

On-line Gambling in France: Evolving under European Pressures

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Abstract

Under the European recommendation notified in 2007, France has established a strong system aiming to control on-line gambling in 2010.

In the very beginning, this recommendation was motivated by the need to guarantee a free and fair competition since on-line gambling was forbidden in France. However, France has tackled this issue with a proactive attitude and has gone far beyond the European expectations of this field.

Indeed, France has taken in account the protection of consumers, particularly through public health (pathological gambling for instance). At the same time, this legislation has helped fight against fraud (money laundering, tax, etc.). In addition, this law has strengthened the fight against illegal gambling websites. Finally, an independent administrative authority has been settled with the specific purpose to provide authorizations for on-line gambling, monitor such activity, and to control the gambling website security, etc.

In the European Union, this sensitive topic is back in the spotlight through the Green Paper on “On-line Gambling in the Internal Market” and the recent Communication “Towards a Comprehensive European Framework on On-line Gambling”.

The French system, which is relatively new, deserves to be analyzed in order to discover the way it copes with the last European expectations. In addition, the French experience might be inspiring for other countries wondering about the legalization of on-line gambling.

Key Words: On-line gambling, Public health, Consumers protection, Free and fair competition, Independent administrative authority, Fraud, Tax, Authorization

I. Introduction

A brief description of the (A) Korean and (B) French backgrounds allows a better understanding of the similarities between those two countries and legitimizes a discovery of the French experience.

A. Korean Background

Mindful of the local penchant for gambling, the South Korean authorities placed a strict ban on all forms of betting through the Criminal Act of 1953.¹ The Article 246 regarding gambling and habitual gambling provides that “a person who gambles or bets for the purpose of gaining property shall be punished by a fine of not more than five million won or a minor fine” (except when gambling is just for momentary pleasure). Moreover, the same Article considers the habitual practice as an aggravating circumstance which involves a punishment by imprisonment for not more than three years or by a fine not exceeding twenty million won. In addition, the person who, for the purpose of profit, opens a gambling place shall be punished by imprisonment for not more than three years or by a fine that does not exceed twenty million won. Nevertheless, Korea has allowed certain gambling activities pursuant to specific laws, as stated, for instance, in the National Gaming Control Commission Act, Article 2.1:

- (a) Casino business: The casino business under the Tourism Promotion Act and the Special Act on Assistance to the Development of Abandoned Mine Areas;
- (b) Horse racing: Horse racing under the Korean Racing Association Act;
- (c) Bicycle and motorboat racing: Bicycle and motorboat racing under the Bicycle and Motorboat Racing Act;
- (d) Lottery tickets: Lottery tickets under the Lottery Tickets and Lottery Fund Act;
- (e) Sport promotion betting tickets: Sport promotion betting tickets under the National Sports Promotion Act.²

1. Criminal Act No. 293, Sep. 18, 1953, *amended by* Act No. 5057, Dec. 29, 1995 (S. Kor.).

2. National Gaming Control Commission Act, Act No. 8279, Jan. 26, 2007 (S. Kor.).

Even if certain gambling activities are allowed, on-line gambling remains illegal³ and, as a matter of fact, that proscription does not prevent Korea from illegal on-line gambling: dedicated websites are “mushrooming”.⁴ Thus, the situation is fairly similar with France before its legalization of on-line gambling in 2010.⁵ This fact brings light on a recurrent issue in the lawmaking process which regards necessity and efficiency in making the law.⁶ Thus, it could be interesting to think about the on-line gambling in the Republic of Korea, and more specifically, to wonder about the relevance of the actual system. To this end, an assessment might be done between the actual system, based on an interdiction, and, on the other side, a system of authorization under conditions. To do so, the recent French example might be helpful and provide some trails of reflection, keeping in mind limits of comparative considerations.

B. French and European Background

Except for gambling activities under the sole right,⁷ all gambling activities were forbidden in France.⁸ However, the legal European context and its economic evolutions⁹ have driven to a quick change.¹⁰ Indeed, the freedom to

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3. Actually, gambling activities - in general - are prohibited and there is no specific law regarding online gambling. However, this activity shall be considered as prohibited too because collecting any winnings from on-line gambling is illegal.
 4. *Online Gambling Sites Mushrooming*, Korea Times, June 9, 2008, available at http://www.koreatimes.co.kr/www/news/nation/2008/06/117_25599.html (last visited March 5, 2013).
 5. “Woerth [budget minister] has said that illegal gambling generates €7 billion a year, and said Thursday that there were 25,000 illegal gambling Web sites in France, representing 75 percent of the market.” *French Gambling Plan Seeks to Stem Illegal Betting*, N.Y. Times, March 5, 2009, available at http://www.nytimes.com/2009/03/05/technology/05iht-gamble.4.20629506.html?_r=0 (last visited March 5, 2013).
 6. Woerth, the budget minister, has said “Rather than banning 25,000 Web sites, we’d rather give licenses to those who will respect public and social order.” *Id.*
 7. Horse betting, sports betting and casinos.
 8. This principle was inherited from 19th century. Swiss Institute of Comparative Law, *Study of Gambling Services in the Internal Market of the European Union*, Final Report, at 218, (June 14, 2006).
 9. “Via the internal market and competition law, the EC pursues a number of policy objectives which are set out upfront the Articles 2 and 3 EC, including economic development and competitiveness via unhindered trade flows and undistorted competition.” Alan Littler & Cyrille Fijnaut, *The Regulation of Gambling: European and National Perspectives 2* (Martinus Nijhoff Publishers 2007).
 10. This change has been driven under European “pressure”. Perrine Pelletier *et al.*, *Betting in*

provide services has been widely developed by European judges. In consequence, the European Commission has been entitled to send a formal notice to France on October 18, 2006.¹¹ Taking in account the French reply, the Commission has considered that the restrictions in question were not compatible with the existing European Union law and that the measures taken by France to restrict the free movement of sports betting services have not been shown to be necessary, proportionate and non-discriminatory. That is why the formal notice has been followed by a reasoned opinion¹² on June 27, 2007, based on the infringement of Article 49 of EU Treaty, requiring for a modification of French laws and regulations.

Nevertheless, this procedure took place in an uncertain juridical framework. Freedom to provide services has certainly been enlarged by judges, but without any specific European text regarding gambling and on-line gambling. Thus, State members concerned by formal notices and reasoned opinions were in a grey area about the establishment of a legal framework. France has tackled this issue in a proactive attitude based on the Italian model, and has gone far beyond the European expectations in this field, drawing up a complete framework through the Law 2010-476,¹³ the French Gambling Act,

France, in Sports Betting: Law and Policy, ASSER International Sports Law Series 387 (Paul Anderson *et al.* eds., 2012).

