

Swiss Federal Act on Gambling

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Contributor: emilien jeannot

In January 2019, a new Swiss Federal Act on Gambling (Loi federal de jeux d'argent: LJAr) entered into force following a vote by the Swiss electorate. Intended to modernize and harmonize previous law and open the market for online casinos; the new regulations have highlighted the need for a comprehensive monitoring system.

gambling law

public policy

indicators

structural prevention

1. Context

The expansion of commercial gambling within recent decades has been met by different regulatory and legislative responses from different countries. Such changes have included the gentle relaxation of regulations in certain jurisdictions and the setting up of government monopolies or regulation and taxation of operators in others ^[1]. As part of the governments' responses, attempts to address gambling-related problems through post hoc harm-minimization efforts, known as "responsible gambling" programs, have predominated for many years ^[2]. Such initiatives place an emphasis on supporting the individual with their gambling-related problems through individualized treatment interventions (self-exclusion, therapy, etc.) ^[3]. More recently, debate has centralized on the need to introduce a broader public health approach, with a focus on reducing the risks of gambling-related harm to individuals, affected others, and the population at large ^{[4][5]}. Aspects of such an approach include increasing an awareness of gambling in order to build public knowledge and resilience, and increasing operator accountability over gambling offers ^[3]. Alongside this debate, countries, such as Switzerland, have taken the first, tentative steps to adapt and modernize their approach towards gambling; an activity which is widespread across the country, as in most of Europe ^[6]. Around 46.6% of the Swiss population are believed to gamble each year (73.6% within their lifetime) ^[7]. This equates to an estimated 5 million people, of whom an estimated 76,000 are reported to gamble excessively ^{[7][8]}. The estimated social costs, including healthcare costs, lost productivity, and reduction in quality of life are between 552 and 654 million Swiss Francs (623 to 739 million US Dollars) per year ^[9]. It is likely that greater numbers are affected by less-severe gambling-related harms, including not only the players themselves but also those close to them, and their communities ^[10]. In order to promote public health, policies incorporating prevention and harm-reduction features will be necessary to protect the population at large as well as those at risk (so called "prevention paradox").

In a move towards modernizing and harmonizing pre-existing law and opening the market for online casino gambling, the Swiss electorate voted in the Swiss Federal Act on Gambling (Loi fédérale sur les jeux d'argent; LJAr) in June 2018. The new act, which entered into force in January 2019 ^[11], recognizes the State's obligation to adapt structural prevention measures, e.g., operator prevention programs, public education initiatives, etc., in

relation to the risk levels of different gambling offers. In order to monitor gambling-related policy, two indicators are currently recognized within the Federal Office of Public Health National Addiction Strategy. These include (1) the number of casino exclusions (data annually produced by the Commission fédérale des maisons de jeu; CFMJ) and (2) excessive gambling prevalence (provided every 5 years by the Swiss Health Survey and mandated by the CFMJ) ^[12]. Given the many facets of the new law, the need for a more extensive and comprehensive monitoring system is paramount.

2. Evolution of an Approach towards Prevention in the New Law

The LJAr serves the purpose of updating Swiss gambling law for the digital age and improving protection against gambling addiction ^[13]. Its main aims are, thus, to regulate online gambling, ensure that a portion of gambling income is consecrated for public use, and to ensure that the level of danger associated with different games is taken into account during licensing. The new law extends pre-existing law concerning the obligation for casinos to detect and exclude players who are spending beyond their means (Federal Act on Gambling and Casinos; Loi sur les maisons de jeu; LMJ) ^[14] and to collaborate with problem-gambling prevention centers (Ordinance on Gambling and Casinos; Ordonnance sur les maisons de jeu; OLMJ) ^[15]. The 26 separate cantons that make up Switzerland are heavily self-regulated, and additionally to federal law, in 2005 they adopted an intercantonal convention (Intercantonal Convention on the supervision, licensing, and distribution of profits from the lotteries and betting; Convention intercantonale sur les lotteries et le paris; CILP) to impose a 0.5% tax on the revenue from lotteries and sports betting companies for “the prevention and treatment of gambling addiction” (art.18). The cantons also set up a supervisory body for sports betting and lottery operators, known as The Lottery and Betting Board (Comlot), which carries out its duties independently from the existing body for Casino regulation; The Federal Gaming Commission (commission fédérale des maisons de jeu; CFMJ). The new law intends to co-ordinate this dual system for market regulation (CFMJ at a federal level, and Gespa (formerly Comlot) at an intercantonal level). Within its legal framework, the role of both supervisory bodies is detailed, and a third coordinating body, including cantonal and federal representatives, is introduced to resolve discussion points and facilitate collaboration. The new law incorporates regulation of casinos, lotteries (including high-risk electronic lotteries), sports betting and also online gambling, which was previously prohibited. The law does not address microtransactions (discussions over the LJAr began in 2010 and as there are typically delays in bringing such laws into effect, the expanding practices in online gaming and microtransactions are not specifically addressed).

