

## Regulation

# Market Focus: France

## Is ARJEL doing a good job of regulating one of Europe's largest potential markets, and could online casino regulation be on the agenda?

Robert Simmons | 25 July 2019



**Gambling in France** was historically completely prohibited due to the Roman Catholic church's stance on the pastime. In modern times, gambling on games of chance is banned as part of the French Code of Homeland Security (2012). However, over the last decade, there have been several exemptions granted which allow certain gambling activities, subject to strict regulations and licensing.

The French definition of a game of chance, enshrined within the French code of Homeland Security, classifies games of chance as “any operation offered to public participation, regardless of the designation it may receive, in order to trigger the hope of a gain which would be acquired, even partially, through chance and for which the operator requires from participants a financial contribution”. This definition applies to both land-based and online gambling.

## Regulation

The **Autorité de Régulation des Jeux en Ligne** (ARJEL) has regulated online gambling in France since the market first opened in 2010. It is the sole authority responsible for the regulation, licensing and enforcement of French gambling law. It can currently issue licences for online poker, sports betting and betting on horseracing.

Online gambling and online sports betting are defined in French law as “any gambling game or betting performed exclusively through a service of online communication to the public”. Moving one step further, operators are defined in law as persons offering to the public on a

regular basis, online gambling or betting services with stakes having a monetary value and under terms and conditions that constitute a standard membership agreement. This definition only applies to sports betting, betting on horseracing and online poker.

Poker games played online are allowed and are subject to a “club game” licence for online gambling operators from ARJEL. There are currently only 11 poker games which are allowed under French law.

Online betting on horseracing is permitted and regulated by French governmental Decree 2010-498 which gives the broad definition of the types of horse races on which bets can be made online subject to the general principles applicable to pooled betting. Betting on sports is regulated by a separate decree (Decree 2010-483), which outlines the competitions and types of sports results on which markets can be offered.

Bets can only be placed on certain sporting activities, types of results and competitions. These events are determined by ARJEL following consultations with the sporting federations involved. A full list of permitted events and activities is published on the French regulator’s website and the regulator is empowered to add new events, competitions or results onto its list as they become available.

According to the requirements of this process, sporting federations retain all usage rights over the matches and competitions they organise, and as such licensed operators can only offer betting on these events after they have signed an agreement with the relevant body. Under French law, sporting federations are obliged to offer agreements to any operator who requests one if the operator meets its conditions for betting. All such agreements are subject to review by both ARJEL and French competition authorities to check the same terms are being offered to all operators.

### **France in numbers**

**Population:** 67 million

**GDP per capita:** \$38,476

**Internet penetration:** 76.8%

**President:** Emmanuel Macron

**Principal regulatory body:** Autorité de Régulation des Jeux en Ligne (ARJEL)

### **Licensing**

Only operators who receive a licence from ARJEL can offer gambling products which target French players. To be eligible to apply for a licence, the operator must have its head office located in the EU or in an EEA state which shares treaties with France in the areas of

financial fraud and tax. Operators located in a country without a taxation agreement with France will not be permitted to apply.

Individual licences are available for online poker, sports betting and betting on horseracing and any operator who wishes to be licensed for all three must undertake three individual licensing processes. Upon receipt of an application, ARJEL will commence review and retains the right to request additional documentation from the operator. ARJEL's reviews are mandated to not last any longer than four months, and any operator who does not receive a reply from the regulator after this time can assume their licence application is denied.

The cost of licences depends on how many applications are being made at the same time. For one application, the fee is €5,000, for two applications the fee rises to €8,000 while the fee for three applications is €10,000. In addition, operators must pay an annual fee of €20,000, €30,000 or €40,000 (depending on whether they hold one, two or three licences). Licences are valid for a five-year period and must be renewed upon expiry. There are no limits on the number of licences that can be granted by ARJEL.

Licensed operators can operate several gambling websites at once, provided they do not offer games on which they are not licensed to operate. Operators seeking a licence must first have their gaming software approved by ARJEL. Any operator who has an existing deal with a supplier must provide ARJEL with confirmation of the supplier's name and provide a copy of the agreement signed with that supplier. Operators using white label providers must clearly state the distinction between the white label operator which operates the website and the company which owns the trademark on it. In this case, the white label operator requires a licence but the trademark owner does not.

## **Taxation**

Online operators are not directly taxed on their profits; however, customers are taxed at certain percentages for different games, subject to certain limits. Players are obliged to pay a 5.7% tax contribution for any online sports bets placed, with an additional 1.8% social security contribution and a further 1.8% payment towards the French National Centre for Sports.

