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# The briefing: Dutch bill notified to Brussels

In our continuing series on emerging remote gaming legislation in the Netherlands, Younes Moussaoui of Kalff Katz & Franssen provides a detailed update

**O**N March 5, 2014, a revised version of the Dutch remote gaming bill was notified to the European Commission.

This version is the result of a public consultation of the draft remote gaming bill ("consultation text") in the summer of 2013 and the approximately 90 received contributions from both national and international stakeholders.

The revised remote gaming bill was approved by the council of ministers on February 14, 2014. Afterwards, the bill was sent to the council of state for advice and to the EC for notification, upon which the bill was published and the revisions became public knowledge.

The ministry of security and justice ("ministry") has amended the consultation text on several matters and while some are beneficial for the remote gaming sector, others are clearly not. This article does not aim to provide a full list of all changes, but merely to discuss the most striking changes that involve (i) the aimed level of channelisation, (ii) server requirements, and (iii) product scope.

## Level of channelisation

Firstly, the ministry stated in the explanatory memorandum of the consultation text that it aimed for a level of channelisation of 75 per cent. Many stakeholders stated in their consultation contribution that this level of channelisation lacked ambition and also entailed that the ministry accepts that 25 per cent of Dutch consumers will play at locally unlicensed operators.

Furthermore, the total effective cost burden (consisting of a 20 per cent GGR tax rate, exploitation fee, gaming duty, contribution to an anti-addiction fund and non-tax-deductible bonuses) would result in a level of channelisation of 67 per cent, according to an assessment by H2 Gambling Capital.

The revised remote gaming bill makes no

substantial changes to the total effective cost burden. It nevertheless increases the aimed level of channelisation of 75 per cent to 80 per cent. The reason given by the ministry for this increase is a report by H2 Gambling Capital. It follows from this report that it is expected that the level of channelisation in 2018 will amount to 80 per cent if and when a 20 per cent tax rate is applicable.

Despite the aforementioned increase of five per cent, this still means that the ministry accepts that a large number of Dutch consumers (i.e. 20 per cent) will play at locally unlicensed operators.

## Server requirement

Secondly, the initial proposal of the ministry was that the primary gaming server in principle had to be located in the Netherlands, unless a memorandum of understanding was concluded with a regulator in the jurisdiction where the server is located.

Again, many stakeholders opposed this element of the consultation text because of the significant costs involved in relocating gaming servers on Dutch soil.

Additionally, a requirement of having servers located in the Netherlands may constitute a form of establishment in breach of EU law. Furthermore, many stakeholders expressed that for effective supervision it is not necessary to have the server located in the member state where a game is offered.

The ministry has taken the above mentioned points into consideration and the revised remote gaming bill no longer has the requirement that the primary gaming server, in principle, has to be located in the Netherlands. The gaming server is allowed to be located in any EU/EEA jurisdiction.

Furthermore, other jurisdictions (Alderney and Isle of Man are for example mentioned in the explanatory memorandum) are also allowed if exemption is granted by the gaming authority subject to conditions.

## Product scope

The third and most surprising amendment to the consultation text involves the product scope. The consultation text included nearly no restrictions on the product scope (except for online lottery products, spread and event betting) and explicitly mentioned bingo as a product that will be regulated.

Surprisingly, remote bingo products have been excluded from the revised remote gaming bill. The reasoning provided for this exclusion is that some forms of bingo are very similar to games that resemble lotteries and are currently being offered as lottery products by the charity lotteries. Such forms of bingo seem to follow the same fate as remote lottery products; they will not be regulated.

This exclusion of remote bingo products is most likely the result of extensive lobby efforts from the charity lotteries. However, this exclusion could be in breach of EU law and has, rightly, resulted in a lot of opposition from the remote gaming industry.

The anticipated exclusion of remote bingo is disappointing; however it cannot be presumed that the current text of the revised remote gaming bill will be final. The revised gaming bill may be amended following advice of the council of state, which is expected in April/May 2014. Additionally, amendments may arise if the bill is discussed in the lower house of parliament after the summer of 2014. Furthermore, the revised bill only provides an indication of the types of games that will be allowed in the upcoming regulatory regime for remote gaming.

Secondary legislation will eventually determine the types of games that will be regulated. It is therefore far from certain that all remote bingo products will be excluded in the final version of the remote gaming bill.

It is to be expected that the parliamentary process will run until Q1 or even Q2 2015. Although the ministry aims for 2015, remote gaming licences will most likely be awarded in Q1 2016.