11. A dozen of State members were concerned by such a formal notice. In the case of France, the Commission has asked a number of questions in relation to a range of restrictions imposed on remote sports betting operators licensed and established in other Member States. The Commission has concerns about the proportionality of the French measures where operators licensed and regulated in other Member States are denied access to the French sport and horse race betting market for reasons such as the protection of consumers from gambling addiction, yet it seems that the French sport betting market continues to expand and offer more choice and opportunity for consumers to bet. See European Commission, *Free movement of services: Commission inquires into restrictions on the provision of certain gambling services in Austria, France and Italy*, IP/06/1362, Oct. 12, 2006, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/1362>.
12. The first stage (formal notice) takes the form of a formal request for information in order to investigate of the case and remains confidential, whereas in the case of a reasoned opinion the Commission generally issues a press release informing the public about the procedure.
13. Four years after the formal notification. Drawing up this law has been a long work because it was politically contested (1,300 proposals of amendment during parliamentary discussion, only 80 have been incorporated in the Law). Mahasti Razavi & Anne-Laure Falkman, *Apports de la loi du 12 mai 2010 Relative à L'ouverture à la Concurrence et à la Régulation du Secteur des Jeux D'argent et de Hasard en Ligne*, JCPE n° 21, 2010, act. 290 (Fr.).

and 19 implementing decrees and few ministerial orders. This framework has been elaborated considering three major lines: opening to competition under a strict control through national licenses for on-line gambling; channeling illegal gambling into legally controlled gambling; and protecting vulnerable gamblers.

France notified the Commission in 2009 that it was amending its laws, ending the “psychodrama”¹⁴ with the European Commission. The Commission welcomed the fact that the new French law allowed for the cross border provision of services, with clear rules for the authorization and the granting of licenses to the domestic and European operators, and has decided to close the case.¹⁵ So the French framework for gambling and on-line gambling activities seemed to be satisfying in the eyes of the European Commission.

The Law 2010-476 contains some (II) general provisions that help to understand the basis of the framework in on-line gambling activities, which is basically (III) an authorization system controlled by public authorities. These authorities are also in charge of (IV) fighting against illegal activities and (V) preserving public health. Finally, one may (VI) conclude in favor of the reliability of the on-line gambling legal framework but not without considering the necessity to improve certain aspects of the Law.¹⁶

Table 1: Overview of Gambling and On-line Gambling Activities in France

	Lotteries and scratchcards	Horse betting	Sports betting	Casino	
Traditional Network	Sole right ¹⁷	Sole right ¹⁸	Sole right ¹⁹	<i>Jeux de cercle</i> : Sole right ²⁰	Blackjack, slot machine, roulette, etc.: Sole right ²¹
Internet Network (Since 2010)		Open to competition on-line	Open to competition on-line	Open to competition on-line	FORBIDDEN ²²

14. François Trucy, *The Role of Crime and Addiction in the Gambling Policy of France*, in Toine Spapens, Alan Littler et Cyrille Fijnaut, (Crime, Addiction and the Regulation of Gambling) 137 (Martinus Nijhoff Publishers 2007).

15. There are still a number of pending investigations since the Commission has asked Denmark, Finland, Greece, Hungary, the Netherlands and Sweden to amend their laws.

16. The roman numerals in this sentence are denotes of relevant sections in this article.

II. General Provisions of the French Gambling Act

One considers the elements of (A) Definition and (B) State Policy as general provisions that can be briefly described before starting the study of the technical clauses of the Law 2010-476 and its implementing decrees.

A. Definitions

Strangely, the Article 1 of Law 2010-476 states in the negative that gambling is neither an ordinary business nor an ordinary service. In this regard, this activity must be strictly delimited if not forbidden. Thus, Article 2 defines gambling as a paying game of chance where luck predominates skill and acumen for winning. This short definition is completed with two types of explanations: (1) delimitation of the fields of on-line gambling under the conditions of authorization, and the (2) definition of notions related to gambling activities.

1. Delimitation of the Fields of On-line Gambling under Conditions of Authorization

The Law 2010-476 has authorized on-line gambling but at the same time, has restricted its field to three types: (a) horse betting, (b) sports betting and (c) *jeux de cercle*.²³

a. Horse Betting

Horse betting was initially regulated by the Law of June 2, 1891 which ob-

17. Sole right belonging to the *Française Des Jeux*.

18. Sole right belonging to the *Pari Mutuel Urbain*.

19. Sole right belonging to the *Française Des Jeux*.

20. Sole right belonging to casinos.

21. Sole right belonging to casinos.

22. Mainly because those games are very addictive. Ariane de Guillenchmidt-Guignot, *Les contrats de jeux d'argent de hasard en ligne*, *Juris Classeur Contrats - Distribution*, Fasc. 3330, n° 202 (Fr.).

23. "Jeux de cercle", meaning games played against other players and not against the house, is sometimes translated as "round games" or "circle games". As there is no official translation, one prefers to keep the French terminology.

viously could not have anticipated the existence of on-line gambling. Thus, the Law 2010-476 allows on-line gambling for horse races but only for certain races which have to be defined yearly by the Ministry of Agriculture according to the decree 2010-498.²⁴ So each year the Minister of Agriculture enacts a ministerial order, which is published on the *ARJEL* website.²⁵

b. Sports Betting

The Law 2010-476 uses the same pattern regarding sports betting. Indeed, this category is ruled by the Law of May 21, 1836. So the former legalized betting for sports that are defined through a procedure established by the Decree 2010-483.²⁶ In consequence, the *ARJEL* has defined a list of sports²⁷ which is regularly updated and published on its website.²⁸

c. Jeux de Cercle

The *jeux de cercle* are regulated by the Law of July 12, 1983 and the Law 2010-476, which authorizes on-line gambling for some *jeux de cercle* defined by the Decree 2010-723.²⁹ On-line gambling for *jeux de cercle* are fairly restricted and the aforementioned decree only legalizes poker through the “Texas Hold’em Poker” (limit, pot limit and no limit) and the “Omaha Poker 4” (Omaha 4 high pot limit).

24. Décret n° 2010-498 du 17 mai 2010 relatif à la définition des courses hippiques supports des paris en ligne et aux principes généraux du pari mutuel, [J.O.] [Official Gazette of France], May 18, 2010, p.9164 (Fr.).

25. <http://www.arjel.fr/-Paris-hippiques-.html> (last visited Nov. 30, 2012).

26. Décret n° 2010-483 du 12 mai 2010 relatif aux compétitions sportives et aux types de résultats sportifs définis par l’Autorité de régulation des jeux en ligne, [J.O.] [Official Gazette of France], 13 mai 2010, p. 8932 (Fr.).

27. Athletics, Rowing, Badminton, Baseball, Basketball, Pool, Boxing, Canoeing, Cyclism, Horse-riding, Fencing, Soccer, Football, Golf, Weightlifting, Handball, Hockey, Ice hockey, Judo, Wrestling, Motorcycle racing, Swimming, Basque pelota, Modern pentathlon, Petanque, Rugby, Roller Skating, Automobile racing, Skiing, Taekwondo, Tennis, Table tennis, Archery, Triathlon, Sailing, Volleyball, Olympics games.

