

DUTCH IGAMING: A GLIMPSE INTO THE FUTURE

The regulatory framework for Dutch iGaming is becoming clearer, however the first licences are unlikely to be issued before 2016, write **Younes Moussaoui** and **Justin Franssen** of Kalf Katz & Franssen.

On 5 March 2014, a revised version of the remote gaming bill was notified to the European Commission. The revised remote gaming bill was approved previously by the Council of Ministers on 14 February 2014. Furthermore, the bill was sent to the Council of State for advice, which it rendered in the first week of May 2014. The final step is that the bill will enter the political arena, which is (at the time of writing) scheduled for July or September 2014.

Background

The Netherlands is one of the last key EU jurisdictions to regulate remote gaming. Currently a 'prohibited unless licensed' approach is adopted in the Betting and Gaming Act of 1964. Offering remote gaming in the Netherlands is prohibited and there is no legal basis for remote gaming licenses to be awarded.

The regulation of remote gaming has been discussed numerous times in Parliament and previous governments have made, to no avail, several attempts to allow remote gaming in the Netherlands. The current government is making an effort of introducing a regulatory regime for remote gaming in 2015. The Ministries of Security & Justice and Finance published a draft bill for consultation in May 2013. The remote gaming bill will introduce a

regulatory framework for remote gaming and the details will be dealt with in secondary legislation.

The Ministry of Security & Justice used the months after a public consultation to digest approximately 90 contributions and made several – mostly positive – adjustments to the bill. The revised version of the bill received the approval of the Council of Ministers on 14 February 2014 and this opened the door to the next steps in the legislative process: sending the bill for advice to the Council of State and to the European Commission for notification.

At the time of writing, the Council of State has just rendered its advice, which will become public once the bill is sent to Parliament. The Ministry is currently digesting this advice and may revise the bill before sending it to Parliament. It is unclear if and, if so, to what extent the remote gaming bill will be adjusted following the advice of the Council of State. It therefore remains to be seen whether or not the notified remote gaming bill will differ much from the bill which the Ministry intends to send to Parliament in the first week of July 2014 or after the Parliamentary recess in September 2014.

The notified bill

The Ministry has stated on various occasions that the remote gaming bill

will implement a "Dutch model" and that it will look at the pros and cons of other jurisdictions so as to ensure the regulation in the Netherlands will be as successful as possible. It follows from the explanatory memorandum of the remote gaming bill that the Ministry is primarily focussed on channelling the existing demand for remote gaming to locally licensed offerings, and not to create new and/or additional demand for remote gaming. This objective is used as the underlying reasoning for the exclusion of several remote gaming products, such as lottery, bingo and event betting. Furthermore, the locally licensed offering has to be as attractive as possible. The Ministry therefore chose not to include a cap on the amount of remote gaming licenses so as to ensure there will be sufficient competition on the remote gaming market. Additionally, B2B licenses will not be introduced and international liquidity will be made possible, at least for poker and exchange betting.

Channelisation objective

The consultation text of the remote gaming bill included the objective to channelise at least 75% of the current demand. Many stakeholders stated in their consultation contribution that this objective lacked ambition and entails that the government accepts that 25% of Dutch consumers will play at locally unlicensed operators. Additionally, according to an assessment of H2 Gambling Capital, the proposed total effective cost burden (consisting of a 20% GGR remote tax, exploitation fee, gaming

duty, contribution to an anti-addiction fund and non-tax deductible bonuses) would result in capturing only 67% of the consumer demand. The revised remote gaming bill makes no adjustments to the effective cost burden, but nevertheless surprisingly raises the channelisation objective to 80%. This increase is based on a new assessment of H2 Gambling Capital in which is stated that a level of channelization of 80% can be achieved in 2018 with a 20% GGR tax rate.

Product scope

The most remarkable amendment to the bill involves the product scope. The consultation bill included an exclusion of remote lottery products, event and spread betting. The first two verticals were excluded due to supposed lack of “consumer demand” and the latter due to consumer protection concerns. The Ministry has made an unforeseen change in the revised remote gaming bill: it chose to also exclude remote bingo. The reasoning provided for this exclusion is that some forms of bingo are very similar to games which resemble lotteries. Such specific forms of bingo seem to follow the same fate as remote lottery products: they are not intended to be regulated. However, the wording used in the bill seems to leave leeway for the regulation of forms of remote bingo which clearly do not resemble lottery products. Secondary legislation will eventually determine which types of (bingo) products will or will not be regulated and it remains to be seen whether the Ministry makes use of the aforementioned leeway.

Server and other localisation requirements

Furthermore, the initial draft remote gaming bill stated that remote gaming operators would be required to have their primary gaming server on Dutch soil. This server

could be located in other jurisdictions if and when the Gaming Authority would conclude a Memorandum of Understanding with the regulator of that jurisdiction. Many stakeholders strongly opposed this requirement because relocating the

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servers to the Netherlands would, inter alia, involve significant costs. Additionally, this requirement may also constitute a form of establishment in breach of EU law. Furthermore, other jurisdictions in the EU show that effective supervision does not require servers to be located in the jurisdiction where the gaming is offered. The Ministry has taken these objections into consideration and removed this requirement from the remote gaming bill. The bill now states that operators are allowed to have their primary gaming server in any EU/EEA jurisdiction, or another jurisdiction (reference is made to Alderney and the Isle of Man) if exemption is granted by the Gaming Authority, subject to conditions.

Next steps and legislative timetable

The Ministry is currently also finalising secondary legislation dealing with five key areas: i) responsible gaming, ii) technical requirements, iii) management requirements/operations and processes, iv) types of games and characteristics and v) formal aspects of the application process and licensing process. It is the intention of the Ministry to publish the secondary legislation for consultation at the moment the remote gaming bill will be sent to Parliament (probably July or September 2014). The Ministry is officially still aiming for

1 January 2015 as the date on which the remote gaming bill will enter into force. However, this timeframe seems to be ambitious and Q2/Q3 2015 is more realistic. Subsequently, remote gaming licences will most likely not be awarded before Q1 2016.

Although the bill has already been notified to the European Commission, it cannot be presumed that the revised remote gaming bill will be the final version. The bill may be amended following advice of the Council of State. Furthermore, amendments may arise during the passage of the bill through the parliamentary process, namely at the point when the bill is before the House of Representatives. The proposed differential gaming tax rate will most likely be a very important element which will be heavily debated in Parliament. Several terrestrial gaming operators are advocating a uniform tax rate and there are political parties who are receptive for this position. Depending on the nature of any amendments, subsequent notification to the European Commission may or may not be required.

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