

**Draft bill
on the liberalisation
and regulation of the online gaming and
betting sector**

Contexte

- ❖ Text submitted to the French Government's Council of Ministers on 25th March 2009 by Mr. Eric WOERTH, French Budget Minister.
- ❖ This text follows a reasoned opinion of the European Commission on the non-compatibility of the monopoly of online horserace betting organised by the PMU and lotteries organised by La Française des Jeux, situations deemed contrary to the principles of freedom of establishment and freedom to provide services enshrined in the Treaty of Rome.
- ❖ Text submitted to the French National Assembly and Senate for discussion before the end of the 1st semester 2009 (deliberate timetable) with a view to opening the market to competition in early 2010.

REASONS BEHIND THE LIBERALISATION OF THE ONLINE GAMING MARKET

The current situation

- ❖ A legal market structured around three channels :
 - lotteries and sports betting organised by La Française des Jeux (9 billion Euros in bets, across 38,000 sales outlets and on the web) ;
 - horserace betting organised by the PMU (9.2 billion Euros in bets, primarily across 9,900 sales outlets and on the web) ;
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❖ Development of large-scale illegal web-based operations :

- 25,000 illegal sites around the world, including 20 % in the French language ;
- 75 % of bets made on the web in France are made on illegal sites.

The consequences of this situation

- Prohibition of gambling among minors not guaranteed in France ;
- No measures against gaming addiction ;
- Sites do not offer full guarantees (risk of being exposed to cheating, fraud, etc.) ;
- No proper protection of horseracing and sports competition ethics.

REAL OPENING ADAPTED TO FRENCH GOVERNMENT'S PUBLIC AND SOCIAL ORDER OBJECTIVES

- ❖ The liberalisation exclusively concerns online gambling.
- ❖ The draft bill liberalises the following 3 sectors.
 - horseracing betting :
 - bets will be allowed exclusively in accordance with the mutual format ;
 - sports betting :
 - ~ fixed-odds betting will be allowed ;
 - ~ live betting will be allowed ;
 - casino gaming :
 - opening up to competition of online poker (around 75% of bets).

❖ Public and social order objectives :

- Exclusion of slot machines and other games, due to their addictive nature ;
- Controlling of types of bet :
 - Prohibition of **spread betting** ;
 - Limiting of bets **to real results** and **real races**.

CONTROLLED OPENNING

- ❖ Licences will be granted for 5 years (renewable) to operators who comply with certain **specifications**. There are three types of licence: sports betting, horserace betting, poker.
- ❖ The draft legislation contains the specification criteria, which shall be stipulated by decree :
 - **general clauses** valid for any type of gaming or betting regarding :
 - ~ protection of vulnerable persons and prevention of addictive behaviour;
 - ~ transparency and financial solidity of operators ;
 - ~ regularity of gaming operations ;
 - ~ reliability and traceability of gaming data ;
 - ~ fight against fraud and money laundering ;
 - ~ obligation to set up business within the European economic area and permit access to all the necessary technical and financial data required for checking compliance with specifications.

- **special clauses**, depending on criteria specific to each type of licence (horserace betting, sports betting, poker).

- ❖ The specifications will be drafted by an independent online gaming regulation authority (ARJEL).

- ❖ ARJEL will check for compliance with the specification clauses on the part of operators and may, where necessary, withdraw approval.

- ❖ **ARJEL will have the means of genuinely controlling the legality of the offering :**
 - compliance on the part of operators' sites with the specifications must be certified by an approved body within 1 year of having obtained a licence ;

 - it shall have access to all necessary technical and financial data required for checking compliance with the specifications and may carry out relevant checks at any time ;

- operators shall be under obligation as follows :
 - ~ to have separate accounts for activities performed on French territory ;
 - ~ to ensure punters have a bank account in France ;
 - ~ not to accept anonymous means of payment ;
 - ~ to have a permanent correspondent in France.

- ❖ The provisions of the French monetary and financial code will be strengthened :
funding of punters' accounts (and therefore bets) will be prohibited on non-approved sites.
- ❖ Illegal organisation of online gaming will be punishable by 3 years' imprisonment and a fine of €45,000.
- ❖ Advertising for online gaming or betting services without approval will be prohibited ;
- ❖ Blocking of banking transactions and access to illegal sites.

