

European Gaming and Betting Association

Maarten Haijer
50 Rue Gray
B-1040 Brussels
Belgium

Ministry of Finance
Minister Wopke Hoekstra
Korte Voorhout 7
2500 EE Den Haag

Brussels, 5 November 2018

Subject: EGBA comments to the consultation on the proposed law: Decree laying down provisions for the implementation of the Remote Games of Chance Act (Remote Games of Chance Decree)

Dear Sir/Madam,

We, the European Gaming and Betting Association (EGBA), the association representing the leading online cross-border licensed gaming and betting operators in the European Union ('EU'), would like to bring forward our considerations on the Decree laying down provisions for the implementation of the Remote Games of Chance Act (Remote Games of Chance Decree).

EGBA is closely following the Dutch legislative process and welcomes that the Netherlands is taking a further step towards re-regulation of its online gambling market. Today's digital reality and well-established demand of Dutch consumers for online gambling and related digital entertainment services requires an appropriate legal framework to provide a well-regulated Dutch online gambling market that succeeds in channelling the existing consumer demand towards the Dutch-licensed offer. EGBA acknowledges the Dutch government's view that effective consumer protection under Dutch law, including responsible gambling, can be achieved to a greater extent if Dutch consumption is channeled towards locally regulated operators. EGBA notes that the channeling rate objective is set by the Dutch government at between 70% and 80% and agrees with the importance of channeling as a critical success factor, however EGBA believes that the Dutch government could strive for a higher percentage of the channeling rate. It should be underlined that the attractiveness of the local Dutch offer, product range, user experience and pricing will determine how many Dutch consumers will choose to play within the Dutch regulated market and thus, conversely, how many will decide to continue to play outside the licensing regime.

Clearly, if a large proportion of Dutch consumers do not find the locally licensed product sufficiently attractive then they will gamble with operators based in other jurisdictions, in most cases even from outside of the EU, where consumer protection standards are significantly lower (and often completely lacking) than those in the Netherlands, and where high standards of responsible gaming such as the 2014 EC Recommendation on responsible gambling are not applied. Whilst all online consumers are price sensitive, some are highly price and user experience sensitive, and all will be able to find – without much burden – an alternative offer if the regulated offer is not made attractive enough. This is especially true in a country such as the Netherlands, which has a high degree of internet penetration and a

population which is tech-savvy. Therefore it would be highly probable that Dutch consumers would use technical tools, e.g. VPNs, to play outside the national market, if the local regime proves to not be attractive enough. In short, the success of the new regulation of the Dutch market will largely depend on the extent to which it will be able to capture the largest possible number of Dutch players by allowing EU-licensed operators to offer Dutch consumers a sufficiently attractive offer under the new Dutch licensing regime and under unique conditions.

As in every newly regulated market, there needs to be a close dialogue between those operators willing to comply with the local licensing requirements and the licensing authority in order to ensure a smooth transition and high channelling rate. To this end, we must put forward certain concerns about the new legislation that could be improved or need clarification.

Responsible gambling

The first paragraph of Article 4.13 obliges operators to “*not register an individual as a player until that individual has specified the limits to their gaming behavior*” and paragraph 2 substantiates such limits:

2. *The limits referred to in paragraph 1 relate at any rate to:*

- a) *the maximum number of times the player logs in per day, week or month;*
- b) *the maximum number of payment transfers to the gaming account per day, week or month; and*
- c) *the maximum credit in the gaming account.*

As for letter (a), setting a maximum number of logins for a player would be detrimental to the channeling objective and burdensome for the players. It has to be considered that, depending on the configuration of the website or the mobile app of the operator, it is very likely that every time the player closes the website, gets disconnected on a public wi-fi or the mobile app this would result in a log out. Therefore, the situation in which a player does not even place a bet, but nonetheless logs in multiple times in the same day, would result in a frustrating experience for the player who will have to be careful every time he logs in in his account to avoid surpassing the set limit. Instead of this limit, to safeguard the consumer, it would be better to set a maximum amount of time that the player can spend on the website or app of the operator. This limit would better protect the consumer from the risk of problem gambling.

