

# SPORTS LAW BULLETIN

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# OPINION ARTICLES 05

## The Good bet: how everyone can win...

On 14 October 2009<sup>1</sup>, the Paris Court of Appeal has rendered a ruling marking a turning point for the legal regime of betting on sports events. This fully reasoned decision makes it clear that sports event organisers enjoy simultaneous protection in order to struggle against betting operators who would be tempted to market betting on their competition without having been authorised: organisers may assert their property right (i.e. exclusive rights) on their event; they may claim trademark infringement for the unauthorised use of the sports event name for commercial purposes; they are also given the opportunity to claim protection through unfair competition provisions (ambush marketing), betting operators having tried to take an undue advantage of the commercial returns resulting from the notorious sports event. France system unquestionably supplies efficient legal means allowing sports events organisers to defend their intangible properties.

The ruling of 14 October 2009 has also represented a crucial step forward for sports event organisers, as it was one of the first to enforce the so-called "betting right". Thereafter, the French legislator has enshrined this right in the law [No 2010-476 of 12 May 2010]. The betting right is now codified in article L.333-1-1 of the French Sports Code (FSC), providing that "exploitation rights referred to in the first paragraph of Article L.333-1 include the right to consent to the organisation of betting in relation to sports events or competitions".

The Law No 2010-476 was passed 3 years ago and France still appears to be a pioneer. ARJEL, in charge of the regulation of the French betting and gambling market, has especially issued an exhaustive report made available on 1 May 2013, which provides with a set of accurate data in this respect<sup>2</sup>. It is now time to take stock of what has been done in France and what was achieved ; in sum, to examine the pros and cons of the French online betting market, whose opening up may be considered as one of the most innovative in Europe.



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## I. The Gradual Recognition of a Betting Right under French Law

### A. Article L.333-1 of the French Sports Code has enshrined sports event organiser's property right

The French Law No. 84-610 of 16 July 1984 on the organisation and promotion of physical and sport activities has granted sports event organisers<sup>3</sup> extra protection. With the aim to struggle ambush marketing practises, the French law-maker introduced an article 18-1, providing that "the right to exploit a sports event or competition

<sup>1</sup> Paris Court of Appeal, 14 October 2009 [No 08/19179] [final judgement]

<sup>2</sup> The "Report of the French Online Gaming Regulatory Authority on the betting right" will be referred to as "The Report" in the present article

<sup>3</sup> Pursuant to Article L.333-1 of the French Sports Code, legal sports event organisers indifferently fall within two categories : Sports Federations and private-law organisers authorised by the relevant empowered federation

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belongs to the organiser of this event [...]". This provision was eventually codified in the Decree No. 2006-596 of 23 May 2006 and then laid down in the first paragraph of Article L.333-1 of the FSC : "Sports Federations and the organisers of sports events [...] are the owners of the exploitation right of the sports events or competitions they organise". It is based on the general idea of "reward" and aims at providing sports event organisers with financial returns to their human and material substantial investments<sup>4</sup>. Thanks to this legal enshrinement, it is no more disputed in France that sports event organisers are holder of an (intangible) property right over their competition<sup>5</sup>.

However, in the absence of further details provided by the law with regards to the scope of organisers' property right, it used to be up to French Courts to delimitate it. It was notably judged that this property right is not confined to the media rights expressly referred to in the law but applies to all forms of commercial exploitation of the competition. Any form of economic activity the purpose of which is to generate a profit and which could not exist if the sports event for which it is the necessary pretext or support did not exist, must be regarded as a commercial exploitation within the meaning of the law (Paris Court of Appeal, 14 October 2009<sup>6</sup>). As any property right, this right thus provides sports events organisers with legal means to exploit and control the way in which their competition is marketed. Exploitation rights on images<sup>7</sup> and broadcasting rights are clearly concerned. French judges have likewise held that the property right covers the right to publish a book dedicated to the sports event<sup>8</sup>.

