



Autorité de régulation
des jeux en ligne

RÉPUBLIQUE FRANÇAISE

Report of the French Online Gaming Regulatory Authority on the betting right



CONTENTS

Introduction.....	5
Part 1.....	9
The sports event organisers' property right in the online sports betting sector	9
I. Existence and purpose of the sports competition organisers' property right	9
A. The organisers' property right	9
B. The right to grant organisation of betting on sports competitions	13
II. A strict legal framework regulating the sports competition organisers' property right in the online sports betting sector	18
A. Marketing conditions for the right to grant organisation of online sports betting.....	20
B. The conclusion of betting right contracts since opening up to competition and regulation of the online gambling and betting sector	27
Part 2.....	33
The organisers' property right contributing to the development of sport and to the preservation of sports integrity in the sports betting sector	33
I. Financial aspects of the organisers' property right in the sports betting sector	33
A. Financing anti-fraud mechanisms through incomes generated by the commercial exploitation of sports.....	33
B. The territorial impact of the betting right on the effectiveness of the system	40
II. A tool to prevent risks for sports competitions integrity.....	46
A. A much-needed legal link allowing sports event organisers to set up efficient anti-fraud systems.....	46
B. An instrument for organisers participation in the alert mechanisms	52

Notice

The data in the present report are supplied by the French Online Gaming Regulatory Authority (hereinafter referred to as "ARJEL") except when the source is otherwise specified. Sports competition organisers contributed information for this report through opinions on draft marketing betting right contracts. This report also includes market data provided by ARJEL based on information declared by licensed operators.

The information concerning the betting right implementation is covering the reporting period from 12 May 2010 to 30 June 2012.

Introduction

1. On 5 March 2009, the French authorities notified the draft law opening up to competition and regulation of the online gambling and betting sector to the European Commission, in compliance with the provisions of Directive 98/34/EC of 22 June 1998 as amended.

This opening up has been effective since Act No.2010-476 came into force on 12 May 2010. It involved three online sectors: betting on horse racing, circle games and sports betting.

2. On 8 June 2009, the notification procedure gave the European Commission an opportunity to send comments to the French authorities in which they were invited to state the grounds warranting the provisions of article 52 of the draft law. This article laid down provisions on the commercial exploitation of sports competitions through sports betting and the fight against fraud and cheating.
3. Following an alert by the sports movement and responding to a French courts ruling, the French authorities had in fact decided to include the sports competitions integrity among their concerns after realising they are exposed to risks by sports betting.

As a result, a system coordinating the sports competition organisers' property right was included in the draft law.

The provisions brought an innovative approach to the online gambling legislative framework raising Commission's questions and providing that:

- the sports competition organisers' property right, which have been enshrined in French law since 1992, explicitly includes the right to authorise betting on these competitions;
 - the results of the property right covering betting not only provide a financial contribution from the commercial exploitation of sports events, but also introduce systems of protection for competitions integrity through their organisers and financing;
 - the conditions for exercising this right and especially its marketing must be regulated in order to permit the effective opening up to competition of online sports betting.
4. On 9 July 2009, the French authorities provided information on the legal nature of this *sui generis* intangible property right allowing the European Commission to pursue its analysis with regard to article 56 of the Treaty on the Functioning of the European Union in particular. The way the right operates regarding betting and in particular regarding the protection of competitions integrity was also explained.
 5. Following these discussions, the French authorities were invited on 6 August 2009 to submit a report to the European Commission on the implementation of the provisions on the exploitation of sports events and on the fight against fraud and cheating in the context of these events, two years after the measures had come into force.
 6. On 12 May 2010, the French Act No.2010-476 on the opening up to competition and the regulation of the online gambling and betting sector entered into force.

While welcoming the adoption of this new French Act and the conditions of this opening up, the European Commission closed the proceedings initiated against France in respect of the free provision of online sports betting services in France by decision dated 24 November 2010.

7. The 12 May 2010 Act adopted the provisions that have raised Commission's questions in article 63 amending the French Sports Code.

The provisions thus applicable under French law appear in the chapter of the French Sports Code dealing with the exploitation of sports events. They are as follows:

"Section 1: Exploitation right

Article L.333-1

Sports federations, and the organisers of sports events referred to in article L.331-5, are the owners of the exploitation right of the sports events or competitions they organise.

Any sports federation may assign property free of charge to sports associations of all or part of the media rights of competitions or sports events organised each sports season by the professional league it has created, as long as these associations participate in these competitions or sport events. This assignment shall thus benefit each of these associations.

Article L.333-1-1

The exploitation right set out in the first paragraph of article L. 333-1 includes the right to grant organisation of betting on the sports events or competitions.

Article L.333-1-2

Where the right to operate betting has been granted to online gambling operators by a sports federation or by an organiser of sports events referred to in the first paragraph of article L.331-5, the draft contract binding upon the operators must be submitted, prior to signature, to the French authority for the regulation of online gambling and to the French competition authority, who will publish a decision within fifteen days of the date of receipt of the document.

The organiser of sports events or competitions may consent to mandate the empowered or approved federation in question or the committee referred to in article L.141-1 to sign the contract referred to in the previous paragraph with the online gambling operators.

Sports federations and organisers of sports events shall not award the exclusive right to organise betting to an operator nor discriminate between the licensed operators of the same betting category.

Any refusal to sign a contract for operating betting must be justified by the sports federation or organiser of sports event in question and notified by it to both applicant and the French Online Gaming Regulatory Authority.

The contract referred to in the preceding paragraph specifies fraud detection and prevention obligations imposed on online betting operators. It includes in particular the conditions of information exchange with sports federation or organiser of the sports event.

It confers them the right to remuneration taking account in particular of the costs incurred in detecting and preventing fraud.

Article L.333-1-3

The associations referred to in article L.122-1 and the sports associations referred to in article L.122-2 may assign to online betting operators, in whole or in part, free of charge or against payment, exclusively or otherwise, rights to the intangible assets they own, subject to the provisions in articles L.333-1 and L.333-2.

The preceding provisions shall apply to sports federations and organisers of sports events referred to in article L.331-5 with respect to the intangible assets they own, except for the right to grant organisation of betting referred to in article L.333-1-1.

The marketing conditions for the right to operate betting on sports events or competitions and the definition of any intangible assets that could be granted to online betting operators shall be specified by decree.”

Decree No.2010-614 of 7 June 2010¹ specifies the marketing conditions of the sports event organisers' property right in the regulated online sports betting sector.

8. The sports event organisers' property right includes the right to grant organisation of betting on these competitions under French law.

Marketing the right to organise betting on a sports event is strictly regulated by Act No.2010-476 of 12 May 2010 and its implemented provisions, when it concerns licensed betting operators in the regulated online sports betting sector in France. It is aimed at responding:

- on the one hand, to the concern with regard to an effective opening up of the market to all the licensed online betting operators in the "sports betting" category and,
- on the other hand, to the public policy objective of fraud prevention and detection guaranteeing the integrity of both betting operations and sports competitions constituting betting mediums.

¹ Decree no. 2010-614 of 7 June 2010 concerning the marketing conditions of rights relating to the organisation of betting in connection with a sports event or competition.

9. These provisions have now been in force in France for two years. The present report confirms two points. First, thanks to its regulatory conditions (Part1), the implementation of sports event organisers' property right has had no impact on the effective opening up of the sector to competition. Secondly, these provisions' contribution to the development of sport and to the guarantee of sports integrity is effective at national level (Part 2).

Part 1

The sports event organisers' property right in the online sports betting sector

10. France has chosen to recognise specific protection for sports events, comparable to that recognised for intellectual property rights. The property right recognised for sports event organisers thus enables them to control their commercial exploitation. It applies to all forms of commercial exploitation, including the sports betting economic activity. The French system is innovative in essentially one respect: the legislator assigned a specific complementary purpose to this property right in the online sports betting sector which is the protection of the integrity of sports competitions constituting betting mediums (I).

The legislator was aware of the need to ensure an effective opening up to competition while respecting the French State's public order objectives regarding gambling. It has thus decided to strictly regulate the conditions for exercising this property right (II).

I. Existence and purpose of the sports competition organisers' property right

A. The organisers' property right

11. In 1992, the legislator has enshrined in French law the property right of sports federations and organisers on sports events.

Commercial exploitation of sports events is subject to their owners' authorisation. It includes media rights (for still or animated images of the competition, for instance TV broadcasting rights), advertising/sponsoring, merchandising, operating ticket sales, running associated services (public relations, prize competitions, etc.)

12. This right was recognised for organisers for some reason: they make both human and material substantial investments in creating economic value for a sports event.

It has been recognised as legitimate that a sports event's economic benefits may (i) be allocated to and (ii) be controlled, by the organiser of a sports event.

13. It is also essential that the economic benefits of sports events contribute to financing the sports movement, given the general interest is at stake for promotion and practice of sporting activities and the public service tasks with which they are associated, enshrined in French law (article L.100-1 ff. of the French Sports Code) :

Article L.100-1 of the French Sports Code

"Physical and sporting activities constitute an important element in education, culture, integration and social life.

They contribute in particular to the fight against school failure and the reduction of social and cultural inequalities, as well as to health.

The promotion and development of physical and sporting activities for all, especially for the disabled, are in the general interest."

14. The legal recognition of the organisers' property over their sports events is a key part of sports promotion and development. These principles are shared by the European Union and referred to in article 165 of the TFEU.

Indeed, the organisation of official sports competitions is a driving factor for the development and promotion of physical and sports activity as it is clear from the increase of sports practice when international sports competitions are taking place. For instance, the Rugby World Cup in 2007 has increased the number of registered members by 30.3% in one year in France².

Moreover, marketing sports events of national and even international interest and organised by sport federations allows to ensure the long term success of these competitions and to finance amateur sport³.

15. The sports event organiser's rights have always been recognised through contractual practice, but it is the French legislator which made it possible in 1992 to enshrine in law this intangible property necessary for the legal certainty of its marketing and protection. Today this right is set out in article L.333-1 of the French Sports Code :

"Sports federations, as well as the organisers of sports events referred to in article L.331-5, are the owners of the exploitation rights for the sports events or competitions which they organise."

16. The legal nature of this right has been discussed. There is nevertheless a wide agreement that this is indeed a property right pertaining to an intangible asset (the sports competition), a *sui generis* intellectual property right or broader property right. .

17. As regards property right, it is protected as one of the fundamental rights of constitutional value in France and under the general principles of European Union law.

² The economic impact and social utility of the 2007 Rugby World Cup in France – a summary produced for the Ministry of Health, Youth and Sport by the Centre for law and economics of sport.

³ As an example, the organisation of the Roland Garros Tournament by the French Tennis Federation in 2007 generated 118 million euros in turnover and 47 million euros of income to the benefit of the federation whose redistribution benefits all its affiliated clubs. The tournament is thus the life blood of French amateur tennis.

Indeed, the protection of the property right is enforced in national law by the French Constitution, as well as on international level by article 1 of Additional Protocol No.1 to the European Convention for the Protection on Human Rights and Fundamental Freedoms:

"1. Protection of property. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

In this regard, Article 6 of the consolidated version of the Treaty on European Union states that:

"2. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law."

Under the Treaty, European Union confirms the guarantee that should be granted to the protection of the property rights, legal qualification adopted for the exploitation right of sports organisers.

18. Consequently, any infringement of this property right must be duly justified.

A needed justification expressly stated by the French competition authority on 19 January 2003 in its Opinion on the property right of the French Tennis Federation over the Roland Garros Tournament:

"As the Court of Justice of the European Communities stated in the Oscar Bronner GmbH judgement (case C-7/97 of 26 November 1998), (...) the right to choose one's contractual partners and freely dispose of its property are principles that are universally recognised in the Member states legal systems, that sometimes are of a constitutional nature. Infringements of such rights need to be carefully justified.

Thus detention and exercise of an exclusive exploitation right will not constitute an infringement of competition law; except when this use constitutes a cartel or an abuse of a dominant position with a competition distorting purpose or effect (...)."

19. Regarding property right recognised in Member States legislations, as in France since 1992, the very existence of sports organisers' property right cannot be jeopardised even on the grounds that it could contravene article 56 TFEU.

Indeed, pursuant to article 345 of the TFEU:

"The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership."

Thus, as required by article 345 TFEU, provisions of article 56 of the TFEU are not such as to affect or restrict the very existence of organiser's intangible property right.

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THE PROPERTY RIGHT OF SPORTS EVENTS BELONGS TO THE ORGANISERS OF THESE EVENTS, UNDER FRENCH LAW.

THE CONCERNED ORGANISERS ARE:

- SPORTS FEDERATIONS WHEN THEY ORGANISE OFFICIAL COMPETITION, WHICH IS, IN ANY CASE, THE TASK ASSIGNED TO THEM BY THE FRENCH STATE (ARTICLE L.131-14 AND L.131-15 OF THE FRENCH SPORTS CODE);

**- ORGANISERS UNDER PRIVATE LAW WHO ORGANISE COMPETITIONS WITH THE PERMISSION OF THE EMPOWERED FEDERATION (ARTICLE L.331-5 OF THE FRENCH SPORTS CODE).
THE ORGANISERS' PROPERTY RIGHT PROVIDES THEM WITH AN EXCLUSIVE EXPLOITATION RIGHT.**

RECOGNITION OF THIS RIGHT PROVIDES LEGAL CERTAINTY ON THE COMMERCIAL EXPLOITATION OF SPORTS EVENTS BY ORGANISERS. THEY MAY GRANT THEIR RIGHTS AND THUS CONTROL THEIR EVENTS MARKETING MODES.

