Cours de 4ème année Sport
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M1

Sports Agents and Contract Law

DROIT DU SPORT

Négociation de contrats

GESTION DE CARRIERE SPORTIVE

Agent sportif et manager

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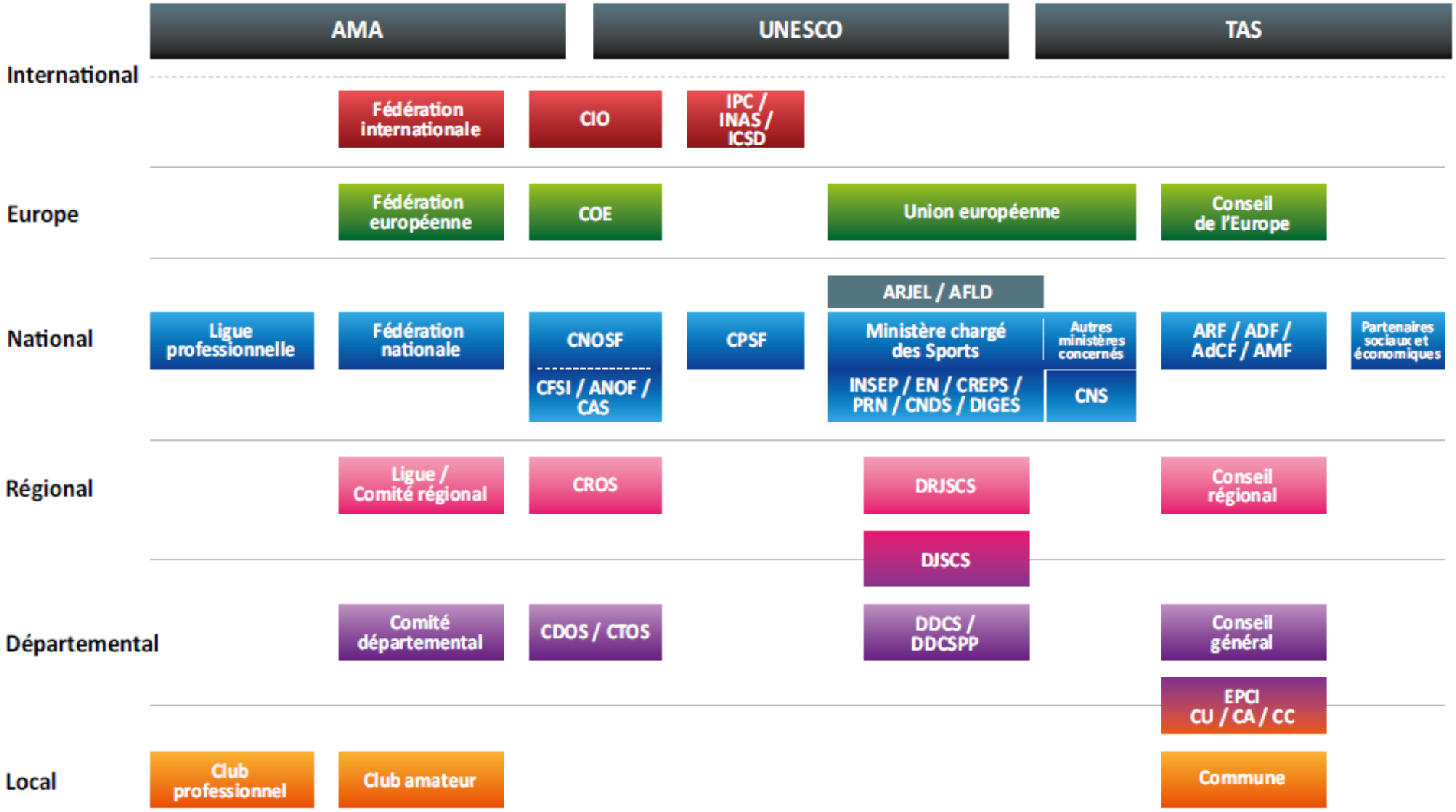
Session 5 - Approaches to sports law topics: doping, health, sports betting and openness to labor law

Session 5 – Approches de thèmes en droit du sport : dopage, santé, paris sportifs et ouverture sur le droit du travail

RAPPEL SUR L'ORGANISATION DU SPORT EN FRANCE

L'ORGANISATION DU SPORT EN FRANCE



THE REGULATION ON SPORTS BETS

CHAPTER I: SPORTS BETS

Section 1: Nature and characteristics of sports betting

Pursuant to article 1108 paragraph 2 of the Civil Code, gambling and betting contracts belong to the category of random contracts. This article states that the contract "is random when the parties agree to make the effects of the contract depend on the benefits and losses that will result from an uncertain event". These are:

- The insurance contract
- The game and the bet
- The life annuity contract

Despite this provision, gambling and betting contracts are not very regulated in the Civil Code.

The gambling and betting contract is defined as "the agreement whereby one or more persons undertake to remit a specified object or a sum of money or to perform a benefit to another person, in the event that It would win the game to which it lends itself ".
The gain thus obtained is the stake of the contract, the performance of the player is the essential element.

Betting contracts are gaming contracts and are the subject of specific legislation in French law.

In general, betting contracts fall into three categories of existing games:

- Lotteries that are in principle prohibited but several exceptions exist
- horse racing betting games which are the subject of a monopoly by the PMU
- Circle and casino games

The law that has long been referring to lotteries is the law of May 21, 1836 prohibiting lotteries. This law was recently repealed by Order No. 2012-351 of 12 May 2012 on the legislative part of the Internal Security Code. From now on, the prohibition principle is codified in Articles L. 322-1 to L. 322-6 and L. 324-6 to L. 324-10 of the Internal Security Code, which appear in Title II "Gambling". , casinos and lotteries "of Book III entitled" Special Administrative Policies ".

These articles came into force on May 1, 2012. This is a constant-law codification which does not entail any real modification in view of the content of the preceding provisions.

The law of 12 May 2010 on the opening to competition and regulation of the online gambling sector also regulates the subject. Gambling is presented by article 1 of the law of May 12, 2010 as not being a trade and an ordinary service, and requiring a strict framework with regard to issues of public order, security public health and the protection of health and minors.

The Hamon law of 17 March 2014 on consumption puts an end to the traditional distinction between random lotteries and quizzes using the player's personal abilities through a strict interpretation of the notion of chance.

Compréhension des différentes catégories de contrats de jeu:

- **les contrats de jeux de hasard (extrêmement réglementés) s'opposent aux contrats de jeux d'adresse (art 1966 du code civil)**
- **les contrats de jeux onéreux s'opposent aux contrats de jeux gratuits**
- **les contrats de jeux d'argent et de hasard en dur s'opposent aux contrats de jeux d'argent et de hasard en ligne**

SECTION 2: The principle of general prohibition

Article 2 of the law of 12 May 2010 amended by the law of 17 March 2014 states that "the notion of gambling and gambling in this Act means the transactions referred to in Articles L.322-2 and L. 322-2-1 of the Internal Security Code. "

The lottery is defined as "a game of chance that leaves little or no room for knowledge, sagacity and more generally the abilities of players." Lotteries can be classified according to whether the result is immediate or deferred.

So is it possible to list:

 Immediate result or "instant win" lotteries
Example: scratch games, good winners on product packaging, audiotel games by SMS or phone

 Lotteries with delayed results
Example: sports prognoses, draw games, pre-draw lotteries, raffles, some unique up and down betting games

Lotteries can also be distinguished according to their purpose. Thus, classically, it is appropriate to distinguish the lotteries constituting real money games and existing by themselves, commercial and advertising lotteries which are the support and the promotional accessory of a main economic operation, the sale of a product or the supply of a service.

A - The definition of the prohibition

Article L.322-1 of the Internal Security Code states that lotteries of any kind are prohibited.

Article L.322-2 of the CSI specifies that the following are considered lotteries and prohibited as such: sales of real estate, furniture or goods made by lot, or to which premiums or other profits due have been collected, even partially, randomly and, in a general way, all transactions offered to the public, under any name whatsoever, to give rise to the expectation of a gain that would be due, even partially, at random and for which a sacrifice financial contribution is required by the operator from the participants.

The lottery is generally defined as "an onerous operation offered to the public, giving rise to the expectation of a gain acquired through the lot"

1) The constituent elements of the offense of a prohibited lottery

It emerges from the wording of Article L.322-2 of the CSI and the case-law in this area that the offense of a prohibited lottery is constituted when the following four conditions are met cumulatively:

 The offer to the public

 The expectation of a gain

 The use of chance in determining the winner

 The pecuniary sacrifice of the participant

Article L.322-2-1 of the CSI specifies in its second paragraph, that: "the financial sacrifice is established in cases where the organizer requires a financial counterpart from the participants, even if a subsequent refund is made possible by the rules of the game ".

Thus, lotteries that meet the other three conditions are lawful, since they are completely free for the participant, and require no disbursements from him. The financial sacrifice can cover different forms: the purchase of a registration form or a raffle ticket, the cost of sending the answer, the prior purchase of a product, etc.

2) The strict interpretation of the concept of chance by the HAMON law

The Hamon law of March 17, 2014 strongly reduces the distinction between games of chance and games of skill. The concept of chance has always been fundamental in gambling contracts in that it introduces a random element intrinsically linked to the game and which makes it possible to determine a winner.

Lotteries involving a draw are the first ones to be covered by the concept of games of chance (eg raffles). Thus, the transactions under which all individuals are assured of winning the lot are not within the scope of the prohibition. This is for example the sale with premium in which the buyer of a commodity is compulsorily awarded the gift proposed by the professional or operations for which chance plays only as a method of determining the date of issue (Cass Crim, 13 Oct. 1993). The notion of chance made it possible to distinguish the lottery, prohibited, for which the player did not appeal to any particular skill of the game or address whose main feature was to put in competition several players who appeal to their personal abilities.

There was a difficulty in qualifying games that use both of these elements simultaneously, both chance and personal abilities. The judges then decided on a case by case basis with regard to the degree of chance in the game.

3) The discussion about the poker game

The poker game has been controversial. Indeed, the legal definition of gambling before the Hamon law stated that "a game of chance is a paid game where chance predominates over the skill and combinations of intelligence to gain". Thus, two decisions had classified poker in the category of games of chance but a judgment rendered by the Toulouse Court of Appeal on January 17, 2013 agreed otherwise. Given the definition of gambling before the Hamon law, the appellate judges had considered that the player's personal abilities in the game of poker predominated over chance.

However, a judgment of the criminal chamber of the Court of Cassation of October 30, 2013 puts an end to the controversy by qualifying poker as a game of chance.

The Hamon law of March 17, 2014 puts an end to this discussion by a very strict interpretation of the notion of chance. It introduces an article L.322-2 to the Internal Security Code which now provides that prohibited lotteries are games in which the expectation of winning depends on chance even partially. In addition, Article L.322-2-1 states that "this prohibition covers games whose operation is based on the player's know-how".

This law imposes a strict interpretation of the notion of chance. As soon as chance is present in the rules of the game, prohibition is the rule, even if it is the skill of the players that prevails in achieving the gain.

These two articles therefore provide for a prohibition in principle of games, whether by chance or based solely on the expertise of the players from the moment they are paid. The latter prohibition is based on the criterion resulting from whether these games are paid for or not. There is no distinction, furthermore, depending on whether they are online or not. Otherwise formulated, the part of chance in the game is no longer the paramount criterion, it is no longer required, so that one is in the presence of a game subject to prohibition, the game has a preponderant share of chance. Even a small, partial fraction of chance is enough to give the game a lottery character and thus be prohibited. The distinction between games of skill and games of chance remains, but it loses much of its raison d'être to the extent that it benefits from the same legal regime. Indeed, from now on, the games which are based on the know-how of the player are forbidden in principle when they include the elements above.

B - Punishment of the offense of a prohibited lottery

The organization of a lottery as defined by the law of May 12, 2010 is a crime punishable by law. Article 56 of this law provides that: "Anyone who has offered or offered to the public an online offer for betting or gambling without being licensed in accordance with Article 21 or exclusive right is punishable by three years' imprisonment and a fine of € 90,000. These penalties are increased to seven years' imprisonment and a fine of € 200,000 when the offense is committed in an organized group ".

The perpetrator of such an offense also incurs additional penalties, such as:

 Prohibition of civil, civil and family rights (Article 131-26 of the Penal Code)
Example: the right to vote, eligibility, the right to be a tutor or curator

 Confiscation of movable or immovable property that has directly or indirectly been used to commit or is the product of the offense, including funds or effects exposed to gambling or lottery and furniture or effects of which the premises are lodged or decorated, with the exception of objectives liable to give rise to

 The posting or dissemination of the decision pronounced

 The definitive closure or for a period of not more than 5 years of the establishments or of one or more of the establishments of the company used to commit the incriminated facts

 The prohibition, either to exercise a public office or to exercise the professional or social activity in the exercise or on the occasion of the exercise of which the offense was committed, is to exercise a profession commercial or industrial, to direct, administer, manage or control in any capacity, directly or indirectly, for its own account or on behalf of others, a commercial or industrial enterprise or a commercial corporation.

Legal persons may be held criminally liable, under the conditions provided for in Article 121-2 of the Penal Code, for the offense of organizing a prohibited lottery scheme. The penalties incurred by legal persons are:

 The fine, increased to five times that provided for natural persons is 450 000 €

 Dissolution, permanent or temporary prohibition, placement under judicial supervision

 The posting of the decision pronounced or the diffusion of this one by the written press, etc ...

The principle of prohibition of lotteries resulting from the law of May 12, 2010 applies, a priori, lotteries organized online. Indeed, the law n ° 2010-476 of May 12th, 2010 relative to the opening to the competition and the regulation of the sector of the games of chance and money on line excludes the lotteries from the field of the opening to the competition gambling and gambling.

SECTION 3: Lotteries Allowed by Exception

A - Specific exceptions

The principle of prohibition of lotteries laid down in Articles L.322-1 and L.322-2 of the Internal Security Code is not absolute and contains certain exceptions.

This prohibition does not cover:

 The advertising operations mentioned in Article L.121-36 of the Consumer Code.

 Lotteries of movable objects exclusively intended for charitable acts, the promotion of the arts or the financing of non-profit sports activities, when they have been authorized by the mayor of the municipality where the head office is located of the beneficiary organization and, in Paris, by the Prefect of Police.

 Traditional lotos, also called "game hens", "rifles" or "quines", when they are organized in a restricted circle and solely for social, cultural, scientific, educational, sporting or social purposes and are characterized by low value bets, less than € 20. Their lots can not, in any case, consist of sums of money nor be reimbursed. They may nonetheless consist in the delivery of non-refundable vouchers.

 Lotteries offered to the public on the occasion, during the duration and within the fairgrounds.

B - Betting on horse races

The law of 2 June 1891 regulating the authorization and operation of horse racing established a state monopoly on horse betting in favor of Pari Mutuel Urbain (PMU).

C - Lotteries reserved for the State

By way of derogation from the general principle of prohibition of lotteries, Article 136 of the law of May 31, 1933 determining the general budget for the financial year 1933 (Journal Officiel of June 1, 1933) authorized the organization of lotteries by the State. Thus, the Française des Jeux has a monopoly. Each game is subject to a regulation issued by the President and CEO of La Française des Jeux, published in the Official Journal, which defines the conditions of the game, the frequency and organization of draws, the use and form of the ballot and the method of distribution of the winnings. Article 2 of the decree of 9 November 1978, as amended by the decree of 17 February 2006, provides that the lottery organized by the Française Des Jeux can be organized through numerous media. It can thus be made

available to the player "a material or intangible technical means, called support, including all the features useful for participation in the game". On this basis, the French Games could very quickly offer to play directly on the Internet.

ESSENTIEL

The Internal Security Code establishes a principle of general prohibition of lotteries.

The lottery is an onerous operation offered to the public, giving rise to the expectation of a gain acquired by chance. The general prohibition also applies to operations in which the participant's skill is required, in addition to chance.

The non respect of this prohibition exposes its author to three years of imprisonment and 90 000 € of fine.

However, exceptions are provided by law, like the Loto for which La Française Des Jeux has a monopoly.

CHAPTER II: SPORTING PARIS "ONLINE"

SECTION 1: The purpose of the law of May 12, 2010

The first chapter of the law of May 12, 2010, lays out the foundations of state intervention to regulate the gambling industry. As such, it is specified that gambling is neither an ordinary business nor an ordinary service and that, in compliance with the principle of subsidiarity, they are subject to strict and legal supervision. the issues of public order, public safety and the protection of the health of minors.