## B. The Law of 12 May 2010 has enshrined the betting right

In this context, having to rule on a dispute between the French Tennis Federation (FFT) and two online betting operators, the Paris Court of Appeal used to rule on 14 October 2009 that "the organisation of sports betting must be regarded as an exploitation of the sport event that is likely to affect the exploitation rights granted to the FFT by Article L.333-1 of the Sports Code"<sup>9</sup>. Hence for this Court, the recognition of a betting right was implicitly contained in the French Sports Code, since the sports event organisers' property right covers all economic and financial flows which are the consequence of business relationships formed during the sports event. Therefore, no betting can be organised on a sports events whether not authorised by its organiser.

Despite the clear terms of case law, the French authorities have deemed safer to grant sports betting a legislative framework without any possible ambiguity, thus providing legal certainty on the marketing and protection of sports events. The betting right was therefore addressed in the Law No 2010-476 of 12 May 2010 (on opening up to competition and the regulation of the online gambling and betting sector). Accordingly, a new Article L.333-1-1 was introduced in the French Sports Code, stating that "exploitation rights referred to in the first paragraph of Article L.333-1 include the right to consent to the organisation of betting in relation to sports events or competitions". In this respect, it is revealing that the Parliamentary works having led to this text specifically referred to the ruling rendered on 14 October 2009.

The objectives pursued by the French law maker appear clearly, when reading the Report No. 209 issued

4. Paris Court of Appeal, 28 March 2001

5. Sports event organisers' property right is as such protected as fundamental rights of constitutional value under national law (See ARJEL Report)

6. Above-mentioned ; See also, using the same definition : Paris Court of Appeal, 16 March 2011 (No 09/22229) French Supreme Court, 17 mars 2006

7. French Supreme Court, 17 mars 2006

8. Paris Commercial Court, 12 December 2002 ; see also, Paris Court of Appeal, 28 March 2001 above-mentioned ; Paris First Instance Court, 30 May 30 2008

9. above-mentioned ; this ruling upheld the judgment of the Paris First Instance Court (30 May 2008, No 08/02005), having held that "organisation of online betting is an activity which generates income directly relating to the conduct of single events, namely to tennis matches, of which the sports event is the scene ; it consequently represents an exploitation of the said event"

on 19 January 2010 before the French Senate : “[future article L.333-1-1] authorises the marketing of the characteristic elements of sports events or competitions and therefore recognises a right of exploitation for the benefit of organisers (...). Such provisions, which comply with the case-law that begins to establish in the silence of the law, do recognise both that : 1) The development of sports betting has significant implications, in particular financial ones, for sports event or competition organisers (in terms of supervision, monitoring of compliance with sporting ethics, etc.) ; 2) Sports betting operators develop their business from the value of events on which they offer bets ; therefore, it is necessary that they provide appropriate remuneration to organisers.”

## II. An Effective but Controlled Opening Up of the French Online Betting Market

### A. Only operators accredited by ARJEL are entitled to organise betting

Until the Law of 12 May 2010, games of chance and lotteries were subject to a principle of blanket prohibition in France, by virtue of the combined provisions of the Law of 21 May 1836 and Law No 83-628 of 12 July 1983. However, French Authorities quickly foresaw an exemption in favour of two State monopolies (“Française Des Jeux” and “Paris Mutuel Urbain”). The European Community however expressed critical views of the French system, considering that the restrictions imposed to competition were not justified with regard to the principle of freedom to provide services and challenging its motivations<sup>10</sup>. As a consequence of a formal notice of 12 October 2006, followed by a reasoned Opinion of 27 June 2007 threatening with the opening of infringement proceedings, France amended its legislation and adopted the Law of 12 May 2010<sup>11</sup>. By decision dated 24 November 2010, the Commission eventually abandoned the proceedings initiated against France.

Although prohibition remains the principle, online horse bets, online table games and online sports bets are now allowed subject to conditions. Under the controlled liberalisation of the French market, only those operators<sup>12</sup> are authorised to operate online betting websites who have been issued an accreditation by the French Authority for the Regulation of Online Gaming (ARJEL), a specially created independent administrative authority. ARJEL has therefore exclusive jurisdiction on French territory, regardless of whether betting operators got an accreditation in another Member State. That being said, France has chosen an open licence system: there can be as many accredited operators as possible. The Decrees No 2010-476 and No 2010-482 of 12 May 2010 aim specifically at setting the conditions for issuing accreditations and at specifying criteria to be met in this perspective. In general terms and without going into details, the accreditation process implies that applicants prove their legal form, but also the composition of their capital and their financial situation. For the purpose of an effective regulation, candidates must produce proof of their legal, technical, economic and financial capacity to meet the obligations set out by the law, but also by a schedule of specifications drawn up by ARJEL<sup>13</sup>. More specifically, articles 15 and 21 of the Law of 12 May 2010 demand that accredited operators have their registered office in a Member State of the European Union or in a state of the European Economic Area having signed with France an administrative assistance clause with a view to countering tax evasion and avoidance.

