

GAMBLING: AN EVOLVING SECTOR, REGULATORY CHALLENGES

Public thematic report

Executive Summary

September 2023

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A highly regulated economic sector that has undergone major changes since it was opened up to competition

Since lotteries were banned in 1836, gambling has been prohibited in principle, except where legislative exceptions have been made.

Such exemptions have been introduced over time, for social, budgetary or economic reasons. They cover lotteries (draw and scratch games), horse betting, casino games (or 'table games'), slot machines and sports betting. The legislative framework for these games aims to preserve public order, in particular by protecting players and preventing fraudulent or criminal activities, and by subjecting their operators to an exceptional legal and tax framework for an activity that is "neither an ordinary business nor an ordinary service", according to Article L.320-2 of the French Internal Security Code.

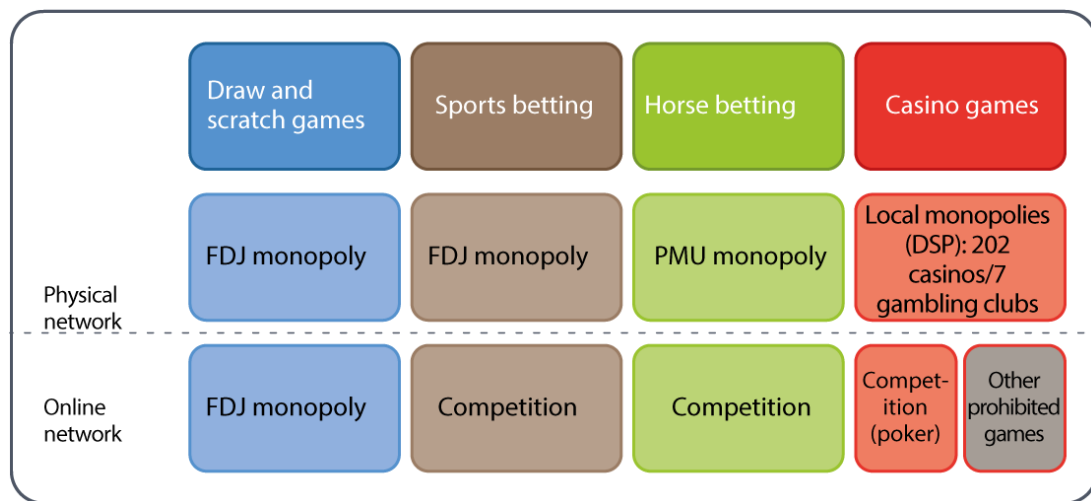
This sector has undergone significant change since the 1990s, driven by the case law of the Court of Justice of the European Union (CJEU) and the digitalisation of gambling. It was reformed by the law of May 12, 2010 on the opening up to competition and the regulation of the online gambling sector, which opened up online sports and horse-race betting and online poker to competition, and then by the Act of May 22, 2019 for the growth and transformation of businesses (known as the "Pacte law"). This law, as well as authorising the privatisation of La Française des Jeux (FDJ), reorganised the regulatory framework, notably with the creation of the National Gaming Authority (ANJ). In 2020, the tax base for the various forms of authorised gambling was unified.

Since the law of 12 May 2010¹, French law has made a distinction between a range of games offered in physical points of sale, known as "land-based", and a range of digital games, accessible "online".

The gambling sector is made up of private operators, designated or authorised by the State and subject to its administrative control. FDJ and Paris Mutuel Urbain (PMU) operate a physical network with exclusive rights to lotteries and sports and horse-race betting. Casinos and Parisian gambling clubs operate table games, while the former also have exclusive rights to slot machines. Finally, 17 licensed operators operate "online" horse-race betting, sports betting and poker "online" in competition with each other.

¹ This report is based on budgetary, financial, tax and activity data up to 2021. Wherever possible, they have been updated to 2022.