It is specified that taking into account the risks of harm to the public order and the social order, the exploitation of the games is subjected to a regime of exclusive rights delivered by the State. As for online games and bets subject to the law, and which appeal to the expertise of the players, and, in the case of games that involve several players simultaneously, they are subject to an approval procedure.

The objectives of the state in gambling regulation are:

 Prevent excessive or pathological gambling and protect minors

 Ensure the integrity, reliability and transparency of gaming operations

 Prevent fraudulent and criminal activities and money laundering

 Ensure the balanced and equitable development of the different types of game in order to avoid any economic destabilization of the concerned sectors

Article 7 of the law of May 12, 2010 provides a framework for the advertising of operators of games of chance and money, whether the offer is online or hard. In this respect, it is provided that any commercial communication to a gambling operator is permitted if it is accompanied by a warning message against gambling or excessive gambling and a message referring to the information and assistance system.

On the other hand, all commercial communication is forbidden when it is intended for minors.

SECTION 2: Legal Definitions

The game or the bet regulated by the law of May 12, 2010 is a contract of adhesion concluded between an operator and a player. Article 10, 1 ° of the law states that: "Online gambling and betting are games and bets whose engagement is made exclusively through a communication service at public online ". The legislator has chosen to open the market to sports betting, horse betting and circle games such as poker exclusively online.

All these notions must be defined in order to determine the scope of the law.

A - Definition of the operator

Article 10 (2) of the Act defines the online gambling or betting operator as: "any person who habitually offers to the public online gambling or betting services with monetary value issues and the terms and conditions are defined by a regulation constituting a contract of adhesion to the game subject to the acceptance of the players ".

The operator may be a legal entity or natural person.

He is bound by the following obligations:

 Offer the public online gaming and gambling services with monetary value issues, as free games are already allowed.

 Propose a player's signature of a membership contract that defines the rules and the terms and conditions of the game.

 Set up a site dedicated to the online gambling and betting offer whose domain name must end with ".fr".

 Prevent excessive or pathological gambling.

 Ensure the age, address, identification of the player's payment account.

B - Player definition

The player is defined as the signatory of the contract of play concluded with the operator.

In the same paragraph of the law is specified what is a bet: it is "any amount of money committed by the player, including that coming from the putting into play of a gain". Social and tax deductions are seated on all bets.

Each player then has an account that the operator is required to open at the time of membership. The player must necessarily be a natural person. The opening of the account must be prior to any bet or game. The request can only be made by the holder and must be express.

C - Definition of sports and horse betting

1) Definitions

According to article 4 of the aforementioned law, horse betting and sports betting are "bets with a monetary value stake where the players' potential winnings depend on the accuracy of the predictions concerning the outcome of any horse test. or actual sports competition legally authorized in France or abroad.

The field of liberalization thus includes bets in which the player incurs money. In addition, the tests are real and legally organized events which therefore excludes virtual events such as video games sports. The field of sporting events is wider than that of horse races.

It is the Regulatory Authority of Online Games (ARJEL) that defines the categories of competition on which sports betting can be made. In the same way, horse betting can only concern races listed on a list established by regulation.

2) Distinction between bets in the form of mutual and pari-odds

Article 4, II of the law of May 12, 2010 clarify the distinction between mutual and fixed-odds betting: "The bet in the mutual form is the bet under which the winning players share all the odds. are committed, gathered in the same mass before the course of the event, after deduction of the levies of any kind provided for by the legislation and regulations in force and on the part of the operator, the latter having a neutral and disinterested role as to to the result of the bet.

Side betting means the bet for which the operator offers the players, before the start of the sports competitions or during their course, odds corresponding to his assessment of the probabilities of occurrence of the results of these competitions on which the players bet. The gain is fixed, expressed in multiplier of the stake and guaranteed to the players by the operator ". There are several types of odds wagers:

 Fixed odds bets: single bets on a single event / handicap betting that assigns a handicap to the team or player considered as the best / combined betting on the completion of several events / the live bet or live betting where the odds are fixed but evolves over matches according to various events.

 The spread betting, which consists of betting on a spread.

D - Definition of circle games

Article 14, II of the law of May 12, 2010 provides that: "only games of circle constituting games of distribution based on chance and on the know-how in which the player, after the 'intervention of chance, decides, taking into account the behavior of other players, a strategy likely to change its expectation of earnings.

The law therefore excludes counterpart games, such as blackjack and roulette and also excludes slot machines for reasons of protection of the player at the risk of addiction.

SECTION 3: Obtaining an ARJEL approval

Only operators who have been approved by the Online Games Regulatory Authority are allowed to operate online sports betting websites.

A - The Regulatory Authority of Online Games

The Regulatory Authority for Online Games (ARJEL) is an independent administrative authority without legal personality. ARJEL ensures that the objectives of the gambling and betting policy are respected. It monitors gambling and betting operations and fights against illegal sites and fraud.

It renders an opinion on any draft text relating to the gaming sector, which opinion may be public.

It also has a role of proposal of modification of the legal texts relating to its field of competence.

1. The main missions

The main missions of the ARJEL are:

 To inform the license files deposited by the operators

 Fix the technical characteristics of platforms and software for gaming and online betting of operators subject to approval

 Licensing gaming and betting software

 Periodically evaluate the level of security offered by gaming platforms and operators

 Determine the technical parameters of online games

 Ensure the quality of the certifications made pursuant to Article 23 of the law

 Evaluate the results of prevention of excessive and pathological gambling by the operators

 Limit commercial offers with a financial reward for players

 Conclude agreements with the regulatory authorities of other states to control the specifications, compliance with the regulations

 Submit an annual report to the President of the Republic, the Prime Minister and the Parliament

2. Powers and sanctions

For the exercise of its missions, the ARJEL has powers of information and investigation.

It thus has the possibility of:

 Gather all the necessary information from the competent ministers, licensed gaming operators and online gamers and from other companies involved in the gaming sector

 To solicit the hearing of any person and to direct administrative investigations necessary for the application of the law

 To pronounce sanctions directed against the operator of games

 To pronounce, according to the seriousness of the deficiencies, the following sanctions: warning, reduction of a maximum year of the duration of the authorization, suspension of the approval for three months or more, withdrawal of the approval.

The law of March 1, 2017 completes Article 12 of the law of May 12, 2010. Thus, "The President of the Regulatory Authority of online games can, if there are serious and consistent evidence of manipulation of a competition or sporting event inscribed on the list defined in I of this article, prohibit, for a duration that it determines, any bet on this one. The organizer of the competition or sports event may seize it for this purpose. "

B - The approval procedure

The flagship measure of the law of May 12, 2010 is to submit companies or companies wishing to obtain the status of online gaming operator and paris to an approval issued by the ARJEL.

Companies and companies wishing to market games and online bets must first obtain a license.

An application for approval must be filed with the ARJEL, which will decide on an acceptance or a refusal. Companies wishing to obtain approval from ARJEL must submit a certain amount of information to the file concerning, in particular, their legal structure, their directors and the company's liabilities. They must also provide information on the characteristics of their offer to the public and in the case of Internet operators, on the means implemented to ensure the security and reliability of the website.

ARJEL issues approvals only to applicants who have the technical, economic and financial capacity to face durably the obligations attached to their activity and their obligations in terms of safeguarding public order, combating money laundering and the financing of terrorism, the need for public security and the fight against excessive or pathological gambling.

The law limits access to the French market only to operators authorized by the ARJEL, which implies that operators approved in another Member State are not admitted to the French market if they have not obtained approval. French.

C - The issue of approval

The issuance of a license prior to any online gambling activity offers control over the opening of games to competition.

Accreditation that can benefit online gambling or betting operators is:

 Distinct for horse betting, sports betting and online circle games

 Issued for a period of 5 years

 Renewable

 transferable

 Subordinate to the beneficiary's compliance with the specifications applicable to it and other obligations set out in the law

Applications for approval may only be made by operators whose head office is established in the territory of a Member State of the European Union or of a State Party to the European Economic Area which has concluded a convention containing an administrative assistance clause.

The refusal of approval, or its renewal, must be motivated.

The grounds for refusal are exhaustively listed:

 The inability of the applicant to face durably the obligations attached to his activity

 The necessities of safeguarding public order

 A sanction pronounced by the ARJEL against the operator

 A criminal conviction of the company, its owner, its directors, its corporate officer

The online gaming market has rapidly led to the disappearance of several licensed operators or concentrations between them. As of March 15, 2016, 16 operators are authorized by ARJEL and authorized to offer online gaming or gambling offers; 11 of these approvals concern sports betting. In 2014, two operators already approved obtained an additional approval to offer sports betting: Zeturf and Winamax, whose offer was respectively and historically limited to betting horse and circle games.

SECTION 4: Sanctions against illegal sites

Article 56 of the law of May 12, 2010 provides for the penal sanctions incurred by unauthorized operators that is to say in case of proposal to the public of an online offer of bets or gambling and gambling. without the authorization mentioned in Article 21 of the aforementioned law.

The penalty is 3 years imprisonment and 90 000 € fine. These penalties are increased to 7 years' imprisonment and a fine of € 200,000 in the case of an offense committed by organized gangs.
The novelty of the law of May 12, 2010 is that legal persons may be deprived of the right to apply for approval for a period of 5 years or more, as well as the authorization to operate a casino. If necessary, the withdrawal of the approval or authorization may be pronounced. Article 61 of the law of 12 May 2010 provides for a procedure leading to the blocking of access to illegal online gaming sites. According to this provision, the ARJEL sends unauthorized operators a formal notice by any means appropriate to establish the date of receipt.

SECTION 5: The limits

A - The terms of the exploitation right

Due to the opening to competition of the sports betting sector, the law of May 12, 2010 on created a legal framework governing contractual relations between sports federations or organizers of sports events and online gaming operators.

Thus, the law inserts a new article L.333-1-1 in the Sport Code, which states that "the right of exploitation defined in the first paragraph of Article L.333-1 includes the right to consent to organization of sports events betting. Accordingly, the organization of sports betting on a sports event will require the agreement of the organizer of said event, which will take the form of a written contract under which the organizer will consent, under the conditions that the parties have determined , the right to organize sports betting.

Decree No. 2010-614 of 7 June 2010 provides that the marketing of the right to organize bets is carried out in accordance with a non-discriminatory consultation procedure open to all operators having obtained the approval of a sports betting operator. It can not be the subject of separate lots. Finally, the law recognizes that sports companies as well as sports associations have an exclusive right to their intangible assets. Under these conditions, the Sport Code now provides that they are entitled to assign, in whole or in part, whether free of charge or for valuable consideration, whether or not the rights they hold over their own intangible assets, such as their brands, images, analyzes, etc.

B - The use of the name of a club

Clubs have relied on two classic foundations to oppose the use of their name on online gaming sites. Indeed, the name of a club is a brand and its use may therefore be parasitism or counterfeiting.

First, under trademark law, clubs may oppose the reproduction or imitation of their trademark, which is an infringement. Regarding sports betting, a site needs to use the name of a club to be able to offer a bet on it.

Then, clubs can defend themselves on the basis of parasitism, defined as "the fact of referring, without addressing the same clientele, to a trademark or any other form of industrial or intellectual property created by a third party and particularly well known for the benefit of its reputation. "

Example: the case PSG c / Bwin Unibet. In that case, the reproduction of the PSG mark for the public performance of sports bets was not found to constitute infringement and parasitism,

it is the exception of the necessary reference that was retained. The Court also notes that while the use of the sign "PSG" by the operators of online games intervenes well in the life of business, it only designates a football team to allow the user to bet on this team . (Court of Appeal of Paris, April 2, 2010)

C - The use of the name of an event

The sports federations as well as the organizers of sports competitions are the exclusive owners of exploitation rights on the events and events they organize (article L.333-1 of the Sport Code).

Until now, the exploitation rights covered by these provisions mainly concerned audiovisual and radio communication (article L.333-7, C. sport) and information on sports events. However, the organization of bets on sports competitions, since it is possible only because of the existence of sports competitions, should enter the field of exclusive rights of exploitation. It is in this sense that the courts have decided the issue, even before the entry into force of the law of May 12, 2010 and the opening to competition of the online sports betting sector.

ESSENTIEL

A sports bet may be defined as the act of wagering a sum of money on a competition or a phase of this competition with a betting operator, according to the terms it determines and in order to make a profit if event is realized. Formerly state monopoly, the law n ° 2010-476 of May 12th, 2010 relative to the opening to the competition and the regulation of the sector of the games of chance and money online framed the offer of sports bets in line that had developed. ARJEL establishes and maintains the list of approved operators and specifies the categories of games or bets that they are authorized to offer.

Finally, Article 63 of the Law of 12 May 2010 expressly provided that this exploitation right also covered the right to consent to the organization of sports betting on said events (Article L.333-1-1, C This is in line with the position taken by the Tribunal de Grande Instance of Paris (TGI Paris, 30 May 2008).

DEFINITIONS

pari sportif « en dur »[1]
jurisprudence[2]
jeu concours[3]
personnes morales[4]
paris sportifs « en ligne »[5] (Notion de pari et de jeu en ligne)
contrat d'adhésion[6]
contrat de gré à gré[7]
opérateur de jeux ou de paris en ligne[8]
personne morale[9]
personne physique[10].
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contrat de jeu
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Autorité de Régulation des Jeux en ligne[17] (ARJEL)[1]
paris sous forme mutuelle[18]
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propriété industrielle ou intellectuelle[22]
contrefaçon[23]
Lire en ligne : https://www.doctrine.fr/d/CA/Paris/2010/INPIM20100254
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Sports Betting Schedule (article) - Faked matches: the uncertainty of the sports results questioned (Part 1)

The Lawsp July 8, 2015 0 Records, Ethics, Football, match fixing

On June 17, the court in Montpellier heard the stars of the team of 2012 on the case of "rigged" handball bets. An opportunity to return to this phenomenon, in full upsurge.
How to avoid that the rise of sports betting can lead to manipulation of sports competitions and thus undermine the fundamental values of sport?
It is to this question that a working group, led by the former president of the Regulatory Authority for Online Games (ARJEL), Jean-François Vilotte, tried to answer in July 2011. Finally, the The whole team proposed to strengthen "the prevention of sports betting business" on the one hand and "the training of players in sports competitions" on the other.
However, and despite the actions taken by international and national authorities, bets likely to distort the results of sports competitions are still news.

The MAHB case

The latest example is the betting around Handball Cesson Sévigné - Montpellier match of May 12, 2012. In this case, the MAHB players were suspected of having bet or bet by their entourage on the defeat of their team and thus steer the outcome of the match.
Finally, on the facts of the case, the Montpellier Criminal Court sentenced players and their entourage to fines and jail for fraud. As the prosecutor pointed out in his indictment, all MAHB players are not involved in this case. Only some of them have been sentenced. Among them: Mladen Bojinovic, sentenced to six months suspended sentence and 60,000 euros, Luka Karabatic, Dragan Gajic, Issam Tej, and Samuel Honrubia, all sentenced to three months suspended sentence and 20,000 euros. Finally, the star of International Handball, one of the best player in the world and representative of French handball, Nicolas Karabatic, was sentenced to three months in prison suspended and 30,000 euros fine.
"What touched me the most is that you could think that I rigged a match, it is inadmissible. Everyone who knows me knows that I do not want to lose, it's in my nature and contrary to my values "(Nicolas Nikola Karabatic)
This case then led the Lexisport team to question all the monitoring systems put in place by international and French institutions to control sports betting.

[1] http://www.arjel.fr/

Terminology

Sports betting refers to all gambling games offering the prospect of a win whose achievement depends on the accuracy of the forecast on the outcome of a sporting event. Through this definition, the uncertain nature surrounding these bets is clearly detectable, leading some individuals to manipulate sports competitions by influencing their outcome.
In other words, they will act irregularly on the course or outcome of a specific sporting event or event in order to gain a benefit for oneself or for others. By this behavior, the manipulators remove all or part of the uncertainty normally surrounding the results of a competition and de facto undermine the fundamental values of sport and its integrity.