<sup>10</sup> Making reference to EU case law in this respect, the Court of Cassation also issued a ruling of 10 July 2007 (No 06-13986) confirming that the monopolies granted to FDJ and to PMU were not proportionate.

<sup>11</sup> The legal text was considered within the French Constitution by the French Constitutional Council (Ruling of 12 May 2010, No 2010-605 DC)

<sup>12</sup> Hereinafter: “accredited operators”

<sup>13</sup> The specifications may be found at the following link : <http://www.arjel.fr/IMG/pdf/cdc.pdf>

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The accreditation is issued by ARJEL for a 5-year term and is renewable. Refusals have to be duly justified and can notably be based on the fact that the betting operator has been the subject of criminal convictions or is not deemed able to preserve public order, to combat money-laundering and the financing of terrorism and/or to struggle against excessive or pathological gambling (Article 21 of the Law of 12 May 2010). At the current time<sup>14</sup>, ARJEL has issued 20 accreditations, 8 of which relating to sports bets services. The latest annual Report of ARJEL also reveals that in 2012, 2 new accreditations were issued and 17 repealed<sup>15</sup>, which is a tangible proof of an effective regulation of the market.

## B. Accredited operators cannot organise betting without prior authorisation of betting right owners

This is no longer contested that, under French law, the right to grant organisation of betting on competitions fall within the scope of the sports event organisers' property right. Thus, even if they have been issued an accreditation by ARJEL, the betting operators interested in offering bets on a specific competition are compelled to require the green light from its organiser. It goes without saying that operating without licence may be risky : accredited operators can be prosecuted before ARJEL's sanctions commission, for breach of the obligations arising from the law (article 43 of the Law of 12 May 2010). Sanctions can take the form of a reduction of the accreditation of a term of not more than 1 year, suspension of the accreditation for 3 months<sup>16</sup> or complete withdrawal of the accreditation (possibly coupled with a prohibition to apply for a new accreditation, for a maximum period 3 years).

Marketing the right to offer bets on sports competitions is strictly regulated by the framework Law of 12 May 2010 and its various Implementing decrees. In order to prevent any abuse of their propriety right, Article L.333-1-2 of the FSC provides that sports event organisers can neither award an operator the exclusive right to organise online betting, nor exercise discrimination between the operators accredited for a given category of betting. In this respect, ARJEL rightly points out in its Report that a sports organiser seeking to optimise its incomes may have preferred an auction mechanism. But the French legislator made the choice to make the online betting market as open as possible. First consequence is that the betting right may be granted to any accredited operators, as soon as the legal and regulatory conditions are met. Second consequence is that no distinction is made between smallest and largest operators, each of them having to pay a fee expressed in percentage of the registered stakes.

Any refusal to conclude contract must be justified by the sports event organiser and notified to both the accredited operator and to ARJEL. In any event, the marketing contracts must be submitted "for information" prior to signature to ARJEL (which will ensure that the above-mentioned rules and also those rules which it has itself defined are complied with) and to the French Competition Authority (FCA)<sup>17</sup>.

Not surprisingly, the financial conditions set out for the betting right were criticised and challenged by betting operators and the European Gaming and Betting Association, when considering that this would contravene the freedom to provide services and the principle of the equality of citizens before the law and the public charges. However, the legislative framework has been fully and repeatedly validated by the French Council of State, which even emphasized that "the right to consent to the organisation of betting in relation to sports events or competitions, which is based on the results uncertainty constituting one of the condition for their commercial exploitation, does not have the character of a public good"<sup>18</sup>. As a consequence, the Council has dismissed the application for a priority preliminary ruling on constitutionality, the question raised having been deemed neither new nor serious. For the same reasons, it has rejected appeals lodged in order to challenge the validity of implementing decrees.