**THIS PROPERTY RIGHT IS ENSHRINED IN THE LEGISLATION OF A MEMBER STATE.
IT IS AS SUCH PROTECTED AS FUNDAMENTAL RIGHTS OF CONSTITUTIONAL VALUE IN NATIONAL LAW AND BY THE GENERAL LEGAL PRINCIPLES OF EUROPEAN UNION LAW.**

THE VERY EXISTENCE OF A SPORTS EVENT ORGANISERS' PROPERTY RIGHT CANNOT THEREFORE BE EITHER AFFECTED OR RESTRICTED BY EUROPEAN UNION LAW.

B. The right to grant organisation of betting on sports competitions

20. Year 2007 brought the development of online sports betting and manipulation cases related to betting were disclosed. As a result, the organisers of French sports events were compelled to consider all legal means opened to them to ensure the control of their competitions' exploitation carried out through betting.
21. As the development of online sports betting existed before the promulgation of Act No.2010-476 of 12 May 2010, the sports movement has had to deal with two issues:

- ***the risks of manipulation of sports competitions constituting betting mediums:***

The amounts at stake and the revelation of cheating cases have led the public to serious suspicions about the conduct of sports competitions, especially in tennis in 2007.

These suspicions were heightened by the fact that betting thus organised was not controlled and could be made on the winner of the game, but also on all sorts of events related to the matches (such as the length of sets, the player making the largest number of faults).

Betting-related abuses were stressed in the report entitled *Cybercrime in Online Gaming*⁴, in the Durieux Report⁵ as well as in the European Parliament Resolution of 8 May 2008⁶. This Resolution also pointed out that "*although sport plays a crucial role in European society, certain competition sports deal with new threats and new challenges, such as commercial pressure, the exploitation of young players and sports men and women, doping, racism, violence, match-fixing, corruption, rigged betting and the laundering of dirty money.(...)*" and "*sports betting activities have developed in an uncontrolled manner (particularly cross-border betting on the Internet), whereas a growing number of matches have been fixed and whereas betting-related scandals have recently come to light in Member States, threatening the integrity of sport and sporting competitions,*"

In this respect, the European Parliament also expressly asked the Commission and Member states to:

"introduce legislation and/or strengthen existing regulations to attach particular importance to respecting intellectual property rights relating to commercial communications, trademarks and images, names, media rights and any other spin-offs from the sporting events organisers are running, so as to protect the professional sport economy, while respecting the right of "short reporting" as stipulated by directive 2007/65/EC⁽¹²⁾ (Audiovisual Media Services' Directive) and the self-sustained and balanced development of sport, without putting at stake the proper balance between a sporting organisation's legitimate concerns and the needs of the public to be able to

⁴ CERT-LEXSI white paper, July 2006.

⁵ Report of 2 April 2008 of the assignment concerning the opening up of the market for gambling and games of chance assigned to Mr DURIEUX.

⁶ European Parliament Resolution of 8 May 2008, concerning the White Paper about sport ([2007/2261\(INI\)](#)) (considerations C and AC in particular).

access and create objective, informative and topical information in the forms of written, pictorial and audio content; points out that it is also important to ensure that recipients are guaranteed the possibility of having access to sporting events at cross-border level with the EU at a distance; [our underlining]"

Any loss of trust in sport actually affects sports movement as a whole, its integrity as well as the values promoted. It is also directly detrimental to the development and promotion of sporting activities in France, including economically.

- ***The commercial exploitation of competitions via betting:***

Sports bets are placed on sports events – their progress, forthcoming results and outcomes.

This activity derives from the sports event exploiting its organisation, its media coverage and the financial benefits generated.

Yet, gambling operators developed their economic model without regard to organisers' rights, or even to the risks sports competitions were exposed as betting mediums. Organisers have thus been obliged to put in place anti-fraud systems, costs of which they support alone.

22. The sports movement faced the development of this economic activity based on their events and exposing them to further risks of manipulation. They thus considered exercising their exclusive right to exploit sports events. This right gives legal means to the organiser allowing it to exploit and control the way in which its sports event is marketed.
23. The French Tennis Federation asserted its property right before the French jurisdictions in order to see penalised unauthorised online sports betting activity during the Roland Garros Tournament as a betting medium.

On May 2008, the Paris Tribunal de Grande Instance held that such activity carried on without the authorisation of the sports competition organiser actually infringed the federation property right over the Roland Garros Tournament.

On 14 October 2009, the Paris Court of Appeal upheld the conviction of the online betting operator on the ground that betting activity constitutes commercial exploitation of the sports event in accordance with Article L.333-1 of the French Sports Code.

The Court also pointed out the purpose of this right which is to ensure the organisers' right to monitor economic movements induced by the success of the competitions they organise. It will provide a financial return for the sports movement, prevent the corruption risk and preserve sports ethical values in full respect of the general interest. It should also be underlined that the Paris Court of Appeal stated that:

"Whereas this exploitation right, with the prerogatives entailed, does not constitute a restriction per se of such a nature as to prohibit, obstruct or even merely make the service provision in question less attractive; that does not discriminate since, quite the contrary, it also places the potential service-providers, in this case the organisers of online betting, in a peer-to-peer relationship with the sports competition organiser;

That only the exercise of this right by the owner, if it set prohibitive, unjustified, disproportionate, or discriminatory conditions, might constitute a punishable obstacle.”

This judgment became final under French law having therefore the force of a *res judicata*.

With this decision, the French jurisdictions recognised the possibility for the organisers of sports events to establish a legal bond with the betting operators. This would admittedly allow them to remunerate the commercial exploitation of their competitions but also develop necessary control means in order to prevent risks of manipulation.

24. As early as March 2009 and in addition to this dispute, the French authorities introduced the bill on the opening up to competition and regulation of the online gambling and betting sector.

It gave the opportunity to stress that the integrity of sports competitions would be better protected if the property right of competitions organisers was expressly recognised when applied to sports betting.

The French Minister for the Budget then pointed out on this organisers' property right relevant to betting that:

"In reality, the interest of this right for sport is not financial but ethical; by requiring commercial agreements between gambling operators and the organisers of sports competitions, this right finally will give professional sport the means to make the operators share their concerns in matters of competitions ethics."

25. It had been decided to incorporate measures in the legal framework directly involving the French sports movement within the process of opening and regulating the online gambling and betting sector. The French sports movement includes 107 federations and sporting groups, 180.000 sports associations representing 26 million regular practitioners and 16 million licensed practitioners. The two main topics brought by the sports movement were the financing of sport and the integrity of competitions, constituting betting mediums.

At the time the bill was introduced, the French authorities pointed out that at the French market opening, sports integrity would be ensured by the legislative recognition of organisers' property right application on online sports betting activity over their sports events. It was also noted that sports financing would be preserved thanks to a double financial return, namely:

- through the National Centre for the Development of Sport (hereinafter referred to as "CNDS") (through a deduction from stakes);
- by signing commercial agreements under the sports event organisers' property right.

26. In parallel, as a follow-up to its Resolution of 8 May 2008, the European Parliament reaffirmed on 10 March 2009, with regard to the integrity of online gambling:

"[The Parliament] notes that criminal activities, such as money-laundering, and black economies can be associated with gambling activities and impact on the integrity of sports events; considers that the threat to the integrity of sport and sporting competitions impacts heavily on grassroots participation, a key contributor to public health and social integration; is of the opinion that, if a sport is perceived as the subject of manipulation for the financial gain of players, officials or third parties rather than played according to its values, rules and for the enjoyment of its fans, this could result in a loss of public trust;

is of the opinion that the growth of online gambling provides increased opportunities for corrupt practices such as fraud, match-fixing, illegal betting cartel and money-laundering, as online games can be set up and dismantled very rapidly and as a result of the proliferation of offshore operators; calls on the Commission, Europol and other national and international institutions to closely monitor and report on findings in this area;

considers that the protection of the integrity of sports events and competitions requires cooperation between sports right owners, online betting operators and public authorities at national as well as EU and international level;

calls on the Member States to ensure that sports competition organisers, betting operators and regulators cooperate on measures to tackle the risks related to illegal betting behaviour and match-fixing in sport and explore the establishment of a workable, equitable and sustainable regulatory framework to protect the integrity of sport;"

27. It is against this background the legislator adopted Act No.2010-476 of 12 May 2010 expressly confirming the French jurisdictions' decisions. It provides that exploitation right referred to in article L.333-1 of the French Sports Code includes the right to grant organisation of betting on sports events or competitions.

Known as "betting right", the right to grant organisation of betting on sports events or competitions is seen as one of the attributes attached to the sports organisers' property right.

In the light of this, this provision applies to all betting activities whether online or land based.

There is therefore no discrimination to the exercise of this right between the monopolistic holder of the sports betting land based network and the licensed online operators.

Under current texts and case-law, this property right has been found to be only applicable for events being held on the French territory and has not been claimed by the organisers of such events before betting operators providing services outside France⁷.

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⁷ See below Part 2. II. B.

BEFORE THE ONLINE BETTING SECTOR WAS OPENED TO COMPETITION, THE FRENCH JURISDICTIONS HELD THAT SPORTS COMPETITION ORGANISERS' PROPERTY RIGHT APPLIED TO THE SPORTS BETTING ACTIVITY.

THIS RULING HAS BEEN ENSHRINED BY FRENCH LAW.

IN FRENCH LAW, THE ORGANISER OF A SPORTS EVENT CAN THUS AUTHORISE, THROUGH ITS PROPERTY RIGHT, THE EXPLOITATION OF ITS EVENT AS BETTING MEDIUMS.

THE LAW THUS RECOGNISED A LEGAL LINK BETWEEN THE BETTING OPERATORS AND THE ORGANISERS OF COMPETITIONS CONSTITUTING BETTING MEDIUMS.

THE COMPETITION ORGANISER MAY THUS NOT ONLY ENSURE A FINANCIAL RETURN FROM THE BETTING ECONOMIC ACTIVITY BUT ALSO CONTROL THE EXPLOITATION CONDITIONS OF THE COMPETITION IN ORDER TO PREVENT RISKS OF MANIPULATION RELATED TO BETTING.

THIS RIGHT APPLIES IN THE BETTING SECTOR, REGARDLESS OF THE DISTRIBUTION NETWORK.

UNDER CURRENT TEXTS AND CASE LAW, THIS RIGHT HAS ONLY BEEN CLAIMED FOR COMPETITIONS TAKING PLACE ON THE FRENCH TERRITORY AND HAS NOT BEEN EXERCISED HITHERTO WITH GAMBLING OPERATORS PROVIDING SERVICES OUTSIDE FRANCE.

II. A strict legal framework regulating the sports competition organisers' property right in the online sports betting sector

28. Act No.2010-476 of 12 May 2010 and its implementing provisions regulates the marketing of the right to organise betting on a sports event when it concerns the licensed online betting operators in the French regulated sports betting sector. The aim is on the one hand, to meet concerns relating to an effective opening up of the market to all the licensed online betting operators in the "sport betting" category; on the other hand, it is to pursue the public order aim of fraud prevention and detection, in order to guarantee fairness of both gambling operations and the course of sports competitions, constituting betting mediums.
29. In the online sports betting sector, the French legislator has strictly regulated the exercise of the property right of the sports event organisers for the purpose of:
- compliance with its specific objective, i.e. its essential functions of on the one hand, fighting against fraud and on the other hand, of encouraging the development and the promotion of sport,
 - doing so in a non-discriminatory and proportionate manner.
30. The organisers' property right as established in the betting sector must ensure the introduction of reciprocal obligations between operators and organisers so as to prevent risks of manipulation on these competitions.

This right provides the organisers with legal means imposing transparency obligations on the operators and especially imposing communication of the amount of stakes placed on their event and their breakdown; this being indispensable prerequisite to the establishment of complete shared monitoring systems. Operators are also required to inform the competition organiser of any unusual gambling pattern on this event, as part of their contractual obligations. This may lead to the implementation of preventive measures, such as placing the course of a competition under observation, controlling referees' substitutions and information to competition officials and players.

31. The exploitation right applied to betting thus makes the competition organiser more accountable in terms of integrity protection and fairness of its sports competition. Indeed, the organiser has an obligation pertaining to means in terms of detection and prevention of harm to its sports competition integrity.⁸ Organisers marketing their "betting right" must introduce anti-fraud systems.
32. Drawing all the consequences of the objectives of this attribute of the organisers' property right on the online gambling sector, Article L.333-1-2 of the French Sports Code created by Article 63 Act No.2010-476 of 12 May 2010 therefore provides in its paragraph 3 et seq. that:

"Sports federations and organisers of sports events shall not award the exclusive right to organise betting to an operator nor discriminate between the licensed operators of the same betting category.

⁸ See article L.333-2 of the French Sports Code and article 2 of Decree No.2010-614 of 7 June 2010 concerning the marketing conditions of the rights to organise betting in connection with a sporting event or competition.

Any refusal to sign a contract for operating betting must be justified by the sports federation or organiser of sports event in question and notified by it to both applicant and the French Online Gaming Regulatory Authority.

The contract referred to in the preceding paragraph specifies fraud detection and prevention obligations imposed on online betting operators. It includes in particular the conditions of information exchange with sports federation or organiser of the sports event.

It confers them the right to remuneration taking account in particular of the costs incurred in detecting and preventing fraud."

The Act thus imposes:

- that the "betting right" marketing contracts shall expressly provide obligations according to fraud detection and prevention and conditions of information exchange between the betting operators and the organisers of sports events;
- remuneration taking account in particular of the costs incurred by organisers of sports events in detecting and preventing fraud;
- marketing conditions: concession on a non-exclusive basis; without discrimination between betting operators belonging to the same category.

