree implementing the Law on Freedom of Communication stipulates: “Commercial communications available on video-sharing platforms must not encourage behaviour prejudicial to health or safety”.

4.12.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Commercial communications available on video-sharing platforms must not encourage behaviour grossly prejudicial to the protection of the environment as per Article 6, 4° of the VSP Decree implementing the Law on Freedom of Communication.

4.12.2.2.9. Causing physical, mental or moral detriment to minors

According to Article 7 of the VSP Decree implementing the Law on Freedom of Communication,

Audiovisual commercial communications available on video-sharing platforms must not cause physical, mental or moral harm to minors; must not directly incite minors to purchase a product or service by exploiting their inexperience or credulity, directly incite them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in their parents, teachers or other persons, or unreasonably show minors in dangerous situations.



Besides, Arcom is tasked with promoting the development of codes of conduct for VSPs related to protection of minors, both in relation to commercial use of the image of children under 16 on online platforms, and to reduction of children's exposure to commercial communications with foods and beverages containing nutrients and substances with a nutritional or physiological effect, including fats, trans-fatty acids, salt or sodium and sugars. Both codes of conduct are explained further in section 4.12.7.

4.12.2.2.10. Other

N/A.

4.12.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

4.12.3.1. Sponsorship

Article L. 3323-2, 9° of the Public Health Code prohibits sponsorship for alcohol on an online site aimed primarily at young people and stipulates that direct or indirect propaganda or advertising for alcoholic beverages, the manufacture and sale of which is not prohibited, shall be permitted only for:

...9° online communication services, excluding those which, by their nature, presentation or purpose, appear to be mainly aimed at young people, as well as those published by sports associations, companies and federations or professional leagues within the meaning of the Sports Code, provided that the propaganda or advertising is neither intrusive nor interstitial. Any sponsorship operation is prohibited when its purpose or effect is direct or indirect propaganda or advertising for alcoholic beverages.

Also, as per Articles L3513-4 and L3512-4 of the Public Health Code, any sponsorship or patronage operation is prohibited when it is carried out by manufacturers, importers or distributors of tobacco products or when its purpose or effect is propaganda or direct or indirect advertising in favour of tobacco.

4.12.3.2. Product placement

There are no specific rules pertaining to product placement for video-sharing platforms in France.



Article 2, 1° of VSP Decree defines audiovisual commercial communications and includes product placement as a form of ACC. Thus, all requirements pertaining to ACCs in the VSP Decree apply to product placement as well.

4.12.4. Obligations regarding (v)blogs and (v)blogging

There are no specific rules relating to (v)blogs in French law, which means that if a v(blog) qualifies as a VOD service, it is subject to the rules applicable to VOD; if it qualifies as a video-sharing platform, it is subject to the rules applicable to video-sharing platforms. This is because the (v)blog has to be either a VOD service or a VSP, according to Article 2 of the Law on Freedom of Communication, which defines VSP and VOD services respectively along the following lines:

- 1-a service provided by an electronic communications network;*
- 2-the provision of programmes, user-generated videos or both, in order to inform, entertain or educate is the main purpose of the service or a dissociable section of the service or essential functionality of the service;*
- 3-the service provider does not have editorial responsibility over the contents but the organisation is determined by the video-sharing platform provider;*
- 4-a service classed as an economic activity.*

Article 2 provides for the definition of VOD service as an:

audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider.

4.12.5. Other relevant information

N/A.

4.12.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.



4.12.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

4.12.6.2. Gambling, betting, betting tipsters, etc.

All commercial communications by an operator in the gambling sector are governed by Articles D. 320-2 to D. 320-8 of the Homeland Security Code. These articles require, *inter alia*, that a commercial communication must be accompanied by a clearly readable warning message about the risks of gambling (Article D. 320-2), which must be combined with the telephone number of a gambling help line. For online commercial communications, there must be a clickable link to a website of the gambling help line (Article D.320-8).