14 15 accreditations out of these 20 relate to poker games and 8 to horse racing betting (on the date of 18 June 2013)

15 <http://www.arjel.fr/IMG/pdf/rapport-activite-2012.pdf>

16 For instance, ARJEL has suspended the accreditation of REMOP LIMITED, notably due to the need to obtain new economic and financial guarantees (Decision No 201-066, 4 July 2011) ; this suspension was eventually lifted by ruling No 2012-083 of 26 September 2012

17 FCA, Press release (15 September 2010) available at : [http://www.autoritedelaconcurrence.fr/user/standard.php?id\\_rub=368&id\\_article=1469](http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=368&id_article=1469) ("The Sport Code also indicates that the Autorité de la concurrence must provide an opinion on all draft contracts for the acquisition of rights to organise online betting. In order to provide the actors in question with necessary clarifications, the Autorité has decided to initiate a self-referral for a general opinion on the possible competition problems within this sector [...]").

18 Council of State, 13 October 2010 (No 342142), 30 March 2011 (No 342142) and 23 December 2011 (No 365711)

## III. The French Online Betting Market Was Opened to Competition while Respecting Public Policy Objectives

As is often the case in France, public order prevention was a core concern of the French Authorities when adopting the Law of 12 May 2010. Therefore, the opening up of the French online betting market should not give rise to an economic destabilisation of the sports event organisers (B) nor threaten the fairness of both betting operations and the course of sports events (A).

### A. The French online betting model pursues an objective of protection for sports competitions integrity

#### 1. Marketing betting right contracts precise the betting operator's obligations relating to fraud detection

Sports event organisers were fully aware that the integrity of their manifestation may be jeopardised by the opening up of the online betting sector, when their events are exposed to further risks of manipulation. As a consequence, fraud prevention and detection appeared as a predominant public policy objective, while regulating the liberalisation of the market. At the time the Law of 12 May 2010 was passed, preserving sports ethics and the integrity of sports competitions was a core concern of the French legislator. This is why the Report of 22 July 2009 before the French National Assembly has pointed out that the legislative recognition of a betting right "is justified by the capacity it will give [sports event organisers] to impose in contracts with online betting operators clauses limiting risks for sports ethics and the fairness of competitions"<sup>19</sup>. In a ruling of 30 March 2011 (No 342142), the French Council of State, while confirming the lawfulness of the property right enshrined by article L.333-1 of the FSC, likewise stressed out that this restriction on the freedom to provide services is justified by "the concern of preventing harm to sports ethics, to honesty and to the integrity of the competitions" and does not go beyond what is necessary to achieve those objectives. Let's also quote the above-mentioned ruling of 14 October 2009 on this point : "[the provisions of Article L.333-1] are inspired by the general interest of (...) preventing the corruption risk (...) and preserving sports ethical values (...). Their purpose is to ensure the organisers' right to monitor these economic movements". The betting right is thus conceived as an effective means of enabling sports event organisers to control their marketing. It allows them to put in place anti-fraud systems so as to detect and prevent any fraudulent practise. In its Report, ARJEL teaches us that since April 2011, anomalies have been detected during 13 French events, 8 of which concerning football matches.

ARJEL Report reveals that marketing contracts signed between sports event organisers and accredited operators are concluded for one or more sport seasons (the maximum duration being 5 years). However, 64% of the draft contracts submitted to ARJEL were meant for a single season, so as to enable competition organisers to review the overall betting system and to bring the necessary improvements and changes from year to year. Indeed, organisers can impose obligations to betting operators in order to prevent risks of cheating on their competitions. ARJEL Report notably specifies that this may lead to the implementation of preventive measures, such as placing the course of a competition under observations, controlling referees' substitutions and information to competition officials and players.

In this perspective, sports event organisers are required by the law<sup>20</sup> to precise in their marketing contracts the obligations to fulfill in terms of fraud detection so as to preserve the integrity of competitions and the overall credibility of the game. Keywords are transparency and communication, operators being also required to communicate the amounts and distributions of stakes placed and to provide organisers with systematic and real-time information of any unusual gambling pattern. As summarised in ARJEL Report, sports organisers need to ensure directly with the betting operators of the content of the betting offer, the implementation of the rules of conflicts of interest, the increasing of stakes that would make it possible to reveal any anomaly that might arise during competitions, prevention of corruption risks on their events and, more generally, risks of fraud. To this end, accredited operators as well as sports event organisers are invited to appoint a corresponding contact in order to facilitate the communication of information. The result of this is an efficient and suitable monitoring and warning system.

