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COMMENTS TO THE REMOTE GAMES OF CHANCE DECREE (CONSULTATION VERSION 10-09-2018)

Dear Sir/Madam,

On behalf of Betclik Group, I would like to hereby submit comments to the Remote Games of Chance Decree (consultation version 10-09-2018), which sets out further details of the proposed regulatory framework for the re-regulation of the Dutch gambling market.

General remarks

Betclik Group's subsidiaries are leading operators established and licensed in the European Union (hereinafter "EU") and provide their gaming services to thousands of EU consumers. Betclik Group, through its subsidiaries, has extensive experience in obtaining licenses in EU Member States, in markets that provide for the possibilities of viable commercial operations, consumer's protection and, most importantly, those that are regulated in accordance with EU law. Therefore, Betclik Group welcomes the attempt by the Dutch authorities to re-regulate the local gambling market by putting in place legislation intended to facilitate competitiveness within an EU law compliant framework.

Betclik Group would like to first comment on a number of general aspects covered by the Remote Games of Chance Decree (hereinafter "Decree").

- The Decree points out which provisions of the proposed law will potentially be elaborated on in the future, which facilitates visibility as to those provisions of the law that could be subject to issuing more detailed secondary legislation. Together with clear and precise provisions, this would enhance legal clarity and ensure that issues of misinterpretation of the law are prevented.

- Betclik Group welcomes the fact that consumer protection and transparency of the regulatory framework are at the heart of the legislative process and the planned licensing system.
- A proper balance between framework legislation and detailed rules as proposed in the Decree will provide the legislator with the possibility to react to the changing circumstances. This is particularly visible with respect to the rules governing online gambling offer where the flexibility of the regulation is to be maintained, and where focus is to be placed on tailoring the regulation to the developments on the market.
- Legislation that is technology and competition neutral will facilitate a higher rate of market entry.
- An additional increase in terms of competition, and thus channelization of players to the regulated offer, will most definitely be achieved through regulation that is not overly costly and unnecessarily burdensome. As rightly pointed out in the Decree and its Explanatory Memorandum, the new legislation should therefore not lead to an increase in administrative duties liable of creating barriers and restrictions for market entry and not justified by concerns related to customer protection or prevention of fraud and money laundering.

Chapter 2. The license

Article 2.1

Opening a market to competition is a crucial element for establishing a successful gambling regulation, and therefore, for facilitating the channelization of consumers to a safe and transparent gambling environment. Systems that do not regulate a broad scope of gambling offer are ineffective as players often want to use more than one gambling product. Consequently, restrictions on the provision of, and thus access to, certain products encourage consumers to use services offered by unlicensed operators that, in contrast to operators licensed to offer only some gambling games, offer a full range of gambling products and are therefore better placed to compete for customers. Only regulation of a complete range of products will enhance the possibility of effective achievement of the objectives sought, and primarily the channelization of consumers to the regulated offer.

Betclik Group therefore applauds the decision of the Dutch lawmakers according to which the new regulatory framework is to introduce a license-based system for the broadest scope of gambling games, while maintaining flexibility in addressing the developments on the market. The Decree, however, is silent in particular on:

- the specificities of a procedure for the introduction of new games into the operators' offer, and on whether any such procedure will in fact be established;
- whether operators will be able to mutualise their liquidity with companies licensed in other EU Member States as per the examples of other EU jurisdictions such as Spain, Denmark or, soon to be, France .

It is therefore proposed that:

- **a clarification is provided on whether the introduction of a new gambling product will be subject to any specific procedure and for any such procedure no to be overly burdensome;**

- **international cooperation between operators licensed in the Netherlands and those licensed elsewhere in the EU is introduced.**

Article 2.2

A discrepancy exists in relation to the period for which licenses will be granted. In that respect, Article 2.2 provides that licenses will be issued for a period of “five years at most”, whereas the Explanatory Memorandum indicates that “the validity period of a license is five years”. It is therefore unclear whether the intention of the legislator is to establish a system whereby all licenses are granted for a fixed period of time, i.e. five years, or one where the length of the license period depends on the decision of the licensing authority. If it is the latter, it is unclear what will be the criteria on the basis of which the granting authority will assess for which period a license is issued. Even if such criteria are established, the existence of such a solution could undermine legal certainty and affect the transparency of the licensing system.