In addition, Article D. 320-9 of the same code prohibits the following commercial communication practices for an operator in the gambling sector:

- 1° *When it encourages excessive gambling, trivializes or promotes this type of practice;*
- 2° *When it suggests that playing contributes to social success;*
- 3° *When it contains unfounded statements about the chances that players have of winning or the winnings they can expect to win;*
- 4° *When it suggests that gambling may be a solution to personal, professional, social or psychological difficulties;*
- 5° *When it presents the game as an activity to earn a living or as an alternative to paid work.*

Article D. 320-10 prohibits staging of minors, personalities or characters belonging to the world of minors or any representation of minors in a purchasing situation, etc.

Arcom has also developed several texts concerning commercial communications on gambling, but these only concern television and radio services.²⁶⁵

Finally, the French administrative authority for gambling and money games²⁶⁶ is responsible for monitoring and approving the promotional strategy for the coming year of each operator in the gambling sector pursuant to Article 34 paragraph IV of the Law on online gambling and money games. As part of this task, they may, for example, ask a gambling operator to withdraw a commercial communication that suggests gambling to minors or to persons prohibited from gambling or a commercial communication that

²⁶⁵ See for example, Deliberation of 22 January 2013 on the conditions for the dissemination of commercial communications in favour of gambling operators, <https://www.csa.fr/Reguler/Espace-juridique/Les-textes-adoptes-par-l-Arcom/Les-deliberations-et-recommandations-de-l-Arcom/Recommandations-et-deliberations-du-CSA-relatives-a-d-autres-sujets/Deliberation-du-22-janvier-2013-relative-aux-conditions-de-diffusion-des-communications-commerciales-en-faveur-des-operateurs-de-jeux-d-argent-et-de-hazard>. This deliberation will soon be modified, after an ongoing public consultation: <https://www.arcom.fr/vos-services-par-media/consultations-publiques/consultation-publique-sur-un-projet-de-deliberation-relative-aux-jeux-d-argent>.

²⁶⁶ “Autorité national des jeux” (hereinafter, “ANJ”), <https://anj.fr/>



promotes excessive gambling.²⁶⁷ Furthermore, the ANJ, an independent administrative authority for the gambling sector, has also published specific guidelines for gambling commercial communications. The guidelines specify the regulatory and legal framework for the commercial communications of gambling operators and, in particular, excessive gambling and protection of minors against gambling. The ANJ can ask for the withdrawal of such commercial communications.

4.12.6.3. Environmental or “green” claims for products

Following the amendment of Article 14 of the Law on Freedom of Communication by Law n°2021-1104 of 22 August 2021 on climate change,²⁶⁸ Arcom will be annually reporting on and promoting codes of good conduct (climate contracts) whose objective is to reduce commercial communications that have a negative effect on the environment, particularly in terms of greenhouse gas emissions, damage to biodiversity and use of natural resources. These codes should also prevent commercial communications that contain “greenwashing”.²⁶⁹ The environmental impact is communicated to consumers through environmental labelling. This article is applicable to VSPs.

A dedicated website was recently initiated,²⁷⁰ on which companies interested in climate contracts and those with mandatory obligations must register. A list of the companies that have registered a climate contract, as well as the contents of these contracts, was published on the website on 15 July 2022.

Arcom, together with the Ministry of ecological transition²⁷¹ issued a guide for drawing up a climate contract and signing in on the platform, detailing the information vis-à-vis the aforementioned climate contracts.

4.12.6.4. Other

N/A.

²⁶⁷ See for example a recent decision taken in this regard, Decision No. 2022-073 of 17 March 2022 ordering the company Winamax to withdraw the “Tout pour la daronne” commercial

<https://anj.fr/sites/default/files/2022-03/D%C3%A9cision%202022-073%20prescriptif%20%C3%A0%20WINAMAX%20de%20retirer%20la%20com%20cciale%20TOUT%20POUR%20LA%20DARONNE%20LA%20DARONNE.pdf>.

²⁶⁸ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043956924>.

²⁶⁹ Law n°2021-1104 of August 22nd 2021 on climate change also forbids commercial communications promoting fossil fuels and major greenhouse gas emitters: new passenger cars.

²⁷⁰ <https://www.publicite-responsable.ecologie.gouv.fr/>.

²⁷¹ Ministère de la Transition écologique, <https://www.ecologie.gouv.fr/en>.