Manipulation cases

The classic case of manipulation consists in corrupting players such as athletes, referees but also the organizers of these events who may have at their disposal information likely to increase the odds of success of bettors.
In addition to these "classic" cases of manipulation, the authorities are faced with another difficulty that existed only a very short time ago fifteen years ago. Since the rise of the NICT, or of the dematerialisation of the means to bet, the fight against the illegal bets took a real turn: it is now possible to bet on all the competitions (professional or amateur), of all the sports (media or not) and taking place anywhere in the world.
However, the international sports authorities betting operators have mobilized to create alert systems to monitor bets and international odds and detect possible anomalies around certain sports events.

Pierre Marcadier

Sports Betting Schedule (article) - Faked matches: the uncertainty of the sports results questioned (Part 2)

The Lawsp July 12, 2015 0 Cases, Ethics, FIFA / UEFA, Football, match fixing

Surveillance systems

The main European online betting operators founded the European Association for Safety and Integrity in Sport (ESSA) in 2005 in order to detect irregular betting on sporting events in several disciplines. The effectiveness of ESSA lies in its ability to obtain "information on suspicious bets in extremely short time and to transmit them to the competent authorities and sports federations so that they can take the necessary measures".
In addition to ESSA, the European Lotteries and Totos Association (ELS) has created the ELMS monitoring system which has been replaced by Global Lottery Monitoring System (GLMS) since 1 June 2015 and whose purpose is to is to respond to the need to fight corruption in sport at the international level.
With regard to the actors of the sports movement, some of them have created their own monitoring system. In this case, FIFA collaborated in the creation of Early Warning System GmbH (EWS). This follows the betting movements for all matches of FIFA competitions, in collaboration with betting operators. In December 2008, UEFA also set up an alert system against irregular betting: BFDS. Finally, in 2009, the IOC, in collaboration with Interpol, founded the International Sports Monitoring GmbH (ISM), which monitors betting movements at the Olympic Games.

International sports federations have also been involved in the fight against bets. The majority of them have adopted internal regulations to limit access to sports betting for athletes, their entourage, coaches, sports executives and other persons active in sports competitions.
Thus, like the IOC, which prohibits "any form of participation in Olympic-related betting", the Association of Tennis Professionals (ATP) generally prohibits, in its code of conduct "Tennis Anti-Corruption Program", any participation in betting "to players but also to coaches, chaperones, agents, family members, tournament attendees as guests and other tournament participants".

The Davydenko case

An alleged match case had shaken the world of tennis and concerned Nikolay Davydenko. Indeed, in August 2008, the Russian, then 4th world, faced Argentine Arguello, then 107th player in the world. While Davydenko had won the first set, the odds on his defeat had exploded during the match and the latter eventually give up in the third set after losing the second run. Faced with suspicious behavior of the player, the ATP opened an investigation to note a possible special event.
Eventually, the court found no evidence of violation of the regulations by the Russian tennis player.
"ATP today confirms that the investigation has been completed and that no evidence of violation of the rules has been found with respect to Mr. Arguello or Mr. Davydenko, or whoever is related to the match". (ATP press release, Davydenko case)
This case clearly demonstrates how difficult it is to judge whether the influence on the course of a match is dishonest and unlawful or whether it remains within the scope of what is permitted.

A scourge in other areas

Other faked betting cases have also hit the sports world. The Italian championship experienced in the 80s a resounding scandal. Several players bet on the result of a match in which they participated. The clubs of AC Milan and Lazio of Rome have been demoted in series B as a result of this affair. This scandal was not the only one in Italy.
During the 2004-2005 season, Turin's Juventus sports director Luciano Moggi had manipulated the Italian league's outcome by "arranging" around thirty matches thanks to the complicity of referees and players. and even journalists to adapt their comments. In 2006, Luciano Moggi was sentenced by the sports court of the Italian Football Federation to a ban on any football-related profession for five years and Juventus of Turin was relegated to Serie B.
Little known in France, but a true national sport in Pakistan, cricket was also hit by betting incidents. Three stars have been sentenced, because of their link with punters, in 2010 to prison terms ranging from six months to two and a half years for missing shots in a match between the Pakistan team and the team. from England.
In France, ARJEL is responsible for ensuring the security and sincerity of online gaming operations. Through its action, the authority allows to preserve the fundamental values of the sport and to challenge the suspicious bettors.
With all these forces, it only remains to hope that only the odds of the bettors will allow them to earn money. .

Pierre Marcadier

Annexe (jurisprudence) : rejet du pourvoi du parieur desabuse par le hors jeu d'un joueur/buteur de lille

Vendredi, 15 Juin 2018 11:10 |  **|**  **|** 

Appendix (case-law): dismissal of the appeal of the punter desabuse by the offside of a player / scorer of Lille

Friday, 15 June 2018 11:10 | | |

On 18 September 2010, a player of the "lotto football" bet on the results of fourteen football matches.
Only the result of the meeting between the club Losc Lille Métropole company to another team has not been predicted by him successfully.
Having bet on a draw while the score, confirmed by the sporting bodies, had been a goal to zero in favor of the club Lille, the person perceived a gain for thirteen accurate predictions.
Believing that the result of this match had been distorted by taking into account the goal scored in an offside position at the end of the match by a Losc player. the bettor has sued the player and his club for damages due to the missed win under fourteen good prognoses.
Disbarred in appeal (see HERE), the bettor wanted to go to the end of his fight by filing an appeal in cassation.
His appeal is dismissed by judgment of 14 June 2018:
"Whereas, contrary to the contention of the first part of the plea, only a fact intended to knowingly undermine the hazard inherent in the sports bet is such as to engage the responsibility of a player and, where appropriate of his club, in respect of a bettor;
That having exactly retained that, even supposing that MY .. was in position of off-side when it registered the aim litigious, this transgression of the sporting rule did not constitute a fact of nature to engage his responsibility, or that of his club, towards a punter, the court of appeal has, for these reasons alone, legally justified its decision "

Judgment No. 834 of 14 June 2018 (17-20.046) - Court of Cassation - Second Civil Chamber

sport bets

SPORTS HEALTH AND FIGHT AGAINST DOPING

The sports minister is responsible for protecting the health of athletes and organizing the fight against doping in sport.

To do this, the Minister has the power to initiate and coordinate prevention, medical surveillance, research and education activities that he implements with the assistance of sports federations.

CHAPTER I: MEDICAL MONITORING OF SPORTS

Section 1: The medical certificate and the issuance of the sports license
Section 2: The role of federations
A - The general role
B - The role in doping
C - The role in disciplinary matters

SECTION 1: The medical certificate and the issuance of the sports license

The license is an authorization given by a sports federation to an interested party to participate in the competitions it organizes.

The obtaining or the renewal of a license is subordinated to the presentation of a medical certificate.

The decree of 24 August 2016 relating to the medical certificate attesting the absence of contraindications to the practice of sport modifies the provisions of the Sport Code on the medical certificate.

From now on, the presentation of a medical certificate is required when applying for a license and when renewing a license only every 3 years.

For certain disciplines that pose a particular risk to health, the certificate remains annual.
Example: mountaineering, speleology, rugby, ...

The practice in competition of a sports discipline is subordinated to the presentation:

- Either a medical certificate;

- Either a license attesting the issue of this certificate.

Each sports federation has a doctor responsible for coordinating the examinations required as part of the special medical surveillance of athletes. In view of the results of this medical surveillance, the doctor can establish a certificate of contraindication for participation in sports competitions which he then transmits to the president of the federation. This certificate suspends the participation of the person concerned in sports competitions organized or authorized by the said federation until the contraindication is lifted by the doctor.

SECTION 2: The role of the federations

A - The general role

The sports federations take care of the health of their licensees and take the necessary

measures to this end, particularly with regard to the training programs and the calendar of competitions and sports events.

The delegated sports federations ensure the organization of the special medical surveillance to which their license holders registered on the list of top athletes as well as licensees enrolled in high-level sports access programs are subject.

B - The role in doping

The federations develop with the licensees information of prevention against the use of the doping substances and products with the support of the medical antennas of doping prevention.

Decrees Nos. 2016-83 and 2016-84 of 29 January 2016 on disciplinary sanctions in the fight against doping modify the standard disciplinary regulation that the approved sports federations must apply as well as the disciplinary procedure concerning doping.

These two decrees were taken to ensure compliance with the principles of the World Anti-Doping Code and came into force on February 1, 2016.

Decree no. 2016-84 set up a new specific anti-doping rule for approved sports federations.

In order to ensure a more effective fight against doping and more in line with the principles of the World Anti-Doping Code, a new model regulation has been created specifically.

In the framework of the whole of the federal disciplinary procedure relating to doping, it will replace the previous model regulation which dated from 2011.

Each accredited sports federation has a period of 6 months from the publication of this decree (ie from 31 January 2016) to adopt this regulation in the same way, under pain, in particular, that the Minister responsible for sports proceeds by order to withdraw the approval of the federation.

C - The role in disciplinary matters

The decree of August 1st, 2016 modifies the standard disciplinary regulation of the approved sports federations.

The sports federations have until 1 July 2017 to adopt a disciplinary regulation in accordance with the provisions of the decree. The new provisions of this decree are as follows:

Article 1: Sports agents are explicitly excluded from the scope of this regulation.

Article 2: The Trial and Appeal Committees are now competent to:

- Associations affiliated to the federation
- Licensees of the federation
- Holders of titles allowing participation in sports activities of the federation
- For-profit organizations whose purpose is the practice of one or more disciplines of the

federation and which authorizes to issue licenses

 Organizations that, without the purpose of practicing one or more disciplines of the federation, contribute to the development of one or more of them

 Sports companies

 Any member, servant, employee or volunteer of these associations and sports companies acting in the capacity of leader or de facto licensee

Points three and seven are new: commissions will now consist of at least 3 members (against 5 previously).

Article 4: Reminder of the independence of the members of the commission and the obligation of confidentiality.

Article 8: Possibility of using the audio-visual conference for disciplinary hearings.

Article 9: The communication of documents and procedural documents must be made by registered mail or by hand delivered against discharge or by mail.

Article 12: Where the circumstances so justify, in particular in view of the seriousness of the facts, the competent bodies may order against the person prosecuted, at any time during the disciplinary proceedings of the first instance and by reasoned decision, a precautionary measure pending the notification of the decision of the disciplinary body.

Article 13: The accused person and, where applicable, his legal representative shall be summoned before the disciplinary body by sending a document setting out the complaints against him at least 7 days before the date of the meeting (15 days before). The accused person and, where applicable, his legal representative, counsel or lawyer may consult, before the meeting, the report and the entirety of the file. They may request the hearing of persons of their choice, whose names they communicate at least 48 hours before the meeting of the disciplinary body (8 days before).

To take account of the geographical distance or professional or medical constraints of the persons whose hearing is requested, this can be done by telephone conference subject to the agreement of the president of the disciplinary body and the person prosecuted . The president of the disciplinary body may refuse, by reasoned decision, the requests for hearing that are manifestly unfair. During the session, the accused person may be accompanied by his legal representative, his counsel or his lawyer and present his written or oral observations (previously, only by a lawyer). If she does not speak or understands the French language sufficiently, she may ask to be assisted by an interpreter of her choice at her own expense or by an interpreter chosen by the federation at the latter's expense. The seven-day period referred to in the first paragraph may be reduced in cases of urgency, circumstances relating to the smooth running of sports competitions or exceptional circumstances by decision of the chairman of the disciplinary body, at his own initiative or at the request of the person responsible for the investigation or the person prosecuted. In this case, the ability to request the hearing of persons is exercised without delay.

Article 14: The refusal to postpone a hearing must now be expressly motivated.

Article 16: Formalization of the cases not requiring the convocation before the disciplinary

organ "because of the nature or the circumstances of the case".

Each federation must specify in which cases there is no place to convene the person being prosecuted.

The parties may then make written submissions or ask to be heard.

Article 17: The sports association or the sports society on which the person pursued depends on the decision.

Article 18: The committees of first instance must decide within a period of 10 weeks (3 months before). An increase of the period of one month is possible in exceptional circumstances motivated.

Article 19: The call is now possible within 7 days (previously, each federation fixed its time of appeal).

The appeal is not suspensive unless a reasoned decision of the disciplinary body of first instance taken at the same time as it is decided on the merits (previously, the appeal was suspensive and the disciplinary body had to justify the reasons justifying the decision is finally enforceable).

Article 21: The appeal board must rule within 4 months from the initial engagement of the prosecution (previously 6 months).

Article 22: New scale of sanctions. There is :
a warning / a reprimand / a fine: when this fine is imposed on a natural person, it can not exceed an amount of 45 000 € / a loss of one or more sports meetings / a penalty in time or in points / a downgrading / a non-homologation of a sporting result / a suspension of ground or room / a total or partial lock-up for one or more sports meetings / a temporary or definitive ban on participating in sports events organized or authorized by a federation / ban temporary or permanent participation directly or indirectly in the organization and conduct of competitions and sports events authorized by a delegated federation or organized by an approved federation / a ban on the exercise of function / a provisional withdrawal of the license during the duration of prohibition / prohibition for a fixed period of time be dismissed from the federation or to join unions / radiation / ineligibility for a fixed period to the governing bodies / the cancellation or the prohibition of belonging to a specific time to disciplinary proceedings.

New sanctions applicable to clubs appear as downgrading, in camera, suspension of land.
It is also introduced the prohibition to take a license during a given period.
The decree authorizes the cumulation of sanctions and validates "automatic" sanctions.

It is possible to replace the sanctions by activities of general interest (previously, it was possible only in case of first sanction).

Article 24: The publication of sanctions anonymously on the site of the federation is no longer automatic. The text provides: "The publication of decisions is made anonymously, unless the disciplinary body, by reasoned decision, decides to order the publication by name or if the person who was the subject of a decision of relaxe asks that it be nominative. "

Article 25: There is a possibility of reprieve for each sanction (previously, this was only

possible for the first sanction). Finally, the period beyond which the suspension disappears is left to the discretion of the federations (previously, it was a period of 3 years).

ESSENTIAL

The license is an authorization given by a sports federation to an interested party to participate in the competitions it organizes. The obtaining or the renewal of a license is subordinated to the presentation of a medical certificate.

The decree of 24 August 2016 creates the article D.231-1-3 which states that "the presentation of a medical certificate of absence of contraindication is required every 3 years".

The sports federations take care of the health of their license holders and take the necessary measures to this end.

CHAPTER II: THE FIGHT AGAINST DOPING

The fight against doping has been in an international context since the creation of the World Anti-Doping Agency (WADA) in 1999. An independent international organization composed and funded equally by the Sports Movement and state governments, WADA coordinates and oversees the development and implementation of the World Anti-Doping Code (WAD). This code harmonises doping-related rules in all sports and all countries.

In order for WADA's recommendations to be binding on States, the United Nations Educational, Scientific and Cultural Organization (UNESCO) developed in 2005 the International Convention against Doping in Sport. This convention helps to ensure the effectiveness of the World Anti-Doping Code and to formalize global anti-doping rules, policies and guidelines aimed at providing all athletes with an honest and fair playing environment. The first law against doping adopted in France is the law of 28 June 1989 on the prevention and repression of the use of doping products during competitions and sports events. This law was repealed in April 2006 following the adoption of the law of 5 April 2006 on the fight against doping and the protection of the health of athletes, establishing the current anti-doping device and creating the French Agency Anti-Doping Strategy (AFLD). The Agency's mission includes the development and implementation of an anti-doping control strategy, the detection of doping products by its WADA-accredited laboratory and the awarding of TUEs.

SECTION 1: The French Anti-Doping Agency (AFLD)

French Anti-Doping Agency (AFLD) is an independent public authority with legal personality. It succeeds the Council for Preventing and Combating Doping (CPLD) and is codified in Articles L232-5 to L 232-8 of the Sports Code.

Created in 2006, the French Anti-Doping Agency (AFLD) is the French public authority responsible for combating doping. With its laboratory, located in Châtenay-Malabry, and its scientific orientation committee, the AFLD ensures very broad missions (advice, control, regulation ...).

AFLD has financial autonomy and can recruit public law contract agents and private law employees. For the fulfillment of its missions, the agency may call upon experts or qualified persons

It defines and implements anti-doping actions and cooperates to this end with the World Anti-Doping Agency (WADA), and with international sports federations.

A - The composition of the AFLD

The college of the AFLD comprises 9 members appointed by decree. The mandate of the members of the College of the Agency is 6 years. Among the nine members, there are:
 3 members of the administrative and judicial courts: 1 State Councilor who holds the presidency of the Agency, 1 Counselor at the Court of Cassation and a General Counsel at the Court of Cassation.
 3 personalities with expertise in the fields of pharmacology, toxicology and sports medicine.
 3 persons qualified in the field of sport: a person registered or having been entered on the list of high level athletes, 1 member of the CNOSF board of directors and 1 person designated by the president of the national advisory committee of ethics for life sciences and health.