Composition of the gambling sector



Source: Court of Accounts

A thriving and rapidly digitising industry

As in many other countries, the French have an enduring passion for gambling and, despite institutional and tax obstacles, the sector is growing steadily. According to surveys, almost half of French adults gamble (93 % of whom play lotteries) and almost a quarter place bets. Since online gambling was authorised in 2010, stakes have risen by 42 % to reach €43.2 billion in 2021. The gross gaming revenue (GGR) generated by operators (which corresponds to total bets placed minus total sums paid out to players, before tax) amounted to €10.7 billion in 2021 and €12.9 billion in 2022, up 20% in one year, after a decade of steady growth (+16 %).

The “land-based” business, driven by the lottery, remains dominant. It accounts for 83 % of the sector’s GGR. “Online” activity has also grown, both in terms of the number of players and bets, mainly driven by sports betting, for which GGR has increased tenfold since 2015. The health crisis, which restricted access to points of sale in 2020, has accelerated this trend. But this “online” growth came to a halt in 2022. The competitive market’s share of GGR rose from 15 % in 2019 to 26 % in 2021 before falling back to 23 % in 2022, following the full reopening of physical distribution networks. The number of “unique” player accounts increased by 6 % between 2021 and 2022, but GGR from online horse-race betting and online sports betting stagnated.

This distinction between “land-based” and “online” gambling has been the cornerstone of the French system since 2010. However, it is becoming blurred as a result of digitisation and gambling diversification strategies. FDJ, PMU and certain casino groups are also licensed online betting or poker operators. For both FDJ and PMU, the accounts of activities under exclusive rights are separate from those of competing activities, but in terms of commercial offers and promotional strategies, this distinction is becoming blurred.

Contrasting economic dynamics between operators and gambling segments

The now privatised Française des Jeux dominates the market

FDJ dominates the gambling sector, accounting for 50.5 % of total GGR in 2022 across all segments. After the health crisis, it quickly recovered its level of activity.

In 2019, FDJ was privatised and became a listed company. The sale of the majority of the capital brought in €1.89 billion for the State, which remains a shareholder with 20 % of the capital and 28 % of the voting rights. The operation was not intended to change the economics of the gambling sector, but was prompted by the State's new investment policy and the need to finance priority public investments. FDJ retained exclusive rights to all lotteries and "land-based" sports betting for 25 years, which may be renewed, in return for a cash payment of €380 million to the State in 2020.

FDJ has over 30,000 points of sale in more than 11,000 municipalities. Its strategy, set out until 2025, aims to diversify its "land-based" and "online" gambling activities, its ancillary point-of-sale activities (payment terminals) and its international activities (business-to-business services, transnational lotteries such as the Euromillions). Its "extensive" business model, which consists of offering small stakes to a large pool of players, aims to reconcile profitability and public policy objectives by channelling players into legal activities. FDJ is in the process of acquiring ZEturf, a licensed online horse-race betting and online sports betting operator and PMU's main competitor in online horse-race betting.

A modernised PMU seeking to increase its profitability

PMU is an economic interest grouping (EIG) formed by horse racing companies. It has retained this legal form despite an attempt to transform it into a public limited company in 2020, but has gained greater autonomy in devising its development strategy. It accounted for more than 17 % of "land-based" GGR in 2022 (€1.7 billion). This EIG has exclusive rights for an unlimited period for "land-based" horse-race betting, the profits from which (€740 million in 2021) finance the horse-racing industry and horse breeders.

PMU offers betting at 235 racecourses and some 13,000 points of sale. After the health crisis, it gradually restored its revenues to the level achieved in 2019. It is seeking to renew its customer base by attracting new generations of gamblers. It has also opened up to a foreign customer base, including "major international gamblers", who use a very large volume of data in real time using predictive algorithms to determine the probability of winning on a set of races. These players account for more than 10 % of the stakes placed with PMU. The practices of these foreign gamblers, whose bets are placed by foreign operators into the common pool of "land-based" betting, raise a number of questions, particularly in terms of equality between gamblers.