4.12.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

4.12.7.1. Self- and co-regulatory bodies

4.12.7.1.1. Context of establishment and legal background

The Law on Freedom of Communication stipulates that Arcom will foster the elaboration of a “Code of Good Administrative Behaviour”, the climate contracts, and the charter on the commercial use of children’s images by VSPs for with regard to the obligatory measures mentioned in Article 60 of the said law. These codes and charters were in a preparatory phase at the time of preparing this factsheet.

4.12.7.1.2. Stakeholders involved

With regard to the Code of Good Administrative Behaviour, the climate contracts, and the charter on the commercial use of children’s images, the stakeholders involved in the development of these tools will include Arcom, Child Protection Associations, VSPs, food industry companies (for the Code of Good Administrative Behaviour), advertisers and the Autorité de régulation professionnelle de la publicité (ARPP).²⁷²

4.12.7.1.3. Scope and objectives

With regard to the Code of Good Administrative Behaviour, the aim is to reduce children’s exposure to commercial communications about foods and beverages containing nutrients and substances with a nutritional or physiological effect, including fats, trans-fatty acids, salt or sodium and sugars, whose excessive consumption in the general diet is not recommended.

With regard to the climate contracts, the aim is to reduce commercial communications that have a negative impact on the environment, particularly in terms of greenhouse gas emissions, damage to biodiversity and use of natural resources. These codes should also prevent commercial communications that contain “greenwashing”. Environmental impacts are communicated to consumers through environmental labelling.

²⁷² Autorité de régulation professionnelle de la publicité : <https://www.arpp.org/the-arpp/>.



With regard to the charter on the commercial use of children's images, as mentioned in section 4.12.2.2.10. and 4.12.7.1.1. of this factsheet, these charters must be adopted by VSPs and will need to meet a range of objectives aimed at protecting children under 16 from commercial use that could harm their rights and dignity.

Self-regulatory instruments also include rules on inappropriate ACCs for alcoholic beverages.

4.12.7.1.4. Code(s) of conduct

The Law on Freedom of Communication, Article 61, provides a mandate for Arcom to foster the elaboration of a "Code of good behaviour" by the VSPs with regard to all the measures mentioned in Article 60 of the said law, within which, VSPs are required to take measures protecting minors (as well measures related to media education, claims resolution, etc.) Emphasis on the protection of minors appears in Article 15 too, which is referred by Article 60 too. Besides, Article 15-1 of the Law on Freedom of Communication provides that Arcom will be tasked with promoting the development of a charter for VSPs on the commercial use of the image of children under 16 on online platforms, as prescribed under Article 4 of Law on commercial use of images of children below 16 years of age on online platforms, which article applies directly and only to VSPs and requires them to adopt charters to, *inter alia*, inform users about the relevant law concerning the commercial use of children (under 16), promote links with child protection associations, in particular to inform them about children's rights, encourage users to report audiovisual content that violates the dignity of children, protect children's personal data, improve reporting, in conjunction with child protection associations, of audiovisual content that violates children's dignity, and facilitate the right to erasure of personal data of minors.

Furthermore, Article 14 of the Law on Freedom of Communication states that Arcom is also responsible for promoting the development of a "Code of Good Administrative Behaviour" by VSPs, which also applies to VOD and TV services, concerning the reduction of children's exposure to commercial communications with foods and beverages containing nutrients and substances with a nutritional or physiological effect, including fats, trans-fatty acids, salt or sodium and sugars, the excessive consumption of which in the overall diet is not recommended. This has not yet been drafted.

Finally, with regard to the codes of good conduct (climate contract), as mentioned in section 4.12.6.3. of this factsheet, Article 14 of the Law on Freedom of Communication also requires Arcom to promote those climate contracts whose objective is to reduce commercial communications that have a negative effect on the environment.

The aforementioned codes and charters were in a preparatory phase at the time of preparing this factsheet.