33. In addition, the Act has provided that the French Competition Authority and ARJEL shall submit a mandatory prior opinion on the draft contracts to be signed between the owners of the right to grant organisation of betting and the operators licensed by ARJEL for the online sports betting⁹. It thus intends to ensure the exercise of this right, namely as regards to its marketing, is compliant with its provisions, and to prevent any risk of fair competition distortion in the sector.

34. The Act is supplemented by Decree No.2010-614 of 7 June 2010 regulating these marketing conditions.

⁹ Article L.333-1-2 of the French Sports Code " Where the right to operate betting has been granted to online gambling operators by a sports federation or by an organiser of sports events referred to in the first paragraph of article L.331-5, the draft contract binding upon the operators must be submitted, prior to signature, to the French Online Gaming Regulatory Authority and to the French Competition Authority, who will publish a decision within fifteen days of the date of receipt of the document."

A. Marketing conditions for the right to grant organisation of online sports betting

35. "Betting right" marketing conditions are specified in Decree No.2010-614 of 7 June 2010 in accordance with paragraph 2 of Article L.333-1-3 of the French Sports Code.

This Decree strikes a balance between on the one hand the exercise of the property right of the sports federations and sports event organisers and, on the other hand the access to the sports offer by as many licensed operators as possible by enforcing the fundamental principles of non-exclusivity and non-discrimination.

36. In order to meet the Act objectives, the Decree imposes a non-discriminatory consultation procedure opened to all the operators licensed by ARJEL, for which it lays down the principles:

- the purpose of the consultation, which may relate to one or more competitions, in compliance with the list of competitions on which betting is authorised, as determined by ARJEL;
- the timetable for the assignment procedure;
- the duration of the exploitation right must be specified;
- the rules governing the consultation, especially with respect to price-fixing (with should be expressed in the proportion of stakes);
- the monitoring and detection measures that sports federation or organiser of the competition intends to introduce for preventing risks for the integrity of the competitions, object of the consultation;
- the information and transparency obligations imposed on the licensed operator in detecting fraud and preventing the risks of harm to the integrity of sports competitions.

37. Under Article 4 of the Decree, the right to organise betting must be granted to any licensed operator who requests it for the remaining exploitation time, when it meets all the conditions and accepts the consultation price.

38. The legislator has provided that ARJEL and the French Competition Authority submit opinions in order to ensure that the draft contracts take account of the applicable legal and regulatory obligations. These opinions must be submitted within fifteen days by the authorities.

39. The French Competition Authority specified that it is unable to submit a useful opinion for each draft contract within fifteen days as provided by the law. In an opinion concerning the online gambling and betting sector (Opinion No.11-A-02 of 20 January 2011), the French Competition Authority identified the main competition concerns with regard to the marketing of the right to organise betting. It also issued general recommendations in order to guide the regulator (ARJEL), sports event organisers and betting operators as part of the development of contracts organising the betting right.

40. The French Competition Authority nevertheless underlined first that:

"the legislator's concern [law of 12 May 2010] was to create a legal offer, restricted to the most popular forms of gambling and controlled by the State and to marginalise illegal operators, so as to do more to prevent gambling addiction and combat fraud and money-laundering. In comparison with the opening up to competition of other economic sectors, such as electronic communications, gas or rail transport, the mechanism adopted for online gambling and games of chance does not come from liberalisation but above all from the will to regulate an existing activity being exercised illegally.

It is thus appropriate to take account, in the context of the present opinion, of the objectives for the opening up to competition of online gambling which is part of the strong regulation of the sector. In fact, the competition law objectives and general interest ones pursued by the Act of 12 May 2010 may appear to be, to some extent, contradictory and need to be reconciled. Thus the fight against gambling addiction necessarily requires finding limits to consumption and therefore to the gambling offer, while competition law is designed to stimulate competition to improve sales conditions of a product or service and facilitating the widest possible access to consumers."

Competition is actually not an end but a betting regulation means to achieve the public and social policy objectives in the online gambling and gaming sector. Accordingly, it is within the reconciliation of competition objectives with regulation that the Opinion was submitted by the French Competition Authority. It was also underlined that other objectives can take precedence over the one of competition.

41. The French Competition Authority voiced about the betting right:

- the cost of the betting right and
- the marketing procedures relating thereto.

42. The marketing of sports federations and sports event organisers' property right depends generally on an auction mechanism (especially for the media rights). It is structured to optimise the price of the exclusive rights placed on the market and fixed at a flat rate.

Assuming a sports organiser seeks to optimise its incomes and that auction mechanism is authorised, it could have resulted in this particular case in excluding licensed operators from the right to organise betting on its sports events, the only exception being the two operators submitting the most compelling bids. Although this situation would obviously be regrettable, it still satisfies the requirements of Article 63 of the Act (respect of principle of non exclusivity) and competition law (a prior and non discriminatory call for competition).

43. In an effort to solve this problem and to ensure the access to the sports betting market for as many licensed operators as possible, it has been found appropriate that the price paid in exchange of the right to organise betting will only be expressed in percentage of bets. This is therefore provided by Decree No.2010-614 of 7 June 2010.

The system thus operated allows access to the number of operators as possible given its relative effect. No discrimination between the smallest and largest operators can therefore be exercised through the price. On the contrary, an overall price could be the instrument for discrimination of this sort.

The prices expressed as a proportion of bets makes it impossible to use auction mechanism.

Furthermore, it must be noted that the payment by an operator of a percentage of the gross gambling revenue (GGR) to a sports event organiser could have limited the economic risk for the fixed-odds betting (an operator could actually lose money because of a wrong rating of the odds and thus have nil GGR or even a negative one on a competition) but would have implied that the event organiser was interested in the benefits of the operator.

The percentage of stakes allows to further avoid any potential conflict of interest (the sports organiser is thus not interested in the operator's profit or loss).

44. Furthermore, the Act provides that the "betting right" remuneration takes account "*particularly of the costs incurred in detecting and preventing fraud.*"

The increasing of the financial stakes involved in sports betting accordingly increases the likelihood of harm to the integrity of sports events through match-fixing and corruption¹⁰. Consequently, the anti-fraud system is all the more important as the financial stakes involved are high.

The increase of bets is therefore correlated with the increase of risk and consequently, of the costs involved in fighting these risks.

A price expressed in percentage of bets is therefore appropriate for covering the costs incurred in detecting and preventing fraud in sports events.

45. In order to avoid any risk of eviction, the French Competition Authority had considered a regulation of the cost of the "betting right" which could be assigned to the sector's regulator where required.

To date, the concerns initially expressed by the French Competition Authority have not materialised since the overall sports betting offer is not involved in the betting right and sports competitions involved in the betting right do not represent a decisive share of this offer.

As the available information shows, price-fixing is not such as to constitute a barrier for the licensed operators¹¹. In 2011, the amount of the "betting right" represented 1% of the licensed online operators' gross gambling revenue.

As a result, administrative price regulation does not seem to be justified.

46. In the context of general recommendations, the French Competition Authority also stated its concern with assuring better transparency on consultation procedures and conditions for awarding the right to grant organisation for online sports betting.

Sharing this concern, ARJEL considered it useful to provide the various interested parties with its analysis on several issues raised during the consultation procedures for opinion that were concerning both the consultation procedure and the marketing conditions for the right to grant organisation of online sports betting.

In its Decision No.2011-106 of 6 October 2011, ARJEL therefore adopted general recommendations on marketing contracts for the right to organise betting, in order to facilitate marketing by the organisers and an effective consultation of the betting operators¹².

¹⁰ See the study entitled "Risks to the integrity of sport from betting corruption" – University of Salford. February 2008.

¹¹ See part 2 below.

47. The French Competition Authority stressed that it was not possible, at the time it submitted its opinion, to assess the competition positions held by those owning the betting right on the relevant markets. The French Competition Authority recalled, in this context, ARJEL may refer to it situations likely to constitute anticompetitive practices in the sector, as provided in the Act. When ARJEL will refer to it draft marketing contract for granting the right to organise betting to the Competition Authority, the latter will consider any specific and identified matter arising in connection with competition.

ARJEL has so far not had to refer any potentially anticompetitive practices to the French Competition Authority when examining draft contracts submitted to it for an opinion.

No competition concern in connection with the exercise of the betting right was noticed.

48. The conditions for exercising the betting right as defined by Decree gave nevertheless the opportunity to a licensed operator and to the European Gaming and Betting Association (EGBA) to argue against the betting right principle. The appeals were rejected.

49. The French Council of State, the highest administrative jurisdiction in France, was indeed asked twice to rule on the lawfulness of Decree No.2010-614 of 7 June 2010 on marketing rights conditions regarding the organisation of betting on a sports event or competition.

50. On 1 September 2010, a licensed operator raised a priority preliminary ruling on constitutionality (hereinafter referred to as "QPC") of Decree No.2010-614 of 7 June 2010 appealed against on grounds of *ultra vires* before the French Council State on 3 August 2010. It raised the issue of compliance with rights and freedoms guaranteed under the Constitution and the provisions of the French Sports Code concerning the betting right, arguing that:

- the betting right would constitute a property right on public domain information (a public asset);
- the betting right would be contrary to the free communication of thought and opinion;
- remunerating betting right price would have ignored freedom of entrepreneurship and the principles of the equality of all citizens before the law and charges levied by the state.

Three conditions are necessary for a QPC to be referred to the French Constitutional Court pursuant to article 23-4 of Ordinance No.58-1067 of 7 November 1958 constituting organic law on the French Constitutional Court, namely:

- the disputed legislative provision must be applicable to the litigation;
- the disputed legislative provision shall not have been declared compliant with the Constitution on the *ratio decidendi* of a Constitution Court decision;
- the question raised should be new or of a serious nature.

In this case, the public rapporteur considered the first two conditions were met, but not the third. Indeed, the question raised was neither new nor serious.

¹² General recommendations of the ARJEL concerning marketing contracts for the right to grant organisation of betting, appendix.

Consequently, the French Council of State rejected the operator's request and underlined that the exploitation right for the organisation of betting on a commercial basis is not of a public good nature. It also pointed out that the remuneration principle of organisers' right does not ignore the entrepreneurial freedom and the principles of the equality of all citizens before the law and charges levied by the state, in addressing only costs incurred in detecting and preventing fraud.

On 3 August 2010, Decree No.2010-614 of 7 June 2010 was also referred to the French Council of State by the same operator seeking its annulment on grounds of ultra vires. The French Council of State ruled on the legality of the aforementioned Decree considering in particular that the decree was neither contrary to article 1 of the first additional protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, nor to Articles 56, 102 and 106 of the TFEU.

In fact, the French Council of State considered that:

"Article L.333-1 of the French Sports Code awards to sports federations and sports competition organisers property of the exploitation right of events or competitions they organise, in view of sometimes particularly significant financial and human investments undertaken to organise these events and of the general interest objective of enabling the sports movement development to benefit from the economic flows thus generated,"

and reiterated that:

"the right to grant organisation of betting on sports events (...), which are based on results uncertainty constituting one of the conditions for their commercial exploitation, is of public good nature," the operators are therefore not deprived of a possession which they could have freely used.

Furthermore, the French Council of State rejected any inference of an automatic abuse of dominant position, in particular in view the restrictions on the exercise of the right imposed by the Act and the subsidiary texts.

Finally, the French Council of State recalled that the establishment of a property rights over sports events does not in itself constitute a restriction on the free provision of services. It was specified, however, that the conditions implementing this property right in online sports betting were probably of such a nature as to constitute a restriction on the free provision of services, but that they were justified in principle by the concern *"to prevent the risks for the sports ethic, the fairness and integrity of competitions and that these are suitable for guaranteeing the fulfilment of the objectives thus pursued and do not go beyond what is necessary in order to achieve them."* Consequently, these provisions were not declared to be contrary to Article 56 of the TFEU.

51. Furthermore, on 3 December 2010, the EGBA European Association, whose members are operators of online gambling and betting, also referred the Decree determining betting right marketing conditions to the French Council of State in order to challenge its legality. As a result, a new priority preliminary ruling on constitutionality was raised on the validity of article L.333-1-2 of the French Sports Code in the light of pricing treatment.

The French Council of State recalled that the betting right remuneration constituted "*the price of a commercial service fixed by contracting parties.*" Consequently, no principle of constitutional value is imposed on the legislator requiring it to fix the rate and basis for such remuneration of the betting right. As the request was not considered serious, the French Council of State has not referred the QPC to the French Constitutional Court. In addition, the French Council of State once again rejected the appeal against the Decree validity.

52. No claim has since been lodged against the conditions for exercising the betting right.
53. The restrictions imposed under the Act No.2010-476 of 12 May 2010 in exercising the organisers' property right in sports betting (non-exclusivity, absence of discrimination) as well as the regulatory framework for the marketing conditions laid down in Decree No.2010-614 of 7 June 2010 (consultation procedure, fixing the price as a percentage of the stakes, obligation to introduce anti-fraud measures, obligations to provide information and communication from the licensed operators for the organisers' benefit) would thus, in this case, enable a reconciliation of this right with the principle of the free provision of services.
54. By exercising their property right in the online betting sector, the sports organisers need to ensure directly with the betting operators of the content of the betting offer, the implementation of the rules of conflicts of interest, the increasing and breakdown of stakes that would make it possible to reveal any anomaly that might arise during competitions, prevention of corruption risks on their events and consequently, and more generally, risks of fraud.
55. It should be noted in this respect that the risks for competition integrity could take a variety of forms depending on the sport in question and the types of events.

It is clear that sports organisers, federations or private organisers, are the most able to have sufficient sports expertise to identify suspicious signs, such as placing bets that are inconsistent with what is at stake or sports information, unusual behaviour in the course of certain phases of the game and to carry out an active monitoring of their events.