Casinos and gambling clubs with a local monopoly and no direct online competition

The 202 "land-based" casinos are either independent or owned by one of the major casino groups. The latter are also investing internationally. The right to operate a casino is part of a public service concession signed with a local authority. Casinos are subject to specific obligations, such as the development of cultural or restaurant activities, and such as contribute to local entertainment and the local economy. In Paris, they have been replaced by seven "gambling clubs", currently in an experimental phase, owned by casino groups. These gambling clubs offer table games but are not authorised to operate slot machines. Casinos and gambling clubs together accounted for 20 % of the sector's total GGR in 2022, a sign that the sector recovered in one season from the effects of the health crisis (its GGR had fallen to 10% of total GGR in 2021).

Since 2011, casinos have seen their GGR grow by 7 %, with slot machines accounting for 80 % of this growth. They were hit hard by the health crisis, with a 55 % drop in GGR between the 2019-2020 and 2020-2021 seasons. During the 2021-2022 financial year, attendance recovered and bets increased by 130 %, reaching an unprecedented level. Casinos are facing competition from "online casinos", which are illegal in France, of which the public is not always aware. Some operators expect to receive authorisation and are preparing

for this, while others are setting conditions or are opposed to the idea in order to avoid destabilising existing casinos and their catchment areas. The debate on channelling online casino players towards legal services has not yet been settled. It should be resolved after an in-depth analysis that takes account of all the interests involved.

Online operators in competition with each other

Lastly, 17 licensed “online” operators, with a variety of legal statuses and often located abroad (particularly in Malta), are competing in the growing sector of online sports and horse-race betting and online poker. This sector accounted for around 20% of total GGR in 2021. Each of these three segments is dominated by one or two main players and a number of secondary competitors. Competition is strong in the fast-growing online sports betting segment, where market share has more than tripled since 2011: around 75 % of market share is held by the three industry leaders, Winamax, Betclic and Unibet. By contrast, the proportion of “online” GGR generated from horse-race betting has halved in ten years; PMU and ZEturf, which FDJ is preparing to acquire, account for 91% of GGR from these bets. Finally, online poker is attracting new operators, including FDJ.

Digitalisation of the sector increasing competition and encouraging innovation

Online operators are pursuing sales diversification strategies and expansion policies supported by sustained advertising campaigns. The prospect of powerful foreign operators entering the sector is exacerbating this competition.

Innovations in online gambling raise questions about their regulatory framework, authorisation and control, as well as tax considerations. For example, non-fungible tokens (NFTs), which are not currently subject to gambling regulations, may form part of a range of services that can be assimilated to gambling and are therefore subject to authorisation. However, their promoters reject this assimilation, arguing that their offers correspond to entertainment.

Sports betting on virtual or “e-sports” competitions is not legal, as these competitions are not considered to be sporting in nature, but are difficult to prosecute. Some operators are arguing for their authorisation in order to channel demand towards a legal framework, an idea that has attracted the attention of authorised operators, including FDJ.

Metaverse platforms also offer the prospect of immersion in closed virtual environments that are conducive to gambling.

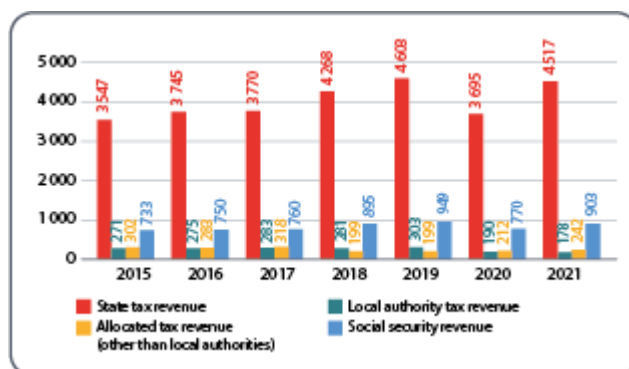
These technologies, which may present risks as regards the safeguarding objectives of gambling policy, call for vigilance and responsiveness on the part of the State and the regulator, as well as an ability to anticipate future changes.

Substantial tax receipts, but greater evaluation required

Gambling operators are subject to ordinary taxes (corporation tax, local taxes). However, gambling activities are mainly subject to specific levies, which accounted for 90% of the sector’s public levies in 2021. Gamblers’ winnings, on the other hand, are generally tax-exempt.