28. *Autorite de regulation des jeux en lign Liste des évènements supports de paris*, <http://www.arjel.fr/-Athletisme-.html> (Fr.).

29. Décret n° 2010-723 du 29 juin 2010 relatif aux catégories de jeux de cercle mentionnées au II de l’article 14 de la loi n° 2010-476 du 12 mai 2010 relative à l’ouverture à la concurrence et à la régulation du secteur des jeux d’argent et de hasard en ligne ainsi que les principes régissant leurs règles techniques, [J.O.] [Official Gazette of France], June 30, 2010, p.11810 (Fr.).

2. Definition of Notions Related to On-line Gambling Activities

The Article 10 of the Law 2010-476 provides some technical definitions that clarify some key notions of on-line gambling activity.

Accordingly, it defines 'on-line' gambling as gambling through the internet without consideration to the access means (wire, wireless, computer, smart-phone, etc.). The internet is the only electronic communication network concerned by this law as it is different from the other laws. Indeed, the former one is global, it is built to provide public access services and furthermore, it uses a specific computer protocol (Internet Protocol).

In addition, the Law 2010-476 states that gambling operators are bound to gamblers through a voluntary membership agreement.³⁰ This agreement is materialized by rules and regulations specific to each type of gambling that gamblers and operators must comply with. Thus, if an on-line gambler is considered as with every person adhering to the voluntary membership agreement then, on the contrary, a gambling company operating without rules and regulations, and subsequently, without voluntary membership agreements would not be considered legal.

Finally, the aforementioned Article 10 also explains the notion of an on-line player's account, which is an account provided to each gambler. Such an account is supposed to record gambling operations: bets and winnings, financial movements and balance. Far from being a simple gambling tool, this account covers gamblers against operators and provides transparency and traceability.

B. State Policy

The Article 3 of Law 2010-476 regards state policy, which is quite unusual to be noticed. Indeed, in the French process of law-making, policy, as a non-binding element, should not be included in a law. Indeed, first few paragraphs of this clause define the preoccupations of the state policy and general goals.³¹ As a matter of fact, this part of the aforementioned Article is a summary of the Law 2010-476 which is usually provided in a specific part

30. It shall specify conditions of gambling for each operator in each of the three fields of on-line gambling. François Trucy, Sénat, Report n° 209, Jan. 19, 2010, tome I, at 104 (Fr.).

31. 1. Prevention of pathological gambling and protection of minors; 2. To ensure about transparency of gambling operations; 3. Fight against fraud, crime, money laundering and terrorism financing; 4. To ensure about free and fair competition.

regarding justification of the law.

Nevertheless, Article 3 has a concrete impact. It established the *Comité Consultatif des Jeux (CCJ)*,³² which could be translated as the Gambling Advisory Committee, and was placed under the authority of the Prime Minister with an overall jurisdiction on gambling activities. Surprisingly, the Decree 2011-252³³ implementing the Article 3 has been enacted almost a year after the other ones, mainly because it established a fairly complex administrative structure. Indeed, the *CCJ* is made of the *Collège* (College), the *Observatoire des jeux* (Gambling observatory), the *Commission consultative des jeux de cercles et de casinos* (Advisory Commission for *Jeux de Cercle* and Casinos) and the *Commission consultative des jeux et paris sous droits exclusifs* (Advisory Commission for Gambling under Sole Right). As the *Commission consultative des jeux de cercles et de casinos* does not concern specifically on on-line gambling, one focuses on the other matters.

1. The Collège

Since the *Collège* is in charge of various fields (horse betting, sports betting and *jeux de cercle*), its composition is fairly complicated because it has to take in account a broad spectrum of concerns. The *Collège* is composed by 19 members as following: 2 members of the *Assemblée nationale*; 2 members of the *Sénat*; 2 mayors named by the *Ministère de l'Intérieur*; the President of the *ARJEL*; the President of the *Observatoire des jeux*; the President of the *Commission consultative des jeux et paris sous droits exclusifs*; the President of the *Commission consultative des jeux de cercles et de casinos* and its deputy; 2 representatives of the *Ministère de l'Intérieur*; 2 representatives of the *Ministère chargé du budget*; 1 representative of the *Ministère de l'agriculture*; 2 representatives of the *Ministère chargé de la santé*; 1 representative of the *Ministère chargé des sports*. This *Collège* has four missions:

- To provide an opinion related to any gambling topic submitted by the Government;

32. It has been qualified of “transversal moral authority”. Ariane de Guillenchmidt-Guignot, *Les contrats de jeux d'argent et de hasard en ligne*, Juris Classeur Contrats - Distribution, Fasc. 3330, n° 101 (Fr.).

33. Décret n° 2011-252 du 9 mars 2011 relatif au comité consultatif des jeux, [J.O.] [Official Gazette of France], Mar 10, 2011, p.4399.

- To propose modifications of laws and regulations;
- To gather information and to initiate studies in relation with gambling; and
- To watch State action and communication related to pathological gambling and eventually to emit proposition in this specific field.

2. The Observatoire des jeux

This Observatory is composed of eight members, different from the *Collège*, duration of five years and renewable once. This includes five people named for their qualities and competences in economic, juridical and technical fields, two professionals in the field to fight against the gambling addiction and one representative of either a consumer association or a family association to complete the *Observatoire des jeux*. The Observatory has a support function since it is in charge of informing and advising the *Collège* and the *Commission consultative des jeux et paris sous droits exclusifs*.

3. The Commission consultative des jeux et paris sous droits exclusifs

The 10 members of this Commission emanate from the *Collège* (seven members) and the Observatory (three members).³⁴ Their main mission consists of advising the *Ministère chargé du budget* and the *Ministère de l'agriculture* in the field of their responsibilities related to the gambling activities under sole right, particularly, within their control. Gambling activities under sole right deserve to be addressed because they can be exercised on-line under respect of Law 2010-476.

III. Authorization from Public Authority

Public authorities have established a framework for on-line gambling. In this regard, (A) an independent administrative authority was introduced in order (B) to control on-line gambling operators and (C) to deliver authorization. In addition, (D) taxes have been established.

34. *Id.*

A. Establishment of an Independent Administrative Authority: The *Autorité de Régulation des Jeux en Ligne*

The *Autorité de Régulation des Jeux en Ligne (ARJEL)*, which can be translated as the On-line Gambling Regulation Authority, has been expressly qualified of its independent administrative authority³⁵ under the Article 34 of the Law 2010-476. This Authority is composed by seven members³⁶ appointed for six years in regard with their competence in economic, legal or technical fields, according to Article 35.

The *ARJEL* has a fairly wide purpose: to watch gambling operations; to fight against fraud and illegal websites; to render an opinion (which can be published) about projects of law or decree regarding gambling; to propose reforms of laws or decrees related to gambling; and to deliver authorizations; etc. In order to fulfill those duties, the Authority has received the power of police³⁷ and it watches operators through a (1) permanent control. Moreover, the *ARJEL* is entitled (2) to investigate and (3) punish infringements. In addition, it also has a strong (4) relationship with other public authorities.