If monitoring obligations were purely imposed on the State, this would involve a disproportionate deployment of human and material resources in order to benefit from the necessary expertise for each sporting discipline.

The actual exercise of the property right by a sports organiser in the online sports betting activity thus appears to be justified on the grounds of the general interest with a view to preserving sports ethics as well as preventing fraud, maintaining the integrity of sports and gambling operations. It is aimed at directly protecting consumers and the public and social order.

The exercise of this property right as long as it is run in accordance with its specific purpose in a non-discriminatory and proportionate manner, compliant notably with competition law, seems to be justified.

THE REGULATION OF THE EXERCISE OF THE BETTING RIGHT APPEARS TO RECONCILE ITS ESSENTIAL FUNCTIONS WITH THE EFFECTIVE OPENING UP TO COMPETITION OF THE ONLINE SPORTS BETTING SECTOR.

THE FRENCH COUNCIL OF STATE, THE HIGHEST JURISDICTION OF THE FRENCH ADMINISTRATIVE COURT SYSTEM, HAS UPHELD THE COMPLIANCE OF THE LEGAL FRAMEWORK OF THE BETTING RIGHT WITH THE CONSTITUTIONAL PRINCIPLES AS WELL AS WITH COMPETITION LAW AND FREE PROVISION OF SERVICES.

TO DATE, NO COMPETITION PROBLEM HAS BEEN SUBMITTED TO THE COMPETENT AUTHORITIES.

MONITORING OBLIGATIONS FOR SPORTS COMPETITIONS ON WHICH BETS ARE PLACED ARE IMPOSED ON ORGANISERS AND BETTING OPERATORS. THIS IS THE MOST APPROPRIATE AND PROPORTIONATE WAY OF ACHIEVING INTEGRITY OBJECTIVES IN SPORTS BETTING OPERATIONS AND COMPETITIONS ON WHICH BETS ARE PLACED.

THANKS TO THE REGULATED EXERCISE OF THE BETTING RIGHT, THE FREEDOM TO PROVIDE SERVICES IS NOT DISPROPORTIONATELY UNDERMINED.

B. The conclusion of betting right contracts since opening up to competition and regulation of the online gambling and betting sector

56. It may be recalled that the 12 May 2010 Act provided that licensed sport betting operators can only offer bets on competitions, types of results, stages of play and scores elements included on a list drawn up by ARJEL, further to an opinion of sports federations or, failing that, of the Ministry of sports. This means there is an evolving list of events on which bets are allowed, compiled at the request of both betting operators and federations or sports competition organisers. This list aims at limiting the organisation of betting on competition categories and types of results with risks factors of manipulation.

Consequently, only sports events listed and allowed can be marketed under the betting right.

When the market was first opened in May 2010, the list covered fifteen sports. On 30 June 2012, it covered thirty-seven ones.

57. Since the market was opened up to competition and until 30 June 2012, ARJEL was asked for its opinion concerning 56 draft marketing contracts for the right to organise online sports betting.

58. BENEFICIARIES OF THE BETTING RIGHT ARE MOSTLY SPORTS FEDERATIONS

The owners of the betting right which may be granted to licensed online sports betting operators are the organisers of competitions¹³, such as sports federations, delegated professional leagues created by the federations and private-law organisers authorised by the relevant empowered federation.

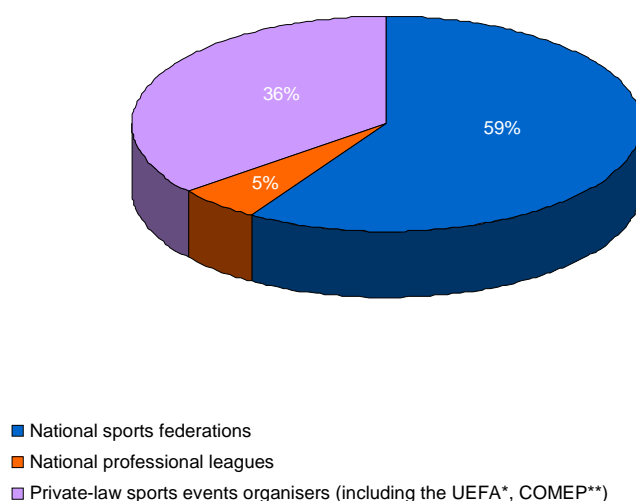
Those granting the betting right, in the contracts that have been submitted for an opinion, are mostly sports federations (59%).

Under French law, sports federations have a public service mission and are responsible for the organisation of their discipline.

Through the marketing of this betting right, 33 national sports federations were able to make direct connections with betting operators. They were therefore made aware of the prevention of risks in sports betting for their whole sporting discipline.

¹³ Articles L.333-1 and L.333-5 of the French Sports Code

Beneficiaries of the betting right



* Union of European Football Associations
** Paris Fencing World Championship organisation committee

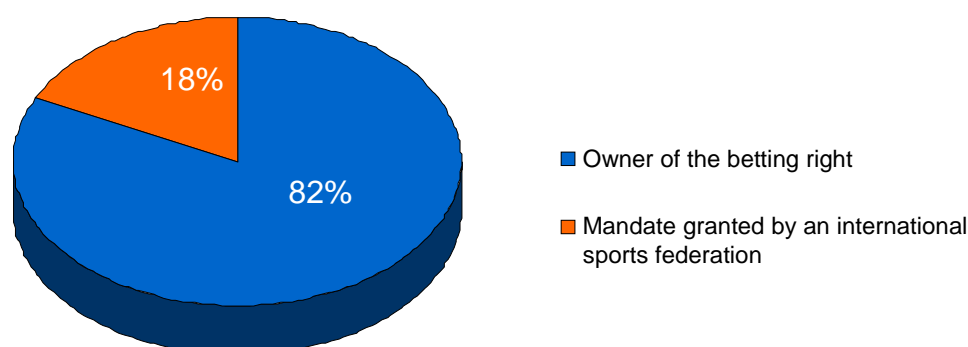
59. Article L.333-1-2 of the French Sports Code provides that the organiser of sports events or competitions may appoint the empowered or approved federation in question or the committee referred to in article L.141-1 of the French Sports Code (The French Olympic and Sporting Committee) to sign the contract granting the organisation of sports betting with online betting operators.

These provisions thus allow the owner of the right to grant organisation of betting to establish a mandate for entering into such contracts. Resorting to mandate must be specified and the owner of the right granted must be identified in the draft contract.

Only 18% of these contracts have been entered into through a mandate. The owners of the betting right were, in such cases, always international federations.

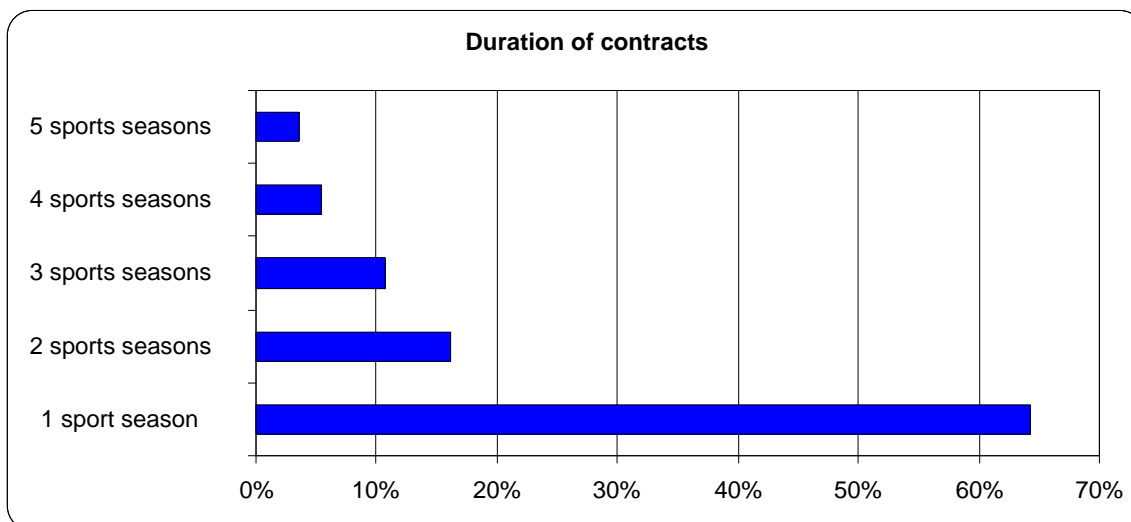
Thus, in 82% of cases, the contract granting betting rights directly linked betting operators with the owner of the right, the organiser of the competition.

Status of the grantor



60. BETTING RIGHT CONTRACTS ARE MOSTLY SIGNED FOR A SINGLE SPORTS SEASON

61. Marketing contracts of the betting right are offered for one or more sports seasons. The maximum duration of the concession is 5 years.



64% of the draft contracts submitted to ARJEL were concluded for a single sports competition.

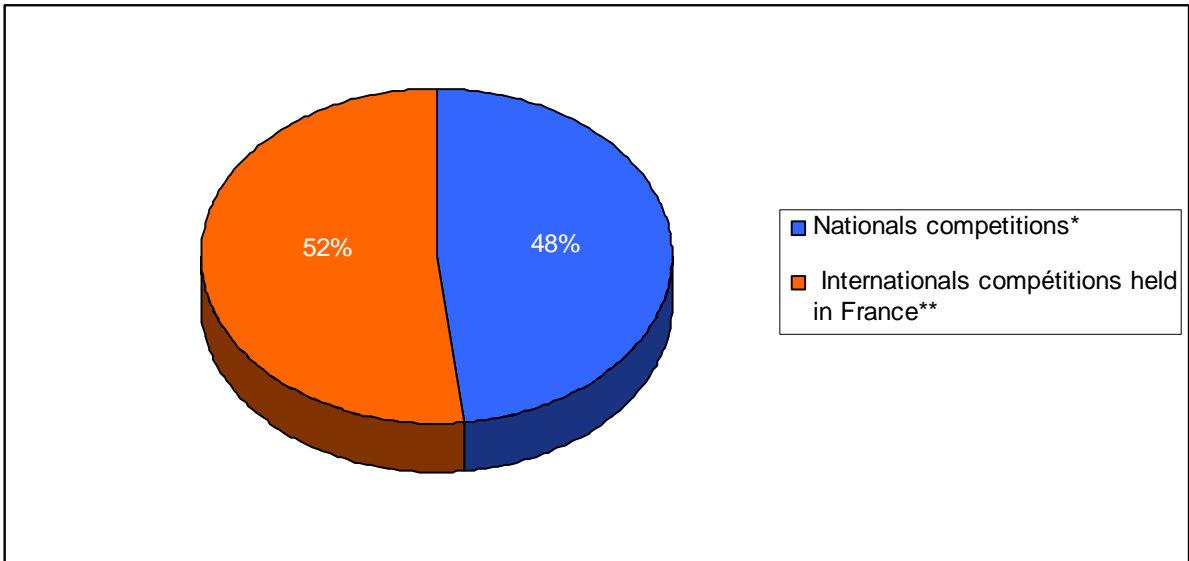
These annual contracts allow the competition organisers to take stock of each edition of the competition. It enables them to review the overall sports betting system and its development with a view to improving next edition contracts by specifying a certain number of obligations, where necessary.

62. MORE THAN 150 COMPETITIONS HELD ON FRENCH TERRITORY HAVE BENEFITED FROM THE BETTING RIGHT SYSTEM

From 12 May 2010 to 30 June 2012, 155 competitions held on French territory benefited from the system introduced through the betting right:

- 63 competitions for the 2010/2011 sport season,
- 77 competitions for the 2011/2012 season,
- 15 competitions for the 2012/2013 season (to 30 June 2012).

The contracts covered both national competitions (48%) and international competitions (52%) that were held in France.