The reform of the bases for specific levies, previously made up of stakes and now GGR, was initiated in 2018 for gambling clubs, based on the casino levy model, and extended to lotteries and sports betting in 2020 and then to horse-race betting in 2022. The rates have been increased as a result of the reduction in the base, as one of the objectives of the reform was to maintain a stable levy rate.

Specific public levies for the State, local authorities and other bodies from 2015 to 2021 (in € million)



Source: Court of Accounts based on data from DB, DGFiP, DGDDI, FDJ and PMU

Revenue from these specific taxes rose from nearly €5 billion to more than €6 billion between 2015 and 2019, before falling in 2020 due to the health crisis and then recovering to €5.8 billion in 2021. In 2021, 77% of this revenue went to the State budget, 15% to social security bodies, 4% to local authorities (from casinos and racing) and 4% to other bodies.

Two-thirds of the State's tax revenue comes from lotteries (€2.9 billion). More than 80% of local authority tax revenue comes from casino levies (€281 million in 2019). Their fall in 2020-2021 (to €155 million) was offset by exceptional allocations from the State.

The other allocations, which finance public support policies, fund the racing companies (€93 million from levies on horse-race betting), the national sports agency (€112 million from levies on lotteries, sports and horse-race betting and online poker), the national public health agency (€10 million from horse-race betting and online poker) and the heritage foundation (€31 million from lotteries).

Revenues intended for social security bodies, CSG, CRDS and levies on sports betting and online poker, amount to almost €600 million, over 70% of which comes from lotteries.

This specific taxation of gambling brings together more than thirty taxes, the management of which remains complex. Above all, its impact on the economic performance of the different sectors has not been measured. Greater understanding is needed to ensure that it is in line with the dynamic nature of the sector, and even that it is adapted to new forms of gambling.

Gambling regulation: consolidation required

The regulatory system for gambling introduced by the Pacte law and the decree of October 2, 2019 reforming the regulation of gambling clarified the scope of exclusive rights, better defined the State's "close control" over the operators that benefit from them and strengthened the sector's regulatory framework, with the creation of the National Gambling Authority (ANJ).

The decree of October 2, 2019 reaffirmed the objectives of the State's gambling policy. These are to *"limit and supervise the supply and consumption of games and control their operation in order to:*

1. *Prevent excessive or pathological gambling and protect minors;*
2. *Ensure the integrity, reliability and transparency of gambling operations;*
3. *Prevent fraudulent or criminal activities as well as money laundering and the financing of terrorism;*

4. Ensure the balanced exploitation of different types of gambling in order to avoid any economic destabilisation of the sectors concerned”.

The reform has left the public authorities with a number of responsibilities that require a renewed commitment from all government departments and enhanced inter-ministerial coordination, alongside the regulatory functions devolved to the ANJ.

The State is responsible for adapting the sector’s legal framework. By decree, it sets the caps on the Return to Player (RTP) rates, which are calculated by dividing the sums paid out to winners by the sums staked over a given period, and are a key regulatory instrument. It also approves the two “reference frameworks” for operators, the first concerning the prevention of excessive and pathological gambling and gambling by minors, the second concerning the fight against fraud and money laundering.

It also exercises administrative policing powers over gambling, as well as “close control” over La Française des Jeux and comparable special control over PMU.

Lastly, the terms and conditions governing the exploitation of exclusive rights are set out in an agreement and specifications approved by decree in the Council of State, and are the subject of an annual report submitted to the ministers responsible for the economy and the budget.

In addition, FDJ is subject to the obligations that apply to all gambling operators under the control of the ANJ, as well as to the specific obligations imposed on the two holders of exclusive rights (FDJ and PMU), in particular that of having all new games and the annual gambling programme approved by the ANJ.

The ANJ, a young institution with increased responsibilities

The ANJ, a collegiate regulatory and supervisory authority, took over from the former online gaming regulatory authority (ARJEL), which was created in 2010. It ensures compliance with the four gambling policy objectives outlined above and monitors gambling operations. It has significant supervisory and sanctioning powers, even if these have not yet been applied at full capacity.