1. Permanent Control

In order to allow a permanent control by the *ARJEL*, operators shall provide some data and information, according to the Decree 2010-509:³⁸

- For each gambler: ID, postal address, e-mail address, account, list of gambling operation;
- List of games and promotional offers; and

35. It does not hold moral personality. Perrine Pelletier *et al.*, *Betting in France*, in, Sports Betting: Law and Policy, ASSER International Sports Law Series 395 (Paul Anderson *et al.* eds., Springer 2012).

36. Appointment of members, who shall not be repealed or renewed, is made up as follow: Three members among which is the President by decree; Two members by the President of the *Assemblée nationale*; Two members by the President of the *Sénat*.

37. Anne-Sophie Gorge, *L'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne*, AEAP, PUAM, 2010, at 521 (Fr.).

38. Article 8, Décret n° 2010-509 du 18 mai 2010 relatif aux obligations imposées aux opérateurs agréés de jeux ou de paris en ligne en vue du contrôle des données de jeux par l'Autorité de régulation des jeux en ligne, [J.O.] [Official Gazette of France], May 19, 2010, p.9223 (Fr.).

- Evolution and maintenance of equipment, platforms and software used.

2. Power of Investigation

Article 42 of the Law 2010-476 provides that some civil servants are specifically authorized to investigate under the supervision of *ARJEL* General Manager. Those people act under oath with special powers:

- They can lead audit based on records and, if necessary, performed on the spot. Operators shall not refer to professional confidentiality;
- They can draw up statements of offence (notified within five days to the operator) in case of infringements; and
- They are allowed to gamble undercover.³⁹

3. Power of Sanction

First of all, the Article 41 of the Law 2010-476 establishes a *Commission des sanctions*,⁴⁰ composed by six members for six years renewable once: two members of the *Conseil d'État*,⁴¹ two members of the *Cour de cassation*,⁴² and two members of the *Cour des comptes*.⁴³ This Commission is exclusively composed of by judges, proving that the penalty process is taken seriously, and respecting the principle. Thus, its decisions are made by a panel of judges.⁴⁴ Moreover, the whole procedure respects the principle *audi alteram partem*.

In the case of infringement (Article 43), the procedure starts with a formal notice to comply with the law within one to six months.⁴⁵ This formal notice

39. Article 28, Décret n° 2010-481 du 12 mai 2010 relatif à l'organisation et au fonctionnement de l'Autorité de régulation des jeux en ligne, [J.O.] [Official Gazette of France], May 13, 2010, p.8930.

40. It can be translated as a Penalty Commission.

41. Supreme Court of the Administrative Order.

42. Supreme Court of the Ordinary Court System.

43. Audit Court.

44. Anne-Sophie Gorge, *L'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne*, AEAP, PUAM, 2010, at 522.

45. According to Art. 3 (Décret n° 2010-495 du 14 mai 2010 relatif à la procédure de sanction applicable aux opérateurs agréés de jeux ou de paris en ligne, [J.O.] [Official Gazette of France], May 15, 2010, p.9052.), operators have one month to respond and comment after reception of the formal notice.

is renewable once unless the infringement is repeated and particularly, serious. The operator has to comply with the legislation and obtain a certification as defined by the Article 23 of the Law. If the gambling company fails to do so, the sanction procedure begins. Then the Penalty Commission is entitled to hear and audit anybody related with the case. The Commission can then pronounce one of the following penalties:

- A warning;
- A reduction of the authorization (for one year maximum);
- A suspension of the authorization for a maximum length of three months; and
- A revocation of the authorization. In addition, the revocation can involve prohibition to request an authorization for a maximum length of three years.

In any case, the Commission may decide to switch the aforementioned penalties into a fine (or to add a fine). This fine shall be proportional to the infringement and shall also take into account the situation of the operator and consider injuries caused and benefits realized. In addition, the fine will be limited to a threshold:

Table 2: Overview of the Sanction Thresholds

	Operators	Starting operators ⁴⁶
First offence	5 % of duty-free turnover for the last fiscal year	150,000 Euros
Second offence	10% of duty-free turnover for the last fiscal year in case of a second offence	375,000 Euros

Operators sentenced by the Commission have the right to apply to an administrative jurisdiction according to the Article 44 of the Law. This article does not provide any specifications regarding the court of competent jurisdiction; nevertheless, it shall be the *Conseil d'État* to have jurisdiction accord-

46. When there is no previous fiscal year as reference.

ing to the report drawn up by a member of the *Assemblée nationale*.⁴⁷

4. Relationship with Other Public Authorities

The mission of the *ARJEL* involves strong relationships with other public authorities. Such is the case particularly with the *Autorité de la concurrence*⁴⁸ and the Tax Administration.

According to Article 39 of the Law 2010-476, the *ARJEL* submits cases related to competition to the *Autorité de la concurrence* and the *Autorité de la concurrence* submits cases related to on-line gambling to the *ARJEL* reciprocally, in order to obtain an opinion from experts. This procedure could be helpful especially in those fields of expertise which are particularly technical.

Furthermore, Article 40 establishes legal obligations between the *ARJEL* and the Tax Administration. The former one shall transmit all information required by the Tax Administration and shall not oppose professional confidentiality. The latter one shall help the *ARJEL* to identify bank account holders. Indeed, this information might be useful essentially during the investigation led by the Authority.

B. Obligations of On-line Gambling Operators

Articles 15 and 16 of the Law 2010-476 list some obligations incumbent to operators intending to obtain authorization mainly in order to ensure transparency. Operators have to prove their ID, address, etc., and shall provide a statement mentioning administrative penalties and penal sentences if any. Thus, gambling companies shall provide a statement gathering human and material resources. In addition, accounting and financial information shall be kept available for the *ARJEL*. Moreover, operators shall be established in the European community or in a country having administrative assistance provision with France regarding taxes. Furthermore, operators shall describe the data treatment process and allow access to any facilities involved in the on-line gambling activities.

47. The *Conseil d'État* has jurisdiction over administrative decisions issued by collegial institutions with national jurisdiction. Jean-François Lamour, *Assemblée nationale*, Report n° 1860, July 22, 2009, at 238 (Fr.).

48. The independent administrative authority in charge of competition.

C. Delivery of Authorizations

The *ARJEL* is in charge of delivering authorizations⁴⁹ which vary depending on their fields:⁵⁰ horse betting, sports betting and *jeux de cercle*. Authorizations are available for five years, renewable and are not transferable to another operator. For obvious purposes, operators requesting for an authorization must be established in the European Community or in a country party to the European Economic Area having an administrative assistance provision with France regarding fraud and tax avoidance.