The President of the College, who also chairs the Agency, is appointed for 6 years.

B - The missions and competences of the AFLD

The French Anti-Doping Agency is an independent public authority with legal personality. It succeeds the Council for Prevention and Anti-Doping (CPLD) and is codified in Articles L.232-5 to L.232-8 of the Sports Code. AFLD has financial autonomy and can recruit public law contract agents and private law employees. For the accomplishment of its missions, the agency can call upon experts or qualified persons. It defines and implements anti-doping actions and cooperates to this end with the World Anti-Doping Agency and with international sports federations.

AFLD is organized in such a way as to guarantee its impartiality. Thus, control missions, analysis and disciplinary skills can not be exercised by the same people.

Its main missions are:
 Define the annual control program
 Diligent controls: During national sports events / During international sporting events with the approval of the relevant international body or, failing that, the World Anti-Doping Agency / During training periods preparing for sporting events
 Diligent controls for athletes designated as members of a target group

The AFLD may also carry out or have the analysis of the samples taken during checks carried out and, where appropriate, exercise its disciplinary power.

The AFLD is competent to designate, for a period of 1 year, a target group of athletes who will be required to provide accurate and up-to-date information on their whereabouts and allowing the performance of controls.

In particular, may be part of a target group:
 Athletes registered on the list of top athletes or on the list of athletes Hope
 Athletes who have been registered on one of these lists at least 1 year in the last 3 years
 Professional or professional sportsmen at least one year in the last 3 years

Failure to comply with this whereabouts obligation or refusal to submit to a check is punishable.

The decrees of 29 January 2016 provided for dematerialization of the means of communication with the AFLD.

It will now be possible to use dematerialized means of communication before the AFLD for documents and procedural documents relating to:

 Athlete designation for target group formation
 Provisional suspension of an athlete
 The biological profile of the athlete
 Applications for authorization or recognition of a therapeutic use authorization
 The disciplinary procedure.

The decree specifies however that this transmission will be able to operate only by means of a dedicated computer application.

C - The control procedure

AFLD acts mainly through a control procedure.

The persons authorized to carry out the controls decided by the AFLD are:

 Officers and judicial police officers acting under the provisions of the Code of Criminal Procedure
 Agents reporting to the Minister of Sports
 Persons approved by the Agency and sworn in

These agents and persons are bound by professional secrecy.

Controls may take the form of clinical medical examinations and biological specimens to demonstrate the use of prohibited procedures or to detect the presence of prohibited substances in the body. They give rise to the drawing up of minutes which are transmitted to the Agency and the federation concerned. A duplicate is left to the interested parties.

The checks can be carried out:

 As part of the annual control program or at the request of an approved federation

 At the request of the World Anti-Doping Agency, a national anti-doping organization or an international sports organization

Checks can be made:
 In any place where a training or a sporting event takes place
 In any establishment in which sporting activities are practiced, and in its annexes
 In any place chosen with the agreement of the athlete, allowing to carry out the control, in the respect of his private life and his intimacy, including, at his request, his home
 As part of the custody of an athlete These places are only accessible between 6 am and 9 pm, or at any time if it is a place open to the public in which an event or training is in progress.

Decree No. 2016-83 clarifies the procedure for night checks.

As a reminder, the order n ° 2015-1207 of September 30, 2015 provided for the implementation of a control carried out at night (from 11 pm to 6 am) for athletes subject to the obligation to locate the AFLD, belonging to the target group of international sports federations (list of the best world sportsmen) or during their participation in an international sports event.
Decree no. 2016-83 provides details on how to implement this control.
Thus, the Athlete's consent (prerequisite to control) can only be requested and collected by the Director of the AFLD's Testing Department, by a competent international sports organization and by the organizer of an international sports event.

In addition, the request for consent must be sent to the Athlete by any means to guarantee its origin and reception. The manner in which this consent will have to be collected is also specified.

In case of abnormal or atypical test results, it is expected that the analysis department of the AFLD will communicate these results to the control authority (the AFLD, the International Federation or the National Anti-Doping Agency concerned). When these results are positive, they must also be sent to the national sports federation concerned.
Finally, the samples can now be kept 10 years after their analysis, compared to 8 years ago.

SECTION 2: Prohibitions

It is forbidden for any sportsman:

 To detain or attempt to detain, without a duly justified medical reason, one or more prohibited substances or methods on the list of prohibited substances and methods.

 To use or attempt to use a prohibited substance or method on the list of prohibited substances and methods, unless the athlete has a Therapeutic Use Permit (TUE) or a medical reason duly justified.

It is forbidden for anyone to:

 Prescribing, administering, applying, assigning or offering to athletes, without duly justified medical reason, one or more prohibited substances or methods, or facilitating their use or incitement to their use.

 Produce, manufacture, import, export, transport, hold or acquire, for use by an athlete without a duly justified medical reason, one or more prohibited substances or methods.

 Oppose by any means the control measures.

 Falsify, destroy, or degrade any control, sample, or analysis items.

Decree No. 2016-83 of 29 January 2016 organizes the prohibition to use the services of a person who has been the subject of a sanction in the fight against doping

As a reminder, the order of September 30, 2015 enacted a prohibition for any athlete to directly or indirectly resort to the services or advice of a person who has been the subject of an administrative sanction, disciplinary or criminal become final.

The contours of this prohibition were specified by Decree No. 2016-83. Thus, when an athlete falls under this prohibition, he must be notified by any means to ensure the origin and reception. He has, from this notification, a period of 15 days to make his observations.

Failure to prove that he or she no longer has any contact with the person concerned may result in disciplinary proceedings being taken against him / her.

SECTION 3: Therapeutic Use Authorization

Therapeutic Use Exemptions (TUEs) are regulated in Article L.232-2 of the Sports Code. They allow sick or injured athletes to use under certain conditions products or substances normally prohibited. In fact, an athlete who participates or prepares for a sports event and whose state of health requires the use of a prohibited substance or method may apply to the AFLD for a TUE.

The use or possession, as part of a treatment prescribed to an athlete by a health professional, of one or more substances or methods included on the list mentioned in the same article L.232-9 of the Sport Code n. entails in respect of him neither disciplinary sanction nor penal sanction if it complies:

 Either a therapeutic use authorization granted to the athlete by the Agency

 Either a Therapeutic Use Exemption granted to the Athlete by a National Anti-Doping Organization or by an International Federation and recognized by the Agency in accordance with Annex II of the International Convention referred to in Article L. 230-2 of the Sport Code.

TUEs are granted by the AFLD, following the assent of a committee of experts. This committee is made up of at least 3 doctors. The substances and methods included in the list mentioned in article L.232-9 of the Sports Code which require for their possession or use a TUE are set by order of the Minister of Sports.

These TUEs allow athletes to take a treatment using a prohibited product, once the need for this treatment is medically proven for a health reason. Thus, any athlete fired in a sports federation who is preparing to participate in a sports competition and who requires a therapeutic treatment must follow this procedure.

Decrees Nos. 2016-83 and 2016-84 of 29 January 2016 specify the conditions for granting a therapeutic use exemption for a prohibited substance or method.

TUE and TUE recognition procedures for AFLD have been clarified.

 For the authorization application made to the AFLD

The AFLD will have to respond to a TUE request for a product or prohibited method within 21 days. After this period, the silence kept by the Agency will be worth rejecting the request.

Finally, it is expected that the Agency will transmit its decision to the International Federation concerned and to the World Anti-Doping Agency within 21 days of its notification.

 For the application for recognition of a user authorization granted by another body

When it receives such a request, the AFLD has a period of 21 clear days (against 30 days before) from the receipt of the request to notify its decision to the athlete concerned. The silence kept by the AFLD beyond this period is worth rejecting the request. In addition, this request must imperatively be formulated by registered letter with acknowledgment of receipt.

An emergency procedure is also provided in the event that the urgency is motivated by the athlete's participation in a sports event.

Finally, when the Agency rejects or grants an application for recognition of authorization, it must inform the authority that issued it and the World Anti-Doping Agency.

SECTION 4: Sanctions

A - Administrative penalties

1. The competence of sports federations

Sanctions incurred by athletes, relating to the regulation on doping, are pronounced by the sports federations. For this purpose, the federations adopt in their regulations provisions defined by decree in the Council of State and relating to controls, as well as disciplinary procedures and applicable sanctions, with due regard to the rights of the defense. The regulation provides that the disciplinary body of the first instance, after the interested party has been given the opportunity to submit observations, shall take a decision within 10 weeks from the date on which the infringement was found. It also provides that, in the absence of a decision within that period, the disciplinary body of first instance is divested of the entire file and that it is then transmitted to the disciplinary body of appeal which renders, in all cases cases, its decision within a maximum period of 4 months from the same date.

Disciplinary sanctions taken by sports federations can go as far as the definitive prohibition to participate in sporting events. These sanctions do not give rise to conciliation proceedings before the CNOSF.

2. The competence of the AFLD

The French Anti-Doping Agency also has, in certain cases, a power of disciplinary sanction. The AFLD, in the exercise of its power of sanction, can pronounce, against the sportsmen, a warning, a temporary or definitive prohibition of participating in sports competitions as well

as pecuniary sanctions whose amount can not exceed 45 000 €. In addition, the federation cancels, at the request of the AFLD, the individual results of the athlete who has been sanctioned with all the resulting consequences, including the withdrawal of medals, points, prizes and winnings.

In collective sports, when, following a check of more than 2 sportsmen of a team have been the subject of an administrative sanction, the federation takes the appropriate measures against the team to which they belong.

Finally, when the circumstances justify it, the president of the AFLD may order against the athlete, as a precautionary measure and pending a final decision by the Agency, a temporary suspension of his participation in the competitions. The athlete is summoned by the president as soon as possible to make his observations on this provisional suspension. The suspension period can not exceed 2 months. It can, however, be renewed once under the same conditions. The duration of the temporary suspension is deducted from the duration of the ban subsequently pronounced.

The decrees of 29 January 2016 modified the disciplinary procedure before the AFLD.

Indeed, Decree No. 2016-84 provides details on the processing of disciplinary files by the AFLD. In particular, the cases in which the Agency may decide to classify a file "without further action", the use of audiovisual conference facilities where justified by geographical or professional constraints ...

This decree also reaffirms the rule according to which the publicity of the sanctions pronounced by the AFLD is by nominative principle, except decision specially motivated or when the athlete concerned is minor or, finally, if when the athlete is the object of a decision of relaxed.

A recent decision of the Council of State allows to take stock of the procedure to be respected by the French Agency for the Fight against Doping in the context of the sanctions it pronounces against athletes who are no longer fired from a federation.

The Council of State first recalls that a federation may impose a sanction on the grounds of facts related to doping only in the event that the athlete is still dismissed at the time of the decision of the federation. Otherwise, it is the AFLD that makes the decision, in accordance with the provisions of article L.232-22 of the Sport Code. (EC, May 11, 2015)

B - Criminal sanctions

In addition to administrative sanctions, the violation of the rules on doping exposes the offender to criminal penalties.

Thus, the fact of opposing the exercise of the duties of the agents and persons authorized to carry out checks is punishable by six months' imprisonment and a fine of € 7,500, just as the fact of not respect the prohibition decisions pronounced.

Detention, without a duly justified medical reason, of one or more prohibited substances or methods is punishable by one year's imprisonment and a fine of € 3,750.

The following additional penalties may also be imposed:

• The confiscation of substances or processes and objects or documents used to commit the offense or to facilitate the commission
• The posting or dissemination of the decision pronounced
• The closure, for a period of 1 year at most, of one, more or all of the establishments of the enterprise used to commit the offense and belonging to the convicted person
• Prohibition of the exercise of professional or social activity in the exercise or on the occasion of which the offense was committed
• Prohibition of public office

ESSENTIEL

The fight against doping is part of an international context since the creation of the World Anti-Doping Agency (WADA) in 1999.

AFLD is an independent public authority with legal personality. It defines the annual control program, diligently controls, organizes the target group.

Authorizations for Therapeutic Use (A.U.T) are regulated in Article L.232-2 of the Sports Code. They allow sick or injured athletes to use under certain conditions products or substances normally prohibited.

Sanctions incurred by athletes, relating to the regulation on doping, are pronounced by the sports federations. In addition to administrative sanctions, the violation of the rules on doping exposes the offender to criminal penalties.

Anti-doping appendix (national case law) - AFLD: AFLD college session - decision (excerpt)

Résumé de la décision de l'AFLD relative à M. Habib MOSBAH :

« M. Habib MOSBAH, titulaire d'une licence délivrée par la Fédération française d'athlétisme (FFA), a été soumis à un contrôle antidopage effectué le 4 février 2018, à Vergèze (Gard), à l'occasion des quarts de finale des championnats de France de cross.

Selon un rapport établi le 14 mars 2018, par le Département des analyses de l'Agence française de lutte contre le dopage (AFLD), les analyses effectuées ont fait ressortir la présence, dans les urines de l'intéressé, d'érythropoïétine (EPO). Cette substance, qui appartient à la classe S2 des hormones peptidiques, facteurs de croissance, substances apparentées et mimétiques, est interdite en permanence (en et hors compétition).

Par un courrier daté du 15 mars 2018, remis en main propre contre récépissé le 20 mars suivant à M. MOSBAH, ainsi que par courrier recommandé du 27 mars 2018 à M. MOSBAH, le Président de l'organe disciplinaire de première instance de lutte contre le dopage de la FFA a informé l'intéressé qu'une décision de suspension provisoire, à titre conservatoire, avait été prise à son égard.

Par une décision du 24 avril 2018, l'organe disciplinaire de première instance de lutte contre le dopage de la FFA a décidé, en premier lieu, de prononcer à l'encontre de M. MOSBAH la sanction de l'interdiction de participer pendant quatre ans aux compétitions organisées ou autorisées par cette fédération, en second lieu, d'annuler les résultats obtenus par l'intéressé le jour de l'infraction, avec toutes les conséquences en découlant, y compris le retrait des médailles, points, gains et prix, en troisième lieu, d'annuler les résultats obtenus par l'intéressé entre le jour de l'infraction et la date de notification de la sanction, avec toutes les conséquences en découlant, y compris le retrait des médailles, points, gains et prix, concernant les compétitions et manifestations relevant de la compétence de la fédération, en quatrième lieu, de demander à l'AFLD d'étendre les effets de la sanction aux activités de l'intéressé pouvant relever d'autres fédérations et, enfin, de publier la décision au bulletin officiel et sur le site internet de la FFA.

Le 24 mai 2018, l'AFLD s'est saisie de cette décision, sur le fondement des dispositions du 3° de l'article L. 232-22 du code du sport, telles qu'interprétées par le Conseil constitutionnel dans sa décision n° 2017-688 QPC.

Par une décision du 5 juillet 2018, l'AFLD a décidé, en premier lieu, de prononcer à l'encontre de M. MOSBAH l'interdiction de participer pendant quatre ans, directement ou indirectement, à l'organisation et au déroulement des manifestations sportives autorisées ou organisées par la Fédération française d'athlétisme ainsi qu'aux entrainements y préparant organisés par cette fédération ou l'un des membres de celle-ci, et en second lieu, d'étendre l'interdiction de participer pour la période restant à courir, directement ou indirectement, à l'organisation et au déroulement des manifestations sportives organisées ou autorisées par la Fédération française d'athlétisme aux manifestations sportives donnant lieu à remise de prix en argent ou en nature et aux manifestations sportives autorisées ou organisées par les autres fédérations sportives françaises agréées, ainsi qu'aux entrainements y préparant organisés par ces fédérations ou l'un des membres de celles-ci.

Par ailleurs, par application de l'article L. 232-23-2 du code du sport, il est demandé à la Fédération française d'athlétisme d'annuler les résultats individuels obtenus par M. Habib MOSBAH lors des quarts de finale des championnats de France de cross ainsi qu'entre le 4 février 2018 et le 26 avril 2018, avec toutes les conséquences en découlant, y compris le retrait de médailles, points et prix.

La décision du 24 avril 2018 de l'organe disciplinaire de première instance de lutte contre le dopage de la Fédération française d'athlétisme est en outre réformée en ce qu'elle a de contraire à la présente décision.

Enfin, il a été décidé que soit publié un résumé de cette décision.