<sup>19</sup> Report No 1860, page 71. The same desire to preserve ethics and integrity of the Sport has led the French legislature to adopt the Laws No 2012-158 and No 2012-348 of 1 February and 12 March 2012, strengthening the fight against doping and criminalizing tickets traffic, including on the Internet.

<sup>20</sup> Article L.333-1-2 of the FSC : "The contract (...) specifies fraud detection and prevention obligations imposed on online betting operators. It includes in particular the conditions of information exchange with sports federations or organiser of the sports event".

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**2. Accredited operators are only authorised to offer certain types of bets exhaustively specified on a list drawn up by ARJEL**

ARJEL accreditation is only valid for the expressly authorised categories of games or betting (i.e. sports bets, horse racing betting and/or table games). As a general rule, online betting can only relate to certain bet types exhaustively mentioned in a list drawn up and updated by ARJEL, further to an opinion issued by the concerned sports federations. ARJEL therefore defines the categories of competition which can be subject to betting (e.g.: Olympic Games, world championships, national championships, etc.) together with, for each sport<sup>21</sup>, the types of results for which betting is permitted and the corresponding phases of the game. Bets will therefore be different, depending on the sport. The official list of authorised bets is available on ARJEL website.

As regards football, bets can be placed on 49 different categories of competition ranging from national championships (Algerian, German, Portuguese ones etc.) to national supercups, international friendly matches and UEFA Europa League. It has also to be noted that ARJEL has undertaken a general investigation (whatever the sport) to rule out of the field of betting offers matches with little at stake or too little sports consequence, which are by their very nature more exposed to risks of cheating<sup>22</sup>. As regards the French football championship, ARJEL Board has adopted a ruling expressly banning betting on "matches between first football League clubs whose position in the general standings, at least for one of these clubs, cannot evolve until the end of the sports season" (Ruling No 2012-103 issued on 14 December 2012)<sup>23</sup>.

Bets can be placed on different types of results : the result of the football match, the scores (halftime score, full time score etc.), the goals (number of goals for each team, total number of goals, number of goals for each half time, next team to score, team having conceded no goal etc.), the goal scorers (name of scorer, number of goals, number of scorers, first scorer, minute of the first goal etc.), the results at the end of a competition day (most prolific attack, general standings, first team to score ; number of goals etc.), the goal scorers of a competition day (number of scorers, first scorer etc.), the global results on the competition (the longest undefeated team, best scorer, winner of the competition, teams relegated in second League etc.) and miscellaneous (free kick scorer and headed goal). Thus, the overall betting offer currently covers 78 types of bets with regard to football.

ARJEL tries to limit risks of cheating, manipulation and corruption, by preventing all kinds of undue external interventions in relation to the course of the game, which might affect its outcome. As way of example, sports where marking is given (gymnastics, artistic skating, dressage etc.) are excluded from betting since they involve by their very nature a (corruptible) human judgment<sup>24</sup>. Betting on "negative" score elements of the game (fouls, lost balls, penalties etc.) is likewise prohibited. As regards football, a betting operator had requested that bets on "first goal in second half time" be authorised ; this motion was denied by ARJEL Board, considering that such a result may expose to a risk of manipulation with regard to a possible agreement between players, especially in cases where the difference in goals between the two clubs would be significant at the end of the first half time<sup>25</sup>.

It is worth noting that ARJEL also prohibits bets consisting in "forecasting which team will win the game, after taking into account the handicap (difference of points) predefined by the operator", such a practice being deemed equivalent to a "handicap bet". Therefore, ARJEL fears that this could "lead a team to be considered as the winner after application of the handicap, even if it was not the winner according to the sports results, thus creating a distortion of the official result declared by the organiser"<sup>26</sup>.