Since mid-2020, the ANJ has established its role as an intermediary for operators. It has monitored, approved and then evaluated the implementation of their promotional strategies, which are required to comply with “guidelines”, and their action plans. Recently, the ANJ rejected FDJ’s promotional strategy as excessive. It has defined or approved the technical characteristics of online games and defined the conditions for betting on the results of each sport.

In September 2022, the ANJ referred a case to the Sanction Committee for the first time, following a procedure that nonetheless remains lengthy to implement.

In view of the sector’s rapid development, the ANJ and the relevant government departments will need multi-disciplinary expertise to monitor, alert, process information and statistics, and conduct forward-looking thinking and research in various gambling-related fields. The ANJ must also step up its monitoring of compliance with RTP regulations and operators’ aggressive promotional strategies, and continue to develop tools for blocking illegal websites.

The fourth gambling policy objective, “*balanced exploitation of different types of gambling*”, suggests economic regulation, but neither its meaning nor its implications are clearly defined. The ANJ has certain tools that could be used for such economic regulation, if a doctrine were defined.

Despite its disparate nature, the gambling sector has grown steadily over the last ten years. The development of online gambling, within a highly competitive environment, accounts for a large part of this growth, particularly at the time of the health crisis, even though its GGR represented just 17% of the sector's total GGR in 2022.

The sector's dynamism also stems from the implementation of more targeted and effective advertising strategies to hold players' attention, although these strategies were not immediately moderated.

In addition to regulating competing online operators, the ANJ must ensure that the strategies of operators holding exclusive rights remain in line with the gambling policy framework defined by the State.

The ANJ must also ensure compliance with the principles underpinning the legal framework and justify express exemptions to the principle of prohibiting gambling, particularly when new techniques, whether algorithms, blockchains or metaverse platforms, multiply the possibilities for playing and betting. The creation of new powers should strengthen the ANJ's capacity for action, rendering it more relevant and effective more rapidly.

However, this independent administrative authority does not have all the powers needed to regulate actual or potential abuses by gambling operators, particularly with regard to the innovations emerging in the digital world. The debate surrounding the authorisation of online casinos remains open, in line with the objective of avoiding any economic destabilisation of the industry.

If this objective were to be achieved, it would strengthen the authority of the ANJ. It would then be able to examine gambling innovations and the adjustments they require in the light of the safeguarding objectives of gambling policy.

Recommendations

1. From 2024, produce a biennial summary of the effects of taxation on operators' gross gaming revenue (*ministry of the economy, finance and industrial and digital sovereignty, ministry of the interior and overseas territories, ministry of agriculture and food sovereignty*).
2. By 2024, set up within the ANJ a multi-disciplinary monitoring, collection, analysis and research centre specialising in gambling (ANJ).
3. Establish the operational doctrine of the ANJ before the adoption of its next strategic plan for the fourth gambling policy objective set out in Article L. 320-3 of the Internal Security Code ("to ensure the balanced exploitation of different types of gambling in order to avoid any economic destabilisation of the sectors concerned") (ANJ).
4. As part of the close control exercised by the State over Française des Jeux (FDJ), ensure that the company's 2025-2030 development strategy is consistent with the objectives set out in Article L. 320-3 of the Internal Security Code (*ministry of the economy, finance and industrial and digital sovereignty*).
5. Initiate convergence of the arrangements applied to the PMU's major international gamblers with those for online betting (*ministry of the economy, finance and industrial and digital sovereignty, ministry of agriculture and food sovereignty*).
6. Subject the PMU's partners to a levy on GGR and subject the winnings of the PMU's major international gamblers in France to a levy on non-commercial profits (*ministry of the economy, finance and industrial and digital sovereignty*).
7. Enable the chairman of the ANJ, prior to referral to the sanctions committee, to give operators formal notice to comply with its requests (*ministry of the economy, finance and industrial and digital sovereignty*).
8. Establish the legal framework for gambling involving NFTs (*ministry of the economy, finance and industrial and digital sovereignty*).