In order to ensure transparency, the request for authorization shall mention several elements regarding the owners of on-line gambling companies, directors and stockholders; personal postal address and position in the company for natural persons; and the head office postal address and name of trustees for legal entities (Article 1 of Decree 2010-482). In addition, according to Article 15 of Law 2010-476, the request also provides any information related to an eventual administrative or penal punishment. Furthermore, operators shall detail the human, material and financial means. Those data would undoubtedly help the *ARJEL* in the decision process since there is information about the health and capacity of potential on-line gambling operators.

The request shall be made by filling out forms which are each different according to the field of the betting and the nature of the operator (natural person or legal entity). Those forms are very inclusive and consist about 60 pages of 'word' documents downloadable on the *ARJEL* website.⁵¹ The request shall be examined and deliberated within four months⁵² by the Authority

49. With compliance with the Ministerial order stating the terms of reference (Arrêté du 17 mai 2010 portant approbation du cahier des charges applicable aux opérateurs de jeux en ligne, [J.O.] [Official Gazette of France], May 18, 2010, at 9165 (Fr.).

50. Article 5, Décret n° 2010-482 du 12 mai 2010 fixant les conditions de délivrance des agréments d'opérateur de jeux en ligne, [J.O.] [Official Gazette of France], May 13, 2010, p.8930. Consequently, an applicant willing to develop the three types of on-line gambling shall apply to three different authorizations. Mahasti Razavi and Anne-Laure Falkman, *Apports de la loi du 12 mai 2010 relative à l'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne*, JCPE n° 21, 2010, act. 290 (Fr.).

51. Autorité de Régulation des Jeux En Ligne, *available at* <http://www.arjel.fr>.

52. When a file is not complete, the *ARJEL* may ask for any necessary information and the applicant has at least fifteen days to reply. If the applicant does not comply with such a formal notice, the application is rejected (Art. 7 of Décret n° 2010-482 du 12 mai 2010 (Fr.). In addition, any file modification extends the delayed examination to four more months (Art. 9 of the same decree).

according to the Article 8 of Decree 2010-482. Authorizations are published on the *ARJEL* website⁵³ and in the Official Journal of the French Republic. An authorization details the fields of on-line gambling, its characteristics and also the domain name used on the Internet, necessarily, in “.fr”.⁵⁴ When the Authority refuses to deliver an authorization, the decision shall be justified and notified to the applicant. Such a decision shall be taken in accordance with Article 12 of Decree 2010-482, which enumerates infringements leading to a refusal including, for instance: procuring, extortion, counterfeit, false, blackmail, theft, bankruptcy, money laundering, corruption, influence peddling, tax evasion, fraud and breach of trust, etc.

D. Fees and Taxes Incumbent upon Gambling Operators

Legalizing an economic activity allows establishment of fees and taxes, and the Law 2010-476 provides for a variety of taxes that are implemented by decrees. Thus, there is a range of fixed fees related with the request for authorization drawn up by the Decree 2010-494.⁵⁵ The pay scale is in Euros:

Table3: Overview of License Fees

	For 1 authorization	For 2 authorizations	For 3 authorizations
Request for authorization	5,000	8,000	10,000
Five-year contribution ⁵⁶	20,000	30,000	40,000
Request for authorization renewal	2,500	4,000	5,000

53. The ARJEL updates a list of approved operators on its website: <http://www.arjel.fr/-Operateurs-agrees-.html>.

54. Mahasti Razavi & Anne-Laure Falkman, *Apports de la loi du 12 mai 2010 relative à l'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne*, JCPE n° 21, 2010, act. 290 (Fr.).

55. Décret n° 2010-494 du 14 mai 2010 relatif au droit fixe dû par les opérateurs agréés de jeux ou de paris en ligne en application de l'article 1012 du code général des impôts, [J.O.] [Official Gazette of France], May 15, 2010, p.9051 (Fr.).

56. It has to be paid on January 1st following the year during which the authorization has been granted.

In addition, some taxes are connected with the sum of money at stake, about 5.7% regarding horse and sports betting, and about 1.8% concerning the *jeux de cercle*. Moreover, a tax dedicated to a social purpose has been settled to about 1.8% of the amount at stake for horse and sports betting, while it is about 0.2% for the *jeux de cercles*.

IV. Fight against Illegal Activities

Since the Government has decided to authorize on-line gambling, it was indispensable to provide a framework aiming to prevent illegal activities. In this regard, the Law 2010-476 has especially (A) targeted fraud, (B) money laundering, (C) illegal on-line gambling websites, and (D) conflict of interest.

A. Fight against Fraud

The first step of fighting against fraud regards to the on-line preregistration process, when gamblers provide information required by Article 17 of the Law. Thus, during an on-line inscription, any authorized on-line gambling company may ensure that any of its players is of age. In addition, any player shall provide an address and prove one's identity. Finally, the on-line gambling company shall check the payment account on which each player will receive its assets. All those operations are done with a specific signature, a CAPTCHA,⁵⁷ for instance, in order to prevent an automatically generated inscription by a bot. This on-line process allows on-line gambling company to open a provisory account for gamblers.⁵⁸ Nevertheless, the inscription process is not yet finished. Indeed, gamblers will have to send the following documents to the company for verification within a month following the request:⁵⁹ a copy of an ID card;⁶⁰ a proof of address; and a Bank Identifier Code (BIC with the same name as in the ID card). At the same time, gamblers will have

57. Completely Automated Public Turing test to Tell Computers and Humans Apart.

58. From that moment, provisionally inscribed gamblers can gamble. If the inscription is not subsequently validated, the eventual credit balance is given back to the gambler.

59. See Art. 4, Décret n° 2010-518 du 19 mai 2010 relatif à la mise à disposition de l'offre de jeux et de paris par les opérateurs agréés de jeux ou de paris en ligne, [J.O.] [Official Gazette of France], May 20, 2010, p.9295 (Fr.).

60. It could be a copy of the National ID card, passport or of the driving license.

to add a declaration stating that they agree with the general conditions of the game but also of the contract binding them. In return, gamblers will receive a provisory password permitting to definitely validate the procedure.⁶¹

Always, in order to avoid fraud, there are only two ways to credit an account player:

- By the owner himself, through a payment service provider, either established in the European Community or in a country party to the European Economic Area having an administrative assistance provision with France regarding fraud and tax avoidance; and
- By an authorized gambling company, whether it is in respects to gains or a promotional offer.

Furthermore, the gamer balance credit can be transferred towards only one bank account, the one which has been declared during the inscription procedure. In addition, this bank account shall be provided by a payment service provider established in the European Community or in a country party to the European Economic Area, as aforementioned. With the same purpose, gambling operators are submitted to the same obligation under Article 18 of the Law. However, this measure is not only justified by fighting against fraud and tax avoidance. It also takes into account other risks like, organized crime, money laundering (see below) and terrorism financing.