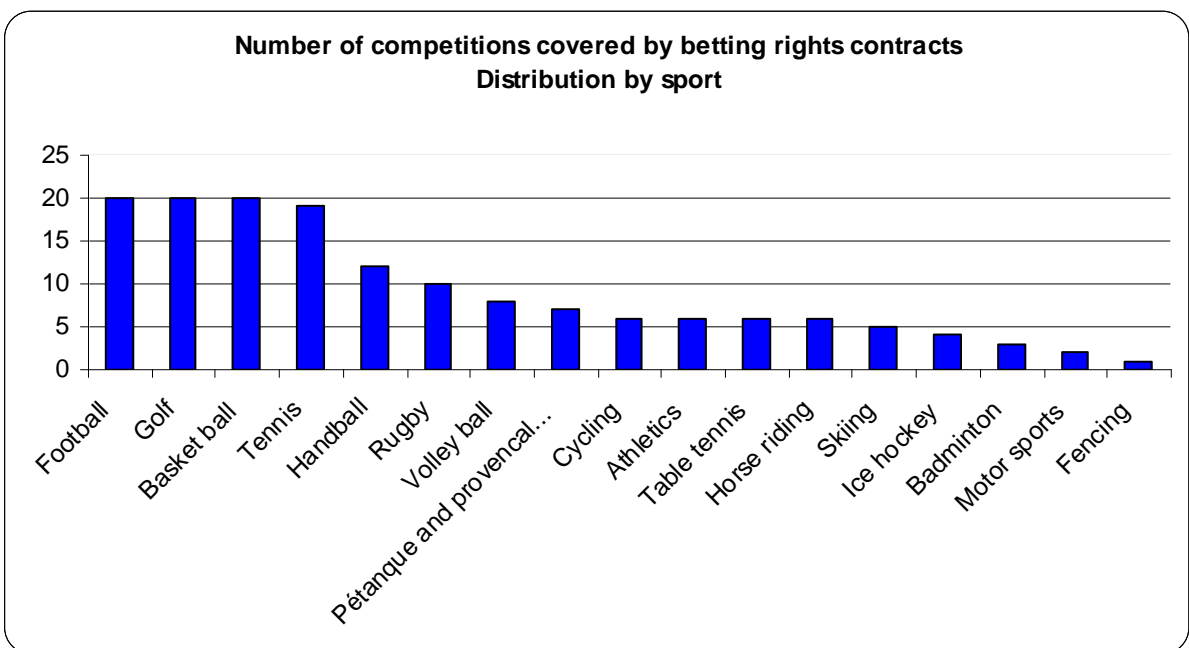
* A national competition is defined as a competition organised in France with French licensed participants

** An international competition is defined as a competition held in France and opened to foreign participants

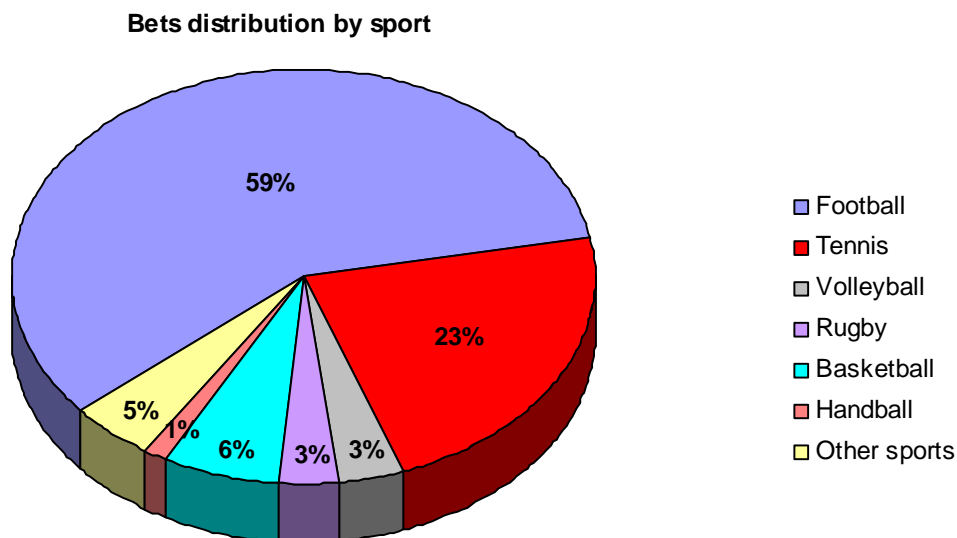
The nature of a competition, national or international, as well as its reputation, do not prejudice betting right marketing.

When a federation or league has marketed its betting right, it has done so for all of the competitions it organise and not only for the best-known ones. In this respect, some events, although generating very little income from the betting right, have been heavily marketed by their organisers, thus enabling them to set up risk prevention and detection measures.

63. ELIGIBLE COMPETITIONS FOR THE BETTING RIGHT IN SPORTS GENERATING MOST BETS HAVE BEEN MARKETED



The bets distribution by sports since the market was opened up can be classified under sports on which the largest numbers of bets were placed:



Distribution by sport for competitions on which betting was permitted shows that most of the sports on which the largest number of bets are placed (football, tennis, volleyball, rugby, basketball and handball) were indeed marketed.

83% of licensed operators signed contracts with the organisers of the football, tennis, basketball, handball and rugby competitions.

Not all the betting right contracts were signed by all the licensed sports betting operators. Reasons for this are likely to include operators marketing strategy and the existing alternative to sports betting on competitions eligible for betting right, since most of the sports betting offer involves competitions that are not covered by the betting right.

Of the 37 sports for which betting is allowed:

- 10 sports had no competitions that could be marketed as part of the betting right;
- for 17 sports, the competitions were subject to betting right contracts;
- for the remaining 10 sports, no betting right contracts were signed due to the lack of demand from operators.

With respect to football competitions which are the most attractive in terms of sports betting, all the licensed operators signed contracts for competitions of the French Football Federation (hereinafter referred to in as "FFF") and the French Professional Football League (hereinafter referred as "LFP").

It should finally be stressed that no licensed operator was refused to sign a betting contract by an organiser. ARJEL did not receive any reasoned refusal to contract on the betting right¹⁴, the law requiring the regulator to be informed thereof.

* * *
*

OF THE 37 SPORTS ON WHICH BETTING IS ALLOWED IN FRANCE:

- 10 HAD NO COMPETITION ELIGIBLE FOR THE BETTING RIGHT;
- 10 WERE NOT THE SUBJECT OF ANY APPLICATION BY BETTING OPERATORS;
- 17 WERE THE SUBJECT OF BETTING RIGHT CONTRACTS.

OF THE 17 SPORTS COVERED BY THE BETTING RIGHT, 6 OF THEM WERE THE ONES GENERATING THE LARGEST NUMBER OF SPORTS BETS.

CONTRACTS SUBMITTED FOR ARJEL'S OPINION CONCERNED:

- 155 COMPETITIONS HELD ON FRENCH TERRITORY FOR WHICH BETTING WAS ALLOWED;
- MOSTLY SPORTS FEDERATIONS;
- MOSTLY IT APPEARS FOR A SINGLE SPORT SEASON.

LICENSED SPORTS BETTING OPERATORS ALL SIGNED A BETTING RIGHT CONTRACT FOR FOOTBALL COMPETITIONS AT THE TIME THEY WERE MARKETED.

83% OF OPERATORS HAVE SIGNED A BETTING RIGHT CONTRACT FOR THE 5 MAIN SPORTS.

NO REFUSAL BY THE BETTING RIGHT OWNER TO SIGN A CONTRACT WAS NOTIFIED TO THE REGULATOR.

NO DISCRIMINATION OR ANTI-COMPETITIVE BEHAVIOUR WAS NOTED IN THE EXERCISE OF THIS RIGHT.

¹⁴ Article L.333-1-2 of the French Sports Code provides that any refusal to contract with an approved operator must be justified and notified to the ARJEL.

Part 2

The organisers' property right contributing to the development of sport and to the preservation of sports integrity in the sports betting sector

64. As any property right, the organisers' right entitles them to collect the benefits generated from their sports competitions exploitation. Organisers can therefore demand a financial remuneration regarded as compensation for the commercial exploitation of sports competitions.

Financial incomes are generated by the property right benefiting to the organisers. It enables them to ensure the success of the event's organisation over the time and more broadly, to develop and promote sport.

In sports betting, the remuneration takes account of the costs incurred for anti-fraud measures. To date, betting right generated limited incomes. As a result, it will mostly and only cover all or part of the introduced anti-fraud measures (I). However, this right is welcome as an effective means to prevent risks for sports competitions integrity (II).

I. Financial aspects of the organisers' property right in the sports betting sector

A. Financing anti-fraud mechanisms through incomes generated by the commercial exploitation of sports

65. ***Funding for sport and especially funding for amateur sport is ensured by a levy on gambling which is separate from the organisers' property right on sports events.*** Article 51 of Act No.2010-476 of 12 May 2010 provides that a levy of 1.8% on stakes placed through a sports betting operator is assigned to the National Centre for the Development of Sport (CNDS). In two years, the CNDS received 23 million euros:

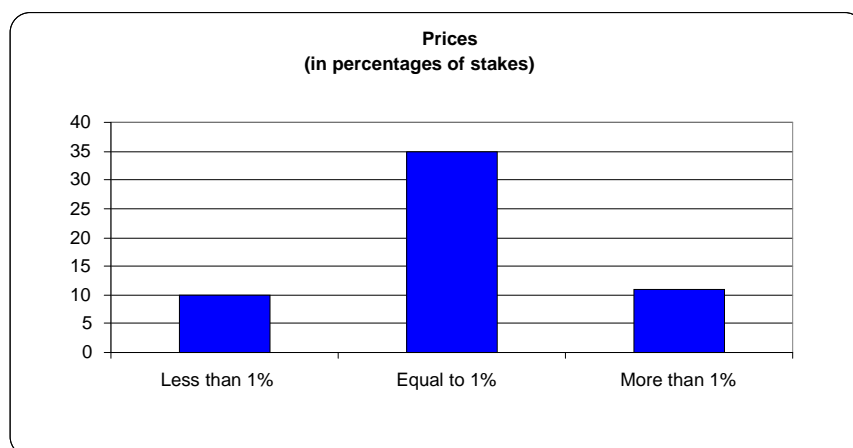
- €6 M in 2010
- €9 M in 2011
- €8 M in 2012

66. It is thus this levy rather than the organisers' property right that ensures a general financial return channelled towards sport.

67. The organisers' property right provides a financial contribution for commercial exploitation. Currently, only a very limited number of organisers can benefit from incomes substantially compensating costs incurred for the anti-fraud mechanisms, or exceeding these expenses.

68. As has already been explained, Decree No.2010-614 of 7 June 2010 provides that "*the price paid for the right to organise betting is expressed in the proportion of stakes*¹⁵."

69. On average, the price being determined in contracts is **1.1% of bets placed**. The highest price offered as found by ARJEL was 2.5% of stakes and the lowest was 0.75%.



70. In line with the applicable texts, this price must depend on the consultation carried out with operators. ARJEL retains the possibility of referring to the French Competition Authority, should competition concerns be raised on this point.

The French Competition authority has therefore considered in its opinion¹⁶ that the betting right pricing established as a percentage of stakes placed reducing in stages depending on the volume of bets, as it was envisaged in a draft betting contract, would constitute a reduction system based on volume.

According to established case law, quantitative discount schemes which are exclusively linked to the volume of purchases from a dominant firm are generally considered not to have a foreclosure effect, as they are therefore expected to indicate efficiency gains and economies of scale achieved by the dominant firm. Nonetheless, such reductions should be regarded to be in breach of articles L.420-2 of the French Commercial Code and 102 TFEU¹⁷, when they tend to remove or restrict the choosing possibility of the purchaser with regards to its sources of supply, to force competitors out of the market, to apply dissimilar conditions to equivalent transactions with business partners or to strengthen a dominant position by distorted competition, whereas this advantage comprising no justifying economic service.

In the present case, systems of quantitative reductions set up by the organisers of sport events seems to have no loyalty-inducing effect, since the betting operators do not control the volume of stakes placed by gamblers on the various sports events. However, such reductions also raise issues regarding the differential treatment of betting operators according to their size.

¹⁵ Article 3 of Decree No.2010-614 of 7 June 2010.

¹⁶ Opinion No.11-A-02 of 20 January 2011, concerning the online gambling and games of chance sector.

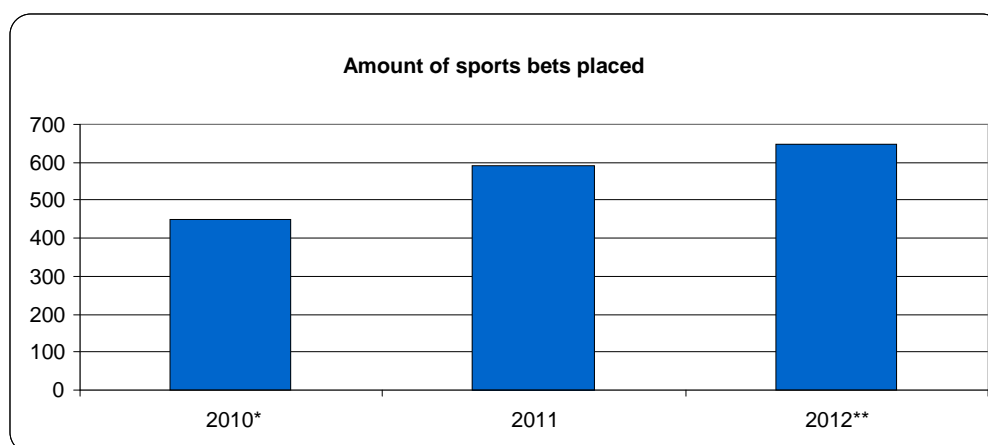
¹⁷ Judgements of the European Court of Justice of 13 February 1979, Hoffmann-La Roche vs. the Commission, 85/76, Rec. p. 461, point 90, and the Court of the First Instance of 30 September 2001, Michelin vs. the Commission, T-203/01, Rec. p. II-4071, point 59.

As well as for the determination of the betting right remuneration, the French Competition Authority may consider whether there is a potential anticompetitive discrimination, only as part of a case-by-case analysis within a dispute, and after determining whether sports federation in question has had a dominant position on the relevant market.

To date, no signed betting right contract provides such a payment system.

Moreover, no sports event organisers happened to be in a dominant position.

71. Online sports betting on the sector opened to competition appeared to be increasing in the year 2012 (by an estimated 18% in comparison with 2011).



* June to December 2010

** until the end of November 2012

In 2011, the betting right represented 1% of the operators' GGR.

72. Since the effective opening up of the online sports betting market in June 2010, **2.4 million euros** were paid back by online betting operators to the federations and organisers of sports events for the betting right.