3. Social Measures Programs

The LJAr includes a number of measures intended to protect the general population and at-risk individuals against the inherent dangers associated with gambling. Under previous law, casinos were already required to implement a social measures program to protect people who gamble ^[15]. This included legal obligations to train casino staff on the issue of excessive gambling and to implement exclusion/self-exclusion processes, with imposed fines for noncompliance. In order to strengthen prevention efforts, the current law extends the obligation to implement

exclusion processes to online betting operators. In addition, Gespa holds the legal authority to decide whether, and how, such measures will be applied to those offline sports betting games that it deems to be high risk. The effectiveness of such measures must now be reviewed by all gambling operators and included in an annual report submitted to the relevant supervisory body, which also documents the management of conflicts of interest (art. 84). Further requirements to protect players include the stipulation that all games must be operated “safely and transparently”, and games for online use must be specifically designed for accompaniment by protection measures (art. 17). In addition, only authorized Swiss online gambling sites are permitted (unauthorized sites are to be blocked according to art. 86), which should serve to limit gambling opportunities whilst providing legal offers and protecting vulnerable consumers.

As part of the social measures program, casinos, who were already obligated to exclude an individual playing beyond their financial means, are now required to exclude “those people whom they know or should presume, on the basis of an announcement by a specialized service or a social service authority, that they are addicted to gambling” (art. 80). Staff are therefore required to act on their concerns over gambling behavior, regardless of the observed financial outlay. This obligation is also extended to online gambling operators and can also be applied to those offline lottery and sports betting games identified as high risk by Gespa. In addition, casinos and online gambling operators are required to work with a specialist or specialized service in order to lift an exclusion (art. 81). Previous law specified that casinos “must” collaborate with prevention and treatment centers ^[15]. Whilst current law extends this notion of collaboration to all other games of a large nature, it also weakens this directive stating that gambling operators have “the possibility of” collaborating with actors including prevention and treatment services to develop and implement social measures (art. 76); a point that has caused much concern for intervention services.

4. Cantonal Level Interventions

In addition to operator social measures, the cantonal authorities are required to provide prevention and treatment measures for those with a gambling dependency, or people deemed at risk, including people who are close to them (art. 85). As part of the pre-existing framework, the cantons funded prevention programs such as the Intercantonal Program for the Fight Against Gambling Addiction (PILDJ), which is overseen by the Swiss-Romande Group for Addiction Studies (GREAr). The 0.5% lottery and sports betting tax, which was initially imposed through cantonal convention (CILP) ^[16], has been preserved in the LJAr. This source of revenue has largely been used to fund healthcare services, but it is yet to be seen how the prevention tax will now be used to fund prevention and treatment efforts in order to meet this cantonal obligation.

5. Other Prevention-Related Provisions

In addition to articles on games licensing, social measures, and prevention by the cantons, the new law and its related ordonnance (OJAR) ^[17] include specific provisions for the prohibition of advertising targeting minors and/or likely to mislead the public, particularly over the probability of winning (art. 74 LJAr, art. 77 OJAR), limitation of the portion of budgets that operators invest in marketing (art. 22), obligation to submit a conflict of interest

management plan (art 81. OJAr), enhanced age control for electronic games operated outside casinos (art 72. LJAr), obligation of operators to submit an annual report on social measures (art. 84 LJAr, art. 86 OJAr), obligations for regulators to make available to researchers the data they have access to in the course of their surveillance activities (art. 76 LJAr, art. 109 OJAr), limiting the remuneration of retailers in relation to turnover, and permitting only an amount that is deemed “reasonable” (art. 46 LJAr). However, the term “reasonable” is left open to interpretation by the new law.

6. Limitations of the LJAr

The LJAr implements a new article of the Swiss Constitution stipulating that the State “takes into account the dangers of gambling”. However, the Swiss legislative system involves complex consultation processes, which are typically carried out over several years (nearly 10 years, for the LJAr), and receive heavy lobbying from economic actors, in particular to the operators themselves. The prevention community has seen a significant decline in the scope of the proposed LJAr during its development. The general architecture of the structural prevention measures has been preserved, with three levels of measures. A first group of measures concerns the protection of players by the conditions imposed on operators, largely inspired by the dominant model known as “responsible gambling”. A second group on primary and secondary prevention by the cantons’ health services, which are in charge of public health in Switzerland, was more inspired by the so-called “harm reduction” model anchored in the federal “addictions” policy ^[12]. A third group concerns the availability of specialized assistance and treatment services, also at the expense of the cantons. Two measures in particular were abolished, weakening the bill: an extra-parliamentary commission to prevent excessive gambling, and additional funding that would have doubled, or even tripled, the resources available in the cantons to implement the second and third groups of measures. The inherent conflict of interest between economy and health has been addressed in theory (the obligation to present a concept addressing this conflict in order to obtain a license), but the conditions of application are unclear and therefore provide little or no practical instruction.

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