

THE NETHERLANDS: Gearing up for a regulated remote gaming market

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Current Regulatory Set-up

- ❖ Prohibition on supplying unlicensed gaming under Dutch Betting and Gaming Act (DBGGA)
 - ❖ No licenses available for remote gaming

- ❖ Market largely supplied by monopolists
 - ❖ Semi-permanent licenses awarded in a non-transparent manner to incumbents:
 - ❖ Sports-betting
 - ❖ Horserace betting
 - ❖ Lotto
 - ❖ Scratch-card
 - ❖ Charity lotteries
 - ❖ Monopoly for casino and state lottery

- ❖ Unlimited number of licenses for slot machine gaming



Catalysts for Change (i)

- ❖ Decision of the CJEU in C-203/08 *Sporting Exchange*
 - ❖ Exclusive license must be awarded in line with duty of transparency
 - ❖ Unless public operator subject to direct state supervisionor
Private operator subject to strict control

- ❖ Dutch Council of State in March 2011 held that De Lotto (sports-betting monopolist) was not subject to strict control; license award process incompatible with EU law

- ❖ See Littler & Franssen, 'How should we define 'strict control'?' in *European Gaming Lawyer*, Summer 2011

Catalysts for Change (ii)

- ❖ Change of government Oct 2010 >> Policy Note of March 2011
 - ❖ Regulate currently unregulated forms for which consumer demand exists
 - ❖ Do so more broadly than merely online poker
 - ❖ Comply with EU law
 - ❖ Allocate licenses in a consistent, transparent and non-discriminatory manner
 - ❖ Horizontal consistency
 - ❖ Liberalize the offline market in 2015
 - ❖ Competition instead of monopolies

Parliamentary Debate – 7 Sept 2011; motions & emotions

- ❖ Discussion regarding forthcoming Gaming Authority
- ❖ State Secretary under pressure to combat unlicensed remote operators
- ❖ Motions passed, including
 - ❖ Calling for the ‘Belgian model’ to be introduced
 - ❖ Financial transaction blocking (“blacklisting”)
 - ❖ After hesitation now moving forward
 - ❖ Excluding illegal operators from licenses in the future
 - ❖ Via an integrity test; exclude those illegally present on the market
 - ❖ Danger of undermining objectives of reform if all operators unable to obtain a license

Enforcement Measures - blacklisting

- ❖ Currently no legal basis for requiring banks to stop serving unlicensed operators; beyond scope of prohibition on promoting participation in unlicensed gaming
 - ❖ Lack of legal basis >> ineffective attempt in 2009
- ❖ Resumed in 2011
 - ❖ Creation of a 'blacklist' to be sent to members of the Dutch Banking Association
 - ❖ Partly in response to political pressure
 - ❖ No longer based on alleged infringement of DBGA but 'customer due diligence' standards
 - ❖ Banks ultimately retain discretion
 - ❖ Cease and desist letters sent to operators in autumn of 2011
 - ❖ Avoid listing through 'passive availability'?
- ❖ Bill introducing remote gaming regulation; possibly including a basis for financial transaction blocking

Gaming Authority

- ❖ Bill amending DBGA passed 20 Dec 2011
- ❖ Independent administrative regulatory body > operational on 1 April 2012
- ❖ Main functions
 - ❖ Issue, revoke & enforce licenses
 - ❖ Supervise & enforce gaming regulations
 - ❖ Act as a knowledge center
- ❖ Sanctions
 - ❖ Administrative fines (€760,000 or 10% of turnover)
 - ❖ Administrative orders
 - ❖ Incremental penalty payments
 - ❖ (Prosecution by the public prosecutor will remain an option)
- ❖ Maintain blacklist for PSP and ISP blocking measures (future specific legal basis?)
- ❖ Maintain central register of (self-)excluded players?



Looking to the Future

❖ Key dates

- ❖ 1 April 2012 – Gaming Authority becomes operational
- ❖ Q2 2012 – bill to amend DBGA
 - ❖ Remote gaming licensing regime
 - ❖ Transparent license allocation procedure
 - ❖ Legal basis for blocking measures
- ❖ 2013/2014 – remote gaming licenses available
- ❖ 2015 – liberalization of offline sector

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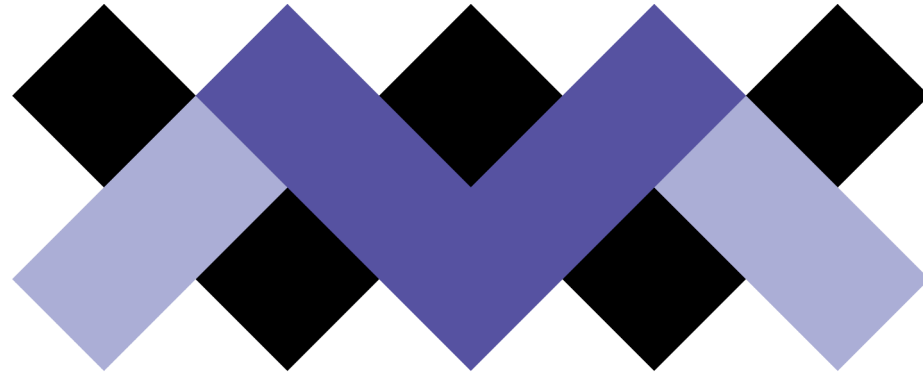


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