La décision prend effet à compter de la date de sa notification à l'intéressé. »

N.B. : la décision a été adressée par lettre recommandée au sportif le 18 juillet 2018, ce dernier ayant accusé réception de ce courrier le **19 juillet 2018**. Déduction faite de la période déjà purgée par l'intéressé en application, d'une part, de la décision de suspension provisoire, à titre conservatoire, prise à son égard le 15 mars 2018 et, d'autre part, de la sanction prise à son encontre le 24 avril 2018 par l'organe disciplinaire de première instance de lutte contre le dopage de la FFA, M. MOSBAH sera suspendu jusqu'au **22 mars 2022 inclus**.

Anti-doping appendix (national jurisprudence) - The State Council confirms the one-year suspension of boxer Tony Yoka

http://thelawsp.com/wp-content/uploads/2018/08/TEST-REAL-TRUE-ONE.jpg

August 15, 2018 Doping

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The State Council confirmed on Tuesday the one-year suspension previously inflicted on Tony Yoka, Olympic super heavyweight champion, for three anti-doping rule violations.

In its ordinance, the Council of State confirmed the sanction pronounced at the end of June by the French Anti-Doping Agency (AFLD) against Tony Yoka, convicted of three "no show", in the space of one year , regarding its localization obligations for anti-doping controls.
Indeed, since April 16, 2010, date of publication of the ordinance n ° 2010-379 relating to the health of the sportsmen and the bringing into conformity of the code of the sport with the principles of the World Anti-Doping Code (CMA), the sportsmen are obliged to give "a slot of one hour per day during which they make themselves available for doping controls at the place of their choice". A procedure considered very heavy and binding for many athletes.
However, according to the judge of the supreme jurisdiction of the administrative order, the boxer "could not ignore from the first warning the consequences of his negligence":
"The lightness of the behavior of Mr. Yoka who, informed sportsman, particularly aware of the importance of doping control, could not ignore the first warning of the consequences of his carelessness, does not allow to look seriously the way from what the sanction of suspension of one year would be disproportionate "(Ordinance of the judge of the Council of State)
The defense of the boxer's lawyers, who pleaded in particular "administrative negligence" and "giddiness", was therefore not heard.

Anti-Doping Annex (European case law) - ECHR: the location system for athletes does not violate Article 8 of the ECHR

http://thelawsp.com/cedh-systeme-de-localisation-sportifs-ne-viole-larticle-8-de-cesdh/

January 18, 2018 Articles, Doping

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

AFFAIRE FÉDÉRATION NATIONALE DES ASSOCIATIONS ET DES SYNDICATS SPORTIFS (FNASS) ET AUTRES c. FRANCE

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In a judgment n ° 48151/11, dated January 18, 2018, the European Court of Human Rights considers that the French State does not violate article 8 of the CESDH by imposing a tracking system for athletes in anti-doping controls.
On April 14, 2010, the Government issued an ordinance n ° 2010-379 relating to the health of athletes and the compliance of the sport code with the principles of the World Anti-Doping Code (CMA). This government measure includes the obligation for athletes to give "a slot of one hour per day during which they make themselves available for doping controls, at the place of their choice". A procedure considered very heavy and binding for many athletes.
Several French sports unions and nearly a hundred athletes considered that this order was contrary to Article 8 "Right to respect for private and family life" of the ECHR, which proclaims the right of everyone to respect his or her rights. private and family life, his home and his correspondence.
"Everyone has the right to respect for his private and family life, his home and his correspondence. There can be interference by a public authority in the exercise of this right only insofar as such interference is provided for by law and constitutes a measure which, in a democratic society, is necessary for national security, to public safety, the economic well-being of the country, the defense of order and the prevention of criminal offenses, the protection of health or morality, or the protection of the rights and freedoms of others . "(Article 8 of the ECHR).
The applicants considered that this localization obligation infringed the right to respect for private and family life, as well as the right to freedom of movement, thus protected by the ECHR.
Sufferances necessary and proportionate to the objectives of general interest

Through its judgment delivered respectively seven and four years after the filing of the two applications, the Court recognizes the impact of such a control on the private life of athletes but considers "that the reasons of general interest that make them necessary are of particular importance and justify the restrictions on the rights granted by Article 8 of the Convention ". European judges believe that "the reduction or elimination of these obligations would increase the dangers of doping for the health of athletes and that of the entire sports community."
"(...) Thus, Articles 3 and 7 of the order contested, which do not impede the freedom of the athletes to come and go, do not give the right to respect for the private and family life of these guaranteed by Article 8, and to individual liberty that the necessary and proportionate infringements of the objectives of general interest pursued by the fight against doping, in particular the protection of the health of athletes and the guarantee of fairness and the ethics of sports competitions; that the order under appeal also does not disregard, in any event, the provisions of the International Convention against Doping in Sport which are not of direct effect "(Extract from the judgment delivered to date by the ECHR)
The judges highlight two essential roles in the fight against doping: the protection of health, especially young amateur athletes, and the "protection of the rights and freedoms of others", believing that the fight against doping favors fairer competition.
This judgment is not final, however. Pursuant to the provisions of Articles 43 and 44 of the Convention, the parties have three months from the date of its decision to decide whether they request the case to be referred to the Grand Chamber of the Court.

Anti-doping appendix (national case-law) - EC Judge of interim measures, 12 February 2016: the sanction pronounced by the AFLD deemed disproportionate

http://thelawsp.com/ce-juge-des-referes-12-fevrier-2016-la-sanction-prononcee-par-lafld-jugee-disproportionnee/

Considering the following procedure:

By an application and a complementary memorial, registered on January 19th and February 8th, 2016 at the litigation secretariat of the Conseil d'Etat, Mr A ... C ... asks the judge of the State Council for interim relief, ruling on the basis of the Article L. 521-1 of the Administrative Justice Code:

1 °) to order the suspension of the execution of the decision of October 22, 2015 by which the French Agency for the fight against doping pronounced against it the sanction of prohibition to participate for one year in authorized sports events or organized by the French Cycling Federation, the French Cycling Federation, the French Triathlon Federation, the French Federation of Corporate Sports, the French Sports and Cultural Federation, the Sports and Gymnastics Federation and the French Union of Sports secular works of physical education, after deduction of the period of prohibition already served pursuant to the sanction taken against him on 10 June 2015 by the National Disciplinary Commission of the French Cycling Federation;
2 °) to charge the French Agency for the fight against doping the sum of 4 000 euros under Article L. 761-1 code administrative justice.

He argues that:
- the condition of urgency is fulfilled where the contested decision is seriously and immediately prejudicial to his professional and economic situation, on the one hand, in that it prevents him from participating for one year in the competitions and events organized or authorized by seven sports federations, suspension whose effects are likely to be extended by two years in application of the rules of the association "Movement for a credible cycling", which will result in the premature end of his professional career, and, secondly, that the denunciation by the cycling team of the army of his contract of engagement will deprive him of any source of income;
- there is serious doubt as to the legality of the contested decision, given that the procedures for the notification of anti-doping controls specific to cycling competitions provided for in the Decision No 296 adopted on 12 September 2013 by the College of the French Anti-Doping Agency doping disregard the provisions of Article D. 232-47 of the Sports Code;
- he has not been regularly informed of the existence of the control he should be subject to;
- the contested sanction is disproportionate in the absence of an intention on its part to avoid control;
- the French Agency for the Fight against Doping gave insufficient reasons for its decision by not specifying the reasons which led it to confirm the cancellation of the results obtained since 11 April 2015 and to extend to the events and competitions organized by other federations than the French cycling federation the disputed prohibition.

By a defense, registered on February 4, 2016, the French Agency for the Fight Against Doping concludes that the motion should be dismissed and that Mr. C ... be charged the sum of 3,000 euros for Article L. 761-1 of the Code of Administrative Justice. It submits that the condition of urgency is not satisfied and that none of the pleas put forward by the applicant is such as to give rise to serious doubt as to the lawfulness of the contested decision.

Considering the other parts of the file;

Viewed:
- the sport code;
- the code of administrative justice;

After convening for a public hearing, on the one hand, M.C ..., on the other hand, the French Agency for fight against doping;

Having regard to the minutes of the public hearing of 9 February 2016 at 10 am, during which the following were heard:

- Me Molinié, lawyer at the Council of State and the Court of Cassation, lawyer Mr. C ...;

- M.C ...;

- the representatives of M.C ...;

- Me Poupot, lawyer at the Council of State and the Court of Cassation, lawyer of the French Agency for fight against doping;

- the representative of the French Anti-Doping Agency;

and at the end of which the judge hearing the application for interim measures closed the investigation;

1. Considering that under the first paragraph of Article L. 521-1 code administrative justice: "When an administrative decision, even rejection, is the subject of a motion for annulment or reformation, the application for interim measures, the Court may order the suspension of the execution of that decision, or of certain of its effects, where the urgency justifies it and there is evidence of its own to create, in the state of the investigation, a serious doubt as to the legality of the decision ";

2. Considering that it follows from the investigation that MC ..., professional rider under contract of engagement within the army cycling team and licensed to the French Cycling Federation, won the event road bike called "La Gainsbarre", held on April 11, 2015 in Port-Bail (Manche); that at the initiative of the French Anti-Doping Agency, it was proceeded at the end of this race to a doping control for which twelve participants, including Mr. C ..., were summoned by way of display; that Mr. C ... did not show up for this control; that for this reason, he was the subject of a disciplinary sanction pronounced on June 10, 2015 by the national commission of discipline of the French Federation of cycling, prohibiting him, for a duration of four months, to take part in the competitions and sports events authorized or organized by the French Cycling Federation and canceling all its results obtained since April 11, 2015; that, on July 2, 2015, the college of the French Agency of fight against the doping decided to seize again the file, on the base of the power of reformation conferred by the provisions of the 3 ° of the article L. 232-22 of the Sport Code; that, by a decision of October 22 following, the Agency pronounced against Mr. C ... a sanction of prohibition to participate for a duration of one year to the sporting events authorized or organized by the French Federation of cycling , the French Cyclotourism Federation, the French Triathlon Federation, the French Federation of Corporate Sports, the French Sports and Cultural Federation, the Sports and Gymnastics Federation and the French Union of Secular Physical Education, after deduction of the prohibition period already served under the sanction of the Disciplinary Body of First Instance of the French Cycling Federation, and reformed the decision of first instance in that it was contrary to its decision; that Mr C ... asks the judge of the State Council for interim measures to order, on the basis of Article L. 521-1 code administrative justice, the suspension of the execution of this decision;

On the emergency condition:

3. Considering that urgency warrants the suspension of an administrative act where the execution of that act undermines, in a sufficiently serious and immediate manner, a public interest, the situation of the applicant or the interests which he intends to defend; whereas it is

for the President of the Court to assess concretely, in view of the reasons given by the applicant, whether the effects of the contested act are such as to characterize an urgency justifying that, without awaiting the judgment of the application on the merits, the execution of the decision is suspended; whereas the urgency must be assessed objectively and taking into account all the circumstances of the case, on the date on which the judge hearing the application for interim measures is taken;

4. Considering that in order to justify the urgency which would attach to the suspension of the execution of the contested decision, Mr C ... argues in particular that this sanction prevents him from participating until 31 August 2016 in all competitions organized by seven sports federations, in particular seven races organized in February and March 2016; that, since the contested sanction is an obstacle, in practice, to the participation of this professional cyclist in almost all the competitions organized in France, and that, moreover, it is not seriously disputed that the progression of M. C ..., who is at the beginning of his career, would be seriously and immediately affected by the one-year suspension imposed on him, the condition of urgency must be regarded as fulfilled;

On the condition relating to the existence of a serious doubt as to the lawfulness of the contested decision:

5. Considering that under the terms of article D. 232-47 of the sport code: "A notification of the control is given to the athlete designated to be controlled by the person in charge of the control or by a person designated by him, the latter to be: / - a federal delegate, or a person designated by the federation responsible for assisting him / her in case of absence of designation of a federal delegate or of non-performance by the federal delegate of his / her obligation mentioned in article R. 232-60; / - the organizer of the competition or event; / - the escort provided for in article R. 232-55. The notification specifies the date, time, place and nature of the check. It must be signed by the athlete and delivered or transmitted without delay to the person in charge of the inspection or to the person designated by him. / For athletes designated to be tested who do not train in a fixed location, or in the event of special circumstances that do not allow the written notification of the control, the agency shall determine the conditions for guaranteeing the origin and reception this notification. The approved sports federations distribute them to interested parties. / Refusal to acknowledge, sign or return the notification constitutes a refusal to submit to the control measures "; that according to the deliberation n ° 296 taken on September 12, 2013 by the college of the French Agency for the fight against doping for the application of these provisions: »For cycling competitions of whatever nature they are, the the person responsible for the control shall inform the organizer, by any means, of the riders designated for the control at the latest before the arrival of the winner of the event. / The list of riders who are required to present themselves for the taking of samples must be posted, at the initiative of the organizer, both in the immediate vicinity of the finish line and at the entrance of the doping control. / The interested parties are identified by their name or by their bib number or, if applicable, by their place in the classification. / Any rider, even in the absence of written notification of the control, must, within ten minutes of crossing the finish line, proceed to the location where the list of persons subject to the check has been posted and, if applicable, immediately rejoin the Doping Control Station. (...) ";

6. Considering that it follows from the instruction and additional explanations provided at the hearing that the holding of an anti-doping test at the end of the road cycling race of April 11, 2015, known as "La Gainsbarre", before to be operated by the two samplers approved and sworn by the French Anti-Doping Agency has been the subject of information by posting near the finish line; that this display was made using a pre-printed document headed by the

Fédération Française de Cyclisme and the Union Cycliste Internationale, entitled "Table of riders to be tested", providing for the mention on dotted lines the nature and date of the event, the place of inspection and the list of riders concerned; that in view of the last two of the ten lines of this document to show the names of the riders is indicated the indication "Reserve"; that the names and bib numbers of twelve riders, and not only ten, were in this case hand-drawn on this single table, in two columns creating confusion on the identity of the riders to stand for scrutiny respectively or appear on the reserve list, as well as on the very existence of a reserve list, though prohibited in principle; that the name of Mr. C ... being the last mentioned on this table, his sports coach deduced that he was not concerned by the control, unlike his teammate, Mr. B ...; that the confusion surrounding the identity of the riders to be checked was not removed by the fact that an escort appeared in front of the bus of the team of these two cyclists to accompany exclusively M B ... at the check, nor by the confirmation twice given to the management by the race commissioners, that Mr C ... was not concerned by the check; that the coaching staff has been guilty of negligent negligence by not going to raise with the samplers the uncertainty surrounding the identity of the riders to be tested; that Mr. C ... can not hide behind this lack of his supervision to exonerate himself of his own responsibility, since the aforementioned provisions of the deliberation n ° 296 of September 12, 2013 require the riders to go personally check s' they are subject to control;

7. Whereas, however, by its decision of 10 June 2015, the National Disciplinary Commission of the French Cycling Federation, in determining the quantum of the penalty imposed on MC ..., took into account the shortcomings of the organization of the control anti-doping carried out on 11 April 2015 and considered that the doubt which they engendered could, without excusing it, partially explain the absence of the applicant to the control; that it relied on these elements, as well as on the apparent good faith of M.C ..., to give to benefit of mitigating circumstances the latter, which did not appeal this sanction; that in the state of the investigation, the plea drawn by the applicant that the French Agency for the fight against doping, refusing to retain these mitigating circumstances, has taken against him a disproportionate penalty by carrying four month to one year the duration of the suspension measure and extending it to events and competitions organized or authorized by six other federations that the French Cycling Federation is likely to give rise to a serious doubt as to the legality of this sanction;

8. Considering that it follows from the foregoing that Mr C ... is justified in requesting the suspension of the execution of the decision of 22 October 2015 of the French Agency for the fight against doping;

The conclusions submitted under Article L 761-1 of the Administrative Justice Code:

9. Considering that these provisions preclude the charging to MC ..., which is not, in the present case, the losing party, the amount requested by the French Agency for Combating doping; whereas, on the other hand, the sum of 3 000 euros to be paid to Mr C ... should be charged to the French Anti-Doping Agency;

O R D O N N E:

Article 1: The execution of the decision of October 22, 2015 of the French Agency for fight against doping is suspended.
Article 2: The French Agency for the fight against doping will pay Mr. C ... the sum of 3,000 euros under Article L. 761-1 code administrative justice.

