

## The die is cast... almost...

*By Diane Mullenex, Avocat à la Cour - Solicitor England & Wales, and Annabelle Richard, Avocat à la Cour - Attorney at Law (New-York Bar)*

*On February 24, 2010, the Senate adopted the draft bill on the opening to competition and regulation of the online gambling market.*

### Nothing revolutionary

Although slightly amended, the text in itself has not been radically modified.

The opening of the French online gambling market is still limited to (1) sports bets (*Live Betting*, mutual and odds bets), (2) horse bets (mutual bets) and (3) poker.

Likewise, the taxation pertaining to online gambling has not really been modified: operators will be taxed on the amount of the bets, up to 7, 5 % on sports and horse' bets and up to 2 % on poker.

The ARJEL, the regulation authority of online gambling, remains in charge for the attribution of licenses, renewable every year, and of the fight against online gambling addiction and illegal websites.

When applying for a licence, operators will be charged a fixed fee from 2.000 to 15.000 €. Moreover, every year, operators will have to pay a license fee between 10.000 and 40.000 €. Finally, for the renewal of the license, they will be charged between 1.000 and 10.000 €.

Operators may be incorporated in any state member of the European Union or the European Economic Space (under some conditions). They will be liable to appoint moderators (to monitor bets and assist in fighting gambling additions) and to be affiliated to an accredited entity aiming at preventing gambling addiction. Users will be compelled to have a bank account in France.

At last, the project retains the recognition of property rights to event organisers on their events.

Globally, the amendments, inserted during the adoption process by the National Assembly, have not been changed.

Among those amendments was the obligation, for the ARJEL, to take into consideration licenses granted by other EU member states to applicants for the licence in France. The European Commission had specifically required such reciprocity.

Other provisions related advertising had also been added. Furthermore, the penalties for illegal websites had been strengthened (200.000 € fine and 7 years imprisonment) and their scope widened as the ARJEL will be entitled to freeze, for up to 6 months, all transactions pertaining to bank accounts identified as belonging to unauthorized operators.

### But interesting additions

Indeed, the Senate did add interesting provisions to the draft bill.

Thus, a definition for “game of chance” is inserted “is a game of chance a game played with a cost where chance supersedes skills and combination of intelligence to be granted a prize”. With this legal definition, senators aim at forbidding the throng of lotteries which present themselves as games of intelligence and to enlarge the perimeter for the fight against illegal websites.

Regarding the fight against money laundering, operators are submitted, under the control of the ARJEL, to the same obligations of internal control and TRACFIN declarations than physical casinos. This amendment, proposed by the government, demonstrates the government’s will to submit online gambling operators to the same constraints than traditional casinos. In addition, it testifies of the government’s fear to see this new market massively used for money laundering purposes.

However, one may wonder how such obligation will be enforced, especially when it will be applied to operators incorporated abroad. Moreover, one may wonder whether the criteria for “legitimate suspicion” that are usually used by other professions

submitted to such obligations (notary public, lawyers, real estate agent, etc.) will be relevant when applied to the activity of online gambling.

At last, senators have decided to allow players to credit their accounts on licensed gambling websites with prepaid cards, which would be sold to tobaccoists. Opinions on this amendment were divided; its opponents feared that the use of prepaid cards would favor money laundering. But, the EU wanted players to have this option available. In any event, the amount of those prepaid cards should be limited to 100 €.

### **Reinforced precautions**

Senators have reinforced the obligations for operators to participate to the fight against “the excessive or the pathological gambling”. To that effect, they inserted a provision creating a phone number dedicated to the so called excessive or pathological players and their entourage.

Above all, the ARJEL will have, from now on, the possibility to refuse granting a license to an operator which did not demonstrate sufficiently its ability to implement relevant means against gambling addiction (the same type of provision allows ARJEL to refuse granting a license if an applicant operator does not demonstrate its ability to implement sufficient means to fight money laundering and financing terrorism).

### **A stronger ARJEL with more powers**

The bill as adopted by the Senate reinforces the independence of the ARJEL. Indeed, the members of the ARJEL “College” will not be able to have their mission renewed or to be dismissed during their mandate.

Likewise, the CEO and the members of the ARJEL will not be able to perceive remuneration (from work or capital) from any online gambling company, for three years after the end of their employment with the regulation authority.

Moreover, the scope of the information on players which shall be made available to ARJEL by operators has been extended.

Amongst the penalties possible against illegal online gambling websites, the ARJEL will be in a position, from now on, to require from the Judge the websites blanking and/or their “de-referencing” on search engines. The text even anticipates an indemnification for ISPs and technical intermediates, for the costs related to these blanking and de-referencing.

However, we noted that, as for the Orientation and Programming Law for the Internal Security (LOPPSI), the technology to be implemented to allow such blanking and de-referencing is not specified. It will be up to the ISPs and technical intermediates to sort it out.

### **The debate outlined some general concerns**

The public debate in the Senate brought out some concerns and dissension in relation to the opening of the online gambling market.

Some parliamentary groups have proposed numerous amendments to increase the level of taxation on online gambling. Indeed, some feared a general decrease of tax receipts on gambling (with the alignment of offline and online gambling taxation) and others wished to benefit from this new market, which we will generate millions in revenues, to increase the state’s revenues. None of these amendments were adopted.

The question of online gambling services advertising has also been widely debated. The proposed amendments ranged from a total ban of advertising for this sector to a restriction limited to certain media, included a proposed ban of such advertising in related to sports’ events. But here again, all these amendment have been rejected, leaving the text largely untouched on this question.

### **Uncertainties remain on the calendar**

Now, the bill as adopted by the Senate will be presented for a second review to the National Assembly. This review should take place on the March 30, 2010. If deputies refrain from amending the text again, it should be submitted to the approval of the European Union and of the Constitutional Council, as the case may be. Application decrees will then have to be adopted by the State Council before the law may enter in force and produce its effects.

If the deputies modify the text adopted by the Senate, the re-amended version will have to revert to the Senate before the process may be pursued.

The Government keeps hoping and declaring that the law will enter into force before the beginning of the next the Football World Cup. They, of course, would like to beneficiate from the millions of bets which will no doubt be taken for this popular event. However, we

seriously doubt that such ambition is realistic or even in the best interest of the industry. Indeed, if it is possible that the law will be definitely adopted by both assemblies before June 1<sup>st</sup>, 2010, how could the application decrees be finalized and adopted by the State Council and how ARJEL could have already granted licenses before that date, without thinking the work will be scamped.

All bets are on...

*Ichay & Mullenex Avocats is a French law firm focusing on all legal issues related to the new technologies in France and abroad. They are considered experts in intellectual property and Internet law, e-commerce, online gaming, data protection. Ichay & Mullenex Avocats also assists its clients on all issues related to financing, mergers & acquisitions, restructuring, etc. and advises them on their litigation and arbitration procedures.*

5, rue de Monceau 75008 Paris - France  
Tel : +33 1 42 89 19 80  
Fax : + 33 1 42 89 14 99  
[www.ichay-mullenex.fr](http://www.ichay-mullenex.fr)