Distribution of the betting right by sport

Sports	Price in % of stakes placed	Betting right (*)			% of total betting right
		2010-2011	2011-2012	Total	
Football	1%	694 k€	811 k€	1 505 k€	64%
Tennis	0.8 to 1%	251 k€	203 k€	454 k€	18%
Rugby	1%	82 k€	96 k€	178 k€	8%
Basketball	1.8%	49 k€	70 k€	120 k€	5%
Volleyball	2 to 2.5%	31 k€	18 k€	49 k€	2%
Handball	1.8%	11 k€	26 k€	38 k€	2%
Cycling	1 to 1.5%	11 k€	9,3 k€	20 k€	1%
Ice hockey	1%	228 €	3,3 k€	3,6 k€	0.2%
Table Tennis	1%	-	1.9 k€	1.9 k€	0,1%
Badminton	1%	-	1.1 k€	1.1 k€	0.05%
Fencing	0.75%	97 €	-	97 €	0.004%
Golf	1.33%	-	26 €	26 €	0.001%

Motor sports	1.11%	13 €	3 €	16 €	0.001%
Athletics	1.2%	-	4 €	4 €	0.0002%
TOTAL	-	1,130 k€	1,241 k€	2,371 k€	100%

(*) From 1 July to 30 June

The figures presented here are the result of estimates made by ARJEL's departments. Given the differences, especially those due to accounting treatment of certain transactions, there may be a 10% potential margin of error.

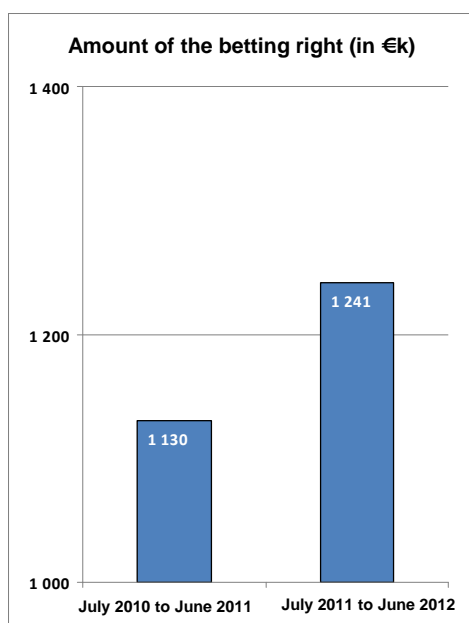
73. The amount paid for the betting right on betting operations in the land based network represents **6.9 million euros**.

Sport	Amount of betting right (in €K)*		
	2010 (2 nd half-year)	2011	2012 (1 st half-year)
Football	1,347	2,955	1,718
Rugby	123	189	123
Tennis	-	-	64
Basketball	41	115	102
Handball	48	62	35
Ice hockey	-	4	10
TOTAL	1558	3325	2053

* source: FDJ

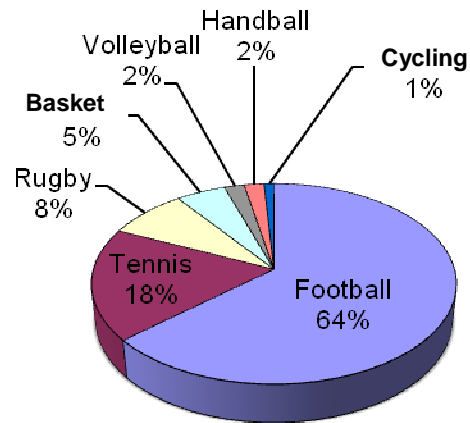
74. The amount of the betting right over the online network increased by 10% for the two periods of reference (June 2010 to June 2011 and July 2011 to June 2012), which can be explained by various factors, such as:

- the overall increase in sports betting between 2011 and 2012 at comparable periods (+20% at the end of the 2012 half-year),
- the growing interest of gamblers in the French championships in the various sports (especially football and rugby),



75. Most of the amounts paid for the betting right (64%) regards football.

Distribution of online betting right by sport



76. Events generating the most significant betting right amounts are as follows:

- between the opening up of the market in June 2010 and the end of May 2012, the French first football League alone generated more than one million euros in betting right income, i.e. more than 43% of the total for all sports;
- The French second football League obtained more than 300 k€ from betting right for the same period;
- The 2011 and 2012 Roland Garros tennis tournament generated nearly 250 k€ in betting right for the French Tennis Federation (130 k€ in 2011 and 118 k€ in 2012).

Rugby (including the Top 14, the Pro D2 and test matches played by France national rugby union team) has generated 7% of the total betting right income since 2010 (171 k€), even though this sport represents less than 5% of sports betting stakes since the market was opened up.

Note that the Top 14 and the Pro D2 are showing a significant increase in betting in recent months (1.6 m€ of bets on the 2011 T2 as against 2.2 m€ for the 2012 T2, a 38% increase).

Betting right on the main events

Sports	Events	Prices in % of stakes placed	Betting right *)		
			2010-2011	2011-2012	Variation
Football	League 1	1%	492 k€	533 k€	+ 8%
Football	League 2	1%	130 k€	162 k€	+ 25%
Tennis	Roland Garros	1%	130 k€	118 k€	- 9%
Rugby	TOP 14	1%	80 k€	91 k€	+ 14%
Football	Coupe de France	1%	44 k€	68 k€	+ 55%
Basketball	Pro A	1,8%	49 k€	66 k€	+ 35%
Football	Coupe de la Ligue	1%	28 k€	42 k€	+ 50%
Tennis	Paris-Bercy Masters	1%	30 k€	39 k€	+ 30%

(*) From 1 July to 30 June

77. During the first half-year of 2012, French gamblers on licensed sports betting operators' websites have bet the total amount of 362 million euros.

Of these 362 million euros, only 75 million euros involved events covered by a betting right, i.e. less than 21% of stakes.

78. The link between stakes and the betting right cost can be explained in two ways:

- the most attractive events in terms of exploitation generate the most stakes (in proportion to the commercial exploitation made of the event);
- the competitions generating the most cash in terms of sports betting market are exposed to the highest risk of manipulation, since the operations associated therewith are less easily detectable.

Since the online sports betting sector was generated, alerts have concerned sports on which stakes are mostly registered.

It therefore appears necessary for the organisers of such events to benefit from a more significant financial return.

79. Currently, the amount paid by licensed sports betting operators for the betting right remains limited but benefits the events potentially most exposed.

Excluding football, tennis and rugby, the amounts paid by operators to organisers remain small. For some of them, it does not cover the costs incurred for risk prevention. Although the online sports betting sector is still developing, organisers nonetheless continue to market their events even if it is not in the prospect of receiving a substantial financial return.

The question arises of the financial basis for the betting right, currently limited to stakes taken by licensed operators licensed to provide services only on French territory.

The question also arises of competitions eligible for the betting right.

* * *

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THE BETTING RIGHT IS ON AVERAGE 1.1% OF STAKES TAKEN ON COMPETITIONS ELIGIBLE FOR THE BETTING RIGHT.

THIS PRICE IS BASED ON MARKET RULES.

SINCE THE OPENING UP, BETTING RIGHT HAVE GENERATED 2.4 MILLION EUROS ONLINE AND 6.9 MILLION EUROS IN THE LAND BASED NETWORK.

THE FINANCIAL IMPACT OF THE BETTING RIGHT IS CURRENTLY RELATIVELY SMALL. IN 2011, IT REPRESENTED 1% OF THE GROSS GAMBLING REVENUE OF LICENSED OPERATORS.

FOOTBALL COMPETITIONS REPRESENT 64% OF THE BETTING RIGHT INCOME WITH ON AVERAGE 58% OF STAKES PLACED SINCE THE OPENING UP; THEN FOLLOW TENNIS, RUGBY, BASKETBALL, VOLLEYBALL AND HANDBALL COMPETITIONS.

THE COMPETITIONS WHICH ARE POTENTIALLY THE MOST EXPOSED, GIVEN THE EXISTING LIQUIDITY ON THE SPORTS BETTING MARKET, ARE THE BENEFICIARIES OF INCOME FROM THE BETTING RIGHT.

THE FINANCIAL BASIS FOR THE BETTING RIGHT IS CURRENTLY LIMITED TO BETS TAKEN IN FRANCE BY THE LICENSED OPERATORS.

MOREOVER, THE BETTING RIGHT COVERS ONLY CERTAIN SPORTS COMPETITIONS.

THE QUESTION OF THE BETTING RIGHT TERRITORIALITY AND ITS IMPACT ON THE EFFECTIVENESS OF THE SYSTEM OUGHT TO BE RAISED.

B. The territorial impact of the betting right on the effectiveness of the system

80. Two questions have been raised during the implementation of the betting right. The first concerns events that may be covered by this right. The second one focuses on enhancing the system efficiency by broadening it to other States, and even to the European Union level.
81. Organisers of events held abroad and willing to grant organisation of betting to licensed operators, as provided for by article L.333-1-1 of the French Sports Code, requested ARJEL for opinion on these contracts.
82. The preliminary issue of the existence of such a right concerning events held abroad was therefore raised. It should be noted that the “betting right” is but one of the attributes of the general property right enshrined by French law to the benefit of organisers through article L.333-1 of the French Sports Code.

This article provides that sports federations and organisers referred to in article L.331-5 of the French Sports Code are the owners of the exploitation rights on the events they organise.

These are therefore approved or empowered French federations and private law organisers, whatever their nationality, which need to be allowed by the French empowered federations to organise events (i) opened to licensed players of the said empowered federations, and (ii) including the awarding of monetary prizes or equivalent exceeding an amount set by decision of the Ministry of Sport.

In order to determine the exploitation right in accordance with the French Sports Code, the relevant criterion is the status of the event organiser. In order to claim property of this right, the event organiser must be:

- a French sports federation that is empowered or uniquely licensed;
- or
- a private law organiser, whatever its nationality, if subject to prior approval by the French empowered federation for the sport in question.

This criterion tends to require a link with the French territory, for which the federations are licensed or are empowered by the Ministry of sport to organise the sports competitions listed in article L.131-8 of the French Sports Code. The approval status entitles to participate as approved federations in the public service task of promoting and developing physical activity and sport in France; the delegation entitles to perform a public service mission through the delegation of a monopoly for the organisation on the French territory of certain competitions in the relevant sport.

Events held abroad do not seem to meet the requirements of article L.333-1 of the French Sports Code as regards their conditions of organisation, given the lack of any connection with French territory:

- if the federations organise events outside French territory, they do not do so in their role as an approved or empowered federation, since such a status is only granted them for the French territory,
- if they organise events outside French territory, the organisers referred to in article L.331-5 of the French Sports Code are not required to request prior authorisation from the empowered federation, this authorisation being required only due to the organisational monopoly conferred upon empowered federation by the Ministry of sport for the French territory.

83. It would therefore appear that events held abroad are not covered by the provisions of article L.333-1 of the French Sports Code. As a result, their organisers cannot be considered as owners of the exploitation right provided for in article L.333-1 of the French Sports Code (and consequently, the right to grant the organisation of betting) on the basis of this text.

84. However, the existence of a right to grant the organisation of betting held by these organisers under any other applicable law can be discussed.

Indeed, ARJEL has noted that organisers of competitions held abroad have hitherto based their claims to the right to grant the organisation of betting solely on the provisions of article L.333-1 of the French Sports Code.

Furthermore, the question of whether an organiser of a sports event held outside France can claim the right to grant the organisation of betting on French territory has not been addressed by French courts up to date.

ARJEL adopted the position that no betting offer can be proposed by a licensed operator for a sports event held in France under the conditions of article L.333-1 of the French Sports Code, unless such exploitation right has been granted to it by the sports organiser as part of the betting right contract.

However, there is no court case law on whether an organiser of a sports event held abroad can see betting operated without its authorisation on French territory sanctioned. As a result, ARJEL considers it does not lie in its purview to engage in possible administrative proceedings against any licensed operator offering betting on an event taking place outside France without contracting first with its organiser.

85. Consequently, ARJEL expressed full reservations on the need for licensed operators to sign a contract granting the organisation of online betting on events not being held on French territory.

86. The other question raised concerns the exercise of the betting right outside French territory. Both in relation to the financial aspects of the betting right as well as its ethical aspects, the restriction to betting organised solely on French territory has a restrictive effect on the effectiveness of the system.

The organiser of the competition can thus only have a partial view of the betting activity performed during its event and consequently it can only claim fair return on an exceedingly small proportion of the income generated by betting on its event.

87. This question is currently being considered by any terms of any possible strategies to pursue betting operators operating outside French territory. Just as organisers protect their television broadcasting rights, including the stills or moving images of their events, the protection of one of the other attributes of their property right – in other words the betting right – in territories other than France makes sense.

This obviously leads to questioning about the adoption of the betting right or an equivalent legal instrument for others countries, and firstly within the European Union.

France is indeed currently the only Member State in the European Union to have such a legal instrument¹⁸. In France, its application is no longer disputed and poses no difficulties.

88. The debate in the European Union was opened by the European Parliament.

In this context, the European Parliament Resolution of 8 May 2008¹⁹ dealt with sport in general but more specifically tackled the question of sports economic aspects and especially compliance with intellectual property rights, as well as the organisers' exploitation rights on sports events, particularly in regard to sports betting.

In the first recitals of the Resolution, the European Parliament recalled:

"C. whereas sport plays a very important role in European society, parts of competition sport, however, are confronted with new threats and challenges, such as commercial pressure, the exploitation of young players and sportsmen and sportswomen, doping, racism, violence, match fixing, corruption, betting fraud and money laundering,"

In relation to the economic aspects of sport, the European Parliament then stressed:

"AC. Whereas sports betting activities have developed in an uncontrolled manner (particularly cross-border betting on the Internet), whereas a growing number of matches have been fixed and whereas betting-related scandals have recently come to light in Member States threatening the integrity of sport and sporting competitions,"

In this context, the European Parliament expressly invited the Commission and Member States to:

"introduce legislation and/or strengthen existing regulations to attach particular importance to respecting intellectual property rights relating to commercial communications, trademarks and images, names, media rights and any other spin-offs from the sporting events organisers are running, so as to protect the professional sport economy, while respecting the right of "short reporting" as stipulated by directive 2007/65/EC⁽¹²⁾ (Audiovisual Media Services' Directive) and the self-sustained and balanced development of sport, without putting at stake the proper balance between a sporting organisation's legitimate concerns and the needs of the public to be able to access and create objective, informative and topical information in the forms of written,

¹⁸ There is, however, an equivalent to betting rights in Australia.