Finally, the fight against fraud also concerns the protection of personal data and privacy. Consequently, authorized on-line gambling operators shall respect those elements in compliance with the general provisions of the law.⁶² Regarding the particular case of on-line gambling, two decrees⁶³ have provid-

61. If the gambler does not activate his account within six months after the provisory password was provided by the gambling company, the latter deactivates the account and the eventual credit balance is given back to the gambler Art. 5 and 8, Décret n° 2010-518 du 19 mai 2010 relatif à la mise à disposition de l'offre de jeux et de paris par les opérateurs agréés de jeux ou de paris en ligne, [J.O.] [Official Gazette of France], June 30, 2010, p. 11810 (Fr.).

62. Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés, [J.O.] [Official Gazette of France], Jan. 7, 1978, p.227 (Fr.).

63. Décret n° 2010-509 du 18 mai 2010 relatif aux obligations imposées aux opérateurs agréés de jeux ou de paris en ligne en vue du contrôle des données de jeux par l'Autorité de régulation des jeux en ligne, [J.O.] [Official Gazette of France], May 19, 2010, p.9223.; Décret n° 2010-518 du 19 mai 2010 relatif à la mise à disposition de l'offre de jeux et de paris par les opérateurs agréés de jeux ou de paris en ligne, [J.O.] [Official Gazette of France], May 20, 2010, p.9295 (Fr.).

ed some specific conditions. In this regard, personal data provided during the on-line registration shall be erased five years after the closure of the account. Besides, gamblers have the possibility to modify personal data, except the place and the date of birth. When they do so, Article 12 of the Decree 2012-518 provides two different types of modifications:

- Civil status and BIC: in such a case, gamblers have to provide relevant proving documents within one month following the request, otherwise, the account is deactivated; and
- Address: in this case, a new password is sent to the new address by the operator. The gambler has six weeks to enter in with the new password in order to validate the new address, otherwise, the account is deactivated.

B. Fight against Money Laundering

The legislator has defined two main measures regarding this specific point. The first one consists within a procedure of certification that any authorized on-line gambling company shall comply with. Thus, after being authorized, these operators have one year to accomplish the procedure of certification. To do so, they have to recourse to an independent certification organism⁶⁴ which shall be approved by the *ARJEL*. The latter provides an updated list on its internet website.⁶⁵ Costs involved by this certification are borne by operators even if this procedure is yearly updated. In case of breach to this obligation, the *ARJEL* shall send a formal notice to comply with the legal provision within one to six months. Any breach of such formal notice would be punished (see above).

The second measure concerns the bookkeeping of operators. Indeed, these companies have to establish separated bookkeeping for on-line gambling activities. In addition, each authorized operator shall submit its bookkeeping to an auditor in charge of delivering a certification. Then, those certified bookkeeping have to be transmitted to the *ARJEL* for a last control.

64. Those independent certification organisms are experienced and internationally recognized so they are an efficient support for the *ARJEL*. François Trucy, Sénat, Report n° 209, Jan. 19, 2010, tome I, at 161 (Fr.).

65. <http://www.arjel.fr/-Organismes-certificateurs-.html> (last visited Nov. 29, 2012) (Fr.).

Finally, it is interesting to underline that, according to Article 27, al. 2 (which is included in a chapter related to the fight against pathological gambling) operators have to send an annual report to the *ARJEL* regarding the fight against fraudulent and criminal activities, including money laundering and terrorism financing.

C. Fight against Illegal On-line Gambling Websites

Anyone who operates an illegal gambling website is subject to a punishment, according to Article 56 of the Law 2010-476. To be legal, a gambling website shall fill two alternative conditions: it shall be authorized in accordance with the procedure established in Article 21 of the same Law; or it shall be entitled to a sole right. Otherwise, it is an illegal gambling website whose owner is subject to be sentenced⁶⁶ to three years in prison and a fine of 90,000 Euros. Moreover, when this infringement is committed by an organized gang, sentences are aggravated to seven years in prison and a fine of 200,000 Euros.

Basically, this law increases the sentence, but also provides for some additional penalties. Some penalties are different considering the nature of the litigant: natural person and legal entity. The former is subject to the following additional penalties: forfeiture of civic, civil and family rights⁶⁷ (for a maximum length of ten years for serious crimes and five years for general crimes). The latter is subject to the following additional penalties: a fine of 450,000 Euros; and a dissolution of the legal entity. Some penalties are the same without any consideration for the nature of the litigants: seizure of personal property and real estate, divided or undivided, for having aided in the infringement; permanent or temporary (for a maximal length of five years) closure of the place having aided the infringement; and the publication of the court's ruling by any means.

The legislature has tried to prevent illegal gambling websites through a set of punishments. Nevertheless, one has to question the effectiveness of Article 56. Indeed, reprehensible facts are highly likely to occur abroad. In such a

66. By a criminal judge, not by the *ARJEL*.

67. Including the right to vote, eligibility, the right to practice a jurisdictional function, the right to be a civil servant, the right to testify in court except for simple statements, the right to be guardianship

case, Article 56 would not be effective without a strong international judicial cooperation.⁶⁸ Unfortunately, our international judicial cooperation seems to be unsuitable regarding the internet, as it is a shifting and unseizable subject.⁶⁹

While an infringement is in litigation, Article 61 provides that the *ARJEL* can start a process in order to block an illegal website from running. In this regard, the Authority sends a formal notice,⁷⁰ according to which an operator shall reply within eight days. If the operator concerned by the process does not reply or does not comply with the law, the *ARJEL* is entitled to refer the case to the *Tribunal de grande instance de Paris*⁷¹ which can block the illegal on-line website through a process of emergency.⁷²

Finally, illegal on-line websites may also be fought by prohibiting advertisements. To do such advertising is punished by a minimum of 100,000 Euros fine and judges are entitled to sentence a fine equal to four times the amount of advertising expenses. This is considered “a hefty payment for sports web sites, broadcasters and other media”.⁷³

D. Prevention of Conflict of Interest

Gambling activities might be favorable to situations in conflicts of interest, given that money is at stake. Therefore, Article 32 of the Law 2010-476 established some safeguards in order to avoid cheating.

Thus, owners, managers, stockholders and employees of an authorized operator are not allowed to participate in the gambling organized by the operator. Following the same principle, athletes and jockeys are not allowed to gamble in tournaments/races in which they participate.

Moreover, relationships between operators and the legal entities organizing

68. François Trucy, Sénat, Report n° 209, Jan. 19, 2010, tome I, at 319 (Fr.).

69. Jean-François Lamour, Assemblée nationale, Report n° 1860, July 22, 2009 at 293 (Fr.)

70. The formal notice informs about the necessity to hold an authorization according to the Art. 21 of Law No 2010-476 (The French Gambling Act).

71. It is the Court of first instance of Paris in civil and criminal matters.

72. Concretely, websites of illegal on-line gambling companies shall be black listed. Bruno Durieux, Rapport de la mission sur l'ouverture du marché des jeux d'argent et de hasard, La Documentation Française, Mar. 2008 at 18 (Fr.); François Trucy, Sénat, Report n° 209, Jan. 19, 2010, tome I, at 333.

