



## **II-8.5: The ARJEL asks Pokerstars to call off its Home Games**

Dominique Blanc, Academic Assistant

### **MAIN INFORMATION**

In February 2011, the Autorité de régulation des jeux en ligne (ARJEL – French Online Gambling Regulatory Authority) has asked Pokerstars to shut down its Home Games, which the online gambling site has agreed to do. After that, the regulator has written to all operators to remind them that any modification of their platforms must be submitted to it for prior approval.

### **CONTEXT AND SUMMARY**

In February 2011, the ARJEL asked Pokerstars to suspend its Home Games, which the online gambling site agreed to do. The games were to be suspended indefinitely, until the regulator examined whether or not this new game is compatible with current legislation and the ARJEL's regulatory goals. In May 2011, the situation has not changed. In the meantime, the regulator wrote to all operators to inform them that any modification to the information provided in their licensing applications must be submitted to it for prior approval.

In early February 2010, it came to the ARJEL's attention that a licensed operator, Pokerstars, had modified its platform in order to offer a new type of game, called the Home Game. These Home Games allow internet users to organize games of poker with their friends, as though they were at home. This is why these games are called *Home Games*, despite the non-physical nature of these net-based collective games.

The problem came from the fact that, in order to offer this new type of game, the operator changed certain of its website's technological parameters. This meant that the website no longer conformed to the parameters that had been submitted to the Regulator with its licensing application, even though such parameters are one of the considerations taken into account by the ARJEL in the attribution of licenses. Furthermore, it was not technologically feasible for Pokerstars to market this game at the time its license was granted, since it required modifications to the website's code. Therefore, when it granted Pokerstars' license, the Regulator could not have considered this game's potential harmfulness to players' interests, which it must protect according to the law. This is why Pokerstar's modification of its website's code causes a problem.

Without accusing Pokerstars of breaking the rules, the Regulator pragmatically requested that the operator suspend players' access to Home Games, and all promotions related to such games. In what resembles an informal agreement, the operator agreed to indefinitely suspend access to the game until the regulator can compare the technological modifications performed by Pokerstars with the parameters contained in its initial licensing application.

Pokerstars has said in the specialized press that it was disappointed to have to stop its Home Games, but that it was optimistic that this simple delay 'was perfectly understandable', because the regulator has to be able to do its work.

On its own website, Pokerstars has left Home Game's splash page open with the remark:

*"In accordance with its supervisory responsibilities, the ARJEL has decided to analyze Home Games' system in order to make sure it complies with French legislation. This decision has been taken in order to ensure players' comfort and security.*

*We do not know how long this operation will take, but we hope to be able to offer you the possibility to play with your friends using Home Games in the very near future.*

*The Club Managers who qualified to receive freeroll tickets will be contacted at a later date.*

*Please pardon us for this temporary inconvenience. We thank you for using PokerStars.fr. The existing Home Games Clubs will be saved in our database with all of the information they contain (members, history, statistics)."*

Four months later, this part of the operator's website still shows the same message, and apparently, the ARJEL is continuing its investigation.

### **Links with other documents in the same sector**

### **BRIEF COMMENTARY**

It is possible to regulate using formal rules, such as sanctions or injunctions. This can be useful when Regulatory Authorities are new, because they have to establish their control over the industries in which they have to maintain a balance, such as the balance between competition and the protection of individuals. But, this traditional use of law defined by its force is not necessarily appropriate when operators' mobility is extreme, as in the present case. Indeed, the Internet is a virtual area in which it is extremely difficult for regulators, police officers, and judges to capture people who can vanish and reappear at any moment, in any place. For example, the ARJEL decided in early May 2011 that the games offered by unlicensed

operator Bet 365 would not be available from France. But, this British operator could simply continue to accept bets from French players who were enrolled before the industry was regulated, or who live outside of France. This is why effective regulation takes on the form of a contract, or at the very least a 'conversation'. In the present case, the regulator requested, instead of ordering; the operator agreed, instead of obeying. Furthermore, the operator takes care to point out that while it believes it is within its rights to provide such a game, it concomitantly recognizes the legitimacy of the regulator's action. Is this an angelic vision of regulation? Most certainly not. First of all, the reticent operator who refused to accept the regulator's "request" would have to deal with a different sort of authority: the recalcitrant operator could be faced with a series of injunctions and sanctions. Therefore, a rational operator, aware that the regulator is able to harden its stance and take the path of litigation, will prefer to cooperate. Secondly, the fact that there is only one regulator is extremely important: in a normal trial, as in normal administrative procedures, the recalcitrant economic agent might hope to come before a different judge, or a different official, the next time around. In this case, the regulator always remains the same, and has a very long memory. Therefore, cordiality is the rule. This case allows us to understand that it is not only a contractual atmosphere, but also a diplomatic atmosphere, that governs the relationship between operators and regulators.