



II-8.4: First referral to the Sanction Committee of the ARJEL, the French online gambling regulation authority.

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MAIN INFORMATION

The College of the Autorité de régulation des jeux en ligne (ARJEL — the French online gambling regulatory authority), decided to bring a matter concerning three licensed operators before its Sanctions Committee on December 3, 2010.

CONTEXT AND SUMMARY

Implemented by the Act of May 12, 2010, the ARJEL is in charge of regulating the online gambling sector, which was opened to competition by the same Act. The legalization of competition actually enabled many operators that were illegally operating in France from outside of France's borders to legalize their activity by obtaining a license and complying with a legal framework.

The ARJEL is in charge of issuing such licenses to online gambling operators so that they can provide gambling services on the market. This certification is necessary for any operator wanting to enter the market. Currently, 46 certifications have been delivered to 33 different operators. They are divided up as follows: 15 have been attributed for online sports betting, 23 for poker, and 8 for horse betting.

After issuing these operating licenses, the ARJEL regularly and constantly supervises these operators' behavior. If necessary, it requests they proceed with the necessary adjustments in order to comply with the law. However, no sanctions proceedings had yet been brought against an operator.

On December 3rd, 2010, according to article 43 of the May 12th, 2010 Act, the College of the ARJEL decided to formally notify three operators of their failure to fulfill their legal obligations. The precise details of the ARJEL's grievances against them will be transmitted by the Board to the operators and to the President of the Sanctions Committee of the ARJEL, M. Thierry Tuot. Until the final decision, the precise content of the ARJEL's grievances remains unpublished.

The six members of this Committee will then rule on this matter after proceeding with an independent inquiry. According to article 43-IV of the Act of May 12, 2010, the Sanctions Committee has a wide range of potential sanctions at its disposal: it could simply give these operators a warning, or shorten the duration of their license by one year, or suspend the license for three months or more, or even purely and simply withdraw their authorization to operate in France. Moreover, the Sanctions Committee can add to these administrative sanctions a pecuniary one, by fining them (even in the absence of an administrative sanction), which can range from simple reparation of the damage caused by the illegal comportment plus profits generated by such illegal behavior, to 5% of the company's total annual turnover (excluding VAT) in the previous year from activities subject to the ARJEL's jurisdiction.

BRIEF COMMENTARY

Although it is not usual to comment on the simple beginning of proceedings, we decided to comment on this very first sanctions proceeding before the ARJEL, because this first citation before the Sanctions Committee of the ARJEL is a signal of the proper functioning of this new regulatory authority. Indeed, as many other sector-related regulation authorities, the ARJEL has an internal duality, including both a rule-making authority (the College) and a sanctions committee in charge of ruling on regulated operators' failure to fulfill certain legal and regulatory obligations, after citation by the College itself. This internal duality, and the strict application of the separation between both entities within the ARJEL, guarantees the independence and the fairness of proceedings before such authorities.

Also, the scope of the sanctions available to the Sanction Committee helps it adequately adapt the punitive nature of the sanction to the damage caused by the unlawful behavior. Because it is more familiar with the sector than any judge could be, the Sanction Committee is able to use its disciplinary powers in order to elaborate a tailored sanction policy appropriate to the sector, and that will serve as an incentive for the operators to comply with their obligations.

Furthermore, since the ARJEL was created very recently, its first decision is awaited by the sector: if the operators are found guilty, the Sanctions Committee of the ARJEL can either adopt a strong decision and assume that in case of an appeal, the appeals tribunal, the Conseil d'État – the French Council of State – will not cancel its decision, or rather opt for a softer sanction, indicating an intent to establish its authority in a more

progressive fashion.

Since a market for online gambling existed before it was made legal, the ARJEL could adopt a very horizontal approach to it by relying on co-regulation mechanisms to compensate for its ingenuousness, compared with actors that have years of experience on the market. Especially because of this imbalance, the Sanctions Committee could adopt a strong, hierarchical sanction, in order to remind these operators that the rules of the market are now different, at the risk exposing itself to the disapproval of the Council of State.

Lastly, the fact that Thierry Tuot is the President of the ARJEL's Sanctions Committee is important: he is a State Councilor in the Council of State, and was the first General Secretary of the Commission de Régulation de l'Électricité (former name of the French Electricity Regulatory Authority). This proves that rather than find a specialist of energy or gambling to fulfill regulatory functions, the tendency is to consider, in the English style, that Regulation is a profession in and of itself, independent from the sector regulated, and that therefore experience working in a regulatory authority is more important than experience in the sector. This is further proof of the existence of Regulatory Law as an independent and unique branch of law.