It is therefore proposed that licenses for online games of chance are issued for a fixed period of five years.

Article 2.4

Major changes to laws governing gambling require time before operators are able to obtain the required national licenses. According to the Decree, a decision on the application for a license will be issued within six months, with a possibility of the application assessment period being extended by another period of up to six months. In that respect, the Decree does not propose for a transitional period to be established. Consequently, Betclik Group would like to take this opportunity to recommend for a transitional regime to be introduced for online gambling operators that are licensed in other EU Member States, for the period between the official publishing of the new gambling law or, alternatively, from the moment an application for a license is filed, and up to the moment the license applied for is issued.

Introduction of a transitional period would allow not only for the verification of which operators intend to operate on the re-regulated market but would also significantly support the process of immediate channelization of consumers, with a positive effect on the achievement of the objectives of the new legislation as the process of assessing applications is to be considerably time-consuming.

The United Kingdom is an example of a country that adopted such a solution with success. According to the modalities of the British transitional system, online operators offering their services on the basis of licenses issued in the EU (and a few other selected countries) were given the opportunity to obtain a transitional license. For this purpose, operators were obliged to submit a copy of the license for the provision of online gambling services issued in at least one EU country; pay GGR tax in the amount of 15% on all products from the date when the transitional license was issued; pay the license fee. This solution enabled the authorities to specify which providers intended to obtain a local license and made it possible to re-direct users to a regulated offer from day one. It also brought significant benefits to the British budget by immediately generating tax revenues from gambling. The establishment of such

a solution would not only provide an incentive to participate in the re-regulated market but would also boost consumer channelization while securing growth of state revenues.

It is therefore proposed that a transitional period for EU-licensed operators is introduced.

Chapter 3. The license holder

Articles 3.2, 3.4, para. 1

The new licensing system, as clearly supported in the Explanatory Memorandum, should not be overly costly and burdensome for operators on the administrative side. Still, national regulators should most certainly have the possibility of making sure that gambling games providers meet the qualifying criteria and standards. Nevertheless, a clear distinction should be made between offshore operators (those not based and not licensed in the EU), and EU licensed companies (those both based and licensed in the EU). Entities that fall under the latter category already meet stringent criteria that apply to entities holding a license in the EU, are being scrutinized by national regulators, often in multiple jurisdictions, and undergo regular audits by independent external parties. Therefore, while Betclik Group supports the universal need by authorities to scrutinize entities wishing to engage in the provision of gambling services in their jurisdiction, the information and documentation to be required for the purpose of a license application should be limited to what is strictly necessary to assess the applicants' suitability and should not impose overly costly, time-consuming and burdensome administrative requirements.

An example of a condition that seems to display a degree of disproportionality, as per the Explanatory Memorandum (Article 3.2), is the requirement to submit employment contracts. Such a condition is also one that would exercise a negative impact on the length of time necessary to submit and process applications.

Moreover, legislation should clearly set out which information and documentation must be provided by license applicants. While applicants should be required to provide information concerning e.g. their owners, the focus should be placed on applicant companies themselves and owners with substantial share percentage in the applicant.

It is therefore proposed that:

- **the requirement to provide employment contracts is removed;**
- **clear and transparent regulations on license applications are published;**
- **the licensing system for online gambling, and therefore the conditions under which it will be possible to obtain a license in the Netherlands, takes into account the experience of the applicants with respect to providing online gambling services in other EU jurisdictions;**
- **the regulations on license applications focus on documentation concerning the applicant and owners having a substantial percentage of shares in the applicant.**

Chapter 4. The organization of remote games of chance

Article 4.2, para. 1

The Decree is unclear on how far the restriction should be applied, and in particular, whether it should be interpreted as prohibiting the use of credit cards as a payment mean for deposits into player accounts.

