Next steps in reforming the Dutch online gaming market

The Dutch gambling regulations have been under scrutiny for over a decade. On 11 July the Dutch government gave the go ahead for far-reaching reforms. To that end, the government submitted the legislative proposal on remote gambling (the 'Online Gaming Bill') and policy documents to Parliament. Roelien van Neck, Mariska van de Sanden and Arnoud Knijnenburg of Bird & Bird LLP, summarise the main features of the Online Gaming Bill and the policy documents, and set out the next steps that need to be taken in order to reform Dutch gambling policy.

Online Gaming Bill

Background

Dutch gambling policy in general has three main objectives: the prevention of addiction, consumer protection and the prevention of fraud and other crime. The current Betting and Gaming Act prohibits the organisation of online games of chance, so it is currently not possible to obtain a licence for the organisation of such games. Modernisation was, therefore, necessary. With the Online Gaming Bill, the government aims to consolidate current and future needs for online gambling into a 'responsible, verifiable and reliable selection of games of chance.' In other words: directing the demand towards legal channels.

Features

The Online Gaming Bill provides for an amendment to the Betting and Gaming Act and the Betting and Gaming Tax Act. It enables the provision of online games of chance in the Netherlands, provided that a licence has been obtained. The Online Gaming Bill consists of the following features:

Licence

- Any company meeting the licence conditions may qualify for a licence;
- The licence is in principle issued for a term of five years;
- The cost of a licence is estimated at approx. EUR €40,000; and
- No restrictions are set to the number of licences granted.

Licence holder location

The licence holder must have its registered office, central administration or principle place of business in an EU/EEA-country. The Dutch Gambling Authority (Kansspelautoriteit or 'KSA') can, however, grant an exemption from this requirement if the laws of the third country provides sufficient protection with regard to the interests the Online Gaming Bill aims to protect.

Technology location

An earlier proposal to require servers to be located in the Netherlands has been removed; it is sufficient that servers are located in the EU/EEA or in a third country provided an exemption has been granted (see above). This means greater flexibility around IT infrastructure.

Identification of players; no anonymous payments

All players must identify themselves to the licence holder. A licence holder cannot offer any online games of chance if the player has not been registered. Only payment instruments identifying players or facilitating identification will be allowed.

Central risk players database

A centrally operated 'risk players' database will be set up by the KSA:

- Players showing risky gaming behaviour may be excluded from participation, either voluntarily (on request of the player) or involuntarily (by the KSA, on the basis of the advice of the licence holder and/or the advice of third parties, for example relatives of the player); and
- This register will be managed by the KSA.

In respect of this database a number of data protection questions have already been raised and the legislator and the KSA will have to address these in order for the database to comply with data protection legislation.

Tax rate and differentiation

For online games of chance offered by online operators, a tax rate of 20% has been proposed. This is lower than the regular rate of 29% applied to land based games of chance. This proposal has been criticized by the owners of casinos and gambling halls, who argue that rate differentiation leads to an uneven playing field and provides preferential treatment to online games of chance. The owners of casinos and gambling halls have already announced that they are preparing a legal challenge against this differentiation. They want an adjustment to the Online Gaming Bill in such way that a level playing field is created.

Additional powers of the KSA

The KSA will have additional and far-reaching powers. Besides its current powers the KSA will have *inter alia* the power to:

- Perform inspections of gaming systems;
- To place seals on business premises and objects;
- To enter and search houses; and
- To issue binding instructions to parties that promote or facilitate illegal online gambling to, for example, block access to websites and internet traffic provided a court order by an examining magistrate has been obtained or block any payments. However, it is

not required and is deemed undesirable, that internet service providers monitor internet traffic.

Policy documents

Together with the Online Gaming Bill, a letter from the Minister on the future of the lottery market and a policy paper on the casino market has been sent to the Parliament. It follows from these policy documents that not only will the online gambling market be reformed, but the lottery and casino market will also be reformed in the coming years.

Lottery market

Currently, lotteries are obliged to pay a certain percentage of their deposits to charities. It becomes clear from the letter regarding the review of the lottery market that this mandatory contribution rate will be reduced from 50% to 40%. According to the Minister, the lottery system is of great social value, as social charities currently receive more than EUR €580 million per year from the lottery sector. The turnover of the lotteries has, however, decreased in the last couple of years. Therefore, the government is willing to facilitate new lottery initiatives, e.g. by reducing the mandatory contribution rate.

As the Minister extends the current lottery licences until 2017 (the current licences expire at the end of 2014) lotteries will have approximately two years to adapt to the new circumstances (e.g. the online gambling market) before the market for lotteries is also opened up. This approach has been criticised because some believe that as a result the land based lottery organisations are being given an advantage by the Minister over new market entrants.

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What is interesting to note is that the National Lottery (Staatsloterij) (currently state owned) and De Lotto, the two main lottery organisations in the Netherlands, are currently investigating whether it is possible for them to collaborate or merge. They have indicated that this is in order to be better able to compete when the online gambling market opens up. It is expected that they will also apply for a licence to organise online games of chance, as well as other parties in the lottery market.

Casino market

Holland Casino is currently the only legal provider of casino games in the Netherlands, with the State as its sole shareholder. The Minister announced in the policy paper on the review of the casino market that the organisation of games of chance is no longer a public task and that it, therefore, has decided to privatise Holland Casino. According to the Minister, the privatisation of Holland Casino must take place in or before 2017. The sale of the fourteen establishments of Holland Casino will be divided into two blocks: the sale of ten establishments together and the sale of four individual establishments.

Moreover, the Minister intends to reform the whole casino market in that same year by opening up the market even further and accepting new operators. However, in the first 15 years, the casino market will only be opened up to a limited extent. Only 16 licences will be provided (as opposed to 14 licences now) and these licences will be distributed over 5 regions, in order to prevent some parts of the country having an accumulation of casinos. This implies that only a limited number of parties will be able to obtain a licence, and that licencees will have a limited opportunity to choose their preferred location.

What happens next?

The reforms set out in the policy documents will be elaborated on by the Minister and eventually laid down in legislation after the summer recess (September). Moreover, at that time the Dutch parliament will start discussing the Online Gaming Bill. It is expected that many amendments will be proposed and that the Bill will not be easily accepted by parliament, as betting and gaming remains a hotly debated topic in the Netherlands.

It was originally expected that the first online licences would be provided as of 1 January 2015. However, this might be pushed back to mid-2015 given the current timing. Nevertheless, it is clear that changes are imminent and parties involved or looking to participate in the Dutch online gambling market should now step up their efforts in order to be ready when the market opens.

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