73. Pelletier *supra* note 35, at 407.

tournaments and/or races are strictly watched. Consequently, any partnership agreement between those two stakeholders shall be transmitted to the *ARJEL*. Furthermore, when the owners, managers, stockholders or employees of an operator have connections with a legal entity organizing tournaments and/or races, it shall be declared to the *ARJEL*. Finally, an authorized operator shall not have a decisive control on a legal entity organizing tournaments and/or races, and *vice versa*.

V. A Public Health Issue: The Fight against Pathological Gambling

This particular aspect of gambling has been tackled through policies (A) before this law, and the fight against pathological gambling was not included in the original project of the Law; (B) it has been added by Jean-François Lamour, a member of the *Assemblée nationale*. This addition is beneficial because social costs of addiction must be taken into account at a high level.⁷⁴

A. Fight against Pathological Gambling before the Law

Both (1) public and (2) private stakeholders try to moderate pathological gambling through various measures.

1. Public Stakeholders

This issue was not ignored by the public authorities, and some institutions are in charge of fighting against addictions related to gambling. For instance, pathological gambling has been added to the general plan of establishing prevention of addictions (with alcohols, drugs and tobacco) from 2007 to 2011.

Before that, the *Institut National de Prévention et d'Éducation pour la Santé (INPES)*⁷⁵ has been settled by Law n° 2002-303 of March 4, 2002.⁷⁶

74. Trucy, *supra* note 14, at 139.

75. Institut National de Prévention et d'Éducation pour la Santé, *available at* <http://www.inpes.sante.fr> (last visited Nov. 19, 2012) (Fr.).

76. Loi n° 2002-303 du 4 mars 2002 relative aux droits des malades et à la qualité du système de santé, [J.O.] [Official Gazette of France], March 5, 2002, p.4118. This Law has been

Placed under authority of the *Ministère de la Santé*, this institute is particularly responsible for implementing programs, providing expertise, and developing training and education in the field of public health, including gambling addictions.

Furthermore, a decree⁷⁷ has merged two types of organisms⁷⁸ to establishing a new one called, *les Centres de Soins d'Accompagnement et de Prévention en Addictologie (CSAPA)*. Those centers provide medical and social assistance for people suffering under addictions.

Recently, scientific research has started to tackle this issue. On January 1, 2008, the *Centre de Référence sur le Jeux Excessif (CRJE)*⁷⁹ has been settled with several missions. Thus, the CRJE leads researches, develops training and manages resources through a documentation center gathering books, reviews, papers and studies, etc.

2. Private Stakeholders

At the same time, some private initiatives have emerged. Thus is the case of *SOS Joueur*, a non-profit association aiming to assist pathological gamblers and their families. However, this association has limited means with a small budget (about 150,000 Euros per year) and its activities are consequently fairly restricted.⁸⁰

Another original solution has been developed by a company, showing that assistance to pathological gamblers can be made a business: *Adictel*. This company provides 24/7 assistance through psychological support and sends gamblers toward an adapted solution, which may be a psychiatrist or a *CSAPA* for instance. *Adictel* provides a fairly good solution for gambling

implemented by the Décret n° 2002-639 du 29 avril 2002 relatif à l'Institut national de prévention et d'éducation pour la santé et au Comité technique national de prévention institués par les articles L. 1417-3 et L. 1417-4 du code de la santé publique (Fr.).

77. Décret n° 2007-877 du 14 mai 2007 relatif aux missions des centres de soins, d'accompagnement et de prévention en addictologie, [J.O.] [Official Gazette of France], 2007 (Fr.).

78. The *Centres Spécialisés de Soins aux Toxicomanes* and the *Centres de Cure Ambulatoire en Alcoologie* (Fr.).

79. Centre de référence sur le Jeux Excessif, available at <http://www.crje.fr>.

80. Annual activity for 2008: 4 028 phone calls, 665 mails, 1 339 gamblers regularly followed, 48 support groups usually gathering about 12 gamblers.

companies that want to outsource their obligations regarding the prevention of addiction and the promotion of responsible gambling.

B. Fight against Pathological Gambling in the Law

This particular aspect of on-line gambling is taken in account in Chapter 7 of the Law (articles 26 to 30), and is very important given that the on-line gambling market in France is fairly active.⁸¹ The current system is based on a co-responsibility shared by gamblers and operators.⁸²

The first paragraph of Article 26 establishes an obligation to achieve a particular result towards the gambling operators, who have to prevent two types of people from gambling: minors⁸³ and people banned from gambling. The protection for minors is fairly classical and the gambling operators may ensure the age of gamblers. The protection regarding the people banned from gambling concerns of three cases: people under guardianship; when such banishment is decided by a judge responsible for the terms and conditions of sentences; and when such banishment is a decision taken by gamblers themselves. This last one is original and a decree,⁸⁴ and a ministerial order⁸⁵ have elaborated a simple framework, according to which, all homepage gambling websites shall post a message explaining the possibility of voluntarily being banned from gambling. Banishment could be requested according to two different terms:

- For provisory term, voluntarily banishment can be requested to the gambling operator for at least seven days; and
- For a definite term, banishment can be requested through a request to

81. 1,3 million active accounts. Ariane de Guillenchmidt-Guignot, *Les contrats de jeux d'argent et de hasard en ligne*, JurisClasseur Contrats - Distribution, Fasc. 3330, n° 9 (Fr.).

82. François Trucy, Sénat, Report n° 209, January 19, 2010, tome I, at 176 (Fr.).

83. The article 5 prohibits gambling for minors.

84. Décret n° 2010-518 du 19 mai 2010 relatif à la mise à disposition de l'offre de jeux et de paris par les opérateurs agréés de jeux ou de paris en ligne, [J.O.] [Official Gazette of France], May 20, 2010, p.9295 (Fr.)

85. Arrêté du 8 juin 2010 relatif aux contenu et modalités d'affichage du message d'information relatif à la procédure d'inscription sur le fichier des interdits de jeu, [J.O.] [Official Gazette of France], June 9, 2010, p.10576 (Fr.).

the *Ministère de l'Intérieur*,⁸⁶ and gamblers requesting for the banishment have to wait three years before asking the same Minister to remove the ban.

The second paragraph of Article 26 details different ways to forestall gambling addictions. As a result, gambling operators shall provide several on-line services and options regarding three parameters:

- Financial parameters: gamblers shall have the possibility to cap their account credits but also their bets through default settings, for instance;
- Temporal parameters: gamblers shall be constantly informed regarding the playing time and losses;
- Informative parameters: some information shall be provided to gamblers: instantaneous balance of their accounts; possibility to be voluntarily banned from gambling; and information regarding addictions (Article 28).

Information regarding addiction is provided under the responsibility of the *Institut National de Prévention et d'Éducation pour la Santé*, according to Article 29 paragraph. However, other organizations can make available such information, provided that, they transmit a yearly report to the *Comité Consultatif des Jeux* concerning their organization and actions, et cetera.