It is important to ensure that customers are able to use a broad range of payment means, including credit cards, in order to deposit funds into their player accounts. Inadequate restrictions in that respect could constitute a hurdle for channelization of players into the regulated offer and thus be liable of strengthening non-licensed operators, which are often based outside of the EU, by allowing them to compete with license holders by providing a more attractive offer to customer with respect to the payment means available.

It is therefore proposed that credit cards are not excluded as a means of depositing amounts into player accounts.

Article 4.8, para. 2

Betclik Group fully supports measures aimed at tackling the issue of match-fixing. Betclik Group is a member of ESSA Sports Betting Integrity (hereinafter "ESSA"), a body the purpose of which is to shield gambling services providers, their customers and sporting governing bodies alike from betting-related corruption. ESSA and its members achieve this goal by identifying and sharing information on suspicious betting patterns across any markets on which ESSA members are active on. The mechanism operates via a tailored monitoring and alert system. Moreover, all ESSA members undergo a rigorous due diligence process and must adhere to the ESSA code of conduct. EU-licensed entities, including Betclik Group, have also put in place specific internal procedures the goal of which is to combat any instances of (potential) match-fixing.

In that context, the requirements under Article 4.8, para. 2 do not only lack clarity but also seem overly burdensome. First, it is unclear what the obligation exactly entails, for instance, whether operators will be obliged to contact contest organizers before every stage of a given contest (e.g. before every match day of the Eredivisie). Second, it is unclear which contest organizers will need to be contacted. For example, does the requirement apply to contests organized outside of Europe if the offer is available in the Netherlands as well? Third, the added value of such a mechanism is questionable as the obligation to inform is not supported by any specific requirement to act on the basis of the information provided. What is also worth noting is that bets offered on a given event are always readily available on the website of betting organizers, and that EU-licensed operators have tools in place enabling them to prepare, where necessary, reports regarding the offer. Lastly, the Decree itself imposes a number of obligations on future licensees in relation to combating match-fixing. Betclik Group is of the opinion that the mechanism is redundant as it duplicates the already existing practice. It would therefore be more beneficial to capitalise on the existing measures.

It is therefore proposed for the requirement to be removed.

Article 4.9

It is unclear how the concept of “material influence” should be understood, whether it should be interpreted as meaning “control”, and what is the test for establishing whether such influence exist.

It is therefore proposed for the concept of “material interest” to be elaborated on.

Article 4.13, para. 2, points a., b., c.

Consumer protection regulations that facilitate responsible gambling among players are an important component of a successful gambling regulation. Betclik Group, which through its subsidiaries has implemented and upholds the highest standards of responsible gambling policies that ensure the maximum level of player protection, welcomes the fact that the future Dutch gambling law is to provide measures aimed at safeguarding consumers’ interests. Nevertheless, it needs to be pointed out that such measures should not put undue burden that could lead to results opposite to those intended.

Consumer protection measures and responsible gambling mechanisms should ensure the highest level of protection possible while maintaining proportionality between the objectives of the legislation and the implemented measures. Therefore, such measures should not result in undue barriers for operators wishing to enter the market, nor should they dissuade consumers from using services of licensed operators. If not regulated in a balanced way, a system intended for player protection could sway players, likely to have gambling related problems, towards non-licensed operators. This would consequently lead to the loss of supervision over such players, and to an increase in black market operations that do not adhere to consumer protection principles and do not utilize responsible gambling mechanisms.

The proposed solution for establishing limits could be liable of creating such a situation. In order to maintain a proper balance between the need to protect vulnerable players and ensuring that customers use the services of licensed operators, it is proposed that the requirement for setting a maximum number of times the player can login to the account in a given period is replaced with the possibility of setting up a limit on login time duration, a practice common in other EU jurisdictions. The solution proposed in the Decree is likely to cause a considerable number of consumers being unintentionally excluded from the licensed offer as a result of such a mechanism being introduced. This is even more apparent taking into consideration that, as per the Decree, players need to be logged off automatically after a certain period of time. Here, the limit on the number of logins combined with the automatic logoff functionality does not provide for the possibility of differentiating between a voluntarily and non-voluntarily decision to logoff and is therefore liable to cause customers being denied access to the service unwillingly.

