

Reform online gambling legislation in the Netherlands?

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Introduction

The legal basis of the Dutch gaming policy can be found in the Dutch Betting and Gaming Act 1964 (hereinafter: "**Gaming Act**"). The Gaming Act stipulates that offering games of chance or promoting games of chance without a licence is prohibited. The Gaming Act includes an enumeration of the specific games for which a licence can be granted. The only types of licence available are those expressly stated in the Gaming Act and currently does not include remote gambling licences. Therefore, all forms of remote gambling are currently prohibited in the Netherlands.

Reform online gambling legislation?

Having regard to the shift towards liberalization in other European countries, such as Denmark, France, Belgium, Spain and Italy, we feel that the developments abroad are likely to influence the process in our country as well. In addition, the following developments increase the feasibility of a reform of the current online gambling legislation:

1. Legal:

– 3 June 2010: ECJ judgment in the Betfair and Ladbrokes cases

Both cases address the compatibility of the Dutch gambling legislation with key principles of EU law. Although the ECJ reiterated the rejection of the mutual recognition principle, the Betfair case also created a new battleground between

operators and monopolists in Europe. Not only the legality of a monopoly system is questioned, but the debate has shifted to how and to whom a monopoly is granted. The ECJ clearly stated that the principle of transparency applies to the procedure for the granting of a gaming licence in a single-license system, which essentially means that the licence-awarding procedures have to be open to competition. However, the Court provided with par. 59 a much debated exemption to the transparency principle. The obligation of a member state to offer or renew a single private operator license through a transparent public tender process may be disregarded when the government subjects that private operator's activities to strict control.

– 2 July 2010: Judgment Dutch court “poker is a game skill”

On 2 July 2010 the District Court in The Hague ruled that poker cannot be classified as a game of chance and therefore acquitted the organizer of an offline poker tournament charged with violating the Dutch Betting and Gaming Act. The Court argues at length why Poker cannot be classified as a game of chance. This judgment is contrary to a ruling rendered by the Supreme Court in 1998, and the District Court also found the evidence used in that ruling to be scientifically lacking. The judgment is not yet final pending the outcome of the appeal lodged by the Public Prosecutor.

2. Political:

– August 2010: Report Advisory Commission Jansen on the future regulation of remote gaming

The Commission was formed to advise the (outgoing) Minister of Justice on the regulation of online games of chance with a view to a further possible regulation. The Advisory Commission recommends regulation of the Dutch online gaming sector for online poker only. New regulations must be accompanied by financial, ISP and media-blocking measures. In response to the

report the major left-wing Labour Party has already announced that they will come up with new proposals aimed at reforming the whole Dutch gaming policy, thus not only internet poker.

– September/October 2010: new Dutch Government

The most crucial development is the formation of a new Dutch right-wing minority government consisting of the VVD party (Liberals) and CDA party (Christian-Democrats) backed by Geert Wilders' PVV (Freedom Party). The new government increases the feasibility of a regulated (remote) gaming sector. It seems that the new government plans to introduce a licensing system for online gaming as of 2012. The financial paragraph of the new coalition agreement states literally:

“Introduction of licence fee for (or auction of) licenses for the exploitation of internet gambling and lotteries”

Future scope

It is clear that the current prohibition on all forms of remote gambling will be most likely abandoned. It is not inconceivable that a multiple licensing system for remote gambling will be introduced, but the precise scope is still unclear. The financial paragraph of the coalition agreement at least suggests that the new government intends to break away from the „poker-only“ approach of the Advisory Commission Jansen, as it speaks of internet gambling in general and also includes lotteries. However, both the Advisory Commission report and the coalition agreement lack further details (such as tax issues, cross-border liquidity, physical presence, server location etc).

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