Article 3: The conclusions presented by the French Anti-Doping Agency under Article L. 761-1 of the Administrative Justice Code are rejected.
Article 4: The present order will be notified to Mr A ... C ... and to the French Anti-Doping Agency.

Source: Legifrance

Appendix Anti-doping (jurisprudence) - Council of State, July 26, 2018, separation of the functions of the French Agency of Fight against the Doping (AFLD)

JURISPRUDENCE
AJOUTÉ LE,MARDI, 14 AOÛT 2018 18:34

By a judgment of July 26, 2018 (attachment), the Council of State again cancels a decision of the French Agency for the Fight against Doping (AFLD), which had seized automatically and suspended a player of rugby.
The High Authority decided on the approval of the decision n ° 2017-688 QPC of 2 February 2018 of the Constitutional Council, which declared the unconstitutionality of article 232-22 of the Sport Code which authorized the AFLD to self-seize to reform a decision taken by a national sports federation, considering in particular that the absence of separation, within the AFLD, the functions of prosecution and judgments disregarded the principle of impartiality, guaranteed by the Constitution.

On the facts and the procedure

A rugby player was suspended for two years by the French Rugby League Federation. The Disciplinary Commission of Appeal of the Federation had then attached this sanction of a reprieve of 21 months.
Then, on the basis of 3 ° of article L 232-22 of the Sport Code which states that "it (the AFLD) can reform the decisions taken pursuant to article L. 232-21. , the agency seizes, within a period of two months from the reception of the complete file, the decisions taken by the approved federations ", the AFLD had auto-seized itself and had pronounced the suspension of the sportsman for two years by decision of 6 July 2017.
It is for this reason that the player turned to the Council of State for the cancellation of the decision taken by the AFLD because of its unconstitutionality. For its part, the World Anti-Doping Agency (WADA), which was formed in the framework of the procedure before the Council of State, had asked the latter to be pronounced against the athlete a suspension (more severe) of four years.
By judgment of July 26, 2018, the Council of State canceled the sanction pronounced on July 6, 2017 by the AFLD taking into account in particular the fact that the unconstitutionality of the article L 232-22 of the Sport Code can be invoked "in all proceedings relating to a decision rendered on these grounds (Article L 232-22 of the Sport Code), pursuant to the

provisions challenged and not finally decided on the date of this decision (decision of 2 February 2018 QPC above) ".

In addition, the Council of State adds that it does not belong to him:

"in the circumstances of this case, after having annulled for irregularity the sanction decision taken by the French Anti-Doping Agency, to take the place of this Agency in order to assess whether it is appropriate to impose on the interested in a sanction for the facts alleged against him. "

Also, the Council of State specifies:

"that the cancellation by this decision of the sanction of July 6, 2017 of the French Agency for the fight against doping revives the decision of the disciplinary commission call anti-doping of the French Rugby Union to XIII of April 4, 2017 which pronounced against Mr. B the sanction of the prohibition to participate for two years, including 21 months suspended, to the sporting events organized or authorized by this federation. "

As for the demands of the World Anti-Doping Agency, the Council of State decides:

"on the date on which the French Anti-Doping Agency had seized the disciplinary procedure against MB, the time limit for the World Anti-Doping Agency to challenge the sanction pronounced by the Disciplinary Commission. appeal of the federation had not expired and, as a result, the time limit for appealing against the sanction decision taken by the Disciplinary Appeals Board of the Federation again runs against the World Anti-Doping Agency. as from the notification of this decision, that it is appropriate for the World Anti-Doping Agency, if it believes it to be justified, to lodge an appeal against this decision. "

Reminder of the context surrounding the decision of 2 February 2018 of the Constitutional Council

A rider is suspended for doping for a period of three months suspended by his Federation, with cancellation of the results obtained.

The AFLD, after having taken action automatically on the visa of article L 232-22 of the Sport Code, pronounced a sanction of two years of prohibition, widened to other sports organizations.

As such, the rider challenged this decision before the Council of State and raised a Priority Issue of Constitutionality (QPC) on precisely the 3 ° of Article L 232-22 of the Sports Code. The Council of State referred this question to the Constitutional Council.

The applicant's central argument rested on the ignorance of the principles of independence and impartiality deriving from Article 16 of the Declaration of the Rights of Man and of the Citizen of 1789, through the power of automatic review exercised. by the AFLD.

The Constitutional Council then considered that:

"The disputed provisions therefore did not establish the legal guarantees ensuring the absence of confusion between the authority of referral and that of judgment within the AFLD in case of automatic seizin."

And more precisely that:

"The contested provisions do not operate any separation within the French anti-doping agency between, on the one hand, the pursuit functions of any failures which have been the subject of a decision by a sports federation in application of Article L. 232-21 and, secondly, the judgment functions of these same breaches. "

As such, the Constitutional Council concluded that Article L 232-22 of the Sports Code is unconstitutional in its wording resulting from Order No. 2015-1207 of 30 September 2015.

On the same subject, see our articles on the decision of the Constitutional Council of February 2, 2018 and on the decision of the Council of State of April 11, 2018

To go further, see Ordinance No. 2018-603 of 11 July 2018 2018-603 of 11 July 2018 on disciplinary proceedings before the French Anti-Doping Agency, which replaced certain provisions of Article L 232 -22 of the Sport Code and the article to come on our website.

Tags:

- Législation Tous sports Dopage Droit Administratif QPC

Anti-Doping Annex (article) - night checks soon to be allowed in France

http://thelawsp.com/dopage-les-controles-de-nuit-bientot-autorises-en-france/

A new step has been taken in the fight against doping in France. The Minister of Sports and his Secretary of State presented at the Council of Ministers of September 30, an order to transcribe into French law the new provisions of the World Anti-Doping Code.
According to Secretary of State Sports Thierry Braillard, once the order signed by the President of the Republic and passed before the Parliament, "the decrees of application will be published in the Official Journal before the end of the year." A period of six months is then granted to all federations to include them in their regulations.
In addition to the fact that this order increases the prerogatives of the AFLD and better control and supervise the entourage of athletes including prohibiting them to get in touch, for any service or advice, with a person who has been sanctioned for anti-doping violations, another provision of the ordinance makes much more noise: that allowing people in charge of anti-doping controls to perform them during the night.

A framed device
"The controls can only take place with the consent of the athlete" (Thierry Braillard, Secretary of State responsible for sports)
Two measures must be distinguished:
o the extension of the duration of the controls during the day by changing from hour to hour from 6am to 9pm and from 6am to 11pm
o the control of athletes between 11pm and 6am, subject to strict conditions
As recalled by Thierry Braillard, the controls "can not intervene with the consent of the athlete, requested quarterly to find out if he accepts. Otherwise, if there is no consent but there is a real desire to control, we will seek a judge freedoms and detention to obtain an order and make this control ".
Moreover, it should not be thought that these controls will be systematic. Given the fact that there is a need for "serious and specific suspicions" against the athlete, the director of controls of the French Anti-Doping Agency (AFLD) must justify his suspicions to through, for example, biological passports, denunciations or police investigation.

What about the future of the reform?
While it is clear that the fight against doping must persevere and that certain doping products can only be detected several hours after their use, this regulation may seem excessive in many respects.
In criminal proceedings, night searches can be conducted only in the area of terrorism, drug trafficking and procuring. In these very specific cases, it will sometimes be necessary to obtain the authorization of the judge of liberties and detention when the searches take place in living quarters. And again there are exceptions. Indeed, in the context of a preliminary investigation, night searches will not be possible, even with the authorization of the judge of liberties and detention, when they take place in residential premises.
However, it seems that in terms of doping the mere fact of obtaining the agreement of the athlete can allow to accept this new regulation infringing on his private life, a priori. A

situation that leaves so pensive. Finally, with this order, has the French government not put on the same level two issues by definition opposed, which are terrorism and doping?
Although it may seem difficult to justify from an ethical point of view, the Council of State, in an opinion issued in early September, voted favorably to all of these provisions. All that remains is to wait for the decision of the Court of Justice of the European Union, in relation to a case concerning the same problem, which is the infringement of the personal rights of athletes in the matter of anti-doping control. .

Pierre Marcadier

Appendix Anti-doping (article) - Cycling: a first case of technological doping turned out in France

http://thelawsp.com/cyclisme-premier-cas-de-dopage-technologique-avere-france/

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This is the first proven case of "technological doping" in France. The engine was discovered in a bike used by a rider during an amateur race held in Saint-Michel-de-Double, Dordogne.
The facts were discovered last Sunday, during a joint operation led by the Prosecutor's Office of Périgueux, the French Cycling Federation (FFC) and the French Agency for Combating Doping (AFLD).
"We have been warned by an official of the French Anti-Doping Agency of suspicion of cheating by means of an electrical system, presumably a small engine," said the prosecutor of the Republic of Périgueux, Jean- François Mailhes.
Questioned Monday by France Bleu Périgord, the 43-year-old cyclist revealed the causes of his action. The latter has indeed explained to the local radio have resorted to this illegal system not to win, but simply to revive the competition after an injury.
"I did it because I had a herniated disc in March and I did not ride a bike for three months," says Cyril, 43. I tried to resume the competition but I had trouble with sciatica in the right leg. I did it to have less trouble at the end of the race. "(Interview France Bleu Périgord)

Several possible sanctions

"The scale for this type of fraud can be in years of suspension," said FFC President Callot. In January 2016, the first proven case of a motorcycle with a concealed engine, earned Belgium's Femke Van den Driessche a six-year suspension by the Union Cycliste Internationale (UCI).
At the penal level, the amateur runner can also be prosecuted for sporting corruption, crime charged by the article L 445-1-1 of the Penal Code:

"The penalties provided for in Article 445-1 shall apply to any person who promises or offers, without right, at any time, directly or indirectly, gifts, gifts or advantages of any kind, whether for himself or for others, to an actor of a sports event giving rise to sports betting, for the latter to perform or refrain from performing, or because he has performed or refrained from performing, an act modifying the normal course of action and fair of this event. "(Article 445-1-1 of the Criminal Code)
This offense is punishable by five years imprisonment and a fine of € 75,000.

La Rédaction

Anti-Doping Annex (CAS jurisprudence) - see documents

HIGH LEVEL SPORT

CHAPTER I: LISTING ON LISTS

The following lists are drawn up by the sports minister on the proposal of the federations:

 High level athletes

 Coaches

 Referees and high level judges

 Hopeful athletes

 Training partners

The Sport Code states that no one may be entered on the list of top athletes:

 If it has not been the subject of a proposal to that effect by a delegated sports federation

 If he does not practice or has not practiced international competition in a sport whose high-level character has been recognized by the National High Performance Sport Commission

 If he does not justify or has not justified a sufficient sporting level

 If he / she is under twelve years old during the year of his / her listing

 If he has not been the subject of medical examinations, the results of which are sent to a doctor appointed by the federation

The quality of high level athlete is obtained by the inscription on the list of high level athletes decided by the minister in charge of sports in one of the following categories:

• Elite

The athlete performs at the Olympic Games, at the World or European Championships, or in a competition the list of which is fixed by the National High Performance Sport Commission, a performance or a significant ranking either individually or as a member of a team from France. The registration is valid for 2 years and can be renewed.

• Senior

The athlete is selected by the competent delegate federation in a team from France to prepare the international competitions listed in the calendar of international federations during the current Olympiad and leading to the issuance of an international title or the establishment of a ranking international. The registration is valid for 1 year and can be renewed.

• Young

The athlete is selected in a team of France by the competent federation to prepare official international competitions of his age category appearing in the calendar of international

federations and leading to the issuance of an international title or the establishment of a ranking international. The registration is valid for 1 year and can be renewed.

• Reconversion

The athlete has been placed on the list of elite athletes in the Elite category or has been included in this list in categories other than the Reconversion category for 4 years, of which at least 3 years in the Senior category and which ceases to fill the conditions of registration in the categories Elite, Senior or Young and which presents a project of professional insertion.

The registration is valid for 1 year and can be renewed for the same duration within the limit of 5 years.

ESSENTIAL

Athletes known as "high level" are listed every year on a list published by the Minister of Sports. There are several categories of top athletes: Elite, Senior, Young and Retraining.

CHAPTER II: HIGH-LEVEL SPORTS STATUS

Section 1: The role of high level athletes
Section 2: Social Protection
Section 3: Professional integration

The law of November 27, 2015 came to bring different elements relating to high level athletes

SECTION 1: The role of high level athletes

Article 1 of the law of November 27, 2015, which states that top athletes contribute to the influence of the Nation and the promotion of the values of sport is anything but symbolic.

Indeed, in addition to recognizing the role of high-level athletes, this article lays the foundation for high-level public support policy. The framework for the preparation of top athletes for excellence is modernized and the place of federations strengthened by the construction of a federal performance project that takes into account the accession to the high level. A new category of sportsmen is thus created: the "sportsmen of the national collectives", instead of the "training partners", which makes it possible to integrate all the sportsmen who participate in the high level politics of their athletes. federation.

In addition, the law makes the registration on the ministerial list of high level sportsmen subject to the conclusion of an agreement between the sportsman and the federation. This commitment, which is not a work contract, will allow athletes to know their rights and obligations, particularly in terms of training and socio-professional support, competitive practice, medical follow-up, compliance with the rules of ethics or still right in the picture.

SECTION 2: Social protection

The law supplements the social security coverage of high-level athletes by setting up an "accident at work - occupational diseases" insurance scheme that covers the risk of a sports accident (see the insurance law course). It concerns all high-level athletes who are not, as sportsmen, employees or self-employed and who therefore already have, in this respect, a

cover. This scheme, financially supported by the state, allows the management of injuries until consolidation and entitles the holder to a capital or minimum annuities to no longer leave without anything certain athletes heavily injured. The modalities of application of this measure will be specified by decree.

In addition to this regime, the law gives the federations the responsibility to subscribe for their high-level athletes an insurance contract to take into account the different categories of sport and secure the resources of those who will be in difficulty.

Finally, the rights of high-level athletes in maternity situations are recognized by guaranteeing the extension of these rights related to their quality of high-level sportsman of at least 1 year.

The medical monitoring of athletes is simplified and secure with the strengthening of the health supervision of top athletes and the possibility given to the federations to adapt the monitoring of other categories of athletes

SECTION 3: Professional integration

The responsibility of the federations for the socio-professional follow-up of top athletes is recognized. This legislative framework gives an obligation to the federations, but will also make it possible to better mobilize the means of the State, and in particular the technical sports managers, on this mission.

The conditions of implementation of the dual project of athletes in terms of school and university development (course of study and access to exams) have been secured, and access to distance learning facilitated for students.

In addition, the list of activities eligible for validation of prior experience is extended to high level athletes. Similarly, the access of high-level athletes to apprenticeship contracts is adapted to the specificities of their sporting career, particularly regarding the age or duration of the contract. In the continuity of the "Performance Pact" initiated by Thierry Braillard (Secretary of State for Sport) to facilitate the search for companies for athletes preparing for the Games in Rio, the use of Professional Integration Conventions (CIP) is modernized by the law. These CIPs allow athletes to benefit from income through a contract of employment or a service contract and from a perspective of professional integration to employment or training with, where appropriate, state aid or community mobilization. The law eases the employment framework, as some sportspeople do not wish to be employees, by opening up the possibility of using image and sponsorship contracts, and extend IPCs to high-level referees and sports judges.

High-level sportspeople may take part in competitions for access to state jobs, local authorities, their public establishments as well as any national or mixed economy company, without fulfilling the diploma requirements required of non-qualified candidates. sports. No age limit for access to public grades and positions is not applicable to them. Candidates no longer qualified as high level athletes may benefit from a decline in these age limits equal to the duration of their entry on the list mentioned in the first paragraph of Article L.221-2 of the Code. Sport. This duration can not exceed 5 years.

If he is an agent of the State or of a local authority or of their public establishments, the sportsman, the referee or the high-level judge shall, in order to continue his training and to participate in sports competitions, employment.

A decree specifies the rights and obligations of high level athletes, hopeful athletes and training partners.

It defines in particular:

 The conditions for access to the training courses defined in liaison with the relevant ministries
 How to find work
 Participation in events of general interest

ESSENTIAL

Top athletes benefit from a special status allowing them to be covered by several mechanisms and protected both socially and contractually.

The contribution of the law of November 27, 2015 is decisive since it strengthens the status of high level athlete and issues more guarantees

CHAPTER III: WITHDRAWAL OF STATUS

The status of high level athlete, high level coach, referee and high level sport judge, Espoir athlete or training partner is withdrawn when the beneficiary ceases to meet the conditions required to obtain it.