Online poker players are obliged to pay a total of 2% contribution on all stakes, made up of a 1.8% contribution and a social security contribution of 0.2%. Taxes are higher for online betting on horseracing, with bettors paying a 5.3% tax contribution on any bets made. Horseracing bettors are then required to make a 1.8% social security contribution, while companies organising the races are required to pay a 6.3% tax contribution.

## **Limitations or restrictions**

Licensed operators are required to prohibit play by minors and are obliged to conduct age verification checks whenever a player visits their respective website. They must also offer players the ability to self-exclude for a minimum of seven days or so-called "definitive"

exclusions, which terminate the players account and prevent them from signing up for the following three years. Operators are also obliged to require that players set deposit and stake limits on a weekly basis as soon as they open their account.

Online gambling adverts must contain written warning messages, providing links to websites or external problem gambling treatment services. Adverts may not feature on any website which mainly targets minors. In addition, any adverts for online gambling websites, which are made via TV or radio, cannot be aired 30 minutes before and after any programmes targeted at children.

ARJEL has the authority to block the ISPs of any operator website deemed to be targeting French citizens without a licence. It can also ban any transfers of funds made from unlicensed operator accounts to French banks for a period of six months. This six-month period can be extended for a further six months if required.

### **Local expert view**

*Alexandre Vuchot is a partner in **Bird & Bird's** International Commercial Group based in Paris and can offer comprehensive advice on all aspects of general business law. He shares his thoughts on the French market*



**EGR Compliance: In your opinion, where are the biggest opportunities for operators entering the French market?**

**Alexandre Vuchot (AV):** I would suggest that there are two significant areas of opportunity which new operators in the industry can take advantage of.

The first relates to the sports betting industry which represents the key area of growth in this market. Not only have we seen strong cumulative growth in the annual total amounts being bet by users of online sports betting platforms, but 2018 was a particularly strong year with a 56% rise in that total when compared with 2017. That increase has been supported by consistent growth in new personal betting accounts, suggesting that the industry has been able to attract new users to grow its customer base. This in turn has also led to increased profits within the sector (€691m in 2018 representing a 46% increase over the previous year).

The second area of opportunity relates to the point above concerning the growth in consumers for such online services. Not only has the market been able to attract more users, but it has also benefited from its capacity to appeal to a younger customer base. These

consumers not only have different expectations in terms of the service provided, but also enjoy different pre-conceptions about online gambling and can be more readily reached through novel technologies and online features. In adopting continuous technological innovation to build their platform and reach new users, savvy new operators can take advantage of this new customer base and in so doing take advantage of the important growth seen in the sports betting industry. The challenge is then to retain those new users and keep their attention through the developing and evolution of one's online services overtime.

### **EGR Compliance: Where are the biggest deficiencies in French regulation and how would you address them?**

**AV:** In relation to regulation of the French market, it is important to note that the ARJEL is intrinsically limited in its mandate. As a regulator of online activities exclusively, the portion of the larger gambling industry which is regulated by ARJEL represents only 11.6% of the net revenue for this industry. The diversity of regulators mandated within the gambling industry leads to challenges in relation to coordination of regulation across different sectors. In some instances it can also lead to unproductive competition between different regulatory bodies.

In addition, French regulatory law itself gives ARJEL strong capacities to act when investigating issues of fraud, money laundering and match fixing within the online gambling sector. However, that law also limits the ability of the regulator to use the data it collects during its activity in ways which fall outside the strict limits of its official remit. This has the consequences of constraining the regulator in its capacity to respond to new challenges brought up as the online gambling industry evolves overtime.

### **EGR Compliance: Is the French regulator ARJEL doing a good job of regulating the French market?**

**AV:** Overall, when one considers the key features of its mandate – namely the fight against illegal online games as well as match fixing – there are certainly some positives in the regulator's performance. In 2018, it has increased its efforts to close illegal sites through effective communication of warnings to service providers and employing legal action where necessary. It has also been capable of increasing its investigation of claims concerning match fixing. This has been supplemented by a variety of public health drives including a social media campaign for the 2018 Football World Cup. These are certainly significant results in the regulation of the online gambling sector.

Yet ultimately the limited mandate of ARJEL, in terms of the percentage of the industry it regulates, has led to a growing demand for it to be integrated into a larger regulatory structure. Such an organisation could conceive, carry out and coordinate regulatory strategies for the larger industry more effectively than the current set-up. As of the start of 2019, ARJEL is indeed preparing itself for its incorporation into such an entity which, in my view, speaks to the limitations of the current regulatory system.

## **EGR Compliance: Will online casino gaming be legalised in France in the near future? If not, why not?**

**AV:** Speaking candidly, I do not believe that this is on the agenda for lawmakers or regulators. Legalisation is therefore unlikely to come to pass in the near future unless there is a radical about-face among decision makers.

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