Furthermore, all gambling operators shall comply with Article 27, according to which, a yearly report shall be transmitted to the *ARJEL*, describing the actions and means developed against pathological gambling.

Finally, Article 30 strictly forbids gambling on credit. In this regard, gambling operators (including their directors and employees, et cetera.) shall not loan money or allow gamblers to loan money from one to the other. Moreover, advertisement related to loans is not allowed on authorized gambling websites.

86. The procedure is fairly simple, and the gambler who desires to be banned shall send a mail to the *Ministère de l'Intérieur*. Forms and information are available on-line: *Ministère de l'Intérieur*, available at http://www.interieur.gouv.fr/sections/a_votre_service/vos_demarches/interdiction-jeux (last visited Nov. 19, 2012).

VI. Conclusion

A. Fairly Reliable System Requiring Improvement

On October 23, 2012, the European Commission adopted the “Communication towards a comprehensive European framework on online gambling”. Based on an in-depth public consultation, this communication sets out an action plan which is seeking to enhance clarity throughout the European Union for the benefit of national authorities, operators, consumers and related industry, such as payment service or media service providers. Five areas of action are prioritized to address the challenges faced in the European Union and at the national level:

- Compliance of national regulatory frameworks with European Union law;
- Enhancing administrative cooperation and efficient enforcement;
- Protecting consumers and citizens, minors and vulnerable groups;
- Preventing fraud and money laundering;
- Safeguarding the integrity of sports and preventing match-fixing.⁸⁷

First of all, one may notice that competition is not wholly free and few sole rights have been confirmed through the Law 2010-476. In addition, incumbent operators benefit from a strong competitive advantage, particularly in horse betting. In this regard, France has not strictly complied with the European Union law, particularly with articles 49 (freedom of establishment) and 56 (free movement of services) of the Treaty on the Functioning of the European Union. Subsequently, French legislation would most likely be submitted to the European judges in case of a dispute.

There is also a residual problem regarding the effective control over illegal on-line gambling. Indeed, one has to emphasize the fact that there is only a limited mutual recognition and cooperation between states. This enhances the necessity for a European framework which is unlikely to be established,⁸⁸ but

87. Communication from the Commission to the European Parliament, the Council, the Econ. and Soc. Committee and the Committee of the Regions, Towards a Comprehensive European framework for On-line Gambling, Oct. 23, 2012, COM (2012) 596 final, at 4.

88. A European Act would likely solve this issue. Nevertheless, the European Parliament has

in the very least, the European Union institutions impose major principles in governing the activity. In the meantime, the *ARJEL* tries to establish regular relationships especially with on-line regulators of Italy, Portugal and Spain. Recently,⁸⁹ the Authority has signed an agreement involving cooperation and exchange of information with the Gambling Commission of Great-Britain.

These efforts demonstrate the proactive attitude of the *ARJEL*. However, the Authority is almost powerless regarding the protection of consumers and vulnerable people, since it only relies on operators and gamblers themselves. Such fact has been criticized by litigants during the examination of the Law by the *Conseil constitutionnel*, nonetheless, constitutional judges gave the green light to the Act.⁹⁰

Prevention of fraud and money laundering is fairly efficient. Indeed, the Law 2010-476 works with TRACFIN, the French cell fighting against money laundering and financing of terrorism. Indeed, according to Article L. 561-2 of the Monetary and Financial Code, on-line gambling operators shall provide numerous information and data regarding their financial situations and that of their customers to TRACFIN. Thus, there is a crossed control in this field.

Furthermore, the integrity of sports and the prevention of match-fixing and conflict of interest have been widely addressed by *ARJEL* through a report proposing ten recommendations.⁹¹ For instance, the Authority recommended the establishment of a criminal offence for sportive corruption and the Law 2012-158,⁹² subsequently provided, a punishment consisting of five years in

already stated “that, in accordance with the principle of subsidiarity and the case law of the European Court of Justice, Member States have an interest and right to regulate and control their gambling markets in accordance with their traditions and cultures in order to protect consumers against addiction, fraud, money-laundering and match-fixing in sports, as well as to protect the culturally-built funding structures which finance sports activities and other social causes in the Member States.” European Parliament Resolution of March 10, 2009 on the integrity of online gambling, P6_TA(2009)0097.

89. July 1, 2012.

90. Conseil constitutionnel [CC] [Constitutional Court] decision No.2010-605 DC, May 13, 2010, [J.O.] [Official Gazette of France], p. 8900 (Fr.).

91. *ARJEL*, Préserver l’intégrité et la sincérité des compétitions sportives face au développement des paris sportifs en ligne, Prévention et lutte contre l’atteinte à l’intégrité et à la sincérité des compétitions sportives en relation avec le développement des paris sportifs, 10 propositions, Rapport à Madame Chantal JOUANNO, Ministre des Sports, Remis le 17 mars 2011 par Monsieur Jean-François VILOTTE (Fr.).

92. Loi n° 2012-158 du 1er février 2012 visant à renforcer l’éthique du sport et les droits des sportifs, [J.O.] [Official Gazette of France], Feb. 2, 2012, p.1906 (Fr.).

prison and a fine of 75,000 Euros. Numerous other trails are, of course, under active consideration.⁹³

As a conclusion, Law 2010-476 is certainly a constructive step forward, but it should be improved by taking into account its weaknesses and deficiencies.

B. Lessons from the Opening of the French On-line Gambling Market

France has undertaken the opening of the on-line gambling market under the European pressure, essentially for competition purposes. However, it has a lot of positive consequences that might be taken into account by countries wondering about the legalization of this activity.

As a matter of fact, establishing a framework is more efficient than a strict interdiction for some activities.⁹⁴ Indeed, through a dedicated framework, control can be implemented with accurate sanctions or incentives and with reliable monitoring. In addition, prevention can be defined as a part of the whole framework in coordination with control and sanction. Furthermore, the establishment of such a framework allows the development of tools specially designed: institutions, policies and coordination between different administrations, etc. The development of an expertise needs also to be taken into account. The last advantage, but not the least, is to be reminded that the legalized activities may be taxed.

To conclude, the French experience is a good example of on-line gambling activities lately legalized. It provides recent data that allows an assessment of advantages and disadvantages of the process, and might also inspire Korean stakeholders who are involved in gambling, whether it is on the regulation level or on the business level. Therefore, the purpose of this study does not consist of recommending a copy/paste of the French system, it tries, first and foremost, to offer another feedback that might be useful for Korean law/policy makers, even if Korea is not subject to the European pressure.

93. To reinforce law regarding prevention of conflict of interest; To establish a bottom-up system of information regarding suspicion of corruption, match-fixing, etc.; To establish a policy of awareness regarding risks related with sports betting; etc.

94. "The [budget] minister, Eric Woerth, said the gambling market in France would be expanded to adapt 'to Internet reality' and help France 'get out of an unsustainable situation in which the state is losing a growing part of the betting market'." N.Y, Times, Mar. 5, 2009.

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