It may be withdrawn or suspended at any time by reasoned decision of the Minister in charge of sports, in particular in the following cases:

 On the proposal of the competent federation, where the person concerned has been the subject of a serious disciplinary sanction

 At the initiative of the Minister for Sports, or on the proposal of the competent federation in the case of a duly recorded offense in the fight against doping.

Before any decision to suspend or withdraw, the interested party is able to submit written or oral observations. When the request for suspension or withdrawal is motivated by disciplinary reasons, the competent sports federation shall attach to its proposal the minutes of the meeting of the body that pronounced the sanction.

ESSENTIAL

The status of top athlete is acquired when the athlete fulfills the conditions of sports performance in particular.

Conversely, when the required conditions are lacking, the status of high level athlete is withdrawn.

THE NATIONAL COLLECTIVE AGREEMENT ON SPORT

The influence of the National Collective Agreement on Sport

The national collective agreement on sport, applicable on a mandatory basis since November 25, 2006, has important practical consequences in the human and financial management of the employer sports structure.
When a collective agreement comes into force, it is intended to apply in labor relations between employers and employees.
How does it apply and what are the main principles to consider?
Generally, a collective agreement provides benefits that are, in principle, more favorable than common law (wages, seniority bonus, retirement benefits, overtime, dismissal, retirement pay, pay for night attendance, part-time work, etc.).). These principles are to be taken into account because they can directly impact the budget of the sports structure.
In particular, it is important to be concerned about the individual situation of the employees present at 25 November 2006. For example, it is quite obvious that these employees did not have a classification corresponding to that established by the NCC Sport. These rules will have to apply in the presence of the contract of employment (written in the no) of each employee. But in what way and what will be the steps to follow?
It is also possible that a collective agreement was already applied, either because it is itself compulsory, but at a more limited professional level (football, golf, rugby, etc.), or because a collective agreement was applied on a voluntary basis (CC of socio-cultural animation for example). Here again, specific provisions will have to be made insofar as we are in the presence of a competition of collective agreements which it is imperative to manage. In this case, specifically concerning the employers who applied the CC of socio-cultural animation, an "option" clause is provided for one or other of the collective agreements.
In addition, what will happen to new hires (especially in the case of previous application of another collective agreement), company agreements, business practices, pension provision (not yet applicable for lack of agreement between the designated bodies), the usual OPCA, the election of staff representatives since the threshold of incorporation has been lowered ....
Finally, we must not overlook the value of rules that are, of course, only optional but which are new working tools made possible by the collective agreement. This is the case of the annual fixed-rate for executives, the intermittent employment contract (subject to certain rules) of the intervention contract, etc. These are all new tools that will make it possible to respond in whole or in part to certain specific problems. to the sports sector.
In short, these few examples show the complexity and the difficulties that concern employers' clubs.
It is a question of applying a relatively voluminous and technical text in everyday working relations, both individual and collective.
Our advice and our will is to be able to integrate this collective agreement as a real tool of work and structuring in the service of the social object.
We are convinced that we should not undergo this convention on a daily basis, let alone apprehend it as a constraint or a necessary evil. This approach, which we advocate, is in no way incompatible with the voluntary commitment of leaders.
Anyway, the text, even partially applicable, requires a real organizational management and therefore preventive:
first of all in the very short term or even immediately to make the first necessary implementations;

in the short term then to integrate the new provisions;

in the medium term, finally, to integrate the collective agreement as an integral part of the sport structure policy.

Summary of the National Collective Agreement on Sport (CCNS)

Definition

The National Collective Agreement on Sport (CCNS) regulates relations between employers and employees throughout the territory, including in the DOMs
(cf Article 1 National Collective Convention of Sport)
An Extended Collective Agreement applies to all employers within its scope.
It is therefore also binding on employers who are neither signatories nor members of a signatory employers' organization
It is the decree of November 21, 2006 which extends the National Collective Convention of Sport (CCNS)

CC Summary

CHAPTER I - Scope
CHAPTER II - Social dialogue and paritarianism
CHAPTER III - Freedom of opinion - Right to organize - Representation of employees
CHAPTER IV - Employment contract
CHAPTER V - Working time
CHAPTER VI - General principles of hygiene, safety, health and working conditions
CHAPTER VII - Holidays
CHAPTER VIII - Vocational training
CHAPTER IX - Classifications and remunerations
CHAPTER X - Provident
CHAPTER XI - Plurality of Employers / Employer Groups
CHAPTER XII - Professional Sport
CHAPTER XIII - Employee Savings - Time Savings Account

The lack of application of the National Collective Convention on Sport (CCNS)

□□The decision of the courts during an employer / employee dispute (adjustment of wages over X months or years, for example)

□□ Penal sanctions

Article R153-2 of the Labor Code
"Where an agreement or a collective agreement has been the subject of an extension order, the employer bound by this agreement or agreement which pays wages lower than those fixed by this agreement or this agreement shall be punished. of the fine imposed for fourth-class offenses (750 euros) "

The fine is pronounced as many times as there are injured employees.

The choice of employment contract

The principle :

The Undetermined Contract (Labor Code and National Collective Convention of Sport art 12.3.2.1)

Exceptions

The National Collective Agreement on Sport (CCNS) provides for exceptions
- The seasonal fixed term contract
- The intermittent employment contract (CDII)
- The part-time work contract
- The intervention contract
- The usual CDD (reserved for professional sports, players and coach)
- The "classic" fixed-term contract (replacement of an employee or temporary increase in activity)

The seasonal contract

The National Collective Agreement on Sport (CCNS) refers to the Labor Code, without any other specific provision (Article L 1221 and following of the TC)
ex: Article L1244-2 of the Labor Code
Seasonal employment contracts may include a renewal clause for the following season.

The intermittent employment contract (CDII)

- it's a CDI
- Permanent employment, which by nature includes an alternation of periods worked and not worked
- Maximum annual work duration: 1250 hours spread over 36 weeks max
- It is a written contract which, in addition to the common obligatory mentions, must include specific mentions (duration and period of work, distribution of the hours in the periods ...)
- Smoothed remuneration over the year: 1/12 of the guaranteed annual contract schedule + 10% for paid holidays. Not smoothed over the year: hours of the month + 10% for paid holidays

Part-time employment contract

It is a contract whose duration is less than 35 hours (spread over the week, the month or the year)
The written contract must also include mandatory common notices:
- The distribution of working hours between the days of the week or the weeks of the month
- The cases and the conditions of modification of these periods
- The notice period in case of modification (7 working days)
- Limits on additional hours

The intervention work contract

- It's a customary CDD. Reserved for the organization of competitions or sports events of exceptional magnitude. Duration of the contract linked to that of the event
(60 hours / week over 3 consecutive weeks max). Obligation to pay at the end of the contract a bonus equal to 10% of the gross remuneration (except if conversion to permanent contract)

The "classic" CCD

It is provided in case of replacement of an absent employee or temporary increase of activity. Maximum duration of 18 months (renewal included) Obligation to pay at the end of the contract a premium equal to 10% of the gross remuneration.

Working time (chapter 5)

The legal duration of working time

- 35 h / week = 151.67 h / month (35 x 52 weeks / 12 months)

Extra time
- The National Collective Agreement on Sport (CCNS) lays down the principle of recovery rather than payment
- overtime = over 35 hours or 1600 hours annually if modulation
- Annual quota = 180 h or 220 h in some cases
- Up to 90 hours the employee is required to perform

Recovery of overtime (non-managerial)

Replacement compensatory rest
first eight hours overtime = 25% increase = 1h15 recovered
following overtime = 50% mark-up = 1.5 hours retrieved
If payment choice of h sup = same conditions of increase
Compulsory compensatory rest, it applies, in addition, beyond the annual quota
(50%)

Maximum daily and weekly times

- 10 hours a day, in some cases 12 hours
- daily rest = 11 h consecutive, so the max amplitude = 13h. If exceeded = employee agreement = 12 days per year max
- 15 weeks max per year where the duration exceeds 44 h
- If 4 weeks above 44 H, the next = 35 h (except modulation)

Weekly rest and holidays

- An employee can not work more than 6 days a week
- If working on Sundays and public holidays = 2 consecutive days of rest or 11 Sundays not worked per year
- If rest days or holidays worked = 50% increase (compensatory rest or remuneration
- If May 1st worked = day wages plus 100%

Modulation of working time

- it can apply for all employment contracts
- It must be specified in the contract
- Each employee must have an individual hours account
- The salary is established independently of the h performed
- The monthly salary corresponds to the classification grid

Modulated full-time work

- Reference period = 12 consecutive months
- annual number of hours = 1575 h
- Modulation ceiling = 48 hours on 14 weeks max per year
- High activity period = 41 h. No more than 8 consecutive weeks. Intervals between 2 periods = 2 weeks of 35 hours
- Average hourly over 12 consecutive weeks = 44 h
- Reduced activity period = days or ½ days not worked
- Hours above = 48 hours and 1575 hours but 70 hours max per year

Modulated part-time work

- The annual duration of work can not be less than that of the contract
- weekly duration = can not reach 35h (complementary hours included) and can not vary, in + or in - of 1/3 of the weekly duration envisaged in the contract
- Minimum daily working time = can not be less than 2 hours
- Minimum monthly working time = can not be less

Holidays (Chapter 7)

- Paid holidays = 30 working days a year
- other forms of leave are provided for in the National Collective Agreement on Sport (CCNS)
- leave for family events
- leave for maternity or adoption, paternity leave
- leave without pay (for one year, renewable twice, not exceeding 3 years)
- employees who are candidates or elected to parliament or local authorities

Vocational Training (Chapter 8)

The National Collective Convention on Sport (CCNS) provides:
- Continuing vocational training (individual training leave)
- Professionalization contracts (work-study training for jobseekers over 26 years of age for young people aged 16 to 25, fixed-term contracts or permanent contracts, remuneration of 70% and 80% of the SMIC)
- Employers pay 1.62% of gross payroll to finance vocational training

Classifications and remunerations

- The National Collective Agreement on Sport (CCNS) provides for a conventional minimum wage (SNC).
- The salary depends on the nature of the job.
- Jobs are classified by group within a grid
- Where are the jobs of instructors and DT classified?
What are the minimum expected pay?
Answers on pages 54 and 58 of the CCNS

The risks covered:

Work interruption

- Work interruption of employees compensated by the safety
From the 4th to the 90th day of stoppage: the Social Security and the employer act in relay and maintain the net salary.

From the 91st to the 1095th day of stoppage: maintenance of the net salary by the provident scheme

- Work interruption of employees not compensated by the Social Security
4th to 87th day off: 50% of the reference salary maintained by the pension plan

The death of the employee

- The death of the employee
Payment of 100% of the reference salary (cumulative gross salary for the last 12 months)

Invalidity of the employee

- The invalidity of the employee

Definition:
1st category: ability to engage in remunerated activity
2nd category: inability to practice a profession
3rd category: incapacity to exercise a profession + recourse to a third person to perform the ordinary acts of life

Invalidity of 1st category
maintenance of 50% of net salary

- Invalidity of 2nd and 3rd category
maintaining 100% of net salary

The pension is paid as long as the insured receives a pension from the Social Security
- The pension scheme provides a pension for education, paid to children according to age
- The scheme is not a mutual or supplementary pension scheme
- The CCNS imposes the use of 4 designated provident institutions according to the geographical situation of the employer
- The provident scheme is financed by employers and employees
At the expense of employers
0.11% salary maintenance of staff not compensated by the SS
0.19% disability
0.16% death benefit
0.06% education annuity
Total: 0.52% of gross salary
At the expense of employees
0.21% temporary incapacity for work
0.19% disability
0.16% death benefit
0.06% education annuity
Total: 0.62% of gross salary

- Executive employees
- They remain subject to the provisions of the National Collective Retirement and Provident Collective Agreement of 14 March 1947
- They must benefit from guarantees at least equivalent to those of the National Collective Agreement on Sport (CCNS)
-

Wage Savings - Time Savings Account (Chapter 13)

The National Collective Agreement on Sport (CCNS) provides that they may be set up by company or establishment agreement

Appendix CCNS - PROHIBITED PROFESSIONAL SPORTS TO PRACTICE CERTAIN RECREATION

http://thelawsp.com/des-sportifs-professionnels-interdits-de-pratiquer-certains-loisirs/

As seen in the article The insurance system applied to high-level athletes, compared to other professions, that of a professional athlete is short is all the more marked by health incidents.
To control this scourge, besides the choice of a higher insurance cover, another solution exists: the contractual prohibition of sports at risk, whose practice can have considerable consequences on the career of a player. For example, a skiing accident robs Sylvain Marconnet of the 2007 Rugby World Cup.

A contractual ban

Top athletes are bound by many obligations, resulting directly from the contract they sign with their club or their federation.
Due to their sporting ambitions and the amount of transfers and salaries paid to players, clubs and federations have an interest in limiting these accidents, even off the field. Indeed, they have the opportunity to intervene in the private life of their players through the contract of employment, which may sometimes prohibit them to practice certain sports. However, since consent is one of the legal conditions for the formation of any employment contract, this prohibition is therefore, by definition, accepted by the athlete.
Specifically, the sports concerned are those considered "at risk", so particularly dangerous for physical integrity. Indeed, these sports can expose to serious injuries in case of errors in their exercise, and can also be practiced on sea, in the sky or on the ground.

Non-exhaustive list of sports at risk

 Parachute jump: K. Benzema was recalled by his club, Real de Madrid, for skydiving as his contract stipulated expressly the prohibition of this practice.
 Scooter: Goalkeeper Iker Casillas fined for driving a scooter
 Motorcycle: The motorcycle is one of the activities most commonly prohibited in the contracts of top athletes, because of the serious consequences that may result from an accident. For example, American footballer Kellen Winslow II of the Cleveland Browns injured his knee ligament, which deprived him of competition for the rest of the season
 Bullfighting: Real de Madrid player Asier Illarramendi was fined for beating in the Basque Country, a practice obviously prohibited by his contract with the club. Indeed, according to Carlo Ancelotti "There is an internal rule to prevent players from skiing or engaging in other dangerous activities, but it has never been applied to me in the event of a bullfight. "
 Snowboard: In 2007, basketball player Vladimir Radmanovic was fined € 420,000 by his Los Angeles Lakers club for injuries to his shoulder while snowboarding, which took him away from the courts for nearly 2 months.
 The playstation! : This question was posed by the doctrine in 2008 after baseball player Joel Zumaya was removed from the field due to an inflammation on his wrist while playing Guitar Hero.

If we focus on these different examples, we quickly notice that these prohibitions mainly concern collective sports. In fact, sports judged to be at risk are contractually forbidden with regard to footballers, basketball players, handball players, and not individual athletes such as athletes, pilots or skiers. For example, Sébastien Loeb is free to ski. Nevertheless, this observation, to say the least strange, can be explained financially, for a question of insurance.

Punishments

If the clauses relating to these various prohibitions are not respected, the sportsmen contracting can thus regularly be sanctioned by a fine, as it was the case with the basketball player Vladimir Radmanovic, or to be dismissed for the most serious cases.
In the context of pecuniary sanctions, it must be borne in mind that these are prohibited in France. Indeed, in case of violation of the employment contract or of the internal regulations, if disciplinary sanctions repress the failings of the employees, only the following ones can be pronounced: the warning, the blame, the disciplinary dismissal, the mutation, the demotion , and dismissal for misconduct for the most serious cases. Pecuniary sanctions such as fines and payroll deduction are therefore prohibited.
Article L 1131-2 of the Labor Code
"Fines or other pecuniary sanctions are prohibited. Any provision or stipulation to the contrary shall be deemed unwritten "
However, no professional athlete whose employment contract has been concluded in France has yet been the subject of such a sanction. Indeed, as the above-mentioned cases underline, these sanctions were mainly pronounced in Spain or in the United States.
However, some French football clubs provide pecuniary penalties for violations of their rules. For example, as our partner PSG-MAG points out, the Paris Saint Germain club has a fine of € 5,000 when a player arrives 5 minutes late for training, uses his mobile phone in the gym, or even arrive at the stage with an audio headset on the ears.
The lack of conformity - in this case of this regulation - with the provisions emanating from the Labor Code is therefore flagrant, and could certainly not be legitimized by the peculiarity of the profession of those concerned and the sums at stake.

