

## **The French online gambling landscape**

*Since June 5, 2010, 30 operators have been granted an agreement by ARJEL to operate online gambling activities in France, whether for poker, sports betting or horse racing bets.*

*Many theoretical analysis of the draft law and then of the law have been published already. However, almost four months after the said law came into force, it is time to confront theory and reality.*

### **A burdensome application process**

Operators have submitted generally between 3.000 and 8.000 pages in the application for an ARJEL agreement.

Looking at these numbers, one can easily imagine the burden of having to gather all this documentation, which of course has to be all in French. This is quite an extra hurdle for foreign operators which had to translate all the corporate documents, contracts with subcontracting entities, etc.

Of course, just reading the law one can easily anticipate that presenting an application for a licence to ARJEL will require quite a lot of work. However, it seems many operators had underestimated just how much it represented.

An unexpected difficulty many foreign operators had to face is the extreme reluctance of French banks to open account to online gambling operators. Indeed, many had to throw in the battle all their influence and economical weight to have an account opened in a French bank. Others, after weeks of unsuccessful attempts decided to use European banks instead. We can only hope that with time and the normalization of this industry in France, this hurdle will soon disappear.

Nevertheless, and notwithstanding the amount of documents to be provided, the process in itself is fairly straightforward and agents of ARJEL have been found quite dedicated to their task providing useful guidance and recommendations.

Provided that application has been properly prepared, the instruction process by ARJEL can be as short as 2-3 weeks. On the other hand, some applications, which have been filed as early as May, are still waiting to be presented to the board of ARJEL.

### **The first legal gambling websites in France**

Since they have been granted their agreement, most operators successfully launched their .fr websites.

Many of them had to face the question of the transfer of players from their .com (or else) websites to the new .fr website. ARJEL has been very involved on these questions and monitored closely the means implemented by operators. Indeed, although ARJEL had no control over the closing of accounts on the .com websites, it required that accounts on the .fr website resulted from an active decision from players. As such, automatic transfers have been excluded and various solutions have been implemented by operators such as pre-populated fields (except for some fields such as banking information which had been forbidden by ARJEL).

ARJEL has also been watching closely all marketing activities of operators. They are, indeed, liable to find the difficult balance between the necessary promotion of the operators' activities and the need avoid enticing players to gamble excessively. At this point, ARJEL did not release yet official guidelines for operators to conduct their marketing campaigns.

Another issue, commonly faced by licensed operators for sports betting, was the negotiation with sport competitions organisers (mostly sport federation) to be granted the right to organise bets on their specific competitions. Taking about negotiation might actually be a trifle exaggerated as most of these organisers allowed general comments from operators but did not actually enter into any sort of negotiation process. These contracts added to the financial burden weighing on

legal operators by requested a 1% commission on all bets, making it even more difficult for the latters to compete with illegal operators.

### ***First decision to block an illegal website***

One of the main commitments of the French government and of the newly created regulator, ARJEL, was to fight against illegal operators.

ARJEL certainly seems to take this commitment to heart. First of all, ARJEL started immediately upon its creation to gather evidence against illegal website. Accounts have been created with most of the gambling website prior to the law coming into force and have been used afterwards to monitors operators' activities in relation to French players.

Second, applicants to an online gambling licence have been put under a certain amount of pressure to stop all their operations with French players before their application could be reviewed. ARJEL professed that applicants had to come to the regulator with clean hands. And although the level of cleanliness varied depending on the operator, most of them complied with this request.

Third, this summer ARJEL started to fire official notifications to a number of illegal operators, giving them 8 days to stop their illegal activities in relation to French players. One of them, decided to decline answering to this notification and on August 6, 2010, ARJEL was granted the first decision by the Tribunal de Grande Instance of Paris (first level court) ordering to ISPs to block an illegal gambling website (stanjames.com).

This decision was not a surprise per se considering that the law specifically grants the power to ARJEL to request such blocking to ISPs (Article 61 of the law n°2010-476 dated May 12 2010) to the Tribunal de Grande Instance, subjected to a penalty equal to 10,000 € per day until the website is effectively blocked.

However, this decision took many by surprise who thought it would take more time to

ARJEL to take illegal operators to court and that no decision would be taken until a position was adopted on the payment of the costs related to such blocking. Indeed the law does not specify who will be liable to bear such costs but mentions that a future decree should settle the matter. This decree has not been published yet. Nevertheless, it was not seen by the Tribunal de Grande Instance as a reason to delay action against illegal operators.

Until the decree is adopted, ISPs will bear such costs. Needless to say that ISPs are not welcoming this first decision. They are, of course, complaining about the costs they will have to bear in particular considering the number of means for illegal operators to circumvent any blocking devices ISPs may implement.

One may not entirely reject ISPs arguments and we will not pretend this decision marked the end of illegal gambling in France.

However, it has been interpreted by many licensed operator as a sign of ARJEL's intention to abide by the French government promises and actively fights against illegal operators.

In addition, there are additional penalties which could be sought by ARJEL and which might reveal (for some of them) more efficient than the intervention of ISPs. Among such penalties, illegal operators may be sanctioned by:

- 3 years of imprisonment;
- A 90,000 € fine;
- A prohibition to request an agreement for 5 years;
- Forbidding, for a renewable 6 months period, all movement of capital on the illegal operator's account (whether inbound or outbound).

Moreover, advertising for an illegal gambling website will be penalized by a 100,000 € fine, which can go up to 4 times the advertising expenses.

### **As a conclusion**

The debuts of the French market are promising and most licensed operators are hopeful for the future.

However, some issues will need to be addressed by the government and ARJEL in the near future. As an example:

- The taxes and commissions to be paid by operators. – Indeed, the high level of taxation does not allow legal operators to compete effectively with illegal operators. If players may be willing to pay for the security offered by licensed operators, they are not ready to pay any price.
- The position of the incumbents on this new market and how to warrant that the competition is fair with new entrants.
- The contracts with sport competitions organisers and the 1% commission on bets.

An answer to these issues is the creation of professional organisations which will allow all actors of the industry to speak with a united voice and set up market standards.

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