



## Update to Dutch Online Gaming Liberalization Process

In July 2014, the Dutch legislative proposal to open the market for online gaming was submitted to the Dutch House of Representatives. At the same time, the advice given by the Dutch Council of State to the Dutch Government to reconsider its choice to liberalize the Internet gaming market was made public.

This *Alert* summarizes the proposed law and highlights several key issues raised by the Council of State, which undoubtedly will give rise to further debate in the course of the legislative process.

### **Online Gaming Bill submitted to Dutch Parliament**

The proposal aims to modernize the current law so as to allow for licensed operators to offer online gaming to the Dutch public. The proposal is part of a plan to reform the Dutch gaming market and to privatize government controlled bodies that currently have licenses to offer games of chance.

The bill amends the laws on betting and gaming, gaming-related taxes, and allows prospective operators to obtain a license to offer online gaming. It refers to the concept of 'remote games of chance,' meaning games of chance where the player will be able to participate using electronic means of communication. A key feature of these games of chance is that there is no physical contact between the player and the game organizer.

Licenses will be granted for five-year spans to operators that meet the criteria to be defined in the implemented regulations. The proposal does not limit the number of licenses that can be granted, but stresses that operators must qualify as "reliable" operators that are capable of implementing extensive monitoring and auditing procedures to combat addiction.

The draft legislation introduces a central register in which records of players that have been (temporarily) excluded from participation will be housed.

The proposal provides that the proceeds of online gambling will be subject to a 20 percent tax rate, which is lower than the current rate of 29 percent applicable to land-based games.

The Betting and Gaming Authority will supervise the conditions set for the licensed operators. The draft bill provides the Betting and Gaming Authority with extensive powers, including the power to perform inspections and the power to give binding instructions to ICT (Information and Communication Technology) operators to take down websites and to block payment.

### **Ongoing Debate on Legitimacy of Proposed Legislation**

Many parties, including advisory bodies such as the Council of State, have criticized the proposed legislation. While recognizing the complexity of the gaming sector in its recently published advice, the Council of State questioned the choices made by the government in a number of key areas.

First, the Council of State questioned the underlying assumption that regulating online gaming in the Netherlands would convince around 80 percent of Dutch players currently using international sites to switch to licensed operators in the Netherlands.

Second, with reference to the international character of online gaming, the Council of State voiced concerns about the effectiveness and enforceability of the Dutch rules.

Third, the Council of State questioned whether the bill is compliant with European guidelines on online gambling, with particular reference to the differentiated taxation scheme that makes online operations benefit from a lower tax rate of 20 percent, whereas proceeds of land-based gaming will be taxed at a less favorable rate of 29 percent.

The government has responded that the national regulator's enforcement powers to deal with operators using international sites will be increased 'significantly.' In the proposal, the differential treatment as regards to taxation has been left unchanged and the government, thus, seems to leave these important issues, which are subject to debate and litigation in Europe, open for an intensified debate.

### **Next Steps**

In September 2014, the House of Representatives will reconvene to consider the proposal. The House of Representatives has the power to introduce amendments to proposed legislation. Once approved by the House of Representatives the proposal will be sent to the Senate. Once the Senate has passed the bill it will be published and take effect.

The proposed legislation is scheduled to take effect in 2015. Earlier this year the Minister of Justice indicated that the proposed legislation was expected to be effective as early as January 2015, but in light of the complexity of the issues raised it may well take longer to complete the legislative process.

In parallel to the legislative process, implementing regulations still have to be finalized. It will be necessary to consult with the industry in the coming months.

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This *GT Alert* was written by **Emilie van Hasselt**, **Peter van Langeveld**, **Reinier van de Steenoven**, **Hans Urlus**, and **Thomas van der Vliet**. Questions about this information can be directed to:

- > [Emilie van Hasselt](mailto:vanhasselte@eu.gtlaw.com) | +31 (0) 20 301 7354 | [vanhasselte@eu.gtlaw.com](mailto:vanhasselte@eu.gtlaw.com)
- > [Peter van Langeveld](mailto:langeveldp@eu.gtlaw.com) | +31 (0) 20 301 7308 | [langeveldp@eu.gtlaw.com](mailto:langeveldp@eu.gtlaw.com)
- > [Reinier van de Steenoven](mailto:steenovenr@eu.gtlaw.com) | +31 (0) 20 301 7316 | [steenovenr@eu.gtlaw.com](mailto:steenovenr@eu.gtlaw.com)
- > [Hans Urlus](mailto:urlush@eu.gtlaw.com) | +31 (0) 20 301 7324 | [urlush@eu.gtlaw.com](mailto:urlush@eu.gtlaw.com)
- > [Thomas van der Vliet](mailto:tvv@gtlaw.com) | +31 (0) 20 301 7387 | [tvv@gtlaw.com](mailto:tvv@gtlaw.com)
- > [Marha A. Sabol](mailto:sabolm@gtlaw.com) | +1 312.476.5114 | [sabolm@gtlaw.com](mailto:sabolm@gtlaw.com)
- > Or your [Greenberg Traurig](#) attorney

<b>Albany</b> +1 518.689.1400	<b>Denver</b> +1 303.572.6500	<b>New York</b> +1 212.801.9200	<b>Shanghai</b> +86 (21) 6391.6633
<b>Amsterdam</b> +31 (0) 20 301 7300	<b>Fort Lauderdale</b> +1 954.765.0500	<b>Northern Virginia</b> +1 703.749.1300	<b>Silicon Valley</b> +1 650.328.8500
<b>Atlanta</b> +1 678.553.2100	<b>Houston</b> +1 713.374.3500	<b>Orange County</b> +1 949.732.6500	<b>Tallahassee</b> +1 850.222.6891
<b>Austin</b> +1 512.320.7200	<b>Las Vegas</b> +1 702.792.3773	<b>Orlando</b> +1 407.420.1000	<b>Tampa</b> +1 813.318.5700
<b>Boca Raton</b> +1 561.955.7600	<b>London*</b> +44 (0) 203 349 8700	<b>Philadelphia</b> +1 215.988.7800	<b>Tel Aviv^</b> +972 (0) 3 636 6000
<b>Boston</b> +1 617.310.6000	<b>Los Angeles</b> +1 310.586.7700	<b>Phoenix</b> +1 602.445.8000	<b>Warsaw~</b> +48 22 690 6100
<b>Chicago</b> +1 312.456.8400	<b>Mexico City+</b> +52 (1) 55 5029 0000	<b>Sacramento</b> +1 916.442.1111	<b>Washington, D.C.</b> +1 202.331.3100
<b>Dallas</b> +1 214.665.3600	<b>Miami</b> +1 305.579.0500	<b>San Francisco</b> +1 415.655.1300	<b>Westchester County</b> +1 914.286.2900
<b>Delaware</b> +1 302.661.7000	<b>New Jersey</b> +1 973.360.7900	<b>Seoul∞</b> +82 (0) 2 369 1000	<b>West Palm Beach</b> +1 561.650.7900

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