21 38 sports (- the Olympic Games) on the date of 19 June 2013 (they were only 15 on 28 May 2010)

22 This is illustrated by the KARABATIC affair, from the name of the French handball player (an Olympic champion), who allegedly bet on the poor performance of his Club at the half-time of a match with nothing at stake (since his team had already won the national title)

23 "Betting offers on Matches of a competition day that became without sufficient challenge before the first game of this competition day must be withdrawn" (Ruling of ARJEL No 2013-031, 11 April 2013)

24 Ruling of ARJEL No 2012-042, 5 April 2012

25 Ruling No 2013-011, 24 January 2013

26 Ruling No 2011-084, 1 September 2011

## B. The French online betting model pursues an objective of funding of the sports movement

The French legislator also considered it essential that economic benefits from sports events contribute to financing the sports movement and in particular grassroots sport. French Authorities are attached to promoting and developing sporting activities as part of their general interest mission. This is clearly spelled out in Article L.100-1 of the FSC<sup>27</sup> ("the promotion and development of physical and sporting activities for all, especially for the disabled, are in the general interest"). At the time the Law of 12 May 2010 was passed, it was therefore foreseen that sports movement's funding would be mainly achieved using a double financial mechanism.

First, the obligation for betting operators to conclude a contract with the sports event organisers makes them subject to payment of a fee, expressed as a proportion of the stakes. French law specifies that this must "notably take account of the costs incurred for fraud detection and prevention" [Article L.333-1-3 of the FSC<sup>27</sup> and Decree No 2010-614 of 7 May 2010]. Hence, sports events potentially most exposed to a risk of fraud (the stakes being high) are granted a more significant financial return through the betting right mechanism. Whatever, it results from ARJEL Report that the price stipulated in contracts is on average 1.1% of bets placed, ranging from a minimum of 0.75% to a maximum of 2,5%.

Since the French online betting market was opened to competition in June 2010, a global amount of 2,37 million Euros has been distributed to sports event organisers. The truth is however that these financial returns are disparate and do not benefit everyone. Market data provided by ARJEL in its Report show that 58% of the stakes are placed on football competitions<sup>28</sup> (23 % for Tennis and 6% for rugby). This bets distribution by sports comes as no surprise when 83% of accredited operators have signed contracts with the French Football, Tennis, Basketball, Handball and Rugby Federations. As a result, the French Football Federation and the French Professional Football League have perceived 64 % of total betting right for the years 2010 – 2012, which represents more than 1,5 million Euros [compared with 18% i.e. 454.000 Euros for the FFT and 8% i.e. 178.000 Euros for the French Rugby Federation]. Now more than ever, football appears to be the most attractive sports activity in terms of betting.

Second, sports movement and in particular the grassroots sports are partially funded through a levy on gambling. The French legislator has indeed introduced an uncapped contribution of 1% on sums staked on sports bets operated by the FDJ and accredited operators. This deduction was increased 1.3% for 2010, 1.5% for 2011 and 1.8% for 2012 [Article 51 of the Law of 12 May 2010]. All such collected sums are paid to the National Centre for the Development of Sport, the State's exclusive operator for the support of territorial actions in the field of sport, and the body responsible for action to maintain and preserve social order and ethics. This mechanism has generated an overall income of 23 million Euros from 2010 to 2012 and ensures better funding of sports that the betting right, which will primarily benefit to the main sports federations and private organisers<sup>29</sup>.

Finally, it is worth noting that sports event organisers may find a new source of income thanks to article L.333-1-3 of the FSC, this recognising their right to "grant operators of online betting, in whole or in part, whether or not for payment, whether or not exclusively, licences over the intangible assets that they hold". In concrete terms, they are given the possibility to grant accredited operators a licence to use their trademarks, logos and emblems or their images. Article L.333-1-3 of the FSC thus confirms the case law finally established in this regard, the Paris Court of Appeal having held after some hesitation<sup>30</sup> that the use made of the sports event organisers' trademarks in connection with betting services constitutes trademark infringement<sup>31</sup>.