The proposed limits on the number of transactions to the gaming account and limits on credit in the gaming account would result in similar consequences. Instead, players should be provided with the

possibility of setting up limits on deposits, which have been tested and proven to be effective in multiple other EU jurisdictions, and which allow players to keep control of their gambling behaviour.

It is therefore proposed that:

- **setting a maximum number of times the player can login to the account in a given period is replaced with the possibility of setting up a limit on login time duration;**
- **setting limits on the number of transactions to the gaming account and limits on credit in the gaming account are replaced with the possibility of setting up limits on deposits.**

Article 4.35

Contacting customer service agents via electronic means is always possible and available. If contact is made outside of the normal operations of the customer service desk, the player may still submit the query. Such queries are then addressed on a rolling basis, and within 24 hours maximum. Such a system ensures that players are able to get in touch with the operator on any questions they might have; that questions are addressed in a prompt manner; and that any queries the answer to which requires input from other departments within the business are answered in an exhaustive manner. Therefore, in order to ensure efficient customer service support and for any queries to be addressed exhaustively and accurately, it is proposed for the provision to be amended so that the availability of the customer service electronically is limited to either a specific number of hours per day, or to specific hours during the day.

It is therefore proposed for the provision to be amended.

Article 4.42 in conjunction with article 5.3

Betclik Group would like to take this opportunity to flag that special care should be given to ensuring that the future legislative framework on gambling does not contain requirements that are contrary to EU Law. In the context of IT infrastructure this applies specifically to requirements that concern the location of IT equipment. It therefore needs to be pointed out that the obligation to have a local server or data warehouse physically placed in the local jurisdiction goes contrary to EU free movement of services and the freedom of establishment due to the fact that such requirements create additional maintenance and costs while discriminating against non-local operators. Such restrictive measures cannot be justified since the level of appropriate surveillance over gambling operations can be obtained using less intrusive means. The IT requirements should therefore facilitate a level-playing field for operators based in the Netherlands and those established in other EU Member States. As a result, physical IT infrastructure should be allowed to be based anywhere in the EU / European Economic Area (hereinafter "EEA").

Requirements of Article 4.42 in conjunction with Article 5.3, however, stand in breach of European law, and in particular, they discriminate directly against operators established outside of the Netherlands and are disproportionate. Under EU law and the jurisprudence of the European Court of

Justice (hereinafter “ECJ”), companies may not be excluded from licensing just because they do not have their servers in a given Member State. In its judgment in *Engelmann* (case C-64/08), the ECJ stated that the award of gaming licenses may not be contingent on the location of the company seat in the Member State granting the license:

“37. [...] the categorical exclusion of operators whose seat is in another Member State appears disproportionate, as it goes beyond what is necessary to combat crime. There are indeed various measures available to monitor the activities and accounts of such operators [...].

38. Inter alia, the possibility of requiring separate accounts audited by an external accountant to be kept for each gaming establishment of the same operator, the possibility of being systematically informed of the decisions adopted by the organs of the concession holders and the possibility of gathering information concerning their managers and principal shareholders may be mentioned. [...] any undertaking established in a Member State can be supervised and have sanctions imposed on it, regardless of the place of residence of its managers.

39. Moreover, having regard to the activity at issue, namely the operation of gaming establishments located in Austrian territory, there is nothing to prevent supervision being carried out on the premises of those establishments in order, in particular, to prevent any fraud being committed by the operators against consumers.”

It is important to note that the requirement of having a database server on the territory of the host Member State in fact requires an operator to establish itself in that State. As such, this requirement directly restricts the freedom to provide (cross-border) services under Article 56 of the Treaty on the Functioning of the European Union. National rules that either explicitly or de facto require an establishment in the country where services are to be provided discriminate directly against operators established elsewhere.