La Rédaction

Appendix CCNS - AN EXAMPLE OF A COLLECTIVE AGREEMENT IN FRENCH SPORT: THE PROFESSIONAL FOOTBALL CHARTER

Appendix CCNS - FC Nantes, relegated to L2, could not lower the remuneration of a player without his express agreement

Wednesday, 04 April 2018 10:52 | Written by Antoine SEMERIA | | |

In May 2007, FC Nantes recruited a professional football player for a period of three seasons, namely the years 2007/2008, 2008/2009, 2009/2010.
At the end of the 2006/2007 season, the Club was relegated to Ligue 2.
In consideration of this relegation, FC Nantes informed the player that his salary would be reduced by 40%.

Contesting this decision, the player seized the Legal Commission of the Professional Football League and then the Conseil de Prud'hommes of Nantes.
By judgment of October 4, 2012, this industrial tribunal of Nantes sentenced the companyFC Nantes to pay the player the sums of 120,000 euros as a reminder of bonus participation in official matches for the season 2009/2010, 12 000 euros as holiday pay and 950 euros on the basis of Article 700 of the Code of Civil Procedure.
The Club Nantes has appealed this judgment.

Appeal by reference after cassation, the Court of Appeal of Angers confirms, by judgment of March 29, 2018, the judgment rendered at first instance considering that the Club could not proceed to a decrease in the remuneration of his employee who had for the effect of amending his employment contract without the express agreement of the latter, notwithstanding the existence of a clause to the contrary in a sectoral collective agreement (Article 761 of the Professional Football Charter).

The Court follows in this sense the reasoning of the Social Chamber of the Court of Cassation, which recalled, by judgment of February 10, 2016, that "unless otherwise required by law, a collective agreement can not allow an employer to make the change of the employment contract without obtaining the express agreement of the employee ".
FC Nantes is finally condemned to pay to its former employee the sum of 120 000 €, 12 000 € for paid vacation related, in addition to 3950 € under Article 700 of the Code of Civil Procedure.

CA Angers, 29-03-2018, No. 16/02444

Updated (Wednesday, 04 April 2018 11:04)

Football Labor Law

DEFINITIONS

[1] pari sportif « en dur »
L'expression pari sportif « en dur » signifie un pari sur un support matérialisé, par exception au pari sportif sur un support dématérialisé, comme sur Internet.

[2] Jurisprudence
Une définition de la jurisprudence pourrait consister à considérer qu'il s'agit du terme désignant l'ensemble des décisions de justice rendues par les tribunaux.

[3] jeu jeu concours
Petit Robert éd. 2007 : « épreuve portant sur les connaissances, dans laquelle plusieurs candidats entrent en compétition pour un nombre limité de places et de récompenses »

[4] personnes morales
En droit français, une personne morale est un groupement doté de la personnalité juridique. Généralement une personne morale se compose d'un groupe de personnes physiques réunies pour accomplir quelque chose en commun. Ce groupe peut aussi réunir des personnes physiques et des personnes morales. Il peut également n'être constitué que d'un seul élément. La personnalité juridique donne à la personne morale des droits et des devoirs.
Le droit français distingue :
- les personnes morales de droit public : l'État, les collectivités territoriales, les établissements publics... ;
- les personnes morales de droit privé : les plus courantes étant les entreprises, les sociétés civiles, les groupements d'intérêt économique, les associations. Certaines personnes morales de droit privé sont chargées de la gestion d'un service public.

[5] paris sportifs « en ligne »
https://www.senat.fr/rap/l09-209-1/l09-209-130.html
NOTION DE PARI ET DE JEU EN LIGNE
Le I du présent article définit, tout d'abord, les notions de paris et de jeux en ligne. Ces notions sont essentielles puisqu'elles participent à la délimitation du périmètre de l'ouverture à la concurrence proposée par l'article premier du présent projet de loi.
Le présent article pose une double définition des paris et jeux en ligne :
- d'une part, une définition positive : sont concernés les paris et les jeux dont « l'engagement passe exclusivement par l'intermédiaire du réseau informatique Internet », et ce quel que soit le moyen de communication électronique utilisé, à savoir aujourd'hui principalement les micro-ordinateurs, les téléphones portables connectés à Internet ou encore le modem ADSL « Asymetric Digital Subscriber Line » permettant d'offrir des services de téléphonie et de télévision ;
- d'autre part, une définition négative : sont exclus les paris et jeux dont l'engagement a été « enregistré aux moyens de terminaux destinés exclusivement ou essentiellement à la prise de paris ou de jeux et mis à la disposition des joueurs dans des lieux publics ou des lieux privés ouverts au public ». Sont ici visés les terminaux électroniques - que ces derniers soient connectés ou non au réseau Internet - qui pourraient être implantés, par des opérateurs agréés, dans des réseaux physiques concurrents de la FDJ et du PMU. Il s'agit ici de préserver le monopole des opérateurs « en dur ».

[6] contrat d'adhésion
Un contrat d'adhésion est un contrat dont les termes sont imposés par une partie à l'autre. Les clauses sont fixées et aucune discussion n'est possible.
Les cocontractants sont alors libres d'adhérer ou non à ce contrat, c'est-à-dire qu'ils peuvent ou non accepter les termes du contrat tels quels ou bien ne pas les accepter du tout.
Le contrat d'adhésion reste cependant celui qui est le plus susceptible de contenir des clauses abusives, d'où un contrôle de plus en plus fréquent des tribunaux qui peuvent déclarer la clause (voire le contrat) non écrite.
Nombre de contrats sont des contrats d'adhésion, notamment dans la vente au consommateur.
Ainsi, lorsqu'on achète une casserole on est obligé de l'accepter telle qu'elle est, même si on avait souhaité un fond plus épais.
C'est une situation à laquelle on est habitué.
Le consommateur est plus réticent lorsqu'il achète des prestations. Dans ce cas, en effet, l'industrialisation des procédés se généralisant, c'est souvent tout un ensemble de caractéristiques de la prestation qu'il lui faut accepter en bloc, alors que certaines lui semblent aisément personnalisables.
Exemples : Contrat de fourniture EDF / GDF / Contrat téléphonie mobile, / Contrat satellite/ Contrat accès Web / (...) Le contrat d'adhésion s'oppose au contrat de gré à gré.

[7] contrat de gré à gré

Les parties discutent entre elles et essayent de trouver une solution pour s'entendre (comme dans les brocantes). Exemple : vente d'un bien meuble de particulier à particulier.
Il s'oppose au contrat d'adhésion qui impose au préalable des clauses indiscutables.

[8] Opérateur de jeux ou de paris en ligne
toute personne qui de manière habituelle propose au public des services de jeux ou de paris en ligne comportant des enjeux de valeur monétaire et dont les modalités sont définies par un règlement constitutif d'un contrat d'adhésion au jeu soumis à l'acceptation des joueurs

https://www.senat.fr/rap/l09-209-1/l09-209-130.html
LA NOTION D'OPÉRATEUR DE JEUX OU DE PARIS EN LIGNE
Le II du présent article définit, quant à lui, la notion d'opérateur de jeux ou de paris en ligne selon trois principaux critères :
1) L'opérateur est, tout d'abord, défini comme « toute personne », physique ou morale en l'absence de précision, dont l'offre de jeux ou de paris en ligne constitue une activité « habituelle », ce qui écarte une entreprise, par exemple un groupe de médias, qui offrirait occasionnellement des jeux et des paris en ligne.
Comme il le précisera à l'occasion du commentaire de l'article 10 du présent projet de loi, votre rapporteur est réservé sur la possibilité, offerte par le présent article et surtout l'article 10 du présent projet de loi, d'accorder des agréments à des personnes physiques, en tant que représentants d'entreprises individuelles, même si les nombreuses obligations imposées aux candidats devraient de facto impliquer une exclusion de telles entités qui solliciteraient l'agrément.
2) L'opérateur doit ensuite « proposer au public des services de jeux et de paris en ligne comportant des enjeux de valeur monétaire ». Les jeux gratuits sont en effet autorisés.
3) Enfin, l'opérateur et le joueur, ou le parieur, doivent être liés par « un règlement constitutif d'un contrat d'adhésion au jeu », précisant les modalités de jeux et de paris proposés par l'opérateur. Ce règlement devra être conforme à des règles définies par décret, pour chaque catégorie de paris et de jeux autorisés, tel que le prévoient les articles 8 et 9 du présent projet de loi. L'ARJEL veillera a posteriori à la conformité de ces règlements selon l'article 25 du présent projet de loi.

[9] personne morale
En droit, une personne morale est une entité juridique abstraite, généralement un groupement, dotée de la personnalité juridique, à l'instar d'une personne physique (un être humain).

[10] personne physique
En droit, une personne morale est une entité juridique abstraite, généralement un groupement, dotée de la personnalité juridique, à l'instar d'une personne physique (un être humain).

[11] Joueur
https://www.senat.fr/rap/l09-209-1/l09-209-130.html
LA NOTION DE JOUEUR, DE PARIEUR EN LIGNE ET DE MISE
Le III du présent article définit la notion de joueur ou de parieur en ligne. Cette expression doit s'entendre comme toute personne qui accepte le contrat d'adhésion précité proposé par l'opérateur de jeux ou de paris en ligne.
Le même paragraphe précise, par ailleurs, la notion de mise : il s'agit de toute somme d'argent engagée par un joueur, y compris celle provenant de la remise en jeu d'un gain. Les prélèvements fiscaux et sociaux définis par le présent projet de loi, assis sur l'ensemble des mises, s'appliqueront donc également aux gains des joueurs réinvestis par ces derniers sous forme de nouvelles mises.
LA NOTION DE COMPTE DE JOUEUR EN LIGNE
Enfin, le III du présent article définit la notion de compte de joueur en ligne. Il s'agit du compte que l'opérateur de jeu est tenu d'ouvrir pour chaque joueur. Cette définition entraîne deux conséquences :
- d'une part, un joueur ne disposera que d'un compte par opérateur, même si celui-ci propose plusieurs types de jeux ou de paris ;
- d'autre part, un joueur pourra disposer de plusieurs comptes jeu ouverts auprès de différents opérateurs.
Le III du présent article précise en outre le contenu de ce compte de jeu. Celui-ci doit retracer :
- les mises et les gains liés aux jeux et paris ;
- les mouvements bancaires qui y sont liés ;
- le solde des avoirs du joueur auprès de l'opérateur.
Le compte de jeu est un élément essentiel qui participe de la traçabilité des opérations de jeux en ligne et de l'activité du joueur.

[12] Mise
Il s'agit de toute somme d'argent engagée par un joueur, y compris celle provenant de la remise en jeu d'un gain.

[13] Expresse
Volonté qui s'extériorise par un procédé quelconque de communication (langage, écrit, oral, gestuel)

[14] Législateur
Etymologie : du latin legislator, celui qui propose une loi, législateur, mot constitué de lex, legis, loi, et de lator, celui qui porte, porteur.

[15] Pari hippique
Paris comportant un enjeu de valeur monétaire où les gains éventuels des joueurs dépendent de l'exactitude des pronostics portant sur le résultat de toute épreuve hippique ou compétition sportive réelle légalement autorisée en France ou à l'étranger.

[16] pari sportif
Paris comportant un enjeu de valeur monétaire où les gains éventuels des joueurs dépendent de l'exactitude des pronostics portant sur le résultat de toute épreuve hippique ou compétition sportive réelle légalement autorisée en France ou à l'étranger.

[17] Autorité de Régulation des Jeux en ligne (ARJEL)
L'Autorité de régulation des jeux en ligne est chargée de mettre en place des moyens de régulation, d'information et de contrôle pour protéger les joueurs, prévenir de l'addiction au jeu et lutter contre la fraude.
[18] paris sous forme mutuelle
Le pari en la forme mutuelle est le pari au titre duquel les joueurs gagnants se partagent l'intégralité des sommes engagées, réunies dans une même masse avant le déroulement de l'épreuve, après déduction des prélèvements de toute nature prévus par la législation et la réglementation en vigueur et de la part de l'opérateur, ce dernier ayant un rôle neutre et désintéressé quant au résultat du pari.

[19] paris à cote
Le pari à cote s'entend du pari pour lequel l'opérateur propose aux joueurs, avant le début des compétitions sportives ou au cours de leur déroulement, des cotes correspondant à son évaluation des probabilités de survenance des résultats de ces compétitions sur lesquels les joueurs parient. Le gain est fixe, exprimé en multiplicateur de la mise et garanti aux joueurs par l'operateur.

[20] Marque
Théoriquement, une marque, c'est « tout signe, tout symbole, ou toute apparence extérieure qui permet à un produit ou à un service de se distinguer de ceux de la concurrence ». Une marque a différentes fonctions. Une marque sert avant tout de moyen de reconnaissance, avec pour capacité d'être reconnue par le consommateur.

[21] Parasitisme
le fait de se référer, sans s'adresser à la même clientèle, à une marque ou à toute autre forme de propriété industrielle ou intellectuelle créée par un tiers et particulièrement connue et ce, à l'effet de tirer profit de sa renommée.
Le parasitisme est l'ensemble des comportements par lesquels un agent économique s'immisce dans le sillage d'un autre afin de profiter sans rien dépenser de ses efforts et de son savoir-faire. Peuvent ainsi constituer des manœuvres susceptibles d'être qualifiées d'actes de parasitisme la reprise de documents commerciaux, d'argumentaires de vente ou de contrats types à condition que leur spécificité soit établie et qu'elle entretienne dans l'esprit de potentiels clients une confusion. Un tel comportement peut également être caractérisé par des tenues, des sigles, logos ou encore des fournisseurs.

[22] propriété industrielle ou intellectuelle
La propriété intellectuelle regroupe la propriété industrielle et la propriété littéraire et artistique.
La propriété industrielle a pour objet la protection et la valorisation des inventions, des innovations et des créations. Les droits de propriété industrielle s'acquièrent en principe par un dépôt (dépôt d'un brevet, d'un dessin ou modèle ou d'une marque). Les droits de propriété industrielle donnent un monopole d'exploitation (sanctionné par l'action en contrefaçon) et constituent à la fois une « arme » défensive et offensive pour les entreprises détentrices de ces droits. Il existe plusieurs voies possibles de protection pour ces droits de propriété industrielle.
La propriété littéraire et artistique s'attache avec le droit d'auteur à protéger les œuvres littéraires, créations musicales, graphiques, plastiques, créations de mode, etc. et les logiciels, ainsi qu'un certain nombre de « droits voisins » (concernant les artistes-interprètes, les entreprises de communication audiovisuelle, par exemple). Le droit d'auteur ne protège pas les idées ou les concepts. Le droit d'auteur s'acquiert sans formalités, du fait même de la création de l'œuvre (Article L111-1 du Code de la propriété intellectuelle).

[23] Contrefaçon
La contrefaçon se définit comme la reproduction, l'imitation ou l'utilisation totale ou partielle d'une marque, d'un dessin, d'un brevet, d'un logiciel ou d'un droit d'auteur, sans l'autorisation de son titulaire, en affirmant ou laissant présumer que la copie est authentique.

[24] Jurisprudence

[25] actif incorporel
L'actif incorporel est partie intégrante de l'actif immobilisé. Il représente les actifs immatériels de l'entreprise, c'est à dire que l'on ne peut pas toucher. Ce sont les brevets, frais d'établissement, fonds de commerce, licences et tout autres bien immatérielles que l'entreprise peut posséder. Ce type d'actif sont souvent appelé les actifs de la connaissance. Ils demandent des années de travail pour parfois n'aboutir à aucun résultat. C'est le cas de recherche et développement qui est très couteuse au départ mais peut si elle aboutit à une découverte, apporter une source de revenu très importante à l'entreprise.
(Attention cependant, tous les actifs immatériels ne sont pas forcément des actifs incorporels. En effet, les disponibilités, l'argent disponible, bien qu'immatérielles font par exemple partie de l'actif circulant car elles sont destinés à disparaître durant le cycle d'exploitation. Les disponibilités ne sont pas durables. Les titres financiers sont aussi à exclure de l'actif incorporel car ils sont à intégrer dans les immobilisations financières.
La valeur de l'actif indiqué dans le bilan est la valeur comptable, c'est à dire le montant du coût de production. C'est le cas pour une innovation technologique, les coûts de recherche et développement lié à sa création seront alors inscrit au bilan. La valeur de l'actif incorporel est donc soumise à manipulation selon les intentions de la société. Une entreprise gonflera ainsi sa valeur si elle souhaite le revendre par la suite.)