¹⁹ Resolution of the European Parliament dated 8 May 2008 concerning the White Paper on Sport ([2007/2261\(INI\)](#)) (considerations C and AC in particular).

pictorial and audio content; points out that it is also important to ensure that recipients are guaranteed the possibility of having access to sporting events at cross-border level with the EU at a distance; [our underlining]

[The Parliament] considers that problems that problems of ambush marketing, internet piracy and unlawful sports betting should be addressed as a priority by Member States and the Commission; (point 70)."

The European Parliament thus pointed out the imperative need to ensure compliance both with the organisers' intellectual property rights – especially their trademarks – and with the exploitation right of sports events to protect this activity. The Parliament also strongly emphasised that solving problems associated with illegal sports betting activity must be regarded as a priority.

89. In its Resolution of 15 November 2011²⁰ on online gambling in the Internal Market, the European Parliament :

*40. reaffirms its position that **sports bets are a form of commercial use of sporting competitions recommends that sporting competitions should be protected from any unauthorised commercial use, notably by recognising the property rights of sports event organisers, not only in order to secure a fair financial return for the benefit of all levels of professional and amateur sport, but also as a means of strengthening the fight against sports fraud, particularly match-fixing;***

*41. stresses that **conclusion of legally binding agreements between organisers of sports competitions and online gambling operators would ensure a more balanced relationship between them;***

A European extension of the French betting right model could be envisaged as it seems entirely consistent with the European Parliament Resolution.

90. In this respect, the Court of Justice of the European Union ruling of 4 October 2011 (cases C-403/08 and C-429/08) about the territorial exclusivity granted by the English *Premier League* for the satellite TV broadcasting of its matches is of general assistance on specific rights of organisers on their sports competitions and their possible future at a European level.

The Court decided to respond to a question concerning the possible contradiction between the provisions in question in English law with the principle of the free movement of services (recitals 76 ff.). It considered that the decoders card in dispute where only an instrument enabling subscribers to obtain the encrypted broadcasting services. As a result, the Court decided it was mainly a question of free movement of broadcasting services. It therefore questioned whether the restriction imposed on the free movement of this service was justified in the light of protecting intellectual property rights, as asserted by the *Premier League*.

The Court's response to this point deserves to be stressed.

The Court initially stated that the *Premier League* cannot insist upon copyright on the Premier League matches, as those sporting events cannot be considered to be "works" for the purposes of copyright within the meaning of the copyright Directive.

²⁰ Resolution of 15 November 2011/2084 (INI).

It recalled that EU law does not confer protection upon sporting events in the field of intellectual property. But the Court then pointed out that "*sporting events, as such, have a unique, and to that extent, original character which can transform them into subject-matter that is worthy of protection comparable to the protection of works, and that protection can be granted, where appropriate, by the various domestic legal orders(...). Accordingly, it is permissible for a Member State to protect sporting events, where appropriate by virtue of protection of intellectual property, by putting in place specific national legislation (...)*"

The position thus expressed by the Court is of particular interest in relation to French law and the property right of competitions organisers. The Court has thus confirmed that recognition of such a property right over sports competitions is not only a possibility for Member states but also this right could even be considered an intellectual property right. This qualification is important since harmonisation at the EU level could be considered in order to protect the rights of the organisers of sports competitions.

91. The study undertaken by the European Commission in January 2013 concerning the rights of sports competitions organisers will make it possible to define and analyse the various existing forms of protection within the Union. Moreover, it will open a new debate on extending this property right, including in its betting right aspect.

Either through the establishment of litigation strategies or through a possible European Union harmonisation, an expansion of the betting right to other territories than France would allow not only to increase the basis for the remuneration paid to organisers but also the scope of the information from which they could benefit and the controls they could exercise to protect their competitions.

FRANCE IS THE ONLY MEMBER STATE IN THE EUROPEAN UNION TO HAVE A LEGAL INSTRUMENT SUCH AS THE BETTING RIGHT.

GIVEN THE CURRENT LEGAL TEXTS AND CASE LAW, ONLY COMPETITIONS ORGANISED ON THE FRENCH TERRITORY HAVE BENEFITED FROM THIS RIGHT AND THIS, SOLELY FOR BETTING OPERATIONS PERFORMED ON THIS TERRITORY BY LICENSED OPERATORS.

IN VIEW OF ITS AIM, THE EXERCISE OF THIS RIGHT WITH OPERATORS PROVIDING SERVICES OUTSIDE FRENCH TERRITORY MAKES SENSE.

THE DEBATE ON THE EXPANSION OF THIS LEGAL INSTRUMENT TO OTHER TERRITORIES WITHIN THE EUROPEAN UNION HAS BEEN OPEN BY THE EUROPEAN PARLIAMENT AND IS REFLECTED IN THE COURT OF JUSTICE OF THE EUROPEAN UNION CASE LAW CONCERNING THE PROTECTION OF SPORTS COMPETITIONS.

SUCH AN EXPANSION WOULD STRENGTHEN THE EFFECTIVENESS OF THE SYSTEM IN TERMS OF COOPERATION BETWEEN ORGANISERS AND OPERATORS AND WOULD *DE FACTO* PRODUCE AN EXPANSION OF THE BASIS FOR THE BETTING RIGHT.

II. A tool to prevent risks for sports competitions integrity

92. The role of the betting right in preventing risks for sports competitions integrity constitutes an effective contribution to the comprehensive system introduced by the French authorities in online sports betting.

Indeed, the betting right materialises the much-needed legal link to the introduction of effective measures to fight against fraud in sports events (A) and enables participation of these organisers in alert measures (B).

A. A much-needed legal link allowing sports event organisers to set up efficient anti-fraud systems

93. French law requires the marketing betting right contract to specify the licensed operator obligations relating to fraud detection on sports competitions or sports events.

The implementing provisions thereof require that the specifications provide monitoring and detection measures, that the organiser intends to introduce in order to prevent risks for its sports competition integrity.

94. The marketing betting right contract, despite being a recent legal instrument, has nevertheless made it possible to establish a much greater awareness of its owners about the risks involved in betting on their competitions.

Apart from a better knowledge of the actual betting activity, the owners of the betting right have gradually introduced measures that take this particular activity into account and have taken suitable preventive measures.

95. In view of the contracts submitted, ARJEL has been able to identify the information and transparency obligations that are most frequently required for the betting right, and for which the operators are responsible:

- systematic, real-time information from the operators organising the competition, by the operators, of any suspicious movement in bets on the competition and especially:
 - an abnormally high volume of stakes on the competition by comparison with an amount fixed between the parties with respect to stakes usually taken by the operators for similar competitions,
 - abnormal distribution of stakes in view of the probable sports results,
 - an abnormally high level of stakes for a specific bet (according to a threshold established by the parties);
- systematic, real-time information from the organiser of the competition, through the operator, of any delisting of bets on the event by providing justification for such delisting ;
- a commitment by operators to answer justified requests for additional information regularly sent to them by the organisers of sports events relating to any enquiry following an alert;
- the methods of transmission of information by the operators to the federations or organisers;

- the appointment of a corresponding contact working for the operator for the needs of any discussions with the federation or an organiser.

The parties are invited to plan to inform ARJEL, in real time, of any case of a fraud suspicion.

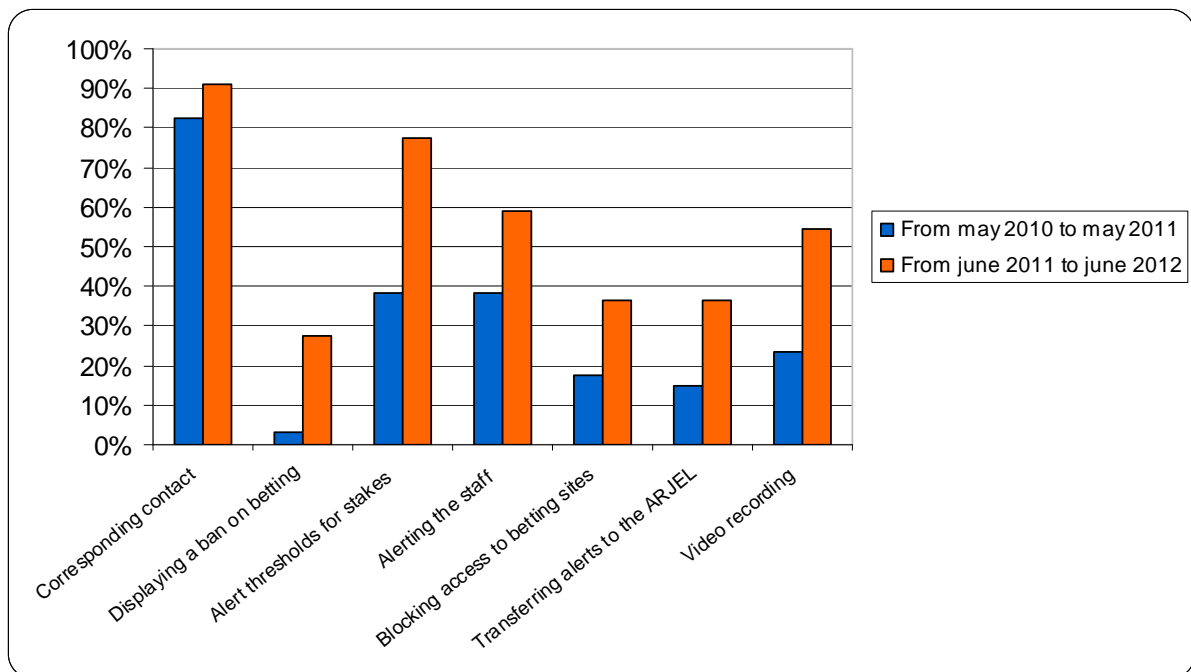
96. Access by organisers to the amounts and distributions of stakes is a decisive point in introducing competition monitoring proceedings. Through these contracts, organisers can also be made aware of the content of certain betting offers placed on their events. If this is necessary, they also can limit some of them given the specificities – for instance of the organisation – of their competitions.
97. During the marketing of the betting right, ARJEL is also able to check the adoption by sports federations and sports events organisers of rules on prevention of conflicts of interests and in particular, on betting and disclosing inside information to those involved in the event, in line with the provisions of article L.131-16 of the French Sports Code.

The adoption of such rules is imperative and contributes to the system introduced by the federation or organiser to prevent and detect the risk for competitions integrity and the risk of conflicts of interests. ARJEL invites the parties to specify in their contracts the persons covered by such prohibitions, as well as the methods for controlling these prohibitions and the sanctions attached thereto.

98. Among the measures introduced by organisers and specified in the contracts, ARJEL has mainly noted the following in the course of 2011:

- the appointment of a referee as late as possible to avoid any possibility of an approach;
- the presence of referees or commissioners associated with the competition organisation, in sufficient number to ensure monitoring of the course of the competition, especially in the case of an alert issued after cooperation with the operators;
- the introduction of a ban on betting from the premises of the competition, including among the spectators present;
- the introduction of measures blocking access to online betting websites during the competition, from computer workstation available to the staff organising or monitoring the competition or available in the premises of the sports event;
- awareness-raising initiatives for the organisational staff, the referees, sportsmen and sportswomen;
- video recording of the competition to enable *a posteriori* checking of the event in case of an alert on the betting sector;
- making the match sheets available and the possibility of analysing the course of the sports event;
- methods of collaboration with national and international federations;
- the appointment of a corresponding contact in the sports federation or organisation to interact with the operator and where appropriate, with ARJEL;
- procedures for dealing with alerts issued following information submitted by the operator or from any other source concerning a risk to the integrity of sports competition:
 - information of the participants,
 - introduction of an increased monitoring,
 - processing information received from the operators in view of

information linked to the competition (sporting level of the competitors, sports, stake of the competition itself or regarding the season progress, etc.).



99. ARJEL has noticed a clear change in the measures introduced under the contracts since the online sports betting sector has opened. Most of the contracts submitted for an opinion now contain a system with preventive measures for the competition stakeholders. These contracts also ensure the automatic transmission of information to corresponding contacts chosen among the organisers and operators entitled to generate and if necessary handle alerts, by introducing monitoring measures to be applied to the competition.
100. The competition organisers have understood the risks resulting from certain organisation measures. It leads organisers to change them, such as the moment when referees are appointed, increasing the number of officials supervising the competition and strengthening their training, limiting access to certain areas in which competition stakeholders are to be found, adapting certain rules (as for instance with equestrian events) and the wording of a ban on betting within the premises of competitions.
101. The marketing of the betting right ensures that human and material resources can be drawn upon before, during and after competitions. Only competitions generating the highest income are now able to substantially amortising the costs of these systems.

Teams or corresponding contacts centralise the betting information available and, where appropriate, conduct their analysis regarding available sports information. They can also include the competition officials who are able to exercise increased monitoring during the course of the event.

These integrity units interact with operators and, when necessary, with public authorities. Some organisers, when looking on information collected under the betting right contract, have informed the law enforcement authorities of behaviours likely to characterise a criminal offense.