What needs to be pointed out as well is that measures less restrictive to the one proposed exist. Such a measure is in fact already contained under Article 5.3, para. 3, which provides that licensees must guarantee that the relevant authorities have electronic access at all times to the control database and the data contained therein.

It is therefore proposed for the requirement to be amended so that the control database can be located anywhere in the EU / EEA.

Chapter 5. Monitoring and enforcement

Article 5.4

It is without question that safeguards need to exist for the authorities of EU Member States to be able to ensure that licensed operators have the necessary financial capacity and means to conduct their operations and cover their liabilities, most importantly towards the consumers. For that purpose, national regulators conduct assessments of operators’ financial standing in order to check their business viability. However, due to multiplicity of national gambling regulations and the lack of harmonised EU legal framework in the area of gambling, operators are often subject to various sets of financial capacity requirements. These financial capacity requirements are additional to the

licencing requirements and should not be confused with the operators' obligation to secure and guarantee the player's funds in a separate account.

As a result, multiple financial requirements imposed on gambling companies in various jurisdictions often prove to be the decisive factor in operators' decision-making process on whether to enter a given market or not. This stands true especially with respect to small and medium companies. Financial capacity requirements can also effectively distort competition to the detriment of the customers. In that regard, the most burdensome requirement is the condition to provide a guarantee in cash or securities, which often constitutes an economic requirement beyond the reach of gambling operators, and in particular those that are licensed in multiple EU jurisdictions.

Therefore, it is suggested that the future legal framework for gambling services in the Netherlands does not provide for the introduction of financial guarantee measures, and most importantly those in the form of cash or securities guarantees, as such a measure would be liable of excluding operators, particularly those holding multiple EU licenses, from the re-regulated Dutch gambling market. The requirement would negatively affect market competition and the objectives sought by the national authorities, in particular with respect to low barriers for entry as means for facilitating high level of consumer channelization. This holds even more true since the level of proposed taxation on gambling will amount to >30% of gross gambling revenue, which is considerably higher than the level of taxation in Member States with widely-recognized model gambling regulation, namely Denmark (20%) and the United Kingdom (15%). Moreover, the soon to be re-regulated Swedish market will operate under a tax of 18% on gross gambling revenue. What must also be mentioned here is that the Swedish lawmakers recognized the issues related to financial guarantee requirements and decided not to introduce such a condition.

It is therefore proposed for the financial guarantee requirement to be removed and replaced by proper due diligence on applicant's management team and ultimate owner beneficiaries.

Explanatory memorandum

2.3.3. Advertising

Establishing reasonable rules on advertising constitutes an effective tool for the protection of consumers by encouraging the use of regulated and licensed services that meet the highest safety standards. Therefore, advertising and promotion to a reasonable extent, that take place in a controlled and regulated environment while taking into account protection of minors and other standards applied in EU countries, would be for the benefit of Dutch consumers. Proper regulation of advertising would also enable online gambling operators to substantially support Dutch sports. In that respect, it should not be prohibited to advertise online gambling services using sportsmen and sportswomen.

Operators should also be allowed to apply bonuses on a discretionary basis. Players differentiate themselves through different needs and different styles of play, and licensed companies should have the possibility to address these specificities for example through their bonus offer. In that context, it is unclear what is meant by a ban on bonuses for students.

Betclik Group considers that the proposed Decree provides solid grounds for building a strong, competitive and safe gambling environment in the Netherlands. We hope that the comments provided will prove to be useful in the ongoing debate. We believe that in the course of work and discussions on the re-regulation of gambling in the Netherlands it is possible to develop solutions that will effectively minimize the grey area and have a beneficial effect on the level of security of Dutch consumers. We remain at your disposal, and we are open to serve with our knowledge and experience in order to contribute to the development of new gambling law of the highest efficiency and standards.

With kind regards,

A handwritten signature in blue ink, consisting of a large 'V' followed by a horizontal line and a long, sweeping underline.

Véronique GIRAUDON