While the Code of Good Administrative Behaviour has not yet been drafted, there is nevertheless a food charter signed on 30 January 2020 (before the implementation of the AVMS Directive in French law) which applies to television, radio and the digital industry. The charter provides that the voluntary digital actors make their best efforts to promote good eating habits and physical activity. They are also encouraged to suggest partnerships



with other signatories and public authorities to optimise the messages in favour of a healthy diet. The charter has not been signed by any major player in the digital industry, but it incorporates the new amended Article 14 of the Law on Freedom of Communication. The objective of the charter is to

reduce children's exposure to commercial communications relating to foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fats, trans-fatty acids, salt or sodium and sugars, excessive consumption of which in the general diet is not recommended". The Charter is assessed by ARCOM every year and does not provide for any sanctions if the Charter is not implemented by a signatory.

Additionally, the ARPP has produced horizontal codes,²⁷³ complemented with specific codes on children, alcohol, food behaviours and digital communication covering influencers.

4.12.7.1.5. Role of the (self-)regulatory bodies

Arcom shall encourage the drafting of the codes (Article 60), especially for measures mentioned in Article 60.

4.12.7.1.6. Period of activity (if limited)

The period of activity is not limited.

In the case of the charter on the commercial use of children's image, Arcom is required to publish a periodic report about the related measures.

4.12.7.1.7. Role of the regulatory authority in a co-regulatory system:

4.12.7.1.7.1. Regulatory body

Arcom will be responsible for promoting the codes and charters to be applied and respected by VSPs. According to the new Article 61 of the 1986 Act, it is implied that Arcom will promote the development of codes of conduct for all the provisions of Article 60, which includes all areas affecting VSPs even if these do not appear explicitly in Article 60. At the time of writing of this report, no code of good conduct had been elaborated on the basis of Article 61.

Arcom is obliged to publish a report on the implementation of these codes of conduct, as per Article 61 of the Law on Freedom of Communication, as well as to present the reports to the French Parliament (Article 18, 17° of the Law on Freedom of Communication).

²⁷³ https://www.arpp.org/nous-consulter/regles/codes-in-english/#toc_0_0.



4.12.7.1.7.2. Co-regulatory scheme

See under 4.12.7.1.1.

4.12.7.1.7.3. Relationship and roles of stakeholders

N/A.

4.12.7.2. Monitoring/evaluation, compliance and sanctioning powers

Arcom will be assessing the application and effectiveness of the commitments made under the charters and codes, mentioned under 4.12.7.1.1. and 4.12.7.1.4. of this factsheet, through periodic reports.

For the climate contracts, the environmental impacts of commercial communication will be communicated to consumers via an environmental display.

The issue of monitoring and supervision vis-à-vis the Code of Good Administrative Behaviour on the commercial use of children's images had not been elaborated at the time of preparation of this factsheet.

4.12.8. Cross-sector and cross-border collaboration

N/A.

4.12.9. Update on plans and practices related to new obligations of VSPs

There are no plans to update plans and practices regarding the tools and mechanisms in place in relation to new VSP obligations.

4.12.10. Studies, reports and research

The following reports have been prepared in relation to audiovisual commercial communications:

- Marc Le Roy, Le nouveau droit des plateformes de partage de vidéos, 2021, Légipresse, May 2021, page 205²⁷⁴

²⁷⁴ <https://www.legipresse.com/011-51181-le-nouveau-droit-des-plateformes-de-partage-de-vidéos.html>



- Loïc Peyen, La publicité, l'argument environnemental et la loi Climat et Résilience : halte au greenwashing ? JCP A, 20 September 2021, n° 2277²⁷⁵
- Laurent Carrié, Enfant influenceur : le contrôle parental sous contrôle de l'administration, du juge, des plateformes de partage de vidéos, du CSA ... et de l'enfant. Légipresse 2020, p. 687²⁷⁶

4.12.11. Data compilation

This factsheet is based on data compiled by Marc Le Roy, PhD in Law.

²⁷⁵ <https://www.lexiskiosque.fr/catalog/jcp-a/jcp-a/n38-2021>

²⁷⁶ <https://www.legipresse.com/011-51014-enfant-influenceur-le-controle-parental-sous-controle-de-ladministration-du-juge-des-plateformes-de-partage-de-vidéos-du-csa-et-de-lenfant.html>