Letter (b) should be also amended, since the player could decide to transfer money little by little on his gaming account precisely to keep his spending in check. Therefore, it is not relevant how many times the player transfers money to his account, but instead for consumer protection reasons it would be more suitable to amend the provision in this letter obliging the player to set a maximum limit of daily, weekly and monthly amounts that could be transferred to the account. Such limits would be easier for the player to relate to his actual budget rather than the number of transfers to his account.

Letter (c) obliges the player to set a maximum credit in the gaming account. However, we fail to see how this would better protect the player, since following our suggestion for letter (b) the player would already have control on the maximum amount of money that can be transferred into the gaming account. Setting a maximum for the overall credit is not useful for consumer protection and is not a future proof provision, since the player could win an amount of money that would make him surpass the limit, thus this provision would oblige him to withdraw money immediately. Further, it is not necessarily helpful to require the player to set a high number of limits, as this would rather be considered as a burden and would not help to channel the player to the regulated offer. On the contrary, it should be easy for the

player to understand which limits he has to set and establish them in a way that can help the player have a clear idea on his financial means. Therefore, we suggest to delete the provision in letter (c).

Method used for identification

Article 4.15 (2) lays down rules on the method to be used for verification of the identity of the player. It states “*the player should carry out an action that only they can carry out and whereby use is made of an instrument that was issued on the basis of a physical check of the player's identity document*”. The wording of the provision is unclear, but we assume that the physical check of the player's identity document includes the possibility to check the document also using electronic means, i.e. online, and without requiring the physical presence of the player. EGBA believes that this provision should be clarified to avoid its misinterpretation. If our interpretation is not correct, the provision would then exclude from the market all online payment service providers such as, for example, Paypal, Skrill, Amazon Payments and Google Wallet that allow online registrations and identity checks, which are commonly used by the average consumer in order to make payments for multiple types of services and purchases, for their simplicity, affordability and short transaction times regarding payments. Therefore, if our interpretation is not correct, the Article would not allow such payment service providers to be used by Dutch players. If that is the case, we would suggest to delete the provision asking for a physical check of the player's identity documents, as this would not reflect the current technological situation.

Mandatory systems inspection

Other provisions, which require clarification are Article 4.41 (3)(c) and Article 4.50. These two Articles establish a system of mandatory inspections, respectively, Article 4.41 (3)(c) provides that every time there are changes in the game system they “*are submitted in good time for inspection by a designated inspection body*”, while Article 4.50 obliges the operator to “*subject a planned change to any component of the game system to inspection by a designated inspection body before it comes into operation*”.

Further, Article 4.50 (2) establishes that this prior inspection could be omitted if the change involves a “*non-critical component of the game system, and the game system satisfies the relevant requirements following the change to that component*”, but in this latter case, the operator must subject the modified component to its own inspection and to the inspection by a designated inspection body within 120 days. Finally, Article 4.50 (3) states that the prior inspection can be omitted if the change “*must be made without delay to ensure the responsible, trustworthy and verifiable organization of the licensed games of chance*”. However, also in this case, the change must be subject to inspection by a designated inspection body as soon as possible, and within thirty days at the latest.

EGBA believes that these provisions lack clarity and create a redundant and burdensome system of inspections, which are not necessary and would require inspections even for routine changes, which are normally unimportant enough to not be subject to scrutiny. Article 4.41 (3)(c) states that changes in the game system must be submitted “*in good time*”, which is very vague and may bring operators to involuntarily infringe the provision, as no guidance is given in this regard. Further, we fail to see why in the case of Article 4.50 (2) the operator should both do a self-inspection and then be inspected by the designated inspection body. Moreover, the difference in the deadlines between the cases of paragraph 2 (b) and 3 would only create confusion in the operator that strives to comply with the legislation.

Overall, operators have numerous changes to their systems and products. The legislation should ensure that these changes conform to the standards as a result of these changes. Some critical changes to the systems may require robust change management processes to ensure compliance, therefore rather than

audit each and every change, the change management process should be subject to audit and certification. This would also help save costs both for the inspection body and for the operators.

Finally, EGBA wishes to reiterate its support for the overall re-regulation of the gambling regime in the Netherlands and welcomes the proposals for secondary legislation as a necessary next step towards the robust regulation of the market. EGBA remains at the disposal of the KSA for any additional questions that need clarification.

Yours sincerely,



Maarten Haijer
Secretary General
European Gaming and Betting Association (EGBA)