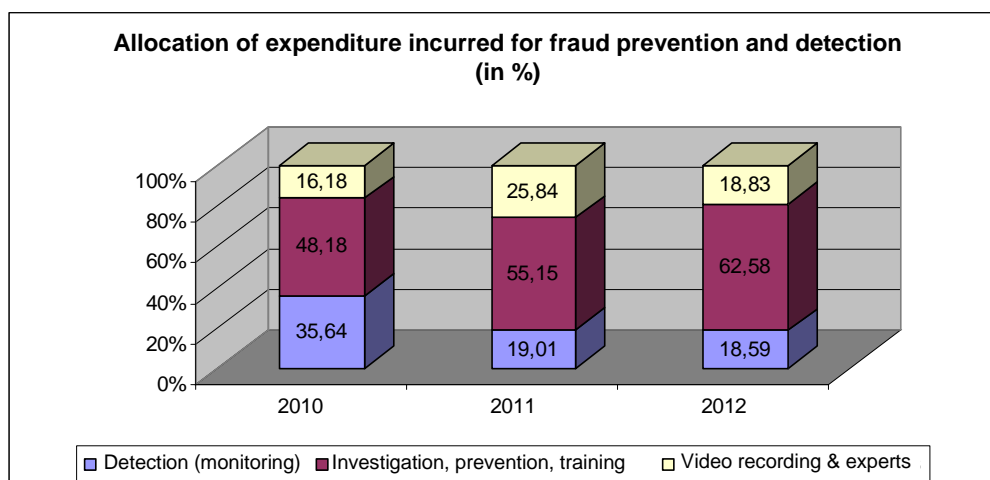
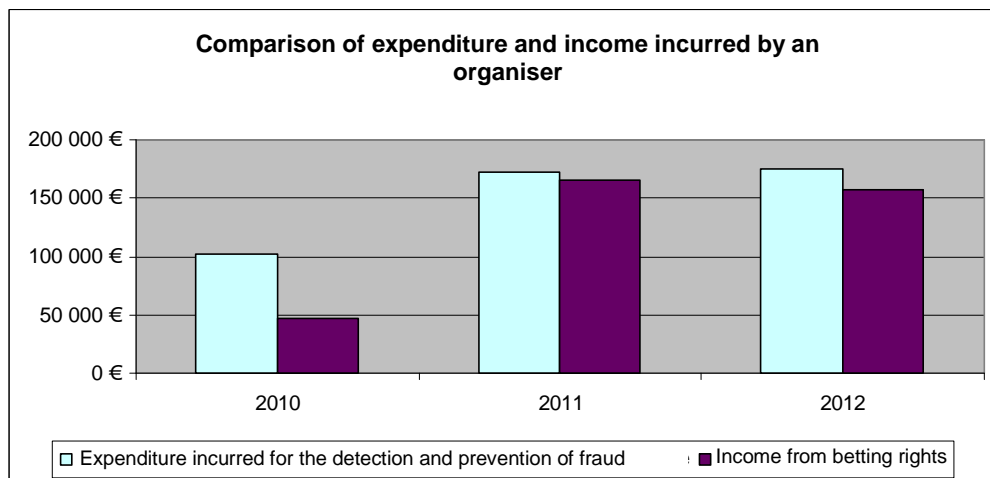
For the French Professional Football League and the French Tennis Federation, the betting right enables them to have a full transparency on the betting operations taken in France. They also monitor betting activity outside France, through betting right-funded monitoring systems.

102. Communication between operators and organisers concerning the total amount of stakes and the stakes above a certain threshold also makes it possible to establish sports betting activity repositories for the competitions in question. These repositories constitute relevant indicators in the detection of potentially abnormal betting behaviours.
103. Finally, the consolidation of information concerning the sports betting market with those at the disposal of the organisers allows on the one hand identifying certain vulnerabilities in the competition such as risks of manipulation and on the other hand, putting aside groundless suspicions.

This legally binding bond thus created between betting operators and organisers of competitions on which bets are placed makes it possible to empower the sports movement. It also provides the sports movement with the instrument granting it the necessary elements for its full involvement in measures for the preservation of sport integrity.

EXAMPLE OF A PREVENTION AND DETECTION MEASURE INTRODUCED BY AN EMPOWEREDSPORTS FEDERATION (THE FRENCH TENNIS FEDERATION) AND USE OF THE INCOME DERIVED FROM THE BETTING RIGHT:

- A corresponding contact for the year and an enhanced unit during the competition;
- Participation in the international integrity unit for the sport in question responsible for training, prevention and investigation (Tennis Integrity Unit);
- An awareness-raising program competitions stakeholders (e-learning, information in the premises of the competition);
- Automated monitoring system for sports betting offers on the competition, adapted for the sport in question (monitoring offers and odds), at an international level (development of a specific monitoring tool and annual services);
- Systematic video recordings of sports events;
- A consultant, a former tennis professional, who provides viewing and analysis services for events in the case of suspicion;
- Ban on betting and awareness-raising of the staff responsible for the organisation and security of the competition;
- Blocking access to online betting websites for the staff during the year and on the wifi network during competitions;
- Collaboration with the relevant police authorities during the event;
- Surveillance of the people liable to collect and send data in the vicinity of the competition place.



THE LEGALLY BINDING LINK CREATED BY THE BETTING RIGHT ENABLES:

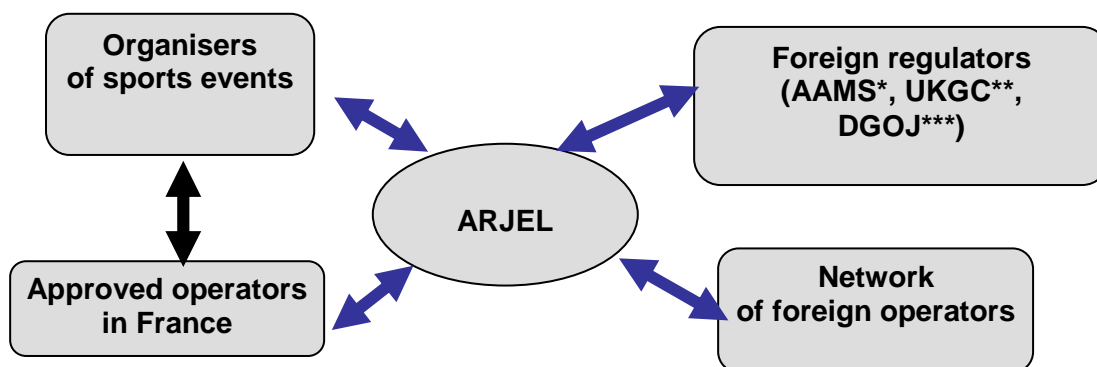
- **ORGANISERS OF SPORTS COMPETITIONS TO BE MADE AWARE OF THE RISKS INVOLVED IN SPORTS BETTING (INTRODUCING INFORMATION CHANNELS, AWARENESS-RAISING WITH STAKEHOLDERS AND ACQUISITION OF A BETTER KNOWLEDGE OF BETTING ACTIVITY);**
- **ACCESS FOR THE ORGANISERS TO INFORMATION (AMOUNT AND DISTRIBUTION OF STAKES, TYPES OF BETS) NECESSARY FOR INTRODUCING PROCEDURES FOR DETECTING ANOMALIES IN THE COURSE OF THE COMPETITIONS, RELATED TO BETTING;**
- **ANALYSIS OF BETTING MOVEMENTS IN RELATION TO THE SPECIFIC CHARACTERISTICS OF THE COMPETITION.**

EMPOWERING ORGANISERS OF SPORTS EVENTS AND THEIR INVOLVEMENT IN THE PREVENTING AND DETECTING RISKS SYSTEMS BECOME EFFECTIVE THROUGH THIS SYSTEM.

B. Instrument for organisers participation in the alert mechanisms

104. The participation of organisers to alert mechanisms was found to be more effective from the moment they became aware of the risks and worked for the preservation of their competitions integrity, thanks to the marketing of their betting right.
105. ARJEL has introduced, together with the different people involved, a sport alert mechanism to determine if any anomaly found in betting operations placed on a particular sports competition can be analysed as revealing a possible competition manipulation.

In addition to its own detection system, ARJEL requires organisers and operators to inform it without delay of any fraud suspicion in bets placed on one or more stages of the play.



* AAMS: Amministrazione autonoma dei monopoli di Stato
** UKGC: Gambling Commission
*** DGOJ: Dirección General de Ordenación del Juego

The alert mechanism involves, for ARJEL:

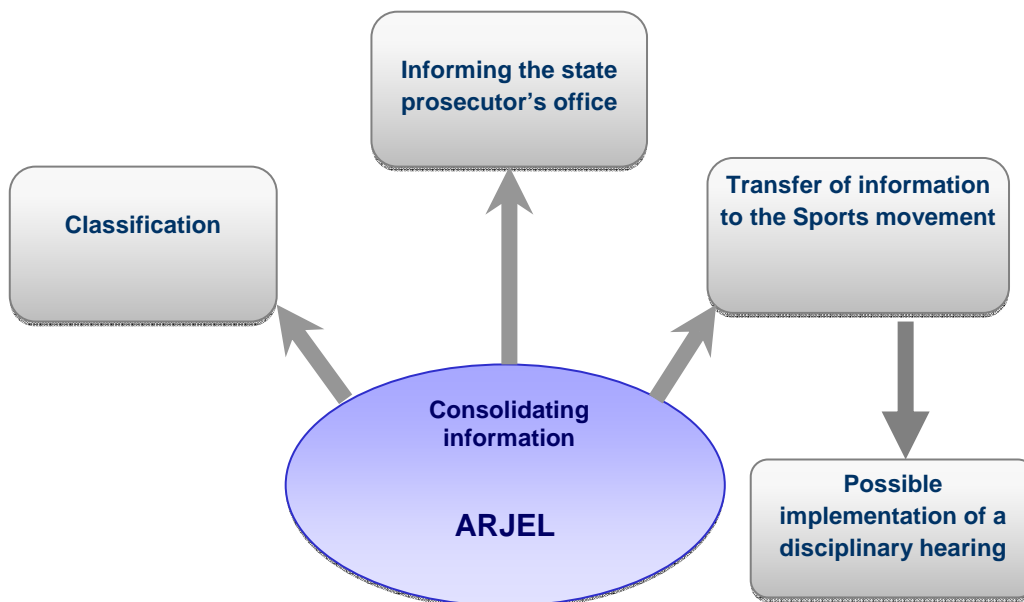
- monitoring of the odds on bets offered for the event if it has not yet ended,
- an analysis of betting operations taken by betting operators from data recorded on archiving hardware (frontal),
- making contact with operators in order to obtain, where appropriate, explanations to justify their sports event delisting or a sudden change in the odds,
- contact organiser of the sports event in question,
- if the event is in progress, ARJEL will ask betting operators to report immediately any anomaly linked to the volume of stakes placed on the event or an unusually high stake.
- questioning other sports betting regulators with whom ARJEL signed a cooperation and information exchange agreement (AAMS, Gambling Commission, DGOJ) and/or operators also operating in other markets to determine whether similar anomalies have been found.

106. Where the alerts concern competitions covered by the betting right system, the organiser may provide elements for analysing the alert, collected under its contract (including repositories of betting on the competition and subsequent specific sports information). The organiser can also place the event in question under observation or transfer information arising after the event (match sheet, viewing and analysis of the competition correlated to the odds evolution, as well as the stakes and their breakdown, questioning officials and referees etc.).

Since April 2011, anomalies have been detected during thirteen French events, including eight in football, two in tennis, one in handball, one in basketball and one in volleyball.

When checks were performed on six of these anomalies, there were discussions between ARJEL and the organisers. For four of them, analysis reports were sent by organisers owning the betting right.

107. The organisers owning the betting right thus became close contacts for the regulator, thus enabling it to complete its own analyses and determine the follow-up to be given to the alert. They might also receive information from ARJEL, especially when the suspicious behaviour comes under the organisational power of the sports competition or the disciplinary power of the federation (especially rules banning betting in order to prevent conflicts of interests or abnormal sports behaviours). Unusual betting operations may in fact reveal behaviour which, without being illegal, may be contrary to sports ethics.



THE BETTING RIGHT MAKES THE PARTICIPATION OF COMPETITION ORGANISERS TO ALERTS SYSTEMS MORE EFFECTIVE IN DETECTING ABNORMAL BETTING OPERATIONS THAT MAY DISCLOSE MANIPULATION CASES.

THANKS TO ELEMENTS ORGANISERS COLLECT UNDER THEIR CONTRACT AND THE MECHANISMS THEY INTRODUCE, , ORGANISERS CONTRIBUTION TO THE ANALYSIS OF SPORTS BETTING ANOMALIES MAKES IT POSSIBLE TO HANDLE EFFICIENTLY POTENTIAL ALERTS.

THE COOPERATION BETWEEN THE THREE STAKEHOLDERS – ORGANISER, OPERATOR AND REGULATOR – ENSURES THE PRESERVATION OF COMPETITIONS INTEGRITY AND THE DETECTION OF EVENTS LIKELY TO CHARACTERISE A CRIMINAL OR SOLELY DISCIPLINARY OFFENCE.

THIS COOPERATION IS ALL THE MORE EFFECTIVE WHEN CARRIED OUT BY ORGANISERS OF A COMPETITION COVERED BY THE BETTING RIGHT.

Appendices

Extract from the French Sports Code (articles L. 333-1 ff.)

Decree No.2010-614 of 7 June 2010 regarding the marketing conditions for rights concerning the organisation of betting in relation to a sports event or competition

Opinion No.11-A-02 of the French Competition Authority of 20 January 2011 concerning the online gambling and games of chance sector

ARJEL's general recommendations concerning marketing contracts for the right to organise betting (decision No.2011-106 of 6 October 2011)

French Council of State ruling No.342142 of 13 October 2010 (5th sub-section)

French Council of State ruling No.342142 of 30 March 2011 (5th and 4th combined sub-sections)

French Council of State ruling No.344711 of 23 December 2011 (5th sub-section)