<sup>27</sup> The first Article of the Code, providing it with a strong symbolic value

<sup>28</sup> From June 2010 to May 2012, more than one million Euros bets were placed on the first football League, i.e. more than 43% of the total for all sports; betting right on the French second football league represents 292 000 Euros for the same period, with a significant increase of 25 % from 2011 to 2012

<sup>29</sup> ARJEL Report highlights that the perceived betting right incomes are most of the time insufficient for the sport events organisers to offset costs incurred for risk prevention and monitoring measures

<sup>30</sup> Paris Court of Appeal, 11 December 2009 (No 08/11890);

<sup>31</sup> Above-mentioned Paris Court of Appeal, 14 October 2009; Paris Court of Appeal, 21 January 2011 (No 09/20261); the Court therefore refuses to consider that this use would fall under the "necessary reference" exception (arising out of Article 4 of Directive 89/100)



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Implementation of the property right enshrined in article L.333-1 of the FSC has raised a number of new issues, the first of which about its geographical scope : are sports events held abroad eligible to this right? This question remains open, since no judicial ruling seems to have been handed down in relation thereto. Some authors nonetheless consider that this article should be interpreted as granting a propriety right limited to competitions taking place on French territory. ARJEL, to which this question was referred, issued a ruling of 6 October 2011<sup>32</sup>, which unfortunately gives no clear reply. ARJEL merely notes that "events held abroad do not seem to meet the requirements of article L.333-1 of the French Sports Code as regards their conditions of organisation, given the lack of any connection with French territory", while immediately recognising that "the existence of a right to grant the organisation of betting held by these organisers under any other applicable law can be discussed". ARJEL therefore reminds that "the question of whether an organiser of a sports event held outside France can claim the right to grant the organisation of betting on French territory has not been addressed by French courts up to date" and concludes that "it does not lie in its purview to engage in possible administrative proceedings against any licensed operator offering betting on an event taking place outside France without contracting first with its organiser".

The other key question remains to determine whether French sports event organisers may assert their property right outside the French territory. This is a crucial issue for at least two reasons: first, the exclusion of stakes placed abroad has a restrictive effect on the effectiveness of the French system and results in an increased risk for competition integrity and sports ethics ; second, from a mere financial point of view, sports event organisers are deprived of a significant proportion of the betting revenues generated by their competitions if only accredited operators operating from France are liable for the betting right<sup>33</sup>.

In this regard, ARJEL Report rightly observes that "just as organisers protect their television broadcasting rights, including the stills or moving images of their events, the protection of one of the other attributes of their property right – in other words the betting right – in territories other than France makes sense. This obviously leads to questioning about the adoption of the betting right or an equivalent legal instrument for others countries, and firstly within the European Union". It appears that this view is widely shared by the European Parliament, as it results from its resolutions of 8 Mai 2008<sup>34</sup> and 15 November 2011<sup>35</sup>. It is also worth referring to the recitals 100 to 102 of the ruling issued on 4 October 2011 by the Court of Justice<sup>36</sup>, reminding that "it is permissible for a Member State to protect sporting events, where appropriate by virtue of protection of intellectual property, by putting in place specific national legislation". French sports event organisers naturally call for an expansion of the French pioneering betting right model to other Member States.

France is the only Member State having enshrined in law the sports event organisers' property right and its attributes, including the betting right. ARJEL Report shows that the implementation of this right has had no impact on the effective opening up of the sector to competition. Indeed, the amount of the betting right has not represented more that 1% of the accredited operators' gross gambling revenue in 2011. ARJEL infers from this that price-fixing is not such as to constitute a barrier for betting operators. The figures speak for themselves: since it has been opened to competition, the amount of the betting right has increased by 10%; between 2011 and 2012, overall sports betting have increased of 20% (28 % for football); the average accounts number of active sports betting players has raised from 97.000 in 2011 to 112.000 in 2012. In this context, it seems that the French sports betting market is not that bad, in spite of (and maybe thanks to ?) its specificities. The French model, led by ARJEL, has thus proved to be exhaustive and efficient, for the greater benefit of French gamblers.

<sup>32</sup> Ruling No 2011-106 ; the same reasoning is spelt out in ARJEL Report

<sup>33</sup> As reported by ARJEL, during the first half-year of 2012, French gamblers have placed 362 millions Euros bets through accredited operators. However, only 21% of these sums (i.e. 75 million Euros) regarded events covered by a betting right

<sup>34</sup> Resolution of 8 May 2008 on the White Paper on Sport (2007/3261)

<sup>35</sup> Resolution of 15 November 2011 on online gambling in the Internal Market (2011/2086)

<sup>36</sup> Joined cases C-605/08 and C-625/08