- ❖ A "Consultative gambling committee" (CCJ) will be created to safeguard a responsible gaming policy for all real and online gaming.
- ❖ The global gaming offering will be controlled in several ways :
 - controlling of types of bet authorised, regulations governing gaming and races which are vehicles for betting ;
 - cap on punters' return rate (TRJ).
- ❖ The specifications will include a number of gaming moderators in an effort to protect punters against gambling addiction.
- ❖ A proportion of the takings will be allocated to the prevention and fight against gambling addiction.
- ❖ Competition integrity will be better protected than at present :
 - through the controlling of types of bets and the fight against illegal sites ;
 - through the recognition of ownership rights of events organisers.

❖ Industry funding will be preserved :

- currently funded through the PMU system, the horse industry will benefit from :
 - a financial "return" from operators having obtained a licence ;
 - the same cap on the average percentage of stakes that can be divided among punters from sports and horseracing bets (TRJ), to prevent the loss of customers ;
- the sports world will also benefit from a double financial return :
 - a financial return via the CNDS (French national sport development centre);
 - the sponsoring of sports clubs will be authorised..

FINANCIAL PLAN

OBJECTIVES

- ❖ Maintain level of **global tax revenues** (around 5 B€).
- ❖ **Neutral** taxation irrespective of channel (**real gaming/online gaming**).
- ❖ **Neutral** taxation for **sports and horseracing bets** (excluding **funding of horse industry**).
- ❖ Preserve funding of horse industry.
- ❖ A **financial return** that is legible and consistent for **sport, heritage, and health**.

- ❖ The horse industry will be funded by a royalty for services rendered.
The rate will be 8 % of horseracing bets.

- ❖ The financial return for the sports industry will be guaranteed in several ways :
 - amateur and top-level sports :
 - royalty equal to 1 % of stakes for the French national sport development centre ;

 - professional sports :
 - authorised sponsoring ;
 - signing of sales agreements.

TAXATION OF ONLINE GAMING

- ❖ The tax base will consist of **stakes**.
- ❖ The rates of taxation will be the same for liberalised gaming.
- ❖ The levy rates will be as follows :
 - 7.5 % for sports and horseracing bets ;
 - 2 % for poker.
- ❖ **The average rate of return on punters' bets** will be between 80 and 85 %.
- ❖ A portion of the tax and social security revenues will be used to fund :
 - **the fight against gambling addiction ;**
 - **the renovation of historic monuments.**

TAXATION AND RETURNS FOR THE INDUSTRY

In % of stakes	Sports bets (real and online)	Horseracing bets (real and online)	Poker (online)
Government Tax	5.7 %	5.7 %	1.8 % (incl. 15% allocated to CMN)
Social Security Tax	1.8% (incl. 3% allocated to INPES)	1.8% (incl. 3% allocated to INPES)	0.2% (incl. 3% allocated to INPES)
<i>Tax sub-total</i>	7.5 %	7.5 %	2 %
Returns for the industry			
Amateur and top-level sports (CNDS)	1 %		
Horse industry		8 %	
Total tax and returns for industries	8.5 %	15.5 %	2 %

CRITIQUE OF DRAFT BILL

FROM A GENERAL POINT OF VIEW

1. French Government's speed in responding to the Commission's request;
2. Other countries have been less forthcoming (Germany, Sweden, Netherlands) ;
3. The European Parliament resolution on Mrs. SCHALDEMOSE's report (carried by 544 votes) should ordinarily compel the Commission to consider the organisation of gaming as being the remit of each national legislation ;
4. How can the opening of the market help in the fight against clandestine operations ?
(should be the reverse: firstly prevent the placing of bets on illegal sites, then open up the market).
(Budget Minister's commitment)

SPECIFIC CRITICISMS

1. Can the opening up of the online betting market be "controlled" ?
Difficult to justify an opening exclusively online and not in the real circuit.
How long can the control last ?
2. The opening of the online gaming market, due to the widespread use of this medium, may become difficult to control.
3. If the pari mutuel system is satisfactory for horseracing, why authorise fixed-odds betting for sports (no regulatory obligation, unconvincing supporting arguments) ?
4. How to avoid fixed-odds betting spreading to horseracing in the future ?
5. Great danger regarding the integrity and transparency of competitions.

6. Punter's rate of return :

- ~ established by decree and not capped by law,
- ~ the return for the horse industry is not specified by law,
- ~ the rate of return, although favourable for sports bets, generates unfair competition in the case of horseracing bets.

7. Advertising insufficiently controlled and limited in gaming.

8. Operators' ethics: ban on being an owner or sponsor of a competition in which betting is on offer.

